

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 8, 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 School Board of Palm Beach County for mutual use of recreational facilities at West Boynton District Park and Park Vista Community High School.

Summary: The Special Use Agreement enables students and faculty of Park Vista Community High School to use the major league baseball field, softball field, multipurpose fields, batting cages and associated park amenities at West Boynton District Park for Florida High School Athletic Association seasonal play and Park Vista Community High School after-school activities. It provides for public use of Park Vista Community High School's eight lighted tennis courts, four lighted multipurpose courts and primary parking lot. The Agreement allows the County to use the gym and portable classrooms for summer camp activities and provides for use of open space owned by the School Board to be utilized by the Parks and Recreation Department for employee parking. District 3 (AH)

Background and Justification: In 1988 the County and the School Board established a Mutual Use Agreement enabling shared use of one another's recreational facilities at no cost. In 2008 the Mutual Use Agreement was updated to refine procedures and develop a more user friendly process. In 1993 the County and the School Board entered into an agreement to coordinate their acquisition and development plans toward the co-location and joint use of recreational facilities. Both agencies recognized the benefit to be derived by all the citizens of the County when the County and the School Board jointly utilize the facilities of the other and, thereby, reduce the overall land requirements and minimize duplication of facilities. In 2005 the County and the School Board entered into a Special Use Agreement (R2005-0899) for West Boynton District Park and Park Vista Community High School enabling shared use of one another's recreational facilities at no cost. This Special Use Agreement is necessary due to the fact that several County facilities at West Boynton District Park will serve as primary athletic venues for Park Vista High School and this exclusive use is beyond the scope of the existing Mutual Use Agreement. In addition, the public has been permitted to utilize the outdoor tennis courts, basketball courts and primary parking area during non-school periods and the County has had access to the gymnasium and portable classrooms for the County sponsored summer camp program. A School Board owned open area has also been utilized by the County for employee parking. Staff recommends the Board approve the Special Use Agreement for cooperative utilization of recreation and athletic facilities.

Attachment: Special Use Agreement

Recommended by: 

Department Director

5-19-10
Date

Approved by: 

Assistant County Administrator

6/2/10
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital 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>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</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>
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

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

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

There is no fiscal impact to the County associated with this item.

C. Departmental Fiscal Review: ckopelakis

III. REVIEW COMMENTS

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

N. Diaz 5/28/10
 OFMB 3/26/10 5/2/10

Don J. Lovelace 5/28/10
 Contract Development and Control

B. Legal Sufficiency:

This Contract complies with our contract review requirements.

Anne Odefant 6/1/10
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 10/95
 ADM FORM 01

**SPECIAL USE AGREEMENT BETWEEN PALM BEACH COUNTY AND THE
SCHOOL BOARD OF PALM BEACH COUNTY FOR MUTUAL USE OF
RECREATIONAL FACILITIES AT WEST BOYNTON DISTRICT PARK AND
FACILITIES AND PARKING AT
PARK VISTA COMMUNITY HIGH SCHOOL**

THIS SPECIAL USE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2010 by and between PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County" and THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, a corporate body politic pursuant to the Constitution of the State of Florida, hereinafter referred to as "School Board," each one constituting a public agency as defined in Part 1 Chapter 163, Florida Statutes, hereinafter referred to collectively as the "parties".

WITNESSETH:

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

WHEREAS, the County and the School Board recognize the benefit to be derived by all the citizens of the County when the County and the School Board jointly utilize the facilities of the other and, thereby, minimize duplication of facilities; and

WHEREAS, County owns, operates and maintains West Boynton District Park hereinafter referred to as "Park" which includes baseball fields, softball fields, multipurpose fields, a recreation center, open park space, skate park, batting cages, playground, heart trail, concession buildings, concession trailers, press box buildings, storage, pavilions and parking areas, legally described in Exhibit "A", attached hereto and incorporated herein; and

WHEREAS, School Board desires to have first priority of use of the Park's major league baseball field #10 and softball field #8 (hereinafter "Fields") as depicted in Exhibit "B", attached hereto and incorporated herein, for the facilitation of the Florida High School Activities Association ("FHSAA") girls softball and boys baseball programs; and

WHEREAS, School Board desires the use of the Park's Multipurpose Fields (hereinafter "Multipurpose Fields") for after-school activities and other Park amenities as may be available when not being used or maintained by the County, as depicted in Exhibit "B", attached hereto and incorporated herein; and,

WHEREAS, County is receptive to School Board's request to utilize the Fields for seasonal play related to the FHSAA girls softball and boys baseball programs and use of other Park amenities and the Multipurpose Fields after school for after-school activities, as provided for under the terms of this Agreement, provided the County retains its priority use of the Fields, Multipurpose Fields and Park amenities at times of the day and week that do not conflict with the School Board's use of the Fields for seasonal play and the Multipurpose Fields for after-school activities; and

WHEREAS, School Board has a, gymnasium, modular classrooms, ("Classrooms") multipurpose courts, tennis courts ("Courts") and parking areas all as depicted in Exhibit "C", attached hereto and incorporated herein (the gymnasium, Classrooms, Courts and parking areas are hereinafter sometimes collectively referred to as the "Board Facilities"); and

WHEREAS, School Board is receptive to County's request to use the gymnasium, Courts, parking areas and Classrooms, as provided under the terms of this Agreement, provided the School Board retains its priority for School Board activities and programs; and

WHEREAS, the County and the School Board desire to define their cooperative roles for the effective and efficient utilization of Fields, Park amenities, gymnasium, Courts, parking areas and Classrooms; and

WHEREAS, the County and School Board 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 hereby agree as follows;

1. The above recitals are true and correct and incorporated herein by reference.
2. For the purpose of this Agreement, "Season" is defined as the period of FHSAA seasonal play and related activities for boys baseball and girls softball, generally beginning January 20 and ending May 31 annually, and may vary from year to year. School Board shall be permitted to use and occupy the Fields during the Season for seasonal play. A member of the School Board staff shall be on-site at the Fields to supervise seasonal play at all times the Fields are in use for practice and games. During the Season, the School Board shall have priority of use of the Fields for practice and games on weekdays between the hours of 3:00 P.M. and 10:00 P.M., on Saturdays between the hours of 9:00 A.M. and 3:00 P.M., and for practice and games at other times which shall be arranged in advance with the County's Parks and Recreation Department Director or designee.

During times that the Fields are being used for seasonal play, the School's General Parking Area shall be open and available for use by School Board and Park patrons as depicted in Exhibit "C".

3. To avoid scheduling conflicts, aid in planning, and assist in better accommodation of requests, the School Board shall submit, in writing, a schedule of all FHSA girls softball and boys baseball games for the Season, at the earliest possible date, to the Palm Beach County's Parks and Recreation Department Director or designee.
4. For the purpose of this Agreement, "After-school" is defined as the period between 3:00 pm and 5:30 pm, Monday through Friday, during the school year, generally beginning August 16 and ending June 4 annually, and may vary from year to year. School Board shall be permitted to use and occupy one or more of the Multipurpose Fields during After-school time except during periods of maintenance or Multipurpose Field renovation. From time to time, the County may desire to utilize the Multipurpose Fields during After-school time for a County program or event. In the event an issue arises which cannot be resolved between the Principal and the West Boynton Recreation Manager regarding the use of the Multipurpose Fields, the dispute shall be referred to the School Board's Chief of Facilities Management and the Director of the County's Parks and Recreation Department who shall both make a good faith effort to resolve the dispute. If a good faith effort cannot be made regarding the use of the Multipurpose Fields, the County's Parks and Recreation Department shall make the final decision regarding County property.
5. The County shall keep the Fields and Multipurpose Fields reasonably safe for public use. The County shall provide year round maintenance and operational support for the Park, Fields and Multipurpose Fields, and County is responsible for water and electric utility service. For the purpose of this Agreement, year round operational support shall include weekly mowing, fertilizing, weed spraying, irrigation wells, pumps, irrigation heads, irrigation zone controls, irrigation piping and electric. The County shall deliver the Fields to the School Board in first class condition at the commencement of each Season. During Season, the School Board shall provide and fund labor, maintenance and materials necessary to prepare the Fields for tournaments, special events held by the School Board, and provide the necessary labor, maintenance and materials in excess of what would normally be provided by the County. The School Board acknowledges and agrees that the County shall not incur any additional costs due to School Board's use of the Fields. The County acknowledges and agrees that additional maintenance needs caused by the County's use of the Fields, during Season, shall be the responsibility of the County.
6. During Season, the School Board shall be given access to the press box and

scoreboards associated with the Fields for practice and games on weekdays between the hours of 3:00 P.M. and 10:00 P.M., on Saturdays between the hours of 9:00 A.M. and 3:00 P.M., and for practice and games at other times which shall be arranged in advance with the County's Parks and Recreation Department Director or designee. The County shall be responsible for all utilities, repairs and operational costs associated with the pressbox and scoreboards. Any damage to the press box or scoreboards caused by the School Board, its employees, agents, subcontractors or invitees shall be repaired by the School Board at its sole cost and expense.

7. During Season, the School Board shall be given access to one (1) County owned concession trailer in the Park for operation during use of the Fields. The placement of the concession trailer will be at the County's sole discretion. The County will be responsible for all utilities, repairs, and operational costs associated with the concession trailer. Any damage to the concession trailer caused by the School Board, its employees, agents, subcontractors or invitees shall be repaired by the School Board at its sole cost and expense.
8. The School Board shall be given year round access to a storage area in the press box situated between the Fields. Within the storage area the School Board shall be permitted to operate a School Board owned ice machine. The School Board shall be responsible for repairs or replacement of the ice machine. The County shall be responsible for all utilities, repairs and operational costs associated with the storage area. Any damage to the storage area in the press box caused by the School Board, its employees, agents, subcontractors or invitees shall be repaired by the School Board at its sole cost and expense.
9. The County shall permit School Board to place and maintain at the School Board's expense two (2) portable storage buildings; one each near Field #8 and Field #10. All costs associated with placement, repair and operation of the storage buildings shall be the responsibility of the School Board. All utilities shall be the responsibility of County.
10. The School Board shall be permitted priority use of the batting cages located near the Fields during Season for practice and games on weekdays between the hours of 3:00 P.M. and 10:00 P.M., on Saturdays between the hours of 9:00 A.M. and 3:00 P.M., and at other times which shall be arranged in advance with the County's Parks and Recreation Department Director or designee, provided the County retains its priority use of the batting cages at times of the day and week that do not conflict with the School Board's use of the batting cages located near the Fields for seasonal play.
11. The County shall keep the batting cage supports, the batting cage fencing and roads and pathways leading to the batting cages reasonably safe for public use, in good repair and condition throughout their estimated lifetime and prevent

undue deterioration. The County is responsible for costs associated with maintenance and repair of such. The County shall be responsible for utilities associated with the operations of the batting cages. The County shall be responsible for the costs associated with the maintenance and repair of the batting cage netting, padding and flooring. The School Board shall be responsible for maintenance and repairs associated with specific high school training equipment.

12. The County shall keep the pressbox building, concession trailer, roads and pathways leading to the pressbox, concession trailer, storage area and batting cages reasonably safe for public use, in good repair and condition throughout their estimated lifetime and prevent undue deterioration. The County is responsible for costs associated with maintenance and repair of such. The County shall maintain fire prevention and sanitation in accordance with applicable health standards.
13. The School Board shall permit the County use of the Classrooms and gymnasium depicted in Exhibit "C" attached hereto for the use of the County sponsored Summer Camp Program. For the purpose of this Agreement, "Summer Camp" is defined as the period of time the School Board officially schedules summer break for School Board students, generally beginning June 4 and ending August 15 annually, and may vary from year to year. County shall be permitted to use and occupy the Classrooms during Summer Camp Monday through Friday from 7:00 am until 6:00 pm. The County shall be permitted to use the gymnasium during Summer Camp Monday through Thursday from 7:00 am to 6:00 pm.
14. The School Board shall permit the public access to the Courts on School Board property for recreation during normal park operating hours, beginning at the end of the normal school day, and at other times that do not conflict with the School Board's use of the Courts. The School Board shall provide access between the School and the County's Park property and maintain gate access points between the School and Park in the location(s) depicted in Exhibit "B". The County shall have the responsibility to unlock the gates for public use at the end of the normal school day and on days when school is not in session and to lock the gates when the Park closes in the evening. Public use of the Courts shall be subordinate to use by the School Board or County. The County shall maintain responsibility for turning on the lights for public use and turning off the lights at the completion of public use. The School Board shall be responsible for utilities and repair service costs associated with the operation and maintenance of the Courts. Any damage to the School Board Facilities caused by the County, its employees, agents, subcontractors or invitees shall be repaired by the County at its sole cost and expense.
15. The School Board shall permit the use of the School Board's General Parking

Area, depicted in Exhibit "C", for overflow parking at the request of the County and for use by the public who are using the Courts. The County shall be responsible for unlocking and locking the School Board's General Parking Area in connection with the County's use thereof. The School Board's General Parking Area shall be used for parking only and for no other use.

16. School Board permits the County year round use of the Maintenance Parking Lot, as depicted in Exhibit "C", solely for vehicular parking purposes by County employees; provided that School Board reserves the right to install or construct and maintain a storage building or container in the Maintenance Parking Lot to support the School's athletic program. The County will be responsible for maintenance and repair of the Maintenance Parking Lot. Any damage to the Maintenance Parking Lot caused by the School Board, its employees, agents, subcontractors or invitees shall be repaired by the School Board at its sole cost and expense.
17. The School Board shall provide year-round maintenance and operational support for the Courts, gymnasium, General Parking Area and Classrooms, including water and electric utility service. The School Board shall keep the Courts, gymnasium and Classrooms reasonably safe for public use with fire prevention and similar activities maintained for proper public safety. The County acknowledges and agrees that the School Board shall not incur any additional costs due to the County's use of the Courts gymnasium, Maintenance Parking Lot, General Parking Area and Classrooms. The School Board shall keep buildings, roads, trails and other structures and improvements in good repair and condition throughout their estimated lifetime to prevent undue deterioration and encourage public use.
18. Outside of Season, Afterschool or Summer Camp, the priority of use of the Fields, Multipurpose Fields, Park amenities, and Board Facilities shall be in accordance with the Interlocal Agreement for mutual use of Recreational Facilities between the parties dated December 3, 2008.
19. County and School Board each agree to provide adequate supervision of activities organized by it to prevent bodily harm to the participants in its activities, and property damage when occupying the other party's property. A member of the County Recreation Services staff or West Boynton District Park's Recreation Center staff shall be on-site at the Courts to monitor their use by the public at all times that they are open to the public by County.
20. The School Board and County each agree that they shall not do, or cause to be done, any act in, on, or upon the Park, Fields, Multipurpose Fields, Park amenities or Board Facilities, which may result in damage or depreciation of the value to the Park, Fields, Park amenities or Board Facilities, or any part thereof.

Each party shall not dispose of, nor allow the disposal of, any contaminants including, but not limited to, hazardous or toxic substances, chemicals, or other agents in the Park, Fields, Multipurpose Fields, Park amenities or Board Facilities in any manner not permitted by law. In the event of discovery of such disposal, the School Board or County shall immediately report such occurrence to the other party, indicating what is being disposed of, and where and how disposal has taken place. The party violating the provisions of this Section shall be responsible for all costs of cleanup, including fines imposed by any applicable agency for contaminants placed on the property of the other party after the Commencement Date of this Agreement. In the event the Board Facilities are damaged during the time that they are open for public use or County Sponsored Activities, respectively, the School Board shall notify the County in writing of the damage and the County shall reimburse the School Board for the actual costs to repair the damage. In the event that the Park, Fields, Multipurpose Fields or Park amenities are damaged during the time that they are being used by the School Board for Seasonal Play or special events, the County shall notify the School Board in writing of the damage and the School Board shall reimburse the County for the actual costs to repair the damage.

21. This Agreement shall become effective when signed by both parties hereto (hereinafter "Commencement Date"). The initial term of this Agreement shall run until June 30, 2011 and shall be automatically renewed up to four (4) additional consecutive one (1) year terms, unless it is terminated by either party in accordance with the termination provisions of this Agreement.
22. The School Board and the County acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes, Section 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. The School Board and County agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes, Section 768.28, arising from the actions of their respective employees, agents and officers. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor consent to be sued by third parties.
23. Without waiving the right to sovereign immunity, the parties acknowledge that they are self-insured for commercial general liability and automobile liability in the amounts specified in the Florida Statutes, Section 768.28, as may be amended from time to time. In the event either party maintains third-party commercial general liability or business automobile liability insurance in lieu of exclusive reliance on self-insurance, the party maintaining the third-party insurance shall

maintain limits of not less than Five Hundred Thousand Dollars (\$500,000) combined single limit for bodily injury or property damage and shall add the other party as an additional insured to the commercial general liability policy, but only with respect to negligence arising out of this Agreement that is not a result of the other party's negligence. The additional insured endorsement for the County shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." The additional insured endorsement for the School Board shall read "The School Board of Palm Beach County, Florida, its Officers, Employees and Agents." The parties agree additional insured endorsements shall provide coverage on a primary basis. Claims-bill tailored coverage shall not be considered third-party liability coverage for purposes of this Agreement. The parties agree to maintain or be self-insured for worker's compensation and employer's liability insurance in accordance with Chapter 440, Florida Statutes, as may be amended from time to time. Each party agrees to provide the other party with an affidavit or certificate of insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the parties agree to recognize as acceptable for the above-referenced coverages. Compliance with the requirements of this paragraph shall not relieve the parties of their liability and obligations under this Agreement.

24. Any notice given pursuant to the terms of this Agreement shall be in writing and hand delivered or sent by U.S. mail. All Notice shall be addressed to the following:

As to the County:

Palm Beach County
Director, of Parks and Recreation
2700 Sixth Avenue South
Lake Worth, Florida 33461

With a copy to:

Palm Beach County
Recreation Services Division Director
2700 Sixth Avenue South
Lake Worth, Florida 33461

With a copy to:

Palm Beach County
Attn: County Attorney
301 N. Olive Ave., Suite 601
West Palm Beach, FL 33401
As to School Board:

Director, Real Estate Services
The School District of Palm Beach County
3661 Interstate Park Road North, Suite 200
Riviera Beach, FL 33404

With a copy to:

Principal
Park Vista Community High School
7900 Jog Road
Boynton Beach, FL 33467

With a copy to:

Office of Chief Counsel
The School District of Palm Beach County
3300 Forest Hill Boulevard
West Palm Beach, FL 33406-5813

25. The parties agree, warrant and represent that no person shall on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, ethnicity, marital status, sexual orientation, gender, gender identity and expression be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted on the property that is the subject to this Agreement.
26. In the event that either party's property is unavailable for use by the other party for the use provided in this Agreement as a result of the need for construction, unscheduled maintenance, emergency repairs or the occurrence of any force majeure event, the owner of the property shall have no liability for any proximate, direct or indirect loss, damage, cost or injury suffered by the party seeking to use the other's property. Use of any property may be withheld or restricted by the owner of that property until construction or repairs are completed.
27. School Board shall comply with the Palm Beach County Code, Article 2, Chapter 21, as the same may be amended, with respect to any and all rules, hours of operation, and/or any special event activity or use occurring on or about the Fields and Park.
28. The parties agree that, in the event the School Board is in default of its obligations under this Agreement, the County shall provide the School Board thirty (30) days written notice to cure the default. In the event the School Board fails to cure the default within the thirty (30) day cure period, the County shall have no further obligations under this Agreement. The parties also agree that, in the event the County is in default of its obligations under this Agreement, the

School Board shall provide the County thirty (30) days written notice to cure the default. In the event the County fails to cure the default within the thirty (30) day cure period, the School Board shall have no further obligations under this Agreement. The Director of the Parks and Recreation Department is hereby authorized to provide such notice to the School Board. The Chief Operating Officer of the School Board is hereby authorized to provide such notice to the County.

29. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by either party, without cause, upon ninety (90) days prior written notice to the other party. This Agreement may also be terminated with cause upon expiration of the thirty (30) day cure period provided for in Section 28 above. The Director of the Parks and Recreation Department is hereby authorized to provide such notice to the School Board. The Chief Operating Officer of the School Board is hereby authorized to provide such notice to the County.
30. Upon termination for any reason, School Board shall remove its gear, equipment and/or other above-ground apparatus, as directed by the Parks and Recreation Department Director, and restore the Park, Fields, Multipurpose Fields, and any Park amenities to at least the same condition the Park, Fields, Multipurpose Fields or Park amenities were in prior to entering into this Agreement, normal wear and tear expected. Upon termination for any reason, County shall remove its equipment and/or personal property from the School Board's property.
31. This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County, Florida.
32. In the event that any section, paragraph, sentence, clause or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
33. This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, written or oral, relating to this Agreement.
34. Except as otherwise provided for in this Agreement, this Agreement may be modified and amended only by written instrument executed by the parties hereto.
35. This Agreement is made solely and specifically among and for the benefit of the parties hereto, and no other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

36. In the event an issue arises which cannot be resolved between the School Board's Principal and the Director of Recreation Services regarding the use or availability of a facility, the dispute shall be referred to the School Board's Chief of Facilities Management and the Director of the County's Parks and Recreation Department who shall both make a good faith effort to resolve the dispute. If a good faith effort cannot be made, School Board's Chief of Facilities Management shall make the final decision regarding School Board property and the Director of the County's Parks and Recreation Department shall make the final decision regarding County property.
37. No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.
38. Neither party shall be considered the author of this Agreement since the parties have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.
39. Neither party shall be required to make any improvements or repairs as a condition of use. The parties shall accept the properties and facilities in their "As is", "Where is" condition. The parties acknowledge and agree that neither party has made any warranties or representations to the other party regarding their property and facilities, including, but not limited to, any representations or warranties regarding the suitability for use by the other party.
40. Notwithstanding any provision of this Agreement to the contrary, the use by either of the parties shall only amount to a license to use the other party's property and facilities on a non-exclusive basis, which license shall be revocable by the party licensing the use for any reason whatsoever. The parties agree that nothing in this Agreement shall be construed as granting either party any title, interest or estate.
41. Each party's performance and obligations under this Agreement shall be contingent upon an annual budgetary appropriation by its respective governing body for subsequent fiscal years.
42. The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.
43. Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

44. A copy of this Agreement shall be filed with the Clerk of the Circuit Court by the County in and for Palm Beach County pursuant to Section 163.01(11), Florida Statutes.
45. Palm Beach County has established the Office of the Inspector General in Ordinance 2009-049, as may be amended, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor and inspect the activities of the School Board, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statute, in the same manner as a second degree misdemeanor.

IN WITNESS WHEREOF, the undersigned parties have signed this Agreement on the date first above written.

ATTEST:

SHARON R. BOCK,
Clerk & Comptroller

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


By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney


APPROVED AS TO TERMS AND
CONDITIONS

By: 
Dennis Eshleman, Director
Parks and Recreation Department

SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  4/22/10
School Board Attorney

By: 
Monroe Benaim, M.D., Chairman

ATTEST:


By: 
Arthur C. Johnson, Ph.D., Superintendent

EXHIBIT "A"
WEST BOYNTON DISTRICT PARK
LEGAL DESCRIPTION

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 10,
TOWNSHIP 45 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA,
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF SAID SECTION 10;

THENCE ALONG THE EAST LINE OF THE SAID SOUTHEAST QUARTER, N 03°
46' 08" E, FOR 1,795.40 FEET TO THE SOUTHERLY BOUNDARY OF THE
SPRINGS PLAT NO. 1, RECORDED IN PLAT BOOK 80, PAGES 92 THROUGH
95 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA;

THENCE ALONG SAID BOUNDARY, S 89° 46' 15" W FOR 1,293.34 FEET;

THENCE CONTINUE ALONG SAID BOUNDARY AND THE SOUTHERLY EXTENSION
THEREOF, S 03° 46' 12" W FOR 664.74 FEET;

THENCE N 88° 00' 00" E FOR 409.60 FEET;

THENCE S 02° 00' 00" E FOR 593.24 FEET TO A NON-TANGENT CURVE
CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 301.00 FEET, WHERE
THE RADIAL LINE BEARS S 71° 16' 49" E;

THENCE SOUTHEASTERLY ALONG SAID CURVE TO THE LEFT, THROUGH A
CENTRAL ANGLE OF 113° 24' 18" FOR 595.77 FEET TO A POINT OF
REVERSE CURVATURE WITH A CURVE CONCAVE TO THE SOUTHWEST, HAVING
A RADIUS OF 28.50 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE TO THE RIGHT, THROUGH A
CENTRAL ANGLE OF 94° 27' 21" FOR 46.98 FEET TO A POINT OF
TANGENCY;

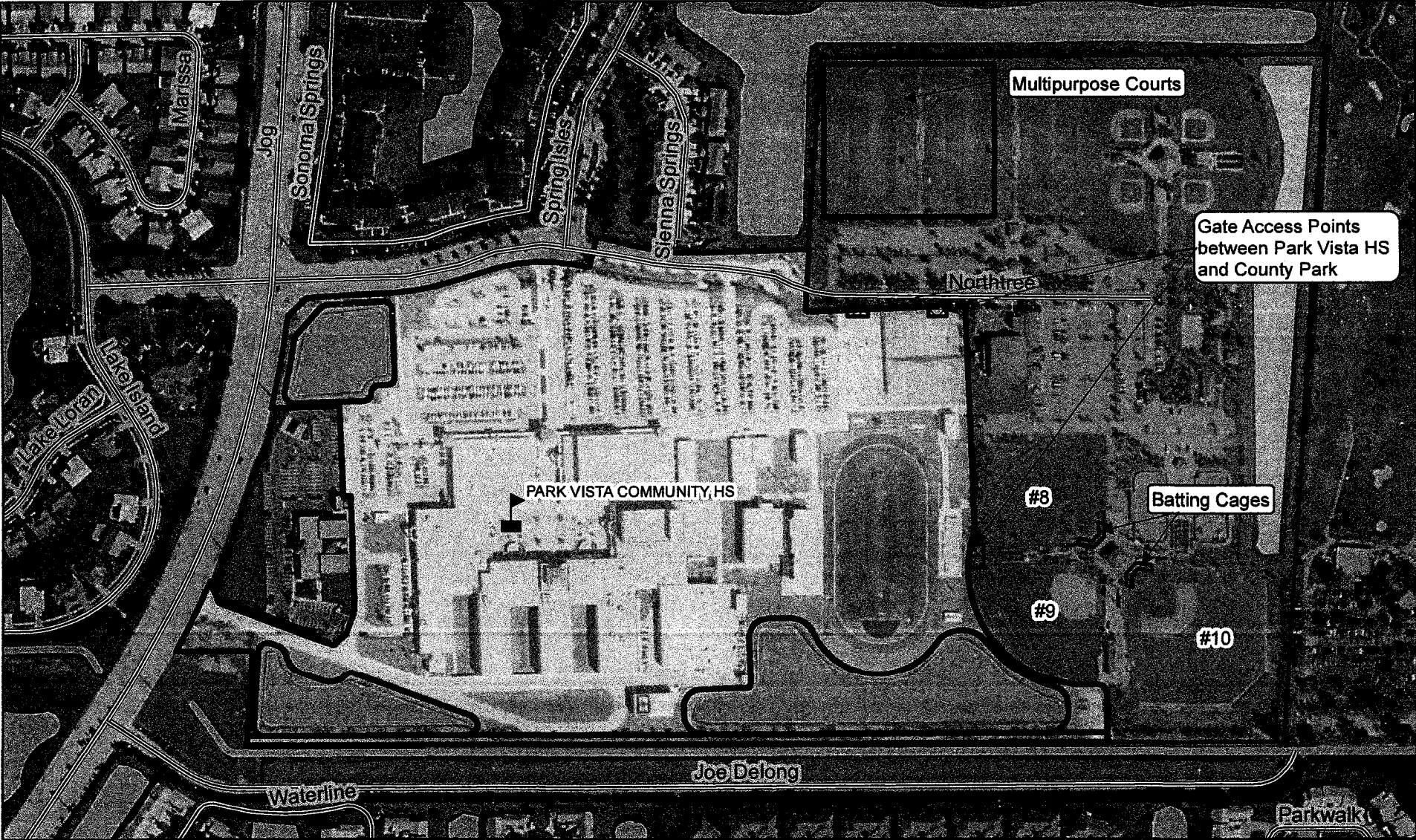
THENCE S 00° 13' 45" FOR 121.36 FEET TO THE SOUTH LINE OF THE
SAID SOUTHEAST QUARTER;

THENCE ALONG THE SAID SOUTH LINE OF THE SOUTHEAST QUARTER, N 89°
46' 15" E FOR 448.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 39.678 ACRES, MORE OR LESS.

West Boynton Park

Exhibit "B"



== Roadways Waterways School Boundary County Park



2/2/2010 - S. Gilles
Revised: 4/13/2010
Park_Vista_HS_Exhibit_B.mxd

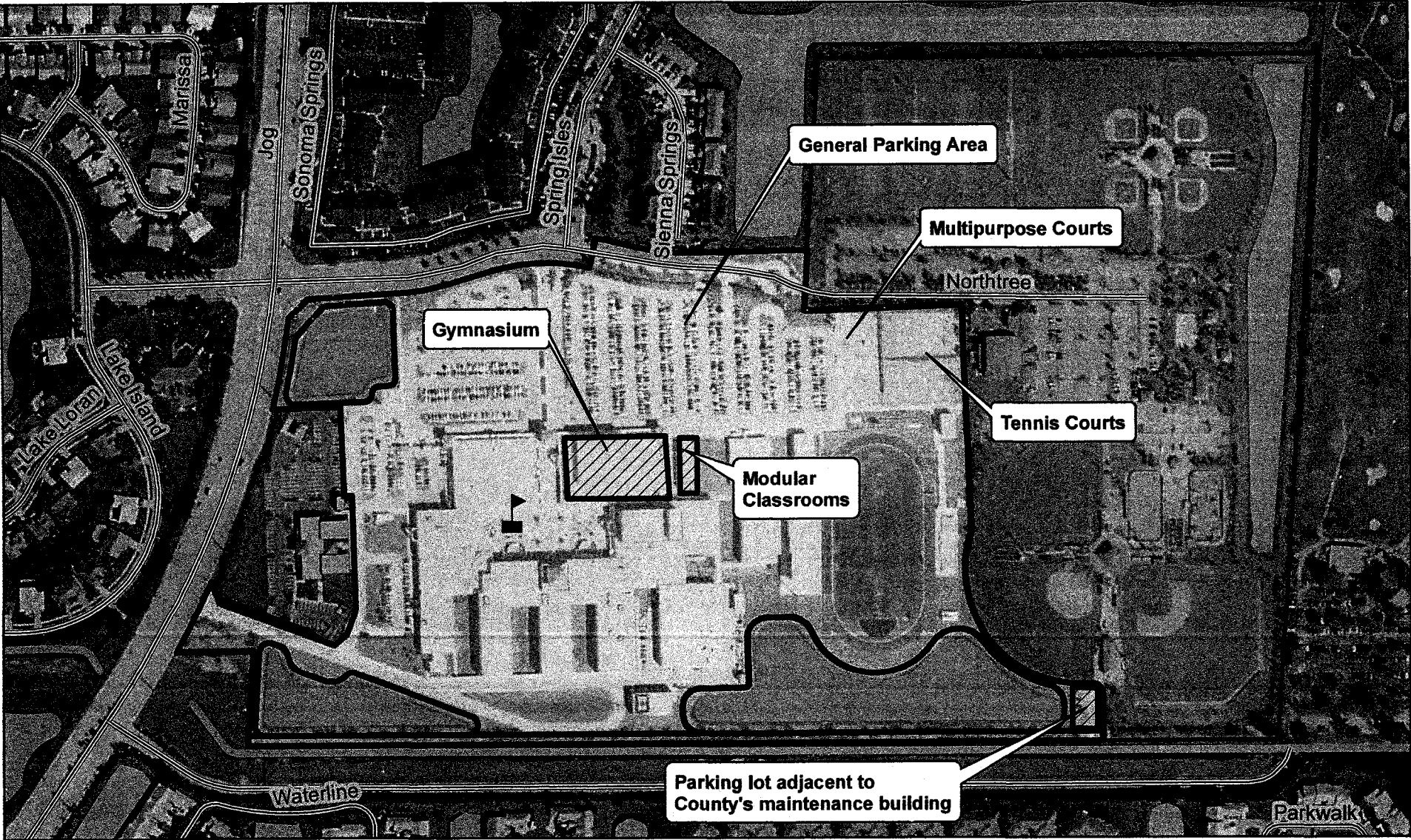
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Park Vista Community High School

Exhibit "C"



-  School Boundary
-  Roadways
-  County Park
-  Waterways



2/2/2010 - S. Gilles
Revised: 4/13/2010
Park_Vista_HS_Exhibit_C.mxd

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