

TAB 1



City of Palmetto Agenda Item

Meeting Date

9/13/10

Presenter: Mayor Bryant/ Michael Hankin,
Special Counsel to the City

Department:

Title: Phase II Ball Field Agreement

Background

Several years ago, the City began discussions with the School Board related to the construction of a new Palmetto Elementary School. As part of those discussions, a plan evolved which involved seven parties to provide a new elementary school, a new Boys & Girls Club, and ultimately new ball fields.

Phase I of the project involved the City, School Board, the Boys and Girls Club, and Just for Girls at property on 10th Street West. Property purchases by the School Board occurred in 2009 and this phase of the project is coming to completion. The new Palmetto Boys and Girls Club has recently opened on property purchased from the City. New Palmetto Elementary School is scheduled to open in January. Just for Girls is located on property which they now own to provide a children oriented complex in the City, also on property purchased from the City.

Phase II was to provide for a ball fields complex with easy access to the residents of Palmetto. A site on 23rd Street near a possible extension of 10th Avenue was selected. This was addressed in the Phase II Agreements. Because of the location of the ball fields, 23rd Street West will need to be relocated and reconstructed and this was addressed in the Dedication Agreement. Although early cost estimates and property needs were significantly off, the City, the County, the School Board and Manatee Fruit Company have been working together to create agreements which address all parties concerns.

Matters necessary for the proposed ball field complex to be accomplished have been begun by the City, County and School Board. The City has initiated a series of requested comprehensive plan amendments, an annexation of 8th Avenue, and street vacation preparation. It has also obtained proposals for the design and construction and development of a relocated 23rd Avenue, which is needed because of the size and location of the proposed ball field complex.

Manatee Fruit Company has presented an executed Phase II contract to the parties and has indicated that it is unwilling to change any terms in that contract. A redline from the last draft prepared by Kirk Pinkerton is attached.

Discussion:

See Attached

AGREEMENT REGARDING THE TRANSFER OF LANDS AND CONSTRUCTION AND OPERATION OF PARK
FACILITIES AMONG MANATEE FRUIT COMPANY, INC., MANATEE COUNTY, THE CITY OF PALMETTO, THE
AND SCHOOL BOARD OF MANATEE COUNTY

DISCUSSION:

This Agreement documents "Phase II" of the overall project described above (and is referred to for convenience as the "Phase II Agreement"). Under this Agreement, Manatee Fruit Co. is dedicating to the City land for the new ball field complex adjacent to Blackstone Park and for the proposed 10th Ave. W. extension south of new 23rd St. W. extension, the School Board is conveying land to the City for the 10th Ave. W. extension, the School Board is acquiring land north of Palmetto High School from the County and from Manatee Fruit Co. for the expansion of the High School, and in exchange the School Board is transferring to Manatee Fruit Co. vacant land east of the proposed 10th Ave. W. extension south of the new 23rd St. W. right of way. These transfers are all by way of dedication or exchanges, with no cash consideration. Manatee Fruit Co. will be entitled to parks and recreation mitigation or allocation credits for future developments. Part of the consideration consists of the City's agreement to adopt amendments to its Comprehensive Plan relating to property owned by Manatee Fruit Co. (as also required under the Dedication Agreement, and as authorized by the City Commission on May 17, 2010). The consideration also includes easements for parking and stormwater retention and agreements addressing the construction of the 10th Ave. W. extension, all for the benefit of the parcel at the southwest corner of new 23rd St. W. and the 10th Ave. extension, which is proposed for use as a "community center". As with the Dedication Agreement, Manatee Fruit Co. does not wish to incur any expense in connection with this agreement. Issues for your particular attention are:

Section 4(d). Manatee Fruit Co. requires that the City have begun construction of the new 23rd St. W. right of way before closing under this Agreement. Previous to the most recent drafts of the agreements, Manatee Fruit Co. had agreed to a deed restriction for the new 23rd St. W. right of way dedication providing for its ability to demand that the property be returned to it if construction on the new right of way hadn't started within 2 years of the transfer. That restriction is still part of the Dedication Agreement (Section 6). That restriction should provide sufficient protection from the possibility that the road project won't proceed.

Section 5(d). If the land targeted for use as a community center is ready to be developed and the City hasn't already constructed the 10th Ave. W. extension, Manatee Fruit Co. can build all or part of the extension. The City is agreeable to providing Manatee Fruit Co. with transportation impact fee credits for this construction to the extent that it is eligible for them. Manatee Fruit Co. wants the City to bind itself to grant these credits, regardless of eligibility (which the City cannot properly do).

Section 6(c). The deed to the City for the ball fields will require that the City begin construction of the ball fields within 5 years, which is an understandable requirement by Manatee Fruit Co., although it will be a concern for the City until funding is completely assured. Manatee Fruit Co. would require that the 5 years run from the date of the Agreement, as opposed to the date of closing. Given that there may be a considerable time lag between the date of the Agreement and the closing date, the use of the contract date shortens the real time frame. Manatee Fruit Co. also wishes to impose a requirement that at least 2 ball fields and associated parking be completed within 6 1/2 years from the date of this agreement, failing which Manatee Fruit Co. can demand reconveyance of the land. While the City has every intention of building the ball fields as quickly as possible, conditioned on available funds, a concrete deadline such as this places a significant risk on public funds which may have been spent on the project, if the project has been begun but has not yet been completed.

Section 10(b). It is customary in transactions of this type for the property owner to be required to provide to the proposed transferee copies of any pertinent information about the property in the owner's possession, such as surveys, appraisals, correspondence with governmental agencies about violations, title insurance policies, and the like. Manatee Fruit Co. is not agreeable to providing this information. Attorneys for Manatee Fruit Co. have indicated that it possesses no such documents regarding the property; but it is preferable to have that representation made in writing as part of the Agreement.

Section 10(c) and (d). As part of customary due diligence, an environmental investigation of the property to be acquired by the City is currently in progress, and the City has agreed to reimburse Manatee Fruit Co. the cost of that study if the transaction goes forward. It was originally anticipated that the study would be completed, reviewed and approved

**AGREEMENT REGARDING THE TRANSFER OF LANDS AND
CONSTRUCTION AND OPERATION OF PARK FACILITIES AMONG
MANATEE FRUIT COMPANY, INC., MANATEE COUNTY, THE CITY
OF PALMETTO, AND THE SCHOOL BOARD OF MANATEE COUNTY**

THIS AGREEMENT, REGARDING THE TRANSFER OF LANDS AND CONSTRUCTION AND OPERATION OF PARK FACILITIES (this "Agreement") is made and entered into as of the Effective Date (as hereinafter defined) by and among Manatee Fruit Company, Inc., a Florida corporation ("MFC" or "Manatee Fruit"), Manatee County, a subdivision of The State of Florida ("County"), The City of Palmetto, a municipal corporation of the State of Florida ("City") and The School Board of Manatee County, a public body corporate ("School Board").

INTRODUCTION

1. MFC owns parcels of real property on or near 23rd Street West in the City of Palmetto, Manatee County, Florida, which are depicted on Exhibits A-3, A-3a, A-4, A-6, A-6a attached hereto; and

2. School Board owns parcels of real property on or near 17th Street West and the proposed extension of 10th Avenue West; and

3. County owns parcels of real property located near the lands owned by MFC and School Board referred to in the previous paragraphs, which is used as parkland, known as "Blackstone Park;" and

4. As part of the expansion of Palmetto Elementary School, School Board acquired from the City land on 10th Street West in the City of Palmetto, on which were located ball fields used by little league groups (although there were no agreements with the City as to the use of the ball fields by any organized baseball leagues);

5. In the Agreement of Purchase and Sale among City, School Board, County, Boys and Girls Club of Manatee County, Inc. and Manatee County Girls Club, Inc. which resulted in among other things, the expansion of Palmetto Elementary School (the "Phase I Contract"), the parties agreed to pursue related transactions, referred to in the Phase I Contract as "Phase II" which, among other things, provided for transfers of land among the parties to this Agreement to provide for the following development projects:

- a. The extension of 10th Avenue West from 17th Street West to 23rd Street West;
- b. Realignment of a portion of 23rd Avenue Street West north of its current location in a mutually advantageous location;

shown on **Exhibit A-7** are schematic relative approximations only. No Property is being transferred to County pursuant to this Agreement.

(f) "Dedication Agreement" has the meaning set forth in Section 2(g) below. Although County and School Board are not parties to such Agreement, by execution of this Agreement, County and School Board acknowledge receipt of a copy of the Dedication Agreement.

(d)(g) "Effective Date" means the later of (i) the last date upon which a copy of this Agreement has been fully executed by MFC Manatee Fruit, County, School Board and the City and School Board and (ii) the last date on which the Dedication Agreement (defined in 2 (g) below) has been fully executed by all parties thereto; provided, however, no later than September 15, 2010.

(e)(h) "Environmental Laws" means all applicable present and future (to the extent they relate back to the Closing date or prior) statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, agreements and similar items, of or with any and all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061 *et seq*; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, *et seq*; and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 *et seq*.

(+)(i) "Hazardous Materials" shall mean any of the following, at levels in excess of federal, state or local safety guidelines, whichever are more stringent: (i) any toxic substance or hazardous waste, substance or related material, or any pollutant or contaminant; (ii) radon gas; asbestos in any form which is or could become friable, ureaformaldehyde urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls; (iii) any substance, gas, material or chemical which is or may be defined as or included in the definition of "hazardous substances", "toxic substances", "hazardous materials", "hazardous wastes" or words of similar import under any Environmental Law and (iv) any other chemical, material, gas or substance, the exposure to or release of which is or may be prohibited, limited or regulated by any governmental or quasi-governmental entity or authority that asserts or may assert jurisdiction over the Property which is the subject of this Agreement or the operations or activity at the Property, or any chemical, material, gas or substance that does or may pose a hazard to the health and/or safety of the occupants of the Property or the owners and/or occupants of property adjacent to or surrounding the Property.

(j) (g) "Inspection Obligations" has the meaning set forth in Section 10(e) of this Agreement.

(c) MFC will transfer to City two parcels of 7.299 +/- acres and 0.521 +/- acres, respectively, as depicted on **Exhibits A-3 and A-3a**, respectively, for the new ball field complex adjacent to Blackstone Park.

(d) MFC will transfer to School Board 1.820 +/- acres as depicted on **Exhibit A-4**, for the expansion of Palmetto High School and related improvements. ~~Before or after the Closing, at School Board's request, City, at its sole expense, will remove City-owned fill located on that Property.~~

(e) County will transfer to School Board 2.833 +/- acres, as depicted on **Exhibit A-5**, for the expansion of Palmetto High School and related improvements.

(f) MFC will transfer to City two parcels consisting of 1.528 +/- and 0.841 +/- acres, respectively as depicted on **Exhibits A-6 and A-6a**, respectively, for the extension of 10th Avenue West from the realigned 23rd Street West to the portion of the 10th Avenue West extension being transferred by School Board to City pursuant to **Section 2 (b)** herein.

(g) Under a separate Dedication Agreement between MFC and City, executed by those parties before or at the same time as this Agreement (the "Dedication Agreement"), MFC is agreeing to dedicate land to City for the realignment of 23rd Street West; and City is agreeing to take the steps necessary to vacate, effective on completion of the 23rd Street West realignment, portions of the existing 23rd Street West and 8th Avenue West rights of way. After the vacation of those portions of the existing 23rd Street West and 8th Avenue West rights of way, ownership of the vacated property will vest in MFC and in the County, as the adjoining landowners. Therefore, following the effective date of the vacation, on the City's request, County will transfer, without warranty, newly acquired lands resulting from the vacation of 23rd Street West to City, and MFC will dedicate its newly acquired lands resulting from the vacation of the portion of 23rd Street West located westerly of the 10th Avenue Extension Area to the City, for inclusion in the new ball field complex, subject to the terms and conditions set forth in this Agreement.

Each of the foregoing transfers shall include all right, title and interest of the transferor in and to all rights, privileges, easements, hereditaments and appurtenances to the Property, and (except with respect to the dedication of property for road use or the vacation of road rights of way) the right, title and interest of the transferor in and to the land lying in the bed of any street, road, avenue or alley, open or proposed; public or private, in front of or adjoining the Property to the center line thereof. Notwithstanding the foregoing, MFC shall retain all consumptive use rights in any wells on the Property transferred by MFC, including, without limitation, any right that may exist to transfer those consumptive use rights and all deeds from MFC shall contain that reservation. the following provision:

~~(b)(a)~~ (i) — Agreement. City and MFC shall have entered into the Dedication Agreement, and each shall have fulfilled all conditions on its respective part required to be performed prior to closing under that agreement (including, without limitation, the adoption of certain amendments to the City's Comprehensive Plan affecting the Community Center Site (hereinafter defined) and other land contiguous to the Property described in this Agreement as more fully set forth in the Dedication Agreement, and the expiration of all available appeal periods affecting those amendments), so that both City and MFC are unconditionally obligated to close the transactions contemplated by the Dedication Agreement. Under the Dedication Agreement, prior to closing under that agreement, City has agreed to take all action necessary on its part to vacate a portion of the existing right of way of 23rd Street West and a portion of the existing right of way of 8th Avenue West, to be effective upon and contingent upon the completion of the "Roadway Project" (as defined in the Dedication Agreement) and opening to traffic of the realigned 23rd Street West, and Closing shall have occurred under the Dedication Agreement.

(ii) — To the extent that any portion of the portions of the existing right of way of 23rd Street West being vacated may vest in County, as the adjoining landowner, as a result of the vacation, the County, on request of the City, agrees to quitclaim its interest in those lands to City for use in the ball field complex. To the extent that any portion of the existing right of way of 8th Avenue West being vacated may vest in County, for any reason, the County, on request of MFC, agrees to quitclaim its interest in those lands to MFC. These agreements shall survive the Closing under this Agreement. The transferee of vacated property agrees to accept title to that property subject to existing easements and easements necessary to accommodate existing utility installations.

(iii) — Portions of the existing right of way of 8th Avenue West are not now within the City's boundaries. Those lands are depicted on Exhibit B attached hereto. To facilitate the completion of the Roadway Project, City agrees to take all steps required for the annexation of those lands to the City and thereafter take all action necessary on its part to vacate the portion of those lands described on Exhibit B-1 attached hereto, to be effective upon and contingent upon the completion of the Roadway Project and opening to traffic of the realigned 23rd Street West. MFC and County will cooperate (at no cost to MFC) in the proceedings and will sign and deliver such applications and consents as may be required in order to evidence their consent to the annexation and vacation. It is understood that the completion of the annexation and vacation is fully subject to the rights of the public in public hearing, so that the final outcome cannot be guaranteed by the City. If the City's efforts to annex the subject property are not successful, then County agrees to take all steps necessary to vacate those portions of 8th Avenue West described in Exhibit B-1 hereto that are not now part of the City, to be effective upon and contingent upon the completion of the Roadway Project as aforesaid, and MFC and City will cooperate (at no cost to MFC) in those proceedings, it being further understood that the outcome of the proceeding cannot be guaranteed by the County.

(d) Construction of new 23rd Street West. As a condition of MFC's obligation to close, construction of realigned 23rd Street West shall have commenced and be ongoing.

(e) Condition of Property at Closing. The transferee of Property shall be entitled to conduct a walk-through inspection of the Property to be transferred to it on the day before Closing to confirm that the Property is in the condition required by this Agreement, and that the express warranties and representations of the transferor regarding the condition of the Property are true and correct and have not changed since the end of the Inspection Period. If transferee is not satisfied, in its reasonable discretion, with the provisions of this subparagraph (f), then transferee may deliver a notice to transferor on or before the Closing Date detailing the default; provided, however, transferor shall have ten (10) days after receipt of such written notice to cure such default and the Closing Date shall be extended to allow for such cure period.

(f) Termination hereunder. A termination under this Agreement by either party, during the Inspection Period or as otherwise allowed herein, terminates the obligations hereunder (including the obligation to close) except those obligations that specifically survive termination.

(g) Termination under the Dedication Agreement. In the event the Dedication Agreement is terminated by any party thereto prior to Closing hereunder, whether during the Inspection Period or as otherwise provided in the Dedication Agreement, this Agreement shall also automatically terminate coincident therewith (except for matters hereunder that specifically survive termination hereunder).

(h) Related Transactions. The obligations of any one party to this Agreement to transfer its Property under the terms agreed to herein is conditioned on the fulfillment on the part of all other parties to this Agreement of their respective obligations described and within the time periods prescribed herein and in the Dedication Agreement, it being understood that each transfer under this Agreement and the Dedication Agreement is part of an integrated development plan, with all components of the plan contemplated herein being dependent upon each other. Accordingly, the termination of this Agreement with respect to any one transfer shall have the effect of terminating this Agreement entirely as to all parties, (except for matters hereunder that specifically survive termination).

Notwithstanding anything herein to the contrary in this Agreement, if any of the conditions in (a), (b), (c), (d) and (e) above have not been satisfied by the Closing Date, Manatee Fruit shall have no obligation to close and deliver the Deed and other closing documents to the City and School Board.

5. Additional Consideration, Construction and Easements. In addition to the Consideration, in consideration of the various transfers described herein, the parties agree as follows:

termination of the School Board's temporary use easement, City will give School Board written notice that City intends to terminate the easement so that the 10th Avenue West Extension Area can be prepared for construction, which shall include all costs of design, permitting and engineering, and the value of any additional land required for stormwater or drainage facilities for the road and the construction of such facilities. The temporary easement shall include agreement in customary form by School Board to comply with Environmental Laws during the term of the easement, liability of the School Board for the easement area, and such other terms and conditions as are acceptable to School Board and City and their respective counsel. If the City has not designed and completed the extension roadway within ninety (90) days after notice to City from the School Board informing the City the roadway is necessary for school purposes, then School Board may design and complete the roadway, with such design and construction plans subject to the reasonable and timely review and approval of the City.

If at any time MFC desires to develop the Community Center Site or its lands to the north or the east and City has not yet constructed the 10th Avenue West Extension roadway, MFC may design and construct the roadway or any portion thereof that it desires, with such design and construction plans subject to the reasonable and timely review and approval of the City. If the 10th Avenue West extension (or any portion thereof) is constructed by MFC, then, to the extent available under the City Land Development Code and subject to the terms and provisions of that Code then in effect, MFC shall receive transportation impact fee credits equal to the cost of construction. The City makes no representation or warranty that such impact fee credits are now or will in the future be available for road construction to local road standards.

(d) **Community Center Site Parking and Easements.**

(i) The 2.0 +/- acres of land located at the southwest corner of the intersection of 23rd Street West, as it will be realigned, and 10th Avenue West Extension, and described on **Exhibit E** attached hereto (the "Community Center Site"), is intended for general commercial use ("GCOM") designation in a certain Future Land Use Map Amendment pending with the City (Ord. No. 2010-05). Until such time as the Community Center Site is developed for use, it may be used for overflow parking for the Blackstone Park and ball field complex and for access, pursuant to one or more temporary easements and/or use agreements substantially in form attached hereto as **Exhibit E-2**. Should the land be used for a community center such as a Boys & Girls Club, YMCA, YWCA or similar recreation facility for the benefit of the surrounding community ("Community Center") (subject to the City's approval in accordance with the City Code of Ordinances), City will allow use of the parking areas on its adjoining land north of the ball fields as parking area for the Community Center, subject to reasonable conditions—lands adjacent to and as a part of the Ball Field Project for the Community Center, via permanent easement in the form attached hereto as Exhibit E-6. If the Community Center is to be developed before the Ball Field Project is completed, parking for the Community Center Site will be made available under the same form of easement agreement, however, such agreement may contain a provision for the relocation of such parking upon development of the Ball Field Project, subject to reasonable agreement by MFC of location, access and language of such provision. If, at the time MFC has need for such parking, the City has not yet built such

property in the area, such lines shall be upsized and the parties shall work together with each other and each party's engineers on the design, and the cost will be prorated accordingly. Following completion, the stormwater facilities shall be maintained by the City, and MFC shall share in the cost of maintenance on an equitable or usage basis to be set forth in the easement and shared use agreement. The easement and shared use agreement shall be substantially in form attached hereto as **Exhibit E-5**.

(e) **Grant Funding.** The parties agree to cooperate with each other in applying for grant funding and supporting each other's applications for grant funding for any part of the development of the improvements planned as described in this Agreement. Such application, however, shall be at the sole cost and expense of the party initiating such application.

(f) **Relocation of Fences and other Improvements on School Board Property.** The transferor of any Property conveyed to School Board or the City shall, within ~~thirty (30)~~ sixty (60) days following the closing of the transfer, move any improvements/fences on the Property to make them conform to applicable laws and ordinances, including, without limitation, setback requirements/separate adjacent uses. School Board and/or City, as the case may be shall reimburse MFC up to \$1,500,000.00 (in the aggregate) for the reasonable cost to relocate or replace, at its discretion, any fences on Property to be transferred to the respective party by MFC, so that, after the closing of the transfer, MFC's and the transferee's lands and activities shall be separated from each other by fencing.

~~(g) **Survival.** The agreements and obligations set forth in this Section shall survive the Closing.~~

~~6. **Closing Conveyance Documents.** (g) **Vacation of 23rd Street West and 8th Avenue West.** Under the Dedication Agreement, prior to closing under that agreement, City has agreed to take all action necessary on its part to vacate a portion of the existing right of way of 23rd Street West and a portion of the existing right of way of 8th Avenue West, to be effective upon and contingent upon the completion of the "Roadway Project" (as defined in the Dedication Agreement) and opening to traffic of the realigned 23rd Street West. To the extent that any portion of the existing right of way of 8th Avenue West being vacated may vest in County, for any reason, the County, on request of MFC, agrees to quitclaim its interest in those lands to MFC. These agreements shall specifically survive the Closing under this Agreement. The transferee of vacated property agrees to accept title to that property subject to existing easements and easements necessary to accommodate existing utility installations, except as otherwise provided in the Dedication Agreement relative to MFC (which provision is incorporated herein by reference).~~

(h) **Annexation and Vacation of 8th Avenue West.** A condition of MFC's obligation to close under the Dedication Agreement is that the City has annexed a portion of 8th Avenue West into the City. County agrees to cooperate in such annexation. If the City's efforts to annex the subject property are not successful, then County agrees to take all steps necessary

(6) months of the Effective Date ("Completion Deadline"). If Manatee Fruit demands reconveyance, the closing of such reconveyance transaction shall occur within thirty (30) days following the date of such election. At such closing, City shall deliver a special warranty deed to the Property to Manatee Fruit subject only to the same encumbrances (Permitted Exceptions) to which City received title from Manatee Fruit. City shall pay all closing costs related to the reconveyance, including but not necessarily limited to: documentary stamps on the deed (if any); recording fees and all costs necessary to satisfy or release any encumbrances on the Property that are not permitted hereunder. City shall provide all documents reasonably requested by Manatee Fruit (including, without limitation, owner's and construction lien affidavits) relating to the title to the Property and its insurability. In the event MFC waives or otherwise does not demand reconveyance if construction is not commenced by the Commencement Deadline, such waiver shall not affect MFC's right to demand reconveyance if at least two (2) ball fields and associated parking have not been completed by the Completion Deadline. Further, if a portion of the Property described in Exhibits A-3 and A-3a has been developed for fewer than two (2) ball fields and associated parking, MFC will be entitled to reconveyance of only the portion of the Property not so developed. On City's completion of the Ball Field Project within the required time periods, MFC will execute and deliver a termination of its reconveyance rights in a form suitable for recording in the Public Records. All of the reconveyance conditions set forth in this Paragraph(c) shall be included in the Deed.

7. **Title.** At Closing, the Property shall be conveyed, subject to the following exceptions (all, "Approved Exceptions"):

- (a) liens for ad valorem taxes not yet due and payable;
- (b) all building, zoning, environmental, and other state, county or federal laws, codes, and regulations (whether existing or proposed), affecting the Property, including any and all special exceptions, conditions, and other similar matters, if any, related to the zoning of the Property; and
- (c) As to property which will be acquired by way of vacation of public roadways, whether as a result of the vacation or by transfer, existing easements and easements needed to accommodate existing utility installations in and along the former right of way.

8. **Title Commitment/Title Policy.** Within twenty (20) days after the Effective Date, each transferee of Property (including, without limitation, any party in whom Property may vest as a result of vacation of a roadway with respect to which the party is an adjoining landowner) may procure, at its own cost and expense (a) a title insurance commitment ("Commitment"), issued by a title insurance agent selected by it (the "Title Company"), showing the transferor of the Property identified in Section 2 of this Agreement as the record title owner of the Property and the terms by which the Title Company agrees to issue an owner's policy of title insurance (the "Title Policy") issued on the standard ALTA Owner's Policy, 1992 form with Florida modifications, in the amount of the appraised value, insuring fee simple title to

the owner of the Property, this Agreement shall be terminated as to all parties, and no party shall have any further rights or obligations pursuant to this Agreement except for the Inspection Obligations (described in **Section 10(c)** of this Agreement) and the obligations created pursuant to **Section 16** (regarding brokerage) and any other obligations hereunder that specifically survive Closing, all of which shall continue until fully performed.

9. **Survey.** Within twenty (20) days after the Effective Date, any proposed transferee may, if it wishes: (a) procure a current ALTA survey ("Survey") of the Property from a Florida licensed surveyor, certified to it, the current owner of the Property, their counsel and the proposed transferee's Title Company in accordance with a surveyor's certificate reasonably acceptable to the parties to whom the certification runs; and (b) provide a copy of the Survey to the owner of the Property and its counsel. If the Survey shows any matters which would affect marketability of title to the Property (except for the Permitted Exceptions), the proposed transferee shall notify the owner of the Property in writing of the specific defects (the "Survey Defects") pursuant to **Section 8**. Any Survey Defects shall be treated in the same manner as Title Objections are treated under **Section 8**. ~~Subject to the transferring party's obligation to relocate them as provided in Section 5(f) of this Agreement, Fences shall not constitute Survey Defects.~~

10. **Inspection Period.**

(a) ~~**Inspection Period Inspections.**~~ During the Inspection Period and at any other time prior to Closing, unless this Agreement is terminated prior thereto, and subject to the terms and conditions of this Agreement, the contractors working on behalf of the proposed transferee shall be entitled to enter upon the Property at all reasonable times during normal business hours to inspect and conduct tests to determine the suitability and feasibility of the Property for that transferee's intended use, with each respective proposed transferee bearing the cost of its own inspections and tests. It is understood that as of the date of execution of this Agreement, and as further provided in **Section 10(d)(1)** of this Agreement, Property now owned by MFC that will be transferred hereunder has been evaluated or is in the process of being evaluated for the presence of Hazardous Materials, so that which evaluation will be completed by the end of the Inspection Period. ~~Thus,~~ no further environmental study of that Property shall be conducted before Closing.

(b) ~~**During the Inspection Period.**~~ Within ten (10) days after the Effective Date, the owner of the Property shall, to the extent it possesses or has reasonable access to any of the following, provide the proposed transferee with each of the following: true and correct copies of all licenses, permits, and approvals, with respect to the ownership and operation of the Property; any surveys, engineering plans, drawings, or specifications, which the owner of the Property or its agents has relating to the Property; notices of assessments (special or otherwise); notices, or correspondence from governmental entities; maintenance, property and any other records relating to the Property; any building or aerial photographs; governmental approvals for zoning, platting, utility services or other matters; copies of any title insurance policies; and such additional information concerning the Property as the proposed transferee may reasonably

School Board. Each of City and School Board acknowledges that it has reviewed and approved an environmental audit of the Property being transferred to it by MFC prior to entering into this Agreement. Such reimbursement shall occur within three (3) business days of the later of (i) the Effective Date, and (ii) the date a copy of the written environmental audit report certified to the City (among others) is delivered to City or City's attorney. It is the intent that the meeting following Limited Phase II as described in the letter agreements attached hereto as Exhibit F and the delivery of the written environmental audit report will occur before the end of the Inspection Period and City, School Board and MFC will use diligent efforts to facilitate such timing. If not received before the end of the Inspection Period, City, School Board or MFC may elect to extend the Inspection Period by a period of time not to exceed ten (10) days to accomplish same.

(ii) With respect to the other Property to be transferred pursuant to this Agreement, as additional consideration for the transfer(s) contemplated herein, each proposed transferee agrees that it will provide to the Property owner immediately following the receipt of same by that proposed transferee copies of any and all reports, tests or studies involving Hazardous Materials on, under or at the Property which reports, tests or studies shall be addressed to both the owner and the proposed transferee at no cost to the owner; provided, however, the proposed transferee shall have no obligation to cause any such tests or studies to be performed on the Property. With respect to Property other than the Property to be transferred by MFC to School Board and City, if such reports, tests or studies indicate the existence or reasonable potential existence of any Hazardous Materials on, under or at the Property, the proposed transferee may terminate this Agreement by giving written notice to all parties prior to the expiration of the Inspection Period; and no party shall have any further rights or obligations pursuant to this Agreement except for the Inspection Obligations and the obligations created pursuant to **Section 16** and any other obligations hereunder that specifically survive Closing, all of which shall continue until fully performed.

(e) **Appraisal.** Except for MFC, which shall have no obligation to obtain an appraisal, the proposed transferee of Property shall obtain any appraisal of the Property which it desires or requires during the Inspection Period. ~~With respect to the appraisal supporting the City's grant of impact fee credits to MFC under Section 3(a), the credits given shall be offset for land vesting in MFC as a result of vacation of roadways as provided in Section 2(g) and 4(a)(ii) of this Agreement and in the Dedication Agreement; provided, however, that~~

secure the approval. In the event the approval is not received by the end of the Inspection Period, the School Board may elect to terminate this Agreement as provided herein:

(i) **Easements and Exhibits.** To the extent the easement agreements and sketches/legal descriptions referenced in this Agreement and in the List of Exhibits attached hereto are not attached to this Agreement at the time of execution, City will provide drafts of same to the other parties hereto no later than five (5) business days after the Effective Date, with the goal of reaching agreement on same by the end of the Inspection Period. Such Exhibits shall be in form and content acceptable to the parties affected by such agreements, in their sole discretion. In the event (and to the extent) such documents, sketches and legal descriptions are not timely provided and agreed during the Inspection Period, and if this agreement is not terminated during the Inspection Period, agreement by the affected parties on the form and content of all such documents and all such sketches and legal descriptions is a continuing obligation and survives Closing.

(i) **Right to Terminate.** The proposed transferee of any Property shall be entitled to terminate this Agreement by giving notice of termination to the other parties no later than the last day of the Inspection Period if such proposed transferee determines in its sole discretion that for any reason whatsoever the Property that it will receive is not satisfactory. Upon such termination, the Parties shall thereupon be released of further obligations under this Agreement, except those that specifically survive termination of this Agreement.

11. **Closing Costs and Documentary Stamp Tax**

(a) For each Property, the proposed transferee shall pay the cost of any Title Policy which the transferee may elect to obtain to insure its ownership interest.

(b) In each transfer the transferor shall pay the cost of recording any corrective title instruments.

(c) Costs of recording the deed for each transfer shall be paid by School Board for transfers between MFC and the School Board, by School Board for the transfer from County to School Board, and one half each by City and by School Board for the transfers from School Board to City.

(d) Costs of preparing and recording easements and agreements provided for herein shall be paid as follows:

(i) City and School Board shall share equally the cost of recording the School Board's temporary easement over the future 10th Avenue West extension (described in Section 5(c) of this Agreement), if needed and School Board shall pay the cost of preparation of that easement.

transferor. Any pending liens and certified liens for which the work has not been substantially completed shall be assumed by transferee of the Property. The provisions of this Section shall survive the Closing.

13. **Representations, Warranties and Covenants of Transferor and Transferee.**

(a) **Representations and Warranties of Transferors.** As an inducement to each transferee of Property to enter into this Agreement and to consummate the transactions contemplated herein, each owner of Property represents and warrants to and covenants with each transferee with respect to the Property to be transferred by the respective owner to the respective transferee that, to the best of its knowledge, the following are true and correct as of the date hereof, and shall be true and correct as of the Closing:

(i) That, except with respect to Property now owned by MFC, which is subject to agricultural lease(s) which will be terminated or released at Closing, there is no party in possession of, or that has a right to possess, any portion of the Property as lessee, tenant at sufferance, licensee, or otherwise.

(ii) That it has not received a written notice from a governmental agency that the Property is in violation of any applicable laws, statutes, ordinances, regulations, codes, covenants, conditions or restrictions of any kind or nature affecting the Property or any part of it.

(iii) That it has made all payments required to be made by it to contractors, subcontractors, mechanics, materialmen and all other persons in connection with work done or services performed at its direction with respect to the Property, and there is no basis for the filing of any lien against the Property.

(iv) That it has received no written notice of public or private assessments against the Property which remain unpaid, including without limitation those for the construction of utility lines and apparatus, streets, sidewalks and curbs;

(v) That it has no actual knowledge of any subsurface condition which would impair the usability or developability of the Property for the transferee's intended use as stated herein, which has not already been disclosed to the transferee;

(vi) That except as disclosed to a transferee, there are no outstanding obligations or assessments for sewer, water, drainage, roadway or other improvements which presently impact upon the Property by reason of any existing improvements on the Property. Further, a transferee who imposed any such obligation or assessment shall not be entitled to rely on this representation.

(vii) That it has received no written notice from any governmental agency of any pending or threatened litigation or proceedings before any governmental agency in which any person or entity alleges that the Property is in violation or threatened violation of any

limitation: (i) the value, condition, merchantability, marketability, profitability, suitability or fitness for a particular use or purpose of the Property, and (ii) the manner, quality, state of repair or lack of repair of the Property. Each proposed transferee agrees that with respect to the Property which it agrees to acquire under the terms of this Agreement, it has not relied upon and will not rely upon, either directly or indirectly, any statement, representation or warranty of the transferor, other than as expressly contained herein. Each proposed transferee represents that it is a knowledgeable buyer of real estate and that it is relying solely on its own expertise and that of its contractors, and that it will conduct such inspections and investigations of the Property, including, but not limited to, the physical conditions thereof, and shall rely upon same; and, upon closing, shall assume the risk that adverse matters, including, but not limited to, adverse physical conditions, may not have been revealed by its inspections and investigations. Each proposed transferee acknowledges and agrees that upon closing, the owner of the Property being conveyed to the transferee shall convey and it shall accept the Property "as is, where is," with all faults, and further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property by the owner, any agent of the owner or any third party. The terms and conditions of this paragraph shall expressly survive the closing and not merge therein.

(b) **Covenants of Owner.** Each owner of Property covenants with each transferee with respect to the Property to be transferred by the respective owner to the respective transferee that from and after the Effective Date, through and including the Closing Date:

(i) Except pursuant to the obligations set forth hereunder and under the Dedication Agreement, it shall not apply for any change whatsoever of the current zoning of any Property or otherwise seek to change in any manner whatsoever the nature of the use of the Property or seek any variance of such zoning of the Property except in conjunction with the other parties to this Agreement and as otherwise expressly provided herein.

(ii) It shall not transfer, convey, or encumber (unless it shall remove such encumbrance on or before the Closing Date) in any manner whatsoever any portion of the Property or any rights therein, or enter into any easement, license or agreement (or amend any existing easement, license or agreement) granting to any person or entity any right with respect to the Property or any portion thereof.

(iii) It shall not direct any person to make, nor shall it consent to any other person making, any material changes to the Property or any portion thereof without the prior written consent of the proposed transferee.

(vi) It shall provide the proposed transferee with prompt notice if any of the representations or warranties with respect to the Property set forth in the immediately preceding Paragraph (a) of this Section becomes untrue in any material respect.

(v) It shall not place or release or allow to be placed or released on the Property any Hazardous Materials in violation of any Environmental Laws.

any condemnation awards or proceeds received after such date relating to the Property and the owner shall convey the portion of the Property, if any, which remains after the taking. In the event the transferee fails to timely deliver written notice of termination pursuant to this Section, it shall be deemed to have waived its right of termination pursuant to this Section.

While this Agreement is in effect, no governmental entity that is a party to this Agreement shall institute condemnation proceedings against any of the Property described herein.

(c) **Termination Pursuant to Paragraphs (a) or (b).** Upon the timely delivery of a termination notice pursuant to either Paragraph (a) or (b) above the proposed transferees shall deliver the Inspection Documents to the owners of the respective Property; and thereafter no party shall have any further rights or obligations pursuant to this Agreement except for the Inspection Obligations and the obligations created pursuant to **Section 16** and any other obligations hereunder that specifically survive Closing, all of which shall continue until fully performed.

15. **Assignment.** No party may assign any or all of its rights and obligations pursuant to this Agreement (whether by direct or indirect transfer or assignment) without the other parties' prior written consent; provided, however, this provision shall not prohibit MFC from transferring or ground-leasing the Community Center Site to another entity as long as such transferee or lessee agrees in writing to take subject to this Agreement.

16. **Brokers/Indemnification.** The parties represent and warrant to each other that they have not dealt with any realtor, broker, salesperson, or agent in connection with this Agreement. In the event of any breach of the foregoing representations, the breaching party shall indemnify and hold the others harmless from any cost, expense, or liability (including reasonable attorneys' fees) for any compensation, commissions or charges claimed by any realtor, broker, or agent in connection with this Agreement or by reason of any act of such breaching party. The representations, warranties, and indemnities contained in this Section shall specifically survive the rescission, rescission, cancellation, termination or consummation of this Agreement.

17. **Notices.** Any notice or communication shall be in writing and shall be sent by either: (a) personal delivery service with charges billed to shipper; (b) overnight or expedited delivery service with charges billed to shipper; (c) facsimile transmission provided a confirmation copy is provided; or (d) United States mail, postage prepaid, registered or certified mail, return receipt requested. Any notice or communication sent as above provided shall be deemed given or delivered: (a) upon receipt if personally delivered (provided that such delivery is confirmed by the courier delivery service); (b) if sent by United States Mail, on the date appearing on the return receipt, or if there is no date on such return receipt, the receipt date shall be presumed to be the postmark appearing on such return receipt; or (c) on the date of actual delivery by any overnight or expedited delivery service or facsimile transmission (provided receipt is confirmed as provided above). All notices, requests or demands which any party is

With a copy to: Tedd Williams, County Attorney and William E. Clague
Office of the County Attorney
Manatee County
1112 Manatee Avenue West, 9th Floor
Bradenton, Florida 34205
Fax: (941) 745-3089

or to such other address as any party may designate by written notice to the other party.

18. **No Third Party Beneficiaries, Remedies.** The agreements made in this Agreement and the development plan described herein have been determined by the parties which are governmental entities to be in furtherance of the public interest. However, no member of the public or any person or entity not a party to this agreement shall have any right to enforce, it or any remedy for breach of it. Further, the rights and remedies are only for the benefit of parties in privity with each other with respect to a transfer of Property, and no party has a right to enforce this agreement against a party unless the allegedly defaulting party has an agreement for the transfer of Property to or from the party seeking enforcement. ~~Further, it is understood and agreed that there is no privity of contract under this Agreement or some other obligation exists between MFC and County, so that neither has any right to enforce the provisions of this Agreement against the other parties.~~ Subject to that limitation, if any party fails to timely comply with any material condition, covenant or obligation it has hereunder, the other parties shall have the right to:

(a) Terminate this Agreement by giving written notice thereof to the other parties, whereupon no party shall have any further rights or obligations hereunder, except those that specifically survive termination; provided, however, (i) termination hereunder is only available as a remedy prior to the Closing, and (ii) except for monetary obligations and the obligation to close hereunder, the defaulting party shall have ten (10) days after receipt of written notice to cure such default (unless different time frames are otherwise specifically provided in this Agreement); or

(b) Enforce specific performance of the defaulting party's obligations under this Agreement.

19. **Miscellaneous.**

(a) **Entire Agreement.** ~~This Agreement constitutes the entire agreement between the parties. No representation, promise or inducement not set forth herein shall be binding upon any party.~~ **Exhibits.** The Exhibits attached hereto ~~(or to be attached hereto as provided herein)~~ are hereby incorporated herein by reference ~~and the List of Exhibits and special provisions therein (if any) are also incorporated herein by reference.~~

Nothing contained herein or in the Introduction to this Agreement shall be construed as a waiver of any party's rights in the event of a condemnation proceeding.

(l) **Construction of Agreement.** The parties acknowledge and agree that they have been represented by counsel and that each of the parties has participated in the drafting of this Agreement. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this Agreement are not to be construed in any way against or in favor of any party hereto by reason of the responsibilities in connection with the preparation of this Agreement.

(m) **Public Disclosure Affidavit.** The parties confirm that, before entering into this Agreement, they have complied with Section 286.23(2), *Florida Statutes* to the extent applicable to any transaction described in this Agreement.

(n) **Attorneys' Fees and Costs.** In the event of any litigation arising out of this Agreement, and subject to the limitations set forth in **Section 18** of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees (including appeal and recovery of judgment costs and fees) from the non-prevailing party.

(o) **Effect of Termination of Agreement.** Unless the parties agree otherwise, the termination of this Agreement with respect to one party shall terminate this Agreement entirely as to all parties, and no party shall have any further rights or obligations pursuant to this Agreement except for the Inspection Obligations and the obligations created pursuant to **Section 16** and any other obligations hereunder that specifically survive Closing, which shall continue until fully performed.

(p) **Delegation of Authority.** After execution of this Agreement by the parties, the duties and responsibilities under this Agreement of the School Board may be performed by the Superintendent of Schools or the Superintendent's designee, the duties and responsibilities of the City may be performed by the Mayor or her designee, and the duties and responsibilities of the County may be performed by the County Administrator or his designee.

(q) **Survival.** As required by the context, any provision(s) hereof shall specifically survive the Closing.

(r) **Execution.** In the event this Agreement is not executed by all parties on or before September 15, 2010, it shall be null and void and of no force and effect.

IN WITNESS WHEREOF, the parties hereto set their respective hands and affixed their seals on the day and year indicated below.

Signatures on following pages

Signed, sealed and delivered
in the presence of:

ATTEST: _____ Tim McGonegal, Superintendent Approved to Form and Legal Sufficiency By: _____	SCHOOL BOARD OF MANATEE COUNTY, FLORIDA, a public body corporate By: _____ Jane Pfeilsticker Chairman Date Executed: _____, 2010
--	--

	CITY OF PALMETTO, a municipal corporation of the State of Florida
_____ Mayor	By: _____ Print Name: Shirley Bryant Its:
Attest:	
By: _____ Jim Freeman, City Clerk	Date Executed: _____, 2010

Signed, sealed and delivered
in the presence of:

MANATEE COUNTY, a political
subdivision of the State of Florida

Attest:

R.B. Shore, Clerk of the Circuit Court

By: _____
Deputy Clerk

By: _____
Donna Hayes, Chairman of the Board of
County Commissioners

Date Executed: _____, 2010

List of Exhibits

Legal Descriptions of Property to be transferred under this Agreement (Section 2):

Exhibit A-1, from School Board to City (2.754 +/- acres) (for 10th Avenue West Extension)

Exhibit A-2, from School Board to MFC (2.055 +/- acres)

Exhibit A-3, from MFC to City (7.229 +/- acres)

Exhibit A-3a, from MFC to City (0.521 +/- acres)

Exhibit A-4, from MFC to School Board (1.820 +/- acres)

Exhibit A-5, from County to School Board (2.833 +/- acres)

Exhibit A-6, from MFC to City (1.528 +/- acres) (for 10th Avenue West Extension)

Exhibit A-6a, from MFC to City (0.841 +/- acres) (for 10th Avenue West Extension)

Exhibit A-7 - Land Exchange Exhibit (aerial photograph)

~~Exhibit B - Portion of 8th Avenue West to be annexed by City of Palmetto (Intentionally deleted.)~~

~~Exhibit B-1 Portion of 8th Avenue West to be vacated by City of Palmetto (Intentionally deleted.)~~

Exhibit C - Temporary Construction Easement from County to City

Exhibit D - Temporary Use Easement over 10th Avenue West Extension Area from City to School Board

Exhibit E- "Community Center" ~~parcel~~ Site (Section 5(d)(i))

Exhibit E-2 - Temporary Easement from MFC to County/City of Community Center ~~land~~ Site for Access and Parking (Section 5(d)(i))

Exhibit E-3 - sketch of access and drainage easements affecting Community Center ~~parcel~~ Site (Section 5(d)(ii))

Exhibit E-4 - Temporary Connector Easement across Community Center Site (Section 5(d)(ii))

Exhibit E-5 - Stormwater Retention Easement and Shared Use Agreement (Section 5(d)(iii))

Exhibit E-6 - Parking Easement from City and County to MFC (Section 5(d)(i))

Exhibit F Letter Agreements re: Environmental Study, from City and School Board to MFC (Section 10(d)(i))

Special provisions:

To the extent any of the above-referenced Exhibits are not attached to this Agreement at the time of execution, City will provide drafts of same (documents and sketches & legal descriptions) to the other parties hereunder no later than five (5) business days after the Effective Date, with the goal of reaching agreement on same by the end of the Inspection Period. Such Exhibits shall be in form and content acceptable to the other parties, each in its sole and absolute discretion.

~~G:\DOCUMENTS\BMP\BMC School Board, Real Estate Minutes Fruit Palmetto property Sch Bd Phase II Purchase Contract Agreement Phase II~~



City of Palmetto Agenda Item

Meeting Date

9/13/10

Presenter: Mayor Bryant/ Michael Hankin,
Special Counsel to the City

Department:

Title: Dedication Agreement for 23rd Street

Background

Several years ago, the City began discussions with the School Board related to the construction of a new Palmetto Elementary School. As part of those discussions, a plan evolved which involved seven parties to provide a new elementary school, a new Boys & Girls Club, and ultimately new ball fields:

Phase I of the project involved the City, School Board, the Boys and Girls Club, and Just for Girls at property on 10th Street West. Property purchases by the School Board occurred in 2009 and this phase of the project is coming to completion. The new Palmetto Boys and Girls Club has recently opened on property purchased from the City. New Palmetto Elementary School is scheduled to open in January. Just for Girls is located on property which they now own to provide a children oriented complex in the City, also on property purchased from the City.

Phase II was to provide for a ball fields complex with easy access to the residents of Palmetto. A site on 23rd Street near a possible extension of 10th Avenue was selected. This was addressed in the Phase II Agreements. Because of the location of the ball fields, 23rd Street West will need to be relocated and reconstructed and this was addressed in the Dedication Agreement. Although early cost estimates and property needs were significantly off, the City, the County, the School Board and Manatee Fruit Company have been working together to create agreements which address all parties concerns.

Matters necessary for the proposed ball field complex to be accomplished have been begun by the City, County and School Board. The City has initiated a series of requested comprehensive plan amendments, an annexation of 8th Avenue, and street vacation preparation. It has also obtained proposals for the design and construction and development of a re-coated 23rd Avenue, which is needed because of the size and location of the proposed ball field complex.

Manatee Fruit Company has presented an executed contract and has indicated that it is unwilling to change any terms in that contract.

Discussion:

See Attached

DEDICATION AGREEMENT BETWEEN MANATEE FRUIT COMPANY, INC. AND CITY OF PALMETTO

DISCUSSION:

Under the Dedication Agreement, Manatee Fruit Co. will dedicate land for the new 23rd St. W. right of way to the City in exchange for the City's agreements with respect to development of the surrounding area, including the City's agreement to pursue amendments to the Comprehensive Plan Future Land Use map to redesignate Manatee Fruit Co.'s lands south of the new 23rd right of way as GCOM. No new impact fee credits are to be granted to Manatee Fruit Co. other than the credits to which it was already entitled as a result of its dedication of right of way for 23rd in 1998. Portions of the existing 23rd St. W. and 8th Ave. W. rights of way will be vacated as part of this project. Manatee Fruit Co. does not wish to incur any expense in connection with the dedication. Issues for your particular attention are:

Section 4(c). Manatee Fruit Co. requires that the City be ready to begin construction of the new 23rd St. W. right of way before closing, including receipt of binding commitments for all necessary funding and execution of construction agreement(s). This is problematic from a timing standpoint as the City will not have the necessary control of the property needed when construction begins. Further, this requirement may delay progress on the project, as the City may be ready to construct in stages, and this would eliminate that possibility. Early on Manatee Fruit Co. had agreed to a deed restriction providing for its ability to demand that the property be returned to it if construction hadn't started within 2 years of the transfer and that restriction is still part of the agreement (Section 6). That restriction should provide sufficient protection to Manatee Fruit Company from the possibility that the road project won't proceed and would better address funding issues.

Sections 4(e) and 13. As a result of the vacation of portions of the existing 23rd St. W. and 8th Ave. W. rights of way, vacated land will revert to Manatee Fruit Co. This land may be subject to customary utility easements and installations. As a condition to closing, Manatee Fruit requires the City to obtain vacations or releases of the easements or replacement easements with relocation provisions acceptable to Manatee Fruit Company. This could be a problem if the utility providers do not agree, and puts the entire project within the control of a third party utility which is not a party to any of the agreements.

Sections 6 and 8(d). The City is required to begin construction of the new roadway for 23rd St. W. within 2 years of closing and, once begun, construction cannot cease for more than 2 weeks unless necessitated by reasons beyond the City's control. (As noted, this Section is inconsistent with Section 4(d).) Under language proposed by Manatee Fruit Co., those reasons **cannot** include lack of funding. Constitutionally, the City cannot agree to this provision.

Sections 7, 9(b), and 16(c)(v). Manatee Fruit Co. is asking that the City make certain warranties of title and provide and pay for title insurance to the vacated portions of 23rd and 8th which will become the property of Manatee Fruit Co. by operation of law (or quitclaim) following their vacation. 23rd was dedicated to the City by Manatee Fruit Co. 8th was acquired by the County under Chapter 95, Florida Statutes, and there is uncertainty as to whether all of the statutory required procedures were fully followed as the City was not involved in this historical process by the County. Thus, the property, and, in particular 8th, may simply not be title insurable and, at a minimum will require deeds from Manatee Fruit Company to the City.

Section 8(g). Manatee Fruit Co. requires that the City agree to name the new 23rd right of way "Terra Ceia Bay Boulevard". The City cannot agree to name a road by contract, and the name is outside the scope of the existing Ordinance. This language is substantially different from the 1998 Agreement; the City could accept the 1998 Contract language.

Section 8(h) and (i). Manatee Fruit Co. and the City have agreed to grant each other easements along 23rd for signage. Customarily, such an easement will include an agreement by the easement holder to indemnify the landowner from damage or liability resulting from the exercise of easement rights. The agreement as proposed by Manatee Fruit Co. anticipates that the two easements will be identical in form. This is not possible because the City is by statute limited in the range of indemnification which it can provide.

Section 12(a) and (d). As part of customary due diligence, an environmental investigation of the property to be acquired by the City is currently in progress, and the City has agreed to reimburse Manatee Fruit Co. the cost of that study if the

DEDICATION AGREEMENT
BETWEEN THE CITY OF PALMETTO AND MANATEE FRUIT COMPANY

THIS DEDICATION AGREEMENT (this "Agreement") is made and entered into as of the Effective Date (as hereinafter defined) by and between Manatee Fruit Company, a Florida corporation ("Manatee Fruit") or "MFC" and the City of Palmetto, a municipal corporation of the State of Florida ("City").

INTRODUCTION

A. Manatee Fruit owns the ~~parcels of certain~~ real property depicted on **Exhibit A** attached hereto, located in the general area of Blackstone Park (the "Property"); and Palmetto High School in Manatee County, Florida, between U.S. Route 41/8th Avenue West on the west and 14th Avenue West on the east and Terra Ceia Bay Boulevard/23rd Street West on the north, and 17th Street West on the South; and

B. The City desires to enhance the recreational and educational opportunities within the City of Palmetto and in coordination with Manatee County by expanding Blackstone Park and related recreational facilities; and

C. As a part of that expansion project, the City needs to realign the 23rd Street West right of way to improve traffic circulation; and

D. The realignment will benefit the City and County by creating lands available and suitable to build and maintain ball fields for use by little league groups as part of Blackstone Park, a County park; and

E. In order to realign 23rd Street West, the City needs to acquire certain lands (as hereinafter specifically defined as the "Property") from Manatee Fruit, which Manatee Fruit is agreeable to dedicating to the City, under the terms and provisions set forth herein, which terms and provisions hereof are intended constitute an irrevocable offer of dedication; and

F. Certain land for use in the existing 23rd Street West right of way was originally dedicated to City by Manatee Fruit pursuant to Roadway Agreement between them dated April 20, 1998 (the "1998 Agreement"), under which, among other things, Manatee Fruit donated \$358,000.00 toward costs of construction of 23rd Street West in its present location, and which agreement contains certain terms and provisions which still have application to the dedication ~~which that~~ is the subject of this Agreement; and

G. City has condemnation powers and has determined that it would condemn, by eminent domain, the Property, if it were not transferred pursuant to this Agreement and such transfer is, therefore, in lieu of condemnation; and

(g) "Hazardous Materials" means (i) any toxic substance or hazardous waste, substance or related material, or any pollutant or contaminant; (ii) radon gas, asbestos in any form which is or could become friable, urea-formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas, material or chemical which is or may be defined as or included in the definition of "hazardous substances", "toxic substances", "hazardous materials", "hazardous wastes" or words of similar import under any Environmental Law; and (iv) any other chemical, material, gas or substance; the exposure to or release of which is or may be prohibited, limited or regulated by any governmental or quasi-governmental entity or authority that asserts or may assert jurisdiction over the real property which is the subject of this Agreement or the operations or activity at the real property, or any chemical, material, gas or substance that does or may pose a hazard to the health and/or safety of the occupants of the real property or the owners and/or occupants of property adjacent to or surrounding the real property.

(h) "Inspection Documents" has the meaning set forth in Section 12(b) of this Agreement.

(i) "Inspection Period" means the period of time ending at 5:00 p.m. EST on the date which is thirty (30) days after the Effective Date, or such extended period of time as specifically provided herein.

(j) "Phase II Contract" means that agreement of even effective date herewith between City, Manatee Fruit, Manatee County ("County") and School Board of Manatee County ("School Board") for transfers and dedication of lands and easements to facilitate (i) expansion of Palmetto High School and related educational facilities; (ii) the development and operation of ball fields near Blackstone Park; (iii) the future extension of 10th Street West, and (iv) related matters.

(k) "Property" means the land described on Exhibit A hereto, which Manatee Fruit has agreed to donate to the City for the realignment of 23rd Street West, subject to the terms and conditions in this Agreement.

(l) "Roadway" means the road right of way of realigned 23rd Street West following completion of the Roadway Project.

(m) "Roadway Project" means the construction of the realignment of 23rd Street West, including construction of the road bed and roadway surface, and installation of any drainage and other utilities along the road right of way.

(n) "Vacated Property" has the meaning set forth in Section 9(b) of this Agreement.

2. Dedication; Existing Impact Fee Credits.

3. **Conditions Precedent to Obligations of City to Close.** The obligation of City to accept dedication of the Property, unless otherwise waived in writing by City, ~~are~~ is subject to the satisfaction of the following conditions precedent (the "Closing Conditions"):

(a) **Termination hereunder.** A termination under this Agreement by either party, during the Inspection Period, City shall be satisfied, in its sole discretion, before the end of or as otherwise allowed herein, terminates the obligations hereunder (including the obligation to close) except those obligations that specifically survive termination.

(b) **Termination under the Phase II Agreement.** In the event the Phase II Agreement is terminated by any party thereto prior to Closing hereunder, whether during the Inspection Period, with the results of its due diligence conducted at the Property as or as otherwise provided under Section 12 of this Agreement. If City is not satisfied with the results of its due diligence as provided in Section 12, City may in the Phase II Agreement, this Agreement shall also automatically terminate this Agreement in its sole discretion prior to the end of the Inspection Period coincident therewith (except for matters hereunder that specifically survive termination).

(b) **Phase II Contract.** No later than the Closing date under this Agreement, City, Manatee Fruit, Manatee County and School Board of Manatee County ("School Board") shall enter into one or more binding agreements (collectively, the "Phase II Contract") on terms satisfactory to each of them in their reasonable discretion for (i) the acquisition by School Board from Manatee County and from Manatee Fruit of land for the expansion of Palmetto High School and related educational facilities; (ii) agreements by City, Manatee County and Manatee Fruit regarding acquisition of land by the City near Blackstone Park for the development and operation of ball fields; (iii) agreement between School Board and the City regarding the transfer of land by School Board to the City for the future extension of 10th Street West; (iv) the County shall agree to operate and maintain such ball fields in a similar manner to comparable facilities in Manatee County; (v) School Board shall agree to transfer land to the east of the future 10th Street West extension to Manatee Fruit; and (vi) upon receiving ownership, City shall agree to take any action necessary on its part for the vacation of the segments of the existing right of way of 8th Avenue West depicted on Exhibit B-2 effective upon and contingent upon the date of completion of the Roadway Project and opening to traffic of the realigned 23rd Street West. The Phase II Contract shall have such other terms and conditions as the parties shall, in good faith, negotiate. It is anticipated that the negotiations for the Phase II Contract will proceed simultaneously with the negotiations for this Agreement, and the parties agree to pursue the Phase II Contract negotiations in good faith.

(c) **General Approvals.** On or before the Closing date, City, School Board and Manatee County shall have received approval of their respective governing boards of the transactions described in the Phase II Contract to be performed by the respective entity, and City shall have received approval of its governing board on terms satisfactory to City, in its sole discretion that City shall be permitted to accept the dedication of the Property, develop it as intended, and perform its obligations under this Agreement.

part of the Phase II Contract, the County has agreed to take all steps necessary to vacate those portions of 8th Avenue West that are not now part of the City, to be effective upon and contingent upon the completion of the Roadway Project as aforesaid, and MFC and City will cooperate in those proceedings, it being further understood that the outcome of the proceeding cannot be guaranteed by the County.

(a) **Vacation and Annexation of Existing 23rd Street West and 8th Avenue West Right of Way.** Manatee Fruit's obligation to close is contingent upon the City's annexation of 8th Avenue West and the vacation of the applicable portions of existing 23rd Street West and 8th Avenue West, all as more particularly described in **Section 9(b).**

(b) **Adoption of Amendment to City's Comprehensive Plan.** The City shall have Manatee Fruit's obligation to close is contingent upon the City's having adopted certain amendments to the City's Comprehensive Plan affecting land which adjoins the Property described in this Agreement as described in Ordinance No. 2010-05 authorized by the City Commission on May 17, 2010 for transmittal to the State of Florida Land Planning Agency and as more particularly described in **Section 9(a)** below. The term "adopted" as used in this paragraph shall mean final adoption by the City Commission, but shall not be deemed to require nonappealable approval by Closing. (The City's surviving obligations regarding nonappealable approval are addressed in **Section 9(a).**)

_____ If the Closing Conditions described in this Section have not been fulfilled, then Manatee Fruit may terminate this Agreement by giving a Termination Notice to City on or before the Closing Date. Upon the timely delivery of that notice neither City nor Manatee Fruit shall have any further rights or obligations pursuant to this Agreement except for the Inspection Obligations and the obligations created pursuant to Section 20, all of which shall continue until fully performed. If Manatee Fruit fails to deliver a Termination Notice on or before the Closing Date, it shall not have any further right to terminate this Agreement pursuant to this Section.

_____ (c) **City Ready to Commence Construction of Roadway Project.** The City shall have obtained a grant or other binding funding commitment (subject only to the acquisition of the new 23rd Street right of way from Manatee Fruit) and have provided a copy of same to Manatee Fruit for review at least ten (10) Business Days prior to Closing. Further, the City shall have entered into a binding contract with a general contractor to construct the Roadway in accordance with construction plans approved by Manatee Fruit pursuant to **Section 8** below and have provided a copy of such contract to Manatee Fruit for review at least ten (10) Business Days prior to Closing.

_____ (d) **Easements.** In the event (and to the extent) the easement documents, sketches and legal descriptions referenced on the List of Exhibits attached hereto and discussed in **Section 12(g)** "Easements and Exhibits" are not timely provided and agreed during the Inspection Period, and if Manatee Fruit does not terminate during the Inspection Period agreement by Manatee

shall be delivered to the City and Manatee Fruit on or before ~~five (5)~~ ten (10) Business Days prior to the Closing Date. At the Closing, the Property will be in as good condition and repair as at the date of signing of this Agreement. The parties agree that the Deed will contain the following provision re: Manatee Fruit's reservation of consumptive use rights:

Excluded from this transfer are consumptive use rights for the Property and Grantor hereby retains same together with any right that may exist to transfer those consumptive use rights to other properties.

6. **Use Restrictions.** The City agrees that the Property shall only be used, maintained and operated as a public roadway and associated stormwater drainage and retention, underground utilities, landscaping and sidewalks consistent with the roadway use, and for no other purposes. The Deed shall contain this restriction and shall provide that Manatee Fruit shall have the right to demand reconveyance of the Property to Manatee Fruit if the Roadway Project has not been commenced within twenty four (24) months following the Closing; provided that with the reconveyance the closing costs on the reconveyance shall be paid by City; and Manatee Fruit shall reimburse City for any consideration paid to Manatee Fruit (including, without limitation, the return or cancellation of any impact fee credits in excess of the 1998 Credits). If Manatee Fruit demands reconveyance, the closing of such reconveyance transaction shall occur within thirty (30) days following the date of such election. At such closing, City shall deliver a special warranty deed to the Property to Manatee Fruit subject only to the same encumbrances (Permitted Exceptions) to which City received title from Manatee Fruit. City shall pay all closing costs related to the reconveyance, including but not necessarily limited to, documentary stamps on the deed (if any), recording fees and all costs necessary to satisfy or release any encumbrances on the Property that are not permitted hereunder. City shall provide all documents reasonably requested by Manatee Fruit (including, without limitation, owner's and construction lien affidavits) relating to the title to the Property and its insurability. On the City's commencement of the Roadway Project within the required period, Manatee Fruit will execute and deliver a termination of its reconveyance rights in a form suitable for recording in the public records. Once commenced, the City will diligently proceed with the Roadway Project and will not cease construction for a period longer than two weeks, unless necessitated by reasons beyond the City's reasonable control (which reasons shall not include lack of funding). All of the provisions set forth in this first paragraph of this Section 6 shall be included in the Deed.

_____ Land comprising part of the current right of way for 23rd Street West will be vacated by the City and conveyed to Manatee County for use as ball fields and related improvements (the "Land to be Released"): The Land to be Released was originally dedicated to City by Manatee Fruit pursuant to the 1998 Agreement for use as right of way for 23rd Street West and is currently restricted, by the terms of the Roadway Agreement and the deed delivered pursuant to it, to use as road right of way. Upon request of City, at the Closing or thereafter, as part of the vacation of the right of way, Manatee Fruit will release the Land to be Released from those use restrictions, such release to be effective coincident the effective date of the vacation. It is understood that completion of any road vacation as described in this Agreement is subject to the rights of the

~~subject to public comment.~~

~~(b)(a)~~ City will be responsible for the design, permitting and construction of the Roadway Project. The plans for design of the roadway, including provisions for stormwater retention and drainage and landscaping, will be subject to Manatee Fruit's reasonable and timely review and comment. Following Manatee Fruit's approval of the plans, any ~~substantial material~~ changes to them shall likewise be subject to reasonable and timely review and comment by Manatee Fruit. The design of the Roadway Project will be in accordance with applicable laws and regulations, City standards and regulations and generally accepted engineering practices. The design shall include the intersection of realigned 23rd Street West with 8th Avenue West, which also will be subject to Manatee Fruit's reasonable and timely review and comment.

~~(eb)~~ The construction of the roadway shall be in accordance with applicable laws and regulations, City standards, generally accepted engineering and construction practices and the approved plans. The City shall require any contractor entering onto the property of Manatee Fruit in the course of the Roadway Project access Manatee Fruit's property only ~~on and via a license or over the easement rights area and pursuant to the terms of the easement granted to the City and pursuant to Section 8(c) below and require any contractor~~ to carry comprehensive general liability insurance in commercially reasonable amounts, which policy(ies) shall name Manatee Fruit as an additional insured thereunder.

~~(d)~~ Following completion and the effective date of the vacation, some or all of the Vacated Property may vest in City, in Manatee County and/or in Manatee Fruit, as adjoining landowner. The amount of transportation impact fee credits allocated to Manatee Fruit under Section 2(b) of this Agreement will be reduced by the value of the portions of the Vacated Property acquired by Manatee Fruit in this manner. (The value of the Vacated Property shall be determined by the appraisals obtained under Section 2(b) of this Agreement.) ~~To the extent necessary or appropriate, following completion and the effective date of the vacation of 8th Avenue West and/or 23rd Street West east of 10th Avenue West, the City will quitclaim any Vacated Property that vests in the City to Manatee Fruit.~~

~~(e)(c)~~ At Closing, Manatee Fruit shall grant to City a temporary construction easement allowing for access, ingress and egress by City, including, without limitation, construction vehicles, transport and storage of materials, across and along the lands of Manatee Fruit adjoining the proposed realigned right of way for 23rd Street West as depicted on **Exhibit C-2** attached hereto (the "Temporary Easement Land"), in compliance with all laws, regulations and permits, until such time as the Roadway Project has been completed. The transportation and storage of Hazardous Materials across the Temporary Easement Land shall be prohibited. On completion of the Roadway Project, City will restore the Temporary Easement Land to the condition that existed prior to its use by the City under the easement. The easement shall be substantially in form attached hereto as **Exhibit C-1.**

~~(f)~~ ~~Subject to funding, (d)~~ City shall design and complete the realignment

hereto. The sketches and legal description for the location of such easement is attached hereto as Exhibit E-2. The City design of the sign shall be subject to Manatee Fruit's reasonable and timely review.

(k) ~~All provisions of this Section 8 shall survive the Closing.~~

9. Potential Development of Other Lands of Manatee Fruit

(a) Access Points, Median Cuts.

(i) Upon request from Manatee Fruit and to the extent allowed under the City of Palmetto code, City shall grant to Manatee Fruit a perpetual exclusive easement to maintain a monument sign for its Terra Ceia project in a logical agreed upon location within the right-of-way of the new 23rd Street West. The form of easement shall be substantially in the form of Exhibit E-1 for the Manatee Fruit signage easement to City.

(j) The plans for the Roadway Project will include the general location of reasonable access points/roadway connections from the realigned 23rd Street West to adjoining property owned by Manatee Fruit. City agrees to allow median cuts/openings at any of those access points/roadway connections depicted on the final plans for the Roadway Project. City agrees to support Manatee Fruit's efforts to obtain access connections or median openings from those roadways and to install utility sub outs, lift stations, force mains or other utilities in the road right of way; provided, however, that all engineering and construction work associated with those connections/openings and utility installations shall be borne by Manatee Fruit.

(h) ~~(k) All provisions of this Section 8 shall specifically survive the Closing.~~

9. City Obligations.

(a) Comprehensive Plan Amendments. The City, in consideration of the dedication of the Property, ~~shall initiate~~ has initiated, and will diligently process and pursue nonappealable approval of, amendments to the City of Palmetto Comprehensive Plan Future Land Use Map to redesignate the lands owned by Manatee Fruit depicted on Exhibit F attached hereto as GCOM, and to pay all filing fees and advertising costs associated therewith; ~~provided, however, that, Such designation of Manatee Fruit's lands between existing 23rd Street West and relocated 23rd Street West is a logical change as a result of the 23rd Street West relocation.~~ It is understood that the process is subject to public hearing and comment, and the City cannot guarantee that the amendments sought by Manatee Fruit will be approved or achieved. ~~Manatee Fruit shall provide the City with a diagram and legal description of the lands whose future land use is to be amended.~~ City agrees that use of the land depicted on Exhibit F for interim agricultural purposes is permitted, ~~notwithstanding~~ notwithstanding any annexation or Comprehensive Plan Future Land Use Map amendments affecting that land. ~~For clarification, certain of the properties described on Exhibit F hereto as Parcel 4 and Parcel 5 are parcels that were to have previously been designated GCOM and~~

Following completion and the effective date of the vacation, some or all of the Vacated Property may vest in City, in Manatee County and/or in Manatee Fruit, as adjoining landowner. To the extent necessary or appropriate or otherwise upon request by Manatee Fruit, following completion and the effective date of the vacation of 8th Avenue West and/or 23rd Street West east of 10th Avenue West, the City will quitclaim any Vacated Property that vests in the City to Manatee Fruit.

The provisions of this Section 9(b) shall specifically survive Closing.

10. **Title Commitment/Title Policy.**

(a) Property to be transferred to City. Within ten (10) days after the Effective Date, City shall procure, at its own cost and expense (a) a title insurance commitment ("Commitment"), issued by Closing Agent or a title insurance agent selected by the City (the "Title Company"), showing Manatee Fruit as the record title owner of the Property and the terms by which the Title Company agrees to issue to the City an owner's policy of title insurance (the "Title Policy") issued on the standard ALTA Owner's Policy, 1992 form with Florida modifications, insuring City's fee simple title to the Property subject to the terms of Title Policy and the title exceptions therein described; and (b) a photocopy of all documents (the "Title Documents") constituting all the title exceptions shown on the Commitment. City shall immediately provide Manatee Fruit with a copy of the Commitment and Title Documents and shall advise Manatee Fruit of the date of City's receipt of same for purposes of calculating deadlines in this paragraph. As used herein, the term "Title Objection Period" shall mean a period commencing on the first day following the City's receipt of the latest version of the Commitment, the Title Documents or the Survey (but in no event later than twenty (20) days following the Effective Date) and ending ten (10) days thereafter. The term "Permitted Exceptions" means the matters of title listed in subparagraphs (a), (b), (c) and (d) of Section 7 of this Agreement. The City hereby signifies its approval of the Permitted Exceptions. In the event (i) the Commitment or the Survey reflects; and/or (ii) at any time after the receipt of the Commitment or the Survey and prior to Closing ~~(each a "Post-Commitment Matter")~~, City receives notice of or otherwise discovers that title to the Property that it is purchasing hereunder is subject to, any matter other than the Permitted Exceptions, that could not have been reflected in the initial Title Commitment or Survey (each a "Post-Commitment Matter"), the City may object to said matter ("Title Objection") by delivering written notice ("Title Objection Notice") on or before the expiration of the Title Objection Period (except in the event of a Post-Commitment Matter, then within five (5) days of the date City receives notice of such Post-Commitment Matter). If Manatee Fruit is able and willing to cure the objections, Manatee Fruit shall notify City in writing of such fact (said notice hereinafter called "Manatee Fruit's Title Notice") ~~on or before five (5) days~~ on or before five (5) days after the delivery of the Title Objection Notice (said period called "Manatee Fruit's Notice Period") and in which case the elimination or curing by Manatee Fruit of the Title Objections shall be completed on or before the date of Closing. In the event Manatee Fruit does not deliver Manatee Fruit's Title Notice to City within Manatee Fruit's Notice Period, City is deemed to be notified that Manatee Fruit does not intend to cure the Title Objections on or before the date of Closing. In that event, or in the event that Manatee Fruit notifies City that Manatee Fruit would be unable or unwilling to cure

object to said matter ("Title Objection") by delivering written notice ("Title Objection Notice") on or before the expiration of the Title Objection Period (except in the event of a Post-Commitment Matter, then within five (5) days of the date Manatee Fruit receives notice of such Post-Commitment Matter). If City is able and willing to cure the objections, City shall notify Manatee Fruit in writing of such fact (said notice hereinafter called "City's Title Notice") on or before ten (10) days after the delivery of the Title Objection Notice (said period called "City's Notice Period") and in which case the elimination or curing by City of the Title Objections shall be completed on or before the date of Closing. In the event City does not deliver City's Title Notice to Manatee Fruit within City's Notice Period, Manatee Fruit is deemed to be notified that City does not intend to cure the Title Objections on or before the date of Closing. In that event, or in the event that City notifies Manatee Fruit that City would be unable or unwilling to cure any Title Objection, Manatee Fruit shall be deemed to have waived the applicable Title Objections unless within five (5) days following the expiration of City's Notice Period, the Manatee Fruit delivers to City and the Closing Agent written notice terminating this Agreement. Notwithstanding anything herein to the contrary, in the event that Manatee Fruit's right to terminate this Agreement pursuant to any provision of this Section does not expire prior thereto, it shall expire upon expiration of the Inspection Period (except in the event of a Post Commitment Matter). As used in this Agreement, the term "Permitted Exceptions" shall mean (a) the Permitted Exceptions and (b) all matters other than the Permitted Exceptions listed in the Title Commitment to which the Manatee Fruit does not deliver a Title Objection within the Title Objection Period (or within the applicable five (5) days for a Post Commitment Matter), or, having objected, Manatee Fruit waives or is deemed to have waived in accordance with the provisions of this Section. Upon the timely delivery of a termination notice pursuant to this Section, City shall deliver the Inspection Documents (hereinafter defined) to Manatee Fruit, neither Manatee Fruit nor City shall have any further rights or obligations pursuant to this Agreement except for the City's Inspection Obligations and, the obligations created pursuant to Section 20 and any other obligations hereunder that specifically survive Closing; all of which shall continue until fully performed.

11. **Survey.** Within ten (10) days after the Effective Date, City shall: (a) procure a current ALTA survey (the "Survey") of the Property to be transferred hereunder and the Vacated Property, from a Florida licensed surveyor, certified to City, Manatee Fruit, their respective counsel, Closing Agent and the Title Company designated by the City; and (b) provide a copy of the Survey to each party to whom the survey is certified. The Survey will include and identify all of the Property or Vacated Property, as applicable, will include a legal description of the Property or Vacated Property, as applicable. If the Survey shows any matters which would affect the marketability of title to the Real Property (except for the Permitted Exceptions), City each party shall notify Manatee Fruit the other party, as applicable, in writing of the specific defects (the "Survey Defects") as if it were a Title Objection under Section 10. Any Survey Defects shall be treated in the same manner as Title Objections are treated under this Agreement. It is understood that some of the Property is improved with fences. Such fences shall not be Survey Defects. Further, City will relocate the fences following Closing, at City's expense, and in consultation with Manatee Fruit as to placement and timing of relocation of the fences.

12. **Inspection Period.**

time as City determines that it shall not acquire the Property, or (ii) such time as this Agreement shall have terminated for any reason:

(c) **Inspection Obligations.** City's Contractors shall: (a) not unreasonably interfere with the operation and maintenance of the Property; (b) not damage any part of the Property; (c) not injure or otherwise cause bodily harm to Manatee Fruit, its agents, contractors and employees or any tenant of the Property; (d) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (e) restore the surface of the Property to substantially the condition in which the same was found before any permitted inspections or tests were undertaken. The obligations of City created pursuant to this Section are called "City's Inspection Obligations," and shall specifically survive the Closing or any termination of this Agreement.

(d) **Environmental Study.** With respect to the Property that Manatee Fruit will transfer to City pursuant to this Agreement, and as additional consideration for the transaction contemplated herein, City agrees that, within three (3) business days of the Effective Date (later of (i) the Effective Date, and (ii) the date a copy of the written environmental audit report certified to the City (among others) is delivered to City or City's attorney, it will reimburse Manatee Fruit the actual cost, not to exceed, in the aggregate, together with the cost relative to property which the City proposes to acquire from Manatee Fruit under the Phase II Agreement, \$2,500.00, for Manatee Fruit's procurement of an environmental audit report of the Property certified to City and Manatee Fruit performed by an environmental consultant satisfactory to City. City acknowledges that it has reviewed and approved an environmental audit of the Property prior to entering into this Agreement. It is the intent that the meeting following Limited Phase II as described in the letter agreement from City to Manatee Fruit attached hereto as Exhibit G and the delivery of the written environmental audit report will occur before the end of the Inspection Period and City and Manatee Fruit will use diligent efforts to facilitate such timing. If not received before the end of the Inspection Period, City or Manatee Fruit may elect to extend the Inspection Period by a period of time not to exceed ten (10) days to accomplish same.

(e) **General Approvals.** City, School Board and Manatee County shall have until the end of the Inspection Period to receive approval of their respective governing boards of the transactions described in the Phase II Contract to be performed by the respective entity; and City shall have received approval of its governing board on terms satisfactory to City, in its sole discretion that City shall be permitted to accept the dedication of the Property, develop it as intended, and perform its obligations under this Agreement. The sole remedy for failing to obtain such approvals is to terminate this Agreement before the end of the Inspection Period.

(f) **Disclaimer.** City acknowledges that any documents regarding the Property provided by Manatee Fruit are provided for informational purposes only, and that Manatee Fruit makes no representation or warranty, express or implied, as to the accuracy or completeness of the any such Documents, except for the representations and warranties expressly set forth herein; and the City further agrees that Manatee Fruit will have no liability to City resulting from the use of any of the any such documents. The City agrees that it shall independently inspect and investigate the

13. Existing Utility Easements and Facilities in or adjacent to Vacated Property.

The only Utility Easement in or adjacent to the Vacated Property that Manatee Fruit agrees to accept is that certain Utility Easement between Manatee Fruit Company and the County of Manatee recorded in O.R. Book 1041, Page 0918, Public Records Manatee County, Florida.

Either by virtue of the Commitment to be issued to Manatee Fruit or by virtue of the Survey to be provided to Manatee Fruit or otherwise within the 20-day time period for the procurement of the Survey, City will advise Manatee Fruit whether any additional utility easements or utility installations existing in the Vacated Property or adjacent to the Vacated Property. For purposes of this Section, references to utility easements and utility installations include, but are not necessarily limited to, utility or drainage easements or facilities owned by the City, County, other governmental entity, FP&L, cable companies, gas companies or the like.

In the event any such easements or facilities exist and do not contain relocation provisions acceptable to Manatee Fruit in its sole discretion, prior to Closing, City will (a) either, vacate any such easements or obtain releases of same, and (b) if installations or facilities exist in such areas, obtain a replacement easement from the holder of such easement containing the following provisions in form and content acceptable to Manatee Fruit:

i) The utility provider's agreement to relocate the facilities to a mutually agreed location in order to accommodate the development of the land by Manatee Fruit within a reasonable time after notice from Manatee Fruit; and

ii) Such relocation shall be at Manatee Fruit's reasonable expense; and

iii) Upon such relocation, Manatee Fruit shall grant a replacement easement for the new location and the utility provider will release the existing easement in exchange therefor.

14. Closing Costs and Documentary Stamp Tax Indemnity.

(a) **Closing Costs.** As the subject transfer involves a dedication, the parties anticipate that there will be no documentary stamp tax due on the recording of the Deed. However, should any documentary stamp tax be due in connection with the transfer, it shall be paid by the City. The City shall pay the cost of the Title Policy Policies; and Manatee Fruit shall pay the cost of recording any corrective title instruments. Manatee Fruit and City shall share equally pay the costs of recording the deed and the costs of recording any easements or agreements described herein. City will pay directly or reimburse Manatee Fruit the reasonable attorneys fees incurred by or on behalf of Manatee Fruit in negotiating and completing this Agreement and the consummation of the transactions contemplated hereby.

(b) **Title and Due Diligence Costs.** The City shall pay for the cost of its Survey the Surveys. City shall pay all costs of all appraisals, except as otherwise provided in

(v) Manatee Fruit has no actual knowledge of any subsurface condition which would impair the usability or developability of the Property for City's intended use, which has not already been disclosed to City.

(vi) Except as disclosed to City, or to which City is a party, there are no outstanding obligations or assessments for sewer, water, drainage, roadway or other improvements which ~~that~~ presently impact upon the Property by reason of any existing improvements on the Property.

(vii) Manatee Fruit has received no notice from any governmental agency of any pending or threatened litigation or proceedings before any governmental agency in which any person or entity alleges that the Property is in violation or threatened violation of any Environmental Laws or the presence, release, threat of release or placement on or at the Property of any Hazardous Materials, nor has it (i) received any notice that any governmental or quasi-governmental authority or any employee or agent thereof, has determined, threatened to determine or required an investigation to determine that there has been a violation of any Environmental Laws at, on or in connection with the Property or that there exists a presence, release, threat of release or placement of any Hazardous Materials on or at the Property, or the use, handling, manufacturing, generation, production, storage, treatment, processing, transportation or disposal of any Hazardous Materials at or on the Property; (ii) received any notice under the citizen suit provision of any Environmental Law in connection with the Property or any facilities, operations or activities conducted thereon, or any business conducted in connection therewith; or (iii) received any written request from any governmental or quasi-governmental authority for inspection, request for information, notice, demand, administrative inquiry or any formal or informal complaint or claim with respect to or in connection with the violation or threatened violation of any Environmental Laws or existence of Hazardous Materials relating to the Property or any facilities, operations or activities conducted thereon or any business conducted in connection therewith.

(viii) The execution and delivery by Manatee Fruit of, and Manatee Fruit's performance under, this Agreement are within Manatee Fruit's powers and have been duly authorized by all requisite parties; and that the person executing this Agreement on behalf of Manatee Fruit has the authority to do so.

(ix) This Agreement constitutes the legal, valid and binding obligation of Manatee Fruit, enforceable in accordance with its terms.

(x) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Manatee Fruit is a party or by which Manatee Fruit might be bound.

(xi) Radon. Florida Statutes requires the following notice be given: "RADON GAS: 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.

~~(iii) That it shall not direct any person to make, nor shall it consent to any other person making, any material changes to the Property or any portion thereof from the date of this Agreement through the Closing Date without the prior written consent of City.~~

~~(iv) It shall provide the City with prompt notice if any of the representations or warranties with respect to the Property set forth in the immediately preceding Paragraph "a" of this Section becomes untrue in any material respect.~~

~~(v) It shall not place or release or allow to be placed or released on the Property any Hazardous Materials in violation of any Environmental Laws.~~

~~(e) City's Representations and Warranties City represents and warrants to Manatee Fruit, its successors and assigns, which representations and warranties are now and on the Closing Date shall be true and correct, as follows:~~

~~(i) The execution and delivery by City of, and City's performance under, this Agreement are within City's powers and have been duly authorized by all requisite parties, and that the person executing this Agreement on behalf of City has the authority to do so.~~

~~(ii) This Agreement constitutes the legal, valid and binding obligation of City, enforceable in accordance with its terms.~~

~~(iii) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which City is a party or by which City might be bound.~~

~~(iv) The Property, together with property owned by City, constitute all of the real property necessary for completion of the Roadway Project.~~

~~(v) The City represents and warrants to and covenants with Manatee Fruit that the following are true and correct as of the date hereof with respect to the Vacated Property, and shall be true and correct as of the Closing:~~

~~(1) Except with respect to the rights of the public in the public right of way and the rights of any utility with installations in the right of way, there is no party in possession of, or that has a right to possess, any portion of the Vacated Property as lessee, tenant at sufferance, licensee, or otherwise.~~

~~(2) City has not received any written notice from any governmental agency that the Vacated Property is not in full compliance with all applicable laws, statutes, ordinances, regulations, codes, covenants, conditions and restrictions of any kind or nature affecting the Vacated Property or any part of it.~~

buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit."

(9) ~~Property conveyed "as-is."~~ (xii) Property conveyed "as is." Manatee Fruit acknowledges and agrees that City is not making and specifically disclaims any warranties or representations of any kind or character, express or implied (other than as expressly contained herein), with respect to the Vacated Property, including, but not limited to, warranties or representations as to matters of title (other than City's warranty of title set forth in the deed to be delivered at closing), zoning, tax consequences, physical or environmental conditions, availability of access, ingress or egress, valuation, governmental approvals, governmental regulations or any other matter or thing relating to or affecting the Vacated Property including, without limitation: (i) the value, condition, merchantability, marketability, profitability, suitability or fitness for a particular use or purpose of the Vacated Property, and (ii) the manner, quality, state of repair or lack of repair of the Vacated Property. Manatee Fruit agrees that with respect to the Vacated Property which it agrees to acquire under the terms of this Agreement, it has not relied upon and will not rely upon, either directly or indirectly, any statement, representation or warranty of City (other than as expressly contained herein). Manatee Fruit represents that it is a knowledgeable buyer of real estate and that it is relying solely on its own expertise and that of its contractors, and that it will conduct such inspections and investigations of the Vacated Property, including, but not limited to, the physical conditions thereof, and shall rely upon same, and, upon closing, shall assume the risk that adverse matters, including, but not limited to, adverse physical conditions, may not have been revealed by its inspections and investigations. Manatee Fruit acknowledges and agrees that upon closing, City shall convey and Manatee Fruit shall accept the Vacated Property "as is, where is," with all faults, and further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Vacated Property by City; any agent of the owner or any third party. The terms and conditions of this paragraph shall expressly survive the closing and not merge therein.

(b) Covenants of Manatee Fruit. Manatee Fruit covenants to City as follows:

(i) From and after the Effective Date, through and including the Closing Date, Manatee Fruit shall not apply for any change whatsoever of the current zoning of any Property or otherwise seek to change in any manner whatsoever the nature of the use of the Property or seek any variance of such zoning of the Property except in conjunction with the other parties to this Agreement and as otherwise expressly provided for herein.

(ii) From and after the Effective Date, through the Closing Date, Manatee Fruit shall not transfer, convey, or encumber (unless Manatee Fruit shall remove such encumbrance on or before the Closing Date) in any manner whatsoever any portion of the Property or any rights therein, or enter into any easement, license or agreement (or amend any existing easement, license or agreement) granting to any person or entity any right with respect to the Property or any portion thereof.

statutes, ordinances, regulations, codes, covenants, conditions and restrictions of any kind or nature affecting the Vacated Property or any part of it.

(3) All payments required to be made to contractors, subcontractors, mechanics, materialmen and all other persons in connection with work done or services performed with respect to the Vacated Property have been made, and, to the best of its knowledge, there is no basis for the filing of any lien against the Vacated Property.

(4) Except as disclosed, no public or private assessments have been made against the Vacated Property which remains unpaid, including without limitation those for the construction of utility lines and apparatus, streets, sidewalks and curbs.

(5) Except as disclosed, there are no outstanding obligations or assessments for sewer, water, drainage, roadway or other improvements which presently impact upon the Vacated Property by reason of any existing improvements on it.

(6) To the best of City's knowledge: (i) after City obtained title to the Vacated Property, the activities, operations and business conducted at or on the Vacated Property have been at all times in compliance with all Environmental Laws; and (ii) no lien has been imposed on the Vacated Property by any federal, state or local governmental or quasi-governmental entity in connection with any environmental condition, the violation or threatened violation of any Environmental Laws or the presence of any Hazardous Materials on the Vacated Property.

(7) City is not aware of any pending or threatened litigation or proceedings before any administrative agency in which any person or entity alleges the violation or threatened violation of any Environmental Laws or the presence, release, threat of release or placement on or at the Property of any Hazardous Materials, or of any facts which would give rise to any such action, nor has City (i) received any notice that any governmental or quasi-governmental authority or any employee or agent thereof, has determined, threatened to determine or required an investigation to determine that there has been a violation of any Environmental Laws at, on or in connection with the Property or that there exists a presence, release, threat of release or placement of any Hazardous Materials on or at the Vacated Property, or the use, handling, manufacturing, generation, production, storage, treatment, processing, transportation or disposal of any Hazardous Materials at or on the Vacated Property; (ii) received any notice under the citizen suit provision of any Environmental Law in connection with the Vacated Property or any facilities, operations or activities conducted thereon, or any business conducted in connection therewith; or (iii) received any written request from any governmental or quasi-governmental authority for inspection, request for information, notice, demand, administrative inquiry or any formal or informal complaint or claim with respect to or in connection with the violation or threatened violation of any Environmental Laws or existence of Hazardous Materials relating to the Vacated Property or any facilities, operations or activities conducted thereon or any business conducted in connection therewith.

be deemed a waiver of City's right to terminate, in which event all insurance proceeds shall be paid or assigned to City at Closing.

(b) **Condemnation.** Manatee Fruit agrees to give City written notice of any action or proceeding for condemnation of any part of the Property, which may result in the taking of all or part of a Property. Upon such notification, City shall have the right, to be exercised within ten (10) days after receipt of such notice, to terminate this Agreement. If City does not elect to terminate this Agreement, then this Agreement shall remain in full force and effect, and the description of the Property and the transportation impact fee credits allocable to the Property shall be revised accordingly to remove the portion taken by condemnation. In the event City fails to timely deliver written notice of termination pursuant to this Section, City shall be deemed to have waived its right of termination pursuant to this Section.

While this Agreement is in effect, City shall not institute condemnation proceedings against any of the Property described herein.

(c) **Termination Pursuant to Paragraphs (a) or (b).** Upon the timely delivery of a termination notice pursuant to either Paragraph (a) or (b) above: (i) City shall deliver the Inspection Documents to Manatee Fruit; and (ii) following (i), no party shall have any further rights or obligations pursuant to this Agreement except for the City's Inspection Obligations and the obligations created pursuant to **Section 20** and any other obligations hereunder that specifically survive Closing, all of which shall continue until fully performed.

18. **Closing Documents.** At Closing, in addition to any other documents required to be delivered hereunder, the following documents shall be executed and delivered to the Closing Agent to be held in escrow pending completion and funding:

(a) **Authority of Manatee Fruit.** Manatee Fruit shall deliver to City satisfactory evidence of its due and proper authority and power to perform its obligations hereunder and to execute and deliver all documents required hereby.

(b) **Authority of City.** City shall deliver to Manatee Fruit satisfactory evidence of its due and proper authority and power to perform its obligations hereunder and to execute and deliver all documents required hereby.

(c) **Deed.** Manatee Fruit shall execute and deliver to City the Deed conveying the Property to City.

(d) **FIRPTA Affidavit.** Manatee Fruit shall execute and deliver to City a certificate certifying that Manatee Fruit is not a foreign person, corporation or partnership or state within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

the receipt date shall be presumed to be the postmark appearing on such return receipt; or (viii) on the date of actual delivery by any overnight or expedited delivery service or actual receipt if sent by facsimile transmission (provided receipt is confirmed as provided above). All notices, requests or demands which any party is required or may desire to give to any other party under any provision of this Agreement may be given by the party's attorney. All notices must be delivered to the other parties at the following address:

City: City of Palmetto
516 8th Ave. West
Palmetto, Florida 34221
Attn: Shirley Bryant, Mayor
Fax: (941) 722-8557

With copy to: Mark P. Barnebey and Sue A. Jacobson
Kirk Pinkerton, P.A.
1301 6th Avenue West, Suite 102
Bradenton, Florida 34205
Fax: (941) 744-9691 and (941) 364-2490

And copy to: David Persson and Michael Hankin
Hankin, Persson, Davis, McClenathen & Damell
1820 Ringling Boulevard
Sarasota, Florida 34236
Fax: 941/957-0558

Manatee Fruit: Whiting H. Preston, II, President
Manatee Fruit Company
1320 33rd Street West
Palmetto, Florida 34221
Fax: (941) 721-0805

With copy to: Caleb Grimes and Leslie H. Gladfelter
Grimes Goebel Grimes Hawkins Gladfelter & Galvano P.L.
1023 Manatee Avenue West
Bradenton, Florida 34205
Fax: (941) 748-0158

or to such other address as any party may designate by written notice to the other party.

22. **Indemnification.** To the extent permitted under Florida Statutes, §768.28 and without in any way limiting the immunity provided by that statute and any other provision of law, City agrees to indemnify and hold Manatee Fruit harmless from and against any and all costs, damages, claims, actions or causes of action arising out of any damage, loss or injury to persons or

(e) **Delivery of Possession.** Possession of the Property shall be granted to City upon completion of Closing.

(f) **Calculation of Time.** If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended through the close of business on the next Business Day. Unless otherwise expressly stated, time periods shall be calculated in calendar days.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.

(h) **Caption.** Captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provision hereof.

(i) **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Florida.

(j) **No Recordation.** ~~No party shall have the right to record this Agreement. This Agreement, any part hereof, or any memorandum hereof shall not be recorded in the public records of any county in the State of Florida; provided, however, that the foregoing shall not prohibit the filing of this Agreement in any court proceeding in which this Agreement is relevant.~~

(k) **No Waiver.** No failure of any party to exercise any power given such party hereunder or to insist upon strict compliance by any other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any party's right to demand exact compliance with the terms hereof. Nothing contained herein or in the Introduction to this Agreement shall be construed as a waiver of any party's rights in the event of a condemnation proceeding.

(l) **Construction of Agreement.** The parties acknowledge and agree that they have been represented by counsel and that each of the parties has participated in the drafting of this Agreement. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this Agreement are not to be construed in any way against or in favor of any party hereto by reason of the responsibilities in connection with the preparation of this Agreement.

(m) **No Third Party Beneficiaries.** The agreements made in this Agreement and the development plan described herein have been determined by the City to be in furtherance of the public interest. However, no member of the public or any person or entity not a party to this Agreement shall have any right to enforce it or any remedy for breach of it.

Jim Freeman, City Clerk	
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List of Exhibits

A- Sketch and legal description of Property to be conveyed by Manatee Fruit to City (Introduction and Section 2(a))

B-1 —Property to be annexed 8th Avenue West (Section ~~8(a)~~9(b))

B-2 —Property to be vacated, both 23rd St. W. and 8th Ave. W. (~~Sections 3 and 8(u)~~ Section 9(b))

C-1 Temporary Construction Easement, ~~including~~ (Section 8(c))

C-2 Sketch of Manatee Fruit land subject to temporary construction easement (Section 8(c))

D-1 Stormwater and Utility Easement (Section 8(e))

~~D-2~~ D-2 Sketch and legal description of land to be subject to Stormwater and Utility Easement (Section 8(~~ec~~))

E-1 Sign Easement (Section 8(jh))

E-2 Sketch and legal description to be subject to Sign Easement (Section 8(h))

F —Sketch of land which Manatee Fruit seeks to have be redesignated as GCOM through amendment to the City of Palmetto Comprehensive Plan (~~Section 9(b)~~ Parcels 1, 2, 3, 4 and 5 shown on aerial, together with specific sketches and legals of Parcels 4 and 5 (Section 9(a))

G Letter Agreement re: Environmental Study from City to MFC (Section 12(d))

Special provisions:

To the extent any of the above-referenced Exhibits are not attached to this Agreement at the time of execution, City will provide drafts of same (documents and sketches & legal descriptions) to Manatee Fruit no later than five (5) business days after the Effective Date, with the goal of reaching agreement on same by the end of the Inspection Period. Such Exhibits shall be in form and content acceptable to Manatee Fruit in its sole and absolute discretion.