

BOARD OF COUNTY COMMISSIONERS

MANATEE COUNTY, FLORIDA



9:00 a.m.

REGULAR USE MEETING

January 10, 2012

- AGENDA SUPPLEMENT -

ADDITIONS TO REGULAR AGENDA

ATTORNEY

32. **Eminent Domain: 44th Avenue East (Parcel 137)** – Approve settlement with William F. Benzel, Deceased, landowner of Parcel 137, for total settlement of \$12,554.35

PARKS AND RECREATION

33. **Request for Fee Waiver** – Consider request from City of Palmetto for a fee waiver for event at Lincoln Park on Saturday, March 24, 2012

MANATEE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT	Eminent Domain; 44 th Avenue East Project, Phase I; Parcel 137, Approval of Settlement	TYPE AGENDA ITEM	Regular
DATE REQUESTED	January 10, 2012	DATE SUBMITTED/REVISED	January 5, 2012
BRIEFINGS? Who?	None	CONSEQUENCES IF DEFERRED	Continue with litigation.
DEPARTMENT/DIVISION	County Attorney's Office	AUTHORIZED BY TITLE	Tedd N. Williams, Jr. County Attorney
CONTACT PERSON TELEPHONE/EXTENSION	Rodney Wade/Sandi Murphy Ext. 3750	PRESENTER/TITLE TELEPHONE/EXTENSION	Rodney C. Wade Deputy County Attorney, Ext. 3750
ADMINISTRATIVE APPROVAL		<i>Jan 11/12</i>	

ACTION DESIRED
INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED

FORM OF MOTION – Approval of settlement between Manatee County and the landowner of Parcel 137 William F. Benzel, Deceased, for the total settlement of \$12,554.35.

This settlement includes (1) full payment for the acquisition of the property for the sum of \$9,000 (with a credit for \$9,000 previously deposited into the Registry of the Court) and (2) all attorney's fees and costs in the amount of \$3,554.35 pursuant to Florida Statutes § 73.092, subject to apportionment proceedings in accordance with Florida Statutes § 73.101, if any, to settle all pending claims against Manatee County for the acquisition of the aforementioned parcel, in the eminent domain case of Manatee County v. William F. Benzel, Deceased, et al., Case No. 2011-CA-3414, Parcel 137.

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy

Article X, Section 6A of the Florida Constitution requires the payment of "full compensation" for the taking of private property for a public purpose. Chapters 73, 74, and 127, Florida Statutes, authorize the County to obtain property by eminent domain.

BACKGROUND/DISCUSSION

- Chapter 74, Florida Statutes, provides for possession and title in advance of entry of the final judgment. Manatee County previously acquired Parcel 137, in fee simple, from landowner William F. Benzel, Deceased, as part of the 44th Avenue East Road Improvement Project, Phase I, by Order of Taking on July 7, 2011. The parent tract is vacant land with drainage improvements and is in the southwest quadrant of the intersection of 44th Avenue East and 12th Street Court East in Bradenton, Manatee County, Florida.
- Parcel 137 is a total acquisition of the fee simple interest approximately 20 feet in length along its boundary with 44th Avenue East with a depth of approximately 302 feet consisting of 5,935 sq. ft. (0.136 acres), more or less. The property appears to be a remnant parcel that resulted after tracts of land around it were sold off over time.
- An easement for drainage and ingress/egress that benefits Manatee County is located on the entire subject property. Before the taking, the utility of Parcel 137 was very limited due to the existing easement. The County's expert appraiser determined the easement severely restricts the permitted uses for the area acquired, as it is appropriate only for drainage improvements, driveway surface, and minor site improvements

such as sod or landscaping, and the value to the property owner is limited. The existing drainage and ingress/egress easement is estimated to encumber 70 percent of the fee simple rights associated with Parcel 137. Before the parcel was acquired, approximately 30 percent of the fee simple rights remained. This acquisition encumbers the remaining 30 percent of the fee simple rights. The ownership interest attributable to the parcel acquired is, therefore, 30 percent.

- Summary of the County's and the landowner's appraisal reports stating the values of the property acquired:

	MANATEE COUNTY APPRAISAL	LANDOWNER APPRAISAL
Appraiser:	Compass Real Estate Consulting	None received.
Date of Value:	January 19, 2011	
Land:	\$9,000 (\$5/sq. ft. x 30% interest acquired)	
Site Improvements:	\$ 0	
Total Value of Land & Improvements Acquired:	\$9,000	
Cost to Cure:	\$0	
Total Compensation:	<u>\$9,000</u>	

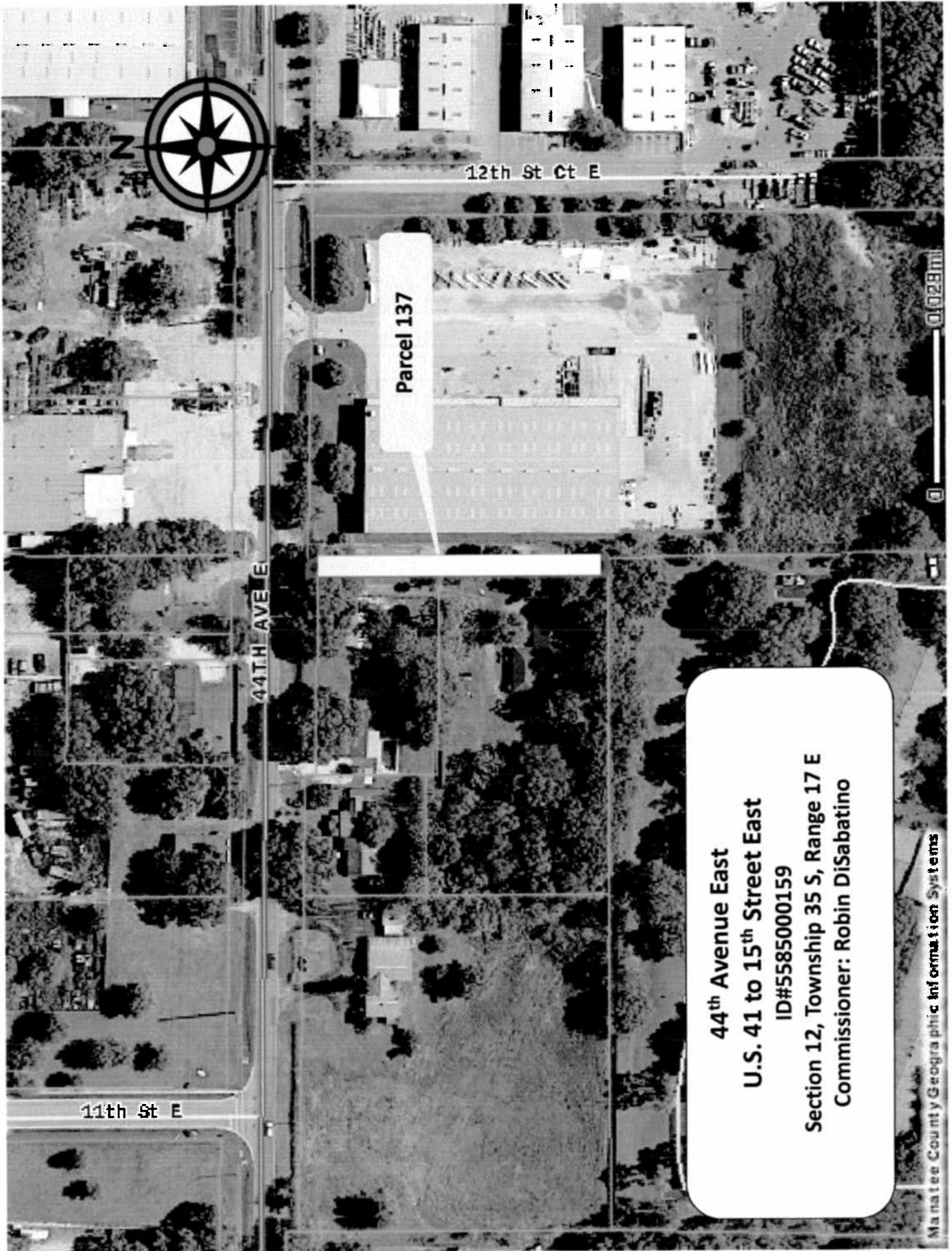
- Pursuant to the Order of Taking, the County deposited \$9,000 into the Registry of the Court on July 21, 2011, which is the date Manatee County acquired ownership of the property. The amount of the deposit was based upon the order of taking appraisal prepared by Manatee County's real estate appraiser Shawn E. Wilson, MAI. Said funds remain in the Registry of the Court.
- As a result of negotiations, the parties reached a settlement for the valuation of the land acquired in the amount of \$9,000 and all attorney's fees and costs pursuant to § 73.092 in the amount of \$3,554.35 for representation of the interests of the unknown heirs of Defendant William F. Benzel, Deceased, in this matter and for investigation to determine if any heirs of Mr. Benzel could be located.
- This settlement takes into account the relative strengths and weaknesses in the case and the estimated costs associated with further litigation as well as the value of the take.
- Based on the foregoing, it is recommended that the Board approve the proposed Stipulated Final Judgment. It is requested that a check in the amount of \$3,554.35 be made payable to Grimes Goebel Grimes Hawkins Gladfelter & Galvano, P.L., and said check be mailed to Jason C. Henbest, Esq., Grimes Goebel Grimes Hawkins Gladfelter & Galvano, P.L., Post Office Box 1550, Bradenton, Florida 34206.

COUNTY ATTORNEY REVIEW

Check appropriate box	
<input type="checkbox"/>	REVIEWED Written Comments: <input type="checkbox"/> Attached <input type="checkbox"/> Available from Attorney (Attorney's initials:)
<input type="checkbox"/>	NOT REVIEWED (No apparent legal issues.)
<input type="checkbox"/>	NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)
<input checked="" type="checkbox"/>	OTHER: This is a County Attorney item.

ATTACHMENTS: (List in order as attached)		INSTRUCTIONS TO BOARD RECORDS:	
1. Aerial Map of Subject Property 2. Proposed Stipulated Final Judgment as to Parcel 137		Forward one (1) approved copy of this Agenda Memo to Deputy County Attorney, Rodney C. Wade (rodney.wade@mymanatee.org).	
COST:	\$9,000.00 – Land Value (Previously Deposited) +\$3,554.35 – Atty's Fees & Costs \$12,554.35	SOURCE (ACCT # & NAME):	334-6001060 Road Impact Fees
COMMENTS:		AMT./FREQ. OF RECURRING COSTS: (ATTACH FISCAL IMPACT STATEMENT)	

cc: Ron Schulhofer, Director, Public Works Department
 Sia Mollanazar, P.E., Deputy Director, Engineering Services Division
 Walter Sowa, Senior Engineering Specialist, Project Management Division
 Charlie H. Bishop, PMP, Director, Property Management Department
 Joaquin Servia, Manager, Property Acquisition Division
 Barbara Carter, SR/WA, Real Property Supervisor, Property Acquisition



11th St E

44TH AVE E

12th St Ct E

Parcel 137

44th Avenue East
U.S. 41 to 15th Street East
ID#5585000159
Section 12, Township 35 S, Range 17 E
Commissioner: Robin DiSabatino

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
MANATEE COUNTY, FLORIDA** **CIVIL DIVISION**

MANATEE COUNTY, a political
subdivision of the State of Florida,

Petitioner,

v.

WILLIAM F. BENZEL, Deceased, et al.;

Defendants.

CASE NO.: 2011-CA-3414

DIVISION: "B"

EMINENT DOMAIN PROCEEDING

PARCEL 137

STIPULATED FINAL JUDGMENT AS TO PARCEL 137

THIS CAUSE having come on upon the stipulation of the Petitioner, MANATEE COUNTY, a political subdivision of the State of Florida, and Defendant WILLIAM F. BENZEL, Deceased, and it appearing to the Court that the parties were authorized to enter into such stipulation, and the Court finding that the compensation to be paid by the Petitioner is full, just, and reasonable for all parties concerned, and the Court being fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED as follows that:

1. Defendant WILLIAM F. BENZEL, Deceased, shall have and recover of and from the Petitioner, MANATEE COUNTY, the sum of NINE THOUSAND and 00/100 DOLLARS (\$9,000.00) in full and fair compensation for Parcel 137 and for all other claims and damages of any nature in this action, exclusive of attorney's fees and costs.

2. Petitioner, MANATEE COUNTY, previously deposited the sum of NINE THOUSAND and 00/100 DOLLARS (\$9,000.00) in the Registry of the Court on July 21, 2011, and said sum remains on deposit at this time.

3. The Court hereby confirms, ratifies, and approves that the right, title, and interest in Parcel 137, as more fully described in the legal description and sketch attached hereto as Exhibit "A" and made a part hereof, is vested in the Petitioner.

4. Pursuant to the Report of the Administrator Ad Litem dated October 28, 2011, attached as Exhibit "B" and the Second Report of the Administrator Ad Litem dated November 18, 2011, attached as Exhibit "C":

a. The Clerk of the Circuit Court is authorized and directed to distribute fifty percent (50%) the funds held in the Registry of the Court (FOUR THOUSAND FIVE HUNDRED and 00/100 DOLLARS (\$4,500.00)) to the residuary beneficiaries of the Estate of GARNET KECK BENZEL, daughter-in-law of Defendant WILLIAM F. BENZEL, Deceased, as follows:

- Fifty percent (50%) to the Florida Eye Bank, Shands Teaching Hospital,
- Twenty-five percent (25%) to the Manatee County Heart Association, and
- In the discretion and request of Earl W. Baden, Jr., Personal Representative of the Estate under the Last Will and Testament for GARNET KECK BENZEL, the final twenty-five percent (25%) be divided equally among the five (5) following entities:
 - Manatee County Health and Rehabilitative Services – Youth Division,
 - Manatee County Kidney Foundation,
 - Manatee County Blood Bank,
 - Happiness House, and
 - Girls' Club of Manatee County.

5. In order to make the above distributions, Jason C. Henbest, Administrator Ad Litem, for the unknown heirs of Defendant WILLIAM F. BENZEL, Deceased, researched each entity/organization and determined the following:

a. The "Florida Eye Bank, Shands Teaching Hospital" is no longer operating. A similarly composed organization with similar goals for the purposes of distribution of a portion of the assets realized in this case would be the Florida Lions Eye Bank. The Clerk of the

Circuit Court shall issue a check payable to the Florida Lions Eye Bank, Post Office Box 016880, Miami, Florida 33101-6880, for **TWO THOUSAND TWO HUNDRED FIFTY and 00/100 DOLLARS (\$2,250.00)**.

b. The “Manatee County Heart Association” is no longer operating. A similarly composed organization with similar goals for the purposes of distribution of a portion of the assets realized in this case would be the local branch of the American Heart Association. The Clerk of the Circuit Court shall issue a check made payable to the American Heart Association, 11207 Blue Heron Boulevard North, St. Petersburg, Florida 33716, for **ONE THOUSAND ONE HUNDRED TWENTY-FIVE and 00/100 DOLLARS (\$1,125.00)**.

c. The “Manatee County Health and Rehabilitative Services – Youth Division” is no longer in existence. A similarly composed organization with similar goals for the purposes of distribution of a portion of the assets realized in this case would be the Children’s Crisis Center at Manatee Glens. The Clerk of the Circuit Court shall issue a check made payable to Children’s Crisis Center at Manatee Glens, 391 6th Avenue West, Bradenton, Florida 34205, for **TWO HUNDRED TWENTY-FIVE and 00/100 DOLLARS (\$225.00)**.

d. The “Manatee County Kidney Foundation” is no longer operating. A similarly composed organization with similar goals for the purposes of distribution of a portion of the assets realized in this case would be the National Kidney Foundation of Florida. The Clerk of the Circuit Court shall issue a check made payable to the National Kidney Foundation of Florida, whose mailing address is 1040 Woodcock Road, Suite 119, Orlando, Florida 32803-3510, for **TWO HUNDRED TWENTY-FIVE and 00/100 DOLLARS (\$225.00)**.

e. The “Manatee County Blood Bank” is no longer operating independently but has merged with Florida Blood Services. For the purposes of distribution of a portion of the

assets realized in this case, such monies could be paid to the Florida Blood Services Foundation. The Clerk of the Circuit Court shall issue a check made payable to the Florida Blood Services Foundation, whose mailing address is 10100 Dr. Martin Luther King Jr. Street North, St. Petersburg, Florida 33716, for **TWO HUNDRED TWENTY-FIVE and 00/100 DOLLARS (\$225.00)**.

f. “Happiness House” has become Easter Seals of Southwest Florida. For purposes of distribution of a portion of the assets realized in this case, such monies could be paid to the Easter Seals of Southwest Florida Foundation. The Clerk of the Circuit Court shall issue a check made payable to the Easter Seals of Southwest Florida Foundation, whose mailing address is 350 Braden Avenue, Sarasota, Florida 34243, for **TWO HUNDRED TWENTY-FIVE and 00/100 DOLLARS (\$225.00)**.

g. The “Girls Club of Manatee County” has become Just for Girls. For purposes of distribution of a portion of the assets realized in this case, such monies could be paid to the Manatee County Girls Club Foundation. The Clerk of the Circuit Court shall issue a check made payable to the Manatee County Girls Club Foundation, whose mailing address is 1011 21st Street East, Bradenton, Florida 34208, for **TWO HUNDRED TWENTY-FIVE and 00/100 DOLLARS (\$225.00)**.

6. Fifty percent (50%) of the funds held in the Registry of the Court (FOUR THOUSAND FIVE HUNDRED and 00/100 DOLLARS (\$4,500.00)) as to the Estate of ELIZABETH M. SCHUMACHER, nee BENZEL, daughter of Defendant WILLIAM F. BENZEL, Deceased, shall remain on deposit with the Registry of the Court pending an order of distribution.

7. The sum of THREE THOUSAND FIVE HUNDRED FIFTY-FOUR and 35/100 DOLLARS (\$3,554.35) as and for full settlement of reasonable and necessary attorney's fees and costs incurred by Defendant, WILLIAM F. BENZEL, Deceased, be taxed against the Petitioner, MANATEE COUNTY.

8. Petitioner, MANATEE COUNTY, shall issue a check made payable to GRIMES GOEBEL GRIMES HAWKINS GLADFELTER & GALVANO, P.L., as full settlement of all claims for attorney's fees and costs as to Parcel 137 in the amount of **THREE THOUSAND FIVE HUNDRED FIFTY-FOUR and 35/100 DOLLARS (\$3,554.35)** within thirty (30) days of the receipt by Petitioner's counsel of a conformed copy of the entry of this Stipulated Final Judgment by the Court and mail said check to JASON C. HENBEST, ESQ., Grimes Goebel Grimes Hawkins Gladfelter & Galvano, P.L, Post Office Box 1550, Bradenton, Florida 34206.

DONE AND ORDERED in Chambers at Bradenton, Manatee County, Florida, on this _____ day of January, 2012.


DIANA L. MORELAND
Circuit Court Judge

Conformed copies to:
Rodney C. Wade, Esq.
Jason C. Henbest, Esq.

STIPULATION

The parties, Petitioner, MANATEE COUNTY, a political subdivision of the State of Florida, and Defendant WILLIAM F. BENZEL, Deceased, by and through undersigned counsel, hereby stipulate and jointly move for the entry of the foregoing Stipulated Final Judgment.

RODNEY C. WADE, ESQ.
Florida Bar No.: 0374091
Deputy County Attorney
Manatee County Attorney=s Office
Post Office Box 1000
Bradenton, Florida 34206-1000
Telephone: (941) 745-3750
Facsimile: (941) 749-3089
rodney.wade@mymanatee.org
Attorneys for Petitioner
MANATEE COUNTY
Dated: _____



JASON C. HENBEST, ESQ.
Florida Bar No.: 14358
Grimes Goebel Grimes Hawkins Gladfelter
& Galvano, P.L.
Post Office Box 1550
Bradenton, Florida 34206
Phone No.: (941) 748-0151
Facsimile No.: (941) 748-0158
jhenbest@grimesgoebel.com
Attorney for Defendant
WILLIAM F. BENZEL, Deceased
Dated: 1/5/2012

Description and Sketch

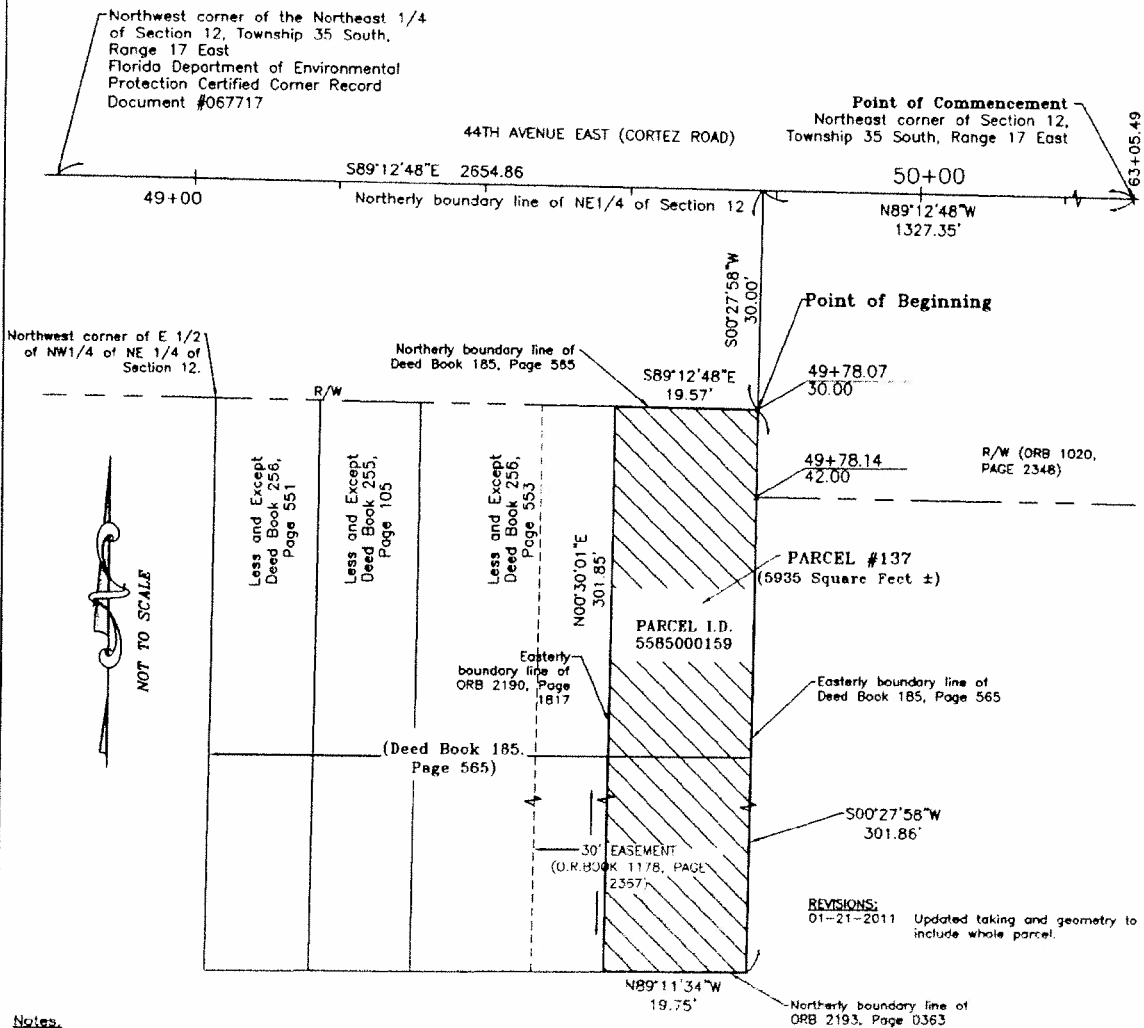
(NOT A SURVEY)

DESCRIPTION: PARCEL #137

The parcel described in Deed Book 185, Page 565, Less and Except Deed Book 255, page 105. Deed Book 256, page 551, and Deed Book 256, page 553 of the Public Records of Manatee County, Florida, being more specifically described as follows:

COMMENCE at the Northeast corner of Section 12, Township 35 South, Range 17 East, Manatee County, Florida; thence N89°12'48"W, 1327.35 feet along the northerly boundary line of the Northeast 1/4 of said Section 12; thence S00°27'58"W, 30.00 feet to the northerly boundary line of said parcel for the POINT OF BEGINNING; thence S00°27'58"W, 301.86 feet along the easterly boundary line of said parcel to the northerly boundary line of Official Records Book 2193, Page 0363 of the Public Records of said County; thence N89°11'34"W, 19.75 feet along said northerly boundary line to the easterly boundary line of the parcel described in Official Records Book 2190, Page 1817 of the Public Records of said County; thence N00°30'01"E, 301.85 feet along said easterly boundary line to the northerly boundary line of said parcel; thence S89°12'48"E, 19.57 feet along said northerly boundary line to the POINT OF BEGINNING.

Containing 5935 Square Feet more or less.



Notes.
 1. This description and sketch does not certify or warranty: title, zoning, easements, or freedom of encumbrances.
 2. Not valid without the signature and original raised seal of a Florida licensed surveyor & mapper. This is not a survey.
 3. The basis of bearing is the northerly line of the Northeast 1/4 of Section 12, Township 35 South, Range 17 East (NADB3/90 Florida West Zone State Plane Coordinate System) which bears S89°12'48"E.

T. E. Boyle 1-24-11
 Todd E. Boyle, RSM
 FLORIDA REGISTERED SURVEYOR & MAPPER, MHT

**FEE ACQUISITION
 PARCEL #137
 PROJECT# 3346001060**

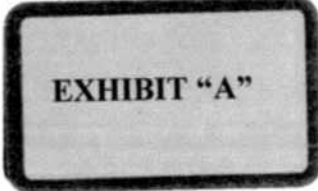
LEGEND	
FCM	= FOUND CONCRETE MONUMENT (4"x4")
FIRC	= FOUND CAPPED IRON ROD
I.D.	= IDENTIFICATION
LB	= LICENSED BUSINESS
NDF	= NAIL AND DISK FOUND (ID NOTED)
ORB	= OFFICIAL RECORDS BOOK
PSM	= PROFESSIONAL SURVEYOR & MAPPER
RSM	= REGISTERED SURVEYOR & MAPPER
R/W	= RIGHT OF WAY
Sec	= SECTION

Drawn By: TRC
Checked By: TEB
Scale: NOT TO SCALE
DWG: Parcel 137
Sheet: 1 OF 1
Section 12, Township 35 South, Range 17 East

MANATEE COUNTY
 PROPERTY MANAGEMENT
 SURVEY DIVISION



1112 MANATEE AVENUE WEST
 BRADENTON, FLORIDA, 34205
 (941) 748-4601



File

#4603-RCU

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL ACTION

Received By
Manatee County Attorney's
Office

Date 10-31-11
Time 2:50 PM
 Rec'd By Mail
 Rec'd By Hand Delivery
 Rec'd By Fax
Time Sensitive Y N U

MANATEE COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Petitioner,

v.

WILLIAM F. BENZEL, Deceased, et al.,

Defendants.

CASE NO.: 2011-CA-3414

DIVISION: "B"

PARCEL NO.: 137

EMINENT DOMAIN PROCEEDING

REPORT OF ADMINISTRATOR AD LITEM

COMES NOW, JASON C. HENBEST, the undersigned Court-appointed Administrator Ad Litem for the unknown heirs of WILLIAM F. BENZEL and files the following report of his findings herein:

1. The undersigned was appointed as Administrator Ad Litem in this matter to represent the interest of the unknown heirs of WILLIAM F. BENZEL by virtue of a Court Order entered on July 5, 2011.

2. Pursuant to such order, the undersigned attorney investigated the proposed settlement in this matter as to whether it would be in the best interest of the unknown heirs of WILLIAM F. BENZEL to accept the settlement. Additionally, the undersigned investigated to determine if any heirs could be located.

3. The property is vested in WILLIAM F. BENZEL, by virtue of Warranty Deed recorded in Deed Book 185, Page 565.

4. On or about May 25, 2011, the instant action was initiated by the petitioner to condemn a portion of the property then owned by WILLIAM F. BENZEL and the unknown heirs, devisees, legatees, or grantees thereof.

5. On or about July 7, 2011, this Honorable Court entered the stipulated order of taking.

6. The total amount deposited by the County as compensation for the taking is \$9,000.00. To date, that amount remains on deposit with the Clerk of the Circuit Court.

7. After investigating the property and reviewing the appraisal prepared at the insistence of the County, the undersigned agrees that the compensation is appropriate for the interest taken and the damages realized by the owners.

8. The Administrator has diligently attempted to identify any heirs living.



9. In or about December 1959, WILLIAM F. BENZEL died. During his life, he was married to HELEN W. BENZEL and had two children, WILLIAM RICHARD BENZEL and ELIZABETH M. BENZEL. Both children were born of the marriage between William F. and Helen Benzel.

10. When William F. Benzel died, his interest in this property would have passed to his wife and/or his children.

11. The Administrator has been unable to determine the precise date of death for Helen W. Benzel. Records indicate that she predeceased her children. However, there is no record of any will having been filed or any probate proceeding. Therefore, any interest she may have had in this property would have passed to her children.

12. The Administrator has been able to determine that WILLIAM RICHARD BENZEL, the son of WILLIAM F. BENZEL, was married to GARNET L. KECK, a/k/a Garnet Keck Benzel and Garnet L. Benzel. William Richard Benzel died in 1972, leaving his wife but no children. William Richard Benzel's interest in the property would have passed to his wife.

13. Garnet Benzel died on February 1, 1986. Her Will was admitted to probate in Manatee County. The personal representative of the estate was Earl W. Baden, Jr. Her Will made no mention of this property, but it identified her residuary beneficiaries as follows:

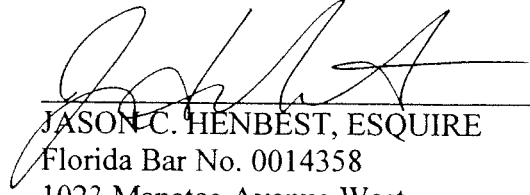
- Fifty (50%) to the Florida Eye Bank, Shands Teaching Hospital,
- Twenty-five (25%) percent to the Manatee County Heart Association, and
- Twenty-five (25%) percent to be divided among one or more of the following charities (in the discretion of the personal representative):
 - Manatee County Health and Rehabilitative Services-Youth Division,
 - Manatee County Kidney Foundation,
 - Manatee County Blood Bank,
 - Happiness House, and
 - Girls' Club of Manatee County

Such residuary beneficiaries would be entitled to her share of the compensation paid for the property taken in this case.

14. The Administrator has been able to determine that ELIZABETH M. BENZEL, the daughter of WILLIAM F. BENZEL, married O. A. SCHUMACHER. Further research determined that at the time of Elizabeth M. Schumacher's death, she was widowed and without children or other heirs. No records of O. A. Schumacher's demise were located. Elizabeth M. Schumacher, died on October 15, 1988, intestate, and under court appointed guardianship, in Sarasota County, Florida. No heirs, devisees, legatees, or grantees have otherwise been located.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 28th day of October, 2011, to: Janelle L. Esposito, Esquire, Greene Hamrick Perry Quinlan & Schermer, P. A., P.O. Box 551 Bradenton, Florida 34206; and Rodney C. Wade, Esq., Manatee County Attorney's Office, 1112 Manatee Avenue West, Suite 969, Bradenton, FL 34205.



JASON C. HENBEST, ESQUIRE
Florida Bar No. 0014358
1023 Manatee Avenue West
Bradenton, Florida 34205
Telephone: (941) 748-0151
Facsimile: (941) 748-0158
Administrator Ad Litem

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL ACTION**

**MANATEE COUNTY, FLORIDA,
a political subdivision of the State of Florida,**

Petitioner,
v.

WILLIAM F. BENZEL, Deceased, et al.,

Defendants.

**CASE NO.: 2011-CA-3414
DIVISION: "B"
PARCEL NO.: 137
EMINENT DOMAIN PROCEEDING**

SECOND REPORT OF ADMINISTRATOR AD LITEM

COMES NOW, JASON C. HENBEST, the undersigned Court-appointed Administrator Ad Litem for the unknown heirs of WILLIAM F. BENZEL and files the following report of his findings herein:

1. The Last Will and Testament for Garnet Benzel included the following entities as the residuary beneficiaries:

- Fifty (50%) to the Florida Eye Bank, Shands Teaching Hospital,
- Twenty-five (25%) percent to the Manatee County Heart Association, and
- Twenty-five (25%) percent to be divided among one or more of the following charities (in the discretion of the personal representative):
 - Manatee County Health and Rehabilitative Services-Youth Division,
 - Manatee County Kidney Foundation,
 - Manatee County Blood Bank,
 - Happiness House, and
 - Girls' Club of Manatee County

2. The Personal Representative of the estate under the Will was Earl W. Baden, Jr. In speaking with Mr. Baden, he suggested that the assets should be distributed as stated in the Will, with the final 25% being divided equally among the five entities listed.

3. In order to make such distributions, I have researched each entity/organization and have found the following information for the purposes of distribution:

a. The "Florida Eye Bank, Shands Teaching Hospital" is no longer operating. A similarly composed organization with similar goals for the purposes of distribution of a portion of the assets realized in this case would be the Florida Lions Eye Bank, whose mailing address is P.O. Box 016880, Miami, FL 33101-6880.

b. The "Manatee County Heart Association" is no longer operating. A similarly composed organization with similar goals for the purposes of distribution of a portion

EXHIBIT "C"

of the assets realized in this case would be the local branch of the American Heart Association, whose mailing address is 11207 Blue Heron Boulevard North, St. Petersburg, FL 33716.

c. The “Manatee County Health and Rehabilitative Services – Youth Division” is no longer in existence. A similarly composed organization with similar goals for the purposes of distribution of a portion of the assets realized in this case would be the Children’s Crisis Center at Manatee Glens, whose mailing address is 391 6th Avenue West, Bradenton, FL 34205.

d. The “Manatee County Kidney Foundation” is no longer operating. A similarly composed organization with similar goals for the purposes of distribution of a portion of the assets realized in this case would be the National Kidney Foundation of Florida, whose mailing address is 1040 Woodcock Rd Ste 119, Orlando, FL 32803-3510.

e. The “Manatee County Blood Bank” is no longer operating independently but has merged with Florida Blood Services. For the purposes of distribution of a portion of the assets realized in this case, such monies could be paid to the Florida Blood Services Foundation, whose mailing address is 10100 Dr. Martin Luther King St. N., St. Petersburg, FL 33716.

f. “Happiness House” has become Easter Seals of Southwest Florida. For purposes of distribution of a portion of the assets realized in this case, such monies could be paid to the Easter Seals of Southwest Florida Foundation, whose mailing address is 350 Braden Avenue, Sarasota, FL 34243.

g. The “Girl’s Club of Manatee County” has become Just for Girls. For purposes of distribution of a portion of the assets realized in this case, such monies could be paid to the Manatee County Girl’s Club Foundation, whose mailing address is 1011 21st Street East, Bradenton, FL 34208.


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 18th day of November, 2011, to: Janelle L. Esposito, Esquire, Greene Hamrick Perry Quinlan & Schermer, P.A., P.O. Box 551 Bradenton, Florida 34206; and Rodney C. Wade, Esq., Manatee County Attorney’s Office, 1112 Manatee Avenue West, Suite 969, Bradenton, FL 34205.

/s/ Jason C. Henbest
JASON C. HENBEST, ESQUIRE
Florida Bar No. 0014358
1023 Manatee Avenue West
Bradenton, Florida 34205
Telephone: (941) 748-0151
Facsimile: (941) 748-0158
Administrator Ad Litem

MANATEE COUNTY GOVERNMENT

AGENDA MEMORANDUM

SUBJECT	Request for Fee Waiver / First Annual County-Wide Multi-Cultural Festival	TYPE AGENDA ITEM	Regular
DATE REQUESTED	January 10, 2012	DATE SUBMITTED/REVISED	January 9, 2012
BRIEFINGS? Who?	None	CONSEQUENCES IF DEFERRED	None
DEPARTMENT/DIVISION	Parks and Recreation/ Administration	AUTHORIZED BY TITLE	Cindy Turner, Director
CONTACT PERSON TELEPHONE/EXTENSION	Cynthia Gray / Ext. 6002	PRESENTER/TITLE TELEPHONE/EXTENSION	Carolyn Angiolillo / Recreation Division Manager / Ext. 6008
ADMINISTRATIVE APPROVAL			

ACTION DESIRED

INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED

The City of Palmetto has requested a fee waiver in the amount of +/- \$600, plus a \$100 refundable damage deposit, for a First Annual Multi-Cultural Festival, to be held at Lincoln Park on Saturday, March 24, 2012. Staff recommends denial of this request.

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy

Resolution No. R-10-121 – Recreation Department Fee Schedule and Policy
Manatee County Code, 2-24-12 Parks and Recreation, Fees For Uses

BACKGROUND/DISCUSSION

- The Parks and Recreation Department supports this Multi-Cultural Community event as it promotes common values and cultural understanding within the community.
- In December, Commissioner Gallen contacted staff regarding this Multi-Cultural event to be held in the spring at Lincoln Park. In an effort to help, and make additional County resources available, the Parks and Recreation Department contacted the Palmetto CRA to see if we could coordinate our morning Splash Ground Opening and meld the events together as one. The City of Palmetto was open to the idea of melding the two events together and we were looking into coordinating a date. The verbal plans called for County staff to do a ribbon cutting in the morning and encourage those in attendance, with community spirit, to come together around this forth coming Multi-Cultural event.
- During the Special Work Session of the Board of County Commissioners and the City of Palmetto, held on January 3, 2012, Commissioner Charles Smith made a request for the Board to waive the fee for using Lincoln Park for an upcoming Palmetto CRA multi-cultural event at Lincoln Park in March. The County Parks and Recreation Department policy would charge \$1,400 for the City to use the Park. To clarify, the Parks and Recreation staff is not sure how this Special Event Permit Fee amount was determined. Based on projected attendance figures of 301 - 1000 participants, the fee would be \$400 for open space and \$200 for the reservation of all four of the pavilions. Additionally, there is a refundable \$100 damage deposit. Commissioner Smith asked the Board to review the Inter-local Agreement and find a better working arrangement for applications made by other local government agencies. Commissioner Gallen agreed to bring it up at the next County Commission meeting to discuss the policy.
- At a Board of County Commissioners (BoCC) Land Use Meeting, held January 5, 2012, a discussion developed during Commissioner Comments concerning the request made by Commissioner Smith for a Special Event Permit fee waiver to hold a Multi-Cultural Festival in Lincoln Park on Saturday, March 24, 2012.

BACKGROUND/HISTORY

- February 29, 2000 – Manatee County entered into a Lease Agreement (here attached) with the City of Palmetto to operate and maintain Lincoln Park, which states, in-part, the following:
"The County will manage, operate and maintain Lincoln Park consistent with the manner in which it manages, operates and maintains its other park facilities, including the assessment of fees for participation in programs and activities conducted thereon."

There is nothing in the agreement that includes fee waivers with the City of Palmetto.

- Since that time the County has made significant capital improvements including athletic fields, playground, pavilions, security lighting, renovated the parking lot and recently constructed a splash ground that is scheduled to open next spring for a total of +/- \$2 Million.
 - We currently spend approximately \$59,000 annually to maintain the park and collect +/- \$18,000 in various user fees.
 - Once the new splash ground becomes operational, later this year, costs will increase by an estimated \$41,400 annually for a total cost to operate of \$100,400.
- Fees are charged to help offset costs of maintaining parks; and when the Parks and Recreation Department conducts events in our parks, we charge admission fees and receive sponsorship monies to help offset operating costs.
- Staff routinely survey's surrounding counties and municipalities to stay on top of "best practices" in order to maintain consistency in our programs and approach to parks maintenance. Recently, staff benchmarked various special event fees and updated our current Fee Resolution which was approved at a Regular Meeting of the BoCC on December 6, 2011.
- The Parks and Recreation Department Director, does not have the authority to waive fees.
 - Per the Parks and Recreation Muni-code, only the Board of County Commissioners has the authority to waive fees: 2-24-12 Fees for Uses - *"Upon recommendation by the director or on its own initiative, the county commission may from time to time establish, modify, revoke or suspend a schedule of fees related to the uses of county park or recreation facilities, programs or services. Such fees may be expressed as a flat fee, a percentage of income, or a fee range. To the extent a fee range is established, the director shall have the authority to set and adjust the specific fee within the set range as actual costs and market conditions dictate."*
 - And, also as stated in Manatee County Parks and Recreation Fee Resolution R-10-121, Sec. G. 2. *"County contributions to any Special Event, including fee waivers, must be approved by the Board of County Commissioners."*
- The City of Palmetto CRA has indicated that they do have funds within their budget to cover the costs of special event fees.
- The Parks and Recreation staff recommends that the fees not be waived. The fee schedule was crafted to ensure costs for events are borne by the user. There is a concern that waiving fees for Special Event Permit Applications will result in an inordinate number of fee waiver requests resulting in the loss of needed revenue to help defray operating costs. We recommend that we coordinate these two significant community events, the grand opening of the splash park and the Multi-Cultural Festival.

COUNTY ATTORNEY REVIEW	
Check appropriate box	
<input type="checkbox"/>	REVIEWED Written Comments: <input type="checkbox"/> Attached <input type="checkbox"/> Available from Attorney (Attorney's initials: __)
<input checked="" type="checkbox"/>	NOT REVIEWED (No apparent legal issues.)
<input type="checkbox"/>	NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)
<input type="checkbox"/>	OTHER

ATTACHMENTS: (List in order as attached)	INSTRUCTIONS TO BOARD RECORDS:	
<ul style="list-style-type: none"> • Lincoln Park Lease Use and Maintenance Agreement • Recreation Fee Resolution / Contributions and Sponsorships (p. B-5, Sec. G 2.) 	Please return approved copy of agenda and agreement to Cynthia Gray, Parks and Recreation Department.	
COST: Event Fees: \$700 (includes \$100.00 refundable damage deposit)	SOURCE (ACCT # & NAME):	1060000000 – Special Events – Parks and Recreation
COMMENTS: None	AMT./FREQ. OF RECURRING COSTS: (ATTACH FISCAL IMPACT STATEMENT)	N/A

RECORDED 2/29/00
PAGE NO. 293
MINUTE BOOK NO. 47

LINCOLN PARK LEASE
USE AND MAINTENANCE AGREEMENT

THIS AGREEMENT, entered into by and between Manatee County, a political subdivision of the State of Florida, hereinafter "County", with a mailing address of Post Office Box 1000, Bradenton, Florida 34206-1000, and the City of Palmetto, a municipal corporation of the State of Florida, hereinafter "City", with a mailing address of Post Office Box 1209, Palmetto, Florida, 34221-1209.

WHEREAS, the City has completed the first phase of development of the Lincoln Community Park, which included the installation of soccer fields, a multi-purpose court, four (4) picnic shelters, one (1) playground and one (1) jogging trail (hereinafter referred to as the "Park Facilities"), for the use and benefit of City and County residents.

WHEREAS, the City and the County agree to pursue, jointly and individually, additional grant or other funds for the development of the subsequent phases of Lincoln Park.

NOW, THEREFORE, for and in consideration of the foregoing recitals and the mutual covenants herein contained, it is agreed by and between the parties as follows:

1. The City herein leases the real and improved property generally described as Lincoln Park, and as more specifically described in the Legal Description attached hereto as Exhibit A to the County.
2. Term: The term of this Agreement shall commence as of the date upon which the Agreement is executed by both parties. The Agreement shall remain in full force and effect until the Agreement is terminated as provided in Section 14 herein.

3. This Agreement shall supercede and replace the Lincoln Park Reimbursement Agreement entered into on September 15, 1998, by the City and the County, except that Section 2 of the Lincoln Park Reimbursement Agreement shall survive and remain in full force and effect until September 14, 2028.
4. The County will manage, operate and maintain Lincoln Park consistent with the manner in which it manages, operates and maintains its other park facilities, including the assessment of fees for participation in programs and activities conducted thereon.
5. The parties acknowledge that the City has installed boulders at Lincoln Park for the purpose of delineating playing fields and for landscaping. It is expressly understood that the City may remove any or all of such boulders for use elsewhere.
6. The first phase of Lincoln Park was developed and constructed by the City. In acknowledgment of the fact that certain contractor and vendor warranties will remain in effect following the execution of this Agreement, the City will furnish to the County a copy of all such warranties and a contact person for County to notify should an event occur or be identified which requires warranty remediation.
7. The City agrees that the County may assess fees for participation in programs or activities which the County conducts at Lincoln Park, which fees shall be consistent with those charged at all other County parks and recreation facilities for participation in similar programs or activities.

8. The City agrees that the maintenance services which the County is obligated to provide may be furnished using employees of the County and/or vendors engaged by the County.
9. - The City shall utilize the procedure established by the County to schedule any activities, programs or events at Lincoln Community Park during the term of the Agreement.
10. The City shall be entitled to claim Lincoln Community Park for Comprehensive Plan concurrency purposes.
11. The City agrees that, following the execution of this Agreement, the County shall have the authority to design and construct restroom facilities to serve park patrons.
12. Each party agrees and covenants to indemnify and hold harmless the other party for the negligent acts or omissions of its respective officers, agents, invitees and employees arising from the effectuation of any provision of this Agreement.
13. The County delegates to the County Administrator or his designee the authority to undertake and perform all of its obligations and exercise all of its authorities under the terms of this Agreement.
14. This Agreement may be terminated by either Party by the giving of no less than 365 days written notice to the other.
15. Notices: Any notice provided for or occasioned by compliance of the parties with the terms of this Agreement shall be furnished as follows:
If to the City:

The Honorable Pat Whitesel, Mayor
City of Palmetto
P. O. Box 1209
Palmetto, Florida 34221-1209

Director of Public Works
City of Palmetto
P. O. Box 1209
Palmetto, Florida 34221-1209

If to the County:

The Honorable Stan Stephens, Chairman
Manatee County Board of County Commissioners
P. O. Box 1000
Bradenton, Florida 34206-1000

With a copy to:

Ernie Padgett, County Administrator
P. O. Box 1000
Bradenton, Florida 34206-1000

16. The County agrees to operate Lincoln Community Park in conformance with all requirements as set forth in FRDAP Project Number F98006 Grant. The specific requirements are set forth on Exhibit B.
17. The performance of this Agreement shall be in compliance with all applicable laws, orders and codes of the federal, state and local governments.
18. Both parties acknowledge that the School Board of Manatee County will be required to approve and/or join in this Agreement, and, in the absence of such approval and/or joinder, this Agreement shall be null and void.

19. All signage for the property must conform to the requirements of the Agreement for conveyance of real property and improvements between the City of Palmetto and the School Board dated July 9, 1996.

APPROVED in regular session, with a quorum present and voting, this 29th day of February, 2000.

ATTEST:

By: *Dana R. King*

CITY OF PALMETTO, FLORIDA

By: *Pat Whitesel*
Mayor Pat Whitesel

ATTEST: R. B. Shore
Clerk of the Circuit Court

By: *Susan B. Rome*



MANATEE COUNTY
BOARD OF COUNTY COMMISSIONERS

By: *Stan Stephen*
Chairman

WITNESSES:

Virginia W. Inboard
Marilyn Clark

SCHOOL BOARD OF MANATEE COUNTY

By: *Frank Brumby*
Chairman
Date: 7-24-00

GAVIN W. O'BRIEN
Approved as to
legal form
and sufficiency *HW*
3-28-2000

Lincoln Park Hambroesensic Hgmt.

EXHIBIT A

Legal Description

Begin at the Northwest corner of the NW 1/4 of the NE 1/4 of the NW 1/4 of Section 13, Township 34 South, Range 17 East; run thence East 70 yards; thence South 140 Yards; thence West 70 Yards; thence North 140 Yards to the Point of Beginning, located in Manatee County, Florida; Less land deeded to the State of Florida for Right-of-Way of State Road 55, as described in Official Record Book 46, Page 512, and less land deeded to the City of Palmetto in OR Book 1098, Page 3216, of the Public Records of Manatee County, Florida, consisting of 1.23 acres more or less.

EXHIBIT B

POLICIES

A. GENERAL POLICIES

1. These policies are subject to such supplemental policies, rules, and interpretations as may be adopted or provided by the Board of County Commissioners.
2. The County Administrator or his designee is authorized to develop or approve procedures required to implement this resolution.
3. Lighted recreation facilities will close at 11:00 p.m., contingent upon the completion of Department programs. All other recreation areas will close at dusk, unless posted otherwise. Special exceptions will be considered due to the nature of the event. The Director is authorized to adjust park opening/closing hours.
4. All facility users shall abide by all rules and regulations provided in Manatee County Ordinance 03-31 and as it may be amended, supplemented, or replaced, and the provisions of this resolution.
5. The County Administrator or his designee is authorized to apply for such licenses as may be required to obtain licenses from the State of Florida for the youth programs at the County's parks and to submit such information and affidavits as may be required to obtain such licenses.

B. RESERVING FACILITIES AND SPECIAL EVENTS

1. Facility Use Priorities: The Manatee County School Board and other governmental agencies have first priority to use the facilities when not required for County use and may reserve facilities for use up to, but not exceeding, one (1) year in advance. All other requests shall be considered on a first come, first serve basis, and may reserve facilities up to, but not exceeding, six (6) months in advance. Approval of a reservation may be withheld until the County schedule and School Board schedule have been set.
2. Reserving Facilities: Individuals or groups may submit requests for use of recreation facilities in writing on approved forms to the Department. The Department reserves the right to review all requests for use of facilities and determine whether or not the request will be granted or Special Event permitted in accordance with Section B.6. below.
3. Requests to reserve picnic shelters for events, including but not limited to family reunions and church functions, regardless of size, shall be considered a resident/social request and assessed the assigned fee; unless for commercial use, then the commercial fee will apply. Facilities shall not be reserved until the appropriate fee payment has been remitted to the County.
4. Fees and Charges: In addition to the fees provided for the specified facility, one or more of the following charges shall apply where applicable:
 - a. A minimum charge of two (2) hours will be assessed for a requested facility normally closed during the time requested.

G. CONTRIBUTIONS AND SPONSORSHIPS

1. The Director is authorized to solicit and accept co-sponsorships and contributions of cash, goods, and services from individuals, service clubs, groups, and businesses in support of County programs, events, and activities in the parks and provide acknowledgments in materials associated with the promotion and conduct of the program, event, or activity.
2. County contributions to any Special Event, including fee waivers, must be approved by the Board of County Commissioners.

H. DEMONSTRATIONS

The Director is authorized to permit demonstrations only at such facilities or locations that may be regarded as traditional or limited public forums pursuant to the Florida and United States Constitutions, and in accordance with the criteria established in Manatee County Ordinance 03-31, as it may be amended or replaced. The Director shall respond to any application for a demonstration permit within three (3) business days.

I. PROMOTIONS AND AWARDS

The Director is authorized to provide T-shirts, water bottles, cups, and one of the departments existing programs as awards and prizes for participants in programs, classes, or planned activities, and to volunteers. This resolution shall serve as authorization pursuant to Ordinance 99-64.