

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 23, 2010

Consent  
 Ordinance

Regular  
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** Special Use Agreement with the Village of Royal Palm Beach for the period February 23, 2010, through December 31, 2022, for annual use of recreational facilities at Seminole Palms Park.

**Summary:** The Special Use Agreement allows the Village of Royal Palm Beach (Village) annual exclusive use of multipurpose field #11 and multipurpose field #12 at Seminole Palms Park between the months of July and December for a period of twelve (12) years, and grants the Village permission to install a scoreboard, construct a concession/storage building, install bleachers and install a sound system at the Village's own expense upon approval by the County Parks and Recreation Director. Under the terms of the Agreement, the County will be responsible for year round field maintenance and operational support. The Village is obligated to pay the County \$60,000 annually over the next five (5) years for a total of \$300,000. The costs associated with the year round field maintenance are currently included in the FY2010 Parks Maintenance Division's operation budget, and will be offset by the revenue created by this Special Use Agreement. District 6 (AH)

**Background and Justification:** The Village utilizes County athletic fields through the Parks and Recreation Department's established athletic field permit process. Due to growth in the Village's sports program, the Village needs additional multipurpose field space to accommodate the program needs. The Village does not have adequate resources to construct new fields, but is willing to pay the County for use of County owned fields. The Special Use Agreement between the Village and the County outlines annual use of multi-purpose fields #11 and #12 at Seminole Palms Park between the months of July and December for a period of twelve (12) years in exchange for the annual payment of \$60,000 over the next five (5) years for a total of \$300,000. The Agreement grants the Village permission to install bleachers, a sound system, scoreboard and construct a concession/storage building at the Village's expense and with approval from the Parks and Recreation Director. In exchange for the total fee of \$300,000 over the course of five (5) years, the County will be responsible for year round field maintenance and operational support of County owned fields and standard park amenities utilized by the Village for the purpose of running recreational sports programs.

**Attachment:** Agreement

Recommended by:   
Department Director

1/29/10  
Date

Approved by:   
Assistant County Administrator

2/10/10  
Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2010	2011	2012	2013	2014
Grant Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(60,000)</u>	<u>(60,000)</u>	<u>(60,000)</u>	<u>(60,000)</u>	<u>(60,000)</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<b>NET FISCAL IMPACT</b>	<b><u>(60,000)</u></b>	<b><u>(60,000)</u></b>	<b><u>(60,000)</u></b>	<b><u>(60,000)</u></b>	<b><u>(60,000)</u></b>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>

Is Item Included in Current Budget? Yes  No   
 Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_  
 Object \_\_\_\_\_/Revenue \_\_\_\_\_ Program N/A

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

FUND: General Fund  
 UNIT: Maintenance

Contributions Fr Other Local Gov't – Culture/Rec 0001-580-5221-3778 (\$60,000)

**C. Departmental Fiscal Review:** ckopelakis

**III. REVIEW COMMENTS**

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

*No Cost Savings as Parks and Recreation will continue to maintain the facilities*

*Jim Owl*  
 OFMB *at 2/5/10* *at 2/4* *SP 2/6/10*

*June J. Jacobson* 2/9/10  
 Contract Development and Control

**B. Legal Sufficiency:**

*Anne Delgado* 2/10/10  
 Assistant County Attorney *at the time of review, a certificate of insurance was being obtained*

**C. Other Department Review:**

*At the time of our review, the contract was not executed and the certificate of insurance was not available.*

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

REVISED 10/95  
 ADM FORM 01

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

**AGREEMENT BETWEEN PALM BEACH COUNTY AND THE VILLAGE OF ROYAL PALM BEACH FOR  
UTILIZATION/USAGE OF MULTIPURPOSE FIELDS AT SEMINOLE PALMS PARK**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County", and the Village of Royal Palm Beach, a political subdivision of the State of Florida hereinafter referred to as "Village".

**WITNESSETH:**

**WHEREAS**, it is the intent of the local Government Comprehensive Planning and Development Regulation Act, Section 163.3161(4), Florida Statutes to encourage and ensure cooperation between and among the local government entities to provide for the coordination of development activities between units of local government; and

**WHEREAS**, the County and the Village recognize the benefit to be derived by citizens of the County when the County and the Village work cooperatively to improve Park amenities and provide space for programming; and

**WHEREAS**, the County owns, operates and maintains Seminole Palms Park, hereinafter referred to as the "Park", which includes Calypso Bay Water Park, softball fields, multipurpose fields, open park space, a pavilion and surrounding natural area and property; and

**WHEREAS**, the Village desires to have first priority of use of the multipurpose fields #11 and #12 located in the Park, hereinafter referred to as "Fields" for the facilitation of a Village Sports program; and

**WHEREAS**, the County is receptive to the Village's request to utilize the Fields for seasonal play and activities related to a Village Sports program; hereinafter referred to as "Seasonal Play", as provided for under the terms of this Agreement, provided the County approves the type of use for each Field, and retains its priority use of the Fields at times of the day and week that do not conflict with the Village's use of the Fields for Seasonal Play; and

**WHEREAS**, the County and the Village desire to define their cooperative roles for the effective and efficient utilization of the Fields; the surrounding Park property and Park improvements; and

**WHEREAS**, the County and Village desire to enter into this Agreement; and

**WHEREAS**, entering into this Agreement serves a public purpose.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows;

1. The recitals as set forth above are true and correct and are reaffirmed as if specifically stated herein.
2. For the propose of this Agreement, "Season" is defined as the period of play associated with a Village Sports Program, generally beginning July 1 and ending November 30 annually, and may vary from year to year, upon approval by the County. During Season, the Village shall have priority use of the Fields for practice and games on weekdays between the hours of 5 pm and 10 pm and on Saturdays and Sundays between the hours of 8:00 am and 8:00 pm.
3. During Season, County shall retain the right to use the Fields at times of the day and week that do not conflict with the Village's use of the Fields for Seasonal Play. Outside of the Season, the County retains the right to utilize the Fields at County's discretion.
4. During Season, the Village shall be given access to the press box and scoreboard associated with field #11 for practice and games on weekdays between the hours of 5:00 pm and 10:00 pm and on Saturdays and Sundays between the hours of 8:00 am and 8:00 pm. The County shall be responsible for operational and repair costs associated with the building and scoreboard. Any damage to the press box or scoreboard caused by the Village or its employees, subcontractors, agents or invitees shall be repaired by the Village at its sole cost and expense.
5. The County shall permit the Village to construct, place, operate and maintain at the Village's expense, one (1) concession/storage building in the Park for the Fields. The site, design, construction, and placement of the building shall be coordinated and approved in advance by the County's Director of Parks and Recreation or designee. All utilities shall be maintained and paid for by the Village. Upon termination of this Agreement, all permanent improvements associated with the concession/storage building shall remain the property of the County.
6. The County shall permit the Village to install at the Village's expense, a scoreboard associated with field #12. The design and installation of the scoreboard shall be coordinated and approved in advance by the County's Director of Parks and Recreation or designee. All utilities, repairs and cost associated with scoreboard operations shall be the responsibility of the County. The County shall retain the right to use scoreboard at field #12 at times of the day and week that do not conflict with the Village's use of the scoreboard during Seasonal Play. Any damage to the scoreboard caused by the Village or its employees, subcontractors, agents or invitees shall be repaired by the Village at its sole cost and expense. Upon termination of this Agreement, the scoreboard and all permanent improvements or additions made to the scoreboard by the Village shall remain the property of the County.
7. The County shall permit the Village to install at the Village's expense, bleachers associated with field #12. The design and installation of the bleachers shall be coordinated and approved in advance by the County's Director of Parks and Recreation or designee.

Maintenance of the bleachers shall be the responsibility of the County and the County shall retain the right to use the bleachers at field #12 at times of the day and week that do not conflict with the Village's use of the bleachers. Any damage to the bleachers caused by the Village or its employees, subcontractors, agents or invitees shall be repaired by the Village at its sole cost and expense. Upon termination of this Agreement, the bleachers and all permanent improvements or additions made to the bleachers by the Village shall remain the property of the County.

8. The County shall permit the Village to install, at the Village's expense, a sound system for its sole use at the Fields. The design and installation of the sound system shall be coordinated and approved in advance by the County's Director of Parks and Recreation or designee. Maintenance and repair of the sound system shall be maintained and paid for by the Village. County may use the sound system, upon approval by the Village. County shall repair any damage to the sound system which is caused by the County's use of the sound system. Upon termination of this Agreement, the sound system and all permanent improvements or additions made to the sound system shall remain the property of the County.
9. If for any reason a Village Sports Provider no longer runs or operates the Village's Sport Program prior to the expiration of this Agreement, the Village shall continue to have exclusive use of the Fields as provided for in this Agreement. The Village must utilize field #11 and field #12 for their intended purpose; only scheduling activities appropriate for multi-purpose athletic fields.
10. In exchange for exclusive use of the Fields for the entire term of this Agreement during Season, the Village agrees to fund five (5) years of maintenance costs associated with the Fields. The Village shall provide annual funding of \$60,000 beginning February 28, 2010 and shall thereafter provide the funding in the amount of \$60,000 by December 31, 2010, December 31, 2011, December 31, 2012 and December 31, 2013 for a total of \$300,000. Thereafter, no additional funding is due to the County for Fields maintenance costs until the end of term of this Agreement as set forth below.
11. The term of this Agreement shall be for twelve (12) years, commencing upon the date of execution by the parties hereto, and terminating on December 31, 2022. The parties agree that in the event either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party thirty (30) days written notice to cure the default. In the event the defaulting party fails to cure the default within the thirty (30) day cure period, the non-defaulting party shall be entitled to seek any remedy available to it at law or equity, including but not limited to, the right to terminate this Agreement and seek damages, if any. The parties' performance and obligations to pay for their respective responsibilities under this Agreement are contingent upon annual appropriation by their respective governing bodies and any non-appropriation action by the governing bodies which affect the terms of this Agreement shall not be considered a default under this Agreement. Should the Village give notice of non-appropriation ninety (90) days prior to

any of the funding due dates set forth at paragraph 10 hereinabove, the Village may terminate this Agreement with no further monies due under this Agreement but subject to the provisions of paragraph 16. The County may give notice of termination to the Village during any portion of the term of this Agreement, but if notice of termination is given for any reason other than default by the Village of its obligations, the County shall retain a specific portion of the monies pre-paid by the Village to the County under the terms of this Agreement with the remaining pre-paid monies being subject to a refund to the Village based upon the following formula: the County shall be entitled to retain \$25,000.00 per year of pre-paid monies, for each year or partial year of this Agreement which has past, up and until the date of termination by the County, with any remaining pre-paid monies being refunded to the Village. For example, should the County terminate this Agreement anytime prior to December 31, 2012, the County would retain \$75,000.00 and refund \$105,000.00 to the Village (i.e. \$180,000.00 pre-paid monies by the Village minus a \$25,000.00 per year retainage by the County for each year or partial year of this Agreement term up to December 2012, the fourth and next payment due date.)

12. The County shall provide year round maintenance and operational support for the Fields, including water and electric utility service to the press box. For purposes of this Agreement "year round maintenance and operational support" shall include weekly mowing, fertilizing, weed spraying, irrigation wells, pumps, irrigation heads, zone controls, electrical and piping. The County shall keep the Fields reasonably safe for public use with fire prevention and similar activities maintained for public safety. The County acknowledges and agrees the Village shall not incur any additional costs, other than those specified in this Agreement, due to the County's use of the Fields, sound system, bleachers or scoreboard.
13. The Village shall maintain the concession/storage building in accordance with applicable health standards.
14. Any requests for Field, press box or surrounding park area usage not specifically set forth in this Agreement must receive prior approval from the Director of Parks and Recreation or designee. Any Village requests of the Director of Parks and Recreation shall not be unreasonably withheld.
15. With regard to the use of Fields, press box, park amenities and surrounding park area, the Village and the Village's Sports Provider shall abide by all applicable local laws, County ordinances, County Operating Standards, and Policies and Procedures as outlined in the County's Parks and Recreation Youth Sports Provider Handbook, in addition to the Village's Parks & Recreation Department (the "Department") Policies and Procedures and Department Operating Standards.
16. Upon termination of this Agreement, any and all permanent improvements or additions made to the Field, press box or surrounding park area by the Village shall remain the property of the County.

17. To the extent permitted by law and without waiving the right to sovereign immunity as provided for in Florida Statute, Sec. 768.28, the Village shall hold County, its agents, employees and elected officers harmless from any and all claims, liability, expense, loss, cost or damages that may result to the Villages concession/storage building, including Betterments and Improvements, respective of cause, except due to the County's negligence.
18. The Village shall require of the Village's Sports Provider, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by the Village and the Village's Sports Provider, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the County under this Agreement.
  - A. Commercial General Liability Village shall require the Village's Sports Provider to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding nor limiting Premises/Operations, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be provided on a primary basis
  - B. Worker's Compensation Insurance & Employers Liability Village shall require the Village's Sports Provider to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. Coverage shall be provided on a primary basis.
  - C. Additional Insured Village shall require the Village's Sports Provider to endorse COUNTY as an Additional Insured with a CG026 Additional Insured – Designated Person or Organization endorsement to the Commercial General Liability. The additional insured shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents. Coverage shall be provided on a primary basis.
  - D. Waiver of Subrogation Village shall require the Village's Sports Provider to agree to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Pop Warner to enter into a pre-loss agreement to waive subrogation without an endorsement, then Village agrees to require that the Village's Sports Provider notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Village enter into such an agreement on a pre-loss basis.
  - E. Certificate of Insurance: Prior to execution of this Agreement, the Village shall deliver to the County's representative a Certificate(s) of Insurance from the Village and the Village's Sports Provider, confirming that all insurance coverages required by this Agreement have been obtained. Additionally, at all times during the term of this Agreement, the Village and Village's Sports Provider shall maintain Certificate(s) of Insurance evidencing that all coverages have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a

minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage.

F. Right to Review: County by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

19. At all times during the term of this Agreement, and without waiving the right to sovereign immunity as provided by Sec. 768.28, Florida Statutes, the Village acknowledges that it maintains General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

The Village shall maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

The Village shall maintain Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

When requested, the Village shall provide an affidavit or Certificate of Insurance evidencing its insurance status, which COUNTY agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing requirements shall not relieve the Village of its liability and obligations under this Agreement.

20. To the extent permitted by law and without waiving the right to sovereign immunity as provided by 768.28 Florida Statutes, both the Village and the Village's Sports Provider shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages, or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their negligent performance of the terms of this Agreement or due to the negligent acts or omissions of Village, the Village's Sports Provider, their agents, employees, officers, volunteers or subcontractors. These provisions shall not be construed to constitute agreement by the Village to indemnify the County for its negligent, willful or intentional acts or omissions.
21. The County and the Village each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators or assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the County nor the Village shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the



County, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the County and the Village.

22. This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
23. The Village represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The Village further represents that no person having any such conflict of interest shall be employed for said performance of services.

The Village shall promptly notify the County's representatives, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Village's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the may undertake, and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest, if entered into by the Village. If, in the opinion of the County, the prospective business association, interest or other circumstance would not constitute a conflict of interest by the Village, the County shall so state in the notification and the Village shall, at its option, enter into said circumstance and it shall be deemed not a conflict of interest with respect to services provide to the County by the Village under the terms of this Agreement.

24. The Village shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Village further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
25. The Village shall be, in the performance of all work, services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Village's sole direction, supervision, and control. The Village shall exercise control over the means and manner in which it and its members perform the work, and in all respects the Village's relationship and the relationship of its members to the County shall be that of an Independent Contractor

and not as employees or agents to the County. The Village does not have the power or authority to bind the County in any promise, agreement or representation.

26. The Village warrants and represents that the league will be open to all individuals without regard to race, color, religion, disability, sex, age, national origin, ancestry, martial status, sexual orientation, gender identity or expression.
27. The Village shall require the Village Sports Provider to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the County upon request.
28. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to the extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to person or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
29. All notices required in this Agreement shall be sent by certified mail, return receipt request, hand delivery or other delivery service requiring signed acceptance. If any information in the notice provision changes, that party shall provide written notice of the change to the other party, which change shall be considered incorporated into this Agreement as if it were originally provided for herein. If sent to the County, notices shall be addressed to:

Director of Parks and Recreation  
Palm Beach County  
2700 6<sup>th</sup> Avenue South  
Lakeworth, FL 33461

If sent to the Village, notices shall be addressed to:

Village of Royal Palm Beach  
Attn: Village Clerk  
1050 Royal Palm Beach  
Royal Palm Beach, FL. 33411

30. The Village shall comply with Criminal Background Screening requirements as outlined by the Parks and Recreation Department's Sports Provider Handbook and require the Village Sports Provider to comply with all requirements outlined in said Handbook. The Village shall

be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030, the Criminal History Records Check Ordinance .

31. Both the County and Village's performance and obligation to perform under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by either the Board of County Commissioners or the Village Council.

The County and Village agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms or conditions contained in this Agreement may be added to, modified, or superseded or otherwise altered, except by written instrument executed by the parties hereto.

(Remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Agreement on behalf of the County, and the Village , has hereunto set its hand the day and year above written.

ATTEST:  
SHARON R. BOCK, Clerk &  
Comptroller

PALM BEACH COUNTY, FLORIDA BY ITS  
BOARD OF COUNTY COMMISSIONERS

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

\_\_\_\_\_  
Burt Aaronson, Chair

Date \_\_\_\_\_, 2010 APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY

By: \_\_\_\_\_  
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: *Dennis Zillman*  
Director, Parks and Recreation Department

ATTEST  
*Diane DiSanto*  
Diane DiSanto, Village Clerk  
Date: 2/5, 2010  
(Seal)

VILLAGE OF ROYAL PALM BEACH  
*David A. Lodwick*  
David A. Lodwick, Mayor