




MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commission
City Manager

FROM: Marion J. Radson, City Attorney 

SUBJECT: Exchange of Northside Park Property

DATE: August 22, 2005

At the City Commission meeting of July 25, 2005, the City Attorney was asked to submit a paper that discusses a process for accommodating the request of Wal-Mart to acquire title to Northside Park in exchange for the "Hartman" property on N.W. 53rd Avenue with certain conditions. (See letter of Ronald A. Carpenter dated July 18, 2005, attached as Exhibit "A".)

I. FACTS:

City owns real property comprising approximately 31.5 acres currently in active use as a City Park (hereinafter, "NORTHSIDE PARK"). The property contains a deed restriction that the property can only be used "for park and recreational purposes". A reverter clause also provides that if the City ceases or abandons use of the property for park and recreational purposes, the property shall revert to the County.¹ A copy of the deed and the implementing agreement between the City and County is attached as Exhibit "B".

The City has received a written request from Wal-Mart, Inc. to acquire title to Northside Park in exchange for property commonly known as the "Hartman" property located on N.W. 53rd Avenue.² The City has previously granted to Wal-Mart, through its agent CPH Engineers, Inc., a "Limited License and Right of Entry" that permitted their engineers to conduct surveys and test boring studies on the Northside Park property.³

The land use and zoning of the property of Northside Park permits the use of the property for recreational uses. A land use and zoning change would be required to develop and use the property for commercial purposes. The land use categories of the Hartman property are Commercial, Single-Family (up to 8 units per acre), Residential Medium-Density (8-30 units per

¹ The deed also refers to an agreement with the County that provided for the exchange of this formerly owned County park property to the City in exchange for city-owned property known as Kanapaha Park.

² On information, Wal-Mart possesses an interest in the Hartman property that would allow the conveyance of the property to the City. Wal-Mart is interested in constructing and operating a super center on the Northside Park property. Wal-Mart also offers to make certain "improvements thereon previously outlined by the City of Gainesville Park Department".

³ The agreement with one extension has expired and expressly granted no other rights to Wal-Mart.

acre), Residential Low-Density (up to 12 units per acre) and Conservation. The zoning categories of the Hartman property are BUS: General business district, RMF-6: 8-15 units/acre multiple-family residential district, RMF-5: 12 units/acre single-family/multiple-family residential district, RSF-1: 3.5 units/acre single-family residential district and CON: Conservation district, that allow for commercial, residential and conservation use. According to the Department of Community Development, land use and zoning changes to Recreation and PS: Public services and operations district, respectively, would be required to develop and use the Hartman property for public recreational use.

II. LEGAL REQUIREMENTS:

1. Article VII., Section 10, Florida Constitution, effectively requires that the City obtain fair market value on the transfer of any city-owned property to a private party.⁴

2. The City cannot contract away its land use and zoning powers or grant any preferential rights involving land use and zoning matters. See Hartnett v. Austin, 93 So.2d 86 (Fla. 1956) and Morgran Company, Inc. v. Orange Co., 818 So.2d 640 (Fla. 5th DCA 2003).

3. Pursuant to Real Estate Guidelines adopted by the City Manager, the City Manager recommends to the City Commission that city property be declared surplus prior to sale or transfer. If declared surplus, depending upon the value of the property, the City management may advertise the property for sale to the public.⁵ (An excerpt from the Guidelines is attached as Exhibit "C".) Pursuant to Code § 2-435, an appraisal of Northside Park is required prior to entering into any contract for sale and purchase, including any option for same.

4. Any use of the Northside Park property, for other than park and recreational purposes, would require Alachua County to release the existing restrictive covenant and revert by quitclaim deed.

5. Very recently, this Office became aware of an additional restriction that may apply to Northside Park. In 1981, Alachua County accepted a \$20,000 grant from the Florida Department of National Resources ("DNR"). The agreement provided that the County operate and maintain the facilities at Northside Park for 25 years ending sometime in 2008. Additionally, the Agreement provided that the County dedicate Northside Park "to the public for recreational purposes in perpetuity." The agreement allows the County to construct and operate a replacement park facility in close proximity to Northside Park with the approval of DNR. This office is unable to determine whether this Agreement is still valid, or whether the County was released from these requirements when it conveyed Northside Park to the City in 1991. It may be necessary for the County to obtain the approval of the successor agency to DNR prior to its possible release of the restrictive covenant and revert clause. The City is not a party to this Agreement. (See Exhibit "D")

⁴ There are some limited exceptions to this requirement, but they are likely not applicable in this situation.

⁵ The City Manager has, in the past, negotiated agreements for sale and purchase without undergoing a public bidding process. Upon information, the value of the real property in these instances was under \$25,000.

6. The City's Comprehensive Plan provides requirements for parks or recreational facilities in this area of the City. The City has adopted a Level of Service Standard for Parks and Facilities. Any change in the level of service would require an amendment to the Comprehensive Plan.⁶

7. A petitioner would be required to change the land use (legislative matter) and zoning (quasi-judicial matter) to allow commercial use on the Northside Park property.

8. The City would be required to change the land use (legislative matter) and zoning (quasi-judicial matter) to allow the Hartman property (and very likely other suitable property) to be developed and used for public recreational use.

III. PROPOSED STEPS TO TRANSFER NORTHSIDE PARK TO A PRIVATE PARTY FOR COMMERCIAL USE IN EXCHANGE FOR OTHER SUITABLE PROPERTY OR OTHER VALUABLE CONSIDERATION FOR DEVELOPMENT OF A NEW PARK:

1. The City Commission should initially decide whether to pursue a request to exchange Northside Park for other suitable park property or other valuable consideration.

2. If the Commission is initially interested in entertaining such a request, the City should formally request that the Alachua County Commission release the deed restriction and reverter clause on the Northside Park Property. It is understood that other property within the City limits of at least equal land area and of at least equal quantity and quality of recreational facilities would be conveyed to the City, presumably by the private party or other valuable consideration would be given to the City, as a condition of the transfer of Northside Park. The new park property could be deed restricted similar to the Northside Park property.⁷

3. If the County Commission agrees to release the deed restriction and reverter clause, and the City Commission deems an exchange of Northside Park to be in the public interest:

- A) Declare the Commission's intent to declare the property surplus, and advertise Northside Park available for private use through the Request for Proposals (RFP) process⁸;
- B) Identify any covenants, conditions, and restrictions/requirements on the development/use of the Northside Park property (e.g., Northside Park will not be conveyed until substitute land is located and available for public recreational use);
- C) Obtain one or more appraisals to determine the value of the Northside Park Property.

⁶ The current Comprehensive Plan classifies Northside Park as a "Community Park". The Level of Service (LOS) adopted standard is 2.0 acres and the current LOS is 2.27 acres. Removal of Northside Park would reduce the LOS below the adopted standard even after Cone Park is added, unless the Hartman property or other suitable property is available for park use. On information, Wal-Mart intends to convey the Hartman property to the City for park use and make certain improvements thereon.

⁷ As discussed in Paragraph II.5. above, Alachua County may also need to obtain the approval of the successor agency to the Florida Department of Natural Resources.

⁸ The RFP process is customarily used to obtain the most responsive bid to a list of pre-established criteria. An openly advertised solicitation is customarily used to obtain the highest monetary bid. When this matter is considered, an advertised public hearing is advisable due to the public interest in this matter.

- D) The successful bidder and their successors or assigns shall be obligated to devote the Northside Park property only to the uses identified in the RFP and may be obligated to comply with such other requirements as the city may determine to be in the public interest (e.g., city may impose restrictive covenant and reverter clause in the deed of conveyance).
4. Receive proposals and select the most responsive bid which the Commission deems to be in the public interest; the city should retain the right to reject any and all bids.⁹
 5. Negotiate an Option Agreement with the successful bidder –
Terms should include:
 - A) Purchase price or other valuable consideration;
 - B) If exchange for other real property, terms for exchange for both properties may include:
 - (1) Timing of development
 - (2) Development conditions/standards
 - (3) Identification of funds or schedule for the development of the new recreational facilities on the new park property
 - C) No waiver of City's police powers, expressly zoning and land use powers;
 6. Development Applications and Orders:
 - A) Successful bidder/buyer petitions for land use and zoning change of Northside Park;
 - B) City applies for comprehensive plan amendment and for re-zoning of the new park property, or other suitable park property, so that it can be developed/used as a public park.
 - C) If land use and zoning petitions/ordinances are approved/adopted, developer obtains appropriate development orders on Northside Park Property, and City obtains development orders, as appropriate, on new park property.
 - D) If City Commission approves ordinance(s) at first reading, large-scale plan amendment(s) will be transmitted to Florida Department of Community Affairs (DCA) for review. (Note: large-scale plan amendments can only be made twice per calendar year.)
 - E) Large-scale plan amendments that do not receive an ORC report (Objections, Recommendations and Comments) from DCA typically require at least 6 months from date of application to the effective date of the amendment. Amendments that receive an ORC require no less than 45 additional days, and will require substantially more time if the amendment is not in compliance or is otherwise challenged in legal proceedings.
 - F) Zoning effective dates would match plan amendment effective dates.
 - G) Development Review Board holds public hearing on proposed site plan(s) for development of a commercial use on the Northside Park Property, and development of a park on the new park property. Other regulatory permits, i.e., water management district, would also be obtained.
 - H) When development orders are final, closing on both properties can occur at earlier stage dependent upon negotiations.
 - I) Apply for building permits.

⁹ Due to the complexity of this matter, it is strongly advisable that a project manager be assigned to ensure that all requirements are timely met.

- J) Construction commences with timing sequence to avoid loss/interruption of public recreational facilities.
- K) Completion of projects.

IV. CONCLUSION:

The exchange or sale and acquisition of public property must be in furtherance of a public purpose in the best interest of the public welfare. Following established steps in the process will ensure adherence to the legal requirements and allow the City to meet its intended objective in a timely manner.

CARPENTER & ROSCOW, P.A.

5608 NW 43rd STREET
GAINESVILLE, FLORIDA 32653-8334

TELEPHONE
(352) 373-7788
FACSIMILE
(352) 373-1114

RONALD A. CARPENTER
rcarpenter@raclaw.net

JOHN F. ROSCOW, IV
roscow@raclaw.net

July 18, 2005



Marion Radson, City Attorney
4th Floor, City Hall
VIA HAND DELIVERY

Re: Northside Park

Dear Mr. Radson:

In furtherance of discussions with the previous City Manager, please accept this letter as Wal-Mart's formal request to acquire title to the "Northside Park" property in exchange for the "Hartman" property on NW 53rd Avenue together with the improvements thereon previously outlined by the City of Gainesville Park Department.

While many of the details of the exchange remain subject to further agreement of the parties, it is our desire that this matter be placed upon the next City Commission meeting agenda so that you might advise and receive appropriate direction from the Commission to move forward procedurally.

Sincerely yours,

A handwritten signature in black ink that reads "Ronald A. Carpenter".

Ronald A. Carpenter

RAC/bw

cc: Barbara Lipscomb
Quenta Vettel

Exhibit "A"

10.50
B...

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made this 26 day of JUNE, A.D., 1991, by Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners, whose address is Post Office Drawer "CC", Gainesville, FL 32602, Grantor; and the City of Gainesville, a Florida municipal corporation existing under the laws of the State of Florida, whose address is Post Office Box 490, Gainesville, FL 32602, Grantee (wherever used herein, the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations);

W I T N E S S E T H:

The Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, remises, releases, conveys, and confirms unto the Grantee all that certain land situate in Alachua County, Florida, to wit:

A portion of Section 13, Township 9 South, Range 19 East, and a portion of Section 18, Township 9 South, Range 20 East, City of Gainesville, Alachua County, Florida, being more particularly described as follows:

COMMENCE at the southwest corner of said Section 18, Township 9 South, Range 20 East, and run thence North 01°40'40" West, along the west boundary of said Section 18, a distance of 1327 feet to the Point of Beginning; thence South 87°54'50" West, 142.74 feet to a point on the southeasterly right-of-way line of State Road No. 121, also being known as Northwest 34th Street (100-foot right-of-way), said point lying on the arc of a curve concave northwesterly and having a radius of 1959.86 feet; thence northeasterly along said southeasterly right-of-way line and along the arc of said curve through a central angle of 22°25'10", an arc distance of 766.88 feet, said arc being subtended by a chord having a bearing and distance of North 35°04'26" East, 762.00 feet; thence North 87°54'50" East, 315.58 feet; thence North 56°07'54" East, 778.96 feet to a point on the southwesterly right-of-way line of U. S. Highway No. 441, also being known as State Road No. 20 and No. 25 (150-foot right-of-way); thence South 47°49'00" East, along said southwesterly right-of-way line, 1262.48 feet; thence South 4°11'30" East, 136.39 feet; thence South 87°54'50" West, 2204.31 feet to the Point of Beginning. Containing 31.502 acres, more or less.

Doc. St. Amt. \$ - 0
A. Curtis Powers, Clerk of Circuit Court
Alachua County - By

91 JUN 26 PM 3:41
OFFICIAL RECORDS
RECORDED
CLERK OF CIRCUIT
COUNTY COURT
ALACHUA COUNTY, FLA.

RETURN TO *Annelle Beagle*

THIS CONVEYANCE is subject to the following conditions which shall survive the closing and conveyance of the property to the Grantee:

1. The Grantee agrees to only use the property which is the subject of this deed for park and recreational purposes. Should Grantee cease or abandon use of the property for park and recreational purposes, the title hereby conveyed shall revert to the Grantor.

2. The terms and conditions entered into between the Grantor and Grantee pursuant to an Agreement for Exchange of Property dated May 9, 1991, and recorded in Official Records Book 1811, page 1682, of the Public Records of Alachua County, Florida.

TO HAVE AND TO HOLD the same in fee simple forever, together with all and singular the appurtenances thereto belonging or in anywise incident or appertaining.

THE GRANTOR hereby covenants with the Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; that the Grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through, or under the Grantor.

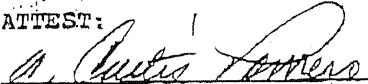
IN WITNESS WHEREOF, the Grantor has caused these presents to be duly executed in its name by the Board of County Commissioners, acting by the Chairman or Vice-Chairman of said Board, on the day and year first above-written.

ALACHUA COUNTY, FLORIDA

By: 

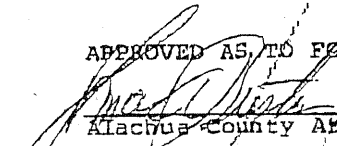
George W. Dekle, Jr., Chairman
Board of County Commissioners

ATTEST:


A. Curtis Powers, Clerk

(SEAL)

APPROVED AS TO FORM


Alachua County Attorney

THIS INSTRUMENT PREPARED BY:

Alachua County Attorney's Office
Post Office Drawer "CC"
Gainesville, FL 32602

AGREEMENT FOR EXCHANGE OF PROPERTY

THIS AGREEMENT, made and entered into this 9th day of May, 1991, by and between Alachua County, a charter county and a political subdivision of the State of Florida, by and through its Board of County Commissioners (County), and the City of Gainesville, a municipal corporation organized under the laws of the State of Florida (City);

WITNESSETH

WHEREAS, it is the opinion of the Board of County Commissioners that the real property known as Northside Park, held and possessed by the County, is not needed for County purposes and such property may, to the best interest of the County, be exchanged for other real property known as Kanapaha Park, owned by the City, which property the County desires to acquire for County park and recreational purposes; and,

WHEREAS, the City is desirous of exchanging Kanapaha Park with the County and acquiring Northside Park for City park and recreational purposes; and,

WHEREAS, before any exchange of property shall be effected, a notice setting forth the terms and conditions of such exchange shall first be published once a week for at least two (2) weeks in a newspaper of general circulation in the County, before the adoption by the Board of County Commissioners of a resolution authorizing the exchange of property.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. The County and the City hereby agree to exchange the County's property known as Northside Park and described in Exhibit A attached hereto and incorporated herein by reference for the City's property known as Kanapaha Park and described in Exhibit B, attached hereto, and incorporated herein by reference.

RECORDED
MAY 15 PM 2:22
CLERK OF COUNTY
OFFICE

2. The City, within one year of the exchange of properties, agrees to provide \$70,000 worth of improvements to the Kanapaha Park site.

3. The County agrees to expend the \$200,000.00 State grant within 18 months of receipt of the grant from the State, or completion of the City's work on the site, whichever shall occur last. If the County receives the grant funds and fails to expend the funds as required herein, the Kanapaha Park site shall automatically revert to the City.

4. The County agrees to designate the Kanapaha Site Committee to work with the County Recreation and Open Space Committee (ROSCO) to make recommendations to the Board of County Commissioners on a plan and phasing for improvements to the park. All improvements determined by the County shall be subject to any necessary concurrence in, or approvals of the improvements by appropriate state agencies.

5. If Kanapaha Park is annexed into the City of Gainesville, the County agrees that the City shall be allowed to include Kanapaha Park in the Recreational Element of its Comprehensive Plan to meet the level of service standards under the Plan, provided that such inclusion will not adversely affect Alachua County's ability to meet concurrency requirements.

6. Exchange of the properties shall be accomplished within sixty (60) days of the effective date of this agreement. The County and the City shall provide title insurance on their respective properties at the time of closing. The deeds conveying the properties shall stipulate that each property shall be used and maintained by the grantee in perpetuity for park and recreational purposes and that the property shall revert to the grantor in the event the property is no longer used or maintained by the grantee for park or recreational purposes.

7. This agreement for exchange of property shall be effective upon the adoption of a resolution by the Board of County Commissioners, duly advertised, authorizing the exchange of properties.

IN WITNESS WHEREOF, the parties have duly executed this agreement for the uses and purposes herein expressed.

ALACHUA COUNTY, FLORIDA

By: *George Dekle*
George Dekle, Chairman
Board of County Commissioners

Date: 4-18-91

ATTEST:

A. Curtis Powers
A. Curtis Powers, Clerk

(SEAL)

APPROVED AS TO FORM:

Frank C. Marshall
Alachua County Attorney's Office

CITY OF GAINESVILLE, FLORIDA

By: *Courtland Collier*
Courtland Collier,
Mayor-Commissioner

Date: 5/9/91

ATTEST:

Francis Kala Lee
Clerk of the Commission
(SEAL)

APPROVED AS TO FORM AND LEGALITY:

By: *Ronald D. Combs*
Ronald D. Combs,
Assistant City Attorney

EXHIBIT "A"

NORTHSIDE PARK:

PARCEL A

A portion of Section 13, Township 9 South, Range 19 East, and a portion of Section 18, Township 9 South, Range 20 East, City of Gainesville, Alachua County, Florida; being more particularly described as follows:

Commence at the Southwest corner of said Section 18, Township 9 South, Range 20 East and run thence North $01^{\circ}40'40''$ West along the West boundary of said Section 18, a distance of 1,325.00 feet to the POINT OF BEGINNING;

thence South $87^{\circ}54'50''$ West, 142.74 feet to a point on the Southeastly right-of-way line of State Road No. 121, also being known as N.W. 34th Street (100' R/W), said point lying on the arc of a curve concave Northwesterly and having a radius of 1,959.86 feet;

thence Northeasterly along said Southeastly right-of-way line and along the arc of said curve through a central angle of $22^{\circ}25'10''$ an arc distance of 766.88 feet, said arc being subtended by a chord having a bearing and distance of North $36^{\circ}04'26''$ East, 762.00 feet; thence North $87^{\circ}54'50''$ East, 315.58 feet;

thence North $56^{\circ}07'54''$ East, 778.96 feet to a point on the Southwesterly right-of-way line of U.S. Highway No. 441, also being known as State Road No.'s 20 and 25 (150' R/W); thence South $47^{\circ}49'00''$ East, along said Southwesterly right-of-way line, 1262.48 feet;

thence South $04^{\circ}11'30''$ East, 136.39 feet; thence South $87^{\circ}54'50''$ West, 2,204.31 feet to the POINT OF BEGINNING.

Containing 31.502 acres, more or less.

EXHIBIT "B"

A parcel of land located in the Southwest 1/4 of Section 16, Township 10 South, Range 19 East, Alachua County, Florida, being more particularly described as follows:

Commence at a found nail and disk in the centerline of County Road No. S.W. 29 marking the Southwest corner of Section 16, Township 10 South, Range 19 East, Alachua County, Florida; thence North 00°15'59" East along the West line of said section a distance of 173.85 feet; thence South 89°49'04" East a distance of 50.00 feet to a set iron pin (#3524), marking the intersection with the East right-of-way line of County Road No. S.W. 29 and the North right-of-way line of S.W. 41 Place and being the Point of Beginning;

thence continue South 89°49'04" East along said North right-of-way line a distance of 941.31 feet to a set iron pin (#3524); thence North 00°15'59" East a distance of 1,061.25 feet to a found concrete monument; thence North 89°43'12" West a distance of 941.31 feet to a point marking the intersection with the East right-of-way line of County Road No. S.W. 29, said point being 0.13 feet East of a found concrete monument; thence South 00°15'59" West along said East right-of-way line a distance of 1,062.86 feet to the Point of Beginning.

Said parcel being subject to an easement for public utilities over and across the West 30.00 feet and the South 30.00 feet hereof.

Also subject to an easement for the purpose of ingress and egress and for operation and maintenance of an existing monitoring well being more particularly described as follows;

commence at a found nail and disk in the centerline of County Road No. S.W. 29, marking the Southwest corner of Section 16, Township 10 South, Range 19 East, Alachua County, Florida; thence North 00°15'59" East along the West line of said section a distance of 173.85 feet; thence South 89°49'04" East a distance of 50.00 feet to the intersection with the East right-of-way line of County Road S.W. 29 and the North right-of-way line of Southwest 41 Place; thence North 00°15'59" East along said East right-of-way line a distance of 1,062.86 feet; thence South 89°43'12" East a distance of 941.31 feet to a found concrete monument; thence South 00°15'59" West a distance of 45.79 feet to the Point of Beginning;

thence continue South 00°15'59" West a distance of 50.00 feet; thence North 89°44'01" West a distance of 174.50 feet; thence North 00°15'59" East a distance of 50.00 feet; thence South 89°44'01" East a distance of 174.50 feet to the Point of Beginning, containing 0.200 acres, more or less.

Containing a total of 22.950 acres, more or less.

EXCERPT FROM REAL PROPERTY GUIDELINES

VII. SALES - PRIOR APPROVAL/REPORTS REQUIRED

- A. No real property of the City shall be sold until such property has been declared surplus by the City Commission.
- B. No real property of the City valued at \$25,000 or more shall be sold without prior approval of the City Commission.
- C. Reports shall be made to the City Commission of any sale of City property for which prior approval has not been obtained when the sale of property has been closed.

VIII. METHODS OF PURCHASE OR SALE

- A. Appraisals required. No purchase or sale of real property may be made until an appraisal of such property has been obtained in accordance with current City Ordinances (Section 2-435 of the Gainesville Code of Ordinances), except that if the value of such property has been determined to have a value of less than \$10,000, no appraisal is required.
- B. Negotiation/Contract. The Manager may enter into negotiations for the purchase and sale of real property without prior approval of the City Commission. The Manager is authorized to enter into binding contracts for the purchase and sale of real property when prior approval of the City Commission is not required. When prior approval of the City Commission is required, the Manager is authorized to enter into purchase and sale agreements for the purchase and sale of real property which are conditioned on City Commission approval.
- C. Closing. When prior City Commission approval is not required, or when prior approval is required and has been obtained, the Manager and the City Attorney may execute all necessary closing documents on behalf of the City, provided the City Attorney has determined that the title to property being acquired is marketable.
- D. Sale of property obtained through foreclosure. After determination by the City Commission that property obtained through foreclosure is not needed for any public purpose, such property may be sold by the Manager as provided in Section 2-436 of the Gainesville Code of Ordinances.
- E. Sale to adjacent landowners. When the sale of City property is requested by an adjacent land owner, the property may be sold without advertisement of such sale provided the value of the property is estimated by the Real Estate Office to be less than \$25,000 and the property has been declared surplus by the City Commission. Except as provided in paragraph (D.) above, all other property to be sold by the City shall be advertised in a newspaper of general circulation in the City. All property with an appraised value of \$25,000 or more shall be sold by sealed bid or auction. Property with an estimated value of less than \$25,000 may be sold by negotiation.
- F. Eminent Domain. Prior approval of the City Commission is required before the filing of an action in eminent domain and for settlement of such approved action, whether or not such suit has been filed, except as provided in Section VI A.1 and A.2, "Purchases - Prior Approval," above.

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FLORIDA DEPARTMENT OF NATURAL RESOURCES
FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM

Project Agreement

1-17-1
(project number)

This agreement made and entered into by and between the State of Florida Department of Natural Resources hereinafter called DEPARTMENT and Alachua County hereinafter called COUNTY in furtherance of an approved recreational program involving the parties hereto in pursuance of which the parties hereto agree as follows:

1. This agreement shall be performed pursuant to Section 375.021(3), Florida Statutes and Chapter 16D-5, Part II, Florida Administrative Code. In the event a dispute should arise between the parties concerning the intent of the language herein contained, the same shall be resolved by the adoption of that meaning which furthers the intent and purpose of said actions of the Florida Legislature and the Executive Board of the Department of Natural Resources. No construction shall be contrary to the program criteria or the agreements contained herein. It is the intention of the parties hereto that none of the provisions of Section 163.01, Florida Statutes, shall have application to this agreement.

2. The DEPARTMENT has found that outdoor recreation is the primary purpose of the project known as Northside Park, (Florida Recreation Development Assistance Program Project Number 1-17-1), and enters into this agreement with the COUNTY for construction of recreational facilities on real property, the legal description of which is set forth in full in Exhibit "A" attached hereto and made a part thereof.

3. The COUNTY will construct, or cause to be

EXHIBIT "D"

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constructed, certain recreational facilities upon such real property described in Exhibit "A" which facilities shall be designed and constructed in accordance with the project elements described herein substantially in accordance with project plans as shown and described in Exhibit "B" attached. The following shall be considered the project elements:

Playground, picnic area, lighting, restrooms, and related improvements.

4. The COUNTY agrees to operate and maintain the recreational facilities developed pursuant to paragraph 3, for a minimum period of twenty-five (25) years from the date of project completion specified in paragraph 7 of this agreement and will pay all such expenses as a COUNTY expense. The COUNTY covenants that it has full legal authority and financial ability to so operate and maintain said facilities.

5. The DEPARTMENT agrees to hold in account and transfer to the COUNTY such Florida Recreation Development Assistance Program monies, not to exceed \$ 20,000, and will pay said program's share of the cost of the project. These funds may be released in no more than three (3) installments, at the discretion of the DEPARTMENT, upon the request of the COUNTY duly authorized agent, whose name and title shall be submitted to the DEPARTMENT prior to commencement of the project. Each request shall include all documentation required by the DEPARTMENT. The DEPARTMENT shall be notified forthwith of any change in the person or authority of the duly authorized agent.

6. The COUNTY agrees to contribute the sum of \$ in cash to be expended for the development of recreational facilities pursuant to paragraph 3. The

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further agrees to submit, at the request of the DEPARTMENT, any and all accounting records pertaining to said contributions.

7. The shall begin construction of the project in accordance with Exhibit "B" on or before September 1, 1982 and agrees to complete said construction on or before September 1, 1983. Failure by the COUNTY to complete development of subject property by the aforementioned date shall be cause for the DEPARTMENT to demand refund of any contribution made from the Florida Recreation Development Assistance Program toward the development of Northside Park.

8. The COUNTY, through its duly authorized agent, shall submit to the DEPARTMENT project status reports every sixty (60) days from the date of the execution of this agreement until the project development is completed.

9. The COUNTY agrees to dedicate the land described in Exhibit "A", and by its acceptance of the provisions of this agreement does hereby dedicate the land described in Exhibit "A" to the public for recreational purposes in perpetuity. The COUNTY further agrees that the execution of this agreement by the Executive Director of the Department of Natural Resources shall constitute an acceptance of the dedication on behalf of the general public of the State. Should the COUNTY, during the period of time established by paragraph 4 of this agreement, for any reason convert all or any portion of the property described in Exhibit "A", or the facilities described in Exhibit "B" to other than the recreational purposes set forth and described in paragraph 3, the COUNTY agrees to provide, at its sole expense, without further contribution from the Florida Recreation Development Assistance Program, a replacement project of comparable quality and size to that which was converted to other purposes, which replacement shall be in close proximity

to the project and meet with the approval of the DEPARTMENT. In lieu of such replacement, the COUNTY shall return to the DEPARTMENT the entire contribution from the Florida Recreation Development Assistance Program.

10. Should the COUNTY elect to implement a user fee system for Northside Park or for any recreational facility within the boundaries of the project, the COUNTY shall impose such fees uniformly upon all users without regard to age, sex, race, other condition, or the political subdivision in which the user may reside.

11. The DEPARTMENT shall have the right, through its agents, servants, and employees designated for that purpose, to inspect the site of the project and the facilities thereon. In addition to the project inspections, which shall be conducted at any reasonable time, the DEPARTMENT shall have access to all financial records relating to the project and the right to audit such records at any reasonable time which right shall be continuous until such audit is completed without unreasonable interference with the operation of any of the facilities thereon.

12. The COUNTY agrees to provide the DEPARTMENT with annual attendance reports at such time Northside Park is opened for use by the general public. Said attendance reports shall be submitted to the DEPARTMENT during the month of July of each year and shall provide attendance records for a one year period beginning on July 1, and ending on June 30 of the previous year, such period constituting one fiscal year.

13. The DEPARTMENT shall have the right to demand a refund, either in whole or part, of the funds provided to the COUNTY for non-compliance with the terms of this agreement, and the COUNTY upon notification from the DEPARTMENT, agrees to refund, and will forthwith pay, the amount of

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money intended—which payment shall be made directly to the DEPARTMENT.

11. The COUNTY and the DEPARTMENT mutually agree to the following special terms and conditions incorporated as part of this agreement:

NONE

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by the officers or agents thereunto lawfully authorized.

STATE OF FLORIDA
DEPARTMENT OF NATURAL RESOURCES

By: Dr. Elton J. Gissendanner
Executive Director
Its Agent for this Purpose

By: _____
Its Agent for this Purpose

Title

Attest: _____

Attest: _____

Effective Date: _____

APPROVED AS TO
FORM AND LEGALITY

[Signature]
CLERK - D.N.R.

RESOLUTION 81-100

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, APPROVING THE AGREEMENT BETWEEN THE COUNTY AND THE DEPARTMENT OF NATURAL RESOURCES FOR THE AWARD OF MONIES FOR THE CONSTRUCTION OF RECREATIONAL IMPROVEMENTS AT NORTHSIDE PARK; AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Department of Natural Resources of the State of Florida has approved a request from Alachua County for Twenty Thousand Dollars (\$20,000.00) for the purpose of constructing recreational improvements at Northside Park; and,

WHEREAS, this project will greatly enhance the recreational use of Northside Park to the benefit of the citizens of Alachua County;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA:

1. The agreement between the Department of Natural Resources and Alachua County authorizing award of Twenty Thousand Dollars (\$20,000.00) is hereby approved.
2. The Chairman and Clerk of the Board of County Commissioners are hereby authorized to execute the proper documents to carry out the intent of this Resolution.
3. This Resolution shall take effect upon its adoption.

DULY ADOPTED in regular session, this 7th day of October, A.D., 1981.

BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA

By: Jack Burrance
Jack Burrance, Chairman

ATTEST:

A. Curtis Powers
A. Curtis Powers, Clerk

(SEAL)

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