

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: **March 17, 2020**

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: **A) approve** a First Amendment to Lease Agreement (R2018-0121) with the City of Palm Beach Gardens (City) to include additional language regarding non-discrimination and revenue sharing; and **B) approve** a Public Private Partnership Sublease Agreement, as amended by Amendment No. 1, between the City and the Palm Beach North Athletic Foundation, Inc. (Foundation) for the development, construction and operation of an Indoor Recreational Facility at the Gardens North County District Park (Park).

**Summary:** On January 23, 2018, the Board approved a 50-year lease agreement with the City for the construction and operation of a district park on 81.7 acres that serves the residents and visitors of northern Palm Beach County. The first phase of the park, which was opened to the public on June 29, 2019, included five lighted multipurpose fields, a restroom/concession building, a playground, splash pad, and associated infrastructure. All elements identified as Phase 1 in the Lease Agreement have been completed and are open to the public. A majority of the elements identified as Phase 2 in the lease agreement, including two lighted multipurpose fields, an open play area, a restroom, playground nature trails and related infrastructure have also been completed and are open to the public. The only element identified in Phase 2 of the approved master plan that has yet to be constructed is an indoor sports center.

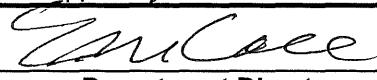
The City received inquiries from various private groups interested in developing and operating an indoor recreational facility under a public-private partnership. The City secured responses from qualified proposers for the design, construction, operation and maintenance of an indoor facility through a publicly advertised RFP process. The Foundation was the only responsive and responsible proposal that was received. The Foundation's proposal calls for the development, construction and operation of a 200,000 square foot indoor recreation facility. Amenities identified within the facility include two ice rinks, six multi-sport courts, five multipurpose rooms, squash courts, a jogging track, children's play area, fitness area and concession/restaurant. Construction is expected to commence within 18 months of agreement execution. The fundraising plan requires the project to be fully funded by May 31, 2023, and construction completed by December 31, 2028. The Public Private Partnership is supported by the nine surrounding municipalities in the North County Area and have submitted letters of support.

The original lease agreement was executed under the assumption that the City would construct the indoor sports facility; therefore, no language regarding the sharing of sublease revenue was included. A provision has been added to Section 2 of the Lease Agreement stating that the County will share any revenue that exceeds the City's annual maintenance cost for the park. Section 4.07 of the Lease agreement was also modified to include the County's latest non-discrimination policy. **District 1 (AH)**

**Background and Policy Issues:** The City wishes to enter into a public-private partnership for the development of an indoor recreational facility at Gardens North County District Park. Revenue terms within the Sublease Agreement require the Lease Agreement between the City and County be modified so that the County may collect a portion of the revenue received from the Sublease. The Foundation will be responsible to fund, construct, maintain and program the indoor facility. The Lease Agreement with the City requires County approval prior to the City assigning or subletting any portion of the Park. The City entered into a Sublease Agreement with the Foundation on October 3, 2019 without County approval. The County was notified of the Sublease Agreement on October 7, 2019 requesting County approval. Upon review of the Sublease Agreement, changes were required prior to staff presenting the Sublease Agreement to the Board for approval. The City and Foundation entered into Amendment 1 to the Sublease Agreement, addressing staff's concerns. The Parks and Recreation Department is supportive of this Sublease Agreement, as amended.

**Attachments:**

1. First Amendment to Lease Agreement between County and City
2. Sublease Agreement between City and Foundation
3. First Amendment to Sublease Agreement between City and Foundation
4. Lease Agreement between County and City
5. Municipal Letters of Support

Recommended by:   
Department Director

2/21/20  
Date

Approved by:   
Assistant County Administrator

3/4/2020  
Date

**II. FISCAL IMPACT ANALYSIS**


**A. Five Year Summary of Fiscal Impact:**

| Fiscal Years  | 2020        | 2021       | 2022         | 2023       | 2024       |
|---|-------------|------------|--------------|------------|------------|
| Capital Expenditures                                | _____       | _____      | _____        | _____      | _____      |
| Operating Costs                                     | _____       | _____      | _____        | _____      | _____      |
| External Revenues                                   | _____       | _____      | _____        | _____      | _____      |
| Program Income (County)                             | _____       | _____      | _____        | _____      | _____      |
| In-Kind Match (County)                              | _____       | _____      | _____        | _____      | _____      |
| <b>NET FISCAL IMPACT</b>                            | <u>*-0-</u> | <u>-0-</u> | <u>-0-</u>   | <u>-0-</u> | <u>-0-</u> |
| <b># ADDITIONAL FTE POSITIONS (Cumulative)</b>      | _____       | _____      | _____        | _____      | _____      |
| <b>Is Item Included in Current Budget:</b>          |             |            | Yes <u>X</u> | No _____   |            |
| <b>Does this item include use of federal funds?</b> |             |            | Yes _____    | No _____   | <u>X</u>   |

Budget Account No.: Fund 0001 Department 580 Unit 5110  
 Object \_\_\_\_\_/Revenue Source 4902 Program \_\_\_\_\_


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

\*There is no fiscal impact associated with this item.

C. Departmental Fiscal Review: 

**III. REVIEW COMMENTS**

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

 2/24/2020  
 OFMB BR 2/24

 2/20/2020  
 Contract Development & Control  
 2/25/2020 TD

**B. Legal Sufficiency:**

 2-27-2020  
 Assistant County Attorney

**C. Other Departmental Review:**

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

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

# ATTACHMENT 1

**PALM BEACH COUNTY**

**AMENDMENT NO. 1 TO  
LEASE AGREEMENT**

**between**

**PALM BEACH COUNTY  
A POLITICAL SUBDIVISION OF THE  
STATE OF FLORIDA  
(County)**

**and**

**THE CITY OF PALM BEACH GARDENS  
A MUNICIPAL CORPORATION ORGANIZED AND EXISTING  
UNDER THE LAWS OF THE STATE OF FLORIDA  
(City)**

**AMENDMENT NO 1. LEASE AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF PALM BEACH GARDENS FOR THE CONSTRUCTION AND FUNDING OF NORTH COUNTY DISTRICT PARK**

**THIS AMENDMENT NO .1** is hereby made and entered into this \_\_\_\_\_ by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County," and THE CITY OF PALM BEACH GARDENS, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as the "City."

**WHEREAS**, the County and the City entered into that certain Lease Agreement for the Construction and Funding of the North County District Park, hereinafter referred to as the "Lease Agreement," having an effective date of January 23, 2018; and

**WHEREAS**, the County and City desire to amend certain provisions of the Lease Agreement to address potential County revenue share and to update the County's nondiscrimination policy; and

**WHEREAS**, the County and the City have determined that execution of this Amendment No. 1 is in the best interests of the health, safety, and welfare of the public.

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

**SECTION 1: ARTICLE IV. CONDUCT OF BUSINESS AND USE OF DISTRICT PARK PROPERTY BY CITY.** is hereby amended at Section 4.07. Non-Discrimination. as set forth hereinbelow; providing that the remainder of Article IV. shall remain in full force and effect as originally set forth in the Lease Agreement. Section 4.07 shall hereafter read as follows:

**Section 4.07 Non-Discrimination.**

The City shall assure and certify that it will comply with the Title VI of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, with respect to any activity occurring on the District Park Property or conducted pursuant to this Lease.

The City 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 and expression or genetic information. The City shall conform to the County's non-discrimination policy as provided in ~~R-2014-1421~~ R2017-1770, as may be amended. The City has submitted to the County a copy of its non-discrimination policy that is consistent with the above paragraph, as set forth in the City's Recreational Facilities Use Policies and Procedures Manual, which is incorporated herein and made a part hereof by reference. In the event the City's Recreational Facilities Use Policies and Procedures Manual changes in regards to its non-discrimination policy, the City shall provide the County with a copy of its new policy to ensure the City is in compliance with the County's non-discrimination policy as provided in ~~R-2014-1421~~ R2017-1770 , as may be amended.

As a condition of entering into this Lease, the City represents and warrants that it will comply with the County's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the City shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the City retaliate against any person for reporting instances of such discrimination. The City shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. The City understands and agrees that a material violation of this clause shall be considered a material breach of this Lease and may result in termination of this Lease, disqualification or debarment of the company from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. City shall include this language in its subcontracts.

**SECTION 2: ARTICLE X. ASSIGNMENT AND SUBLETTING.** is hereby amended by adopting entirely new Section 10.02, to be entitled "Revenue Share"; providing that the remainder of Article X. shall remain in full force and effect as originally set forth in the Lease Agreement. Section 10.02 shall hereafter read as follows:

**Section 10.02 Revenue Share.**

Should the City sublease any portion of the District Park Property pursuant to Section 10.01 above and at any time the City's annual revenue share exceeds the City's annual maintenance costs for the entire District Park Property any such excess shall be remitted to the County no later than January 31st of the year following the year in which such excess was realized.

**SECTION 3:** This Amendment No. 1 shall become part of the Lease Agreement upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners ("Effective Date").

**SECTION 4:** Each and every other term and provision of the Lease Agreement shall remain in full force and effect as previously written.

(The remainder of this page intentionally left blank.)

**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment to Lease Agreement as of the date first above written.

**ATTEST:  
CLERK & COMPTROLLER**

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

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

By: \_\_\_\_\_  
Dave Kerner, Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

**APPROVED AS TO TERMS AND  
CONDITIONS:**

By: Anne Delgant  
COUNTY Attorney

By: Eric Call  
Eric Call, Director  
Parks and Recreation Department  
Palm Beach County

CITY:

Signed and delivered in the presence of:

By: Ronald M. Ferris  
Ronald M. Ferris, City Manager

Renata Schwedhelm  
Witness Signature

Renata Schwedhelm  
Print Witness Name

Bertha L. Loane  
Witness Signature

Bertha L. Loane  
Print Witness Name

ATTEST:

By: Patricia Snider  
Patricia Snider, CMC, City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: R. Max Lohman  
R. Max Lohman, City Attorney



## ATTACHMENT 2

RESOLUTION 60, 2019

1  
2  
3  
4 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM  
5 BEACH GARDENS, FLORIDA, APPROVING A PUBLIC PRIVATE  
6 PARTNERSHIP AGREEMENT WITH PALM BEACH NORTH  
7 ATHLETIC FOUNDATION, INC., A FLORIDA NOT-FOR-PROFIT  
8 CORPORATION, TO DEVELOP AN INDOOR RECREATIONAL  
9 FACILITY AT THE GARDENS NORTH COUNTY DISTRICT PARK,  
10 SUBJECT TO THE APPROVAL OF THE AGREEMENT BY PALM  
11 BEACH COUNTY, FLORIDA; PROVIDING AN EFFECTIVE DATE;  
12 AND FOR OTHER PURPOSES.  
13  
14

15 WHEREAS, the City of Palm Beach Gardens has a 50-year Lease Agreement with  
16 Palm Beach County for the lease and development of recreational facilities at the  
17 Gardens North County District Park located at 117th Court North, Palm Beach Gardens,  
18 Florida; and  
19

20 WHEREAS, Phase 1 of the development involves the creation of several soccer  
21 fields, parking, concession, and other infrastructure; and Phase 2 primarily involves the  
22 development of an indoor recreational facility; and  
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24 WHEREAS, the City received several inquiries from various private groups  
25 interested in developing and operating a recreational facility on the premises under a  
26 public private partnership; and  
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28 WHEREAS, pursuant to the public private partnership provisions of Section  
29 287.05712, *Florida Statutes*, the City publicly advertised a competitive Request for  
30 Proposals to secure responses from qualified proposers for the design, construction,  
31 operation, and maintenance of the indoor recreational facility on the area of land proposed  
32 for the development; and  
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34 WHEREAS, the only responsive and responsible proposal received was submitted  
35 by Palm Beach North Athletic Foundation, Inc. (the "Foundation"), and the Selection  
36 Committee, comprised of City staff, Palm Beach County staff, and the Palm Beach County  
37 Sports Commission, recommended that the City negotiate an agreement with the  
38 Foundation; and  
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40 WHEREAS, after discussions and negotiations, the City intends to execute a  
41 Public Private Partnership Agreement with the Foundation for the development of the  
42 indoor recreational facility; and  
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44 WHEREAS, pursuant to the terms of the Lease Agreement with the County, the  
45 City must obtain prior approval from the County for this Agreement; and  
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1           **WHEREAS**, the City Council deems approval of this Resolution to be in the best  
2 interests of the health, safety, and welfare of the residents and citizens of the City of Palm  
3 Beach Gardens and the public at large.

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6           **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY**  
7 **OF PALM BEACH GARDENS, FLORIDA, that:**

8  
9           **SECTION 1.** The foregoing recitals are hereby affirmed and ratified.

10  
11           **SECTION 2.** The City Council hereby approves the award of a Public Private  
12 Partnership Agreement with Palm Beach North Athletic Foundation, Inc. for the  
13 development of an indoor recreational facility at the Gardens North County District Park,  
14 attached hereto as Exhibit "A", consistent with the needs and vision of the City and the  
15 requirements described in the Request for Proposals that is included as part of the Public  
16 Private Partnership Agreement. The City Council specifically authorizes the City Manager  
17 to execute the Agreement and all documents necessary to effectuate the Agreement,  
18 after written approval for this Agreement is received from Palm Beach County.

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20           **SECTION 3.** This Resolution shall become effective immediately upon adoption.

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23                           (The remainder of this page intentionally left blank.)  
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PASSED AND ADOPTED this 3<sup>rd</sup> day of October, 2019.

CITY OF PALM BEACH GARDENS, FLORIDA

BY: [Signature]  
Mark T. Marciano, Mayor

ATTEST:

BY: [Signature]  
Patricia Snider, CMC, City Clerk

Patricia Snider City Clerk  
of the City of Palm Beach Gardens  
do hereby certify that this is a true copy  
as taken from the Official records of the  
City of Palm Beach Gardens.

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY: [Signature]  
R. Max Lohman, City Attorney

City Clerk: [Signature]  
Date: 10-4-19

VOTE:

|                      | <u>AYE</u> | <u>NAY</u> | <u>ABSENT</u> |
|----------------------|------------|------------|---------------|
| MAYOR MARCIANO       | ✓          | ___        | ___           |
| VICE MAYOR LITT      | ✓          | ___        | ___           |
| COUNCILMEMBER MARINO | ✓          | ___        | ___           |
| COUNCILMEMBER WOODS  | ✓          | ___        | ___           |
| COUNCILMEMBER LANE   | ✓          | ___        | ___           |

[Signature]

**EXHIBIT "A"**



City of Palm Beach Gardens  
10500 North Military Trail  
Palm Beach Gardens, FL 33410

**PUBLIC PRIVATE PARTNERSHIP AGREEMENT  
FOR THE  
DEVELOPMENT OF AN INDOOR RECREATIONAL FACILITY  
AT THE GARDENS NORTH COUNTY DISTRICT PARK**

**AGREEMENT NO. RFP2018-050CS**

THIS AGREEMENT is made and entered into this 3<sup>rd</sup> day of September, 2019 (the "effective date") by and between the **City of Palm Beach Gardens**, a Florida municipal corporation (hereinafter referred to as "City"), located at 10500 North Military Trail, Palm Beach Gardens, Florida 33410, and **Palm Beach North Athletic Foundation, Inc.**, a Florida Not For Profit Corporation (hereinafter referred to as "Foundation"), with its principal address at 11300 US Highway One, Suite 500, Palm Beach Gardens, Florida 33408.

WHEREAS, City and Foundation desire to enter into a public private partnership for the development, construction, and operation of an Indoor Recreational Facility, in accordance with the City's Request for Proposals, RFP2018-050CS, Development of the Gardens North County District Park Indoor Recreational Facility, and Foundation's response thereto, which are attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, subject to the requirements and provisions of Chapter 255.065, *Florida Statutes*, City held several recorded meetings with Foundation to discuss and negotiate the details, terms, and conditions of the proposed Project, as defined herein; and

WHEREAS, after such discussions and negotiations, City and Foundation agreed, in principle, to move forward with the Project for the development of an Indoor Recreational Facility at the Gardens North County District Park; and

WHEREAS, to facilitate the development, operation, and maintenance of the Indoor Recreation Facility, City agrees to lease a portion of, and grant certain easements, rights, and privileges with respect to the property to Foundation upon and subject to the conditions and limitations hereinafter expressed (such lease being referred to herein as the "Ground Lease").

**EXHIBIT "A"**

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, City and Foundation agree as follows:

**ARTICLE 1. DEFINITIONS.**

For the purposes of this Agreement and the various covenants, conditions, terms, and provisions that follow, the definitions set forth below are assumed to be true and correct and are agreed upon by the parties:

- 1.1 **ANCILLARY REVENUE:**  
Ancillary revenue sources shall be income derived from such activities as Food & Beverage, Performance/Fitness Center, retail, Sports Medicine, Sponsorships, and Charitable Contributions.
- 1.2 **CHANGE ORDER:** A written document ordering a change in the contract price or time or a material change in the work issued subsequent to this Agreement, as determined by the Project Manager.
- 1.3 **CITY:** City of Palm Beach Gardens, a Florida municipal corporation.
- 1.4 **CONSULTANT:** A registered architect, professional engineer, professional land surveyor, civil engineer, planner and/or registered landscape architect who has contracted with or who is employed by City or Foundation to provide professional services for the design or construction of the Project and who is licensed by the State of Florida to provide said services.
- 1.5 **CONTRACT:** This Agreement between City and Foundation for this Project, including the ground lease, all as set forth herein. As used herein, the term Contract shall mean the same as Agreement.
- 1.6 **CONTRACTOR:** A general contractor hired by Foundation for the construction of the Project and who is licensed by the State of Florida to provide said services.
- 1.7 **CONTRACT DOCUMENTS:** Foundation's proposal, including plans, specifications, drawings, and/or other written or graphic materials that are to be developed by the consultant as part of the record of this Agreement; this Agreement, the performance and payment bond, the design documents, the construction documents, the Purchase Order, and any additional documents relevant to the Project and are required by this Agreement.
- 1.8 **COUNCIL:** City Council, which is the governing body of the City of Palm Beach Gardens, Florida.
- 1.9 **COUNTY:** Palm Beach County, Florida, a political subdivision of the State of Florida.



- 1.10 **FOUNDATION:** Foundation is the private entity which submitted to City a proposal under RFP2018-050CS, for the Development of the Gardens North County District Park Indoor Recreational Facility. Foundation shall perform the work pursuant to this Agreement, and is the person, firm/entity, or corporation primarily liable for the acceptable performance of and payment of all legal debts pertaining to the Project. All references in the Contract Documents to third parties under contract or control of Foundation shall be deemed to be a reference to Foundation. Foundation shall be responsible for the provision, installation, and performance of all equipment and materials, and Foundation is in no way relieved of the responsibility for the performance of all equipment furnished.
- 1.11 **DESIGNATED REPRESENTATIVE:** An authorized representative of Foundation assigned to represent Foundation on this Project. The initial authorized representative shall be Jeff Campol.
- 1.12 **FACILITY or INDOOR RECREATIONAL FACILITY:** An approximately two hundred thousand square feet (200,000 sq. ft.) Indoor Recreational Facility to be constructed on lands owned by Palm Beach County and leased to City located at 5101 117<sup>th</sup> Court North in the City of Palm Beach Gardens. Construction of the Facility may be completed in phases.
- 1.13 **FIELD ORDER:** A written order issued by the Project Manager that orders minor changes in the Project but that does not involve a change in the total cost or time for performance.
- 1.14 **FINAL COMPLETION:** The date that all construction work on the Facility is fully and finally complete.
- 1.15 **FORCE MAJEURE:** Acts of God; hurricane; war; acts of terrorism; civil commotion; fire or other casualty; labor difficulties; shortages of labor, materials or equipment; government regulations; or other causes beyond such party's reasonable control.
- 1.16 **INSPECTOR:** An authorized representative of City assigned to make necessary inspections of materials furnished by Foundation and of the work performed by Foundation.
- 1.17 **MATERIAL:** Materials incorporated in this Project that are used or consumed in the performance of the work.

- 1.18 **NOTICE OF COMPLETION:** The date certified by Consultant that all conditions of the permits and regulatory agencies have been met, all construction, reconstruction, or rehabilitation, including corrective work, has been performed, and all administrative requirements of the Contract Documents have been completed, and City has received from Foundation a release of all liens, release of surety, certificate of indemnification by Foundation, release of claims by contractors, and corrected as-built drawings.
- 1.19 **NOTICE TO PROCEED:** A written Notice to Proceed issued by the Project Manager.
- 1.20 **PLANS AND/OR DRAWINGS:** The official graphic representations of this Project that, upon written approval of the Project Manager, shall become a part of the Contract Documents, as well as the preliminary plans and drawings and renderings of the Project and the preliminary outline specifications and plans for the design-build services for the Project that shall be prepared by Foundation, and shall be made a part of the Contract Documents upon approval by the Project Manager. The plans and specifications shall include the design development documents and construction documents to be approved by the Project Manager as provided in this Agreement.
- 1.21 **PRIMARY REVENUE:** Revenues generated through all sports-related activities at the Facility, including, but not limited to, memberships, user fees, admission fees, and programs fees. Primary Revenue shall not include any fees that are not directly related to sports and recreation programs or activities. Primary revenue sources shall include Ice Programs, Gym Programs, Court programs, and Turf programs.
- 1.22 **PROJECT:** The Project is the design, construction, operation, and maintenance of an Indoor Recreational Facility at the Gardens North County District Park, as described herein and in accordance with the Contract Documents, complete with all appurtenances required to perform the work, including without limitation, construction services and labor, materials, and equipment necessary or used or incorporated in the construction, in accordance with the Contract Documents and as is required or reasonably inferred from them. The Project includes the work, services, and labor, and the goods, materials, tools, supervision, and equipment to be provided, and the cleanup, removal, and disposal of all debris, trash, and other material so as to leave the facilities in a clean and ready-to-use condition; and the operation and maintenance thereof by Foundation.
- 1.23 **PROJECT MANAGER:** Unless otherwise explicitly stated, all contract duties, contract responsibilities, and contract communications of City shall be made through the City Engineer as Project Manager. The foregoing sentence shall not apply to City construction inspections made to assure compliance with applicable regulatory law and which City conducts in a governmental regulatory capacity.

- 1.24 **SUBCONTRACTOR:** The person or corporation having a direct contract with the Contractor, including one who furnishes material worked to a special design according to the Contract Documents for this Project, but does not include one who merely furnishes material not so worked.
- 1.25 **SUBSTANTIAL COMPLETION:** The date certified by City that all conditions of the permits and regulatory agencies have been met, all construction, reconstruction, or rehabilitation (except minor corrective work) has been performed, and City has issued a Certificate of Occupancy; and the Facility is able to be used for its Intended Use.
- 1.26 **SURETY:** The surety company or individual that is bound by a contract bond with and for Foundation who is primarily liable, and which surety company or individual is responsible for Foundation's acceptable performance of the work under the contract and for the payment of all debts pertaining thereto per Chapter 255.05, *Florida Statutes*.

**ARTICLE 2. GENERAL INTENTION AND UNDERSTANDING.**

- 2.1 It is the intent of the Contract Documents to describe a functionally complete Project to be designed, constructed, operated, financed, owned, and maintained by Foundation in accordance with the Contract Documents. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result, shall be supplied by Foundation whether or not specifically called for. When words that have a well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the standard specification, manual, code, laws, or regulations in effect at the time of the date of the execution of this Agreement.

County shall be deemed to have privity of contract with Foundation under this Agreement, and references to City in the Agreement, shall also be deemed to be references to County, as may be properly and legally construed to protect the interests and indemnification rights of County. City affirms, to the best of its knowledge, that nothing contained in this Agreement conflicts with the Inter-Local Lease Agreement between City and Palm Beach County entered into between City and County on or about January 29, 2018 (the "Inter-Local Lease").

- 2.2 This is a public-private partnership Project. As such, the parties agree and understand that after the expiration of the Agreement, except as otherwise provided herein, ownership of the Indoor Recreational Facility will revert to City, free and clear of all claims by Foundation or any other related entity.

- 2.3 City will have no obligation to provide any financial assistance or monetary support for the development of this Project. City is not and shall not be responsible for any costs related to the design, construction, operation, or maintenance of the Indoor Recreational Facility during the term of this Agreement, except as specifically set forth herein. The foregoing shall not preclude City from waiving any City fees in accordance with Section 2.11, as may be required of a private party developing and constructing within City.

City shall not be obligated to provide any kind of bonding support, credit guarantees, or any type of financial commitments for the development of this Project

- 2.4 Foundation shall design, construct, operate, and maintain the Facility to the satisfaction and standards of City, as set forth herein and consistent with City's design, construction, operation and maintenance of The Gardens North County District Park.

- 2.5 The public shall have access to and use of the Facility as set forth herein. Foundation shall develop a non-discrimination policy and applicable processes and procedures to allow the public to access and use the Facility. Furthermore, Foundation shall assure and certify that it will comply with the Title VI of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, with respect to any activity occurring on the District Park Property or conducted pursuant to this Lease. Foundation 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 and expression or genetic information. Foundation shall conform to the County's non-discrimination policy as provided in R-2014-1421, as may be amended. Foundation shall comply will all applicable American with Disabilities Act provisions and shall ensure that reasonable accommodations are made for all users of the Facility.

- 2.6 The individual and group programming that is offered by Foundation shall be available and open to the public. The recreation activities shall be conducted according to policies, procedures, and costs developed by Foundation; provided such policies and procedures are not in conflict with City's policies and procedures. City shall not be responsible for providing staff, additional facilities (outside of this Agreement), or the collection of fees for Foundation.

- 2.7 The Facility shall be used for recreational programs and activities, and related food and beverage and other support operations, as outlined and described in Foundation's proposal, Exhibit "A," as may be amended ("Intended Use"). City shall have no right to modify or change the Intended Use, except as provided by law or ordinance. At Foundation's discretion, the Intended Use may be developed and constructed in multiple phases, as set forth in Exhibit "C."

Additionally, the Foundation shall not be in default or breach of this Agreement in the event that the Phase II fundraising milestones as set forth in Exhibit "C" are not satisfied; provided, however, the Foundation shall use all commercially reasonable and good faith efforts to ensure that Project is completed in accordance with the development and construction milestones set forth herein.

Notwithstanding the foregoing, the Foundation shall complete Phase 2 on or before December 31, 2028.

The fees associated with this Agreement are specifically related to the Intended Use. Foundation shall retain all revenues collected as part of its business operations.

- 2.8 After the construction phase of the Project is completed and Foundation has begun operating the Facility, City's Leisure Services Administrator or designee shall perform the functions of Contract/Project Manager during the remaining term of the Agreement. All issues related to the operation and maintenance of the Facility shall be handled through the Leisure Services Department.
- 2.9 By executing this Agreement, Foundation agrees and understands that the property is owned by the County and leased by City through a Lease Agreement for a certain number of years. The terms and conditions of the Lease Agreement are made a part of this Agreement, and further incorporated by reference pursuant to the terms of the Request for Proposal.
- 2.10 Foundation understands that the Property is in its natural state and no infrastructure work has been performed on the land. Foundation shall be responsible for all preparatory and infrastructural work, including any earthworks, site works, planning, surveying, utility connections, and any pre-construction work necessary to make the site ready for construction of the Facility.
- 2.11 City hereby waives any and all applicable development and construction fees for this project that can be waived, as allowed by applicable law, including, but not limited to, application fees, review fees and impact fees. In the event that such fees cannot legally be waived by City, the construction and development of this project shall otherwise be considered as though it were a City project.

- 2.12 City shall not, at any time during the term of this Agreement, including the term of the Ground Lease, as set forth in Article 50, commence any eminent domain or condemnation proceeding which would impact or affect the Facility, or any part thereof.

ARTICLE 3. CONTRACT DOCUMENTS.

- 3.1 The Contract Documents shall be followed in strict accordance as to work, material, and dimensions, except when the Project Manager may authorize an exception in writing. Approval of requests by Foundation for exceptions to the Contract Documents shall not be unreasonably withheld.
- 3.2 Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, any discrepancies shall be clarified and resolved by the Project Manager. Contractor shall not proceed when in doubt as to any dimension or measurement but shall seek clarification from the Project Manager.
- 3.3 Foundation shall maintain four (4) copies of the Contract Documents, two (2) of which shall be preserved and always kept accessible to the Project Manager or his/her authorized representative.
- 3.4 This Contract incorporates by reference Foundation's proposal, including any addenda or revisions that have been presented to and accepted by City in writing. In the event of any conflict between such proposal and this Contract, this Contract shall prevail.

ARTICLE 4. OWNERSHIP OF DESIGN MATERIALS AND DOCUMENTS.

All design materials and documents shall remain the property of Foundation. However, Foundation shall provide to City copies of all such design materials and documents, including any updates or changes during the term of this Agreement.

ARTICLE 5. PROJECT DEVELOPMENT SCOPE.

- 5.1 Foundation hereby agrees to engage the consultants and the contractors necessary for the design, permitting and construction of an approximately two hundred thousand square feet (200,000 sq. ft.) Indoor Recreational Facility on County-owned land leased by City at Gardens North County District Park, 5101 117<sup>th</sup> Court North, Palm Beach Gardens, Florida, inclusive of furnishing land surveying, utilities, parking, stormwater, labor, materials, equipment, and other services necessary to perform all of the work to develop and operate the Facility. The Facility shall be located in the general area identified in the drawings, including any additional drawings and addenda thereto, to be constructed in accordance with the requirements and provisions of the Contract Documents.

- 5.2 The Facility shall be designed to reflect or complement the general architectural language of the surrounding buildings and City's Tennis Center, and shall conform to all applicable building codes and construction requirements for public buildings in the State of Florida.
- 5.3 Foundation agrees to meet with City at reasonable times and with reasonable notice during the term of this Agreement, and specifically during the design and construction phase of the Facility.
- 5.4 Prior to the Final Completion of construction services under this Agreement, there shall be established a record set of plans and specifications, that shall bear the approval of Foundation and the Project Manager.

In addition, prior to the commencement of construction services under this Agreement, Foundation shall submit to the Project Manager a Construction Schedule for the planning and execution of the Construction Phase of the Project. The Construction Schedule shall be updated regularly, at Foundation's reasonable discretion, and submitted to the Project Manager.

**ARTICLE 6. COMPLETION DATE – CONSTRUCTION PHASE.**

- 6.1 The Project Manager shall instruct Foundation to commence the Construction Phase of the Project by written instructions in the form of a Notice to Proceed issued by City. Construction of the Project shall commence within ninety (90) days of the date of the Notice to Proceed ("Construction Commencement Date"). The Notice to Proceed will not be issued until after execution of this Agreement by both parties, City's approval of any and all necessary approvals and permits as may be necessary to commence construction, and receipt by City of all required documents, including the Fund-Raising Plan described below.

- 6.1.1 The development and construction of the Facility shall be subject to the milestones in the Fund-Raising Plan and Construction Phasing Plan, developed by Foundation, which are attached hereto and incorporated herein as Exhibit "C".

The Fund-Raising Plan and the Construction Phasing Plan shall include scheduled milestones by which the funds for the design, construction, annual operations, and capital renewal and replacement must be secured. Failure of Foundation to meet any of the fund-raising milestones, may result in termination of this Agreement by City, pursuant to the provisions of Article 51, Termination by City.

- 6.2 The Facility shall be substantially completed no later than the milestone dates established in the Construction Schedule, and final completion shall be no later than ninety (90) calendar days after the substantial completion date, subject to approved extensions, which shall not be unreasonably withheld, and Force

Majeure. Upon failure of Foundation to substantially complete the Facility within the specified period of time (plus approved extensions and Force Majeure, if any), Foundation shall reimburse City for any monetary losses, including fines, that City experiences for each calendar day (plus any approved extensions) after the time specified for substantial completion.

- 6.3 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded for the City of Palm Beach Gardens.
- 6.4 Notwithstanding the foregoing, Foundation shall begin construction of the Facility no later six (6) months after all City approvals necessary for Foundation to commence construction. If Foundation fails to begin construction of the Facility during the time allowed, such non-performance shall grant City the right to terminate the Agreement for cause and shall result in the forfeiture of the performance bond.

#### ARTICLE 7. FOUNDATION'S RESPONSIBILITIES.

- 7.1 The parties acknowledge and agree that City is entering into a public private partnership with Foundation, and that Foundation is bound to coordinate, administer, and finance the design and construction of an Indoor Recreational Facility at the Gardens North County District Park, including, without limitation, the obligations to coordinate, administer, and assume certain rights and obligations with respect to: (a) the consultants under consultant contracts, and (b) the Contractor under the construction contract for the Facility that shall be constructed in accordance with the Contract Documents and comply with all applicable laws and technical codes.
- 7.2 City acknowledges that Foundation is providing the services described herein as a development consultant and not as a licensed general contractor, architect, or other licensed professional. Foundation will engage and contractually require licensed professionals to complete the construction work in accordance with the requirements of this Agreement, and will enforce such contracts and administer any claims process associated with such contracts as set forth herein. Foundation shall require each contractor and each design consultant to provide customary warranties, enforce said warranties, and name City as a third-party beneficiary of all such warranties.
- 7.3 All fees payable to City will be paid by Foundation. Local Business Tax Receipts (formerly Occupational Licenses) are required pursuant to Chapter 205, *Florida Statutes*.



- 7.4 Nothing in this Agreement shall create any contractual relationship between any consultant or subcontractor and City or any obligation on the part of City to pay or to see to the payment of any monies due to any consultant or subcontractor of Foundation.
- 7.5 Foundation agrees to bind specifically Contractor and consultants to the applicable terms and conditions of this Agreement for the benefit of City.
- 7.6 Unless otherwise provided herein, Foundation shall provide and pay for all land surveying services, materials, labor, water, tools, equipment, light, power, transportation, and other facilities and services necessary for the proper execution and completion of the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Project.
- 7.7 Foundation shall cause all its agents, employees, Contractor, subcontractors, and consultants to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees, at no additional cost to City.
- 7.8 Foundation shall pay all applicable sales, consumer, use, and other taxes required by law. Foundation is responsible for reviewing the pertinent state, federal, and local statutes, laws, rules, regulations, guidelines, and directions involving such taxes and complying with all requirements. To the extent legally permissible, City shall assist Foundation in the procurement of equipment and materials pursuant to Section 212.08(6), F.S. City shall determine at what cost threshold it will make such purchases so as not to burden City staff with additional work for small purchases when the benefit does not justify the effort.

ARTICLE 8. FINANCIAL SUPPORT.

- 8.1 City shall have no obligation whatsoever to provide any type of monetary or financial support for the design, construction, operation, and maintenance of the Indoor Recreational Facility. City shall not be obligated to provide any kind of bonding support, credit guarantees, or any type of financial commitments for the development of this Project.
- 8.2 Prior to the execution of this Agreement, Foundation shall provide acceptable written evidence to City that it has the necessary financial means to design, construct, operate, and maintain the Indoor Recreational Facility. Such evidence shall meet City's standard of financial adequacy, and City shall conduct due diligence to verify the nature and source of such funding. City shall have the right to reject such evidence as inadequate or unacceptable as City deems in its best interest. During the term of this Agreement, City shall have the right to demand and receive information from Foundation on any additional form of financial support or commitments and the sources of such support/commitments.

ARTICLE 9. USE OF FACILITY.

- 9.1 The intent of the parties to this Agreement is that the Indoor Recreational Facility will be used for the Intended Use, and primarily to provide a mix of recreational activities for professional and amateur athletes that will compliment and supplement existing offerings from City. The parties envision a public private partnership that helps to position City as a premier sports destination, while providing tangible economic and community benefits, in an atmosphere of cooperation and not competition. The Facility shall be operated subject to City's applicable codes and its rules regarding parks, recreation, and leisure services activities.
- 9.2 The programmatic operation of the Facility shall be governed by programs and schedules outlined in a Programming Schedule, to be developed by Foundation with input from City. City and Foundation may mutually make changes to the Programming Schedule during the term of this Agreement, without invalidating the Agreement and without the need for a formal amendment. Except as provided on the Programming Schedule, Foundation shall have full discretion as to the hours of operation and programs offered at the Facility, provided such operation does not conflict with existing laws.
- 9.3 The parties agree that the intent is for the public to have access to the services offered at the Facility, subject to the Programming Schedule. Foundation shall have the right to establish fees reasonably within industry norms for services and programs provided to the public.

ARTICLE 10. CITY'S RESPONSIBILITIES.

- 10.1 City shall assist Foundation by placing at its disposal any available information pertinent to the Project, including previous reports, laboratory tests, and inspections of samples, materials, and equipment; property, boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; and known zoning, deed, and other land-use restrictions.
- 10.2 City shall arrange for access to and make all provisions for Foundation to enter upon the public property as required for Foundation to perform its services.
- 10.3 Without invalidating this Agreement and without notice to any surety, City reserves and shall have the right to make such changes from time to time as may be reasonably considered necessary to complete fully and acceptably the proposed construction in accordance with applicable law. Any other changes (that are not required for compliance with applicable law) proposed by City shall be paid for by City at its sole cost and expense. Any extra or additional work during the construction of the Facility may be accomplished by means of appropriate field orders and supplemental instructions or change orders subject to Articles 33 and 34 herein.

10.4 City shall sign all forms as may be required for permits and approvals, grant applications, or other requests, as may be acceptable to City. Notwithstanding the foregoing, City shall not be required to sign anything that would place any financial burden or obligation on City.

**ARTICLE 11. RESOLUTION OF DISPUTES.**

In order to prevent all disputes and litigation, it is agreed by the parties hereto that during the construction phase of the Project, the City Engineer shall decide all questions, difficulties, and disputes of whatever nature that may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Agreement as to the character, quality, amount, and value of any work done and materials furnished under or by reason of this Agreement; and the City Engineer's estimates and decisions upon all claims, questions, and disputes shall be final and conclusive upon the parties hereto. The City Engineer's decisions shall be reasonable and based on consideration of the terms of this Agreement and best engineering principles.

Notwithstanding the foregoing, in the event that Foundation disagrees with a determination of the City Engineer, the parties shall, at a shared and equal cost, engage an independent, third-party engineer, agreed upon by the parties, to review any area of disagreement. The determination of any third-party engineer engaged for such purpose shall be final and binding on the parties.

This Article does not preclude either or both parties from seeking any and all remedies available at law or in equity. The parties hereto may also seek other mediation sources to resolve any dispute related to this Agreement.

**ARTICLE 12. ASSIGNMENT.**

Except as provided in Section 62 below with respect to subleasing, neither party to this Agreement shall assign this Agreement without the written consent of the other party, nor shall Foundation assign any monies due or to become due to City hereunder without the prior written consent of City. Any assignment of this Agreement shall require the written approval of County.

**ARTICLE 13. CONSTRUCTION PROGRESS MEETINGS.**

Foundation shall schedule periodic work progress meetings and specially called meetings as needed with City relating to the construction services under this Agreement. Foundation shall record the minutes of such meetings, include significant proceedings and decision(s) within the minutes, and reproduce and distribute copies of minutes within five (5) business days after each meeting, to the Project Manager, plus incorporate comments received or exceptions taken by those present who have reviewed and commented on the minutes.

ARTICLE 14. SECURITY.

Foundation or its Contractor shall provide a project security program to protect work, stored products, and construction equipment from theft and vandalism, and to protect premises from entry by unauthorized persons. In the event any such materials, equipment, and supplies are lost, stolen, damaged, or destroyed prior to final completion, Foundation shall replace same without cost to City.

ARTICLE 15. INSPECTION OF CONSTRUCTION.

15.1 During the construction phase, the City Engineer or designee shall, at all times, have access to the Facility, and Foundation shall provide proper facilities for such access. Unless otherwise contemplated by the Agreement, the City Engineer or designee shall not unreasonably delay the progress of the construction.

15.1.1 Should the Contract Documents, instructions, any laws, ordinances, or any public authority require any work for the Facility to be specially tested or approved, Foundation shall give to City timely notice of readiness of the work for inspection. If the testing or approval is to be made by an authority other than City, timely notice shall be given of the date fixed for such testing. Inspections shall be made promptly, and where practicable, at the source of supply. If any work on the Facility is covered up without approval or consent of the Project Manager, it shall, if required by City, be uncovered for examination and properly restored at Foundation' expense.

15.1.2 Re-examination and re-testing of any work on the construction of the Facility may be ordered by the Project Manager, as Project Manager reasonably believes necessary, and if so ordered, such work shall be uncovered by Foundation. If work is found defective, Foundation shall bear all direct, indirect, and consequential expenses of such removal or correction. If such work is found to be in accordance with the Contract Documents, City shall pay the cost of re-examination, re-testing, and replacement.

15.2 The payment of any compensation, regardless of its character or form, or the giving of any gratuity or the granting of any valuable favor by Foundation to any inspector other than its consultant, is forbidden, and any such act on the part of Foundation shall constitute a breach of this Agreement.

ARTICLE 16. SUPERINTENDENCE AND SUPERVISION.

16.1 The orders of City shall be given through the Project Manager; whose instructions shall be reasonable and are to be strictly and promptly followed in every case, subject to the terms and conditions of this Agreement. Foundation shall maintain a competent resident supervisor, who shall serve as the Designated Representative, and any necessary assistants on the construction site throughout

the duration of the construction phase of the Project. The Designated Representative shall serve as the Superintendent on site and shall be responsible for continuous field supervision, coordination, and completion of the work. The Designated Representative shall not be changed except with the consent of the Project Manager, unless the Designated Representative proves to be unsatisfactory to Foundation and ceases to be in its employ. The Project Representative shall represent Foundation, and all direction given to the Designated Representative shall be as binding as if given to Foundation. Directions shall be confirmed in writing to Foundation. Other directions will be so confirmed on written request in each case.

- 16.2 Foundation's Designated Representative shall prepare, on a daily basis and keep on the construction site, a bound log setting forth, at a minimum for each day: the weather conditions and how any weather conditions affected progress of the work; work performed; equipment utilized for the work; any idle equipment and reasons for idleness; visitors to the site; labor utilized for the work; and any materials delivered to the construction site. The daily log shall be available for inspection by the Project Manager at all times during the construction phase of the Project.
- 16.3 If Foundation, in the course of constructing the Facility, finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors or omissions in the Contract Documents, including drawings (plans) and specifications, it shall be Foundation's duty to immediately inform the Project Manager in writing, and the Project Manager shall promptly verify the same. Any work done prior to or after such discovery shall be done at Foundation's sole risk.

ARTICLE 17. CITY'S RIGHT TO TERMINATE AGREEMENT DURING DEVELOPMENT AND CONSTRUCTION.

- 17.1 The following shall give City the right to terminate this Agreement with Foundation prior to completion of construction of the Facility:
  - 17.1.1 Construction of the Facility does not commence within the time specified, or is not performed to ensure the prompt completion of the Facility or the construction work is performed unsuitably, or the construction work is defective and/or unsuitable.
  - 17.1.2 If Foundation becomes insolvent, is declared bankrupt, commits any act of bankruptcy or insolvency, makes an assignment for the benefit of creditors, or as a result of any other cause whatsoever resulting in Foundation not carrying on the construction of the Facility in an acceptable manner, the Project Manager may give notice in writing to Foundation and its Surety of such delay, neglect, or default, specifying the same. If Foundation, within a period of thirty (30) calendar days after such notice, does not proceed in accordance therewith and cure the default, then City may, upon written certificate from the Project Manager of the fact of such delay, neglect or default and Foundation's failure to comply with such notice,

terminate the Agreement, exclude Foundation from the site and take the construction of the Facility out of the hands of Foundation, and appropriate or use any or all materials and equipment on the site as may be suitable and acceptable. Notwithstanding the foregoing, if the nature of Foundation's default is such that more than thirty (30) days are required to cure the subject default, then Foundation shall not be in default if the Foundation commences to cure within such thirty (30) day period and thereafter diligently pursues same to completion. Additionally, nothing set forth herein shall preclude City from granting a request by the Foundation to extend the time within which the Foundation must cure a default.

- 17.2 In the event of an occurrence under Section 17.1 above, City may enter into a separate agreement for the completion of the Facility according to the terms and provisions of the Contract Documents or City may utilize such other methods as City has determined are necessary and proper to complete the construction in an acceptable manner.
- 17.3 In the event of an occurrence under Section 17.1 above, all damages, costs, and charges incurred by City shall be deducted from any monies due or that may become due to Foundation. Actions may be instituted to recover on the posted bonds. In case of damages and expenses incurred by City, Foundation shall be liable and shall pay to City the amount of such costs.
- 17.4 If after Notice of Termination is given to Foundation it is determined for any reason that Foundation was not in default or breach of this Agreement, Foundation shall be paid for all work executed and expenses incurred prior to termination in addition to termination settlement costs reasonably incurred by Foundation relating to commitments, that had become Foundation's prior to the date of termination. Payment shall include all costs, expenses, and deposits for services actually performed prior to the termination date, but shall exclude all lost profits, indirect or special, or other damages for the remainder of the Agreement.
- 17.5 Upon receipt of the Notice of Termination pursuant to Article 17.1, Foundation shall promptly discontinue all affected work, unless the Notice of Termination directs otherwise, and deliver or otherwise make available to the Project Manager all data, drawings, specifications, reports, estimates, summaries, and such other information as may have been required by the Contract Documents, whether completed or in process.
- 17.6 If a Court of competent jurisdiction finds that City wrongfully terminated this Contract, then Foundation shall be entitled to all items provided for in Section 17.5 herein.

ARTICLE 18. FOUNDATION'S RIGHT TO STOP WORK OR TERMINATE AGREEMENT.

- 18.1 If the construction of the Facility should be stopped under an order of any court or other public authority for a period of more than ninety (90) calendar days, through no act or fault of Foundation or of anyone employed by Foundation, then Foundation may, upon seven (7) calendar days' written notice to City and the Project Manager, stop work on the construction of the Facility, without any penalties hereunder, until such time Foundation is legally permitted to commence or continue performance under this Agreement.
- 18.2 If City fails to perform its obligations under this Agreement, Foundation shall provide City with written notice of such failure no more than twenty (20) calendar days' after such time that City's failure became evident to Foundation, after which City shall have thirty (30) days to cure. If City fails to cure the subject default, Foundation may terminate the Agreement. Notwithstanding the foregoing, if the nature of City's default is such that more than thirty- (30) days are required to cure the subject default, then City shall not be in default if City commences to cure within such thirty- (30) day period and thereafter diligently pursues same to completion. Additionally, nothing set forth herein shall preclude Foundation from granting a request by City to extend the time within which City must cure a default.

ARTICLE 19. PLANS AND WORKING DRAWINGS.

City and Foundation will review and revise construction plans prior to submittal for permitting. All approved plans, general and detail, are to be deemed a part of this Agreement, and the plans and specifications and Agreement are to be considered together and are intended to be mutually complementary so that any work shown on the plans, though not specified in the specifications, and any work specified in the specifications, though not shown on the plans, is to be executed by Foundation as part of this Agreement. Foundation shall obtain site plan approval from City through City's development review process.

Nothing contained herein shall be deemed to be an approval by City of any regulatory approval, which shall be required to meet all applicable regulations and follow all required processes. All things that in the opinion of the Project Manager may reasonably be inferred from this Agreement and plans, as developed by Foundation and approved by the Project Manager, are to be executed by Foundation under the terms of this Agreement; and the Project Manager shall determine whether the detail plans conform to the Contract Documents, except as may be otherwise determined by the Project Manager. All plans, specifications, and related technical documentation should be in the form of an electronic CADD drawing file and paper copy.

ARTICLE 20. Intentionally Omitted.

ARTICLE 21. Intentionally Omitted.

ARTICLE 22. Intentionally Omitted.

ARTICLE 23. Intentionally Omitted.

ARTICLE 24. Intentionally Omitted.

ARTICLE 25. SUBCONTRACTS.

Foundation shall cause the Contractor, prior to the start of construction, to notify the Project Manager in writing of the names of the subcontractors who will be used to construct the Facility, and identify the portion of the work that each will perform. The Contractor shall have a continuing obligation to notify the Project Manager of any additions or changes in the subcontractors.

ARTICLE 26. SEPARATE CONTRACTS.

26.1 City reserves the right to contract with other contractors that may impact work in the general area of the construction site. City shall provide Foundation with reasonable notice of such contractors prior to their access to the construction site. Foundation shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate this work with theirs.

26.2 Foundation shall use commercially reasonable efforts to require the Contractor to perform the obligations described on Exhibit "B", Contractor Requirements, attached hereto and incorporated herein.

26.3 To ensure the proper execution of its subsequent work, Foundation shall inspect the work already in place and shall immediately report to the Project Manager any discrepancy between the executed work and the requirements of the Contract Documents.

26.4 No claim for damages or any claim other than for an extension of time shall be made or asserted against City by reason of any delays due to work of other contractors, unless such delays result in the de-mobilization of Contractor's work crew and there is an attendant cost to re-mobilize.

ARTICLE 27. USE OF COMPLETED PORTIONS.

27.1 Foundation shall inform City prior to the completion of construction if any portion of the Facility may be utilized by Foundation prior to normal construction completion. Such possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such possession and use delay the construction of the Facility, Foundation shall be liable for any costs incurred by City.



27.2 In the event Foundation takes possession of a completed portion, the following shall occur:

- 27.2.1 Foundation shall give notice to City at least fifteen (15) calendar days in advance of intent to occupy a designated area.
- 27.2.2 Foundation shall bring the designated area to the point of Substantial Completion. When City considers that the designated area of the Facility is substantially complete, City shall notify Foundation, in writing, and shall prepare a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of Foundation to complete work on the designated area in accordance with the Contract Documents. The Project Manager shall conduct an inspection to determine that the designated portion of the Facility is substantially complete. The Project Manager and Foundation shall agree on the time within which Foundation shall complete the items listed.
- 27.2.3 Upon issuance and acceptance of the Certificate of Substantial Completion, Foundation shall assume full responsibility for the operation, maintenance, utilities, and all related expenses. Foundation shall remain responsible for all items listed to be completed or corrected as submitted to the Project Manager as required in the substantial completion process.
- 27.2.4 If Foundation finds it necessary to use a portion or portions of the Facility prior to Substantial Completion thereof, such use shall not commence prior to a time mutually agreed upon by the Project Manager and Foundation. Any insurance in effect shall not be canceled or lapsed on account of such partial use.

ARTICLE 28. Intentionally Omitted.

ARTICLE 29. LANDS FOR WORK.

City shall provide, as indicated in the Contract Documents, the lands upon which the Facility is to be constructed, rights-of-way, and easements for access thereto, and such other lands as are designated for the use of Foundation. No claim for damages or other claim other than for an extension of time shall be made or asserted against City by reason of any delay arising as a result of any failure of City to provide such lands on the date needed by Foundation.

ARTICLE 30. Intentionally Omitted.

ARTICLE 31. Intentionally Omitted.

ARTICLE 32. Intentionally Omitted.

ARTICLE 33. FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS.

The Project Manager shall have the authority to approve interpretations of the intent of the Contract Documents and minor changes in contract execution.

ARTICLE 34. Intentionally Omitted.

ARTICLE 35. Intentionally Omitted.

ARTICLE 36. Intentionally Omitted.

ARTICLE 37. Intentionally Omitted.

ARTICLE 38. SUBSTANTIAL COMPLETION.

38.1 When Foundation considers that the construction of the Facility, or a designated portion thereof which is acceptable to City, is substantially complete, Foundation shall notify the Project Manager in writing and shall instruct the Contractor to prepare for submission to the Project Manager a thorough list of items to be completed or corrected, together with a schedule for completion of all items.

38.2 The Project Manager shall conduct an inspection to determine that the Facility or designated portion thereof is substantially complete. The Project Manager will then instruct Foundation to prepare and deliver to the Project Manager a Certificate of Substantial Completion that shall establish the date of Substantial Completion. After review of the Certificate by the Project Manager, City will either accept or reject the Certificate. The Project Manager, with the concurrence of Foundation, shall fix the time within which Foundation shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the date of Substantial Completion. The Certificate of Substantial Completion shall be submitted to City through the Project Manager and Foundation for its written acceptance of the responsibilities assigned to them in such Certificate.

ARTICLE 39. Intentionally Omitted.

ARTICLE 40. FIELD ENGINEERING.

40.1 Foundation shall provide and pay for field engineering services required for the construction of the Facility. This work shall include the following elements:

40.1.1 Survey, architecture, engineering, materials testing and the like required in execution of the construction of the Facility. The Parties agree that Foundation, as a private, not-for-profit organization, is not subject to the requirements of Section 287.055, F.S.

ARTICLE 41. FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS.

41.1 Intentionally Omitted.

41.2 Foundation shall maintain in a safe place at the site one (1) record copy of all drawings (plans), specifications, addenda, written amendments, change orders, and written interpretations and clarifications in good order, annotated to show all changes made during construction, and in a format compatible with CADD equipment. These record documents, together with all approved samples and a counterpart of all approved Shop Drawings, shall be available to the Project Manager for reference. Upon completion of the construction, these record documents, samples, and Shop Drawings shall be delivered to the Project Manager.

41.3 At the completion of the construction of the Facility, Foundation shall turn over to City a set of reproducible drawings that accurately reflect the "as-built" conditions of the new Facility and in a format compatible with City's CADD equipment. All changes made to the construction documents, either as clarifications or as changes, shall be reflected in the plans. The changes shall be submitted electronically at least monthly to the Project Manager. The final "as-built" drawings shall be signed and sealed by a registered Florida engineer or architect and shall be delivered and found to be acceptable.

ARTICLE 42. Intentionally Omitted.

ARTICLE 43. Intentionally Omitted.

ARTICLE 44. PROJECT SIGNAGE.

44.1 Foundation and/or the Contractor shall furnish and erect signs at the construction site, as directed by the Project Manager. Foundation and/or the Contractor may install additional signage at the site, subject to approval by the Project Manager, subject to City's Land Development Code.

44.2 Foundation shall supply and install wayfinding and building signs for the Facility. These signs shall be developed with the review and approval of City's Development Review Committee, and subject to City's Land Development Code requirements for signage.

ARTICLE 45. CLEANING UP AND REMOVAL OF EQUIPMENT.

45.1 Intentionally Omitted.

45.2 City's Right to Clean Up

If a dispute arises between Foundation and separate contractors as to the responsibility for cleaning up, City may clean up and charge the reasonable cost thereof to contractors, including Foundation, responsible therefor, as the Project Manager shall determine to be just.

45.3 Removal of Equipment

In case of termination of this Agreement before completion for any cause whatever, Foundation, if notified to do so by City, shall promptly remove any part or all of Foundation's equipment and supplies from the property of City, failing which City shall have the right to remove such equipment and supplies at the expense of Foundation.

ARTICLE 46. Intentionally Omitted.

ARTICLE 47. MISCELLANEOUS.

47.1 Intentionally Omitted.

47.2 Rights of Various Interests

Whenever work being done by City or by other contractors is contiguous to work covered by this Agreement, the respective rights of the various interests involved shall be established by the Project Manager to secure the completion of the various portions of the work in general harmony.

47.3 Intentionally Omitted.

47.4 Records

Foundation shall keep such records and accounts and require any and all architects, consultants, contractor and subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement. Such books and records shall be available at all reasonable times for examination and audit by City and for the required retention period of the Florida Public Records Act (Chapter 119, *Florida Statutes*), if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by City to be applicable to Foundation's records, Foundation shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by Foundation.

47.5 No Contingent Fee

Foundation warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Foundation, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Foundation, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, City shall have the right to terminate this Agreement without liability, at its discretion, and to recover the full amount of such fee, commission, percentage, gift, or consideration.

47.6 All Prior Agreements Superseded: Amendments

The Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in the Contract Documents. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

47.7 Notices

Whenever either party desires to give notice unto the other, it shall be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph.

For the present, the parties designate the following as the respective places for giving of notice, to-wit:

47.7.1 As to City: **City of Palm Beach Gardens**  
10500 North Military Trail  
Palm Beach Gardens, Florida 33410  
Attention: City Manager  
Facsimile: (561) 799-4111

47.7.2 With a copy to: **City of Palm Beach Gardens**  
10500 North Military Trail  
Palm Beach Gardens, Florida 33410  
Attn: City Attorney  
Email: [mlohman@pbgfl.com](mailto:mlohman@pbgfl.com)

47.7.3 As to County: **Palm Beach County  
Property and Real Estate Management  
Division**  
Attention: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605  
Telephone: 561.233.0217  
Fax: 561.233.0210

47.7.4 With a copy to: **Palm Beach County Attorney's Office**  
Attention: Parks Attorney  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401  
Telephone: 561.355.2225  
Fax: 561.355.4398

47.7.5 And a copy to: **Palm Beach County Parks and  
Recreation Department**  
Attention: Director  
2700 6<sup>th</sup> Avenue South  
Lake Worth, Florida 33461  
Telephone: 561.966.6614  
Fax: 561.963.6734

47.7.6. As to Foundation: **Palm Beach North Athletic  
Foundation, Inc.**  
11300 US Highway One  
Suite 500  
Palm Beach Gardens, Florida 33408  
Attention: Michael J. Winter  
Email: [mike@otter-creek.com](mailto:mike@otter-creek.com)

47.8 Truth-In-Negotiation Certificate

Signature to this Agreement by Foundation shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the costs for the design and construction of the Facility are accurate, complete, and current at the time of contracting. The original pricing and any additions thereto shall be adjusted to exclude any significant sums, by which City determines the prices were increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such pricing adjustments shall be made within one (1) year following the end of this Agreement.

47.9 Interpretation

The parties hereto acknowledge and agree that the language used in this Agreement expresses their mutual intent, and no rule of strict construction shall apply to either party hereto. The headings contained in this Agreement are for

reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to the particular sentence, paragraph, Section, or Article where they appear, unless the context requires otherwise. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections and subparagraphs of such Section or Article, unless the reference is expressly made to a particular subsection or subparagraph of such Section or Article.

47.10 Intentionally Omitted.

47.11 Environmental Regulations

City reserves the right to consider the history of citations and/or violations of environmental regulations in investigating a contractor's responsibility, and further reserves the right to declare Foundation not responsible if the history of violations warrants such determination in the opinion of City. Foundation shall notify City immediately of notice of any citation or violation that Foundation may receive during the time of performance of this Agreement.

47.12 Applicable Law and Venue

This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to any contrary conflicts of law principle. Venue for all proceedings in connection herewith shall lie exclusively in Palm Beach County, Florida, and each party hereby waives whatever its respective rights may have been in the selection of venue.

47.13 Public Entity Crime Statement

Foundation acknowledges the existence of Chapter 287.133(2)(a), *Florida Statutes* ("Public Entity Crimes Act"), which provides, in part, that a person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City; may not submit a bid on a contract with City for the construction or repair of a public building or public work; may not submit bids on leases of real property to City; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City; and may not transact business with City in excess of the threshold amount provided in Chapter 287.017, *Florida Statutes*, for Category Two for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List. Violation of this Section by Foundation shall result in termination of this Agreement by City without penalty.

47.14 Joint Preparation

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other by virtue of the fact that it may have been physically prepared by one party or its attorneys.

47.15 Severance

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Foundation elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.

47.16 Waiver

No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

47.17 Drug-Free Workplace

Execution of this Agreement by Foundation shall serve as Foundation's certification that it either has or that it will establish a drug-free workplace consistent with Chapter 112.0455, *Florida Statutes*.

47.18 Conflicts

Neither Foundation nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Foundation's loyal and conscientious exercise of judgment related to its performance under this Agreement.

Foundation agrees that none of its employees shall, during the term of this Agreement, serve as an adverse or hostile expert witness against City in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, that is adverse or prejudicial to the interests of City in any such pending or threatened legal or administrative proceeding. The limitations of this Article shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement.

In the event Foundation is permitted to utilize subcontractors to perform any services required by this Agreement, Foundation agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this Article.



**47.19 Background Checks**

Prior to hiring any employee, subcontractor, or consultant to provide services at the Facility, City shall conduct a comprehensive criminal background check by accessing any Federal, State, or local law enforcement database available. Foundation and/or the individual shall sign an authorization for City to access criminal background information. The costs for the background checks shall be borne by Foundation.

**47.20 Waiver of Jury Trial**

THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS IN CONNECTION WITH THIS AGREEMENT.

**ARTICLE 48. AUDITED FINANCIAL REPORTS.**

Each year, Foundation shall submit to City, for the attention of the City Manager, a copy of its audited financial statements. The financial statement shall be presented in compliance with generally accepted accounting standards, and a copy provided to City's Finance Administrator.

**ARTICLE 49. PUBLIC RECORDS.**

49.1 Pursuant to Chapter 119, *Florida Statutes*, Foundation shall comply with the public records law by keeping and maintaining public records required by City in order to perform the Project. Upon request from City's custodian of public records, Foundation shall provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law. Foundation shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract. Upon completion of the contract, Foundation shall transfer, at no cost, to City all public records in its possession or keep and maintain public records required by City in order to perform the Project. If Foundation transfers all public records to City upon completion of the contract, Foundation shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Foundation keeps and maintains public records upon completion of the contract, Foundation shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City, upon request from City's custodian of public records, in a format that is compatible with the information technology systems of City.

**IF FOUNDATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO FOUNDATION' DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC**

**RECORDS AT THE OFFICE OF THE CITY CLERK LOCATED AT  
10500 NORTH MILITARY TRAIL, PALM BEACH GARDENS,  
FLORIDA 33410, PHONE NUMBER (561) 799-4122, EMAIL  
ADDRESS: PSNIDER@PBGFL.COM.**

**ARTICLE 50. GROUND LEASE.**

City hereby demises and leases to Foundation, and Foundation hereby hires and takes from City, subject to and with the benefit of the terms, covenants, conditions, and provisions of this Agreement, the Property.

The initial term of this Agreement (the "Term") shall be from the Effective Date until January 22, 2068, unless terminated sooner pursuant to the terms herein.

The term of the Agreement, including the Initial Term and Renewal, shall not exceed the expiration date of the Initial Term of the Inter-Local Lease between County and City, which is January 22, 2068. In the event that the Inter-Local Lease is extended, City and Foundation may, upon mutual written consent of both parties, agree to extend the term of this Agreement for an additional renewal term, the duration of which shall not exceed the term of the Inter-Local Lease between City and County.

Foundation shall be responsible for performing all maintenance, repair and replacement for the Facility during the Term, at its sole cost and expense. Foundation shall maintain the Facility to the same or higher standard as City maintains other City buildings and facilities.

Foundation, in its sole discretion, has the right to modify or expand the Facility at any time during the term of this ground lease. Any modification or expansion of the Facility shall not affect the term and shall be subject to approval by City, which shall not be unreasonably withheld.

**ARTICLE 51. TERMINATION BY CITY.**

Following Final Completion, City shall have the right to terminate the Ground Lease if any of the following shall occur.

51.1 If Foundation at any time is in default of its material obligations, including payment obligations, under this Agreement, and such default persists for thirty (30) days after written notice thereof is given by City, or if such default cannot be cured within thirty (30) days, or such time as may be reasonably necessary to cure so long as Foundation is diligently prosecuting to cure but not to exceed an additional thirty (30) days, unless additional time is agreed to by the City Manager, in his or her reasonable discretion;

- 51.2 The filing by or against Foundation of a bankruptcy, insolvency, receivership, reorganization or arrangement proceeding, or the initiation of any similar type of proceeding (if involuntary, the same not having been dismissed after sixty (60) days from the date of filing), or if Foundation shall be unable or unwilling to pay its debts when due; or
- 51.3 Any breach in any material respect of any representation or warranty made by Foundation.
- 51.4 Foundation fails to meet any of the scheduled milestones of Exhibit "C", Fund-Raising Plan.
- 51.5 Subject to the provisions of this Article and the terms of this Agreement, any termination by City for breach or default by Foundation shall result in the ownership of the Facility being forfeited to City, and City shall have the right to finish any incomplete construction of the Facility, demolish the building, or operate the Facility as City deems in its best interest. Regardless of the foregoing, City shall not be subject to any financial obligations or any debts owed by Foundation related to the design, construction, operation, or maintenance of the Facility.

Notwithstanding anything contained herein to the contrary, this Agreement shall not be terminated by City for any reason other than a breach of this Agreement or default by Foundation.

#### ARTICLE 52. TERMINATION BY FOUNDATION.

Following Final Completion, Foundation shall have the right to terminate the Ground Lease if any of the following shall occur:

- 52.1 If City at any time is in default of its material obligations under this Agreement, and such default persists for thirty (30) days after written notice thereof is given by Foundation, or if such default cannot be cured within thirty (30) days, or such time as may be reasonably necessary to cure so long as City is diligently prosecuting to cure but not to exceed an additional thirty (30) days, unless additional time is agreed to by Foundation, in its reasonable discretion;
- 52.2 If City fails to pay to Foundation any undisputed amounts required to be paid hereunder when due and such failure to pay persists for ten (10) business days after written notice thereof;
- 52.3 The filing by or against City of a bankruptcy, insolvency, receivership, reorganization or arrangement proceeding, or the initiation of any similar type of proceeding (if involuntary, the same not having been dismissed after sixty (60) days from the date of filing), or if City shall be unable or unwilling to pay its debts when due; or

52.4. Any breach in any material respect of any representation or warranty made by City herein.

**ARTICLE 53. ANNUAL MEETING.**

At the start of each calendar year, to coincide with the time that City and County begin their annual budget preparation process, Foundation shall attend a meeting with staff from City, County, Sports Commission, and any other stakeholder. This meeting shall be mutually scheduled between the parties to this Agreement at a location and time convenient to all.

The purpose of the meeting shall be for City, Foundation, and all stakeholders to discuss current and future plans for the Facility, operational issues, and any other matter that the parties determine relevant.

**ARTICLE 54. WINDING-UP AND COOPERATION.**

If this Agreement expires or is otherwise terminated, the Parties shall promptly and cooperatively work together in the process of winding-up of Foundation's operations under this Agreement, including (i) notification of staff, subcontractors, vendors, suppliers, and others having contractual or other arrangements with respect to the operation of the Facility, pursuant to the terms of the Agreement; (ii) completion of all calculations and schedules for reconciliations, inventory, accounting, claims, and payments arising under this Agreement; and (iii) transition, as applicable, to any third Person that will take over the operation of the Facility, which shall, at a minimum, otherwise be commercially reasonable, and shall not bind Foundation to any liabilities of such third Person. City and Foundation shall use best reasonable commercial efforts to complete and constructively cooperate in the winding-up process as expeditiously as possible.

**ARTICLE 55. DUTIES UPON TERMINATION.**

Upon termination, Foundation shall be required to:

55.1 Vacate the premises and leave the Facility in good repair and operating condition. Foundation shall not have the right to remove any capital improvements, equipment, fixtures, or other assets or property belonging to City, or any of their respective agents or representatives; and

- 55.2 Remove all trash, stacks of material, supplies, tools, equipment, etc., belonging to Foundation or its agents. Costs of such removals and restoration shall be borne by Foundation. If such trash, stacks of materials, supplies, tools, equipment, etc., placed in the Facility by Foundation or its agents have not been removed by Foundation by the date of termination, it will be the option of City to remove the same at Foundation' cost, risk, and expense or to retain or dispose of the same or any part thereof, without payment or reimbursement to Foundation, unless other arrangements have been made in writing between City and Foundation with regards to the removal thereof.

ARTICLE 56. SURRENDER AND DELIVERY.

Upon the expiration or termination date of this Agreement, whichever is earlier, Foundation shall surrender the Indoor Recreational Facility and promptly deliver to City all keys Foundation and any of its officers, agents, and subcontractors have to the Indoor Recreational Facility or the District Park site.

ARTICLE 57. REMEDIES.

57.1 Opportunity to Cure.

Notwithstanding any other provisions in this Agreement, City shall allow Foundation at least thirty (30) calendar days to cure any deficiency in the operation and maintenance of the Facility, subsequent to the provision of written notice to Foundation regarding the deficiency. Except in an event of Termination for Cause, Foundation shall be allowed to use the thirty (30) days' period as an Opportunity to Cure the deficiency.

57.2 Remedies Upon Default.

Upon the occurrence of any of the events of default, and following any applicable cure period, then in addition to any other rights and remedies that either party may have hereunder, at law, in equity, or otherwise, the non-defaulting Party may declare this Agreement terminated and recover damages permitted by applicable law and/or seek specific performance or other injunctive or equitable relief.

ARTICLE 58. GROUND LEASE FEE.

- 58.1 During the construction phase of the Facility, Foundation shall not be required to make any payments towards the Ground Lease Fee or Permit Fee.

- 58.2 No later than one (1) year and thirty (30) days after the issuance of a Certificate of Occupancy for the Facility, or a later date as determined by City, Foundation shall be required to pay an annual Ground Lease Fee. The subject Ground Lease Fee shall be comprised of City's total actual costs for common area and landscape maintenance. The specific amount of the Ground Lease Fee shall be established within City's annual budget and shall be provided in writing to Foundation no later

than December 1<sup>st</sup> of each year for each and every year this Agreement remains in effect, payable in advance, to the City of Palm Beach Gardens, Florida. However, City will waive the first annual payment of the Ground Lease Fee. During this period, Foundation shall be responsible for maintaining the environs of the Facility to the standards established by City for the Gardens North County District Park complex.

All payments are due payable no later than January 31<sup>st</sup> of each year.

**ARTICLE 59. REVENUE SHARE.**

The payment of Revenue Share to City shall be based on the following table:

| YEARS                    | MINIMUM ANNUAL GUARANTEE | PERCENTAGE SHARE OF GROSS PRIMARY REVENUE |
|--------------------------|--------------------------|---|
| 1                        | \$0                      | 0%  |
| 2                        | \$50,000                 | 0%  |
| 3 – 12                   | \$50,000                 | 2%  |
| 13 – 24                  | \$50,000                 | 2.5%                                      |
| 25 – end of Initial Term | \$50,000                 | 3%  |

Foundation shall pay each year to City the greater of the Minimum Annual Guarantee or the Revenue Share amount, except that the amount due in the first year shall be deferred for payment in the sixth year of the Agreement.

All payments are due payable by the 10th day of the month that the payment becomes due.

**ARTICLE 60. TRANSFER OF OWNERSHIP OF INDOOR RECREATIONAL FACILITY.**

This is a public-private partnership Project, subject to the provisions of Chapter 222.065, *Florida Statutes*. Upon the expiration of the initial term of this Agreement, the Indoor Recreational Facility shall revert in ownership to City, free and clear of all claims by Foundation or any other entity. At that time, Foundation, its successors, and assignees, as may be applicable, shall transfer full legal ownership of the Facility to the City of Palm Beach Gardens, Florida.

**ARTICLE 61. TAXES, FINES, AND LIENS.**

Foundation shall pay all taxes that may be assessed on its design, construction, operation, lease, and maintenance of the Indoor Recreational Facility. Neither City nor County shall be liable for any taxes, fines, liens, or penalties that may be levied against the Facility during the time of Foundation's ownership of the building. Notwithstanding the foregoing, City may, in its reasonable discretion, purchase materials and equipment for Foundation in accordance with Section 212.08, F.S., for which taxes may not be required.

ARTICLE 62. SUBLICENSE.

Foundation may license areas of the Facility, provided that any sub license is pre-approved by City in writing, and the sub-licensee shall be subject to and bound by all applicable terms of this Agreement. City shall not unreasonably withhold its approval of a sublicense arrangement, provided the activities being proposed by Foundation's sublicensee are related to or complement the Intended Use. Foundation shall provide a copy of the sublicense agreement to City, prior to City's decision. City shall notify Foundation of its decision within thirty (30) days after receipt of sublicense. If City does not deny the sublicense within thirty (30) days, the sublicense shall be deemed approved. In the event that City denies Foundation's request for a sublicense, City shall provide Foundation with reasons for such denial in writing.

Notwithstanding the foregoing, Foundation has the sole discretion to sell naming rights to the building, or any portion thereof. Naming rights approved by Foundation shall not be considered a sublicense; however, City shall have the final approval of any and all naming rights, which shall not be unreasonably withheld.

ARTICLE 63. PUBLIC BENEFITS REPORT.

Each calendar year Foundation shall provide City with a general analysis and report detailing the economic impact to the city and local area of the operations of the Indoor Recreational Facility and its related programs. The report shall include the estimated number and the length of stay for clients who travel to the Indoor Recreational Facility for any purpose, including, but not limited to, training, seminars, collegiate summer leagues, special clinics, and showcases. The report shall contain a short paragraph with projections for the next year. City and Foundation shall determine the due date for the first report.

In preparing the report, Foundation shall consult and seek input from Palm Beach County Sport Commission, and shall include any material and relevant observation or comment by the Commission.

ARTICLE 64. UTILITIES.

It shall be the responsibility of Foundation to apply for and connect all temporary utility service for the Facility required during the construction phase of the Facility. Upon completion of construction and during the operation of the Facility, Foundation shall be responsible for the connection and payment of all permanent utility service to the building, and paying any required impact of connections fees.

ARTICLE 65. INDEMNIFICATION OF CITY AND COUNTY; AND INSURANCE.

65.1 Foundation shall indemnify and hold harmless City and County, its officers, and employees from liabilities, damages, losses, liens, code violations, and costs, including, but not limited to, reasonable attorneys' fees and cost, including fees

and costs on appeal, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Foundation and other persons employed or utilized by Foundation in the operation and maintenance of the Indoor Recreational Facility.

City shall indemnify Foundation to the extent permitted by applicable law, and subject to the monetary limits set forth at Section 768.28, Florida Statutes. To the extent that City is further indemnified by the County pursuant to the Lease Agreement, City hereby extends such indemnification to Foundation, to the fullest extent permitted by law.

65.2 Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability shall include:

- a. Premises and/or Operations on an occurrence basis.
- b. Independent Contractors.
- c. Products and/or Completed Operations Liability on an occurrence basis.
- d. Explosion, Collapse, and Underground Coverages.
- e. Broad Form Property Damage.
- f. Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
- g. Personal Injury Coverage with Employees and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

65.3 Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and shall include:

Owned vehicles.  
Non-owned and hired vehicles.

65.4 Notice of Cancellation, Expiration, and/or Restriction: The policy(ies) shall be endorsed to provide City and County with thirty (30) calendar days' advanced written notice of cancellation, expiration, and/or restriction to the attention of the Project Manager, c/o Risk Management Coordinator, City of Palm Beach Gardens, 10500 North Military Trail, Palm Beach Gardens, Florida 33410; and Palm Beach County, c/o Insurance Tracking Services, Inc., P.O. Box 20270, Long Beach, California 90810, Email: [pbcc@instracking.com](mailto:pbcc@instracking.com) or Facsimile: 562.435.2999.



65.5 Foundation shall furnish to the Project Manager Certificate(s) of Insurance evidencing the insurance coverages required herein prior to commencement of any work on this Project. Such certificate(s) shall reference this Agreement. City and County reserve the right to require a certified copy of such policies upon request. All certificates shall state that City and County shall be given thirty (30) calendar days' prior written notice of cancellation and/or expiration.

65.6 The official title of City is "City of Palm Beach Gardens." This official title shall be used in all insurance or other legal documentation. City shall be included as "Additional Insured" with respect to liability arising out of operations performed for City by or on behalf of Foundation or acts or omissions of Foundation in connection with such operation.

The official title of County is "Palm Beach County, Florida." This official title shall be used in all insurance or other legal documentation. County shall be included as "Additional Insured" with respect to liability arising out of operations performed for County by or on behalf of Foundation or acts or omissions of Foundation in connection with such operation.

#### ARTICLE 66. ENVIRONMENTAL MATTERS.

City represents and warrants to Foundation that, to the best of City's knowledge, the Property is in full compliance with all Environmental Laws; and no claim, action, suit, or proceeding is pending or threatened against City or any third party arising directly or indirectly out of the discharge of Hazardous Materials at the Property, or the presence of underground storage tanks beneath the Property. Simultaneously with the execution of this Lease, City shall deliver to Foundation all environmental reports concerning the Property in City's possession. Further, City agrees to indemnify, defend, and hold Foundation harmless, up to the maximum amount allowed by Florida law, from any claims, judgments, damages (including, without limitation, natural resource damages), fines, penalties, costs, liabilities, and/or losses, including, without limitation, reasonable attorney's fees, reasonable consultants fees, and reasonable expert fees that arise during or after the term of this Lease by reason of the presence of Hazardous Materials in the soil, groundwater, soil vapor, or other environmental media at, on, under, to or from the Property based on or in connection with events occurring or conditions arising or accruing (a) prior to the Commencement Date or (b) during the term of this Lease that are not caused or introduced by Foundation, its assignees, subtenants or licensees, clients, or the employees or agents of any of them.

"Environmental Laws" means any and all federal, state, local, and foreign statutes, laws, codes, rules, regulations, ordinances, environmental permits, guidelines, standards, and directives and all applicable agreements and judicial and administrative orders and decrees pertaining to health, safety, or the environment, and all common law providing for any right or remedy with respect to environmental matters, each as currently in effect or hereinafter amended, adopted, promulgated, or enacted.

“Hazardous Materials” means any and all materials, pollutants, contaminants, wastes, chemicals, or substances listed, defined, designated, classified, or considered or regulated as dangerous, special, hazardous, toxic, or radioactive, or any terms of similar import, under any applicable Environmental Laws, including petroleum and any derivation or by-product thereof, asbestos and asbestos-containing materials, lead-based paint, PCBs, and perchloroethylene or related or similar dry cleaning.

ARTICLE 67. REPRESENTATION AND WARRANTIES OF CITY.

City hereby represents and warrants to Foundation that (i) City has full power and authority to enter into this Agreement; (ii) County is the sole fee owner of the Property; (iii) to City’s knowledge, the Property complies with all environmental laws and regulations, and all other federal, state, and local rules, regulations, laws, statutes, and ordinances; (iv) City has obtained all required consents and approvals in order to enter into this Lease (including from all Major Title Document Holders, as hereinafter defined); (v) there are no restrictions (including, without limitation, declarations, covenants, easements, ground leases, and/or mortgages) that would prohibit, interfere with, restrict, or otherwise impair Foundation’s ability to use the Property for the uses permitted hereunder, and City shall not permit or suffer any such restrictions that would prohibit, interfere with, restrict, or otherwise impair Foundation’ ability to use the Property for such uses; (vi) City has not received any notice of any actual or threatened action, litigation, or proceeding by any organization, person, individual, or governmental agency against the Property or City with respect to the Property; (vii) the Property is free and clear of any leases, tenancies, or claims of parties in possession; and (viii) this Agreement and the rights granted to Foundation hereunder shall not violate and are not inconsistent with any other agreement relating to the Property.

City shall have an affirmative obligation to immediately provide Foundation with written notice in the event of any change with regard to the representations set forth above.

ARTICLE 68. CASUALTY.

68.1 In case any improvement(s) or any part thereof shall be damaged or destroyed by fire or other casualty, or ordered to be demolished by the action of any public authority in consequence of a fire or other casualty, Foundation may terminate this Ground Lease and shall have no obligation to repair or rebuild the improvements but shall be obligated to remove any debris and properly secure the Property.

68.2 In case of any damage or destruction occurring in the last three (3) years of the Term, or during any Renewal Period, to the extent of fifty percent (50%) or more of the insurable value of the improvement(s), Foundation may, at its option, to be evidenced by notice in writing given to City within ninety (90) days after the occurrence of such damage or destruction, elect to terminate this Ground Lease as of the date of said damage or destruction.

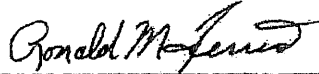
ARTICLE 69. QUIET ENJOYMENT.

City agrees that Foundation shall and may peaceably and quietly have, hold, and enjoy the Facility during the Term, subject to the covenants and conditions of this Ground Lease.


(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand this Agreement and all Contract Documents and attachments hereto and have caused this Agreement to be executed by their duly authorized officers on the date hereinabove first written.

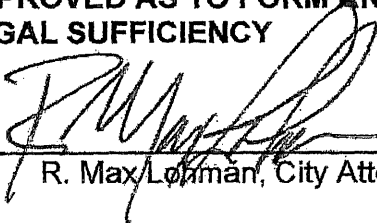
**CITY OF PALM BEACH GARDENS, FLORIDA**

By:   
Ronald M. Ferris, City Manager

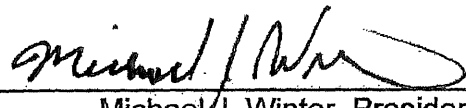
**ATTEST:**

By:   
Patricia Shider, CMC, City Clerk

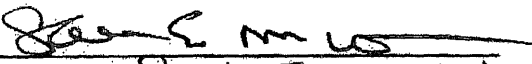
**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

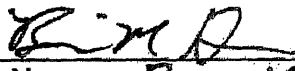
By:   
R. Max Lohman, City Attorney

**PALM BEACH NORTH ATHLETIC  
FOUNDATION, INC.**

By:   
Michael J. Winter, President

**WITNESSES:**

By:   
Print Name: Sarah E. M. Winter

By:   
Print Name: Brian M. Duncan

**EXHIBIT "A"**

## **EXHIBIT "B"**

### **CONTRACTOR REQUIREMENTS**

#### **1. GENERAL QUALITY OF WORK.**

- a. Articles, materials, and equipment specified or shown on drawings shall be new and shall be applied, installed, connected, erected, used, cleaned, and conditioned for proper forming, as per the manufacturer's directions, and as approved by the Project Manager. Contractor shall, if required, furnish satisfactory evidence as to kind and quality of the materials.
- b. Contractor shall apply, install, connect, and erect manufactured items or materials according to the recommendations of the manufacturer when such recommendations are not in conflict with the Contract Documents. Contractor shall furnish copies of the manufacturer's recommendations to the Project Manager before proceeding with the work.
- c. Contractor shall at all times enforce strict discipline and good order among its employees, consultants, and subcontractors at the Project site and shall not employ on the Project any unfit person or anyone not skilled in the work assigned to him or her.
- d. Contractor shall maintain suitable and sufficient guards and barriers, and at night suitable and sufficient lighting for the prevention of accidents and thefts.

#### **2. CHECK DRAWINGS AND DATA**

Contractor shall take measurements and verify all dimensions, conditions, quantities and details shown on the drawings, schedules, or other data, and shall notify the Project Manager of all errors, omissions, conflicts, and discrepancies found therein. Failure to discover or correct errors, conflicts, or discrepancies shall not relieve Contractor of full responsibility for unsatisfactory work, faulty construction, or improper operation resulting therefrom nor from rectifying such condition at Contractor's own expense. Contractor will not be allowed to take advantage of any error or omission.

#### **3. WARRANTY**

Contractor shall warrant to City and Foundation that all materials and equipment furnished for the Facility shall be new, unless otherwise specified, and that all work for the construction of the Facility shall be of good quality, free from faults and defects, and in conformance with the Contract Documents. All work for the Facility not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Project Manager, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4. DELIVERY AND STORAGE OF MATERIALS.

- a. Material stored on the job site shall be verified as to quantity and condition by Contractor, prior to acceptance. Safeguarding the material shall be the responsibility of Contractor. Any materials that are lost, stolen, damaged, or otherwise deemed unacceptable by the Project Manager shall be replaced at no cost to City.
- b. Materials stored off the job site shall be stored in a bonded warehouse. Safeguarding the material shall be the responsibility of Contractor.

5. DEFECTIVE WORK.

The Project Manager shall have the authority to reject or disapprove work for the Facility that the Project Manager finds to be defective. If required by the Project Manager, Contractor shall promptly, as directed, correct all defective work or remove it from the construction site and replace it with non-defective work.

6. CONSTRUCTION AREA.

- a. Contractor shall use areas approved by City for deliveries and personnel. Contract limits of construction area shall be indicated on the drawings. Equipment, material, and personnel shall be in conformance with this Contract.
- b. To provide for maximum safety and security, Contractor shall erect and maintain all necessary barricades and any other temporary walls and structures, and boarding, as required, to protect life and property during the period of construction.

7. LEGAL RESTRICTIONS AND TRAFFIC PROVISIONS.

Contractor shall conform to all applicable laws, regulations, or ordinances with regard to labor employed, hours of work, and its subcontractor's general operations. Contractor shall also conduct its operations so as not to close any thoroughfare nor interfere in any way with traffic on highways without the written consent of the proper authorities.

8. DAMAGE TO EXISTING FACILITIES, EQUIPMENT, OR UTILITIES.

- a. Existing utilities have been identified insofar as information is reasonably available; however, it will be Contractor's responsibility to verify such information and to preserve all existing utilities whether shown on the drawings or not. If utility conflicts are encountered by Contractor during construction, Contractor shall give sufficient notice to the owners of the utilities so that they may make the necessary adjustments.
- b. Contractor shall exercise care and take all precautions during construction operations to prevent damage to any existing facilities, equipment, or utilities. Any

damage caused by Contractor shall be reported immediately to the Project Manager, and such work shall be repaired and/or replaced by Contractor in a manner approved by City. All costs to repair and/or replace any damage to existing facilities, equipment, or utilities shall be the sole responsibility of Contractor, and such repair or replacement shall be performed expeditiously without cost to City.

- c. Contractor shall provide the type of required protection for finished work at all times and protect adjacent work during cleaning operations and make good any damage resulting from neglect of this precaution.
- d. Protection of work shall include protecting work that is factory-finished during transportation, storage, and during and after installation. Where applicable and as required, Contractor shall close off areas where certain work has been completed to protect it from any damages caused by others during their operations.
- e. Contractor shall store materials and shall be responsible for and shall maintain partly or wholly finished work during the construction of the Facility until the final acceptance of the structure. If any materials or part of the work should be lost, damaged, or destroyed by any cause or means whatsoever, Contractor shall satisfactorily repair and replace the same at its own cost. Contractor shall maintain suitable and sufficient guards and barriers, and at night, suitable and sufficient lighting for the prevention of accidents.
- f. To all applicable sections where preparatory work is part of work thereon, Contractor shall carefully examine surfaces over which its finished work is to be installed, laid, or applied before commencing with the work. Contractor shall not proceed with said work until defective surfaces on which work is to be applied are corrected satisfactorily to the Project Manager's satisfaction. Commencement of work shall be considered acceptance of surfaces and conditions.

9. CONTINUATION OF WORK.

Contractor shall carry on construction and adhere to the progress schedule during all disputes or disagreements between Foundation and City. No work shall be delayed or postponed pending resolution of any disputes or disagreements.

10. Intentionally Omitted.

11. FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS.

The entire responsibility for establishing and maintaining a line and grade in the field lies with Contractor. Contractor shall maintain an accurate and precise record of the location and elevation of all pipelines, conduits, structures, manholes, handholds, fittings, and the like and shall deliver these records in good order to the Project Manager as the work is completed. These records shall serve as a basis for record drawings. The cost of all such field layout and recording work shall be paid by Foundation.



12. SAFETY AND PROTECTION.

- a. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the construction of the facility. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - i. All employees on the construction site and other persons who may be affected thereby;
    - (1) All the work and all materials or equipment to be incorporated therein, whether in storage on or off the construction site; and
    - (2) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
  - ii. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss, and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the work may affect them. All damage, injury, or loss to any property referred to in Section 6(i) above, caused directly or indirectly, in whole or in part, by Contractor, any subcontractors or consultant, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the construction site shall continue until the construction of the Facility is completed, and the Project Manager has issued a notice to Contractor that the Facility is acceptable, except as otherwise provided in Article 27, Use of Completed Portions.
  - iii. Contractor shall designate a responsible member of its organization at the Project site whose duty shall be the prevention of accidents. This person shall be Contractor's Designated Representative unless otherwise designated in writing by Contractor to City.

13. CLEANING UP AND REMOVAL OF EQUIPMENT.

Contractor shall at all times keep the construction site free from accumulation of waste materials or rubbish caused by Contractor's operations. At the completion of the construction, Contractor shall remove all its waste materials and rubbish from and about the site, as well as its tools, construction equipment, machinery, and surplus materials. If Contractor fails to clean up at the completion of the construction, City may do so, and the

cost thereof shall be charged to Contractor.

14. **BONDS, INDEMNIFICATION, AND INSURANCE.**

Prior to commencement of any work on the construction of the Indoor Recreational Facility, the Contractor shall furnish a Performance and Payment Guaranty consisting of either:

a. Performance and Payment Bond (Surety)

- i. A Performance and Payment Bond (separate Performance Bond and separate Payment Bond) of the form and containing all the provisions of the Performance and Payment Bond (Performance Bond and Payment Bond forms), attached hereto and made a part hereof.
- ii. The Bonds shall be in the amount of one hundred ten percent (110%) of the Contract amount guaranteeing to City the completion and performance of the Project covered in this Agreement, as well as full payment of all suppliers, materialmen, laborers, or subcontractors employed pursuant to the construction of the Facility. Such Bonds shall be with a surety company that is qualified pursuant to Section c. Qualifications of Surety below.
- iii. Such Bonds shall be in effect for one (1) year after completion and acceptance of the Facility with liability equal to one hundred ten percent (110%) of the Contract price, or an additional Bond shall be conditioned that Contractor shall, upon notification by City, correct any defective or faulty work or materials that appear within one (1) year after completion of the construction.
- iv. The Payment and Performance Bond required herein shall be in conformance with Chapter 255.051, *Florida Statutes*, and shall be on such forms provided by City.
- v. City shall not be responsible for the cost to secure the Performance and Payment Bonds required for the construction of the Facility.

b. Performance and Payment Guaranty. In lieu of a Performance and Payment Bond, Contractor may furnish an alternate form of security that may be in the form of cash, money order, certified check, cashier's check, or irrevocable letter of credit. Such alternate forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable above and shall be held by City for one (1) year after completion and acceptance of the Facility.

c. Qualifications of Surety

- i. A Performance Bond and separate Payment Bond shall be executed by a surety company shown on the United States Treasury approved list of companies and also authorized to do business in the State of Florida. Both

Bonds shall show City as obligee.

- ii. The surety company shall have at least the following minimum ratings in the latest version of A.M. Best's Insurance Report:

| Amount of Bond           | Policyholder's Ratings | Best's Financial Size Category |
|--------------------------|------------------------|--------------------------------|
| 500,001 to 1,000,000     | B+                     | Class I                        |
| 1,000,001 to 2,000,000   | B+                     | Class II                       |
| 2,000,001 to 5,000,000   | A                      | Class III                      |
| 5,000,001 to 10,000,000  | A                      | Class IV                       |
| 10,000,001 to 25,000,000 | A                      | Class V                        |
| 25,000,001 to 50,000,000 | A                      | Class VI                       |
| 50,000,001 or more       | A                      | Class VII                      |

- iii. Indemnification of City

- (1) Contractor shall indemnify and hold harmless City and Foundation, its officers, and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Contractor and other persons employed or utilized by Contractor in the design and construction of the Indoor Recreational Facility. The indemnification herein is limited to the greater of the Insurance of Contractor for such claim or Five Million Dollars (\$5,000,000.00), whichever is greater. Regardless of the foregoing, this provision shall be limited by Chapter 725.06, *Florida Statutes*.
- (2) The indemnification provided above shall obligate Contractor to defend at its own expense to and through appellate, supplemental, or bankruptcy proceeding, or to provide for such defense, at the City Attorney's option, any and all claims of liability and all suits and actions of every name and description that may be brought against City that may result from the operations and activities under this Agreement, whether performed by Contractor, its subcontractors, its consultants, or by anyone directly or indirectly employed by any of the above.
- (3) The execution of this Agreement by Contractor shall obligate Contractor to comply with the foregoing indemnification provision; however, the collateral obligation of insuring this indemnity shall be complied with as set forth in the Agreement.

- d. Insurance

Contractor shall provide, pay for, and maintain in force at all times such insurance, including Workers' Compensation Insurance, Employer's Liability Insurance,

Comprehensive General Liability Insurance, and shall provide, pay for, and maintain in force at all times during the construction, operation, and maintenance of the Indoor Recreational Facility, Professional Liability Insurance to assure to City the protection contained in the foregoing indemnification and save harmless clauses undertaken by Contractor. The Comprehensive General Liability Policy shall clearly identify the foregoing indemnification and save harmless clauses by the additional named insured endorsement under this Article.

Such policy or policies shall be issued by companies authorized to do business in the State of Florida and have a resident agent licensed in Florida. Contractor shall specifically protect City by naming City as an additional named insured under the Comprehensive General Liability Insurance Policy hereinafter described.

- i. Professional Liability (Errors and Omissions), Intentionally Omitted.
- ii. Workers' Compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) shall include Employer's Liability with limits of One Million Dollars (\$1,000,000.00) each accident, One Million Dollars (\$1,000,000.00) each disease, and One Million Dollars (\$1,000,000.00) aggregate by disease.
- iii. Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability shall include:
  - (1) Premises and/or Operations on an occurrence basis.
  - (2) Independent Contractors.
  - (3) Products and/or Completed Operations Liability on an occurrence basis.
  - (4) Explosion, Collapse, and Underground Coverages.
  - (5) Broad Form Property Damage.
  - (6) Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
  - (7) Personal Injury Coverage with Employees and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.
- iv. Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and shall include:

Owned vehicles.  
Non-owned and hired vehicles.

- v. Builder's Risk Insurance - Coverage shall be "All Risk" coverage for one hundred percent (100%) of the completed value of the structure(s), building(s) or addition(s). Where contract calls for install of machinery or equipment, the policy must be endorsed to provide coverage on "All Risk" basis during transit and installation. The policy must be issued with a deductible of not more than \$50,000 per claim.

Builders Risk / Installation Floater – Contractor shall take out and maintain, as applicable, during the construction of the Facility, "all risk" type builders risk insurance satisfactory to City for the completed value of the Facility that shall protect Contractor and City as their interests may appear, for the following hazards to the work, encompassing structures in the course of construction, including foundations, additions, attachments and all permanent fixtures belonging to and constituting a part of said structures, as well as materials and equipment suitably stored at the site and Contractor's construction equipment, materials, and temporary structures:

- (1) Fire and lightning, vandalism, and malicious mischief;
  - (2) Extended coverage including windstorm, hail, flood, explosion, riot, civil commotion, aircraft, vehicle, and smoke damage.
- e. Notice of Cancellation, Expiration, and/or Restriction: The policy(ies) shall be endorsed to provide City with thirty (30) calendar days' advanced written notice of cancellation, expiration, and/or restriction to the attention of the Project Manager, c/o Risk Management Coordinator, City of Palm Beach Gardens, 10500 North Military Trail, Palm Beach Gardens, Florida 33410.
- f. Contractor shall furnish to the Project Manager Certificate(s) of Insurance evidencing the insurance coverages required herein prior to commencement of any work on this Project. Such certificate(s) shall reference this Agreement. City reserves the right to require a certified copy of such policies upon request. All certificates shall state that City shall be given thirty (30) calendar days' prior written notice of cancellation and/or expiration.
- g. The official title of City is "City of Palm Beach Gardens." This official title shall be used in all insurance or other legal documentation. City shall be included as "Additional Insured" with respect to liability arising out of operations performed for City by or on behalf of Contractor or acts or omissions of Contractor in connection with such operation.

## EXHIBIT "C"

### FUND-RAISING PLAN & DEVELOPMENT PHASING PLAN

This Exhibit sets forth the fund-raising and development phasing milestones, which have been developed by Foundation and accepted by City. Foundation shall submit to City a report, prepared by a certified public accountant, identifying the funds raised related to the milestones identified below, and for every report subsequent to the initial report those funds raised since the previous report had been filed. The report need not identify the names of the donors; however, it must identify the donation and pledges which are committed to in writing (without conditions which are contrary to the requirements of this Agreement) and/or actually received. The report shall also describe the current stage of development and construction of the Facility, and identify any potential issues that may impact the development phasing plan.

The report shall be submitted to the City Manager's Office no later than thirty (30) days following each milestone deadline, as set forth below, beginning with the reporting year 2021. City will review the report for compliance with the milestones identified below.

City shall notify City Council and Palm Beach County of the status of Foundation's compliance with these requirements.

#### FUND-RAISING MILESTONES

| Milestone Deadline           | Total        | Accumulated Total |
|------------------------------|--------------|-------------------|
| <b>PHASE 1</b>               |              |                   |
| October 3, 2020 <sup>1</sup> | \$7,000,000  | \$7,000,000       |
| May 31, 2021                 | \$5,000,000  | \$12,000,000      |
| December 31, 2021            | \$5,000,000  | \$17,000,000      |
| March 31, 2022 <sup>2</sup>  | \$10,000,000 | \$27,000,000      |
| <b>PHASE 2</b>               |              |                   |
| May 31, 2022                 | \$6,625,000  | \$33,625,000      |
| December 31, 2022            | \$5,000,000  | \$38,625,000      |
| May 31, 2023                 | \$5,000,000  | \$43,625,000      |

<sup>1</sup> The first milestone deadline shall be October 3, 2020, or one (1) year following the City's receipt of written approval of this Agreement from Palm Beach County, whichever is later.

<sup>2</sup> This milestone is for receipt of financing. Financing shall occur on or before March 31, 2022, subject to funding approval by a qualified lender. Foundation shall use its best efforts to secure financing in a timely manner prior to final Phase 1 fundraising milestone.

DEVELOPMENT/CONSTRUCTION MILESTONES

| Development/Construction Progress                             | Milestone Deadline   |
|---|--|
| Submit for site plan approval                                 | Within six months of execution of Agreement                                    |
| Submit for building permits                                   | Within six months of site plan approval  |
| Vertical Construction of Facility begins                      | Within six month of issuance of all permits and approvals by City              |
| Substantial Completion of the Facility, or any phase thereof. | Within twenty-four (24) months of commencement of construction of the Facility |

PHASING PLAN

| Phase I   | Phase II   |
|---|--|
| <p><u>Ground Level</u></p> <p>Two (2) ice rinks</p> <p>Six (6) squash courts</p> <p>One (1) children's play area and rock-climbing wall</p> <p>Three (3) multi-purpose rooms</p> <p>One (1) health / wellness area</p> <p>One (1) retail pro shop</p> <p>One (1) concession area</p> <p>Administrative offices</p> <p><u>Upper Level</u></p> <p>One (1) community / conference room</p> <p>One (1) fitness area</p> <p>Two (2) multi-purpose rooms</p> <p>One (1) restaurant / bar</p> <p>One (1) observation area</p> <p>One (1) squash viewing area</p> | <p><u>Ground Level</u></p> <p>One (1) 4-court multi-sport gymnasium</p> <p>One (1) 2-court championship multi-sport gymnasium</p> <p><u>Upper Level</u></p> <p>Elevated jogging track</p> <p>Two (2) multi-purpose rooms</p> |



# ATTACHMENT 3

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**RESOLUTION 19, 2020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA, APPROVING AMENDMENT NO. 1 TO THE INTERLOCAL LEASE AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF PALM BEACH GARDENS FOR THE DISTRICT PARK PROPERTY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**WHEREAS**, the County is the owner in fee simple of an 82-acre parcel of land located at 5101 117<sup>th</sup> Court North, Palm Beach Gardens, Florida 33418; and

**WHEREAS**, Section 163.01, *Florida Statutes*, permits public agencies to enter into Lease Agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

**WHEREAS**, the County and City entered into that certain Lease Agreement to facilitate the development of the District Park Property for park purposes for the use and benefit of all residents of Palm Beach County; and

**WHEREAS**, the County has requested that the Lease Agreement be amended to address revenue sharing and to update the County's nondiscrimination policy; and

**WHEREAS**, Amendment No. 1 to the Interlocal Lease Agreement has been prepared and is attached hereto as Exhibit "A"; and

**WHEREAS**, the City Council deems approval of this Resolution to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Palm Beach Gardens and the public at large.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA, that:**

**SECTION 1.** The foregoing recitals are hereby affirmed and ratified.

**SECTION 2.** The City Council of the City of Palm Beach Gardens hereby approves Amendment No. 1 to the Interlocal Lease Agreement with Palm Beach County for the District Park Property, attached hereto as Exhibit "A", and authorizes the City Manager to execute the subject amendment and any and all future amendments that he may deem necessary and prudent.

PASSED AND ADOPTED this 6<sup>th</sup> day of February, 2020.

CITY OF PALM BEACH GARDENS, FLORIDA

BY: [Signature]  
Mark T. Marciano, Mayor

ATTEST:

BY: [Signature]  
Patricia Snider, CMC, City Clerk

I, Patricia Snider City Clerk  
of the City of Palm Beach Gardens  
do hereby certify that this is a true copy  
as taken from the Official records of the  
City of Palm Beach Gardens.

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

City Clerk: [Signature]  
Date: 2-7-20

BY: [Signature]  
R. Max Lonman, City Attorney

VOTE:

|                      | <u>AYE</u> | <u>NAY</u> | <u>ABSENT</u> |
|----------------------|------------|------------|---------------|
| MAYOR MARCIANO       | ✓          | ___        | ___           |
| VICE MAYOR LITT      | ✓          | ___        | ___           |
| COUNCILMEMBER MARINO | ✓          | ___        | ___           |
| COUNCILMEMBER WOODS  | ✓          | ___        | ___           |
| COUNCILMEMBER LANE   | ✓          | ___        | ___           |

[Signature]



**AMENDMENT NO. 1 TO PUBLIC PRIVATE PARTNERSHIP AGREEMENT  
FOR THE DEVELOPMENT OF AN INDOOR RECREATIONAL FACILITY  
AT THE GARDENS NORTH COUNTY DISTRICT PARK**

**AGREEMENT NO. RFP2018-050CS**

THIS AMENDMENT NO. 1 is made and entered into this 7<sup>th</sup> day of FEBRUARY, 2020 (the "effective date") by and between the **City of Palm Beach Gardens**, a Florida municipal corporation (hereinafter referred to as "City"), located at 10500 North Military Trail, Palm Beach Gardens, Florida 33410, and **Palm Beach North Athletic Foundation, Inc.**, a Florida Not For Profit Corporation (hereinafter referred to as "Foundation"), with its principal address at 13965 Willow Cay Drive, North Palm Beach, Florida 33408.

WHEREAS, City and Foundation did enter into and fully execute that certain Public Private Partnership Agreement for the Development of an Indoor Recreational Facility at the Gardens North County District Park, dated October 3, 2019 (hereinafter referred to as the "Agreement") to enter into a public private partnership for the development, construction, and operation of an Indoor Recreational Facility, in accordance with the City's Request for Proposals, RFP2018-050CS, Development of the Gardens North County District Park Indoor Recreational Facility, and Foundation's response thereto; and

WHEREAS, in response to comments provided by Palm Beach County, the landlord and owner of the Gardens North County District Park parcel (hereinafter referred to as "County"), City and Foundation have determined that certain provisions of the Agreement need to be revised to address the County's comments.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, City and Foundation agree as follows:

Section 1. Article 2. General Intention and Understanding. is hereby amended at subsections 2.1, 2.5, and 2.9 as set forth hereinbelow; providing that the remainder of Article 2 shall remain in full force and effect as originally set forth in the Agreement. Subsections 2.1, 2.5, and 2.9 shall hereafter read as follows:

- 2.1 It is the intent of the Contract Documents to describe a functionally complete Project to be designed, constructed, operated, financed, owned, and maintained by Foundation in accordance with the Contract Documents. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result, shall be supplied by Foundation whether or not specifically called for. When words that have a well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the standard specification, manual, code, laws, or regulations in effect at the time of the date of the execution of this Agreement.

~~County shall be deemed to have privity of contract with Foundation under this Agreement, and references to City in the Agreement, shall also be deemed to be references to County, as may be properly and legally construed to protect the interests and indemnification rights of County. City affirms, to the best of its knowledge, that nothing contained in this Agreement conflicts with the Inter-Local Lease Agreement between City and Palm Beach County entered into between City and County on or about January 29, 2018 (the "Inter-Local Lease").~~ Notwithstanding the foregoing, in the event of a conflict between any term or condition set forth in this Agreement and any term or condition set forth in the Inter-Local Lease the terms and/or conditions of the Inter-Local Lease shall prevail.

- 2.5 The public shall have access to and use of the Facility as set forth herein. Foundation shall develop a non-discrimination policy and applicable processes and procedures to allow the public to access and use the Facility. Furthermore, Foundation shall assure and certify that it will comply with the Title VI of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, with respect to any activity occurring on the District Park Property or conducted pursuant to this Lease. Foundation 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 and expression or genetic information. Foundation shall conform to the County's non-discrimination policy as provided in ~~R-2014-1424~~ R2017-1770, as may be amended.

As a condition of entering into this Agreement, the Foundation represents and warrants that it will comply with the County's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the Foundation shall not discriminate on the basis of race, color, national origin,

religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Foundation retaliate against any person for reporting instances of such discrimination. Foundation shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. Foundation understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the company from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Foundation shall include this language in its subcontracts.

Foundation shall comply will all applicable American with Disabilities Act provisions and shall ensure that reasonable accommodations are made for all users of the Facility. Failure to meet these requirements shall be considered default of the Agreement.

- 2.9 By executing this Agreement, Foundation agrees and understands that the property is owned by the County and leased by City through an Inter-Local Lease Agreement for a certain number of years. The terms and conditions of the Inter-Local Lease Agreement are made a part of this Agreement, and further incorporated by reference pursuant to the terms of the Request for Proposal. Notwithstanding the foregoing, in the event of a conflict between any term or condition set forth in this Agreement and any term or condition set forth in the Inter-Local Lease the terms and/or conditions of the Inter-Local Lease shall prevail.

Section 2. Article 9. Use of Facility. is hereby amended at subsections 9.1, 9.2, and 9.3 and entirely new subsection 9.4 is added; providing that Article 9. shall hereafter read as follows:

- 9.1 The intent of the parties to this Agreement is that the Indoor Recreational Facility will be used for the Intended Use, and primarily to provide a mix of recreational activities ~~for professional and amateur athletes~~ that will compliment and supplement existing offerings from City. The parties envision a public private partnership that helps to position City as a premier sports destination, while providing tangible economic and community benefits, in an atmosphere of cooperation and not competition. The Facility shall be operated subject to City's applicable codes and its rules regarding parks, recreation, and leisure services activities.

- 9.2 The programmatic operation of the Facility shall be governed by programs and schedules outlined in a Programming Schedule, to be developed annually by Foundation with input from City, as outlined in the Inter-Local Lease. City and Foundation may mutually make changes to the Programming Schedule during the term of this Agreement, without invalidating the Agreement and without the need for a formal amendment. Except as provided on the Programming Schedule, Foundation shall have full discretion as to the hours of operation and programs offered at the Facility, provided such operation does not conflict with existing laws. Notwithstanding the foregoing, City may provide input to Foundation on hours of operation and programs offered.
- 9.3 The parties agree that the intent is for the public to have access to the services offered at the Facility, subject to the Programming Schedule. Foundation shall have the right to establish fees reasonably within industry norms for services and programs provided to the public. Such fees may fluctuate depending on the season, demand or other factors which may be determined by Foundation. Foundation shall charge the same fee/rate to all Palm Beach County residents.
- 9.4 Foundation shall establish and fund a scholarship program to provide access to the facility and programs provided by Foundation to those Palm Beach County residents who are fiscally challenged. This scholarship program and its effectiveness shall be provided to City annually.

Section 3. Article 50. Ground Lease. is hereby amended as set forth hereinbelow and shall hereafter read as follows:

ARTICLE 50. GROUND LEASE.

City hereby demises and leases to Foundation, and Foundation hereby hires and takes from City, subject to and with the benefit of the terms, covenants, conditions, and provisions of this Agreement, the Property.

The initial term of this Agreement (the "Term") shall be from the Effective Date until January 22, 2068, unless terminated sooner pursuant to the terms herein.

The term of the Agreement, including the Initial Term and Renewal, shall not exceed the expiration date of the Initial Term of the Inter-Local Lease between County and City, which is January 22, 2068. In the event that the Inter-Local Lease is extended, City and Foundation may, upon mutual written consent of both parties, agree to extend the term of this Agreement for an additional renewal term, the duration of which shall not exceed the term of the Inter-Local Lease between City and County.

Foundation shall be responsible for performing all maintenance, repair and replacement for the Facility during the Term, at its sole cost and expense. Foundation shall maintain the Facility to the same or higher standard as City maintains other City buildings and facilities.

Foundation, in its sole discretion, has the right to modify or expand the Facility at any time during the term of this ground lease. Any modification or expansion of the Facility shall not affect the term and shall be subject to the terms and conditions of the Inter-Local Lease and approval by City, which such approval by City shall not be unreasonably withheld.

Section 4. Article 58. Ground Lease Fee. is hereby amended at subsection 58.2; providing that subsection 58.2 shall read as set forth hereinbelow; providing that the remainder of Article 58. shall remain in full force and effect as originally set forth in the Agreement.

58.2 No later than one (1) year and thirty (30) days after the issuance of a Certificate of Occupancy for the Facility, or a later date as determined by City, Foundation shall be required to pay an annual Ground Lease Fee. The subject Ground Lease Fee shall be comprised of City's total actual costs for common area and landscape maintenance of the area included within Foundation's ground lease. The specific amount of the Ground Lease Fee shall be established within City's annual budget and shall be provided in writing to Foundation no later than December 1<sup>st</sup> of each year for each and every year this Agreement remains in effect, payable in advance, to the City of Palm Beach Gardens, Florida. However, City will waive the first annual payment of the Ground Lease Fee. During this period, Foundation shall be responsible for maintaining the environs of the Facility to the standards established by City for the Gardens North County District Park complex.

All payments are due payable no later than January 31<sup>st</sup> of each year.

Section 5. Article 59. Revenue Share. is hereby amended by adding the sentence set forth hereinbelow to the end of Article 59.; providing that the new sentence shall read as follows:

If at any time City's annual Revenue Share exceeds City's annual maintenance costs for the entire Gardens North County District Park property, any such excess shall be remitted to Palm Beach County no later than January 31st of the year following the year in which such excess was realized.

Section 6. Article 65. Indemnification of City and County; and Insurance. is hereby amended at subsection 65.1 as set forth hereinbelow; providing that the remainder of Article 65 shall remain in full for and effect as originally set forth in the Agreement. Subsection 65.1 shall hereafter read as follows:

65.1 Foundation shall indemnify and hold harmless City and County, its officers, and employees from liabilities, damages, losses, liens, code violations, and costs, including, but not limited to, reasonable attorneys' fees and cost, including fees and costs on appeal, to the extent caused by the ~~negligence, recklessness, or intentionally wrongful conduct~~ acts or omissions of Foundation and other persons employed or utilized by Foundation in the operation and maintenance of the Indoor Recreational Facility.



City shall indemnify Foundation to the extent permitted by applicable law, and subject to the monetary limits set forth at Section 768.28, Florida Statutes. ~~To the extent that City is further indemnified by the County pursuant to the Lease Agreement, City hereby extends such indemnification to Foundation, to the fullest extent permitted by law.~~

Section 7. Article 67. Representation and Warranties of City. is hereby amended and shall hereafter read as follows:

ARTICLE 67. REPRESENTATION AND WARRANTIES OF CITY.

City hereby represents and warrants to Foundation that (i) City has full power and authority to enter into this Agreement; (ii) County is the sole fee owner of the Property; (iii) to City's knowledge, the Property complies with all environmental laws and regulations, and all other federal, state, and local rules, regulations, laws, statutes, and ordinances; (iv) City has obtained all required consents and approvals in order to enter into this Lease (including from all Major Title Document Holders, as hereinafter defined); (v) there are no restrictions (including, without limitation, declarations, covenants, easements, ground leases, and/or mortgages) that would prohibit, interfere with, restrict, or otherwise impair Foundation's ability to use the Property for the uses permitted hereunder, and City shall not permit or suffer any such restrictions that would prohibit, interfere with, restrict, or otherwise impair Foundation' ability to use the Property for such uses; (vi) City has not received any notice of any actual or threatened action, litigation, or proceeding by any organization, person, individual, or governmental agency against the Property or City with respect to the Property; (vii) the Property is free and clear of any leases, tenancies, or claims of parties in possession (apart from that certain Inter-Local Lease between Palm Beach County and City, from which arises City's authority to sub-lease the Property to Foundation); and (viii) this Agreement and the rights granted to Foundation hereunder shall not violate and are not inconsistent with any other agreement relating to the Property.

City shall have an affirmative obligation to immediately provide Foundation with written notice in the event of any change with regard to the representations set forth above.

Section 8. Exhibit B is hereby amended at paragraph 14.(c)iii. Indemnification of City, subparagraph (1), as follows:

iii. Indemnification of City and County

- (1) Contractor shall indemnify and hold harmless City, County, and Foundation, its officers, and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the ~~negligence, recklessness, or intentionally wrongful conduct~~ acts and omissions of Contractor and other persons employed or utilized by Contractor in the design and construction of the Indoor Recreational Facility. The indemnification

herein is limited to the greater of the Insurance of Contractor for such claim or Five Million Dollars (\$5,000,000.00), whichever is greater. Regardless of the foregoing, this provision shall be limited by Chapter 725.06, *Florida Statutes*.

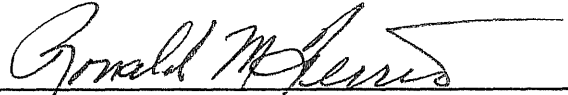
Section 9. This Amendment No. 1 shall become effective and part of the Agreement only when signed by all parties ("Effective Date").

Section 10. Each and every other term and provision of the Agreement shall remain in full force and effect as previously written.


(The remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand this Agreement and all Contract Documents and attachments hereto and have caused this Agreement to be executed by their duly authorized officers on the date hereinabove first written.

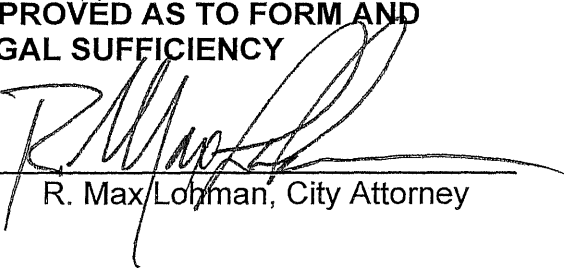
**CITY OF PALM BEACH GARDENS, FLORIDA**

By:   
Ronald M. Ferris, City Manager

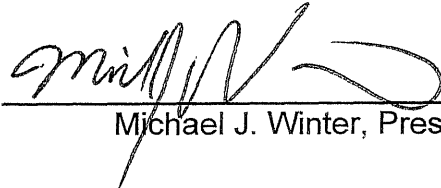
**ATTEST:**

By:   
Patricia Snider, CMC, City Clerk

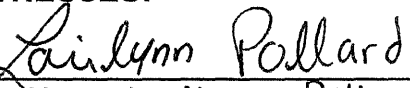
**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By:   
R. Max Lohman, City Attorney

**PALM BEACH NORTH ATHLETIC  
FOUNDATION, INC.**

By:   
Michael J. Winter, President

**WITNESSES:**

By:   
Print Name: Lorilynn Pollard

By:   
Print Name: Barbara R. Chabre

# ATTACHMENT 4

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE LEASE OF CERTAIN REAL PROPERTY TO THE CITY OF PALM BEACH GARDENS, FLORIDA, PURSUANT TO FLORIDA STATUTE SECTION 125.38; PROVIDING FOR CONFLICT WITH FEDERAL, STATE OR LOCAL LAW; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, THE CITY OF PALM BEACH GARDENS, a municipal corporation organized and existing under the laws of the State of Florida, ("City") has made application to the Board of County Commissioners of Palm Beach County requesting that Palm Beach County lease certain real property owned by Palm Beach County to the City for use by the City as a district park; and

**WHEREAS**, the County is the owner in fee simple of an 82 acre parcel of land located at 5101 117<sup>th</sup> Court North, Palm Beach Gardens, Florida 33418 ("District Park Property"); and

**WHEREAS**, the County and City desire to enter into a Lease Agreement to facilitate the development of the District Park Property for park purposes for the use and benefit of all residents of Palm Beach County; and

**WHEREAS**, the City has requested use of the District Park Property to design, construct, operate, and maintain a park with active recreational facilities; and

**WHEREAS**, the District Park Property shall be open to and benefit all residents of Palm Beach County regardless of residency; and

**WHEREAS**, Section 163.01, Florida Statutes, permits public agencies to enter into Lease Agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

**WHEREAS**, both parties desire to increase the recreational and cultural opportunities for residents of Palm Beach County and to enter into this Lease Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

**Section 1. Recitals**

The foregoing recitals are true and correct and incorporated herein by reference.

**Section 2. Authorization to Extend Funding Benchmark**

The Board of County Commissioners of Palm Beach County shall lease to the City, pursuant to the Lease Agreement attached hereto and incorporated herein by reference, for a term of fifty (50) years with an option to renew for one (1) additional fifty (50) year term, at an annual rent of ten (\$10), the real property identified in the Lease Agreement for the use as a park with active recreational facilities.

**Section 3. Conflict with Federal, State or Local Law**

Any Federal, State or Local Law in conflict with this Resolution shall prevail.

**Section 4. Effective Date**

The provisions of this Resolution shall be effective immediately upon adoption hereof.

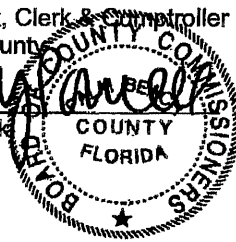
The foregoing resolution was offered by Commissioner Abrams who moved its adoption. The Motion was seconded by Commissioner Valeche, and upon being put to a vote, the vote was as follows:

|                                       |     |
|---------------------------------------|-----|
| Commissioner Melissa McKinlay, Mayor  | Aye |
| Commissioner Mack Bernard, Vice Mayor | Aye |
| Commissioner Hal R. Valeche           | Aye |
| Commissioner Paulette Burdick         | Aye |
| Commissioner Dave Kerner              | Aye |
| Commissioner Steven L. Abrams         | Aye |
| Commissioner Mary Lou Berger          | Aye |

The Mayor thereupon declared this resolution duly passed and adopted this 23rd day of January, 2018.

PALM BEACH COUNTY, a political subdivision  
of the State of Florida  
BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller  
Palm Beach County  
By: [Signature]  
Deputy Clerk



Approved as to Form and Legal  
Sufficiency

By: [Signature]  
Assistant County Attorney

**PALM BEACH COUNTY**

**LEASE AGREEMENT**

R2018 0122

between

**JAN 23 2018**

**PALM BEACH COUNTY**

**A POLITICAL SUBDIVISION OF THE**

**STATE OF FLORIDA**

**(County)**

and

**THE CITY OF PALM BEACH GARDENS**

**A MUNICIPAL CORPORATION ORGANIZED AND EXISTING**

**UNDER THE LAWS OF THE STATE OF FLORIDA**

**(City)**

R2018 0122

**LEASE AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF PALM BEACH GARDENS FOR THE CONSTRUCTION AND FUNDING OF NORTH COUNTY DISTRICT PARK**

THIS LEASE AGREEMENT is made and entered into JAN 23 2018 by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County," and THE CITY OF PALM BEACH GARDENS, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as the "City."

**WHEREAS**, the County is the owner in fee simple of an 82-acre parcel of land located at 5101 117<sup>th</sup> Court North, Palm Beach Gardens, Florida 33418, as more specifically described in Exhibit "A" (District Park Property), attached hereto; and

**WHEREAS**, the County and City desire to enter into a Lease Agreement to facilitate the development of the District Park Property for park purposes for the use and benefit of all residents of Palm Beach County; and

**WHEREAS**, the City has requested use of the District Park Property to design, construct, operate, and maintain a park with active recreational facilities, which park project, as more specifically described hereinafter, shall be referred to herein as the "Project"; and

**WHEREAS**, the Project shall be open to and benefit all residents of Palm Beach County regardless of residency; and

**WHEREAS**, Section 163.01, Florida Statutes, permits public agencies to enter into Lease Agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

**WHEREAS**, both parties desire to increase the recreational and cultural opportunities for residents of Palm Beach County and to enter into this Lease Agreement.

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

**ARTICLE I  
BASIC LEASE PROVISIONS**

**Section 1.01 District Park Property.**

In consideration of the rents, covenants, and agreements hereafter reserved and contained on the part of the City to be observed and performed, the County demises and leases to the City, and the City rents from the County approximately 82 acres of real property described in Exhibit "A", attached hereto and made a part hereof (the "District Park Property").

**Section 1.02 District Park Property Phasing Plan.**

The County and City agree that the City shall complete the recreational amenities located on the 36.5 acre Phase I property. The City shall also remove exotic vegetation, develop trails and open space, construct the retention lake, stabilized grass parking, and the road accessway immediately south of the retention lake and open space to be located on the remaining forty-five



(45.4) acre Phase II property within 24 months of the effective date of this Lease. The City must complete all recreational amenities, including vertical construction for the 45.4 acre Phase II property within ten (10) years of the effective date of this Lease as depicted on the Conceptual Master Plan. Should the City fail to meet the timelines set forth, the County, at its sole discretion, may unilaterally redact the 45.4 acre Phase II property, as depicted on the Conceptual Master Plan, from this Lease, which shall terminate the City's leasehold thereon. However, any such redaction shall have no effect on the City's tenancy and leasehold of the 36.5 acre Phase I property, unless the City fails to complete construction of Phase I within the required time periods set forth in this Lease, then this Lease shall terminate.

**Section 1.03 Term.**

This Lease shall be effective upon the Effective Date, as defined hereinafter. The Lease shall extend for a period of fifty (50) years ("Initial Term") thereafter, unless sooner terminated pursuant to the provisions of this Lease. The term of this Lease may be modified or extended with the mutual consent of the parties.

**Section 1.04 Option to Renew.**

Provided the City is not then in default of any term, covenant, condition, or payment of Rent under this Lease, the City may extend this Lease, for one additional fifty (50) year term under the same terms and conditions as this Lease and commencing upon the expiration of the initial Term of this Lease. The City shall exercise such option to renew if at all, by written notice to the County received by the County no later than one hundred eighty (180) days prior to the expiration of the Initial Term of this Lease. Failure of the City to duly and timely exercise its option to renew the Term of this Lease shall be deemed a waiver of the City's right to such option.

**ARTICLE II  
RENT**

**Section 2.01 Annual Rent.**

The City shall pay the County an annual net rent of Ten Dollars and no/100 (\$10.00) (the "Annual Rent"), payable without notice on the Commencement Date and each subsequent anniversary thereof. Annual Rent shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Finance Department, Revenue Section, P.O. Box 4036, West Palm Beach, Florida 33402. This Lease shall be what is commonly referred to as "triple net" to the County, it being understood by the parties that the County shall receive the rent payable hereunder free and clear of any and all impositions, taxes, liens, charges, and expense of any nature whatsoever relating to ownership or operation of the, including, without limitation, those relating to taxes, if any, insurance, repair, maintenance, use, care, or operation.

**Section 2.02 Assessments and Personal Property Taxes.**

The City shall pay all sales, use or rent taxes assessed by any governmental authority against the Annual Rent and/or Additional Rent, if any, even if such tax is intended to be imposed against the County. The City shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special, and all tangible or intangible personal property taxes and assessments of any kind or nature that may be levied by any governmental authority against the District Park Property, the City's leasehold interest in the District Park Property, the City's Alterations or personal property located on the District Park Property.

**Section 2.03 Additional Rent.**

Any and all sums of money or charges required to be paid by the City under this Lease other than Annual Rent shall be considered "Additional Rent", whether or not the same is specifically so designated, and the County shall have the same rights to enforce due and timely payment by the City of all Additional Rent as are available to the County with regards to Annual Rent.

**Section 2.04 Unpaid Fees, Holdover.**

In the event the City fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Lease within ten (10) days after same shall become due and payable, interest at the rate of one and one-half percent (1½ percent per month (or the highest rated permitted by law if lower) shall accrue against the delinquent payment(s) from the date due until the date payment is received by the County. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, the County shall not be prevented from terminating this Lease for default in the payment of rentals, fees, charges, and payments due to the County pursuant to this Lease or from enforcing any other provisions contained herein or implied by law. In the event the City shall holdover, refuse, or fail to relinquish possession of the District Park Property at the expiration or termination of this Lease, the City shall be liable to the County for any and all damages, and in addition thereto, the City shall also be strictly liable to pay to the County during the entire period of such holdover, double the actual fair market rental value of the District Park Property.

**Section 2.05 Accord and Satisfaction.**

In the event the City pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to the County's right to recover the balance due or to pursue any other remedy available to the County pursuant to this Lease or under the law.

**ARTICLE III**

**CONDITION OF LEASED DISTRICT PARK PROPERTY, DESIGN, AND CONSTRUCTION**

**Section 3.01 Acceptance of the District Park Property by the City.**

The City certifies that the City has inspected the District Park Property and accepts same "As Is," in its existing condition together with any defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions, and matters of record. The City further acknowledges that the County has made no representations or warranties of any nature whatsoever regarding the District Park Property, including, without limitation, the physical condition of the District Park Property, any improvements or equipment located thereon, if any, or the suitability thereof for the City's intended use thereof. No repair work, alterations, or remodeling of the District Park Property is required to be done by the County as a condition of this Lease. The City agrees to perform any and all work at its own cost and expense that is necessary to fully equip and maintain the District Park Property for the lawful use of the District Park Property by the City as specified in Section 4.01 of this Lease.

**Section 3.02 Approved Master Plan.**

A conceptual design of the Project and Phase I and II thereof are reflected in the Conceptual Master Plan. The City shall be responsible for the design, construction, and improvements necessary for both Phase I and Phase II Improvements. The City shall prepare and deliver to the County for review and written approval, which approval shall not be unreasonably withheld, a final master plan for Phase I and Phase II of the Project. The County hereby designates its Parks and Recreation Director as the approving authority for the County. Upon the City's submittal of the Phase I and Phase II Master Plan to the Parks and Recreation Director, the Director, or designee, shall respond to the City within 90 days or the Master Plan shall be deemed automatically approved. The final Master Plan, approved by the County, shall be referred to herein as the Approved Master Plan (the "AMP"). The City shall design and construct the Project at the City's sole cost and expense, in accordance with the requirements of this Lease and the AMP. The City shall utilize its procurement process for all services required for the Project. Said procurement process shall be consistent with all federal, state, and local laws, rules, and regulations. The County shall have no contractual obligation to any person retained by the City with regards to the Project. Any dispute, claim, or liability that may arise as a result of the City's procurement shall be the sole responsibility of the City and the City hereby holds the County harmless for same. Nothing contained herein shall be construed as a waiver of sovereign immunity or an agreement by the City to indemnify the County beyond the statutory limits of liability set forth in Section 768.28, Florida Statutes.

**Section 3.03 Construction of Project.**

The City shall design, construct, fund, operate, and maintain the Project at the City's sole expense, in accordance with the requirements of this Lease and the Conceptual Master Plan, attached hereto as Exhibit "B". All construction and improvements shall be made and performed in a good and workmanlike manner and in full compliance with applicable building codes, zoning regulations, and the provisions of this Lease. The County hereby delegates to the City all authority necessary and proper for the City to obtain any and all permits, necessary to design, construct, maintain, and operate the District Park Property. The City's subcontractors shall obtain, prior to commencing any work upon District Park Property, a public construction payment and performance bond in accordance with the provisions of Florida Statute 255.05 in an amount equal to the total cost of construction of such work. Notwithstanding the foregoing, the parties recognize that existing field conditions may necessitate minor deviations in the location of park amenities; however, any deviation from the AMP that would reduce the quality, quantity, or functionality of the park amenities shall not be considered a minor deviation and shall require review and approval by the County. Requests to make minor deviations shall be submitted to the Parks Director, or designee, who shall respond to the City within 14 days or the subject submittal shall be deemed to be automatically approved.

**Section 3.04 Expenses and "As Builts."**

The City shall be responsible for all expenses associated with the Project including, without limitation those relating to architecture and engineering, site work, utilities, drainage, securing requisite permits and approvals, and physical construction of the Project. The City shall provide the County with complete "As Built" plans for all infrastructure, building, stormwater management systems, and lighting systems for the Project and any alterations upon completion of the Project.

**Section 3.05 Project Elements.**

The City shall be responsible to complete Phase I as depicted on the AMP within four (4) years of the effective date of this Lease and in accordance Section 3.06 hereinbelow.

The Project shall contain the following minimum improvements as depicted in the Conceptual Master Plan:

1. Program Elements including three (3) lighted regulation multipurpose fields, two (2) lighted flexible use playing fields, one (1) playground large enough to serve a minimum of 30 children, picnic facilities, restroom/concession/meeting room building, maintenance compound and upland preserve.
2. Site improvements including bleachers, shade structures, nature trails, and interpretive signs.
3. Civil work including paving, grading, drainage, water retention lake, parking, lighting and related infrastructure.
4. Fencing, gates and/or other approved means of securing the and controlling access to the Project.

The parties acknowledge the AMP may differ from the Conceptual Master Plan and the minimum improvements set forth above. In the event of such a conflict, the AMP shall control and this Lease shall be deemed amended to require construction of the minimum Phase I improvements in accordance with the AMP.

**Section 3.06 Project Timeline**

A. The City shall construct the Project in accordance with the following schedule:

1. Commencement of construction of Phase I of the Project within two (2) years of the effective date of the Lease Agreement.
2. Completion of construction of Phase I within four (4) years of the effective date of the Lease Agreement.

For purposes hereof, commencement of construction shall be defined as issuance of all requisite permits for Phase I, execution of a construction contract and commencement of site work. For purposes hereof, completion of construction shall mean completion of construction of the improvements in accordance with the approved plans and specifications, issuance to the County by the City's engineer of record of a substantial completion, issuance of a certificate of completion, if applicable, and opening the facility to the general public for its intended use as a public park. In the event the City fails to construct the Project in accordance with the above schedule, the County shall be entitled to terminate this Lease, and all improvements located on the District Park Property shall become the property of the County.

**Section 3.07 Alterations.**

After completion of the Project and issuance of a certificate of completion therefore, the City shall not make any improvements, additions, modifications or alterations costing in excess of \$75,000 (hereinafter collectively referred to as "Alterations") without the prior written consent from the County, which consent will not be unreasonably withheld. The City shall submit detailed plans and specifications for all such Alterations to the County for the County's written approval prior to commencing work on same. The City agrees and acknowledges that all work performed to the

District Park Property, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of the City, and not for the benefit of the County, such work being nevertheless subject to each and every provision of this Lease. All work done by the City shall be done in a good and workmanlike manner and shall be diligently pursued to completion in accordance with the approved plans and specifications therefor.

**Section 3.08 Construction Payments.**

The City shall ensure that all improvements are constructed to completion in accordance with the approved plans therefor and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials.

**Section 3.09 Contractor Bond Requirements.**

For Alterations costing in excess of \$75,000, the City shall require contractors to furnish for the benefit of the City a payment and performance bond to the City equal to the cost of the improvements and in the form required under Section 255.05, Florida Statutes. The City shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a Builder's Risk form, in such amounts and in such manner as the City may reasonably require.

**Section 3.10 No Liens.**

The City covenants and agrees that nothing contained in this Lease shall be construed as consent by the County to subject the estate of the County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that the County's estate shall not be subject to such liability. The City shall notify any and all parties or entities performing work or providing materials relating to any improvements made by the City of this provision of this Lease. If so requested by the County, the City shall file a notice satisfactory to the County in the Public Records of Palm Beach County, Florida stating that the County's interest shall not be subject to liens for improvements made by the City. In the event that a construction lien is filed against the District Park Property or other County property in connection with any work performed by or on behalf of the City, the City shall satisfy such claim, or transfer same to security, within 10 days from the date of filing. In the event that the City fails to satisfy or transfer such claim within said 10-day period, the County may do so and thereafter charge the City, and the City shall promptly pay to the County upon demand, as Additional Rent, all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, the City agrees to indemnify, defend, and save the County harmless from and against any damage or loss incurred by the County as a result of any such construction lien.

**ARTICLE IV  
CONDUCT OF BUSINESS AND USE OF DISTRICT PARK PROPERTY BY CITY**

**Section 4.01 Use of the District Park Property.**

The City shall use and occupy the District Park Property solely and exclusively as a public park as specified in this Lease and Conceptual Master Plan. The City shall not use, permit, or suffer the use of the District Park Property for any other purpose whatsoever without the prior written consent of the County, which consent may be granted or withheld in the County's sole discretion.

The City shall provide supervision and strictly enforce all rules, regulations, and safety procedures established by the City, the requirements of this Lease, and in general, good standards and practices for the safe and orderly use of the District Park Property. At all times the District Park Property is in use by the City or its invitees, such use shall be under the control and supervision of the City and such supervision shall be conducted by a supervisor authorized by the City. The City shall not use the District Park Property or allow the District Park Property to be used for any commercial or unauthorized purpose, or by any other groups, foundations, or persons not authorized by the City. The City shall not commit or permit any reckless or dangerous conduct on the District Park Property at any time.

The City shall be in full control of the operation of the District Park Property, and shall set and establish the times of operation and the rules and regulations for use by the public. The City shall ensure that all access areas to the District Park Property are locked and secured outside of normal operating hours. The County shall have no control or responsibility with regard to the use of the District Park Property, except as is otherwise set out in this Lease.

The City agrees that the District Park Property shall be used only and exclusively for lawful purposes, and the City will not use, or suffer anyone to use, the District Park Property, for any purpose in violation of the laws of the United States, the State of Florida, or the ordinances and regulations of Palm Beach County or any governmental entity having jurisdiction over the District Park Property.

**Section 4.02 Program and User Fees.**

The City shall provide programs and facility access to all residents of Palm Beach County on a first come first serve basis regardless of residency, with no preference given to Palm Beach Gardens residents. The City may assess and collect a program fee of up to 20% higher to non-City residents to help offset the City's cost to maintain, program, operate, and staff the District Park Property.

**Section 4.03 Sports Commission Accommodations.**

The Palm Beach County Sports Commission shall have use privileges of the District Park Property facilities to host regional, state, national, and international events on a "not-to-conflict" basis with City programs. Fees for such events shall be reasonable and shall not exceed the City's cost of providing maintenance and staffing for said events.

**Section 4.04 North County District Park Advisory Committee**

The City shall establish a North County District Park Advisory Committee comprised of representatives from the County, municipalities, sports providers and other appropriate representatives located within northern Palm Beach County. Municipal representation shall include but not be limited to: City of Palm Beach Gardens, Town of Jupiter, Village of North Palm Beach, Town of Lake Park, City of Riviera Beach, Village of Tequesta, Town of Juno Beach, Town of Palm Beach Shores, and Town of Jupiter Inlet Colony. The committee shall provide input and recommendations to the City regarding the development and programming of the District Park Property. Committee membership is voluntary and no compensation shall be provided. The Advisory Committee shall continue to exist for the duration of this Lease.

**Section 4.05 Waste or Nuisance.**

The City shall not commit or suffer to be committed any waste upon the District Park Property, commit or permit the maintenance or commission of any nuisance or other act or thing that may result in damage or depreciation of value of the District Park Property, or that may affect the County's fee interest in the District Park Property, or that results in an unsightly condition. All refuse is to be removed from the District Park Property at the City's sole cost and expense, and the City will keep such refuse in proper containers on the interior of the District Park Property until removed. The City will keep the access to the District Park Property, the parking areas, and other contiguous areas to the District Park Property free and clear of obstruction. The City, at its sole cost and expense, will keep the District Park Property free of rodents, vermin, and other pests.

**Section 4.06 Governmental Regulations.**

The City shall, at the City's sole cost and expense, comply with all ordinances, laws, statutes, and regulations promulgated thereunder of all county, municipal, state, federal, and other applicable governmental authorities, now in force or that may hereafter be in force, pertaining to the City or its use of the District Park Property or the District Park Property generally.

The parties acknowledge and agree that the County is entering into this Lease in its proprietary capacity as the owners of the District Park Property and that nothing contained herein shall be construed to constitute any form of approval by the County in its governmental capacity or limit or alter the City's obligation to comply with all applicable governmental regulations.

The City shall not use the District Park Property in a manner, which causes the County to be in violation of any current or future local, state, or Federal permits, rules, regulations, deed restrictions or covenants applicable to the District Park Property. The County shall have the right to require any modifications to the City's use of the District Park Property if the County in its reasonable discretion determines such use violates any current or future local, state or Federal permits, rules, regulations, deed restrictions or covenants applicable to the District Park Property. In the event the required modification is determined by the City to be not financially feasible in the City's sole discretion, the City shall have the right to terminate this Lease upon the City's 45-day written notification to the County. In the event that the City has not terminated this Lease and fails to timely make such modifications or changes, the County shall have the right to enter upon the District Park Property and make such modifications or changes at the City's expense as the County in its sole discretion determines are necessary to meet such compliance. The City shall promptly pay to the County upon demand, as Additional Rent, all costs incurred by the County in connection with such modifications.

**Section 4.07 Non-Discrimination.**

The City shall assure and certify that it will comply with the Title VI of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, with respect to any activity occurring on the District Park Property or conducted pursuant to this Lease.

The City 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 and expression or genetic information. The City shall conform to the County's non-discrimination policy as provided in R-2014-1421, as may be amended. The City has submitted to the County a copy of its non-discrimination policy that is consistent with the above paragraph, as set forth in the City's Recreational Facilities Use Policies and Procedures Manual. In the event the City's Recreational Facilities Use Policies and Procedures Manual changes in regards to its non-discrimination policy, the City shall provide the County with a copy of its new policy to ensure the City is in compliance with the County's non-discrimination policy as provided in R-2014-1421, as may be amended.

**Section 4.08 Surrender of the District Park Property.**

Upon termination or expiration of this Lease, the City, at its sole cost and expense, shall remove the City's non-real property or chattel, if so directed by the County and shall surrender the District Park Property to the County. Upon surrender of the District Park Property, title to any and all remaining improvements, alterations, and structures within the District Park Property shall vest in the County.

**Section 4.09 Hazardous Substance.**

The City shall not use, maintain, store, or dispose of any contaminants, including, but not limited to, Hazardous Materials or toxic substances, chemicals, or other agents on the District Park Property, or any adjacent land, in any manner not permitted by Environmental Laws. Furthermore, the City shall not cause or permit the Disposal of Hazardous Materials upon the District Park Property or upon adjacent lands and shall operate and occupy the District Park Property in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, and contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge, or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state, or local laws, statutes, ordinances, rules, regulations, or other governmental restrictions.

Any discharge, release, spill, or disposal of a Hazardous Material, whether by the City or any third party, shall be reported to the County immediately upon the knowledge thereof by the City. The City shall be solely responsible for the entire cost of remediation and cleanup of any Hazardous Materials disposed of or discovered upon the District Park Property or emanating from the District Park Property onto adjacent lands that occurs as a result of the use and occupancy of the District Park Property by the City, or the City's agents, licensees, invitees, subcontractors, or employees.

The City hereby agrees to indemnify, defend, and hold harmless the County from and



against any and all claims, suits, judgments, loss, damage, fines, or liability that may be incurred by the County, including reasonable attorney's fees and cost, that may arise from the use or disposal of Hazardous Material upon District Park Property. The City's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise.

Nothing set forth hereinabove shall constitute a waiver of sovereign immunity or an agreement to indemnify the County beyond the monetary limits set forth at Section 768.28, Florida Statutes. This provision shall survive expiration or termination of this Lease.

**Section 4.10 Concessions.**

The City may enter into contracts with or issue licenses to vendors for the operation of the concession space(s) on the District Park Property for sale of food and/or merchandise. The City shall be entitled to retain the proceeds generated by such contracts and/or licenses. Such contracts and/or licenses shall not release the City from any obligations under this Lease. Further, the City shall comply with and shall be obligated to ensure that all such contracts and/or licenses comply with the terms of this Lease and all applicable federal, state, and county laws, rules, regulations, and ordinances pertaining to the foregoing, including, without limitation, the sale of retail goods, food, and beverages, and the collection and remittance of sales tax as applicable.

**Section 4.11 Park Rules and Special Events.**

The City shall be entitled to grant short-term licenses reserving the Park's picnic facilities for user groups. Any such special event license shall incorporate the terms of this Lease by reference. The City shall be entitled to retain the proceeds generated by such licenses. Such licenses shall not release the City from any of its obligations under this Lease. Further, the City shall be obligated to ensure that such licensees comply with the terms of this Lease and all applicable federal, state, and county laws, rules, regulations, and ordinances.

**ARTICLE V  
REPAIRS AND MAINTENANCE OF DISTRICT PARK PROPERTY**

**Section 5.01 Responsibility of the County and City.**

The County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the District Park Property. The City shall keep and maintain all portions of the District Park Property, and all alterations or improvements currently existing or constructed hereinafter on or about the District Park Property, in good condition and repair, at the City's sole cost and expense.

**Section 5.02 County's Right to Inspect.**

The County or County's agents shall have the right, upon reasonable prior notice to the City (except that no notice need be given in case of emergency) to enter the District Park Property for the purpose of inspection of the District Park Property and the improvements located thereon. Any such entrance into the District Park Property shall be conducted by the County in a manner calculated to minimize interference with or disruption of the City's operations within the District Park Property.

**ARTICLE VI**

## UTILITIES

The City shall be solely responsible for and promptly pay all costs and expenses relating to providing utility service to the District Park Property, and shall pay directly to the utility company or the provider of such service all charges and assessments for any utility services provided, including, without limitation, water, sewer, gas, electricity, trash collection and removal, or any other utility used or consumed on the District Park Property. In no event shall the County be liable for an interruption or failure in the supply of any such utility to the District Park Property.

## ARTICLE VII INSURANCE

Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, the City acknowledges and represents that the City is self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence, or such monetary waiver limits that may change and be set forth by the legislature.

The City shall at all times during the term hereof and at its sole expense, maintain property insurance in an amount not less than 100 percent of the total replacement cost of any betterments and improvements made by or on behalf of the City, as well as the City's contents located on the District Park Property. This coverage shall include, without limitation, stock, inventory, fixtures, and equipment belonging to the City or any occupant of the District Park Property. Coverage shall be provided on a primary basis, and the settlement clause shall be on a replacement cost basis with coverage written on a Special – Cause of Loss (All-Risk) form. The City shall deliver to the County certificates of such insurance policies that shall contain a clause requiring the insurer to give the County thirty (30) days prior notice of cancellation of such policies.

When requested, the City agrees to provide a statement or Certificate of Insurance evidencing insurance, self-insurance, and/or sovereign immunity status that the County agrees to recognize as acceptable for the above-mentioned coverages, as required herein to Insurance Tracking Services, Inc. (ITS), the County's authorized insurance consultant. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

Submit certificates of insurance to:

Palm Beach County  
c/o Insurance Tracking Services, Inc. (ITS)  
P.O. Box 20270  
Long Beach, CA 90801  
Email: [psc@instracking.com](mailto:psc@instracking.com) or Facsimile: (562) 435-2999

Subsequently, the City shall, during the term of the Lease and prior to each renewal thereof, provide such evidence to ITS at [psc@instracking.com](mailto:psc@instracking.com) or fax (561) 435-2999, which is Palm Beach County's insurance management system.

Compliance with the foregoing requirements shall not relieve the City of its liability and

obligations under this Lease.

The City agrees its self-insurance, general liability, automobile liability, and property insurance shall be primary as respects to any coverage afforded to or maintained by the County.

The City shall require its contractors to provide insurance with at least the minimum limits as designated in this Article and shall require its contractors include Palm Beach County Board County Commissioners and City of Palm Beach Gardens of as Additional Insureds on contractors' general liability and automobile liability policies.

|                                 |   |
|---------------------------------|---|
| Commercial General Liability -  | \$1,000,000 per occurrence<br>\$2,000,000 per aggregate |
| Business Automobile Liability - | \$ 500,000 per occurrence                               |
| Workers' Compensation -         | Statutory   |
| Employer's Liability -          | \$ 100,000 each accident                                |

**ARTICLE VIII  
INDEMNIFICATION**

It is understood and agreed that the City is merely a City of the County and is an independent contractor and is not an agent, servant, or employee of the County or its Board of County Commissioners. The City shall, to the extent permitted by law, indemnify, defend, and save harmless the County from and against any and all claims, suits, actions, damages, and/or causes of action arising as a result of the City's use and occupancy of the District Park Property, any personal injury, loss of life, environmental contamination, and/or damage to property sustained in or about the District Park Property by reason, during, or as a result of the use and occupancy of the District Park Property by the City, its agents, employees, licensees, invitees, and the general public, and from and against any orders, judgments, and/or decrees that may be entered thereon, and from and against all costs, attorney's fees, expenses, and liabilities incurred in and about the defense of any such claim at trial or on appeal. In the event the County shall be made a party to any litigation commenced against the City or by the City against any third party, then the City shall protect and hold the County harmless and pay all costs and attorney's fees incurred by the County in connection with such litigation and any appeals thereof. Notwithstanding anything herein to the contrary, the City shall not be obligated to indemnify or hold harmless the County for matters that are attributable to the negligent or intentional acts or omissions of the County. The City recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the County in support hereof in accordance with the laws of the State of Florida. This section shall survive the termination of this Lease. Nothing contained herein shall be construed as a waiver of sovereign immunity or an agreement to indemnify the County beyond the statutory monetary limits of liability set forth in Section 768.28, Florida Statutes.

**ARTICLE IX  
DESTRUCTION OF DISTRICT PARK PROPERTY**

**Section 9.01 Damage or Destruction by Fire, War, or Act of God.**

In the event the District Park Property shall be destroyed or damaged or injured by fire or other casualty during the Term of this Lease, the City shall restore the District Park Property to the same or better condition than that which existed prior to such casualty. The City shall commence such restoration within a reasonable time after such casualty but in no event later than one hundred and eighty (180) days of such casualty, unless it is commercially unreasonable and/or practicably impossible to do so. In which case, the County shall agree to a reasonable extension of time to commence restoration. The City shall thereafter diligently pursue such restoration to completion.

**ARTICLE X  
ASSIGNMENT AND SUBLETTING**

**Section 10.01 Consent Required.**

The City may not assign, mortgage, pledge, or encumber this Lease in whole or in part, nor sublet or rent all or any portion of the District Park Property nor grant any easements affecting the District Park Property without prior written consent of the County, which may be granted or withheld at the County's absolute discretion. Any attempted assignment, mortgage, pledge, encumbrance, or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of this Lease. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

**ARTICLE XI  
DEFAULT**

**Section 11.01 Default by the City.**

The occurrence of any one or more of the following shall constitute an Event of Default by the City under this Lease: (i) the City's failure to pay any sum due hereunder within thirty (30) days after the same shall become due; (ii) the City's use of the District Park Property for a purpose other than that allowed under this Lease; (iii) the City's failure to perform or observe any of the agreements, covenants, or conditions contained in this Lease on the City's part to be performed or observed if such failure continues for more than thirty (30) days after notice from the County, unless the same is of such a nature that it cannot reasonably be cured within such a time period, in which event the City shall be entitled to a reasonable period under the circumstances; (iv) the City's vacating or abandoning the District Park Property; or (v) the City's leasehold estate being taken by execution, attachment, or process of law or being subjected to any bankruptcy proceeding; (vi) failure to maintain the District Park Property in accordance with the AMP and acceptable maintenance procedures with normal wear and tear excepted. If any Event of Default occurs, then at any time thereafter while the Event of Default continues, the County shall have the right to give the City notice that the County intends to terminate this Lease upon a specified date not less than thirty (30) days after the date notice is received by the City, and this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within the thirty- (30) day period and the County is so notified, this Lease will continue; provided, however, if the nature of the City's

obligations are such that more than thirty (30) days are required for performance, then the City shall not be in default if the City commences performance within such thirty- (30) day period and thereafter diligently pursues the same to completion. Upon such termination, the County shall be entitled to pursue such damages as are available to the County pursuant to this Lease or the laws of the State of Florida. In the event City fails or refuses to perform any term, covenant, or condition of this Lease for which a specific remedy is not set forth in this Lease, County shall, in addition to any other remedies provided at law or in equity, have the right of specific performance and injunctive relief. Specific performance will only be required pursuant to this section if there is an annual budgetary funding and appropriations by its respective body.

**Section 11.02 Default by the County.**

The County shall not be in default unless the County fails to perform obligations required of the County within a reasonable time, but in no event later than thirty (30) days after written notice by the City to the County, specifying wherein the County has failed to perform such obligations; provided, however, that if the nature of the County's obligations is such that more than thirty (30) days are required for performance, then the County shall not be in default if the County commences performance within such thirty- (30) day period and thereafter diligently pursues the same to completion.

**ARTICLE XII  
ANNUAL BUDGETARY FUNDING**

This Lease and all obligations of the County and City hereunder are subject to and contingent upon annual budgetary funding and appropriations by their respective legislative bodies.

**ARTICLE XIII  
QUIET ENJOYMENT**

Upon payment by the City of the Rent, Additional Rent, and other charges herein provided, and upon the observance and performance of all the covenants, terms, and conditions on the City's part to be observed and performed, the City shall peaceably and quietly hold and enjoy the District Park Property for the Term hereby demised without hindrance or interruption by the County or any other person or persons lawfully or equitably claiming by, through, or under the County, subject, nevertheless, to the terms and conditions of this Lease.

**ARTICLE XIV  
MISCELLANEOUS**

**Section 14.01 Entire Agreement.**

This Lease and any Exhibits attached thereto constitute all agreements, conditions, and understandings between the County and City concerning the District Park Property. All representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, waiver, change, or addition to this Lease shall be binding upon the County or the City, unless reduced to writing and signed by both parties.

**Section 14.02 Notices.**

**Notices:** All notices, consents, approvals, and elections (collectively "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained). The effective date of any such notice shall be the date of delivery of the notice if by personal delivery, courier service, or national overnight delivery service. The parties designate the following addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the County at:

Property and Real Estate Management Division  
Attention: Director  
2633 Vista Parkway  
West Palm Beach, Florida 33411-5605  
Telephone: (561) 233-0217  
Fax: (561) 233-0210

with a copy to:

Palm Beach County Attorney's Office  
Attention: Parks Attorney  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401  
Telephone: (561) 355-2225  
Fax: (561) 355-4398

and a copy to:

Palm Beach County Parks and Recreation Department  
Attention: Director  
2700 6<sup>th</sup> Avenue South  
Lake Worth, Florida 33461  
Telephone: (561) 966-6614  
Fax: (561) 963-6734

- (b) If to the City at:

City of Palm Beach Gardens  
Attn: City Manager  
10500 North Military Trail  
Palm Beach Gardens, Florida 33410  
Telephone: (561) 799-4110

With a copy to:

City of Palm Beach Gardens  
Attn: Sports Director  
10500 North Military Trail  
Palm Beach Gardens, Florida 33410  
Telephone: (561) 630-1117

With a copy to:

City of Palm Beach Gardens  
Attn: City Attorney  
10500 North Military Trail  
Palm Beach Gardens, Florida 33410  
Telephone: (561) 799-4138

Any party may from time to time change the address at which notices under this Lease shall be given such party, upon three (3) days' prior written notice to the other parties.

**Section 14.03 Severability.**

If any term of this Lease or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 14.04 Broker's Commission.**

The County and City both represent and warrant that neither has dealt with any real estate salesperson, agent, finder, or broker in connection with this Lease

**Section 14.05 Recording.**

The City shall not record this Lease or any memorandum or short form thereof without the written consent and joinder of the County, which may be granted or withheld at the County's sole discretion.

**Section 14.06 Waiver of Jury Trial.**

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN CONNECTION WITH THIS LEASE.

**Section 14.07 Governing Law and Venue.**

This Lease shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Lease will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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 or hereafter existing at law or in 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 14.08 Time of Essence.**

Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

**Section 14.09 Waiver.**

The waiver by either Party of any default of any term, condition, or covenant herein contained shall not constitute a waiver of such term, condition, or covenant for any subsequent default of the same or any other term, condition, or covenant herein contained.

**Section 14.10 Non-exclusivity of Remedies.**

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 or hereafter existing at law or in equity or 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 14.11 Construction.**

No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease, and the same shall remain in full force and effect.

**Section 14.12 Incorporation by Reference.**

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Lease by reference.

**Section 14.13 Survival.**

Notwithstanding any early termination of this Lease, the City shall remain obligated hereunder to perform any duty, covenant, or obligation imposed upon the City hereunder arising prior to the date of such termination or surviving such termination.

**Section 14.14 No Third-Party Beneficiary.**

No provision of this Lease 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 Lease, including, but not limited to, any citizen or employees of the County and/or City.

**Section 14.15 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 is authorized with the power to review past, present, and proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a 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.

**Section 14.16 Effective Date of Lease.**

This Lease is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners ("Effective Date"). Upon termination or expiration of this Lease, all improvements on the Property shall become County property.

**Section 14.17 Public Entity Crimes.**

As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Lease or performing any work in furtherance hereof, City certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3) (a), Florida Statutes.

**Section 14.18 Headings.**

The paragraph headings or captions appearing in this Lease are for convenience only, are not part of this Lease, and are not to be considered in interpreting this Lease.

**Section 14.19 Condemnation.**

If the District Park Property, or any part thereof, or any improvements thereto, shall be taken, appropriated, or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, the County shall be entitled to that portion of the award relating to the County's reversionary interest in the fee simple estate. The City shall be entitled to that portion of the award relating to the City's leasehold estate, which includes any and all improvements made to the District Park Property by the City, including depreciation deducted from the award total, if the City is not in default of this Lease Agreement. Notwithstanding the foregoing, the City shall be entitled to pursue in such condemnation proceeding such award as may be allowed for moving expenses, business damages, and value of any crops. In the event of a total taking of the District Park Property, the rent shall be prorated, and this Lease shall terminate upon, the date title vests in the condemning authority. Notwithstanding such termination, the City shall remain liable for all matters arising under this Lease prior to such termination. In the event of a partial taking, Rent shall be reduced on a pro rata basis. In the event of a temporary taking, Rent shall be abated on a pro rata basis for the period of time the City is unable to use the portion of the District Park Property temporarily taken. After such period, Rent shall be restored to the Rent that would have been then due without regard to such taking. The County shall have no obligation to restore the District Park Property improvements or otherwise perform any work upon same as a result of any such taking.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease Agreement as of the day and year first above written.

COUNTY: R2018 0122  
JAN 23 2018

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

By: Melissa McKinlay  
Melissa McKinlay, Mayor

Signed and delivered in the presence of:

Glendia Y. Harvey  
Witness Signature  
Glendia Y. Harvey  
Print Witness Name

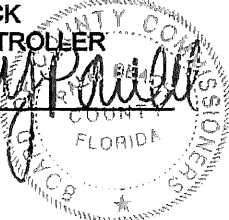
Timothy Montiglio  
Witness Signature

TIMOTHY MONTIGLIO  
Print Witness Name

ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

By: Sharon Bock  
Deputy Clerk



APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: Arnona Helgand  
Assistant County Attorney

APPROVED AS TO TERMS &  
CONDITIONS

By: Eric Call  
Eric Call, Director  
Parks & Recreation Department

CITY:

By: Maria G. Marino  
Maria G. Marino, Mayor

Signed and delivered in the presence of:

[Signature]  
Witness Signature

Kenthia White  
Print Witness Name

BERTHA L. MA-ROQUE  
Witness Signature

BERTHA L. MA-ROQUE  
Print Witness Name

ATTEST:

By: [Signature]  
Patricia Snider, CMC, City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: [Signature]  
R. Max Lohman, City Attorney

**LIST OF EXHIBITS**

| <b>Description</b>         | <b>Exhibits</b> |
|----------------------------|-----------------|
| The District Park Property | Exhibit "A"     |
| Conceptual Master Plan     | Exhibit "B"     |

**EXHIBIT "A"**



2035 Vista Parkway, West Palm Beach, FL 33411  
 Phone No. 866.909.2220 www.wginc.com  
 Cert No. 6091 - LB No. 7055

**DESCRIPTION & SKETCH**

PREPARED FOR:

**CITY OF PALM BEACH GARDENS**

**LEGAL DESCRIPTION: OVERALL BOUNDARY**

A PARCEL OF LAND LYING IN SECTIONS 1 AND 2, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 1; THENCE NORTH 01°52'52" EAST, ALONG THE WEST LINE OF SAID NORTHWEST ONE-QUARTER, A DISTANCE OF 732.77 FEET; THENCE SOUTH 88°07'08" EAST, DEPARTING SAID WEST LINE, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 01°52'52" EAST, A DISTANCE OF 541.55 FEET; THENCE NORTH 88°21'18" WEST, ALONG, IN PART, THE NORTH LINE OF 117TH COURT NORTH, AS DESCRIBED IN OFFICIAL RECORD BOOK 6496, PAGE 325, OF THE PUBLIC RECORDS OF SAID COUNTY, A DISTANCE OF 1758.02 FEET TO A POINT ON A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 1460.00 FEET; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 17°24'33", A DISTANCE OF 443.62 FEET TO A POINT ON A NON-TANGENT LINE; THENCE NORTH 70°54'39" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 274.84 FEET; THENCE NORTH 25°17'46" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 57.13 FEET TO A POINT ON THE EAST LINE OF CENTRAL BOULEVARD, AS DESCRIBED IN OFFICIAL RECORD BOOK 5104, PAGE 945, OF THE SAID PUBLIC RECORDS, SAID POINT BEING A POINT ON A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 3759.72 FEET, AND FROM SAID POINT A RADIAL LINE BEARS SOUTH 69°40'50" EAST; THENCE NORTHEASTERLY, ALONG SAID EAST LINE AND THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°48'18", A DISTANCE OF 709.02 FEET; THENCE SOUTH 88°21'18" EAST, A DISTANCE OF 2993.88 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 9 (PER FDOT (I-95) RIGHT-OF-WAY MAP SECTION NO. 93220-2474; THENCE SOUTH 30°31'49" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 529.73 FEET; THENCE SOUTH 26°31'49" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 433.18 FEET, THENCE SOUTH 01°48'15" WEST, DEPARTING SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 554.22 FEET; THENCE NORTH 88°31'06" WEST, A DISTANCE OF 1287.10 FEET TO THE POINT OF BEGINNING.

**SURVEYOR'S NOTES: (NOT A SURVEY-DESCRIPTION AND SKETCH ONLY)**

1. DATA SHOWN HEREON WAS COMPILED FROM OTHER INSTRUMENTS AND DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.

2. BEARINGS SHOWN HEREON ARE BASED ON GRID NORTH, AND ARE REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983, 2007 ADJUSTMENT. THE BASIS OF BEARINGS IS THE WEST LINE OF THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA BEING NORTH 01°52'52" EAST AND ALL OTHER BEARINGS ARE RELATIVE THERETO.

FOR THE FIRM  
 WANTMAN GROUP, INC.

BY:  DATE: 12/11/17

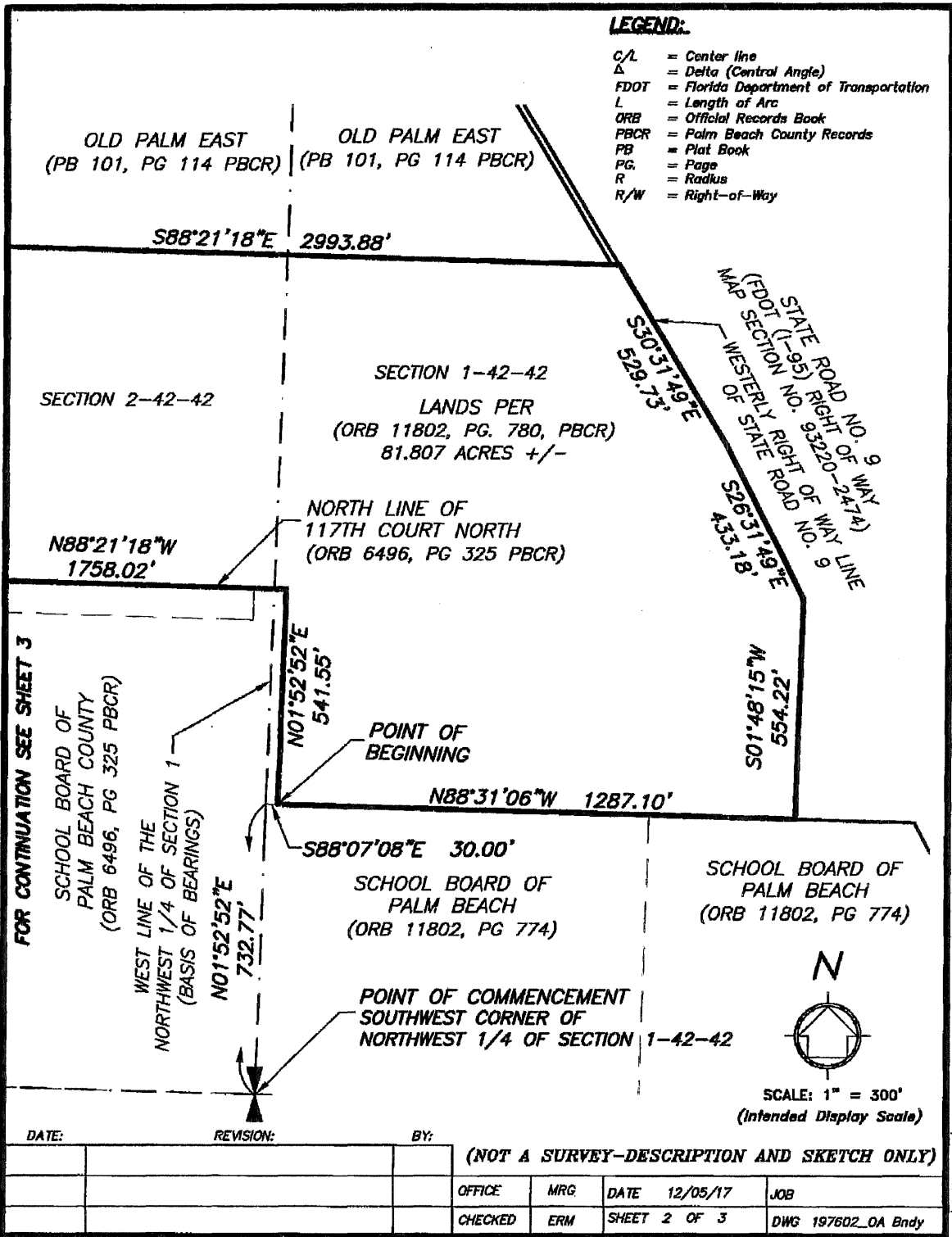
ERIC MATTHEWS, P.S.M.  
 PROFESSIONAL SURVEYOR AND MAPPER  
 STATE OF FLORIDA LICENSE NO. 6717

|       |           |     |         |     |       |          |                    |
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| DATE: | REVISION: | BY: | OFFICE  | MRG | DATE  | 12/05/17 | JOB                |
|       |           |     | CHECKED | ERM | SHEET | 1 OF 3   | DWG 197602_OA Bndy |

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**LEGEND:**

- C/L = Center line
- Δ = Delta (Central Angle)
- FDOT = Florida Department of Transportation
- L = Length of Arc
- ORB = Official Records Book
- PBCR = Palm Beach County Records
- PB = Plat Book
- PG. = Page
- R = Radius
- R/W = Right-of-Way



FOR CONTINUATION SEE SHEET 3  
SCHOOL BOARD OF  
PALM BEACH COUNTY  
(ORB 6496, PG 325 PBCR)

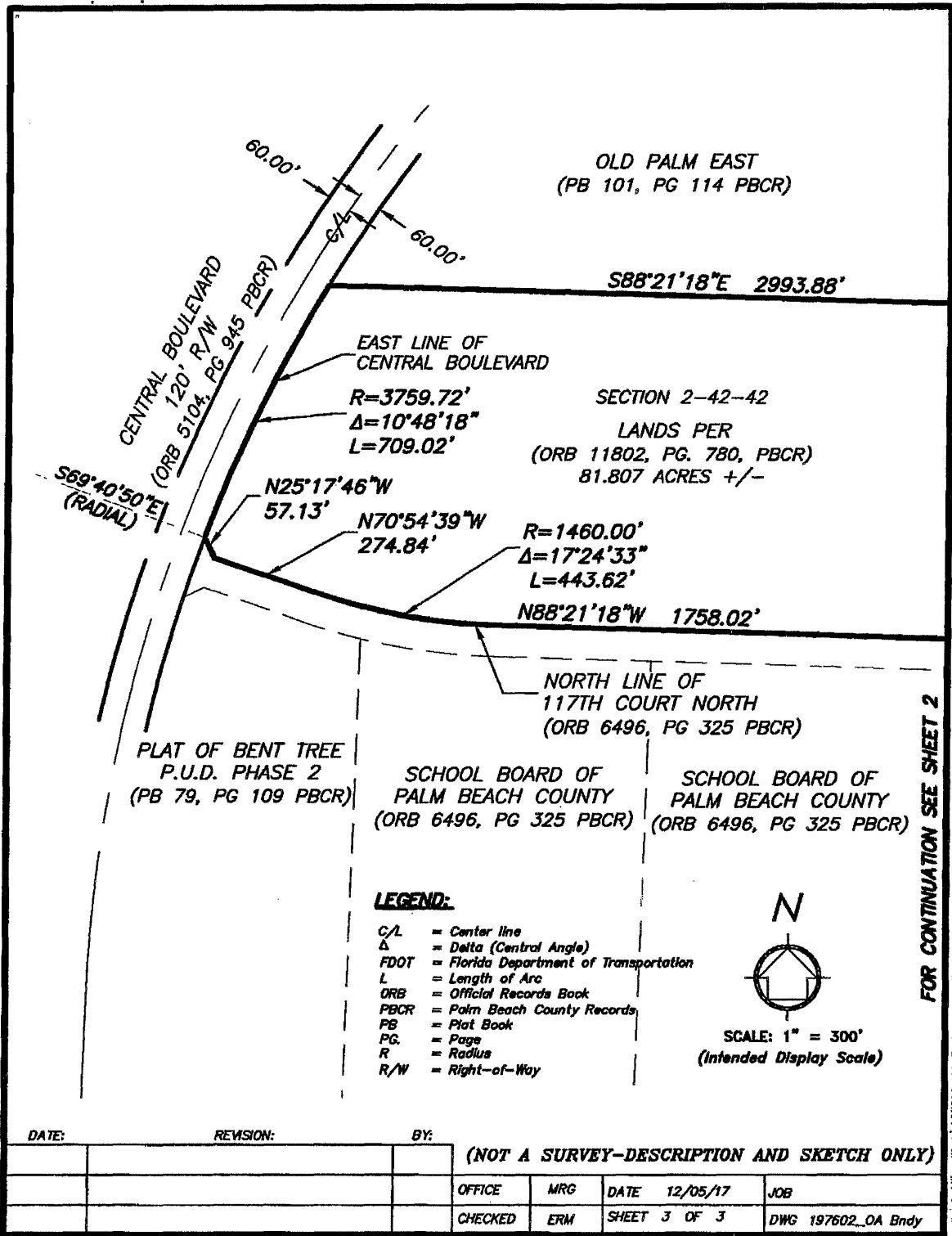
WEST LINE OF THE  
NORTHWEST 1/4 OF SECTION 1  
(BASIS OF BEARINGS)



SCALE: 1" = 300'  
(Intended Display Scale)

|       |           |     |  |     |               |                    |
|-------|-----------|-----|--|-----|---------------|--------------------|
| DATE: | REVISION: | BY: | (NOT A SURVEY-DESCRIPTION AND SKETCH ONLY) |     |               |                    |
|       |           |     | OFFICE                                     | MRG | DATE 12/05/17 | JOB                |
|       |           |     | CHECKED                                    | ERM | SHEET 2 OF 3  | DWG 197602_OA Bndy |

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OLD PALM EAST  
(PB 101, PG 114 PBCR)

S88°21'18"E 2993.88'

CENTRAL BOULEVARD  
120' R/W  
(ORB 5104, PG 945 PBCR)

EAST LINE OF  
CENTRAL BOULEVARD  
R=3759.72'  
Δ=10°48'18"  
L=709.02'

SECTION 2-42-42

LANDS PER  
(ORB 11802, PG. 780, PBCR)  
81.807 ACRES +/-

S69°40'50"E  
(RADIAL)

N25°17'46"W  
57.13'

N70°54'39"W  
274.84'

R=1460.00'  
Δ=17°24'33"  
L=443.62'

N88°21'18"W 1758.02'

NORTH LINE OF  
117TH COURT NORTH  
(ORB 6496, PG 325 PBCR)

PLAT OF BENT TREE  
P.U.D. PHASE 2  
(PB 79, PG 109 PBCR)

SCHOOL BOARD OF  
PALM BEACH COUNTY  
(ORB 6496, PG 325 PBCR)

SCHOOL BOARD OF  
PALM BEACH COUNTY  
(ORB 6496, PG 325 PBCR)

**LEGEND:**

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SCALE: 1" = 300'  
(Intended Display Scale)

FOR CONTINUATION SEE SHEET 2

DATE:                      REVISION:                      BY:

(NOT A SURVEY-DESCRIPTION AND SKETCH ONLY)

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|  |  |  | OFFICE  | MRG | DATE  | 12/05/17 | JOB                |
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2035 Vista Parkway, West Palm Beach, FL 33411  
 Phone No. 866.909.2220 www.wginc.com  
 Cert No. 6091 - LB No. 7055

**DESCRIPTION & SKETCH**

PREPARED FOR:  
**CITY OF PALM BEACH GARDENS**

LEGAL DESCRIPTION: PHASE 1

A PARCEL OF LAND LYING IN SECTION 1, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 1; THENCE NORTH 01°52'52" EAST, ALONG THE WEST LINE OF SAID NORTHWEST ONE-QUARTER, A DISTANCE OF 732.77 FEET; THENCE SOUTH 88°07'08" EAST, DEPARTING SAID WEST LINE, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 01°52'52" EAST, A DISTANCE OF 1388.13 FEET; THENCE SOUTH 88°21'18" EAST, A DISTANCE OF 796.29 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 9 (PER FDOT (I-95) RIGHT-OF-WAY MAP SECTION NO. 93220-2474; THENCE SOUTH 30°31'49" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 529.73 FEET; THENCE SOUTH 26°31'49" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 433.18 FEET, THENCE SOUTH 01°48'15" WEST, DEPARTING SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 554.22 FEET; THENCE NORTH 88°31'06" WEST, A DISTANCE OF 1287.10 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAIN 36.456 ACRES, MORE OR LESS.


(NOT A SURVEY-DESCRIPTION AND SKETCH ONLY)

SURVEYOR'S NOTES:

1. DATA SHOWN HEREON WAS COMPILED FROM OTHER INSTRUMENTS AND DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.

2. BEARINGS SHOWN HEREON ARE BASED ON GRID NORTH, AND ARE REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983, 2007 ADJUSTMENT. THE BASIS OF BEARINGS IS THE WEST LINE OF THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA BEING NORTH 01°52'52" EAST AND ALL OTHER BEARINGS ARE RELATIVE THERETO.

FOR THE FIRM  
 WANTMAN GROUP, INC.

BY:  DATE: 12/11/17  
 ERIC MATTHEWS, P.S.M.  
 PROFESSIONAL SURVEYOR AND MAPPER  
 STATE OF FLORIDA LICENSE NO. 6717

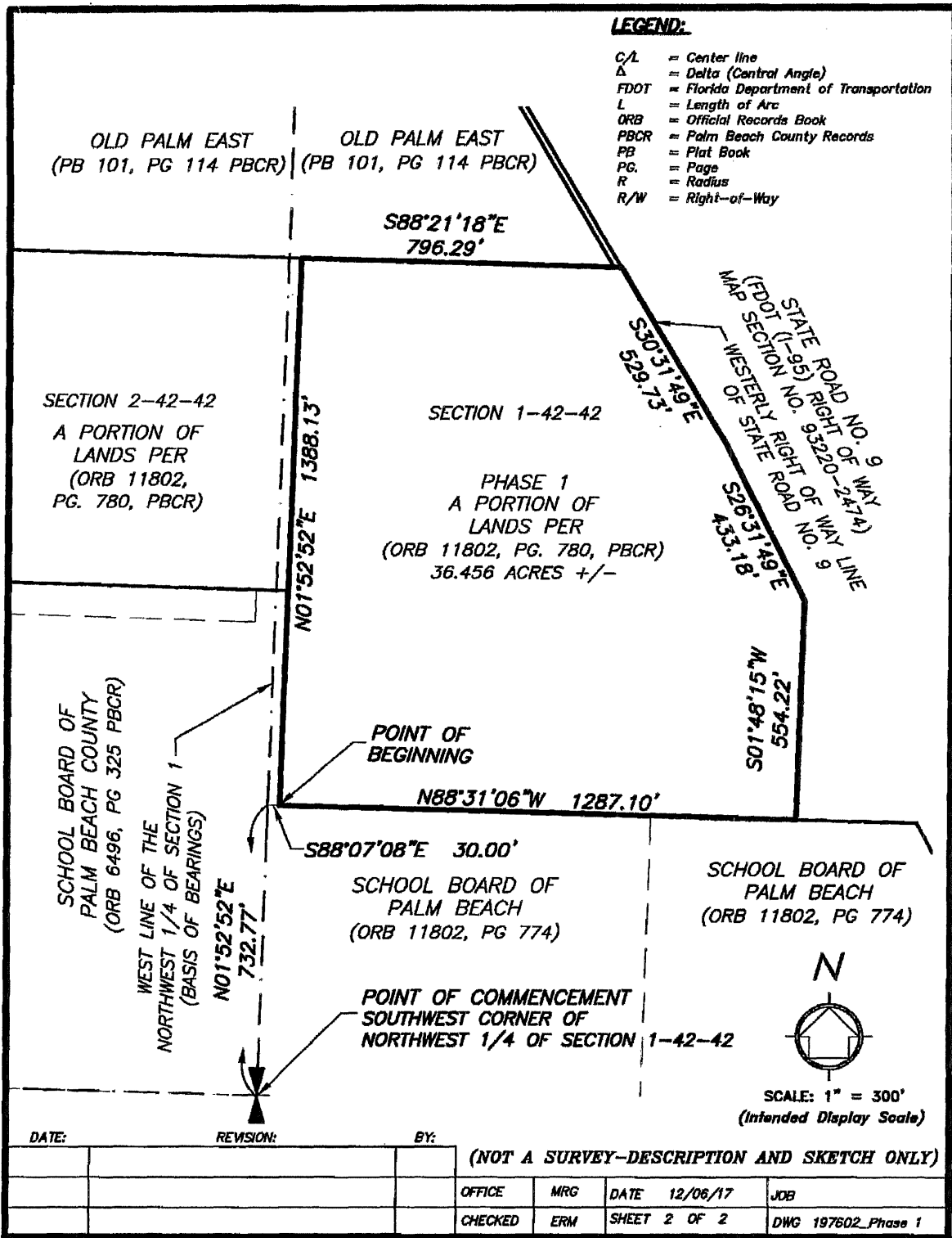
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2035 Vista Parkway, West Palm Beach, FL 33411  
 Phone No. 866.909.2220 www.wginc.com  
 Cert No. 6091 - LB No. 7055

**DESCRIPTION & SKETCH**

PREPARED FOR:

**CITY OF PALM BEACH GARDENS**

**LEGAL DESCRIPTION: PHASE 2**

A PARCEL OF LAND LYING IN SECTIONS 1 AND 2, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 1; THENCE NORTH 01°52'52" EAST, ALONG THE WEST LINE OF SAID NORTHWEST ONE-QUARTER, A DISTANCE OF 732.77 FEET; THENCE SOUTH 88°07'08" EAST, DEPARTING SAID WEST LINE, A DISTANCE OF 30.00 FEET; THENCE NORTH 01°52'52" EAST, A DISTANCE OF 541.55 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88°21'18" WEST, ALONG, IN PART, THE NORTH LINE OF 117TH COURT NORTH, AS DESCRIBED IN OFFICIAL RECORD BOOK 6496, PAGE 325, OF THE PUBLIC RECORDS OF SAID COUNTY, A DISTANCE OF 1758.02 FEET TO A POINT ON A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 1460.00 FEET; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 17°24'33", A DISTANCE OF 443.62 FEET TO A POINT ON A NON-TANGENT LINE; THENCE NORTH 70°54'39" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 274.84 FEET; THENCE NORTH 25°17'46" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 57.13 FEET TO A POINT ON THE EAST LINE OF CENTRAL BOULEVARD, AS DESCRIBED IN OFFICIAL RECORD BOOK 5104, PAGE 945, OF THE SAID PUBLIC RECORDS, SAID POINT BEING A POINT ON A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 3759.72 FEET, AND FROM SAID POINT A RADIAL LINE BEARS SOUTH 69°40'50" EAST; THENCE NORTHEASTERLY, ALONG SAID EAST LINE AND THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°48'18", A DISTANCE OF 709.02 FEET; THENCE SOUTH 88°21'18" EAST, A DISTANCE OF 2197.59 FEET; THENCE SOUTH 01°52'52" WEST, A DISTANCE OF 846.58 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAIN 45.351 ACRES, MORE OR LESS.


(NOT A SURVEY-DESCRIPTION AND SKETCH ONLY)

**SURVEYOR'S NOTES:**

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FOR THE FIRM  
 WANTMAN GROUP, INC.

BY:  DATE: 12/11/17

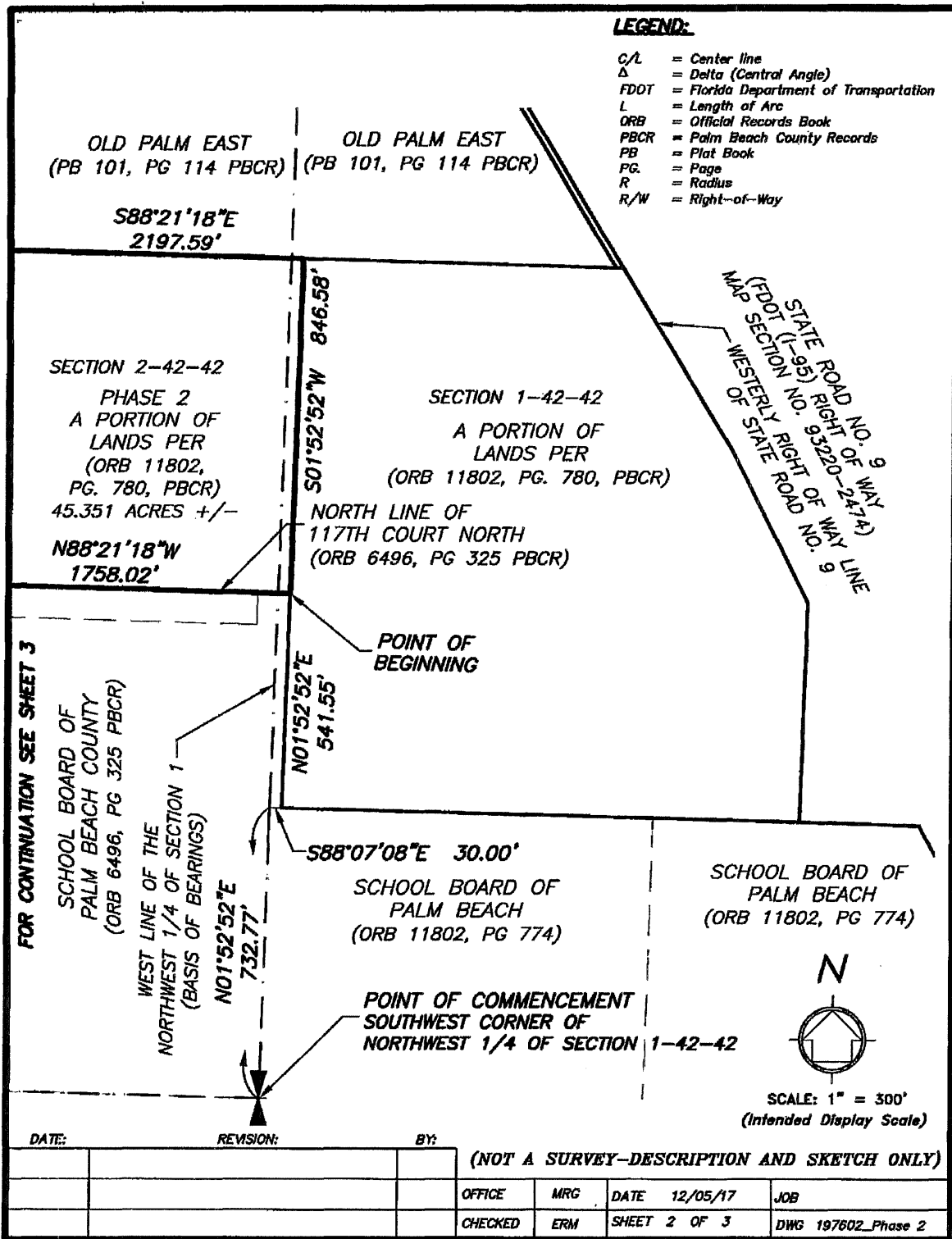
ERIC MATTHEWS, P.S.M.  
 PROFESSIONAL SURVEYOR AND MAPPER  
 STATE OF FLORIDA LICENSE NO. 6717

|       |           |     |         |     |       |          |                    |
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| DATE: | REVISION: | BY: | OFFICE  | MRG | DATE  | 12/05/17 | JOB                |
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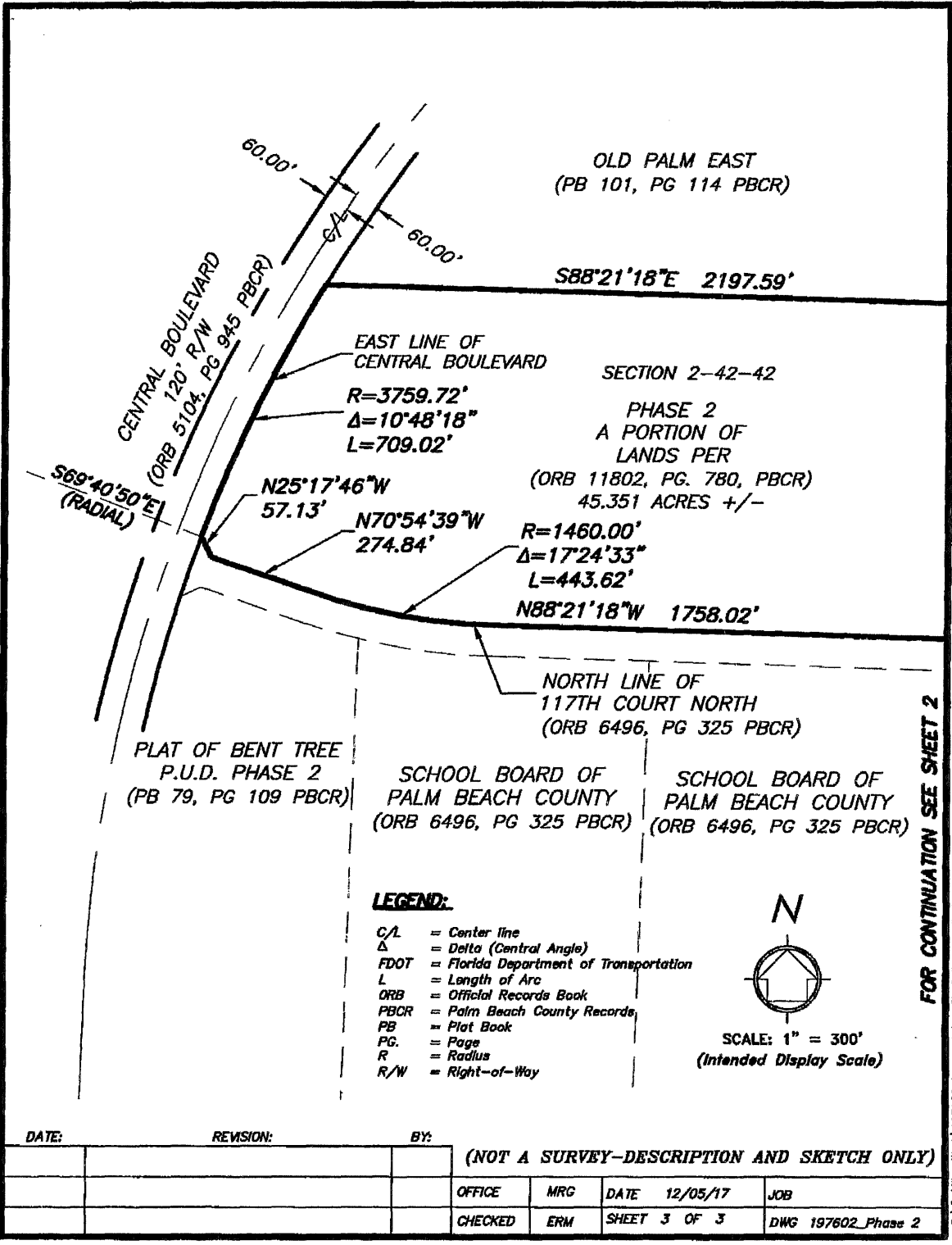
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FOR CONTINUATION SEE SHEET 2

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(NOT A SURVEY-DESCRIPTION AND SKETCH ONLY)

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|---------|-----|-------|----------|--------------------|
| OFFICE  | MRC | DATE  | 12/05/17 | JOB                |
| CHECKED | ERM | SHEET | 3 OF 3   | DWG 197602_Phase 2 |

**EXHIBIT "B"**

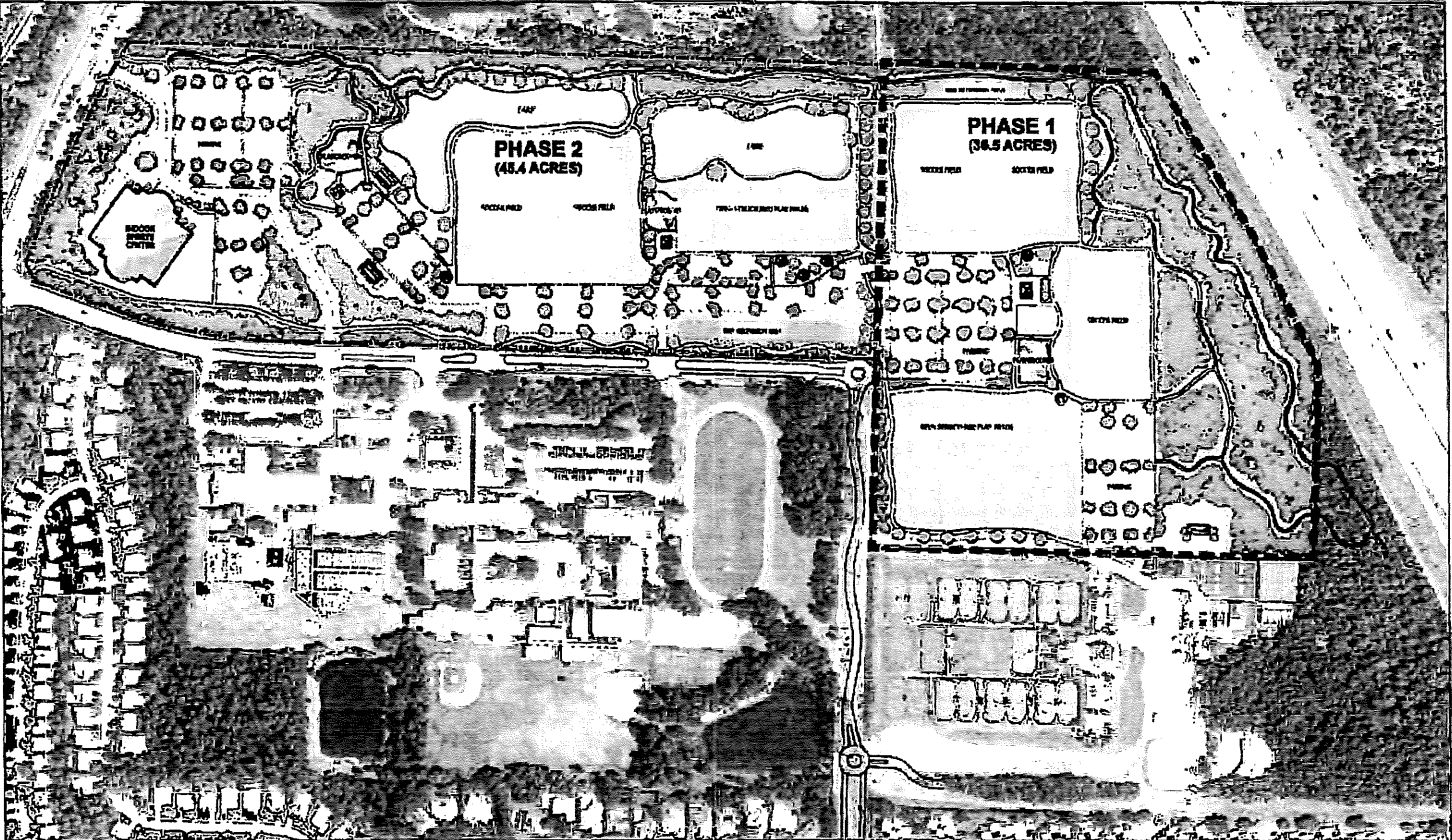


EXHIBIT "B"



PALM BEACH COUNTY  
PARKS & RECREATION DEPARTMENT  
PLANNING & DESIGN DIVISION

NORTH COUNTY DISTRICT PARK  
CONCEPTUAL MASTER PLAN 2017  
EXHIBIT "B"



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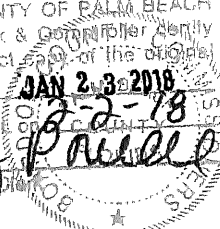
**Palm Beach Gardens Lease Agreement  
Summary of Key Terms**

- 1) Palm Beach County to Lease approximately 82 acres of vacant land to the City of Palm Beach Gardens for the development of a district park with active recreational facilities.
- 2) The initial term is 50 years with one 50-year renewal option, and annual rent payment of \$10 per year.
- 3) City will be responsible to design, construct, operate, and maintain the Park. There will be no cost to the County.
- 4) Park and programming will be open to all residents of Palm Beach County on a first-come, first-serve basis regardless of residency. For programs or services where a fee is charged the City may charge nonresidents up to a 20% supplementary fee to help cover maintenance costs.
- 5) Project will be developed in adherence with the Conceptual Master Plan approved by the Board on June 20, 2017. The County's Park and Recreation Director has authority to approve final plans.
- 6) Park will be developed in two phases, with Phase One containing 36.5 acres and Phase Two containing 45.5 acres.
- 7) City must commence construction of Phase One within two years and complete construction within four years. The project elements include;
  - Three lighted regulation multipurpose fields, two lighted flexible use multipurpose playing fields, one playground large enough to serve a minimum of 30 children, picnic facilities, restroom/concession/meeting room building, maintenance compound and upland preserve.
  - Site improvements including bleachers, shade structures, nature trails, and interpretive signs.
  - Civil work including paving, grading, drainage, water retention lake, parking, lighting and related infrastructure.
  - Fencing, gates, and/or other approved means of securing and controlling access to the Project.
- 8) The City must also remove exotic vegetation, develop trails and open space, construct the retention lake, stabilized grass parking, and construct the access road on the Phase Two property within 24 months of the effective date of this Lease.
- 9) The City must complete all recreational amenities, including vertical construction for the 45.4 acre Phase two property within 10 years of the effective date of this Lease.
- 10) Should the City fail to complete development of Phase Two facilities within 10 years, this 45.5 acre portion of the property can be redacted and the City's leasehold interest terminated.
- 11) Once Park is complete the County must approve all alterations in excess of \$75,000
- 12) The Palm Beach County Sports Commission shall have use privileges of the District Park Property facilities to host regional, state, national, and international events on a "not-to-conflict" basis.
- 13) The City shall establish a North County District Park Advisory Committee comprised of representatives from the County, municipalities, sports providers and other appropriate representatives located within northern Palm Beach County. Municipal representation shall include but not be limited to: City of Palm Beach Gardens, Town of Jupiter, Village of North Palm Beach, Town of Lake Park, City of Riviera Beach, Village of Tequesta, Town of Juno Beach, Town of Palm Beach Shores, and Town of Jupiter Inlet Colony. The committee shall provide input and recommendations to the City regarding the development and programming of the District Park.

**Palm Beach Gardens Lease Agreement  
Summary of Key Terms**

- 1) Palm Beach County to Lease approximately 82 acres of vacant land to the City of Palm Beach Gardens for the development of a district park with active recreational facilities.
- 2) The Initial term is 50 years with one 50-year renewal option, and annual rent payment of \$10 per year.
- 3) City will be responsible to design, construct, operate, and maintain the Park. There will be no cost to the County.
- 4) Park and programming will be open to all residents of Palm Beach County on a first-come, first-serve basis regardless of residency. For programs or services where a fee is charged the City may charge nonresidents up to a 20% supplementary fee to help cover maintenance costs.
- 5) Project will be developed in adherence with the Conceptual Master Plan approved by the Board on June 20, 2017. The County's Park and Recreation Director has authority to approve final plans.
- 6) Park will be developed in two phases, with Phase One containing 36.5 acres and Phase Two containing 45.5 acres.
- 7) City must commence construction of Phase One within two years and complete construction within four years. The project elements include:
  - Three lighted regulation multipurpose fields, two lighted flexible use multipurpose playing fields, one playground large enough to serve a minimum of 30 children, picnic facilities, restroom/concession/meeting room building, maintenance compound and upland preserve.
  - Site improvements including bleachers, shade structures, nature trails, and interpretive signs.
  - Civil work including paving, grading, drainage, water retention lake, parking, lighting and related infrastructure.
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- 8) The City must also remove exotic vegetation, develop trails and open space, construct the retention lake, stabilized grass parking, and construct the access road on the Phase Two property within 24 months of the effective date of this Lease.
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- 11) Once Park is complete the County must approve all alterations in excess of \$75,000
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STATE OF FLORIDA, COUNTY OF PALM BEACH  
I, SHARON R. BOCK, Clerk & County Officer, do hereby certify  
this to be a true and correct copy of the original  
filed in my office on JAN 23 2018  
dated at West Palm Beach, FL on 1-2-18  
By: Nancy Powell  
Deputy Clerk



# ATTACHMENT 5



# CITY OF RIVIERA BEACH

1621 WEST BLUE HERON BLVD.  
(561) 845-4070

• RIVIERA BEACH, FL 33404  
FAX (561) 842-2731

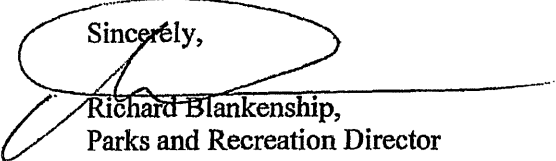
PARKS AND RECREATION DEPARTMENT

February 6, 2020

Palm Beach County Board of County Commissioners,

Upon review of the proposed Public Private Partnership (P3) project, as a member of the Gardens North County District Park Advisory Committee, I would like to express my support. The Palm Beach North Athletic Foundation has incorporated many of the project elements expressed by the Advisory Committee in their original review of the Park Development. The Indoor Sports Facility, when completed, will be a valued addition to the North County.

Sincerely,

  
Richard Blankenship,  
Parks and Recreation Director  
City of Riviera Beach

C: Jonathan Evans, City Manager, City of Riviera Beach

**RIVIERA BEACH, FLORIDA... "The Best Waterfront City In Which To Live, Work, & Play"**  
**IT STARTS IN PARKS**



THE VILLAGE OF  
**NORTH PALM BEACH**  
Village Manager's Office

*"THE BEST PLACE TO LIVE UNDER THE SUN"*

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February 19, 2020

Mayor Dave Kerner  
Board of County Commissioners  
Palm Beach County  
301 N. Olive Avenue  
West Palm Beach, FL 33401

**RE: The Gardens North County District Park Indoor Sports Facility**

Dear Mayor Kerner and Members of the Palm Beach County Board of County Commissioners:

Upon review of the proposed Public Private Partnership (P3) project, and as a member of the Gardens North County District Park Advisory Committee, I would like to express my support for the Indoor Sports Facility. The Palm Beach North Athletic Foundation has incorporated many of the project elements expressed by the Advisory Committee in their original review of the Park Development. The Indoor Sports Facility, when completed, will be a valued addition to the North County.

Sincerely,

Andrew D. Lukasik  
Village Manager

Cc: Mayor Aubrey and Members of the Village Council  
Stephen Poh, Acting Director of Parks and Recreation

---



Office of the  
Town Manager

555 Park Avenue  
Lake Park, FL 33403  
Phone: (609) 881-3304  
Fax: (609) 881-3314

[www.lakeparkflorida.gov](http://www.lakeparkflorida.gov)

February 18, 2020

City Manager Ron Ferris  
City of Palm Beach Gardens  
10500 N. Military Trail  
Palm Beach Gardens, Florida 33410

Dear Manager Ferris:

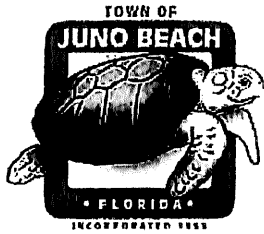
At a recent Town Commission meeting, a discussion ensued regarding the Palm Beach Gardens' desire to construct an indoor sports facility. The Town Commission viewed such a proposal favorably. The Town Commission supports the Partnership between the Gardens North County District Park Advisory Committee and the Town of Lake Park to construct an indoor sports facility. The North Palm Beach County municipalities will benefit from such a facility. We are pleased that the City of Palm Beach Gardens is moving forward with its commitment to build a state of the art indoor recreational facility, so desperately needed in the northern part of the county.

Riunite Franks, our Special Events Director, sits on the regional district park board. As the City Manager, your leadership is crucial to the future success of the regional district park, and the Town of Lake Park appreciates your forward-thinking approach to solving the northern county's regional recreational needs.

Your continued commitment and support are much appreciated. The facilities envisioned and those recently completed provide much needed recreational activity for all member communities to enjoy.

Sincerely,

John O. D'Agostino  
Town Manager, Town of Lake Park  
Cc: Town Commission Town of Lake Park



**TOWN OF JUNO BEACH**  
340 OCEAN DRIVE  
JUNO BEACH, FL 33408  
PHONE: 561.626.1122 • FAX: 561.775.0812  
WEBSITE: [www.juno-beach.fl.us](http://www.juno-beach.fl.us)  
E-MAIL: [junobeach@juno-beach.fl.us](mailto:junobeach@juno-beach.fl.us)

Jason Haselkorn, Mayor  
Jim Lyons, Vice Mayor  
Frank Fahy, Vice Mayor Pro Tem  
Peggy Wheeler, Councilmember  
Stuart Katz, Councilmember

Joseph F. Lo Bello, Town Manager

February 11, 2020

Board of County Commissioners  
Palm Beach County  
301 N. Olive Avenue  
West Palm Beach, FL 33401

**Re: Letter of Support for a Public Private Partnership Agreement for the Development of an Indoor Recreation Facility at Gardens North County District Park**

Dear Palm Beach County Board of County Commissioners,

Upon review of the proposed Public Private Partnership (P3) project, as a member of the Gardens North County District Park Advisory Committee, I would like to express my support. The Palm Beach North Athletic Foundation has incorporated many of the project elements expressed by the Advisory Committee in their original review of the Park Development. The Indoor Sports Facility, when completed, will be a valued addition to the North County.

Sincerely,

Joseph F. Lo Bello, CPA  
Town Manager  
Town of Juno Beach

/cc

Mayor Jason Haselkorn  
Vice Mayor Jim Lyons  
Vice Mayor Pro Tem Frank Fahy  
Councilmember Peggy Wheeler  
Councilmember Stuart Katz



# Village of Tequesta

345 Tequesta Drive  
Tequesta, FL 33469



561-768-0700  
[www.tequesta.org](http://www.tequesta.org)

February 6, 2020

Charlotte Presensky, CPRP  
Leisure Services Administrator  
Burns Road Recreation Center  
4404 Burns Road  
Palm Beach Gardens, FL 33410

Dear Charlotte,

Upon review of the proposed Public Private Partnership (P3) project, as a member of the Gardens North County District Park Advisory Committee, I would like to express my support.

The Palm Beach North Athletic Foundation has incorporated many of the project elements expressed by the Advisory Committee in their original review of the Park Development. The Indoor Sports Facility, when completed, will be a valued addition to the North County.

Sincerely,

Greg Corbitt, CPRP

Director of Parks & Recreation

Vice-Mayor Kristi Johnson  
Council Member Laurie Brandon

Mayor Abby Brennan  
Village Manager Jeremy Allen

Council Member Vince Arena  
Council Member Kyle Stone

---



**TOWN OF JUPITER INLET COLONY**  
A MUNICIPAL CORPORATION

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2/12/2020

Dear Mayor Kerner, Vice Mayor Weinroth and Commissioners,

As a member of the Gardens North County District Park Advisory Committee, I enthusiastically endorse the Public Private Partnership Project. It will be an excellent addition to the athletic/recreation facilities in North County.

Chip Block  
Vice Mayor  
Jupiter Inlet Colony

**Daniel Prieto**

---

**From:** Myra Koutzen <mkoutzen@pbstownhall.org>  
**Sent:** Saturday, January 4, 2020 8:14 AM  
**To:** Daniel Prieto  
**Subject:** Re: The Gardens North County District Park Advisory Committee

[EXTERNAL EMAIL] The following email has originated from outside of PBGFL. Think before you click!

Hi Daniel,  
Palm Beach Shores has no comments on the plans. Everything that we had proposed has been included.  
Thanks, Mayor Myra

Myra Koutzen  
Mayor, Town of Palm Beach Shores  
"Best Little Town in Florida"  
247 Edwards Lane  
Palm Beach Shores, FL 33404  
(561) 844-3457

Sent from my iPhone

On Jan 3, 2020, at 5:55 PM, Daniel Prieto <dprieto@pbgfl.com> wrote:

Dear Advisory Committee Member,

Happy New Year! I Hope you have had a wonderful Holiday season. Please accept this email as a reminder that the City of Palm Beach Gardens is still very much interested in receiving your input or response to the proposed project. The City respectfully requests that your input/response is submitted via email by January 6, 2020. For review, you can find my original email below, along with the applicable attachments. Should you have questions, please contact me at 561.630.1117. Thank you for your attention to this matter.

Sincerely,

**Daniel Prieto, AFO**

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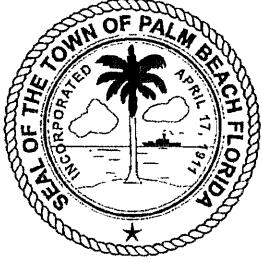
"A Signature City"

<image002.jpg>

Deputy Leisure Services Administrator

office:(561) 630-1117 | site: [www.pbgfl.com](http://www.pbgfl.com)

address:4404 Burns Road | Palm Beach Gardens, FL 33410



# TOWN OF PALM BEACH

Office of the Town Manager

February 5, 2020

Charlotte Presensky, Leisure Services Administrator  
City of Palm Beach Gardens Parks and Recreation  
4404 Burns Road  
Palm Beach Gardens, Florida 33410

Dear Ms. Presensky:

As a member of the Gardens North County District Park Advisory Committee, please allow this letter to serve as an endorsement of the Palm Beach North Foundation's proposed multi-sport indoor complex. I have reviewed the project materials provided. As a former ex-officio board member of the Palm Beach County Sports Commission, I know that significant demand exists for a multi – sport indoor facility. I believe that the Gardens North County District Park is an ideal location and will be a sports tourism destination for years to come.

I am not personally familiar with the Palm Beach North Foundation so do not feel comfortable commenting on their fundraising plan or the actual proposed partnership with the City. I do believe as an advisory committee member that the project merits support and that the proposed location will effectively serve those who use the facility.

Please let me know if you need additional information. I wish you well on the next steps with this endeavor.

Sincerely,

Carolyn S. Stone  
Director of Business Development and Operations



February 18, 2020

**Town Council**  
(561) 741-2214

**TODD WODRASKA**  
MAYOR  
toddw@jupiter.fl.us

**JIM KURETSKI**  
VICE-MAYOR  
jimk@jupiter.fl.us

**RON DELANEY**  
COUNCILOR  
rond@jupiter.fl.us

**ILAN KAUFER**  
COUNCILOR  
ilank@jupiter.fl.us

**WAYNE R. POSNER**  
COUNCILOR  
waynep@jupiter.fl.us

Town Manager  
**MATT BENOIT**  
mattb@jupiter.fl.us  
(561) 741-2214

Board of County Commissioners  
Palm Beach County  
301 N. Olive Avenue  
West Palm Beach, FL 33401

**Subject: Gardens North District Park Indoor Sports Complex**

**Dear Honorable Mayor and Commissioners:**

The Town of Jupiter is in receipt of and has reviewed the City of Palm Beach Gardens Resolution 60-19, Approving a Partnership Agreement with Palm Beach North Athletic Foundation, Inc. (PBNAF) to Develop Indoor Recreational Facility at Gardens North County District Park. There have been several questions raised regarding this agreement including who would be responsible for operations and maintenance of such a large facility and these questions have been answered within the agreement.

Additionally, when the original concept for the District Park was developed many years ago, it was envisioned as a park that would serve all north county residents, including those residing within the Town of Jupiter. Therefore, it will be important to continue to keep members of the Advisory Committee involved with programming opportunities and scheduling.

The Town of Jupiter does not object to this facility and the public-private partnership agreement and recognizes the County's investment in the project. While I am hopeful our residents will benefit from its future use, I must remind the County that the Town of Jupiter has its own needs for indoor recreation/gymnasium space and would appreciate similar support when the time comes to proceed with this realization.

Thank you for the great deal of time and effort put forth into the development of this future sports complex.

Sincerely,

A handwritten signature in cursive script, appearing to read "Todd Wodraska".

**Todd Wodraska**  
Mayor

cc: Town of Jupiter Town Council  
Ron Ferris, City Manager, Palm Beach Gardens  
Charlotte Presensky, Leisure Services Administrator, Palm Beach Gardens