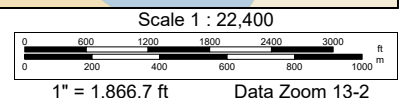
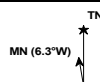


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Ancillary Parking  
Approximate

Pond (To be  
maintained by  
County)

Autumnale  
Softball complex

Bob Golazo

Stimmers Young (and  
entrance dog park)

Softball Field

Google

**LEASE AGREEMENT BETWEEN  
POLK COUNTY, FLORIDA  
AND  
THE CITY OF AUBURNDALE**

This Lease Agreement (the "Agreement") is entered into as of October 1, 2023 (the "Effective Date") by and between **Polk County**, a political subdivision of the State of Florida, its successors and permitted assigns, hereinafter referred to as "COUNTY" and the **City of Auburndale**, a municipal corporation existing under the Laws of the State of Florida, hereinafter referred to as "CITY", its successors and permitted assigns. The COUNTY and the CITY shall hereinafter be collectively referred to as the "PARTIES."

**WITNESSETH:**

**WHEREAS**, the COUNTY owns certain real property (hereinafter referred to as the "LEASED PREMISES"), more particularly described in Section 2 below, which is located at the area of County Road 542 and Recker Highway as described and shown in **Exhibits "A" and "B"** which are attached hereto and incorporated by reference herein; and

**WHEREAS**, the CITY leases a portion of real property from the COUNTY for use as a Softball Complex pursuant to that certain lease agreement dated August 3, 1993, and signed by the COUNTY on November 23, 1993, as amended on August 6, 2013, with an expiration date of September 30, 2023 (the "Softball Lease"); and

**WHEREAS**, the CITY leases a portion of real property from the COUNTY for the use of ancillary parking for the Softball Complex pursuant to that certain lease agreement dated November 28, 2000 (the "Parking Lease"), as extended by the first renewal option pursuant to a Memorandum of Understanding dated August 24, 2005, and further extended for the second renewal option pursuant to the First Amendment to Lease Agreement dated October 1, 2010 and ending on November 27, 2015, and beginning on November 18, 2015 and thereafter, automatically renewing for a one-year term. The Parking Lease will expire upon execution of this new Lease Agreement, as set forth in Section 1 below; and

**WHEREAS**, the CITY has requested, and the COUNTY has agreed, to lease the property, previously identified, described and leased pursuant to the "Softball Lease" and the "Parking Lease", respectively, now collectively referred to in this Lease Agreement as the "LEASED PREMISES" and has additionally agreed to consolidate both leases into this Lease Agreement as the LEASED PREMISES as described and/or depicted in **Exhibits "A" and "B"** attached hereto and incorporated herein by reference, to the CITY for the purposes stated in Section 3 below, upon the terms and conditions stated in this Agreement.

**NOW THEREFORE, IN CONSIDERATION** of the mutual promises, covenants and conditions hereinafter contained, the parties agree as follows:

**SECTION 1. RECITALS.**



The above recitals are true and correct and incorporated herein. The CITY and the COUNTY each acknowledge and agree that the Softball Lease and the Parking Lease, as described above, are both hereby terminated effective September 30, 2023.

## **SECTION 2. LEASED PREMISES.**

The COUNTY, for and in consideration of the terms and conditions hereinafter contained to be kept, performed, and observed by the CITY, does hereby lease to the CITY, and the CITY does hereby lease and accept from the COUNTY, the property identified as follows (hereinafter referred to as the LEASED PREMISES):

**Being a portion of Polk County Property Appraiser Parcel ID Number: 262825-000000-012260**

**See Exhibits “A” and “B” attached**

**hereto and incorporated herein by reference.**

## **SECTION 3. USE OF THE LEASED PREMISES.**

a. The LEASED PREMISES shall be utilized by the CITY on a continuous basis during the term of this Agreement for the purpose of operating a Recreational Softball Complex and for the purposes of providing ancillary parking to the Softball Complex. The County has a plan for a water quality project in the vicinity of the ancillary parking area and the CITY and the COUNTY agree that the dimensions of the area may need to be adjusted in the future to accommodate COUNTY’s planned water quality project.

b. The COUNTY retains the adjoining property for recreational purposes. From time-to-time the COUNTY may conduct events that require additional parking or use of the LEASED PREMISES. If COUNTY or its permitted assigns reasonably believes that it will require additional parking or use, it may request permission in writing to utilize the LEASED PREMISES. Said permission may only be denied if the CITY is conducting an event on the same date and time such that the LEASED PREMISES are being used by the CITY and that such event was scheduled prior to COUNTY’S request to use the LEASED PREMISES. The COUNTY will coordinate use scheduling efforts with the CITY’S designee and strive to provide 14 calendar days’ written notice prior to the date the COUNTY intends to use the LEASED PREMISES.

c. The CITY and COUNTY agree that the ancillary parking area within the LEASED PREMISES may be utilized as a “storage/staging area” for debris and utility companies in event of an emergency (hurricane or storm).

d. The CITY shall conduct all of its operations on the LEASED PREMISES in a high-quality manner and in strict conformity with all applicable laws, rules, regulations, and ordinances. The CITY shall obtain and maintain all necessary permits, licenses and approvals required to conduct its activities on the LEASED PREMISES. If the LEASED PREMISES are used for purposes inconsistent with this Agreement or otherwise in violation of any applicable federal, state or local law, statute, regulation or ordinance, then the CITY shall be deemed in default of this Agreement, and the COUNTY shall have the right to terminate this Agreement, subject to the notice requirements and cure period set forth in Section 9.a, below.

#### **SECTION 4. IRRIGATION.**

The CITY is connected to the existing well on COUNTY's property in order to provide water for irrigation. The CITY shall pay all costs of maintaining the connection of a meter or other monitoring device to determine the amount of the CITY's water usage. The CITY shall pay a pro-rata share of the costs of operating the pump, which costs shall be invoiced monthly. Additionally, the CITY shall pay the cost of all upgrades necessary to maintain irrigation services to the LEASED PREMISES. All potable water shall be supplied by the CITY.

#### **SECTION 5. RENT AND CONSIDERATION.**

The term "Rent" as used in this Agreement shall mean Base Rent and Additional Rent, both as defined in this Section 5, together with any and all other amounts that are payable from the CITY to the COUNTY pursuant to this Agreement.

- a. Base Rent. On or before January 1st of each year this Agreement is in effect, the CITY shall pay the COUNTY an annualized base rent of One Dollar (\$1.00) for the use and occupancy of the Premises. Upon any termination of this Agreement, the CITY shall not be entitled to any pro-rated refund of the annual base rent amount.
- b. Additional Rent. The CITY shall pay as "Additional Rent" all other sums due from the CITY to the COUNTY in accordance with this Agreement.
- c. Other Consideration. As additional consideration for leasing the LEASED PREMISES to the CITY, the CITY shall be responsible for maintenance of the LEASED PREMISES, all utility and irrigation costs, all City and County property and ad valorem taxes and fees, non-ad valorem assessments and any other fees associated with its occupation and/or use of the LEASED PREMISES. Notwithstanding the foregoing, the COUNTY shall continue to be responsible for any and all maintenance and related costs for the permitted storm water pond (POND) along with any associated piping and structures and continue to be responsible for any recertification of the POND which POND is more specifically identified on Exhibit "B" attached hereto and incorporated herein by reference.

#### **SECTION 6. LEASE TERM.**

Unless sooner terminated in accordance with the provisions of this Agreement, the initial term of this Agreement shall be for the continuous period of twenty (20) years beginning on October 1, 2023 (the "Commencement Date") and terminating on September 30, 2043 (Termination Date). Notwithstanding the foregoing, this Agreement may be unilaterally extended by the CITY for one (1) additional ten (10) year renewal term upon ninety (90) days written notice to the COUNTY given prior to the Termination Date, from the CITY, of its intent to renew the Agreement.

#### **SECTION 7. CONDITION OF LEASED PREMISES.**

The CITY accepts the LEASED PREMISES in the condition that the Leased Premises are in as of the Commencement Date. The CITY shall be responsible, at its sole cost, for all maintenance and repairs associated with the LEASED PREMISES and any improvements located thereon except as set forth in Section 5(c) of this Agreement.

#### **SECTION 8. IMPROVEMENTS AND ALTERATIONS.**

The COUNTY acknowledges that the CITY, at its sole cost and expense, intends to operate and maintain ball fields and ancillary parking on the LEASED PREMISES in conjunction with the existing Auburndale Softball Complex, as stated in Section 3, above, and as generally depicted and incorporated herein as Exhibit "B" (collectively, the "Improvements"). The CITY shall ensure that the Improvements, including, without limitation, alterations, modifications, or improvements to any COUNTY roadways, meet all applicable laws, local codes, and regulations, and are approved in writing by the County Manager or his/her designee in advance. Upon the expiration or termination of this Agreement, the Improvements shall, at the sole election of the COUNTY, either: (i) remain in and be surrendered with the LEASED PREMISES and shall become the property of the COUNTY, free and clear of any claims, liens, mortgages or encumbrances; or (ii) be removed by the CITY with the CITY restoring the LEASED PREMISES to substantially the same condition that existed on the Commencement Date, reasonable wear and tear excepted. This Section 8 shall survive expiration or any earlier termination of this Agreement.

#### **SECTION 9. TERMINATION OF AGREEMENT FOR DEFAULT.**

a. Termination for Default: Except as stated in the following sentence, if either party materially defaults in any of its duties or obligations stated in this Agreement (the "Defaulting Party") and fails to cure the same within thirty (30) days after the date that the other party (the "Non-Defaulting Party") delivers written notice to the Defaulting Party of any such default, then the Non-Defaulting Party may terminate this Agreement immediately. If, however, the Defaulting Party's material default is such that it cannot be reasonably cured within thirty (30) days, then the Non-Defaulting Party shall not have the right to terminate this Agreement for such default if the Defaulting Party commences the necessary curative actions within a reasonable time after receiving the Non-Defaulting Party's notice and thereafter diligently pursues the cure to completion. The COUNTY shall not be liable for any loss or damage suffered by the CITY resulting from the COUNTY's exercise of its rights pursuant to this Section 9.

b. This Agreement may be terminated by either party upon three-hundred sixty-five (365) days' prior written notice by the party seeking termination.

#### **SECTION 10. RIGHT OF FIRST REFUSAL.**

In the event the COUNTY determines or decides to sell or lease the Leased Premises to a third party, the CITY shall be provided an opportunity to meet or exceed all offers received by COUNTY. In that regard, the COUNTY shall be required to provide the CITY written notice of any such offers and/or determinations by the COUNTY to sell or lease the Leased Premises so that the CITY has thirty (30) business days to consider said matters and respond in writing to the COUNTY in order to exercise the right of first refusal granted to the CITY herein. The foregoing shall be subject to all applicable laws at the time of any such transaction.

#### **SECTION 11. LIABILITY.**

a. To the extent specified under Section 768.28, of the Florida Statutes, and without waiving any statutory and constitutional sovereign immunity protections, the CITY shall be responsible for (i) monetary damages for bodily injury or death to any person, and (ii) monetary damages for the injury or loss of personal property, that are caused by the negligent or wrongful

act or omission of an employee of the CITY who is acting within the scope of the employee's office or employment while on or around the LEASED PREMISES.

b. LIMIT OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANYONE CLAIMING FOR, BY, OR THROUGH THE OTHER PARTY, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

## **SECTION 12. SOVEREIGN IMMUNITY AND EMPLOYEE STATUS.**

a. Nothing herein shall be deemed a waiver, express or implied, of either parties' sovereign immunity or an increase in the limits of liability pursuant to Section 768.28, of the Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise. Nothing herein shall be construed as consent by either party to be sued by third parties in any matter arising out of any contract, act or action.

b. All the respective privileges and immunities from liability, exemptions from laws, ordinances, and rules, and all pensions and relief, disability, worker's compensation, and other benefits, as held by each party, respectively, shall be unaffected by this Agreement.

c. All costs associated with the compensation and benefits for personnel shall be borne by the party employing said personnel unless otherwise agreed upon in an amendment to this Agreement, which is reduced to writing and executed between the parties.

d. Persons employed by the CITY and/or COUNTY, respectively, in the performance of services and functions pursuant to this Agreement, shall have no claim on the other party to this Agreement for pension, worker's compensation, unemployment compensation, civil service, or any other employee rights or privileges granted by operation of law or otherwise to officers and employees of the other party to this Agreement.

## **SECTION 13. ENTRY FOR INSPECTION AND REPAIRS.**

The COUNTY shall have the right to enter the LEASED PREMISES for inspection at all reasonable business hours, and whenever reasonably necessary so long as such entry does not unreasonably interfere with the City's use of and peaceful enjoyment of the Leased Premises as authorized under this Agreement.

## **SECTION 14. SIGNS.**

The CITY shall be permitted to erect and to place any and all signs on or about the LEASED PREMISES identifying and related to the CITY's use including but not limited to, the identity of the department, traffic control signs and any other signs denoting general information and instructions concerning the CITY's use or its services that are compliant with any applicable sign code rules and regulations.

#### **SECTION 15. ASSIGNMENT.**

The CITY shall not sublet or assign all or any part of the LEASED PREMISES, and the COUNTY shall not permit the use or occupancy of the LEASED PREMISES for any purposes other than those purposes specified or otherwise contemplated herein without the express, prior written consent of the CITY. Neither this Agreement nor any interest herein may be assigned, transferred, or encumbered under any circumstance without the express prior written consent to both parties to this Agreement.

#### **SECTION 16. NO ENCUMBRANCE.**

The CITY shall not mortgage, pledge or otherwise encumber its interests in the LEASED PREMISES or otherwise under this Agreement. The CITY, at its own cost and expense, shall at all times keep the COUNTY's interests in and to the LEASED PREMISES free and clear from and against all claims, liens, and legal processes of the CITY's creditors.

#### **SECTION 17. HAZARDOUS MATERIALS.**

The CITY shall not knowingly or unknowingly generate, store, treat, dispose of, install or otherwise cause or permit any Hazardous Material (defined below) to be brought upon, kept or used in or about the LEASED PREMISES by the CITY, its guests, employees, contractors or invitees. If the CITY fails to comply with the foregoing covenant, then the CITY shall be wholly responsible for (i) all costs incurred in connection with any investigation of site conditions and cleanup, remediation, removal, or restoration work required by any federal, state, or local governmental agency because of the presence of the Hazardous Materials; and (ii) all consequential damage or loss that the COUNTY incurs, both regardless of whether such costs, damages or loss arise during or after the Term. If the CITY must take any remedial action in accordance with this section, the CITY shall first obtain the COUNTY's approval and then immediately take all actions (at the CITY's sole expense) that are necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Materials. The term "Hazardous Materials" is defined to include, but not be limited, to any and all substances, materials, wastes, pollutants, elements or compounds in such quantities as are currently or shall in the future be classified as hazardous, toxic, dangerous or capable of posing a risk of injury to health, safety, or property by any Federal, State or local statute, law, ordinance, code, rule, regulation, order, or decree, excepting therefrom such cleaning materials and petroleum products that are typically sold in most retail grocery or home improvement stores. This Section 17 shall survive the expiration or the early termination of this Agreement.

#### **SECTION 18. NOTICES.**

a. All notices, demands, or other writings required to be given or made or sent in this Agreement, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when in writing and addressed as follows:

**POLK COUNTY:**

Real Estate Services Administrator  
Post Office Box 9005, Drawer RE01  
515 East Boulevard Street  
Bartow, Florida 33831  
863-534-2580

**CITY OF AUBURNDALE:**

City Manager  
Post Office Box 186  
1 Bobby Green Plaza  
Auburndale, Florida 33823



b. All notices required, or which may be given hereunder, shall be considered properly given if (i) personally delivered, (ii) sent by certified United States mail, return receipt requested, or (iii) sent by Federal Express or other equivalent overnight letter delivery company.

c. The effective date of such notices shall be the date personally delivered, or if sent by mail, the date of delivery stated on the return receipt, or if sent by overnight letter delivery company, the date the notice was picked up by the overnight letter delivery company.

d. The parties may designate other parties or addresses to which notice shall be sent by notifying, in writing, the other party in a manner designated for the filing of notice hereunder.

#### **SECTION 19. ENTIRE AGREEMENT.**

This document incorporates and includes 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 this document. 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 between the PARTIES that the COUNTY and the CITY equally contributed to and assisted in the drafting of this Agreement.

#### **SECTION 20. WAIVER OF BREACH.**

A waiver by any party of a breach or violation of any provision of this Agreement shall not operate, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.

#### **SECTION 21. ENFORCEMENT.**

Each party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any disputes or any litigation arising out of, or related to this Agreement, including attorneys' fee, costs, and expenses incurred for any appellate or bankruptcy proceedings.

#### **SECTION 22. AMENDMENTS TO AGREEMENT.**

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

#### **SECTION 23. SEVERABILITY.**

In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement which shall remain in full force and effect and enforceable in accordance with its terms.

**SECTION 24. MUTUAL INTENT.**

It is agreed between the COUNTY and the CITY that the aforementioned provisions represent the true intent of the PARTIES, and that sufficient consideration exists for each to be bound thereby.

**SECTION 25. NO DISCRIMINATION.**

Both parties shall comply with the Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Americans with Disabilities Act of 1990, as amended. Specifically, in the carrying out of this Agreement, neither party shall discriminate in any way as to race, color, creed, national origin, or in any other respect which would violate the aforesaid acts.

**SECTION 26. DRUG-FREE WORKPLACE.**

The CITY shall not permit the presence of illegal drugs in or on the LEASED PREMISES and shall maintain the Premises as a drug-free workplace.

**SECTION 27. RELATIONSHIP.**

This Agreement creates a LESSOR-LESSEE relationship between the parties. Nothing in this Agreement shall be deemed or construed as creating any other relationship between the parties.

**SECTION 28. RADON.**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

**SECTION 29. EFFECTIVE DATE AND DISSEMINATION OF AGREEMENT.**

This Agreement is entered into by and between the PARTIES pursuant to Section 163.01, of the Florida Statutes. Further, fully executed copies of this Agreement shall be kept on file with the respective clerk and/or custodian of both parties.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK;  
THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE  
WITH THE PARTIES' SIGNATURES.**

**IN WITNESS WHEREOF**, the parties have signed this Lease Agreement on the respective dates specified below.

**ATTEST:**

**Stacy M. Butterfield, Clerk**

**POLK COUNTY,**

a political subdivision of the State of Florida

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

By: \_\_\_\_\_  
W. C. Braswell, Chair

\_\_\_\_\_  
County Attorney's Office

Date Signed: \_\_\_\_\_

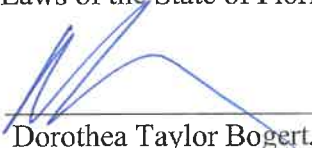
**IN WITNESS WHEREOF**, the parties have signed this Lease Agreement on the respective dates specified below.

**ATTEST:**

**CITY OF AUBURNDALE**

a municipal corporation existing under  
the Laws of the State of Florida

By: \_\_\_\_\_  
Brandon Henry, City Clerk

By: \_\_\_\_\_  
Dorothea Taylor Bogert, Mayor

\_\_\_\_\_  
City Attorney's Office

2-19-24  
Date

Date Signed: 2-19-24

**Exhibit "A"**  
**Description of Softball Complex Area**

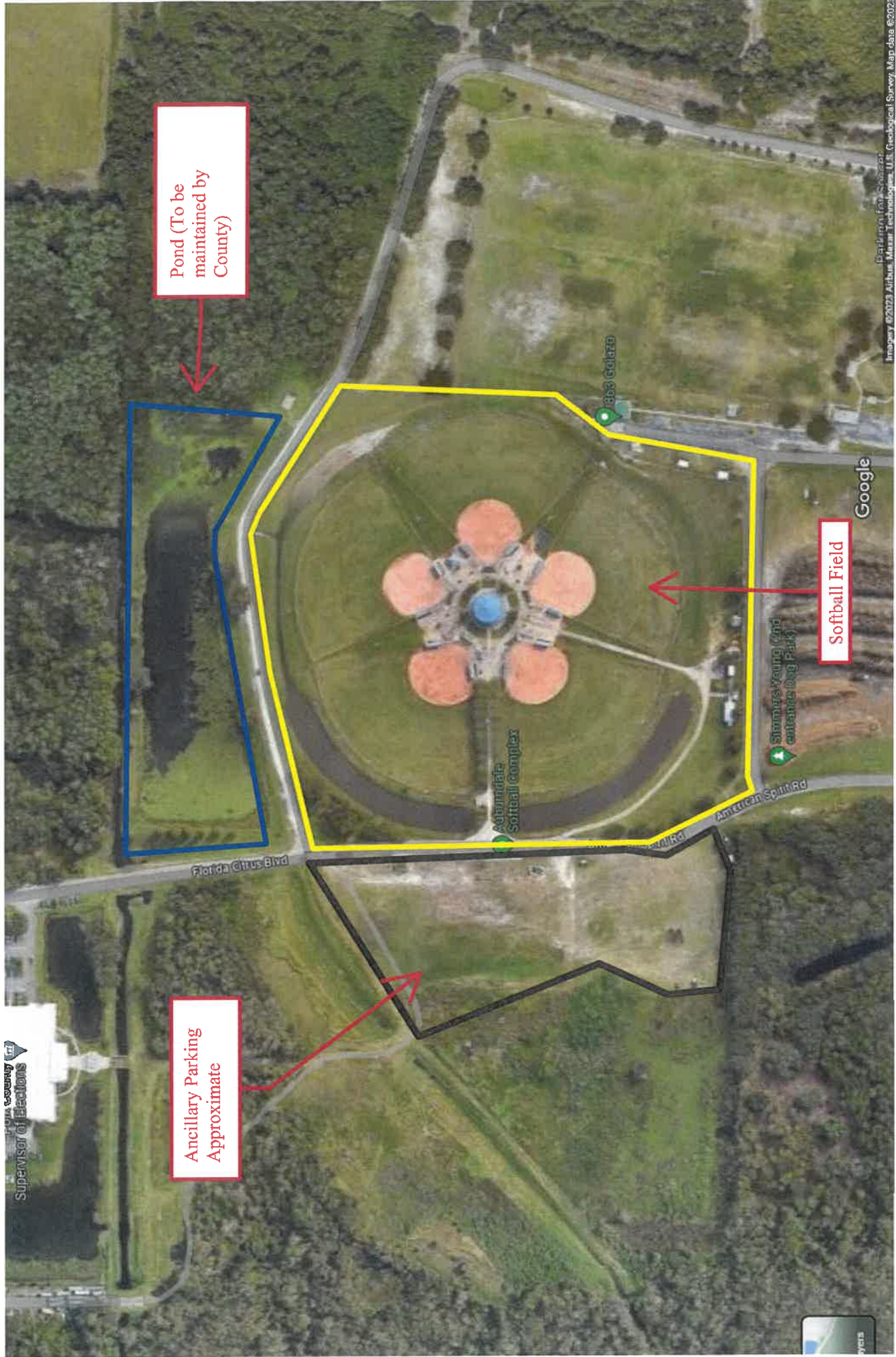
That part of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 23, Township 28 South, Range 25 East, Polk County, Florida, being more particularly described as follows:

Begin at the Southwest corner of the Southeast  $\frac{1}{4}$  of Southwest  $\frac{1}{4}$  of said Section 23; thence North of  $00^{\circ}00'17''$  East, along the West boundary of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of said Section 23, 810.00 feet; thence North  $45^{\circ}09'18''$  East, 279.42 feet; thence South,  $89^{\circ}41'40''$  East, 731.91 feet; thence South  $00^{\circ}00'17''$  West 590 feet; thence South  $38^{\circ}53'06''$  West, 214.06 feet; thence South  $13^{\circ}38'51''$  West, 257.10 feet to the South boundary of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of said Section 23; thence North  $89^{\circ}44'27''$  West, along said South boundary, 735.00 feet to the POINT OF BEGINNING.

Containing 19.861 Acres, more or less.

Pond and Ancillary Parking as depicted on Exhibit "B."





Pond (To be maintained by County)

Softball Field

Ancillary Parking Approximate

Exhibit "B"