



**City of Palm Beach Gardens
Office of the City Clerk
10500 North Military Trail
Palm Beach Gardens, FL 33410
(561) 799-4122 psnider@pbgfl.com**

Letter of Transmittal

DATE: April 5, 2024

TO: Palm Beach North Athletic Foundation, Inc
4440 PGA Boulevard, Suite 600
Palm Beach Gardens, Florida 33410
Attention: Michael Winter

Sent via FedEx Tracking No. 8168 9124 5395

Re: Resolution 21, 2024 – Palm Beach North Athletic Foundation P3 Agreement

For Your Records

For Recording

As Requested

Returned for Corrections

For Review and Signature

Other: _____

Signed



Patricia Snider, CMC, City Clerk

FedEx Tracking Number

8168 9124 5395

Form 10 No. **0215**

Sender's Copy

From *Please print and press hard.*

Date **4/5/2024**

Sender's FedEx Account Number

SENDER'S FEDEX ACCOUNT NUMBER ONLY

Sender's Name **Patricia Snider**

Phone **(561) 799-4122**

Company **CITY OF PALM BEACH GARDENS**

Address **10500 N MILITARY TRL**

Dept./Floor/Suite/Room

City **PALM BEACH GARDENS** State **FL** ZIP **33410-4628**

Your Internal Billing Reference

First 24 characters will appear on invoice.

OPTIONAL

To Recipient's Name **Michael Winter**

Phone **(561) 389-5809**

Company **Palm Beach North Athletic Foundation, Inc**

Address **4440 PGA Boulevard, Suite 600**

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Dept./Floor/Suite/Room

Address

Use this line for the HOLD location address or for continuation of your shipping address.

City **Palm Beach Gardens** State **FL** ZIP **33410**

0137759192

Hold Weekday
FedEx location address
REQUIRED. NOT available for
FedEx First Overnight.

Hold Saturday
FedEx location address
REQUIRED. Available ONLY for
FedEx Priority Overnight and
FedEx 2Day to select locations.

4 Express Package Service * To most locations.

Packages up to 150 lbs.
For packages over 150 lbs, use the
FedEx Express Freight US Airbill.

Next Business Day

- FedEx First Overnight**
Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless Saturday Delivery is selected.
- FedEx Priority Overnight**
Next business morning.* Friday shipments will be delivered on Monday unless Saturday Delivery is selected.
- FedEx Standard Overnight**
Next business afternoon.*
Saturday Delivery NOT available.

2 or 3 Business Days

- FedEx 2Day A.M.**
Second business morning.*
Saturday Delivery NOT available.
- FedEx 2Day**
Second business afternoon.* Thursday shipments will be delivered on Monday unless Saturday Delivery is selected.
- FedEx Express Saver**
Third business day.*
Saturday Delivery NOT available.

5 Packaging * Declared value limit \$500.

- FedEx Envelope***
- FedEx Pak***
- FedEx Box**
- FedEx Tube**
- Other**

6 Special Handling and Delivery Signature Options Fees may apply. See the FedEx Service Guide.

- Saturday Delivery**
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.
- No Signature Required**
Package may be left without obtaining a signature for delivery.
- Direct Signature**
Someone at recipient's address may sign for delivery.
- Indirect Signature**
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only.

Does this shipment contain dangerous goods?

- One box must be checked.
- No**
 - Yes**
As per attached Shipper's Declaration.
 - Yes**
Shipper's Declaration not required.
 - Dry Ice**
Dry Ice, 9, UN 1845 _____ x _____ kg
- Restrictions apply for dangerous goods — see the current FedEx Service Guide. **Cargo Aircraft Only**

7 Payment Bill to:

- Enter FedEx Acct. No. below
- Sender**
Acct. No. in Section 1 will be billed.
 - Recipient**
 - Third Party**

This airbill can be used only when billing to a FedEx account number. For cash, check, or credit card transactions, please go to a staffed shipping location.

FedEx Acct. No. _____
Total Packages _____ Total Weight _____ Total Declared Value† _____
lb. 0 _____ .00

†Our liability is limited to US\$100 unless you declare a higher value. See back for details. By using this airbill you agree to the service conditions on the back of this airbill and in the current FedEx Service Guide, including terms that limit our liability.

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RESOLUTION 21, 2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA, APPROVING A PUBLIC PRIVATE PARTNERSHIP AGREEMENT WITH PALM BEACH NORTH ATHLETIC FOUNDATION, INC, A FLORIDA NOT-FOR-PROFIT CORPORATION, TO DEVELOP AN INDOOR RECREATIONAL FACILITY AT PLANT DRIVE PARK; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Palm Beach Gardens owns and operates a public park at 10113 Plant Drive Park, which has a skatepark, basketball courts, pickleball courts, and a youth softball field; and

WHEREAS, for several years, Plant Drive Park has been a marginal recreational facility for the City and has attracted malcontents who engage in illegal activities, including vandalizing the premises; and

WHEREAS, the City received an unsolicited proposal from Palm Beach North Athletic Foundation, Inc (PBNAF), a not-for-profit corporation, offering to develop and operate an indoor recreational facility on the premises; and

WHEREAS, pursuant to the public private partnership (P3) provisions of Section 287, *Florida Statutes*, the City accepted and reviewed the unsolicited proposal from PBNAF for the design, construction, operation, and maintenance of the indoor recreation facility and allowed and reviewed other competing proposals from interested parties; and

WHEREAS, the City's evaluation team recommended that the City negotiate an agreement with PBNAF, subject to certain fund-raising and construction milestones; and

WHEREAS, after discussions and negotiations, the City intends to execute a Public Private Partnership Agreement with PBNAF for the development of the indoor recreational facility; and

WHEREAS, the City Council deems approval of this Resolution to be in the best interest of the 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.

PASSED AND ADOPTED this 4TH day of April, 2024.

CITY OF PALM BEACH GARDENS, FLORIDA

BY: *Chelsea Reed*
Chelsea Reed, Mayor

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

VOTE:

AYE NAY ABSENT

MAYOR REED	<u>✓</u>	___	___
VICE MAYOR MIDDLETON	<u>✓</u>	___	___
COUNCILMEMBER WOODS	<u>✓</u>	___	___
COUNCILMEMBER TINSLEY	___	___	___
COUNCILMEMBER PREMURROSO	<u>✓</u>	___	___

Abstain - form 8b on file

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 PLANT DRIVE PARK**

AGREEMENT NO. A2024-310CM

THIS AGREEMENT (the "Agreement") is made and entered into this 4th day of April, 2024 (the "effective date") by and between the **City of Palm Beach Gardens**, a Florida municipal corporation (the "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 ("PBNAF"), located at 4440 PGA Boulevard, Suite 600, Palm Beach Gardens, Florida 33410.

WHEREAS, the City and PBNAF desire to enter into a public private partnership for the development, construction, and operation of an Indoor Recreational Facility at Plant Drive Park, based on an unsolicited proposal from PBNAF to the City, including all documents submitted therewith, which are attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, subject to the requirements and provisions of Chapter 255.065, *Florida Statutes*, the City held meetings with PBNAF to discuss and negotiate the details and logistics of the proposed Project, as defined herein; and

WHEREAS, after discussions and negotiations, the City and PBNAF agreed, in principle, to move forward with the Project for the development of an Indoor Recreational Facility at Plant Drive Park; and

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

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the City and PBNAF 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 **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.
- 1.2 **CITY:** The City of Palm Beach Gardens, a Florida municipal corporation.
- 1.3 **CONSULTANT:** A registered architect, professional engineer, professional land surveyor, civil engineer, and/or registered landscape architect who has contracted with or who is employed by the City or PBNAF 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.
- 1.4 **CONTRACT:** This Agreement between the City and PBNAF for this Project, all as defined herein. As used herein, the term Contract shall mean the same as Agreement, which shall also mean the same as Ground Lease.
- 1.5 **CONTRACTOR:** A general contractor hired by PBNAF for the construction of the Project and who is licensed by the State of Florida to provide said services.
- 1.6 **CONTRACT DOCUMENTS:** PBNAF'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. The Contract Documents also include this Agreement, the Performance and Payment Bonds, the design documents, the construction documents, and any additional documents relevant to the Project that are required by this Agreement.
- 1.7 **COUNCIL:** The City Council, which is the governing body of the City of Palm Beach Gardens, Florida.
- 1.8 **PBNAF:** PBNAF is the private entity that submitted to the City a public private partnership proposal for the development of an Indoor Recreational Facility at Plant Drive Park. PBNAF 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 PBNAF shall be deemed to be a reference to PBNAF. PBNAF shall be responsible for the provision, installation, and performance of all equipment and materials, and PBNAF is in no way relieved of the responsibility for the performance of any and all equipment furnished.

- 1.9 **DEBT SERVICE OBLIGATION:** Total funds required to make timely interest and principal payments on debts incurred by PBNAF necessary to fund the actual construction of the Facility. Debt Service Obligations shall not include expenditures for maintenance, operations, salaries, non-construction related vendor and/or contractor expenses, working capital loans and the like, and/or expenditures for the acquisition and/or installation of items that do not qualify as a fixture of the Facility.
- 1.10 **DESIGNATED REPRESENTATIVE:** An authorized representative of PBNAF assigned to represent PBNAF on this Project.
- 1.11 **FACILITY or INDOOR RECREATIONAL FACILITY:** An approximately one hundred thousand-square-foot (100,000 sq. ft.) Indoor Recreational Facility, with related amenities, to be constructed on lands owned by the City located at 10113 Plant Drive in the City of Palm Beach Gardens, Florida. The Facility is primarily comprised of two (2) full-size ice rinks and associated seating, a concession area, parking, a retail space, a large community/conference room, a full-service restaurant and bar, and other related areas.
- 1.12 **FIELD ORDER:** A written order issued by the Project Manager that orders minor changes to the Project but that does not involve a change in the total cost or time for performance.
- 1.13 **FINAL COMPLETION:** The date certified by the City that all construction work on the Facility is fully and finally complete under this Agreement.
- 1.14 **FIXTURE:** Any previously movable chattel, or property other than real property, that becomes part of real property due to an attachment between the two.
- 1.15 **FORCE MAJEURE:** An act of God; hurricane; flood; war; act of terrorism; civil commotion; fire or other casualty; labor difficulty; shortage of labor, materials, or equipment; government regulation; epidemic or pandemic; or some other cause of delay of performance beyond the parties' reasonable control.
- 1.16 **INSPECTOR:** An authorized representative of the City assigned to make necessary inspections of materials furnished by PBNAF and of the work performed by PBNAF.

- 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 the Contractor and/or Consultant that all conditions of the permits and regulatory agencies have been met, all construction, reconstruction, or rehabilitation, including corrective work, has been performed, all administrative requirements of the Contract Documents have been completed, and the City has received from PBNaf a release of all liens, release of surety, certificate of indemnification by PBNaf, 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, which shall include all construction plans, construction drawings, and renderings (including architectural renderings/drawings) of the Project for the design-build services for the Project that shall be prepared by PBNaf 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 **PROJECT:** The Project is the design, construction, operation, and maintenance of an Indoor Recreational Facility at Plant Drive Park, as described herein and in accordance with the Contract Documents, and related amenities, 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, labor, goods, materials, tools, supervision, and equipment to be provided; the cleanup, removal, and disposal of all debris, trash, and other material so as to leave the Facility in a clean and ready-to-use condition; and the operation and maintenance thereof by PBNaf.
- 1.22 **PROJECT MANAGER:** Unless otherwise explicitly stated, all Contract duties, Contract responsibilities, and Contract communications of the City shall be made through the City's Engineer as Project Manager. The foregoing sentence shall not apply to the City construction inspections made to assure compliance with applicable regulatory law and which the City conducts in a governmental regulatory capacity.
- 1.23 **PROPERTY:** The Plant Drive park parcel, which is more particularly described in Exhibit "D."

- 1.24 **SUBCONTRACTOR:** A 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 not including one who merely furnishes material not so worked.
- 1.25 **SUBSTANTIAL COMPLETION:** The date certified by the 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 in accordance with the Contract Documents, 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 PBNAF, PBNAF being primarily liable, and which surety company or individual is responsible for PBNAF's acceptable performance of the work under the Contract and for the payment of all debts pertaining thereto pursuant to 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, and maintained by PBNAF 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 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 specifications, manuals, codes, laws, or regulations in effect at the time of the date of the execution of this Agreement.
- 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, the Indoor Recreational Facility will revert in ownership to the City, free and clear of all claims by PBNAF or any other related entity.
- 2.3 The City will have no obligation to provide any financial assistance or monetary support for the development of this Project, except as provided in this Agreement. The City shall not be liable for any financial 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.

- 2.4 PBNAF shall design, construct, operate, and maintain the Facility to the satisfaction and standards of the City.
- 2.5 The public shall have access to and use of the Facility as set forth herein. PBNAF shall develop a non-discrimination policy and applicable processes and procedures to allow the public access to and use of the Facility. The policy and procedures will be reviewed and approved by the City, and such approval will not be unreasonably withheld.

PBNAF shall comply will all Americans with Disabilities Act (ADA) 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 PBNAF shall be available and open to the public. The recreational activities shall be conducted according to policies, procedures, and costs developed by PBNAF, provided such policies and procedures are not in conflict with the City's policies and procedures. The City shall not be responsible for providing staff, additional facilities (outside of this Agreement), additional permitting, or the collection of fees for PBNAF.
- 2.7 The Facility shall be used for recreational programs and activities, related food and beverage sales, and other support operations, as outlined and described in PBNAF's proposal (the "Intended Use"). The City shall have no right to modify or change the Intended Use, except as provided by law or ordinance.

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

- 2.8 After the construction phase of the Project is completed and PBNAF has begun operating within the Facility, the 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 Recreation Department.
- 2.9 After the construction phase of the Project is completed, PBNAF shall require all vendors, subcontractors, and/or service providers that PBNAF contracts with, licenses, employs, or utilizes to provide goods and/or services at the Facility to use E-Verify to vet their employees, to comply with all applicable equal employment and non-discrimination laws, and to require background checks as set forth at subsection 47.20 hereinbelow.

- 2.10 PBNAF understands that the Property is a public park with certain amenities that will require demolition and disposal. PBNAF shall be responsible for all preparatory and infrastructure 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 The City shall waive any development and permitting fees for this Project that can be waived, as allowed by applicable law. In the event that such fees cannot be legally waived by the City, the construction and development of this Project shall otherwise be considered as though it were a City project.
- 2.12 To assist PBNAF, the City will review the construction and building plans through its Development Review Committee and plan approval process.

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.
- 3.2 Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be decided upon by the Project Manager. The Contractor shall not proceed when in doubt as to any dimension or measurement but shall seek clarification from the Project Manager.
- 3.3 PBNAF 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 PBNAF's proposal, including any addenda or revisions. 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 PBNAF; however, PBNAF shall provide to the 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 PBNAF hereby agrees to engage the Consultants and the Contractor necessary for the design and construction of the Indoor Recreational Facility on City-owned land at 10113 Plant Drive, Palm Beach Gardens, Florida, inclusive of furnishing land surveying, utilities, parking, stormwater management, 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, and shall 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 City's other recreational buildings and shall conform to all applicable building codes and construction requirements for public buildings in the State of Florida.
- 5.3 PBNAF agrees to meet with the 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 PBNAF and the Project Manager.

In addition, prior to the commencement of construction services under this Agreement, PBNAF 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 and submitted to the Project Manager.

ARTICLE 6. COMPLETION DATE – CONSTRUCTION PHASE

- 6.1 The Project Manager shall instruct PBNAF to commence the construction phase of the Project via written instruction in the form of a Notice to Proceed ("NTP") issued by the City. Construction of the Project shall commence within thirty (30) days of the date of the NTP ("Construction Commencement Date"). The NTP will not be issued until after execution of this Agreement by both parties and receipt by the City of all required documents, including the Fund-Raising and Construction Plan described below.
 - 6.1.1 The development and construction of the Facility shall be subject to the milestones in the Fund-Raising and Construction Plan, developed by PBNAF, which is attached hereto and incorporated herein as Exhibit "C."

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

- 6.2 The Facility shall be substantially constructed no later than seven hundred twenty (720) calendar days after the Construction Commencement Date, and Final Completion shall be no later than seven hundred eighty (780) calendar days after the Construction Commencement Date, subject to approved extensions and Force Majeure. Upon failure of PBNAF to substantially complete the Facility within the specified period of time (plus approved extensions and Force Majeure, if any), PBNAF shall reimburse the City for any monetary losses, including fines, that the City incurs 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, PBNAF shall commence vertical construction of the Facility no later than fifteen (15) months following issuance of the NTP.

ARTICLE 7. PBNAF'S RESPONSIBILITIES

- 7.1 The parties acknowledge and agree that the City is entering into a public private partnership with PBNAF and that PBNAF is obligated to coordinate, administer, and finance the design and construction of an Indoor Recreational Facility at Plant Drive Park, with related amenities. PBNAF's responsibilities include, but are not limited to, the coordination, administration, and assumption of certain rights and obligation with respect to (a) the consultants under consultant contracts, and (b) the Contractor under the construction contract for the Facility, which shall be constructed in accordance with the Contract Documents and comply with all applicable laws and technical codes.
- 7.2 The City acknowledges that PBNAF is providing the services described herein as a development consultant and not as a licensed general contractor, architect, or other licensed professional; however, PBNAF 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. PBNAF shall require the Contractor, subcontractors, and each design consultant to provide customary warranties, enforce said warranties, and name the City as a third-party beneficiary of all such warranties. Notwithstanding the foregoing, PBNAF shall be obligated to enforce the provisions of each consultant contract and each construction contract as set forth herein.
- 7.3 PBNAF disclaims any and all warranties related to the work, express or implied, including implied warranties of merchantability, workmanship, construction, or physical condition of the Facility and all fixtures or items of personal property contained therein, regardless of whether the warranties arise from custom, usage, course of trade, case law, statutory law, or otherwise.
- 7.4 All fees payable to the City will be paid by PBNAF. Local Business Tax Receipts are required pursuant to Chapter 205, *Florida Statutes*.
- 7.5 Nothing in this Agreement shall create any contractual relationship between any contractor, subcontractor, or consultant that would serve to obligate the City to pay or see to the payment of any monies that may be owed to any contractor, subcontractor, or consultant of PBNAF.
- 7.6 PBNAF agrees to incorporate the applicable terms and conditions of this Agreement into the construction contracts with PBNAF's Contractor, subcontractors, and consultants and shall specifically state therein that the City is a third-party beneficiary to all such contracts.
- 7.7 Unless otherwise provided herein, PBNAF 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.
- 7.8 PBNAF shall cause all its agents, employees, the 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 the City.
- 7.9 PBNAF shall pay all applicable sales, consumer, use, property, and other taxes required by law. PBNAF 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. PBNAF shall also pay any special assessments levied on the Property and/or Facility.

ARTICLE 8. FINANCIAL SUPPORT

- 8.1 The City shall have no obligation whatsoever to provide any type of financial or “in-kind” support for the design, construction, operation, and maintenance of the Indoor Recreational Facility, except as specifically provided in this Agreement. The City shall not be obligated to provide any kind of bonding support, credit guarantees, or any type of financial commitment for the development of this Project.
- 8.2 Within six (6) months of the effective date of this Agreement PBNAF shall provide documentation to the City, sufficient to demonstrate that PBNAF possesses the financial resources necessary to meet the financial milestone set forth in Exhibit “C.” Additionally, prior to commencement of construction, PBNAF shall provide documentation to the City, sufficient to demonstrate that PBNAF possesses the financial resources necessary to design, construct, operate, and maintain the Indoor Recreational Facility, in accordance with Exhibit “C.” The sufficiency of the subject documentation shall be determined by the City in its sole and absolute discretion. The City shall conduct a due diligence review of the documentation to verify the nature and source of such funding. The City shall have the right to reject such evidence as inadequate or unacceptable if the nature and source of such funding fail to satisfy the requirements set forth in Exhibit “C,” Footnote 1. During the term of this Agreement, the City shall have the right to demand and receive information from PBNAF related to any additional financial support or commitments and the sources of such support/commitments regardless of the form of same.
- 8.3 If approved by the City, in its sole and absolute discretion, PBNAF may finance a portion of the costs of the Project under the Property Assessed Clean Energy (PACE) program administered by one of the PACE vendors approved by Palm Beach County for the commercial PACE program (c-PACE). Should the City permit PBNAF's participation in the c-PACE program, the Facility may be subject to non-ad valorem c-PACE assessments, which may be amortized over the initial term of this Agreement. The terms and conditions set forth in all PACE financing documents are subject to the City's approval, at the City's sole and absolute discretion. For avoidance of doubt, any PACE financing shall be conventional in nature and may not contain balloon payment provisions, principal acceleration provisions, and/or pre-payment penalties. The foregoing list is not intended to be limiting or all-inclusive; however, any c-PACE financing agreement containing any of the prohibited provisions set forth hereinabove shall render such c-PACE agreement void ab initio, even if such agreement is co-signed and/or acknowledged by the City.

ARTICLE 9. USE OF FACILITY

- 9.1 The intent of the parties to this Agreement is that the Indoor Recreational Facility, and related amenities, will be used for the Intended Use, which is primarily to provide a mix of recreational activities for professional and amateur athletes that will complement and supplement other existing recreational offerings from the City. The parties envision a public private partnership that helps position the City as a premier sports destination, while providing tangible economic and community benefits, in an atmosphere of cooperation, not competition. The Facility shall be operated subject to the City's applicable ordinances, regulations, policies, rules, and procedures related to 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 PBNAF and reviewed by the City. The City and PBNAF 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 set forth in the Programming Schedule, PBNAF 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 or the City's ordinances, regulations, policies, rules, and procedures.
- 9.3 The parties agree that their intent is for the public to have access to the services offered at the Facility, subject to the Programming Schedule. Notwithstanding the Programming Schedule, PBNAF will coordinate with the City to deconflict City events and PBNAF events to the greatest extent possible. Should there be an irreconcilable conflict between events, City events will take priority over PBNAF events. PBNAF shall have the right to establish fees, within industry norms for the local market, for services and programs provided to the public. The City may assist with marketing the Facility, if doing so is deemed to be in the City's best interest.

ARTICLE 10. THE CITY'S RESPONSIBILITIES

- 10.1 The City shall assist PBNAF by providing all information pertinent to the Project in the City's possession, including: previous reports; laboratory tests; inspections of samples, materials, and equipment; property, boundary, easement, right-of-way, topographic, and utility surveys; property descriptions; and known zoning, deed, and other land-use restrictions.
- 10.2 The City shall arrange for access to and make all provisions for PBNAF to enter upon the public property as required for PBNAF to perform its services.

10.3 Without invalidating this Agreement and without notice to any surety, the City reserves and shall have the right to make such changes, from time to time, as it reasonably deems necessary for PBNAF to complete the proposed construction fully and acceptably in accordance with applicable law. Any other changes (that are not required for compliance with applicable law) proposed by the City shall be paid for by the 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 Article 33 herein.

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 that the City Engineer's estimates and decisions upon all claims, questions, and disputes shall be final and conclusive upon the parties hereto. This Article does not preclude either or both parties from seeking any and all remedies available at law or in equity. Upon mutual agreement, the parties may also choose to engage in mediation to resolve any dispute related to this Agreement.

ARTICLE 12. ASSIGNMENT

Except as provided in Article 62 with respect to subleasing, neither party to this Agreement shall assign this Agreement without the written consent of the other party, nor shall PBNAF assign any monies due or to become due to the City hereunder without the prior written consent of the City.

ARTICLE 13. CONSTRUCTION PROGRESS MEETINGS

PBNAF shall schedule periodic work progress meetings and specially called meetings as needed with the City relating to the construction services under this Agreement. PBNAF shall record the minutes of such meetings, include significant proceedings and decision(s) within the minutes, and reproduce and distribute copies of minutes within ten (10) business days after each meeting to the City. PBANF shall also incorporate comments received or exceptions taken by those present who have reviewed and commented on the minutes.

ARTICLE 14. SECURITY

PBNAF 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, PBNAF shall replace same without cost to the 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 PBNAF shall provide proper facilities for such access.
- 15.1.1 Should the Contract Documents, instructions, or any law, ordinance, or public authority require any work on the construction of the Facility to be specially tested or approved, PBNAF shall give to the City timely notice of readiness of the work for inspection. If the testing or approval is to be made by an authority other than the 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 the City, be uncovered for examination and properly restored at PBNAF's 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, and if so ordered, such work shall be uncovered by PBNAF. If work is found defective, PBNAF 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, the 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 PBNAF to any inspector other than its consultant(s) is forbidden, and any such act on the part of PBNAF shall constitute a material breach of this Agreement.

ARTICLE 16. SUPERINTENDENCE AND SUPERVISION

- 16.1 The orders of the City shall be given through the Project Manager, whose instructions are to be strictly and promptly followed in every case. PBNAF 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 onsite 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 PBNAF and

ceases to be in its employ. The Designated Representative shall represent PBNAF, and all direction given to the Designated Representative shall be as binding as if given to PBNAF. Directions shall be confirmed in writing to PBNAF. Other directions will be confirmed on written request in each case.

- 16.2 PBNAF's Designated Representative shall, on a daily basis, prepare 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 construction 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 PBNAF, 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 PBNAF'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 PBNAF's sole risk.

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

- 17.1 The following shall give the City the right to terminate this Agreement with PBNAF prior to completion of construction of the Facility:
- 17.1.1 Construction of the Facility does not commence within the time specified in Article 6, and such default persists for thirty (30) days thereafter. Upon the occurrence of such default, the City shall have the right to immediately terminate the Agreement, which shall result in forfeiture of the Performance Bond.
- 17.1.2 The occurrence of any of the termination events set forth at Article 51. Termination by the City.
- 17.1.3 Construction work is performed unsuitably and/or is defective, and such default persists for thirty (30) days after written notice thereof is given by the City, or if such default cannot be cured within thirty (30) days, within such time as may be reasonably necessary to cure so long as PBNAF is diligently prosecuting to cure but not to exceed an additional thirty (30) days.
- 17.2 In the event of an occurrence under Section 17.1 above, PBNAF shall not be entitled to receive any payments from the City.

- 17.3 In the event of an occurrence under Section 17.1 above, the City may enter into a separate agreement for the completion of the Facility according to the terms and provisions of the Contract Documents or use such other methods as the City deems prudent to complete the construction in an acceptable and expeditious manner.
- 17.4 In the event of an occurrence under Section 17.1 above, all damages, costs, and charges incurred by the City shall be deducted from any monies due or that may become due to PBNAF. The City may make claim on the posted Bonds for recovery of damages, costs, and expenses. PBNAF shall be liable for and shall pay to the City the cost of all damages and expenses incurred by the City.
- 17.5 If after Notice of Termination is given to PBNAF it is determined by a court of competent jurisdiction that PBNAF was not in default or breach of this Agreement, PBNAF shall be paid for all work executed and expenses incurred prior to termination, in addition to termination settlement costs reasonably incurred by PBNAF relating to commitments that had matured 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.
- 17.6 Upon receipt of the Notice of Termination pursuant to Article 17.1, PBNAF shall promptly discontinue all 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.

ARTICLE 18. PBNAF'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 fault of PBNAF, its officers, agents, contractors, consultants, or employees, then PBNAF may, upon seven (7) calendar days' written notice to the City and the Project Manager, stop work on the construction of the Facility, without any penalties hereunder, until such time PBNAF is legally allowed to commence performance under this Agreement.
- 18.2 See Article 52 hereinbelow.

ARTICLE 19. PLANS AND WORKING DRAWINGS

The City and PBNAF will review, revise, and finalize the 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 PBNAF as part of this Agreement. PBNAF shall obtain site plan approval from the City through the City's development review process. All things that, in the opinion of the Project Manager, may reasonably be inferred from this Agreement and the plans, as developed by PBNAF and approved by the Project Manager, are to be executed by PBNAF under the terms of this Agreement. The Project Manager shall determine whether the detailed plans conform to the Contract Documents. All plans, specifications, and related technical documentation shall 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

PBNAF 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 change in the subcontractors.

ARTICLE 26. SEPARATE CONTRACTS

26.1 The City reserves the right to let other contracts that may impact work in the general area of the construction site. PBNAF 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 PBNAF shall use commercially reasonable efforts to require the Contractor to perform the obligations described in Exhibit "B," attached hereto and incorporated herein.

26.3 To ensure the proper execution of its subsequent work, PBNAF shall inspect the work already in place and shall at once 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 the City by reason of any delays due to work of other contractors unless such delays result in the de-mobilization of the Contractor's work crew and there is an attendant cost to re-mobilize.

ARTICLE 27. USE OF COMPLETED PORTIONS

- 27.1 PBNAF shall inform the City prior to the completion of construction if any portion of the Facility may be utilized by PBNAF 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, PBNAF shall be liable for any costs incurred by the City.
- 27.2 In the event PBNAF takes possession of a completed portion, the following shall occur:
- 27.2.1 PBNAF shall give notice to the City at least fifteen (15) calendar days in advance of intent to occupy a designated area.
- 27.2.2 PBNAF shall bring the designated area to the point of Substantial Completion. When the City considers the designated area of the Facility to be substantially complete, the City shall notify PBNAF, in writing, and shall prepare a list of items to be completed or corrected related to the designated area. The failure to include any items on such a list does not alter the responsibility of PBNAF 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 PBNAF shall agree on the time within which PBNAF shall complete the items listed.
- 27.2.3 Upon issuance and acceptance of the Certificate of Substantial Completion for the completed portion, PBNAF shall assume full responsibility for the operation, maintenance, utilities, and all related expenses. PBNAF shall remain responsible for all items listed to be completed or corrected as submitted by the Project Manager, as required in the Substantial Completion process.
- 27.2.4 If PBNAF 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 PBNAF. Any insurance in effect shall not be canceled or lapse as a consequence of such partial use.

ARTICLE 28. Intentionally omitted.

ARTICLE 29. LANDS FOR WORK

The 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 PBNFAF. No claim for damages or other claim other than for an extension of time shall be made or asserted against the City by reason of any delay arising as a result of any failure of the City to provide such lands on the date needed by PBNFAF.

The land for the Project is an operating public park and has not been cleared or graded. PBNFAF shall have the complete responsibility to perform all work necessary, including demolition and disposal, to prepare the site for construction and development.

Prior to issuance of the NTP, the City will remove any fittings, furnishings, installations, or equipment that belong to the City and/or that the City may decide to utilize for other purposes.

ARTICLE 30. Intentionally omitted.

ARTICLE 31. Intentionally omitted.

ARTICLE 32. Intentionally omitted.

ARTICLE 33. FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS

33.1 The Project Manager shall have the right to interpret the terms set forth in the Contract Documents.

33.2 The Project Manager shall have the right to approve and issue supplemental instructions setting forth substitutions, instructions, or interpretations concerning this Agreement or its performance, provided such changes do not increase costs to the City or the time of performance.

ARTICLE 34. Intentionally omitted.

ARTICLE 35. Intentionally omitted.

ARTICLE 36. Intentionally omitted.

ARTICLE 37. Intentionally omitted.

ARTICLE 38. SUBSTANTIAL COMPLETION

- 38.1 When PBNAF has determined that construction of the Facility is substantially complete, PBNAF 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 PBNAF 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, the City will either accept or reject the Certificate. The Project Manager, with the concurrence of PBNAF, shall establish the time within which PBNAF shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the date of Substantial Completion. Once finalized, acceptance of the Certificate of Substantial Completion shall be acknowledged in writing by the City, through the Project Manager, and by PBNAF.

ARTICLE 39. Intentionally omitted.

ARTICLE 40. FIELD ENGINEERING

- 40.1 PBNAF shall provide and pay for field 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.

ARTICLE 41. FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS

- 41.1 Intentionally omitted.
- 41.2 PBNAF 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 as a counterpart to 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, PBNAF shall turn over to the City a set of reproducible drawings that accurately reflect the "as-built" conditions of the new Facility, and such "as-built" drawings must be in a format compatible with the 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 in PDF format at least monthly to the Project Manager. These "as-built" drawings shall be signed and sealed by a registered Florida engineer or architect.

ARTICLE 42. Intentionally omitted.

ARTICLE 43. Intentionally omitted.

ARTICLE 44. PROJECT SIGNAGE

- 44.1 PBNAF and/or the Contractor shall furnish and erect signs at the construction site, as directed by the Project Manager. PBNAF and/or the Contractor may install additional signage at the site, subject to approval by the Project Manager.
- 44.2 PBNAF shall supply and install wayfinding and building signs for the Facility. These signs shall be developed with the review and approval of the City's Development Review Committee and shall be subject to the requirements of Chapter 46, City Code of Ordinances.

ARTICLE 45. CLEANING UP AND REMOVAL OF EQUIPMENT

- 45.1 Intentionally omitted.
- 45.2 The City's Right to Clean Up
If a dispute arises between PBNAF and separate contractors as to the responsibility for cleaning up, the City may clean up and charge the cost thereof to contractors, including PBNAF, deemed to be responsible therefor, as reasonably determined by the Project Manager.
- 45.3 Removal of Equipment
Should this Agreement be terminated prior to completion for any cause whatsoever, PBNAF shall promptly remove any and all of PBNAF's equipment and supplies from City property, if directed by the City to do so. If PBNAF fails to comply, the City shall have the right to remove such equipment and supplies and charge the cost of removal and/or storage to PBNAF.

ARTICLE 46. Intentionally omitted.

ARTICLE 47. MISCELLANEOUS

47.1 Royalties and Patents
Intentionally omitted.

47.2 Rights of Various Interests
Whenever work being done by the 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
PBNAF shall keep such records and accounts and require any and all architects, consultants, contractors, 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 the 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 the City to be applicable to PBNAF's records, PBNAF shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by PBNAF.

47.5 No Contingent Fee
PBNAF warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for PBNAF, 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 PBNAF, 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, the 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 Representatives of the City and PBNAF

47.6.1 It is recognized that questions in the day-to-day course of the construction of the Facility will arise. All communications pertaining to the day-to-day conduct of the work shall be addressed to the Project Manager.

47.6.2 PBNAF's point of contact for day-to-day construction management shall be designated in writing and such writing shall be provided to the Project Manager.

47.7 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 of the terms or conditions contained herein shall be effective unless set forth in a written document executed with the same formality and of equal dignity as this Agreement.

47.8 Notices

Whenever either party desires to give notice unto the other, it shall be given by written notice and sent by electronic mail or overnight courier, with signature confirmation of receipt upon delivery, addressed to the party for whom it is intended at the place last specified. The place for providing notice shall remain as set forth hereinbelow until it is changed by written notice in compliance with the provisions of this paragraph.

For the present, the parties designate the following places to receive notice, to-wit:

47.8.1 As to the City: **City of Palm Beach Gardens**
10500 North Military Trail
Palm Beach Gardens, Florida 33410
Attention: City Manager
Email: rferris@pbgfl.com

47.8.2 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

47.8.3 As to PBNaf: **Palm Beach North Athletic
Foundation, Inc**
4440 PGA Boulevard
Suite 600
Palm Beach Gardens, Florida 33410
Attention: Michael Winter
Email: mike@pbnaf.org

47.8.4 With a copy to: **Nason Yeager Gerson Harris &
Fumero PA**
3001 PGA Boulevard
Suite 305
Palm Beach Gardens, Florida 33410
Attention: Philip M. DiComo
Email: pdicomo@nasonyeager.com

47.9 Truth-In-Negotiation Certificate

Execution of this Agreement by PBNaf shall constitute 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 the 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.

47.10 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.

47.11 Condition Precedent to Agreement
Intentionally omitted.

47.12 Environmental Regulations

The 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 PBNAF not responsible if the history of violations warrants such determination in the opinion of the City. PBNAF shall notify the City immediately upon receipt of any citation or notice of violation that PBNAF may receive during the time of performance of this Agreement.

47.13 Applicable Law and Venue

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida, irrespective of any conflict of laws principle. Venue for litigation related to this Agreement shall be in a court of competent jurisdiction located in Palm Beach County, Florida.

47.14 Public Entity Crime Statement

PBNAF acknowledges the requirements 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 the City; may not submit a bid on a contract with the City for the construction or repair of a public building or public work; may not submit bids on leases of real property to the City; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City; and may not transact business with the 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 PBNAF shall result in termination of this Agreement by the City without penalty.

47.15 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.

47.16 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 the City or PBNaf 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.

47.17 Waiver

The failure by either party to promptly exercise any right arising hereunder or enforce any provision of this Agreement shall not constitute a waiver of such right unless expressly provided herein. No waiver of any provision of this Agreement shall be effective unless it is in writing and 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.

47.18 Drug-Free Workplace

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

47.19 Conflicts

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

PBNaf agrees that none of its employees shall, during the term of this Agreement, serve as an adverse or hostile expert witness against the City in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall any such person 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 the 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 PBNaf is permitted to utilize subcontractors to perform any services required by this Agreement, PBNaf agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this Article.

47.20 Background Checks

Prior to PBNAF hiring any employee, vendor, subcontractor, or consultant to provide goods and/or services at the Facility, PBNAF shall conduct a comprehensive criminal background check pursuant to the requirements set forth in Chapter 435, *Florida Statutes*, for a "Level 1" background check. Each year, PBNAF shall provide the City with the written results of each background check. All costs associated with these background checks shall be borne by PBNAF. Notwithstanding the foregoing, background checks are not required for vendor delivery personnel so long as such personnel are not on the property and/or in the Facility any longer than is necessary to complete the particular delivery.

ARTICLE 48. AUDITED FINANCIAL REPORTS

Each year, no later than May 31st, PBNAF shall submit to the City, to the City Manager's attention, a copy of its audited financial statements for the immediately preceding calendar year, beginning with the 2024 calendar year. The financial statement shall be presented in compliance with generally accepted accounting standards. A copy shall also be provided to the City's Finance Administrator.

ARTICLE 49. PUBLIC RECORDS

49.1 Pursuant to Chapter 119, *Florida Statutes*, PBNAF shall comply with the public records law by keeping and maintaining public records required by the City in order to perform the Project. Upon request from the City's custodian of public records, PBNAF shall provide the 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. PBNAF 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, PBNAF shall transfer, at no cost, to the City all public records in its possession or keep and maintain public records required by the City in order to perform the Project. If PBNAF transfers all public records to the City upon completion of the Contract, PBNAF shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If PBNAF keeps and maintains public records upon completion of the Contract, PBNAF shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF PBNAF HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO PBNAF'S 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

The City hereby demises and leases to PBNAF, and PBNAF hereby hires and takes from the 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 September 30, 2064, unless terminated sooner pursuant to the terms herein. At least one (1) year prior to the expiration date of the Agreement, the City and PBNAF may, upon mutual written consent of both parties, agree to extend the term of this Agreement, provided the terms and conditions of the extended Agreement are mutually agreeable to PBNAF and the City.

PBNAF shall be responsible for performing all maintenance, repair, and replacements for the Facility during the Term, at its sole cost and expense. PBNAF shall maintain the Facility to the same or higher standard as the City maintains other City buildings and facilities. This maintenance requirement shall include all landscaping, parking surfaces, turf, and other related areas. PBNAF specifically acknowledges and agrees that the City's interest in the underlying fee will not be subject to liens for costs or expenses incurred by PBNAF for any improvements, expenses, and/or operations of any kind whatsoever. Pursuant to Section 713.10, *Florida Statutes*, a Memorandum of this Agreement, providing notice that the City's interest may not be subjected to liens for tenant improvements, will be recorded in the public records prior to issuance of the NTP.

PBNAF may choose to modify or expand the Facility at any time during the Term, subject to approval by the City in its sole and absolute discretion. The City cannot require PBNAF to modify or expand the Facility. Additionally, any such approved modification and/or expansion shall not affect the Term of this Agreement.

ARTICLE 51. TERMINATION BY THE CITY

In addition to any other termination provisions set forth herein, the City shall also have the right to terminate this Agreement if any of the following shall occur:

- 51.1 PBNAF is in default of any material term, condition, obligation, representation, or warranty made, including payment obligations, under this Agreement, and such default persists for thirty (30) days after written notice thereof is provided to PBNAF by the City, or if such default cannot be cured within thirty (30) days, within such time as may be reasonably necessary to cure so long as PBNAF is diligently prosecuting to cure but not to exceed an additional thirty (30) days.
- 51.2 PBNAF fails to pay to the City any amounts due or any other undisputed amounts required to be paid hereunder when due, and such failure to pay persists for fifteen (15) calendar days after written notice thereof. Failure to timely remit any payment shall result in all future payments being treated as untimely until all outstanding payments and/or late fees have been paid in full. See Section 59.1 below.
- 51.3 The filing by or against PBNAF 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 PBNAF shall be unable or unwilling to pay its debts when due.
- 51.4 PBNAF fails to commence vertical construction of the Facility within fifteen (15) months following full execution of this Agreement and issuance of the NTP. The NTP will only be issued if PBNAF has secured all remaining financing as set forth in Exhibit "C," such financing being necessary to construct and complete the Facility for operations.
- 51.5 PBNAF fails to meet any of the scheduled milestones set forth in Exhibit "C." PBNAF shall be entitled to time to cure for this default, so long as PBNAF is diligently prosecuting to cure, but not to exceed an additional thirty (30) days.
- 51.6 Construction work is not performed and progressing such that the Facility will achieve timely completion.
- 51.7 PBNAF 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, fails to prosecute construction of the Facility in a timely and acceptable manner. In such case, the Project Manager may give notice in writing to PBNAF and its surety of such failure. If PBNAF, within a period of ten (10) calendar days following such notice,

does not timely remedy the subject failure, then the City may, upon written certification of such failure from the Project Manager, terminate the Agreement. Upon such termination, PBNAF may be excluded from the site, and the City may assume control of the construction of the Facility and appropriate or use any or all materials and equipment on the site as may be suitable and acceptable.

- 51.8 PBNAF fails to timely remit property tax and/or any special assessment payments to the City on or before December 1st of the year in which such taxes or special assessments are assessed. For avoidance of doubt, taxes and special assessments are assessed as of January 1st each calendar year. Each year, the City will provide notice of the property taxes and/or special assessments due for the Property and Facility within five (5) business days of the City's receipt of same from the Palm Beach County Tax Collector. Upon timely receipt of any required property tax and/or special assessment payment from PBNAF, the City must remit said payment to the Palm Beach County Tax Collector no later than December 31st. PBNAF's failure to timely remit any payments referenced in this subsection 51.8 to the City shall constitute an immediate and incurable default and material breach of this Agreement for which the City may immediately terminate this Agreement.

Subject to the provisions of this Article and the terms of this Agreement, any termination by the City shall result in the ownership of the Facility being forfeited to the City, and the City shall have the right to finish any incomplete construction of the Facility, demolish the building, or operate the Facility as the City determines to be in its best interest. Regardless of the foregoing, the City shall not be subject to any financial obligations or any debts owed by PBNAF related to the design, construction, operation, or maintenance of the Facility; however, the City has the right, but not the obligation, to assume any or all of PBNAF's debt obligation(s) related to the construction of the Facility. This City's assumption rights shall constitute a right of first refusal. All loan documents, promissory notes, and/or written financial obligations related to the construction of the Facility, entered into by PBNAF, shall contain a provision requiring the lender(s) to provide written notice of PBNAF's default and acknowledgment of and consent to the City's assumption rights and the priority of said assumption rights. The City must exercise its assumption rights, if ever, within sixty (60) days of receipt of such notice. This assumption right shall constitute a material inducement for the City to enter into this Agreement. Failure to include this provision in any of PBNAF's financial obligations related to the construction of the Facility shall constitute an incurable default and material breach of this Agreement for which the City may immediately terminate this Agreement.

ARTICLE 52. TERMINATION BY PBNAF

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

- 52.1 The City is in default of material term, condition, obligation, representation, or warranty made herein, and such default persists for thirty (30) days after written notice thereof is given by PBNAF, or if such default cannot be cured within thirty (30) days, or such time as may be reasonably necessary to cure so long as the City is diligently prosecuting to cure but not to exceed an additional thirty (30) days.
- 52.2 The City fails to pay to PBNAF any undisputed amounts required to be paid hereunder when due, and such failure to pay persists for thirty (30) business days after written notice thereof.
- 52.3 The filing by or against the 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 the City shall be unable or unwilling to pay its debts when due.

ARTICLE 53. ANNUAL MEETING

At least once per year, at a mutually convenient location and time, the City and PBNAF shall attend a meeting with staff from the City and any other stakeholders. The purpose of the meeting shall be for the City, PBNAF, 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 PBNAF'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 party that will take over the operation of the Facility. The City and PBNAF shall use their 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, PBNAF shall be required to:

- 55.1 Vacate the premises and leave the Facility in good repair and operating condition. PBNAF shall not have the right to remove any improvements, equipment, fixtures, property, or chattel that would customarily transfer with real property such as the Facility, or to remove any other assets or property belonging to the City or any of its respective agents or representatives; and
- 55.2 Remove all trash, stacks of material, supplies, tools, equipment, and the like belonging to PBNAF or its agents. Cost of such removal and restoration shall be borne by PBNAF. If such trash, stacks of materials, supplies, tools, equipment, and the like placed in the Facility by PBNAF or its agents have not been removed by PBNAF by the date of termination, it will be the option of the City to remove the same at PBNAF's cost, risk, and expense or to retain or dispose of the same or any part thereof, without payment or reimbursement to PBNAF, unless other arrangements have been made in writing between the City and PBNAF with regards to the removal thereof.

ARTICLE 56. SURRENDER AND DELIVERY

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

ARTICLE 57. REMEDIES

- 57.1 Opportunity to Cure
Subject to all other terms and provisions in this Agreement, the City shall allow PBNAF at least thirty (30) days to cure any deficiency in the operation and maintenance of the Facility, subsequent to the provision of written notice to PBNAF regarding the deficiency. Likewise, PBNAF shall allow the City thirty (30) days to cure any deficiency, material breach, failure, and/or default, subsequent to the provision of written notice to the City of such 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, PBNAF shall not be required to make any payments toward the Ground Lease Fee or Permit Fee.

58.2 No later than thirty (30) days after the issuance of a Certificate of Occupancy for the Facility, or a later date as determined by the City, PBNAF shall pay an annual Ground Lease Fee of Ten Dollars (\$10.00) per year for each and every year this Agreement remains in effect thereafter, payable in advance, to the City.

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

ARTICLE 59. REVENUE SHARE

59.1 Revenue Share

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

YEARS	ANNUAL GUARANTEE
1	\$0
2 – 5	\$75,000
6 – 12	\$100,000
13 – 18	\$125,000
19-30	\$150,000
31+	\$200,000

Notwithstanding the above, PBNAF shall make payments to the City only at such time as PBNAF is current on its Debt Service Obligations, as such term is defined in Article 1 hereinabove. All payments are due within sixty (60) days after the end of each calendar year. Any payment received after the due date will be subject to a ten percent (10%) late fee. Failure to timely remit any payment shall constitute a default and material breach of this Agreement.

59.2 Service and Program Participation

In addition to the Revenue Share, PBNAF shall provide the following services and programs to the City, at no cost to the City, unless a cost is specified below:

59.2.1 City residents shall receive a discount for public skating at the Facility.

59.2.2 Advertising within the Facility to include one (1) dasher board panel per ice rink and space on digital marketing boards (the City will be responsible for material production costs associated with such advertising).

59.2.3 PBNAF shall work in good faith with the City to make the Facility available for the City to disseminate information to the public in the event of a state of emergency by executive order of the Governor or the City Council.

ARTICLE 60. TRANSFER OF OWNERSHIP OF INDOOR RECREATIONAL FACILITY

This is a public private partnership Project, subject to the provisions of Chapter 222, *Florida Statutes*. Upon the expiration of the Term, ownership of the Facility shall revert to the City, free and clear of all claims by PBNAF or any other entity. At that time, PBNAF, 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, SPECIAL ASSESSMENTS, AND LIENS

PBNAF shall pay all taxes that may be assessed on its design, construction, operation, lease, and maintenance of the Facility. The City shall not be liable for any taxes, fines, liens, special assessments, or penalties that may be levied against the Facility during the time of PBNAF's ownership of the building.

ARTICLE 62. SUBLEASING

PBNAF may sublease areas of the Facility, provided any subleasing is pre-approved by the City in writing, and the subtenants shall be subject to and bound by all applicable terms of this Agreement. The City shall not unreasonably withhold its approval of a sublease arrangement, provided the activities being proposed by PBNAF's subtenant are related to and/or complement the Intended Use. PBNAF shall provide a copy of the sublease agreement to the City.

ARTICLE 63. ECONOMIC IMPACT REPORT

At the conclusion of the first calendar year of operation, PBNAF shall provide the City with an economic impact report and general analysis detailing the public benefit of the Facility and programs offered. The report shall include, but not be limited to, the total estimated economic impact with financial details, attendance figures for programs and events, highlights of the business operations, future operating and programming projections, and anticipated changes for the coming year. The annual report for the previous year is due no later than January 31st of the current year.

ARTICLE 64. UTILITIES

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

ARTICLE 65. INDEMNIFICATION OF THE CITY; INSURANCE

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

The City shall indemnify PBNAF to the extent permitted by applicable law, subject to the monetary limits set forth at Section 768.28, *Florida Statutes* (2023).

65.2 PBNAF shall provide the City with Certificates of Insurance with the following minimum coverage:

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 and with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.
- h. Pollution Liability

Builders Risk Policy listing the City of Palm Beach Gardens as "Additional Insured."

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 the 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.

65.5 PBNAF 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. The City reserves the right to require a certified copy of such policies upon request. All Certificates shall state that the City shall be given thirty (30) calendar days' prior written notice of cancellation and/or expiration.

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

ARTICLE 66. ENVIRONMENTAL MATTERS

The City represents and warrants to PBNAF that, to the best of the City's knowledge, the Property is in full compliance with all Environmental Laws (as hereinafter defined), and no claim, action, suit, or proceeding is pending or threatened against the City or any third party arising directly or indirectly out of the discharge of Hazardous Materials (as hereinafter defined) at the Property or the presence of underground storage tanks beneath the Property. Simultaneously with the execution of this Lease or prior thereto, the City shall deliver or shall have delivered to PBNAF all environmental reports concerning the Property in the City's possession. Further, the City agrees to indemnify, defend, and hold PBNAF 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 consultant's 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 Construction Commencement Date or (b) during the term of this Lease, that are not caused or introduced by PBNAF, 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, directives, and 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, 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 materials.

ARTICLE 67. REPRESENTATION AND WARRANTIES OF THE CITY

The City hereby represents and warrants to PBNAF that (i) the City has full power and authority to enter into this Agreement; (ii) the City is the sole fee owner of the Property; (iii) to the 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) the City has obtained all required consents and approvals in order to enter into this Lease; (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 PBNAF’s ability to use the Property for the uses permitted hereunder, and the City shall not permit or suffer any such restrictions that would prohibit, interfere with, restrict, or otherwise impair PBNAF’s ability to use the Property for such uses; (vi) the 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 the 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 PBNAF hereunder shall not violate and are not inconsistent with any other agreement relating to the Property.

The City shall have an affirmative obligation to immediately provide PBNAF 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, PBNAF 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), PBNAF may, at its option, elect to terminate this Ground Lease as of the date of said damage or destruction, to be evidenced by notice in writing given to the City within ninety (90) days after the occurrence of such damage or destruction.

ARTICLE 69. QUIET ENJOYMENT

The City agrees that PBNAF 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.

ARTICLE 70. COMPLIANCE AND CONDUCT

PBNAF shall, at all times, comply with all rules, regulations, and ordinances of the City and other governmental agencies having jurisdiction. PBNAF shall further take all precautions and extreme care to conduct its activities in a safe, professional, and prudent manner with respect to its agents, employees, members, visitors, and participants.

By entering into this Agreement, PBNAF is obligated to comply with the provisions of Section 448.095, *Florida Statutes*, "Employment Eligibility." This includes, but is not limited to, utilizing the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that they do not employ, contract with, or subcontract with an undocumented immigrant unauthorized to work in the United States of America. Failure to comply shall lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontractor must be terminated immediately.

ARTICLE 71. SUPERIORITY OF OTHER FORMS OR DOCUMENTS

If PBNAF requires the City to complete and execute any other forms or documents in relation to this Agreement, the terms, conditions, and requirements in this Agreement shall take precedence to any and all conflicting or modifying terms, conditions, or requirements of PBNAF's forms or documents. Additionally, in the event of a conflict between the terms and conditions set forth in this Agreement

and any attachments or exhibits hereto, the terms and conditions set forth herein shall prevail.

ARTICLE 72. GENERAL TERMS AND CONDITIONS

This Agreement is subject to the City's General Terms and Conditions, which are available for review at www.pbgfl.com/purchasing. By executing this Agreement, PBNAF agrees to be bound by the City's General Terms and Conditions, as may be applicable to this Agreement.

[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.

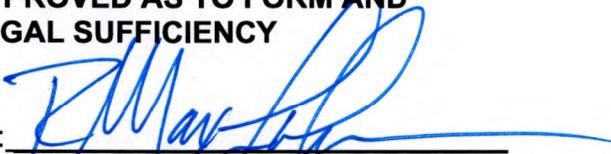
CITY OF PALM BEACH GARDENS, FLORIDA

By: 
Chelsea Reed, Mayor

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 Winter, President

City of Palm Beach Gardens
Agreement No. A2024-310CM
Development of Indoor Recreational Facility at Plant Drive Park

EXHIBIT "A"

PBNAF PROPOSAL

PRESENTED TO:

CITY OF

PALM BEACH GARDENS



PALM BEACH NORTH
ATHLETIC FOUNDATION

"Creating a Lasting Legacy"

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COVER LETTER



June 28, 2023
Ron Ferris
City Manager
Km! Ra
Purchasing and Contracts Director
Palm Beach Gardens
10500 North Military Trail
Palm Beach Gardens, FL 33410

RE: Palm Beach Gardens Ice Center at Plant Drive Park

Palm Beach North Athletic Foundation was founded with the sole purpose of developing a world class indoor recreation facility in Palm Beach Gardens. We are excited to submit this unsolicited proposal for a state-of-the-art indoor ice sports complex in Plant Drive Park. Originally proposed for The Gardens North County District Park, the City provided invaluable guidance in finding a more appropriate, yet an equally suitable location in Plant Drive Park. Our Board of Directors remains focused on delivering a recreational amenity that will enhance the local community and help grow ice sports in Palm Beach County and the surrounding communities.

As members of this special community, we are looking forward to providing a unique recreational asset to Palm Beach Garden residents of all ages. The project will be constructed on land already utilized for recreation purposes, preventing the loss of any developable commercial or residential parcels that could be used to generate taxable income. The facility will provide residents with access to a specialized recreation amenity not commonly found in the region, increasing recreational options and quality of life. City residents will have the opportunity to enjoy the complex at a reduced rate, encouraging local participation year round. In addition to the economic drivers that come with having a "recreation destination" that will draw participants from across the country, the Palm Beach Gardens Ice Center will become another reason why Palm Beach Gardens remains a premier city to live, work, and enjoy.

Respectfully,

Michael Winter
President
Palm Beach North Athletic Foundation, Inc.

EXECUTIVE SUMMARY



Following is a summary of the key information contained in this proposal:

- 1. Size of the facility** —The facility will be approximately 103,000 SF with an estimated 300+ parking spaces.
- 2. Projected construction start and completion date** — We have a 18-month completion target. Construction is estimated to begin January of 2024 and be completed by July of 2025.
- 3. Floor plans and renderings of the proposed facility** — The proposed site plan, floor plans, and renderings for the proposed facility can be found on pages 15-16.
- 4. Who will own, operate and maintain the facility** — The Palm Beach North Athletic Foundation (PBNAF), a 501 (C)(3) not for profit organization based in Palm Beach Gardens, will own and operate the facility through their Board of Directors and Advisory Council.
- 5. Types of indoor programs that will be offered** — A wide array of indoor programming is being proposed for this facility including, but not limited to public skating, figure skating, hockey leagues Y&A, learn to skate programs, learn to play programs, and curling.
- 6. Development costs for the project** — Cost breakdowns begin on page 23.
- 7. Nature of commitment required from City** — In the spirit of partnership the PBNAF would ask that the City expedite the approval process, waive development fees, provide utilities within 5 feet of the building, aid in facility marketing, appoint a dedicated inspector for construction, and facilitate a shared parking agreement.
- 8. Marketing plans** — We will work with the appropriate City departments and with local stakeholders to develop a meaningful and fully cohesive marketing plan that will employ traditional print, radio and television marketing, web-based and social marketing, and grass roots marketing to become an integrated part of the community.



9. Similar projects successfully financed, developed, and operated — Florida Panthers Ice Den (Incredible Ice), in Coral Springs, Florida, is a 125,000 SF facility developed as a public-private partnership between the City of Coral Springs and CanAm Investment Group. It was built in 1996 and then expanded in 2009, due to its popularity and financial success. (page 8)

10. Project team and subcontractors known at the time of proposal submission — To make our vision a reality, we have brought together a team of professionals that are uniquely qualified to guide this project from conception to completion, and from there into the future. Our team includes: Chiodini Architects as lead architect; WGI for planning, landscape architecture, civil engineering, and survey. In addition, a group of subcontractors with extensive experience in mechanical/electrical engineering, plumbing, food-service, structural engineering, and refrigeration engineering are included on the team.



WHO WE ARE



We are a multidisciplinary group of passionate individuals with backgrounds ranging from business to athletics who are committed to developing a state-of-the-art indoor multi-sport recreational facility in Palm Beach Gardens

The Palm Beach North Athletic Foundation (PBNAF), a 501(C)(3) not for profit organization based in Palm Beach Gardens, Florida, was founded by a diverse group of individuals with the goal to create a best-in-class athletic facility in North Palm Beach County. We are a multidisciplinary group of passionate individuals with backgrounds ranging from business to athletics who are committed to developing a state-of-the-art indoor multi-sport recreational facility in Palm Beach Gardens.

To make our vision a reality, we have assembled a team of professionals that are uniquely qualified to guide this project from conception to completion, and from there into the future. Our design and development team has decades of national and local experience in recreation design, planning, engineering, and construction. CCGroup, the firm selected to manage the facility, has the professional management experience necessary to ensure the financial stability and growth of the facility.

LEADERSHIP TEAM



MICHEAL WINTER
FOUNDER & PRESIDENT



TUCKER FREDERICKSON
VICE PRESIDENT



CHARLES BERES III
TREASURER



CHARLOTTE PELTON
FUNDRAISING DIRECTOR



STACEY MALAKOFF
DIRECTOR



JASON MCCARTY
DIRECTOR

OUR MISSION

“ To develop and operate a world class community recreation facility that will provide people of all ages and abilities a safe, state-of-the-art environment to help them achieve their goals. ”

OUR VISION

“ To create a lasting legacy and enduring future in Palm Beach County, and facility through diverse revenue sources well into the future. ”



REFERENCES



COMMUNITY FIRST IGLOO

JACKSONVILLE, FLORIDA

FACILITY INFORMATION

Facility Type	Indoor Ice Sports
Owner	Zawyer Sports & Entertainment
Contact	Bob Ohrablo President Bob@Zawyersports.com
Size	104,000 SF
Final Cost	\$15M
Performance Period	2020 - 2022



The complex will provide a practice facility and amenities for the ECHL Jacksonville Iceman and an additional facility for Youth Hockey in northern Florida, attracting youth and adult hockey and figure skating tournaments from throughout the Southeastern United States. This project was a complete renovation of an existing metal building.

REFERENCES



MARYSVILLE UNIVERSITY HOCKEY CENTER CHESTERFIELD, MISSOURI

FACILITY INFORMATION

Facility Type	Ice and Athletic Center
Owner	Chesterfield Hockey Association
Contact	Tim Lowe Staenberg Group tlowe@tsgproperties.com
Size	84,000 SF
Final Cost	\$22.6M
Performance Period	2019



Chiodini Architects led the Master Planning and Design exploring a wide range of concepts and components for a multi-use development to create a Town Centre of the Chesterfield Valley. The Master Planning concepts included two to three-sheet ice facilities, a recreational outdoor rink and amphitheater, adjacent small 'village' retail, big-box retail, medical facilities, and hotels. September of 2019; the Marysville University Hockey Center was completed. The project includes a 2-sheet ice facility complex with all essential amenities; concessions/coffee shop, meeting facilities, viewing areas, and bar/dining area. The next phase of this project is in progress.

The Complex provides needed ice time and recreational facilities for St. Louis youth and adults and attracts local and regional sporting events and tournaments, generating jobs and tourism dollars for local businesses.



DEVELOPMENT OF THE PALM BEACH GARDENS ICE CENTER

REFERENCES

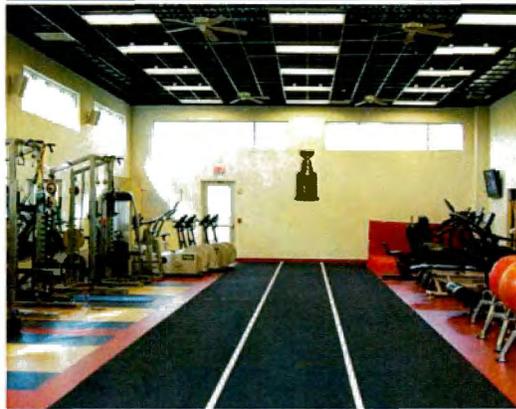


INCREDIBLE ICE (FLORIDA PANTHERS ICE DEN) CORAL SPRINGS, FLORIDA

FACILITY INFORMATION

Facility Type	Indoor Ice Sports
Owner	Incredible Ice, LLC City of Coral Springs
Contact	Peter Luukko Chairman of Oak View Group Facilities Pluukko@oakviewgroup.com 215.429.7007
Size	125,000 SF
Final Cost	\$9M / \$10M Expansion
Performance Period	Sept 1995 - Nov 1996 Expansion Sept 2008 - Aug 2009

Established in 1994 and opened in 1996, Incredible Ice is a 125,000-SF indoor ice sports facility developed in partnership with the City of Coral Springs; one of the first public private recreation partnerships in South Florida. It was the first designed twin-ice skating facility in the state of Florida and official practice home of the National Hockey League Florida Panthers Hockey Club. From 1994-2016 Incredible Ice established an enviable record of financial success rarely equaled in today's ever-changing recreation market.



REFERENCES



R.P. LUMBER CENTER EDWARDSVILLE, ILLINOIS

FACILITY INFORMATION

Facility Type	Community Ice and Athletic Center
Owner	City of Edwardsville
Contact	Ryan Zwijack City Engineer rzwijack@cityofedwardsville.com
Size	65,000 SF
Final Cost	\$11 M
Performance Period	June 2022

Chiodini Architects was chosen to design a new 65,000 SF sports complex in Edwardsville, Illinois. The highlight of this project is an NHL regulation size ice rink with 1,000 seat capacity. An elevated, 1/8 mile, four lane indoor running track will span the facility. Users of the sports complex will also be able to take advantage of the 3,500 SF fitness area, teen center, meeting rooms, and concessions.



DEVELOPMENT OF THE PALM BEACH GARDENS ICE CENTER

REFERENCES



Chadline
ARCHITECTS

THE COURTZ ATHLETIC FACILITY

ST. CHARLES, MISSOURI

FACILITY INFORMATION

Facility Type	Athletic Facility
Owner	City of St. Charles
Contact	Steve Layne, President Layneco Construction Services 636.294.6245 slayne@lcsconstruct.com
Size	180,000 SF
Final Cost	\$25M
Performance Period	Late 2009 to late 2023

This 180,000-SF athletic facility concept was developed to meet the growing demand for practice and game court time for West St. Louis County youth basketball teams and leagues consisting of over 5,000 participants, as well as offering a central location for regional and national youth basketball tournaments. The facility was designed with a suspended catwalk system that would not only be used as a jogging track, but could be secured and serve as a private viewing area of all courts for collegiate coaches/recruiters during tournament play. Multi-use of the facility was an important criterion; the design accommodated personal training and physical therapy facilities together with a 24-hour members gym and full-service kitchen and food court. The 'Performance Court', seating 3,000 spectators, was designed to have a collegiate 'Final Four' atmosphere – center-court suspended score board and video display wall.



DEVELOPMENT OF THE PALM BEACH GARDENS ICE CENTER

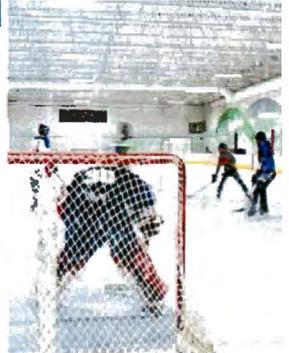
REFERENCES



BRENTWOOD RECREATION COMPLEX & ICE RINK BRENTWOOD, MISSOURI

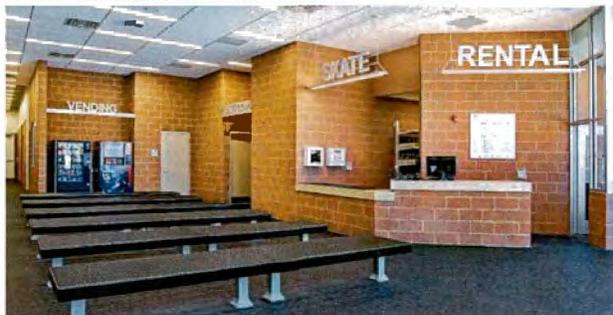
FACILITY INFORMATION

Facility Type	Indoor Ice Sports
Owner	Incredible Ice, LLC City of Coral Springs
Contact	Peter Luukka Chairman of Oak View Group Facilities Pluukko@oakviewgroup.com 215.429.7007
Size	125,000 SF
Final Cost	\$9M / \$10M Expansion
Performance Period	Sept 1995 - Nov 1996 Expansion Sept 2008 - Aug 2009



The mission of Brentwood Parks and Recreation Department is to provide exceptional spaces and opportunities for a sustainable future that best serve the evolving needs of the community. Chiodini Architects was instrumental in the redesign of the complex, creating complete ADA accessibility. Other improvements included increasing locker room size, larger restrooms, a designated Welcome Desk, skate rental area, updated office space and a reconfigured party room, helping to improve foot traffic flow. New equipment, furniture and fixtures were included in the renovation. A newly furnished multi-purpose room, a demonstration kitchen, and small fitness area are also new to the facility. The Ice Arena renovation includes a new, more sustainable refrigeration system, along with new dasher boards and improved entrance/exit door placement

Creative Thinking: Given the extent of the facility renovation resulting from the subsidence of floor slabs, what remained was literally the building shell. Chiodini Architects stressed with the City that, for the budget, the citizens of Brentwood would expect a significantly different and unique facility. The gut renovation allowed for the complete reprogramming of the Community Center and Administrative functions. The result was a more consolidated and collaborative Administrative Suite and increased Community Center multi-purpose space.



DEVELOPMENT OF THE PALM BEACH GARDENS ICE CENTER



PROJECT UNDERSTANDING & APPROACH

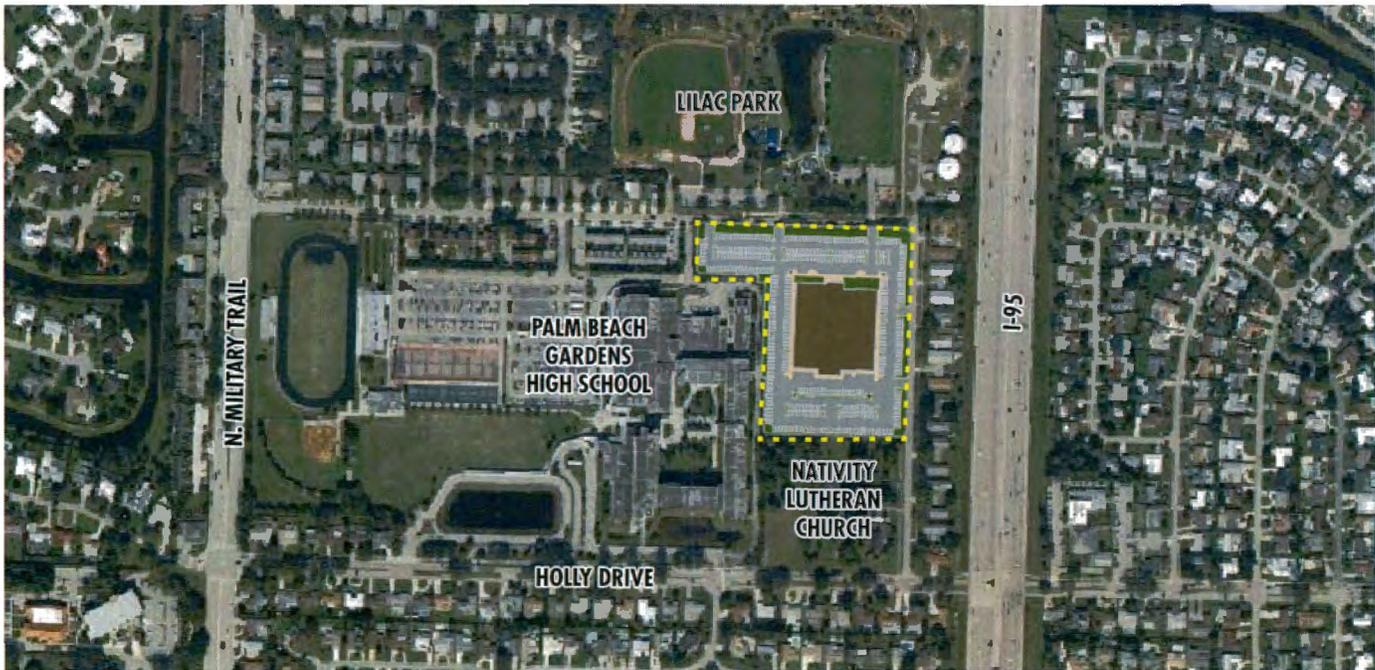
The City of Palm Beach Gardens is known throughout South Florida for providing quality recreation facilities to its residents as well as those in surrounding communities. Residents and visitors are drawn to the City due in part to the quality and diversity of recreation offered. The ability to continue to offer such desirable recreation areas will be important as the City continues to grow. It will be particularly important to create a facility that addresses the City's current recreational needs as shown in the June 2018 "Recreation Services Analysis" while also providing flexible indoor areas that can change and grow with the needs of the community, and specialty areas that will bring new recreational opportunities to the City and region.

The City of Palm Beach Gardens is the ideal location for Palm Beach North Athletic Foundation, Inc.'s (PBNAF) proposed state-of-the-art indoor multi-sport facility. After discussions with key stakeholders, local residents and community leaders, our internal assessment leads us to a bold concept that will appeal to all ages and abilities. This facility, unlike any other in the state, will service the local community while also having the ability to host regional, national, and international events; bringing with them significant direct economic impact through increased hotel occupancy, and secondary economic impact on local business.

Population growth in northern Palm Beach County, and Palm Beach Gardens specifically, has been explosive over the past 30 years. With

numerous planned residential communities on the horizon, it is estimated that by 2028 the number of people living within a five-mile radius of the proposed site will be three times larger than it is currently, and that there will be more than one million people living within 20 miles of the facility. Existing aging facilities and a general lack of indoor recreational space are noted in the June 2018 Recreation Services Department "Needs Analysis Assessment" as limiting factors in the continued growth of many sports in the community and region – a condition that will only worsen as the population continues to grow.

The PBNAF is proposing an approximately 103,000-SF world class multi-sport facility that will offer programming to include ice skating, hockey, figure skating and curling to name a few. The PBNAF is made up of a sophisticated and dedicated volunteer board of directors and advisory council who are committed to philanthropy by giving back to the community in which they reside. It is the Foundation's vision to give people of all ages, income levels and abilities the opportunity to experience a wide variety of recreational activities including many not presently available in the area. This level of facility will allow the community to simultaneously provide a wide range of sports and activities, and become a true community asset for decades to come. Once completed, our concept will further enhance Palm Beach Gardens as a signature city in South Florida and put it on the map as a "recreation destination" for Palm Beach Gardens' residents and the larger regional population.



DESCRIPTION & SITE PLAN

The facility is planned to be open seven days a week from 5am to 11pm. The management team intends for the facility to be used not only by community members, but also by regional sports leagues and will adjust the hours of operation as needed to accommodate both groups. Additionally, activity scheduling will be coordinated through the management team to ensure that the facility maintains a steady stream of visitors throughout the day to prevent against overcrowding and "crush times."

Our state-of-the-art two-story facility is expected to contain two full size ice rinks, with 81,000 SF on the first floor and 21,000 SF on the second, for a total of approximately 103,000 SF. While the building is not planned to be LEED certified, green building principles will be used throughout the design to increase energy and water efficiency, enhance the indoor environment, and reduce the overall strain on local resources.

To ensure the safety and security of the facility, our design and management teams are working together to develop a comprehensive security plan for the building focused on Crime Prevention Through Environmental Design (CPTED) principles. To this end, the building will have one main entrance with a circular pick-up/drop-off and a controlled check-in desk that will be managed at all times by a dedicated staff member.

The first floor will be the facility's main hub of activity. Visitors will have direct access to two full-sized ice rinks and party rooms. There will also be a quick serve concession area as well as a retail space for the purchase of athletic gear and sport specific merchandise and equipment. The second floor will have multipurpose rooms for activities and a large community/conference room. Additionally, there will be a full-service restaurant and bar, and areas for visitors to observe from above.

APPROACH TO THE PROJECT



Critical to the overall success of a complex of this size and nature, is a professionally managed building. It will be imperative that all areas of the facility are communicating with each other in order to provide programming at a level of service that facilitates the growth of the multiple sport programs within the facility. Additionally, the building will be carefully designed to allow for multiple activities to function simultaneously.

A blend of fees, dues, admission rates, and membership categories are being developed for the entire facility and will vary with the program, league, sport and event. We will encourage participation for all and also plan on having subsidized programs and fees for those that require assistance within the county.



A large variety of indoor ice sports are being planned for the facility including, but not limited to:

- Public Skating
- Figure Skating
- Hockey Leagues Y&A
- Learn to Skate Programs
- Learn to Play Programs
- Curling

SITE PLAN



PALM BEACH NORTH
ATHLETIC FOUNDATION

Proposed Development
North County District Park
Highway 95 at 117th Court
Palm Beach Gardens, Florida



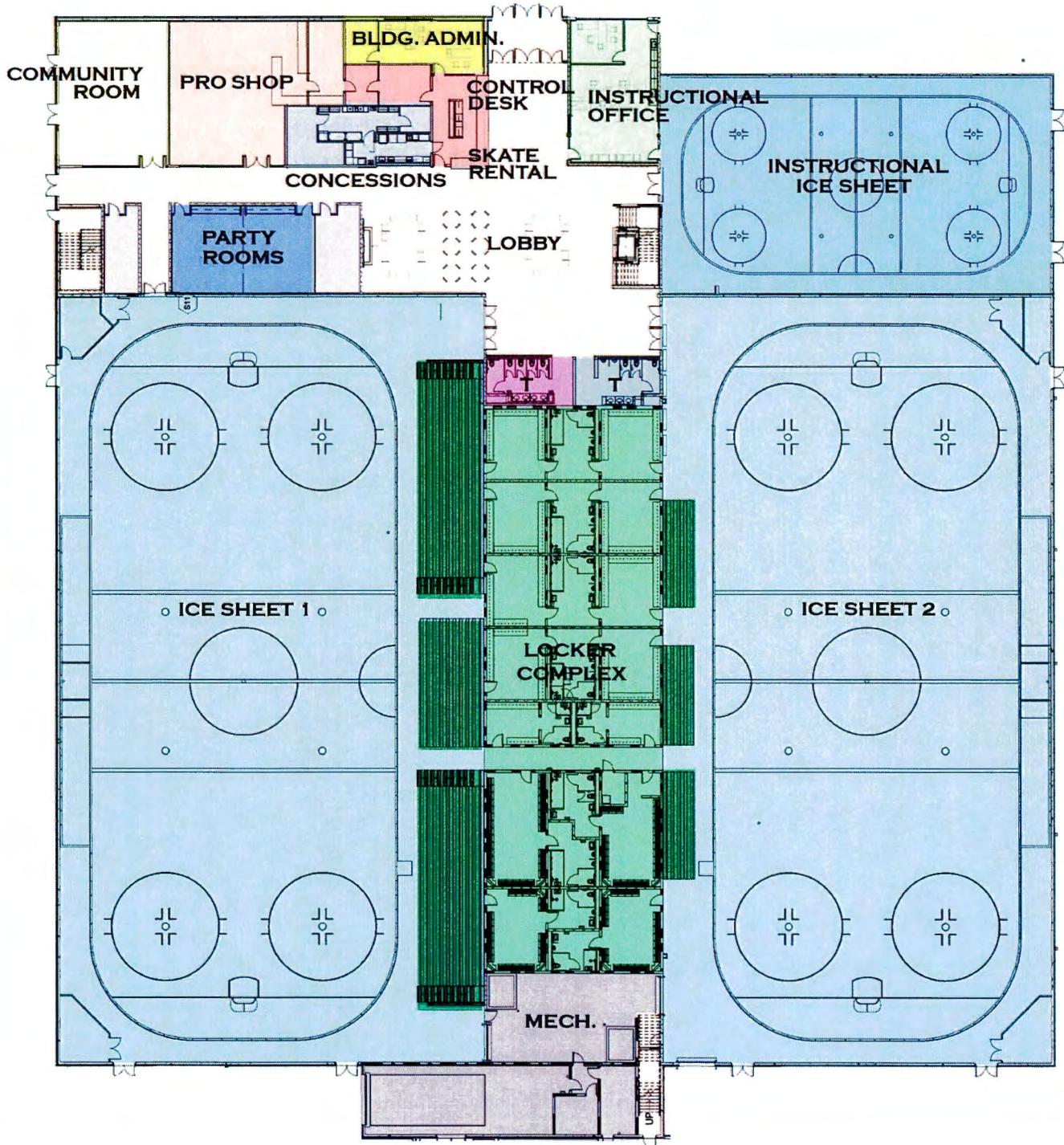
Chodini
ARCHITECTS

Chodini Associates - Architects | Interior Design | Graphics
1401 South Broadway Blvd., Suite 315
West Palm Beach, Florida 33411
TEL: 561.838.1100 FAX: 561.838.1000



ENTRY LEVEL

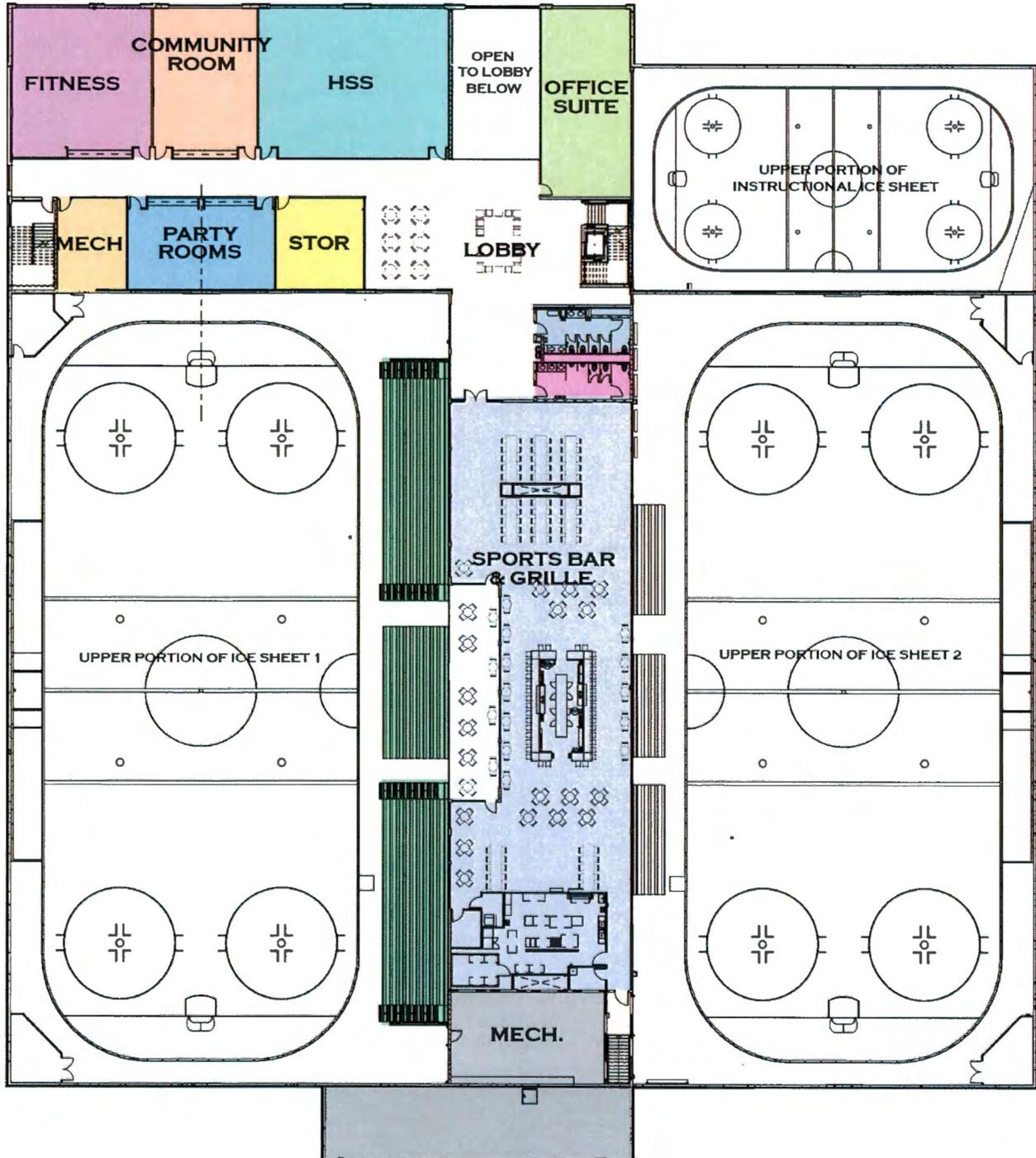
81,566 SF





UPPER LEVEL

21,263 SF

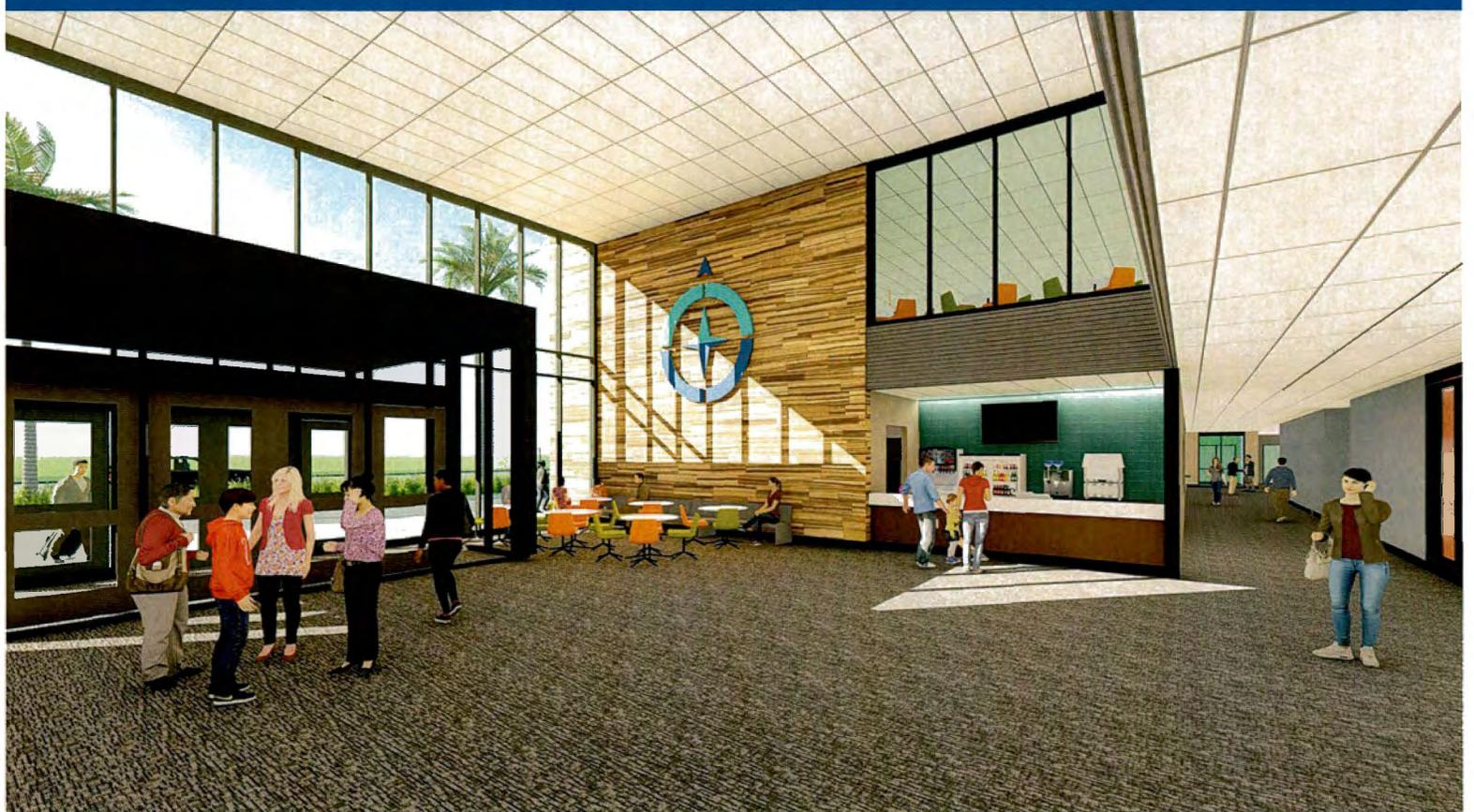


FACILITY RENDERINGS



DEVELOPMENT OF THE PALM BEACH GARDENS ICE CENTER

FACILITY RENDERINGS



DEVELOPMENT OF THE PALM BEACH GARDENS ICE CENTER

FACILITY RENDERINGS



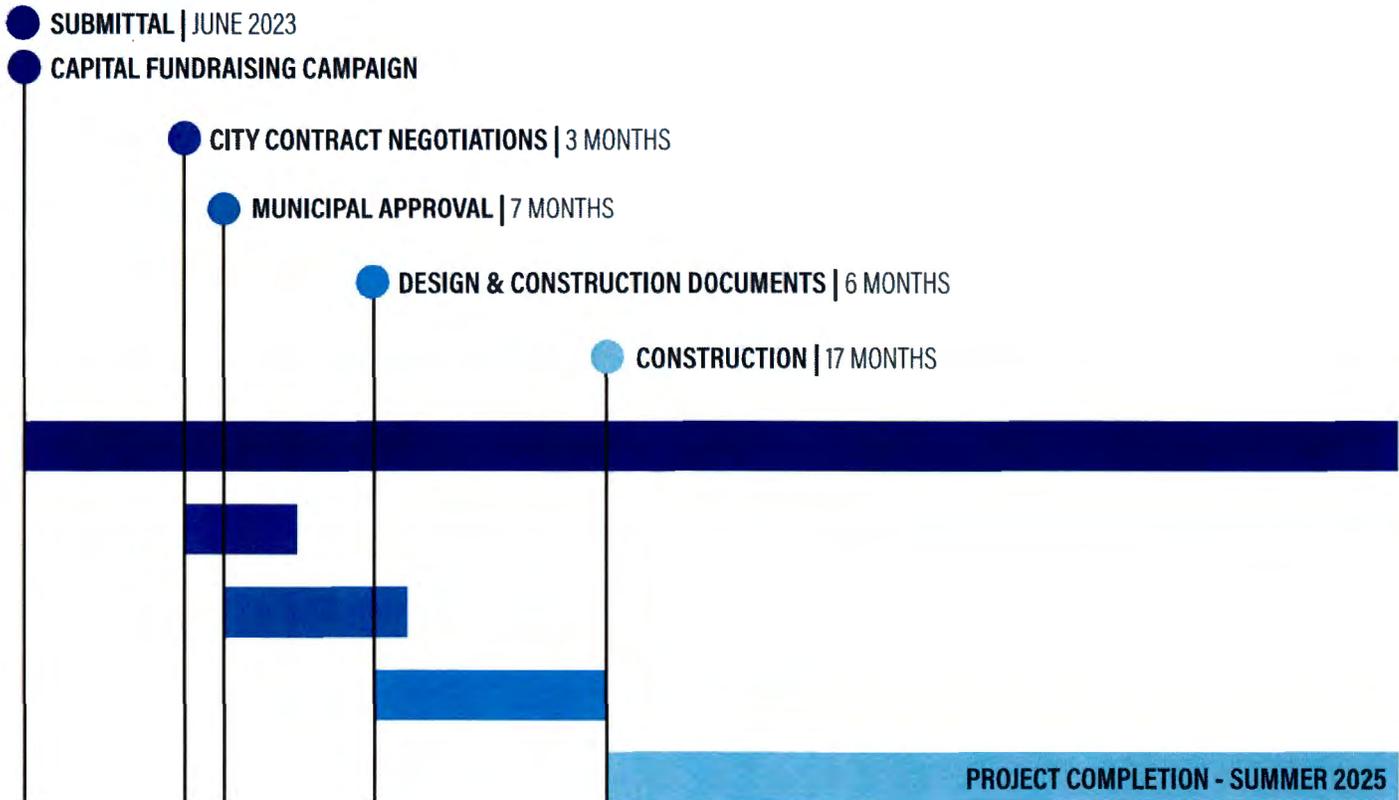
DEVELOPMENT OF THE PALM BEACH GARDENS ICE CENTER

DEVELOPMENT TIMELINE



Our on-going capital fundraising campaign commenced in early 2019 and will continue and coincide with the projected completion date of summer 2025. The PBNAF has been diligent in working with our design team to create innovative yet realistic concept drawings that will easily translate into the required documents for Palm Beach Gardens' plan approval process. As such, we anticipate a five-month municipal approval time-frame.

Once the site plan is approved, work will begin on the design and construction documents which we estimate will take six months. During this phase, the project team will perform all required testing and surveys, including but not limited to, topographical surveying, geotechnical analysis, and soil testing that is required to determine the state of the site prior to beginning construction. Construction is estimated to begin in the first quarter of 2024 with a target completion date of summer 2025.



MARKETING PLAN



PBNAF will embark on a bold marketing plan that will begin to establish a true partnership with the local community. Successful facilities are those that are deeply integrated into the community and serve not only as an athletic facility, but as a meeting point and community center for the public at large. It is our intention to work with the appropriate departments within the City and County, as well as with local stakeholders, to develop a meaningful and fully integrated marketing plan including:

- **Social media campaigns**
- **Grass roots marketing**
- **Database marketing**
- **Media releases**
- **Traditional advertising mediums**
- **Print, radio, television**
- **Community event marketing and promotion**
- **Website development and management**
- **Event sponsorships**
- **Charitable initiatives**

Our marketing campaign and community outreach will be augmented by the strategic alliances PBNAF will form with key sports agencies to promote and grow our programming.

The long term sustainability of the facility will depend on our ability to create a healthy combination of local participation and the ability to attract large format events, such as national sports tournaments.

An important sector of our marketing initiatives will focus on holding tournaments and competitions across the multiple sports offered in the facility on a regular basis throughout the year with the help of our alliances.

- Palm Beach Gardens Recreation Department
- Florida Sports Foundation
- Palm Beach Sports Commission
- Palm Beach Gardens Youth Athletic Association
- Jupiter Tequesta Athletic Association
- Amateur Sports National Governing Bodies
- Statewide Amateur Hockey of Florida



SOURCE OF FUNDING



The vision of the Palm Beach North Athletic Foundation's Board of Directors has inspired community leaders in Palm Beach County and the City of Palm Beach Gardens to support this creative project. The funding needs of the project have been structured to be completed in the current capital market environment. The financing has been structured with 65% through a tax-exempt bank construction bonds, up to 20% through subordinate tax-exempt debt placed with an institutional investor by B.C. Ziegler & Company. The remaining 15% will be provided from capital commitments received to date by PBNAF and additional contributions to be provided prior to closing.

Support of the City of Palm Beach Gardens is critical to the overall success of this unique public-private partnership. In the spirit of this partnership, the PBNAF would ask that the City consider the following:

- Waive any and all building plan review fees and any development fees
- Waive any and all permitting fees
- Waive any and all impact fees
- Expedite site plan and architectural review board approvals
- Expedite municipal approvals, inspections and permitting process
- Appoint a dedicated inspector throughout the construction process
- Waive any sales tax due to our 501(c)(3) status
- Provide all utilities to within five feet of the proposed building
- Assist in marketing the facility to its residents through existing communication channels
- Inclusion in City's marketing collateral materials



DEVELOPMENT BUDGET



PBNAF Sportsplex Development Budget

Cost estimates at this preliminary stage are based on past projects and generic square foot costs. The construction cost estimate will continually be reevaluated and revised throughout the remaining phases of the project. As the project scope develops, during the development phase, the cost estimate and project budget will be more clearly defined. The design complexity, materials, type of mechanical/ electrical systems and level of quality will affect the cost of a building. Below is a summary of the estimated overall development costs of the project as of June 28, 2023:

Building Size - Approximately 102,000 sq.ft.

Building Construction Costs

Sitework	\$3,314,302
Shell Construction	\$8,190,403
General Construction	\$5,872,768
Interior Finishes	\$8,321,949
Contingency	\$1,286,633
Total Est. Construction Costs:	\$26,986,035

Soft Costs

Architect & Engineering Fees	\$1,541,965
Financing Costs	\$5,360,000
Consultant Fees	\$270,000
Permitting	TBD
Total Est. Soft Costs:	\$7,171,965

Building Furnishings, Fixtures and Equipment (FF&E)

Ice Resurfacers (2 Electric)	
Scoreboards	
Bleacher Seating	
Kitchen Equipment	
Retail Store Buildout	
Restaurant Buildout	
Medical/Tenant Space	
Office Furniture and Equipment	
Computer, Phone & Sound Systems	
Miscellaneous	
Total Est. FF&E	\$2,207,000

Pre-Opening Est. Costs: \$420,000

Working Capital Costs: \$1,500,000

TOTAL ESTIMATED DEVELOPMENT COSTS \$38,285,000

DEVELOPMENT SUMMARY



REVENUE	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
PRIMARY REVENUES					
Hockey	1,743,680	2,179,600	2,353,968	2,448,127	2,546,052
Figure Skating	702,080	877,600	912,704	949,212	987,181
Public Skating/Parties	960,804	1,067,560	1,110,262	1,154,673	1,154,673
Private Rentals	451,200	564,000	592,200	621,810	634,246
TOTAL PRIMARY REVENUES	4,196,440	4,688,760	4,969,134	5,173,822	5,322,152
ANCILLARY REVENUES					
Food & Beverages	1,017,600	1,272,000	1,324,152	1,378,442	1,434,958
Retail	564,000	752,000	774,560	797,797	821,731
Performance/Fitness Center	102,000	200,000	210,000	214,200	218,484
Wellness/Sports Medicine	53,760	67,200	69,216	71,292	73,431
Sponsorships	500,000	550,000	600,000	650,000	675,000
Charitable Contributions	212,500	250,000	250,000	250,000	250,000
TOTAL ANCILLARY REVENUES	2,449,860	3,091,200	3,227,928	3,361,732	3,473,604
TOTAL REVENUES	6,646,300	7,779,960	8,197,062	8,535,553	8,795,756
% Growth	-	14.6%	5.1%	4.0%	3.0%

COST OF REVENUE					
Ice Programs	947,314	1,058,451	1,096,157	1,122,157	1,148,157
Food & Beverages	799,867	893,706	975,927	1,065,712	1,163,758
Retail	525,888	657,360	677,081	697,393	718,315
Performance/Fitness Center	56,117	62,700	64,581	66,518	68,514
TOTAL COSTS OF REVENUE	2,329,185	2,672,217	2,813,746	2,951,781	3,098,744
GROSS PROFIT	4,317,115	5,107,743	5,383,316	5,583,772	5,697,012
GENERAL & ADMINISTRATIVE EXPENSES					
Facility Operations	1,003,904	1,115,449	1,137,758	1,149,135	1,160,627
Finance & Administration	1,035,720	1,150,800	1,162,308	1,197,177	1,233,092
Replacement Reserve Fund			50,000	50,000	50,000
TOTAL EXPENSES	2,039,624	2,266,249	2,350,066	2,396,313	2,443,719
OPERATING INCOME	2,277,491	2,841,494	3,033,251	3,187,460	3,253,293

PROFORMA NOTES & ASSUMPTIONS

- Proforma is based on full operating years
- Year 1 revenues and cost of revenues are approximately 80% of Year 2 stabilized revenues
- Year 1 shows facility operations expense and finance & administration expense at 90% of Year 2
- Retail and Food & Beverage departments assume internal management
- Wellness/Sports Medicine assumes lease of a 2,000sq.ft. area

SOURCES & USES



SOURCES & USES

SOURCE & USES	DEBT	CONTRIBUTION	AGGREGATE	YEAR 2
SOURCES				
Senior Debt	\$24,960,000	-	\$24,960,000	65.2%
Subordinate Debt	6,825,000	-	6,825,000	17.8%
Capital Contributions	-	6,500,000	6,500,000	17.0%
TOTAL	\$31,785,000	\$6,500,000	\$38,285,000	100.0%
USES				
Project Fund	\$26,425,000	\$5,000,000	\$31,425,000	82.0%
Working Capital	-	1,500,000	1,500,000	4.0%
Debt Service Reserve Fund	614,625	-	614,625	2.0%
Capitalized Interest Fund	3,869,374	-	3,869,374	10.0%
Closing Costs & Legal Fees	374,400	-	374,400	1.0%
Financing Fees	499,200	-	499,000	1.0%
Rounding Amount	2,401	-	2,401	0.0%
TOTAL	\$31,785,000	\$6,500,000	\$38,285,000	100.0%

DEBT SERVICE COVERAGE RATIO

PBNAF

SPORTSPLEX PROJECT

* DEPOSITS AT CLOSING

CONSTRUCTION PERIOD

YEAR 1

YEAR 2

YEAR 3

YEAR 4

YEAR 5

NET OPERATING INCOME		2,277,491	2,841,494	3,033,251	3,187,460	3,253,293
Subordinate Reserve Earnings		-	-	19,975	19,975	19,975
Cash Flow Available for Debt Service	-	2,277,491	2,841,494	3,053,226	3,207,435	3,273,268
Senior Debt Service	\$1,522,560	\$1,522,560	\$1,522,560	\$1,907,560	\$1,909,075	\$1,909,065
Subordinate Debt Service	511,875	511,875	511,875	511,875	511,875	611,875
Capitalized Interest	\$3,869,374	(2,034,435)	(2,034,435)	-	-	-
Total Debt Service	-	-	2,034,435	2,419,435	2,420,950	2,520,940
Senior Debt Service Coverage			1.87x	1.59x	1.67x	1.7x
Total Debt Service Coverage			1.4x	1.26x	1.32x	1.3x
Cash Flow After Debt Service	-	2,277,491	807,059	613,816	766,510	732,353
Cumulative	-	2,277,491	3,084,550	3,698,366	4,464,876	5,197,229

* Assumes a 3.25% investment rate on the Capitalized Interest deposits, which is why disbursements are higher than deposits at closing.



Ziegler

CAPITAL :: INVESTMENTS :: ADVICE

1401 Beulah Road
Suite 124
Winter Garden, FL 34787
Phone: 312-596-1660
Fax: 312-263-5217

www.Ziegler.com

June 28, 2023

Michael Winter
President
Palm Beach North Athletic Foundation, Inc.
4440 PGA Blvd, Suite 600
Palm Beach Gardens, FL 33410

Dear Michael:

This is to confirm our engagement as investment banker and placement agent for Palm Beach North Athletic Foundation, Inc. ("PBNAF") to finance its proposed ice rink complex that would be located at Plant Drive Park. We have been engaged to assist in capital structuring and placement of the debt financing for the project.

We are delighted to be engaged on this transaction and we are confident in our ability to structure a financing based on the preliminary terms we have discussed with PBNAF and potential investors. Upon approval by the city of Palm Beach Gardens, we will work to secure term sheets that will outline the terms of the financing for the facility. Based on our experience and expertise in structuring and underwriting project financings, we believe the merits of this project will result in a very successful financing.

We look forward to working together with PBNAF and the city of Palm Beach Gardens.

Sincerely,

Robert D. Gall
Director

"A community thrives off the spirit of those within it. This journey is about strengthening our community and providing opportunities for our children, and our children's children. Our Foundation is a vessel to share the prosperity of our community to all walks of life. We need to strengthen the moral compass for future generations. This is our mission and our legacy."

- Micheal J. Winter, Board President



PALM BEACH NORTH
ATHLETIC FOUNDATION

"Creating a Lasting Legacy"

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. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of the materials.
- b. The 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. The Contractor shall furnish copies of the manufacturer's recommendations to the Project Manager before proceeding with the work.
- c. The 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. The 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

The 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 the Contractor of full responsibility for unsatisfactory work, faulty construction, or improper operation resulting therefrom nor from rectifying such condition at the Contractor's own expense. The Contractor will not be allowed to take advantage of any error or omission.

3. WARRANTY

The Contractor shall warrant to the City and PBNFAF 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, the 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 the Contractor, prior to acceptance. Safeguarding the material shall be the responsibility of the Contractor. Any materials that are lost, stolen, damaged, or otherwise deemed unacceptable by the Project Manager shall be replaced at no cost to the City.
- b. Materials stored off the job site shall be stored in a bonded warehouse. Safeguarding the material shall be the responsibility of the 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, the 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. The Contractor shall use areas approved by the City for deliveries and personnel. Contract limits of the 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, the Contractor shall erect and maintain all necessary barricades and any other temporary walls, structures, and boarding, as required, to protect life and property during the period of construction.

7. LEGAL RESTRICTIONS AND TRAFFIC PROVISIONS

The Contractor shall conform to all applicable laws, regulations, and ordinances with regard to labor employed, hours of work, and its subcontractor's general operations. The 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 the Contractor's responsibility to verify such information and to preserve all existing utilities whether shown in the drawings or not. If utility conflicts are encountered by the Contractor during construction, the Contractor shall give sufficient notice to the owners of the utilities so that they may make the necessary adjustments.
- b. The 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 the Contractor shall be reported immediately to the Project

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

- c. The Contractor shall, at all times, provide the type of required protection for finished work, 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, the Contractor shall close off areas where certain work has been completed to protect it from any damages caused by others during their operations.
- e. The 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, the Contractor shall satisfactorily repair and replace the same at its own cost. The 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 the work thereon, the Contractor shall carefully examine surfaces over which its finished work is to be installed, laid out, or applied before commencing the work. The Contractor shall not proceed with said work until defective surfaces on which work is to be applied are corrected to the Project Manager's satisfaction. Commencement of work shall be considered acceptance of surfaces and conditions.

9. CONTINUATION OF WORK

The Contractor shall carry on construction and adhere to the progress schedule during all disputes or disagreements between PBNFAF and the 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 the Contractor. The 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 PBNFAF.

12. SAFETY AND PROTECTION

- a. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the construction of the Facility. The 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.
 - ii. All the work and all materials or equipment to be incorporated therein, whether in storage on or off the construction site; and
 - iii. 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.
- b. The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction over the safety of persons or property; shall protect such persons from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The 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 12.a.(i) above, caused directly or indirectly, in whole or in part, by the Contractor, any subcontractor or consultant, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable shall be remedied by the Contractor. The 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 the Contractor that the Facility is acceptable, except as otherwise provided in Article 27, Use of Completed Portions.
- c. The 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 the Contractor's Designated Representative unless otherwise designated in writing by the Contractor to the City.

13. CLEANING UP AND REMOVAL OF EQUIPMENT

The Contractor shall, at all times, keep the construction site free from accumulation of waste materials or rubbish caused by the Contractor's operations. At the completion of the construction, the 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 the Contractor fails to clean up at the completion of the construction, the City may do so, and the cost thereof shall be charged to the 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 Bonds (Surety)

- i. A Performance Bond and a Payment Bond (separate Performance Bond and separate Payment Bond) of the form and containing all the provisions of the Performance and Payment Bonds (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 the City the completion and performance of the Project covered in this Agreement as well as full payment of all suppliers, materialmen, laborers, and 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 such that the Contractor shall, upon notification by the 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 Bonds required herein shall be in conformance with Chapter 255.051, *Florida Statutes*, and shall be on such forms provided by the City.
- v. The 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 Performance and Payment Bonds, the 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 the 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 that is also authorized to do business in the State of Florida. Both Bonds shall show the 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	A.M. 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 the City

- (1) The Contractor shall indemnify and hold harmless the City and PBNAF, its officers, and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the design and construction of the Indoor Recreational Facility. The indemnification herein is limited to the greater of the Certificate of Insurance 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 the 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 the City that may result from the operations and activities under this Agreement, whether performed by the Contractor, its subcontractors, its consultants, or anyone directly or indirectly employed by any of the above.
- (3) The Contractor is obligated to comply with the foregoing indemnification provisions; however, the collateral obligation of insuring this indemnity shall be complied with as set forth in the Agreement.

d. Insurance

The Contractor shall provide, pay for, and maintain in force at all times such insurance, including Workers' Compensation Insurance, Employer's Liability Insurance, and 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 the City the protection contained in the foregoing indemnification and save harmless clauses

undertaken by the Contractor. The Comprehensive General Liability Policy shall clearly identify the foregoing indemnification and save harmless clauses by the "Additional Insured" endorsement under this Article.

Such policy or policies shall be issued by companies authorized to do business in the State of Florida and that have a resident agent licensed in Florida. The Contractor shall specifically protect the City by naming the City as "Additional 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 and 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 the Contract calls for the installation 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 Fifty Thousand Dollars (\$50,000) per claim.

Builders Risk / Installation Floater – The Contractor shall take out and maintain, as applicable during the construction of the Facility, "All Risk"-type Builders Risk Insurance satisfactory to the City for the completed value of the Facility, which shall protect the Contractor and the City as their interests may appear, for the following hazards to the work, encompassing structures in the course of construction, including PBNAF's, 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 the 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 the 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. The 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. The City reserves the right to require a certified copy of such policies upon request. All Certificates shall state that the City shall be given thirty (30) calendar days' prior written notice of cancellation and/or expiration.
- g. The official title of the City is "City of Palm Beach Gardens". This official title shall be used in all insurance or other legal documentation. The City shall be included as "Additional Insured" with respect to liability arising out of operations performed for the City by or on behalf of the Contractor or acts or omissions of the Contractor in connection with such operation.

EXHIBIT "C"

FUND-RAISING AND CONSTRUCTION PLAN

This Exhibit sets forth the fund-raising and construction requirements and milestones, which have been established by the City and accepted by PBNAF. PBNAF acknowledges that a failure to comply with the requirements and milestones of this Fund-Raising and Construction Plan shall be considered a default pursuant to Article 51 of this Agreement.

PBNAF shall submit a written report to the City within five (5) business days after each milestone deadline with evidence that the fund-raising and construction requirements have been met. Failure to timely submit any report shall be an incident of material breach and/or default. Timely submission of a report which fails to contain evidence sufficient to demonstrate that the subject milestone has been met shall also be an incident of material breach and/or default.

Fund-Raising Milestones

Milestone Deadline	Funding Requirement
6 months after execution of Agreement	\$6,500,000 funding secured ¹
15 months after execution of Agreement	Remainder of all financing secured

Construction Milestones

Construction Progress	Milestone Deadline
Construction Plans Submitted to City	9 months after execution of Agreement
Final Construction Plans Approval Obtained	12 months after execution of Agreement
Construction of Facility Begins	15 months after execution of Agreement
Construction of Facility Completed	3 years after execution of Agreement

¹ NOTE: Acceptable forms of "secured" funds are cash on deposit in a bank in Florida, approved loan proceeds, committed and legally enforceable donor pledges, and any other certified source of funds in a form such that federally insured lending institutions would accept as collateral sufficient to secure a loan.

EXHIBIT "D"

LEGAL DESCRIPTION OF THE PROPERTY

Parcel 1:

A parcel of land in the Southeast 1/4 of Section 12, Township 42 South, Range 42 East, City of Palm Beach Gardens, Palm Beach County, Florida, being more particularly described as follows:

Beginning at a point in the south right-of-way line of Lilac Street (60 feet wide) as dedicated by Right-of-way Deed dated March 26, 1965 and recorded in Official Record Book 1179, at pages 254 et seq., Palm Beach County Public Records, Florida, being 535.80 feet east of the southeast corner of the Plat of Golfers Village as recorded May 1, 1965, in Plat Book 28, page 83 of Palm Beach County Public Records, Florida; thence South 89° 14' 29" East along said south right-of-way line of Lilac Street 470.03 feet to the beginning of a curve bearing to the south having a radius of 25.00 feet and a central angle of 89° 55' 30 " ; thence along the arc of said curve 39.24 feet to the end of said curve; thence South 0° 41' 01" West along the westerly right-of-way line of Plant Drive (60 feet wide) 125.03 feet to a point; thence North 89° 14' 29" West 495.00 feet to a point; thence North 0° 41' 01" East 150.00 feet to the principal place of beginning, being a 495 foot by 150 foot parcel containing 1.702 acres, more or less. Subject to an easement for public utilities and drainage over the south 25 feet thereof, and subject to an easement for public utilities and drainage over the west 6 feet thereof, and subject to an easement for public utilities being the north 25 feet of the east 18 feet of the west 24 feet thereof.

PARCEL 2:

A parcel of land in the Southeast Quarter of Section 12, Township 42 South, Range 42 East, City of Palm Beach Gardens, Palm Beach County, Florida, being more particularly described as follows: Beginning at a point in the south right-of-way line of Lilac Street (60 feet wide) as dedicated by right-of-way deed dated March 26, 1965 and recorded in official Record Book 1179, pages 254, et seq., Palm Beach County Public Records, Florida, being 338.61 feet east of the southeast corner of the Plat of Golfers Village as recorded May 1, 1965 in Plat Book 28, page 83 of Palm Beach County Public Records, Florida; thence South 89° 14' 29" East along said south right-of-way line of Lilac Street 197.19 feet to a point; thence South 0° 41' 01" West 150.00 feet to a point; thence North 89° 14' 29" West 222.22 feet to a point; thence North 0° 41' 01" East 124.97 feet to the beginning of a curve bearing to the east having a radius of 25.00 feet and a central angle of 90° 04' 30 " ; thence along the arc of said curve 39.30 feet to the end of said curve and the principal place of beginning, being a 222 foot by 150-foot parcel containing 0.716 acres more or less. Subject to an easement for public utilities and drainage over the South 25 feet thereof and subject to an easement for public utilities and drainage over the East 12 feet thereof.

PARCEL 3:

A parcel of land lying, situate and being in Palm Beach County, Florida, which is more particularly described herein:

The North 542.88 feet of the South 1050.00 feet of the West 467.22 feet of the East 817.22 feet of the Southeast quarter, Section 12, Township 42 South, Range 42 East, Palm Beach County, Florida. Subject to restrictions, reservations, and easements of record.

Subject and provided, however, that the conveyance evidenced by this Special Warranty Deed shall be for only so long as the entirety of the property conveyed hereby is used as a municipal, non-commercial public park only. In the event that all or any part of the above-described property should be abandoned or should not be used as a municipal, non-commercial public park, then and in that event, by operation of law, the title to the entirety of the above-described property shall revert to the Grantor, its successors or assigns.

PARCEL 4:

The West 50 feet of the East 117.22 Feet of the North 150 feet of the South 1200 feet, and the West 50 feet of the East 867.22 feet of the Southeast 1/4, Section 12, Township 42 south, Range 42 East, Palm Beach County, Florida

AND

The East 50 feet of the West 1146.72 feet of the North 150 feet of the South 1200 feet of the Southeast 1/4, Section 12, Township 42 South, Range 42 East, Palm Beach County, Florida.

All four parcels together comprising Plant Drive Park, the "Property."