

Mayor

Marni L. Sawicki

Council Members

District 1: James D. Burch

District 2: John M. Carioscia Sr.

District 3: Marilyn Stout

District 4: Richard Leon

District 5: Rana M. Erbrick

District 6: Richard Williams

District 7: Jessica Cosden



1015 Cultural Park Blvd.
Cape Coral, FL

City Manager

John Szerlag

City Attorney

Dolores Menendez

City Auditor

Margaret Krym

City Clerk

Rebecca van Deutekom

**AGENDA FOR THE REGULAR MEETING OF THE
CAPE CORAL CITY COUNCIL**

February 6, 2017

4:30 PM

Council Chambers

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

1. MEETING CALLED TO ORDER

A. MAYOR SAWICKI

2. INVOCATION/MOMENT OF SILENCE

A. COUNCILMEMBER COSDEN

3. PLEDGE OF ALLEGIANCE

A. Alexander Lucas - Diplomat Elementary

4. ROLL CALL

A. MAYOR SAWICKI, COUNCIL MEMBERS BURCH, CARIOSCIA,
COSDEN, ERBRICK, LEON, STOUT, WILLIAMS

5. CHANGES TO AGENDA/ADOPTION OF AGENDA

6. RECOGNITIONS/ACHIEVEMENTS

A. North RO Plant Received Plant Operations Excellence Award from
FDEP - Presented by Jon Iglehart

7. APPROVAL OF MINUTES

A. NONE

8. BUSINESS

A. PUBLIC COMMENT - CONSENT AGENDA

A maximum of 45 minutes is set for input of citizens on matters concerning the Consent Agenda; 3 minutes per individual.

B. CONSENT AGENDA

- (1) Resolution 13-17 Amend the contract with the City's electronic bill presentment and payment system provider to reflect the Firm's new business name to Factor Systems, Inc., dba Bill Trust, formerly Best Practice Systems, Inc., and authorize the City Manager or Designee to execute the contract; increase the estimated spending allocation, due to an increase in customer connection, in an estimated annual amount of \$63,000 not to exceed budgetary limits. The existing contract was secured through a competitive solicitation and the awarded unit price continue to be at a competitive level; Department: Financial Services; Annual Dollar Value: \$63,000; (Water & Sewer)
- (2) Resolution 16-17 Shared-Use Nonmotorized Trail Network Agreement between the State of Florida, Department of Transportation and the City of Cape Coral; Department: Public Works; Dollar Value: N/A; FDOT Grant: \$1,778,100 (Fund: N/A)
- (3) Resolution 25-17 Approve Use of State Forfeiture Funds in compliance with F.S.S. 932.7055; Department: Police Department; Dollar Value: \$9,551; (Special Revenue Fund)
- (4) Resolution 26-17 Renewal of the Mutual Aid Agreement (MAA) Between the City of Cape Coral o/b/o the Cape Coral Police Department and the Charlotte County Sheriff's Office and authorizing the Chief of Police to execute all necessary documents; Department: Police Department; Dollar Value: N/A; (Fund: N/A)
- (5) Resolution 27-17 Acceptance of Permanent Utility and Drainage Easement at 1707 Cape Coral Parkway East (Block 363, Lots 1-7 & 24-30, Unit 7, Cape Coral Subdivision ~ Strap #08-45-24-C4-00363-0010) as required as part of the Downtowner Car Wash Site Plan Review (SP15-0044); Department: Financial Services / Real Estate; Dollar Value: N/A; (Fund: N/A)

C. CITIZENS INPUT TIME

A maximum of 45 minutes is set for input of citizens on matters concerning the City Government to include Resolutions appearing in sections other than Consent Agenda or Public Hearing; 3 minutes per individual.

D. PERSONNEL ACTIONS

- (1) NONE

E. PETITIONS TO COUNCIL

- (1) NONE

F. APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

- (1) NONE

9. ORDINANCES/RESOLUTIONS

A. Public Hearings

- (1) Ordinance 2-17 Final Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending Article VIII, Administration, of the City of Cape Coral Land Use and Development Regulations, creating Section 8.14, Reasonable Accommodation Procedures, to implement a procedure for reasonable accommodation with respect to Zoning and Land Use Regulations, Ordinances, rules and policies for persons with disabilities; providing severability and an effective date.

P&Z recommendation: At the January 4, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted (7-0) to recommend approval of Ordinance 2-17. There was one speaker during public hearing.

City Management Recommendation: Recommends approval of the requested amendment.

- (2) Ordinance 3-17 Public Hearing for Transmittal

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the Future Land Use Element of the City of Cape Coral Comprehensive Plan to provide for greater development flexibility within the Commercial Activity Center (CAC) Future Land Use Classification. (See attached memorandum from DCD to CM for additional explanation.)

P&Z recommendation: At the January 4, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted (5-1 with 1 abstention) to recommend approval of Ordinance 3-17. There was one speaker during public hearing.

City Management Recommendation: Recommends approval of the requested amendment.

- (3) Ordinance 7-17 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance declaring a triangular shaped parcel of property being a part of Highlander Canal right-of-way as unusable municipal surplus real property and deeding it to the property owner, subject to public utility, drainage, roadway, and bridge maintenance easements, and subject to the grantee constructing a seawall upon said property within 12 months of deed conveyance; property is located at 1935 SW 8th Court.

- (4) Ordinance 8-17 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance authorizing and directing the City Manager to enter into an Animal Shelter Ground Lease and Purchase

Agreement with Cape Coral Animal Shelter Corporation, a not-for-profit corporation, for the lease of property owned by the City of Cape Coral located at 325 SW 2nd Avenue for the operation of an animal shelter and adoption facility.

B. Introductions

- (1) Resolution 20-17 (AP 16-0001*) Set Public Hearing Date for March 6, 2017

*Quasi-Judicial, All Persons Testifying Must be Sworn In
WHAT THE RESOLUTION ACCOMPLISHES:

A resolution either approving or reversing the decision of the Board of Zoning Adjustment and Appeals that denied Resolution SE 1-2016, which concerned an amendment to Resolution 9-2000, which granted a special exception for a Rental Establishment, Group III (Automotive) use in a Pedestrian Commercial (C-1) zone; property is located at 2200 Santa Barbara Boulevard.

10. UNFINISHED BUSINESS

- A. Water Quality
B. Legislative Issues - Update

11. NEW BUSINESS

- A. Resolution 21-17 Amend Council Agenda Rules of Procedure to expand time frame for public comment. [This item was advanced by Councilmember Stout]

12. REPORTS OF THE MAYOR AND COUNCIL MEMBERS

13. REPORTS OF THE CITY ATTORNEY AND CITY MANAGER

14. TIME AND PLACE OF FUTURE MEETINGS

- A. A Special Meeting of the Cape Coral City Council is Scheduled for Wednesday, February 8, 2017 at 1:00 p.m. in Council Chambers
B. A Regular Meeting of the Cape Coral City Council is Scheduled for Monday, February 13, 2017 at 4:30 p.m. in Council Chambers

15. MOTION TO ADJOURN

**GENERAL RULES AND PROCEDURES REGARDING
THE CAPE CORAL CITY COUNCIL AGENDA**

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of the City Clerk at least forty-eight (48) hours prior to the meeting. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

Persons wishing to address Council under Citizens Input or the Consent Agenda may

do so during the designated times at each meeting. No prior scheduling is necessary. All speakers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

Any citizen may appear before the City Council at the scheduled PUBLIC HEARING/INPUT to comment on the specific agenda item being considered. No prior scheduling is necessary.

When recognized by the presiding officer, a speaker shall address the City Council from the designated speaker's lectern, and shall state his or her name and whom, if anyone, he or she represents. An address shall only be required if necessary to comply with a federal, state or local law.

Copies of the agenda are available in the main lobby of Cape Coral City Hall and in the City Council Office, 1015 Cultural Park Boulevard. Copies of all back-up documentation are also available for review in the lobby of Council Chambers. You are asked to refrain from removing any documentation. If you desire copies, please request they be made for you. Copies are 15 cents per page. Agendas and back-up documentation are also available on-line on the City website (capecoral.net) after 4:00 PM on the Thursday prior to the Council Meeting.

***PUBLIC HEARINGS
DEPARTMENT OF COMMUNITY DEVELOPMENT CASES**

In all public hearings for which an applicant or applicants exist and which would affect a relatively limited land area, including but not limited to PDPs, appeals concerning variances or special exceptions, and small-scale rezonings, the following procedures shall be utilized in order to afford all parties or their representatives a full opportunity to be heard on matters relevant to the application:

1. The applicant, as well as witnesses offering testimony or presenting evidence, will be required to swear or affirm that the testimony they provide is the truth.
2. The order of presentation will begin with the City staff report, the presentation by the applicant and/or the applicant's representative; witnesses called by the applicant, and then members of the public.
3. Members of the City Council may question any witness on relevant issues, by the applicant and/or the applicant's representative, City staff, or by any member of the public.
4. The Mayor may impose reasonable limitations on the offer of testimony or evidence and refuse to hear testimony or evidence that is not relevant to the issue being heard. The Mayor may also impose reasonable limitations on the number of witnesses heard when such witnesses become repetitive or are introducing duplicate testimony or evidence. The Mayor may also call

witnesses and introduce evidence on behalf of the City Council if it is felt that such witnesses and/or evidence are necessary for a thorough consideration of the subject.

5. After the introduction of all-relevant testimony and evidence, the applicant shall have the opportunity to present a closing statement.
6. If a person decides to appeal any decision made by the City Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Item Number: 6.A.
Meeting Date: 2/6/2017
Item Type: RECOGNITIONS/ACHIEVEMENTS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

North RO Plant Received Plant Operations Excellence Award from FDEP - Presented by Jon Iglehart

REQUESTED ACTION:

Informational

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

n/a

SUMMARY EXPLANATION AND BACKGROUND:

n/a

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Amy Burdier, Sr Administrative Specialist

Division- Administrative

Department- Utilities

SOURCE OF ADDITIONAL INFORMATION:

Jeff Pearson, Utilities Administration

ATTACHMENTS:

Description

Type

MEMORANDUM

**CITY OF CAPE CORAL
UTILITIES DEPARTMENT**

TO: John Szerlag, City Manager
FROM: Jeff Pearson, Utilities Director 
DATE: January 27, 2017

SUBJECT: North RO Plant Receives Plant Operations Excellence Award from FDEP

The City of Cape Coral's North Reverse Osmosis (RO) Water Treatment Plant has recently received the 2016 "Plant Operations Excellence Award" from the Florida Department of Environmental Protection (FDEP) in recognition of outstanding treatment plant operation, maintenance, and compliance. Each year, the FDEP presents awards to domestic wastewater and drinking water facilities around the state that demonstrate excellence in operation, maintenance, innovative treatment, or other special achievements. These awards are presented to recognize facilities that demonstrate a special commitment to excellence in management through dedicated professionalism.

The North RO Plant was selected as the best water treatment plant serving a large community water system in the South FDEP District for 2016. The South District includes all water treatment plants serving large water systems (more than 50,000 customers) in the following counties: Charlotte, Collier, Desoto, Glades, Hendry, Highlands, Lee, Monroe & Sarasota. This prestigious award from our State's regulatory agency is a tremendous accomplishment for our department and our City. Mr. Jon Iglehart has graciously accepted my invitation to present the award to the Water Production Manager, Andy Fenske, Chief Operator, Chris Caglioti, and the entire North RO Plant staff at the February 6th Council Meeting under Agenda Item 6 (Recognitions/Achievements). Attached is a copy of the award and the letter from FDEP.



Florida Department of Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Jonathan P. Steverson
Secretary

December 12, 2016

Mr. Chris Caglioti
ccagliot@capecoral.net
Chief Operator
City of Cape Coral North RO Plant
1200 Kismet Parkway West
Cape Coral, FL 33993

Dear Mr. Caglioti:

I am very pleased to announce that the City of Cape Coral North RO Plant (5360325) has been selected to receive a 2016 Plant Operations Excellence Award from the Department of Environmental Protection (DEP) in recognition of outstanding treatment plant operation, maintenance, and compliance.

The award will be presented at a ceremony to be held at a Florida Rural Water Association seminar called Focus on Change. The seminars will take place in Panama City, Lake City, Ocala, Haines City, Punta Gorda, and Pompano Beach. **Your award will be presented on Wednesday January 25, 2017, during the morning general session of the seminar at Charlotte Harbor Event and Conference Center, 75 Taylor Street, Punta Gorda, Florida.** The details of the award ceremony are available at <http://www.frwa.net/focus-on-change.html>. I hope that you and/or representatives from your facility will be able to attend.

Congratulations! We look forward to seeing you on January 25. If you have any questions, please contact Marian Fugitt at (850) 245-8628 or via email at marian.fugitt@dep.state.fl.us. It is not necessary to RSVP for the event.

Sincerely,

A handwritten signature in black ink that reads "Jane Herndon".

Jane Herndon, Esq.
Deputy Director
Division of Water Resource Management

JH/mf

cc: Jon Iglehart, Director, DEP South District Office, jon.iglehart@dep.state.fl.us
Jennifer Carpenter, DEP South District Office, jennifer.carpenter@dep.state.fl.us
Brian Bates, DOH in Lee County, brian.bates@flhealth.gov
Marian Fugitt, DEP Tallahassee Office, marian.fugitt@dep.state.fl.us

2016 Plant Operations Excellence Award



This Award is Presented to
City of Cape Coral - North RO Plant
In Recognition of
Outstanding Operation through Dedicated Professionalism
Large Community Water System
South DEP District

2016


Jane Herndon, Esq.
Deputy Director
Division of Water Resource Management

Item Number: B.(1)
Meeting Date: 2/6/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 13-17 Amend the contract with the City's electronic bill presentment and payment system provider to reflect the Firm's new business name to Factor Systems, Inc., dba Bill Trust, formerly Best Practice Systems, Inc., and authorize the City Manager or Designee to execute the contract; increase the estimated spending allocation, due to an increase in customer connection, in an estimated annual amount of \$63,000 not to exceed budgetary limits. The existing contract was secured through a competitive solicitation and the awarded unit price continue to be at a competitive level; Department: Financial Services; Annual Dollar Value: \$63,000; (Water & Sewer)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. On December 5, 2007, the City entered into a contract with Best Practice Systems, Inc. for electronic bill presentment, payment system and archival services for the City's water and sewer customers. On December 18, 2012, Bill Trust merged with Best Practice Systems.
2. This service provides our customers with online presentment of water bills, multiple online payment options and electronic archives of water bills.
3. In addition, this service provides a web based "Customer Care" option to City staff which includes billing, customer service research, reporting and administrative functionality.
4. The Provider has since changed their firm's name to Factor Systems, Inc., dba Bill Trust.
5. The cost associated has been less than \$50,000 annually. Due to the increase of connection, the projected dollar value is greater than \$50,000 requiring Council approval.
6. The department is requesting Council to approve an increase to the estimated spending allocation to Factor Systems, Inc. dba Bill Trust formerly Best Practice Systems, Inc. for \$63,000, not to exceed budgetary limits, to enable the City to continue with the e-bill payment and archival service for the City's water and sewer customers and to approve the Contract amendment due to the name change

7. The City Manager or his designee shall have the authority to approve and execute any authorized contract amendments, renewal or purchase orders provided.
8. Funding Source: This is a budgeted item. Water & Sewer Fund

LEGAL REVIEW:

EXHIBITS:

Department Recommendation
Resolution 13-17
Original Contract

PREPARED BY:

Wanda Division- Procurement Department- Finance
Roop

SOURCE OF ADDITIONAL INFORMATION:

Victoria Bateman, Financial Services Director

ATTACHMENTS:

Description	Type
▣ Recommendation Memo	Backup Material
▣ Resolution 13-17	Resolution
▣ Original Contract	Backup Material

CITY OF CAPE CORAL
FINANCIAL SERVICES DEPARTMENT

TO: John Szerlag, City Manager

FROM: Victoria Bateman, Financial Services Director *VB*
Wanda Roop, Procurement Manager *W200P*
Bill Boyd, Customer and Field Services Manager *Bill*

DATE: December 14, 2016

SUBJECT: E-BILL SERVICE CONTRACT RENEWAL – BILLTRUST – Annual
Maintenance Contract

Background

BillTrust has served the City of Cape Coral by providing e-bill presentment, payment and archival services for the City's water/sewer customers. The service provides our customers with online presentment of water bills, multiple online payment options, and electronic archives of water bills. The service provides City Finance staff with a web-based "Customer Care" option which includes utility billing, customer service research, reporting and administrative functionality.

The increased cost of the service is a reflection of customers opting for e-bill service. For example, the e-bill adoption rate was 15% at the end of calendar year 2015 compared to 19% at the end of calendar year 2016.

Recommendation

The City would like to amend the current contract with BillTrust, (formerly Best Practice Systems), for one year. As such, the request is to amend the spending allocation to a projected amount of \$62,735.00 annually, utilizing the current contract.

The services provided to our customers and staff by this vendor have proven to be a vibrant customer convenience, as well as a significant cost savings over the traditional printed and mailed bill. Specifically, the cost per account for a printed bill averages over \$0.80/each, while an e-bill account averages \$0.29/each.

Fund Availability

Funds for this service are paid through the water/sewer enterprise fund.

Thank you.

RESOLUTION 13-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING AMENDMENT #1 TO THE CONTRACT FOR ELECTRONIC BILL PRESENTMENT AND PAYMENT SYSTEM SERVICES BETWEEN BEST PRACTICE SYSTEMS, INC., AND THE CITY OF CAPE CORAL TO REFLECT THE FIRM'S NEW BUSINESS NAME OF FACTOR SYSTEMS, INC., DBA BILLTRUST; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE CONTRACT AMENDMENT; APPROVING AN INCREASE IN THE ESTIMATED ANNUAL SPENDING ALLOCATION FOR ELECTRONIC BILL PRESENTMENT AND PAYMENT SYSTEM SERVICES TO \$63,000, NOT TO EXCEED BUDGETARY LIMITS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on December 5, 2007, the City entered into a contract with Best Practice Systems, Inc., for electronic bill presentment and payment system services; and

WHEREAS, in 2012, Best Practice Systems, Inc., merged with Billtrust and has since changed the firm name to Factor Systems, Inc., dba Billtrust; and

WHEREAS, the City Manager recommends amending the contract with Best Practice Systems, Inc., to reflect the firm's new business name of Factor Systems, Inc., dba Billtrust; and

WHEREAS, although the contract transaction fees per customer remain the same, the projected spending allocation for electronic bill presentment and payment system services has increased from an annual cost of less than \$50,000 to a projected annual cost of \$63,000 due to the increased number of customers opting to utilize the e-bill service; and

WHEREAS, the City Manager recommends increasing the estimated spending allocation for electronic bill presentment and payment system services to a total annual amount of \$63,000, not to exceed budgetary limits; and

WHEREAS, the City Council desires to approve Amendment #1 to the contract with Best Practice Systems, Inc., to reflect the firm's new business name of Factor Systems, Inc., dba Billtrust, and desires to increase the estimated spending allocation for electronic bill presentment and payment system services to a total annual amount of \$63,000, not to exceed budgetary limits.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby approves Amendment #1 to the contract with Best Practice Systems, Inc., to reflect the firm's new business name of Factor Systems, Inc., dba Billtrust, and authorizes the City Manager or his designee to execute Contract Amendment #1, attached hereto as Exhibit A.

Section 2. The City Council hereby approves an increase in the estimated spending allocation for electronic bill presentment and payment system services to a total annual amount of \$63,000, not to exceed budgetary limits.

Section 2. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____,
2017.

REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
Amend Contract-Bill Trust

CONTRACT AMENDMENT #1

Reference is made to the Contract entered into between the City of Cape Coral and Factor System, Inc., dba Billtrust formerly doing business as Best Practice, Inc., for providing an electronic bill presentment and payment system.

This contract is hereby amended to reflect the Firm's new business name which herein after will be known as Factor Systems, Inc., dba Billtrust.

All other terms, conditions and specifications of the aforementioned Contract dated December 5, 2007, are incorporated herein by reference in full force and effect.

Factor System, Inc. dba Billtrust

City of Cape Coral

By: _____

By: _____

Print: _____

Print: A. John Szerlag

Title: _____

Title: City Manager

Date: _____

Date: _____

City Clerk

By: _____

Print: Rebecca van Deutekom

Title: City Clerk

Date: _____

Legal

By:  For

Print: Dolores Menendez

Title: City Attorney

Date: 1/30/17

**BEST PRACTICE SYSTEMS CORPORATION
ELECTRONIC COMMERCE SERVICE AGREEMENT**



This Agreement (the "Agreement") is made this 5th day of December 2007 (the "Effective Date"), by and between Best Practice Systems, Inc. ("BPS"), a Colorado corporation, and The City of Cape Coral a Florida corporation and is as follows:

1. **Term of Agreement.**

The term of this Agreement shall begin on the Effective Date and shall remain in force for a period of five (5) years and shall automatically renew and extend for successive one (1) year terms, commencing at the conclusion of the Initial Term or any renewal term, unless contrary notice in writing is given by Client or BPS at least thirty (30) days prior to termination of the then current term.
2. **Scope of Agreement.**

BPS agrees to provide the electronic bill presentment and payment system described in the attached Schedule A and access to CheckFree's Distribution Network described in attached Schedule B.
3. **Confidentiality.**
 - 3.1 BPS and Client shall treat as confidential and shall not disclose or otherwise make available the data received from either party, including, without limitation, techniques, inventions, methods, specifications, trade secrets, copyrights, and other proprietary information.
 - 3.2 Client understands and agrees that Users enrolling in the Service may provide BPS with certain information, including e-mail address, biller or merchant account numbers, checking account numbers, credit card information, and passwords ("User Data"). Client and BPS agree that at all times User Data shall remain the sole and exclusive property of the User, and that User Data shall be used in conformance with BPS's Privacy Policy and Terms and Conditions of Service statement.
4. **Default; Remedies Upon Default.**

Default. In the event either party defaults in the performance of this Agreement, the non-defaulting party shall have such remedies, including cancellation of this Agreement, as may be appropriate at law or in equity; provided, however, that no remedies shall be pursued by either party unless: (a) the other shall have been given at least forty-five (45) days notice specifying the alleged default; and, (b) the alleged default is continuing.
5. **Warranty and Limitation of Liability.**
 - 5.1 BPS warrants that it will exercise reasonable care in the performance of its Service obligations, as defined herein.
 - 5.2 **BPS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER.**

6. **General.**

- 6.1 Entire Agreement. Both parties acknowledge that they have not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement. This Agreement, Schedules and/or Attachments, each of which is hereby incorporated herein or therein, as applicable, constitute the entire agreement of the parties with respect to its subject matter and supersedes all existing agreements.
- 6.2 Severability. If any provision of this Agreement or Schedules hereto (or any portion thereof) shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder hereof or thereof shall not in any way be affected or impaired thereby.
- 6.3 Independent Contractor. In the performance of all work, BPS is an independent contractor with sole right to supervise, manage, control and direct the performance of the details of said work to be performed by BPS. Client is interested only in the results obtained and the prompt performance by BPS of its obligations and agreements hereunder.
- 6.4 Governing Law: The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees.

7. **Notices.**

Service of all notices under this Agreement shall be in writing and sent by U.S. Certified Mail or by a nationally recognized overnight mail service, at the following addresses. All such notices and communications shall be effective upon receipt.

Best Practice Systems, Inc.
12741 E. Caley Ave
Suite 126
Centennial, CO 80111
Attention: Contract Services

EXECUTED in multiple originals on the dates shown below.

Best Practice Systems, Inc.

By: [Signature]
Print: JEFFERY J DOWNS
Title: DIRECTOR OF SALES
Date: 2 JAN 2008

The City of Cape Coral

By: [Signature]
Print: MARK THIELE
Title: PROCUREMENT MANAGER
Date: 12-24-7

APPROVED AS TO FORM:

BY: [Signature]
City Attorney's Office
12/24/07

The City of Cape Coral Legal

By: [Signature]
Print: MARILYN W. MILLER
Title: ASSISTANT CITY ATTORNEY
Date: 12/24/07

The City of Cape Coral Clerk

By: [Signature]
Print: BONNIE J. POTTER
Title: CITY CLERK
Date: 12/24/07

SCHEDULE A
Best Practice Systems Biller Direct

1 Service.

BPS agrees to provide Client with a hosted electronic bill presentment and payment system which provides customer self enrollment, bill presentment, customer initiated payment, and bill/payment history.

2 Term of Schedule.

The term of this Schedule shall begin on the Effective Date and shall remain in force for a period of five (5) years ("Initial Term") in accordance with section 1 of the Agreement.

3 Charges.

3.1 Transactional fees will be charged for "Active Users" which is defined as customers which have enrolled in the Hosted Biller Direct website.

3.2 Archive Fees will be charged for every bill loaded into the e.bill system.

3.3 For the Services, Client shall pay to BPS monthly within thirty (30) days of receipt of the invoice at its principal office in Parker, Colorado (or such other place designated by BPS), in accordance with Attachment A-1, "Pricing for Biller Direct Services", which includes the total of the applicable charges incurred during the preceding month in accordance with Attachment A-1.

3.4 All invoices for the Services rendered hereunder and not in dispute shall be due and payable thirty (30) days after receipt of the invoice. If Client fails to pay any such amounts when due, BPS may, at its option, and after giving at least thirty (30) days prior written notice, discontinue furnishing the Services unless and until all such arrearages are paid in full.

3.5 In the event Client fails to pay any fee or charge on or before the due date specified hereunder, BPS reserves the right to impose a late fee equal to 1% of the delinquent amount for each month or partial month that the amount remains unpaid (or, if less, the maximum amount permitted by law).

4 BPS's Standard Obligations.

4.1 BPS Obligations apply to the Standard offering and pricing in Attachment A-1

4.2 BPS will establish and maintain systems providing Users secure access to the Service twenty-four (24) hours per day, seven (7) days per week, exclusive of downtime necessary to maintain the system or any unplanned system interruptions. Scheduled maintenance is 2:00 a.m. to 6:00 a.m. Eastern Time each Monday.

4.3 BPS will be responsible for development and maintenance of the Hosted Biller Direct Website (including GUI, Hypertext Architecture and functionality), appropriate system operations, continuous network and application monitoring, data security, system redundancy and maintenance of the operating system.

4.4 Specific personnel will be designated to work with Client in support of customization of the biller direct UI, which includes 1 standard link from Client website to Hosted Biller Direct Website.

4.5 BPS will brand the Hosted Bill Direct Website to match the Client website to the extent of Logo and company colors unless otherwise specified in Attachment A-1.

4.6 BPS will specify the enrollment fields, receive and record User enrollments, and create and maintain a database of Users.

4.7 BPS will make available through an online tool paper suppression activation requests.

4.8 Electronic Invoices presented in PDF format unless otherwise specified in Attachment A-1.

4.9 BPS will notify client by email if a billing file is not received according to the billing cycle calendar.

4.10 In the event of an invoice load error, BPS will be responsible for notifying Client and BPS and Client will make every effort to resolve the issue.

- 4.11 For Active Users, BPS will maintain and provide the User access to any particular bill summary and detail record for a period of thirteen (13) months after that bill is first made available to the User unless otherwise specified in Attachment A-1.
- 4.12 Each User will have the ability to utilize BPS's electronic bill payment service to pay bills via ACH unless otherwise specified in Attachment A-1.
- 4.13 BPS will collect and electronically deliver payments to Client specified ACH processor on a nightly basis pursuant to the User's instructions.
- 4.14 The data file of Users' payment instructions will be electronically transmitted to Client daily by BPS in a standard format for Client accounting system update.
- 4.15 BPS will maintain and provide Users access to any particular electronic payment history for six months unless otherwise specified in Attachment A-1.
- 4.16 Three standard email communication messages sent out based upon the following events. 1. Invoice ready to view, 2. Invoice Paid (ACH recurring or automated payments), 3. Password reset.
- 4.17 BPS will provide customer service training and system administrator training via an electronic training course.
- 4.18 If applicable as described in Attachment A-1, BPS will provide connectivity services between the client's credit card settlement processor and the Hosted Direct Biller website.
- 4.19 For the client, BPS will maintain sixty (60) months of billing data; however, only thirteen (13) months of billing statements will be available through the online customer care tool. Archived data will be made available at the client's request for the archive retrieval rate quoted in Schedule A1.

5 Client's Obligations.

- 5.1 Client is responsible for ACH processor and credit card processor business relationships and the associated transactional and fixed fees associated with these services.
- 5.2 Client will assign resources and complete implementation tasks pursuant to a formal, mutually agreed upon implementation plan.
- 5.3 The paper suppression activation requests provided by BPS will be used by the Client to designate Users on its internal billing systems as "paper suppressed".
- 5.4 Client will transmit accurate and timely User billing file data to BPS according to a mutually agreed upon bill cycle calendar.
- 5.5 Client will respond to general User inquiries regarding the Service and specific billing related inquiries.
- 5.6 Client is responsible for promoting the availability of ebilling.
- 5.7 Client is responsible for resolving ACH exceptions (i.e. NSF, adjustments, etc.) through clients ACH processor.
- 5.8 Client will notify BPS of any changes in customer bill formatting.

6 Customer Care.

- 6.1 Client shall respond to user ebilling inquiries.
- 6.2 Client shall administer customer care functions and will have access to an online customer care tool.
- 6.3 BPS will provide telephone support to Client between the hours of 8:00AM and 8:00PM Eastern time Monday through Friday.

IT IS AGREED.

Best Practice Systems, Inc.

By: [Signature]

Print: JEFFERY J. DOWNS

Title: DIRECTOR OF SALES

Date: 2 Jan 2008

The City of Cape Coral

By: [Signature]

Print: MARK Thiele

Title: Procurement Manager

Date: 12-24-7

APPROVED AS TO FORM:

BY: [Signature]
City Attorney's Office

The City of Cape Coral Legal

By: [Signature]

Print: MARILYN W. MILLER

Title: ASSISTANT CITY ATTORNEY

Date: 12/24/07

The City of Cape Coral Clerk

By: [Signature]

Print: Bonnie J. Potter

Title: City Clerk

Date: 12/24/07

SCHEDULE B

CheckFree Distribution Network

1 Services.

1.1 BPS through CheckFree agrees to provide Client with one (1) implementation of the CheckFree e-Bill Distribution Services ("Services"). The Services are comprised of CheckFree's products, services, and support systems which enable CheckFree to provide an end-to-end electronic bill creation, presentment (including use of CheckFree's Terms and Conditions and the CheckFree Privacy Policy), distribution and payment solution on Client's behalf to Users who have elected to enroll in the Services through distribution arrangements established by CheckFree ("CheckFree Client Applications"). In addition to bill presentment, distribution, and payment, the Services will incorporate Client into CheckFree's network of billers, merchants and Users (collectively, the "Network"), which is designed to facilitate the User's ability to locate bills (including Client's) and the Client's ability to locate Users.

2 CheckFree Obligations

2.1 CheckFree agrees to execute the delivery of all bill payment requests as instructed by the User in accordance with the Service's Terms and Conditions.

2.2 CheckFree will provide the equipment (excluding telecommunications and related equipment and costs attendant thereto), software and facilities necessary to provide and maintain the Services.

2.3 CheckFree will specify the enrollment fields, receive and record User enrollments, and create and maintain a database of Users.

2.4 CheckFree will maintain and provide Users access to any particular electronic payment history for a minimum of one hundred eighty (180) days.

2.5 When CheckFree maintains the bill detail data, CheckFree will use its best efforts to programmatically replicate (to a maximum of two (2) iterations) one (1) online bill template design chosen by BPS/Client and will warehouse such template within the CheckFree system. CheckFree will receive transmitted billing data files in a mutually agreed upon format from BPS, will acknowledge the receipt thereof in a mutually agreed manner, and will notify BPS within one (1) business day if received billing files prove unusable. CheckFree will match billing file data with the bill template to create electronic bills which will be made available to Users within one (1) business day of CheckFree's receipt of a useable billing file.

2.6 CheckFree will maintain records of all User's customer care activity for two (2) years and copies of the payment data files for seven (7) years, and will provide such information related thereto as BPS/Client may reasonably request upon reasonable notice to CheckFree during normal business hours.

2.7 CheckFree will have sole responsibility for managing customer enrollment through CheckFree member Network sites, which include, but are not limited, to Personal Financial Management applications and financial institutions, and may also include CheckFree Client Applications.

2.8 To activate Users for the Network, CheckFree will obtain User Data from Users, including, but not limited to, account information (e.g., name, address, merchant account number, etc.), as well as (if applicable) information about User's checking accounts to enable CheckFree to create Automated Clearing House ("ACH") transactions for bill settlement purposes. CheckFree will create ACH transactions for Users who elect to pay through the Network and will route such financial transactions through the appropriate networks.

2.9 CheckFree will make available on a regular basis activation requests (in CheckFree's standard format) to BPS for validation and applicable database maintenance; during this timeframe the User will remain in a pending status.

2.10 Upon receipt of billing file data, BPS will make available to CheckFree who will make available to the User or CheckFree Client Applications the following summary

information: biller name, user account number, amount due, balance info, date due and a URL that indicates the location of the bill detail housed at the BPS data center.

- 2.11 CheckFree will establish and maintain systems providing Users secure access to the Services twenty-four (24) hours per day, seven (7) days per week, exclusive of downtime necessary to maintain the system or any unplanned system interruptions. Scheduled maintenance is 2:00 a.m. to 6:00 a.m. Eastern Time each Sunday.
- 2.12 CheckFree will maintain and provide the User access to any particular bill summary data for a period of one hundred eighty (180) days after that bill is first made available to the User.

3 BPS/Client Responsibilities:

- 3.1 Client agrees that Users enrolling in the Services are required to read and accept the Terms and Conditions established by CheckFree. Notwithstanding anything to the contrary above, Client understands and agrees that once a User enrolls in the Services and elects to receive a bill or statement from Client, Client shall not require the User to re-accept terms and conditions of use from Client prior to receiving such bill or statement.
- 3.2 BPS agrees that Users may enroll for the Services at any CheckFree Client Application or any site that is a member of the CheckFree Distribution Network. A User enrolling for the Services will be required to submit User Data that shall be used by CheckFree to create a User profile. The User profile information may be utilized by the User and CheckFree to make payments to any entity accepting payments from CheckFree (including Client), or for accessing on-line bill content.
- 3.3 BPS will provide regular activation responses (as frequently as daily) to CheckFree as a means to ensure integrity and User status. BPS shall ensure that the Client approves or disapproves the activation request of a User and to so notify CheckFree.
- 3.4 BPS will use enrollment records to designate Users on its internal billing systems, and BPS, thereafter for so long as this Agreement remains in effect, or until it has received instructions to the contrary from a Client/User, will deliver a User's bills electronically using the Services.
- 3.5 If Client deactivates a User, BPS will ensure that CheckFree is notified immediately thereafter. In those instances where Client deactivates a User, BPS understands and agrees that such deactivation shall apply solely to access to bills provided by Client, and shall not affect User's access to bills from another member of the CheckFree Distribution Network.
- 3.6 BPS will ensure that Client provides its bill data to CheckFree for delivery within twenty-four (24) hours of the preparation of the bill or not less than seven (7) days before the due date of the bill. Should Client be unable to provide its bill data within those parameters, BPS will immediately notify CheckFree and provide an alternate time.
- 3.7 BPS will direct Client to notify CheckFree no less than thirty (30) days prior to the effective date of any change to the User's merchant account number. Notification should be in the form of an automated change request.
- 3.8 BPS will transmit accurate and timely User billing file data to CheckFree and BPS/Client will respond to general Client/User inquiries regarding the Services and specific billing related inquiries.
- 3.9 BPS/Client is responsible for informing customers of the availability of the Services, and for informing Users of their ability to utilize CheckFree's bill payment processing services in conjunction with receiving bills delivered via the Services.
- 3.10 When BPS/Client maintains the bill detail data, BPS/Client will maintain and provide the User access to any particular bill detail data for a period of at least one hundred eighty (180) days after that bill is first made available to the User.
- 3.11 The parties agree to the window concept for file processing, and will assist each other in the establishment of such windows. This requires each party to provide information about file processing schedules and to discipline its processing schedules to meet such processing windows. BPS/Client must send a file in a mutually agreed upon format for each agreed upon window, even if BPS/Client does not have any information to transmit.

If a corrupt file is sent by BPS/Client to CheckFree, it is BPS's/Client's responsibility to send a 'clean' (i.e. not corrupt) file to CheckFree, allowing enough time to complete processing before the CheckFree selector run; if the file is not sent in time to complete processing before the selector run, it will process the following business day. BPS/Client agrees to monitor acknowledgement files sent by CheckFree in order to ensure that all customer data is being handled properly.

4 Electronic Remittance.

- 4.1** Each User will have the ability to utilize CheckFree's electronic bill payment service to pay bills presented via the Services.
- 4.2** CheckFree will collect and electronically deliver payments pursuant to the Users' instructions, debited from Users' designated bank accounts (the "Debit Entries") to Client as payee.
- 4.3** The data file of Users' payment instructions will be electronically transmitted to BPS/Client daily by CheckFree in a mutually agreed upon format.
- 4.4** The data transmitted by CheckFree to BPS/Client will be one hundred percent (100%) in balance with the expected amount of payment funds every day. The associated payment funds will be deposited electronically by CheckFree in the Client's designated account and available for use no later than the business day following the date of transmission of the data records.
- 4.5** Client acknowledges that Users will be prevented from enrolling on-line for payment in the following circumstances: a) where the User's payment account is not accessible; b) where the User's payment account number is incomplete, incorrect or otherwise fails the account number edit procedures established by CheckFree and BPS/Client; or, c) User fails risk parameters or authorization guidelines established by CheckFree or BPS/Client.
- 4.6** Client acknowledges that User payments will not be transmitted electronically in the following circumstances:
 - 4.6.1** Where the User banks at a financial institution that is not accessible through the ACH;
 - 4.6.2** Where the User's Client account number is incomplete, incorrect or otherwise fails the account number edit procedures established by CheckFree and BPS/Client; or,
 - 4.6.3** For a User payment in excess of \$10,000, unless otherwise determined by CheckFree in its sole discretion.
- 4.7** Client accepts full financial responsibility for the dollar amount of Debit Entries originally credited to Client and returned unpaid to CheckFree, after the second (2nd) submission when applicable, that were originated by CheckFree for a payment by User to Client, irrespective of the reason for the return. Client agrees that CheckFree is authorized to debit Client's designated account in the amount of the returned Debit Entries. Further, Client agrees that should there ever be insufficient funds in its designated account to cover the amount of the returned Debit Entries, it will, upon notification from CheckFree, immediately reimburse to CheckFree the amount in issue. CheckFree will send notification in a proprietary file format to be coded to by Client.
- 4.8** The parties agree that all necessary information for returned items settlement and for payment processing and posting will be provided and documented in a separate document(s) prior to implementation.

5 Marketing

- 5.1** Client's name shall be added to the CheckFree Distribution Network and financial institutions shall receive notice that the Client was added
- 5.2** Client shall provide a logo for use at mycheckfree.com exactly 80 pixels wide by 24 pixels high
- 5.3** Client is responsible for informing users that an electronic bill is available at financial institution websites registered with the CheckFree distribution network

- 5.4 Client understands that financial institutions have sole responsibility on how and when or if users are informed of the availability of the Client's bill on the financial institutions website
- 6 Unauthorized Transactions and Enrollment Fraud.**
- 6.1 The party that performs Initial/Recurring Authentication shall be responsible for researching reports that it receives from Users that an Unauthorized Transaction has occurred through the Services, and for funding any amounts due Users resulting from such Unauthorized Transactions. As used herein:
- 6.1.1 the term "Unauthorized Transaction" means any electronic fund transfer from a User's account initiated through the Services by a person other than the User without actual authority to initiate the transfer and from which the User receives no benefit; and,
- 6.1.2 "Initial/Recurring Authentication" means the process by which an individual adds or modifies Services account information at initial enrollment or during any recurring visits to the Services. The party that performs Initial/Recurring Authentication shall be responsible for the research of and any losses incurred by Users resulting from Initial/Recurring Authentication, including any Unauthorized Transactions, when such Initial/Recurring Authentication results in the establishment or modification of an account for the Services by an individual or entity using any information belonging to another individual or entity, included, but not limited to, name or financial institution account information. BPS/Client and CheckFree agree to notify the other in the event of fraud being investigated by either party as it relates to the Services; such notification should be made within two (2) business days of the party learning of the issue.
- 7 Customer Care.**
- 7.1 CheckFree shall respond to inquiries regarding the Services from Users. BPS/Client shall respond to inquiries from Users regarding the content presented on the bill.
- 7.2 BPS/Client acknowledges that when CheckFree inquires about the status of a User's payment, CheckFree is doing so as agent for the User, and BPS/Client agrees to provide the requested information in a timely manner.

IT IS AGREED.

Best Practice Systems, Inc.

By: [Signature]

Print: JEFFERY J. DOWNS

Title: DIRECTOR OF SALES

Date: 2 JAN 2008

The City of Cape Coral

By: [Signature]

Print: MARK THIELE

Title: Procurement Manager

Date: 12-24-7

The City of Cape Coral Legal

By: [Signature]

Print: MARILYN W. MILLER

Title: ASSISTANT CITY ATTORNEY

Date: 12/24/07

APPROVED AS TO FORM:

BY: [Signature]
City Attorney's Office

The City of Cape Coral Clerk

By: [Signature]

Print: Bonnie J. Potter

Title: City Clerk

Date: 12/24/07

Schedule A-1
Pricing for Biller Direct and Network Services

e.Billing Services

Implementation Fees (One time Fee)	
Initial Development and Implementation	\$ 7,000
CheckFree Distribution Network	\$ 2,000
Additional Forms for Electronic Display	\$ 500 per form
Monthly Active Customer Transaction Fees	
Invoice Presentment & Payment (Minimum \$500)	\$0.29 per unit
Monthly Archive Fee	
Archive Fee per month	\$0.02 per unit

Programming, Testing, and Archive Retrieval

After initial implementation if there is need for additional programming the rate is as follows:

Design, Programming and Testing (after initial implementation)	\$150.00 Per Hr
Archive Retrieval	\$150.00 Per Hr
First Dynamic Message Setup	Included
Each Additional Message Setup	\$55.00 Per Hr

Terms & Conditions

1. Active Customers are customers who have enrolled in the e.bill/e.invoice system
2. Enrollment is the process by which a customer activates their e.bill account

Item Number: B.(2)
Meeting Date: 2/6/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 16-17 Shared-Use Nonmotorized Trail Network Agreement between the State of Florida, Department of Transportation and the City of Cape Coral; Department: Public Works; Dollar Value: N/A; FDOT Grant: \$1,778,100 (Fund: N/A)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

FDOT launched the Sun Trail grant program with the purpose of building a nonmotorized trail network within the state of Florida. No matching funds are required under this program.

The City of Cape Coral has been awarded a \$1,778,100 Sun Trail grant for the design of a 12-foot wide multi-use trail on the north side of Van Buren Parkway from Burnt Store Road to El Dorado Boulevard; on the west side of El Dorado Boulevard from Van Buren Parkway to Kismet Parkway; and on the north side of Kismet Parkway from El Dorado Boulevard to Del Prado Boulevard; approximately 6.5 miles.

Pedestrian bridge structures will be required to cross canals at three locations. The design will consider drainage improvements and environmental mitigation, as required.

There is an additional Sun Trail funding application pending for \$8 million to cover the construction phase.

This nonmotorized trail will provide a signature destination for recreational activity in the North Cape.

LEGAL REVIEW:

Dolores D. Menendez, City Attorney

EXHIBITS:

Resolution 16-17
Staff Presentation

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Persides Zambrano, Permitting & Planning Manager

ATTACHMENTS:

Description	Type
□ Resolution 16-17	Resolution
□ Staff Presentation	Backup Material

RESOLUTION 16 - 17

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING THE FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE DESIGN OF THE VAN BUREN/EL DORADO/KISMET PARKWAY MULTI-USE TRAIL AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature has declared that the Florida Department of Transportation shall make use of its expertise in efficiently providing transportation projects to develop the Florida Shared-Use Nonmotorized Trail Network, consisting of a statewide network of nonmotorized trails which allows nonmotorized vehicles and pedestrians to access a variety of origins and destinations with limited exposure to motorized vehicles; and

WHEREAS, the City Council desires to enter into the Florida Shared-Use Nonmotorized Trail Network Agreement with the State of Florida Department of Transportation (FDOT) to provide for FDOT's participation in the design of the Van Buren/El Dorado/Kismet Parkway Multi-Use Trail, as further described in the Agreement, attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA:

Section 1. That the Florida Shared-Use Nonmotorized Trail Network Agreement (Financial Project No. 440236-1-34-01) is hereby approved.

Section 2. That the Mayor is hereby authorized to execute the Florida Shared-Use Nonmotorized Trail Network Agreement with the State of Florida Department of Transportation, and any other applicable documents pertaining to the Agreement. A copy of the Agreement is attached hereto and incorporated herein by reference.

Section 3. Effective Date. This Resolution shall take effect immediately upon its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
res/FDOT Shared Use Nonmotorized Trail Agreement

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

Financial Project No.: 440236-1-34-01	Contract No.	Vendor No.: F591312996008	CSFA No. and Title: <u>55.038</u> Florida Shared-Use Nonmotorized (SUN) Trail Network Program
--	---------------------	-------------------------------------	--

THIS FLORIDA SHARED-USE NONMOTORIZED TRAIL GRANT AGREEMENT ("Agreement") is entered into this _____ day of _____ 2017, by and between the State of Florida Department of Transportation, ("Department"), and the City of Cape Coral, ("Recipient"). The Department and the Recipient are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties".

RECITALS

- A. The Department is authorized under Section 339.81, Florida Statutes, to enter into this Agreement.
- B. The Florida Shared-Use Nonmotorized Trail Network is included in the Department's work program for the purposes of funding and maintaining projects within the network.
- C. The purpose of this Agreement is to provide for the Department's participation in the design of the Van Buren/El Dorado/Kismet Parkway Multi-Use Trail, as further described in **Exhibit "A", Scope of Services ("Project")**, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed. The Project is or shall be a component of the Florida Shared-Use Nonmotorized Trail Network and it would be more practical, expeditious, and economical for the Recipient to perform the Project.
- D. The Recipient by Resolution No. _____ adopted on _____, 2017, a copy of which is attached hereto and made a part hereof as **Exhibit "E", Recipient Resolution**, authorizes the proper officials to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the Parties agree to the following:

- 1. **Incorporation of Recitals:** The recitals set forth above are true and correct and are incorporated into this Agreement.
- 2. **Term of Agreement:** This Agreement shall commence upon full execution by both Parties ("Effective Date") and continue through June 30, 2019. If the Recipient does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Recipient and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed prior to the Effective Date or after the expiration date of this Agreement will not be reimbursed by the Department. Unless terminated earlier, work on the Project shall commence no later than: the 30th day of June, 2017 or within N/A days of the issuance of the Notice to Proceed for the construction phase of the Project (if the Project involves construction), whichever date is earlier. The Department shall have the option to immediately terminate this Agreement should the Agency fail to meet the above-required dates.
- 3. **Amendments, Extensions and Assignment:** This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred or otherwise encumbered by the Recipient under any circumstances without the prior written consent of the Department.
- 4. **Termination or Suspension of Project:** The Department may, by written notice to the Recipient, suspend any or all of the Recipient's obligations under this Agreement for the Recipient's failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected. The Department may also terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- a. If the Department terminates the Agreement, the Department shall notify the Recipient of such termination in writing within thirty (30) days of the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.
- c. If the Agreement is terminated before performance is completed, the Recipient shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Recipient.
- d. In the event the Recipient fails to perform or honor the requirements and provisions of this Agreement, the Recipient shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.

5. Project Cost:

- a. The estimated total cost of the Project is \$1,778,100.00 (One Million Seven Hundred Seventy Eight Thousand One Hundred Dollars). This amount is based upon the schedule of funding in **Exhibit "B", Method of Compensation**. The schedule of funding may be modified by mutual agreement of the Parties.
- b. The Department agrees to participate in the Project cost up to the maximum amount of \$1,778,100.00 (One Million Seven Hundred Seventy Eight Thousand One Hundred Dollars) and as more fully described in **Exhibit "B", Method of Compensation**. The Parties agree that the Department's participation may be increased or reduced upon a determination of the actual bid amounts of the Project by the execution of a supplemental agreement. The Recipient agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits involved.

6. Compensation and Payment:

- a. The Department shall reimburse the Recipient for costs incurred to perform services described in the Scope of Services in **Exhibit "A"**, and as set forth in the Method of Compensation in **Exhibit "B"**.
- b. The Recipient shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project, identified as Financial Project Number 440236-1-34-01, and the quantifiable, measurable, and verifiable units of deliverables are described more fully in **Exhibit "A"**, Scope of Services. Any changes to the deliverables shall require written approval in advance by the Department.
- c. Invoices shall be submitted no more often than monthly by the Recipient in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable and verifiable deliverables as established in **Exhibit "A"**. Deliverables must be received and accepted in writing by the Department's Project Manager prior to reimbursements. The Department will identify the Department's Project Manager to the Recipient in writing.

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- d. Supporting documentation must establish that the deliverables were received and accepted in writing by the Recipient and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit "A" has been met.
- e. Travel expenses are not compensable under this Agreement.
- f. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the Department's Comptroller under s. 334.044 (29), Florida Statutes. If the Department determines that the performance of the Recipient is unsatisfactory, the Department shall notify the Recipient of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Recipient shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Recipient will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Recipient shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Recipient resolves the deficiency. If the deficiency is subsequently resolved, the Recipient may bill the Department for the retained amount during the next billing period. If the Recipient is unable to resolve the deficiency, the funds retained must be forfeited at the end of the Agreement's term.
- g. Recipients providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the Recipient. Interest penalties of less than one (1) dollar will not be enforced unless the Recipient requests payment. Invoices that have to be returned to a Recipient because of Recipient preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- h. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Recipient's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- i. Upon request, the Recipient agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- j. If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Recipient owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
 - k. The Recipient must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
 - l. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Recipient. See **Exhibit "B"** for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Recipient, in writing, when funds are available.
 - m. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."
 - n. Any Project funds made available by the Department pursuant to this Agreement which are determined by the Department to have been expended by the Recipient in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Recipient files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.
 - o. In determining the amount of the payment, the Department will exclude all Project costs incurred by the Recipient prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in **Exhibit "B"** for the Project, costs agreed to be borne by the Recipient or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.
7. **General Requirements:** The Recipient shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.

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- a. In the event the Recipient proceeds with any phase of the Project utilizing its own forces, the Recipient will only be reimbursed for direct costs (this excludes general overhead).
- b. The Recipient shall certify to Department that the Recipient's design consultant and/or construction contractor has secured the necessary permits. If the Recipient fails to provide such certification to Department by October 18, 2018, the Department may, at its discretion, terminate this Agreement.
- c. The Recipient shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained.
- d. In the event the cost of the Project is greater than \$250,000.00 and the Project involves construction on the Department's right-of-way, the Recipient shall provide the Department with written notification of either its intent to:
 - i. Award the construction of the Project to a Department prequalified contractor which is the lowest and best bidder in accordance with applicable state and federal statutes, rules, and regulations. The Recipient shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or
 - ii. Construct the Project utilizing existing Recipient employees, if the Recipient can complete said Project within the time frame set forth in this Agreement.
- e. The Recipient shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards.
- f. The Recipient shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Recipient will make best efforts to obtain the Department's input in its decisions.
- g. If this box is selected, then the following provision is incorporated into this Agreement:

A portion of the Project will be located on the Department's right-of-way and the Recipient shall be responsible for ensuring that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable Department standards and that the work is performed in accord with **Exhibit "F", Terms and Conditions of Construction**, attached to and incorporated into this Agreement.

8. Contracts of the Recipient:

- a. Except as otherwise authorized in writing by the Department, the Recipient shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.
- b. It is understood and agreed by the parties to this Agreement that participation by the Department in a project with the Recipient, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Recipient's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Recipient shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

9. **Design and Construction Standards and Required Approvals:** In the event the Project includes construction the following provisions are incorporated into this Agreement:
- a. The Recipient shall hire a qualified contractor using the Recipient's normal bid procedures to perform the construction work for the Project. The Recipient must certify that the installation of the Project is completed by a Contractor prequalified by the Department as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2016), as amended, unless otherwise approved by the Department in writing or exhibit past project experience in the last five years that are comparable in scale, composition, and overall quality of the site identified within the scope of services of this Project.
 - b. Construction Engineering Inspection (CEI) services will be provided by the Recipient by hiring a Department prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the Department in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall approve all CEI personnel. The CEI firm shall not be the same firm as that of the Engineer of Record for the Project. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project.
 - c. The Recipient understands that it is responsible for the preparation of all design plans for the Project. The Recipient shall hire a qualified consultant for the design phase of the Project using the Recipient's normal procurement procedures to perform the design services for the Project.
 - d. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Recipient for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Recipient shall not begin the construction phase of the Project until the Department issues a Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Recipient shall request a Notice to Proceed from the Department's Construction Project Manager, Richard Arico, at (239) 225-1973 or from an appointed designee. Any work performed prior to the execution of this Agreement is not subject to reimbursement.
 - e. The Recipient will provide one (1) copy of the final design plans and specifications and final bid documents to the Department's Construction Project Manager prior to commencing construction of the Project.
 - f. The Recipient shall require the Recipient's contractor to post a payment and performance bond in accordance with Section 337.18(1), Florida Statutes.
 - g. The Recipient shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable Recipient and Department standards.
 - h. Upon completion of the work authorized by this Agreement, the Recipient shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached hereto and incorporated herein as **Exhibit "C", Engineers Certification of Completion**. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

10. Maintenance Obligations: In the event the Project includes construction then the following provisions are incorporated into this Agreement:

- a. The Recipient has agreed by resolution to accept all future maintenance and other attendant costs occurring after completion of the Project for all improvements constructed as part of the Project, and such resolution is attached and incorporated into this Agreement as **Exhibit "E"**. The terms of this provision shall survive the termination of this Agreement.
- b. The Recipient agrees to execute a Maintenance Memorandum of Agreement with the Department prior to letting for construction of the Project. The Maintenance Memorandum of Agreement shall require the Recipient to maintain the entire Project, as depicted in the construction plans and specifications of the Project in perpetuity, according to the Department's standards, which include but are not limited to, the Americans with Disabilities Act, the Department's Design Standards, and the Department's Standard Specifications for Road and Bridge Construction, as those standards are amended from time to time.

11. State Single Audit: The administration of resources awarded through the Department to the Recipient by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state agency inspector general, the Auditor General, or any other state official. The Recipient shall comply with all audit and audit reporting requirements as specified below.

- a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Recipient's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS) or the Auditor General.
- b. The Recipient, a nonstate entity as defined by Section 215.97(2)(n), Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement is subject to the following requirements:
 - i. In the event the Recipient meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Recipient must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "D"** to this Agreement indicates state financial assistance awarded through the Department by this Agreement needed by the Recipient to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, other state agencies and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
 - ii. In connection with the audit requirements, the Recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes

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submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

- iii. In the event the Recipient does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Recipient is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Recipient must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Recipient's audit period for each applicable audit year. In the event the Recipient does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Recipient's resources (i.e., the cost of such an audit must be paid from the Recipient's resources obtained from other than State entities).
- iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, FL 32399-0405
Email: FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaudgen_localgovt@aud.state.fl.us

- v. Any copies of financial reporting packages, reports or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- vi. The Recipient, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Recipient in correspondence accompanying the reporting package.
- vii. Upon receipt, and within six months, the Department will review the Recipient's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Recipient fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.
- viii. As a condition of receiving state financial assistance, the Recipient shall permit the Department, or its designee, DFS or the Auditor General access to the Recipient's records including financial statements, the independent auditor's working papers and

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project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

- c. The Recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, DFS or the Auditor General access to such records upon request. The Recipient shall ensure that the audit working papers are made available to the Department, or its designee, DFS or the Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department.

12. Notices and Approvals:

- a. All notices (except invoices) pertaining to this Agreement are in effect upon receipt by either Party, shall be in writing, and shall be transmitted either by personal hand delivery; United States Post Office, return receipt requested; or, overnight express mail delivery. E-mail and facsimile may be used if the notice is also transmitted by one of the preceding forms of delivery. The addresses and the Agreement Administrators set forth below for the respective Parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

**JIM MARTIN, CPM, FCCM
801 NORTH BROADWAY AVENUE
BARTOW, FL 33830
PHONE: (863) 519-2665
EMAIL: JIM.MARTIN@DOT.STATE.FL.US**

RECIPIENT:

**CITY OF CAPE CORAL
PERSIDES ZAMBRANO, AICP
P.O. BOX 150027
CAPE CORAL, FL 33915-0027
PHONE: (239) 574-0733
EMAIL: PZAMBRAN@CAPECORAL.NET**

- b. All approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.

13. Restrictions, Prohibitions, Controls and Labor Provisions:

- a. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- b. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.

- c. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Recipient.
- d. No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.
- e. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. The Recipient shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.

14. Indemnification and Insurance:

- a. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Recipient guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Recipient or any subcontractor, in connection with this Agreement. Additionally, the Recipient agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Recipient's contractor/consultant shall indemnify and hold harmless the Recipient and the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Recipient's sovereign immunity."

- b. The Recipient shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultants have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.

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- c. If the Recipient is a state agency or subdivision of the State of Florida and elects to self-perform the Project, then the Recipient may self-insure. If the Recipient is not a state agency or subdivision of the State of Florida or if the Recipient is a state agency or subdivision of the State of Florida that elects to hire a contractor or consultant to perform the Project, then the Recipient shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Cause the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible. Pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Recipient is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.
- d. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, you shall, in addition to the insurance coverage required pursuant to 7-13.2 above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to paragraph 15.C above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have. The Railroad Protective Liability Coverage described above is not required if the Recipient is a government entity that elects to self-perform the Project and utilizes self-insurance.
- e. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the policy/ies procured pursuant to paragraph 11.c above. This provision does not apply if the Recipient is a government entity that elects to self-perform the Project and utilizes self-insurance.

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FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

15. Miscellaneous:

- a. The Recipient will be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Recipient will be responsible for securing any applicable permits. The Recipient shall include in all contracts and subcontracts for amounts in excess of \$150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- b. The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.
- c. In no event shall the making by the Department of any payment to the Recipient constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Recipient and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- d. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- e. The Recipient and the Department agree that the Recipient, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- f. By execution of the Agreement, the Recipient represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- g. Nothing in the Agreement shall require the Recipient to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Recipient will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Recipient to the end that the Recipient may proceed as soon as possible with the Project.
- h. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- i. If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Recipient must comply with the requirements of Section 255.0991, Florida Statutes.
- j. The Recipient shall:
 - i. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Recipient during the term of the contract; and
 - ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

- k. The Department reserves the right to unilaterally cancel this Agreement for failure by the Recipient to comply with the provisions of Chapter 119, Florida Statutes.
- l. The Recipient agrees to comply with Section 20.055(5), F.S., and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), F.S.
- m. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Recipient agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

16. Exhibits:

- a. Exhibits A, B, C, D, and E are attached to and incorporated into this Agreement.
- b. A portion or all of the Project will utilize the Department's right-of-way and therefore Exhibit F, Terms and Conditions of Construction, is attached and incorporated into this Agreement.
- c. **Exhibit List**
 - Exhibit A: Scope of Services
 - Exhibit B: Method of Compensation
 - Exhibit C: Engineer's Certification of Compliance
 - Exhibit D: State Financial Assistance (Florida Single Audi Act)
 - Exhibit E: Recipient Resolution

The remainder of this page intentionally left blank.

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

CITY OF CAPE CORAL

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title:

By: _____
Name:
Title:

Title:

Legal Review:

APPROVED AS TO FORM:

BY: William Baston for
City Attorney's Office 12/30/16

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

EXHIBIT A

SCOPE OF SERVICES

This exhibit forms an integral part of the Florida Shared-Use Nonmotorized Trail Network Agreement between the State of Florida, Department of Transportation and the City of Cape Coral.

The purpose of this Exhibit is to describe the scope of work and the responsibilities of the City of Cape Coral in connection with the design of a 12-foot wide multi-use trail on the north side of Van Buren Parkway from Burnt Store Road to El Dorado Boulevard; on the west side of El Dorado Boulevard from Van Buren Parkway to Kismet Parkway; and on the north side of Kismet Parkway from El Dorado Boulevard to Del Prado Boulevard; approximately 6.5 miles. Pedestrian bridge structures will be required to cross canals at three locations. Drainage improvements and environmental mitigation will be provided, as required. The project design will be divided into two separate plan sets, Phase I and Phase II. Phase I will include the limits of Van Buren Parkway from Burnt Store Road to El Dorado Boulevards, El Dorado Boulevard from Van Buren Parkway to Kismet Parkway and Kismet Parkway from El Dorado Boulevard to Nelson Road. Phase II will include the limits of Kismet Parkway from Nelson Road to Del Prado Boulevard.

The general objective is for the City of Cape Coral to provide contract administration, management services and quality acceptance reviews of all work associated with the development and preparation of the contract plans for the associated improvements. The services performed shall be in accordance with all applicable Florida Department of Transportation manuals, guidelines and specifications. This scope of services is intended to be inclusive of all pre-construction activities required in preparation of the construction phase of the project.

Specifically and non-inclusive, the following are included in the Scope of Services:

- Provide for the preparation of the Final Contract Plans Package. This work effort includes design and analysis needed to prepare a complete set of Construction Plans, Traffic Control Plans, Environmental Permits and other necessary documents.
- The design criteria shall meet or exceed standards set forth in applicable Florida Department of Transportation manuals, guidelines and specifications.
- Coordination with utility owners during design will be required to determine and avoid potential impacts. Where unavoidable, disposition of the utility conflicts should be coordinated, including any utility design and utility relocation of impacted utility facilities.
- A Professional Engineer, registered in the State of Florida, in responsible charge of the project's design shall professionally endorse (sign, seal and certify) the record plans, the special provisions and all reference and support documents.
- Obtain topographic survey sufficient to provide proposed design. Survey products and services shall comply with pertinent Florida Statutes and the Florida Administrative Code.
- Identify and obtain geotechnical investigation, analysis, and design dictated by the project needs. A signed and sealed Final Geotechnical Report, prepared by a Professional Engineer, registered in the State of Florida will be provided.
- Acquisition of all applicable stormwater and environmental permits in accordance with Chapter 62-25, Regulation of Storm water Discharge, Florida Administrative Code; Chapter 373 and 403, Florida Statutes; Chapters 40 and 62, Florida Administrative Code; Rivers and Harbors Act of 1899; Section 404 of the Clean Water Act; and parts 114 and 115, Title 33, Code of Federal Regulations. In addition, permitting required by local agencies shall be prepared in accordance with their specific regulations. Acquisition includes all associated permit fees.

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- Coordinate design activities with other infrastructure projects that are impacted by or impact this project. This includes projects under the jurisdiction of local governments or other regional and state agencies.

The following special requirements and conditions shall apply: N/A

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

EXHIBIT B

Method of Compensation

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources:						
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
440236-1-34-01	STTF	2017	55.038	Florida Shared-Use Nonmotorized (SUN) Trail Program – Wheels on Road Fund	\$1,778,100.00	5
Total Award					\$1,778,100.00	

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/catalog.aspx>]. The services/purposes for which the funds are to be used are included in the Agreement scope of services/work. Any match required by the recipient is clearly indicated in the Agreement

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

EXHIBIT C

ENGINEER'S CERTIFICATION OF COMPLIANCE

NOTICE OF COMPLETION

FLORIDA SHARED-USE NONMOTORIZED (SUN) TRAIL PROGRAM
GRANT AGREEMENT

Between

THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
And CITY OF CAPE CORAL

PROJECT DESCRIPTION: _____

FINANCIAL MANAGEMENT ID# _____

In accordance with the Terms and Conditions of the Shared-Use Nonmotorized (SUN) Trail Program Grant Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of _____, 20_____.

By: _____

Name: _____

Title: _____

ENGINEER'S CERTIFICATION OF COMPLIANCE

In accordance with the Terms and Conditions of the Shared-Use Nonmotorized (SUN) Trail Program Grant Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish FDOT a set of "as-built" plans certified by the Engineer of Record/CEI.

By: _____, P.E.

SEAL:

Name: _____

Date: _____

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

EXHIBIT D

STATE FINANCIAL ASSISTANCE (FLORIDA SINGLE AUDIT ACT)

THE STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Awarding Agency: Florida Department of Transportation
State Project Title: FLORIDA SHARED-USE NONMOTORIZED (SUN) TRAIL NETWORK PROGRAM
CSFA Number: 55.038
***Award Amount:** \$1,117,000.00

*The award amount may change with supplemental agreements.

Specific project information for CSFA Number 55.038 is provided at:
<https://apps.fldfs.com/fsaa/searchCatalog.aspx>

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:

State Project Compliance Requirements for CSFA Number 55.038 are provided at:
<https://apps.fldfs.com/fsaa/searchCompliance.aspx>

The State Projects Compliance Supplement is provided at: <https://apps.fldfs.com/fsaa/compliance.aspx>

STATE OF FLORIDA Department OF TRANSPORTATION
FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

EXHIBIT E

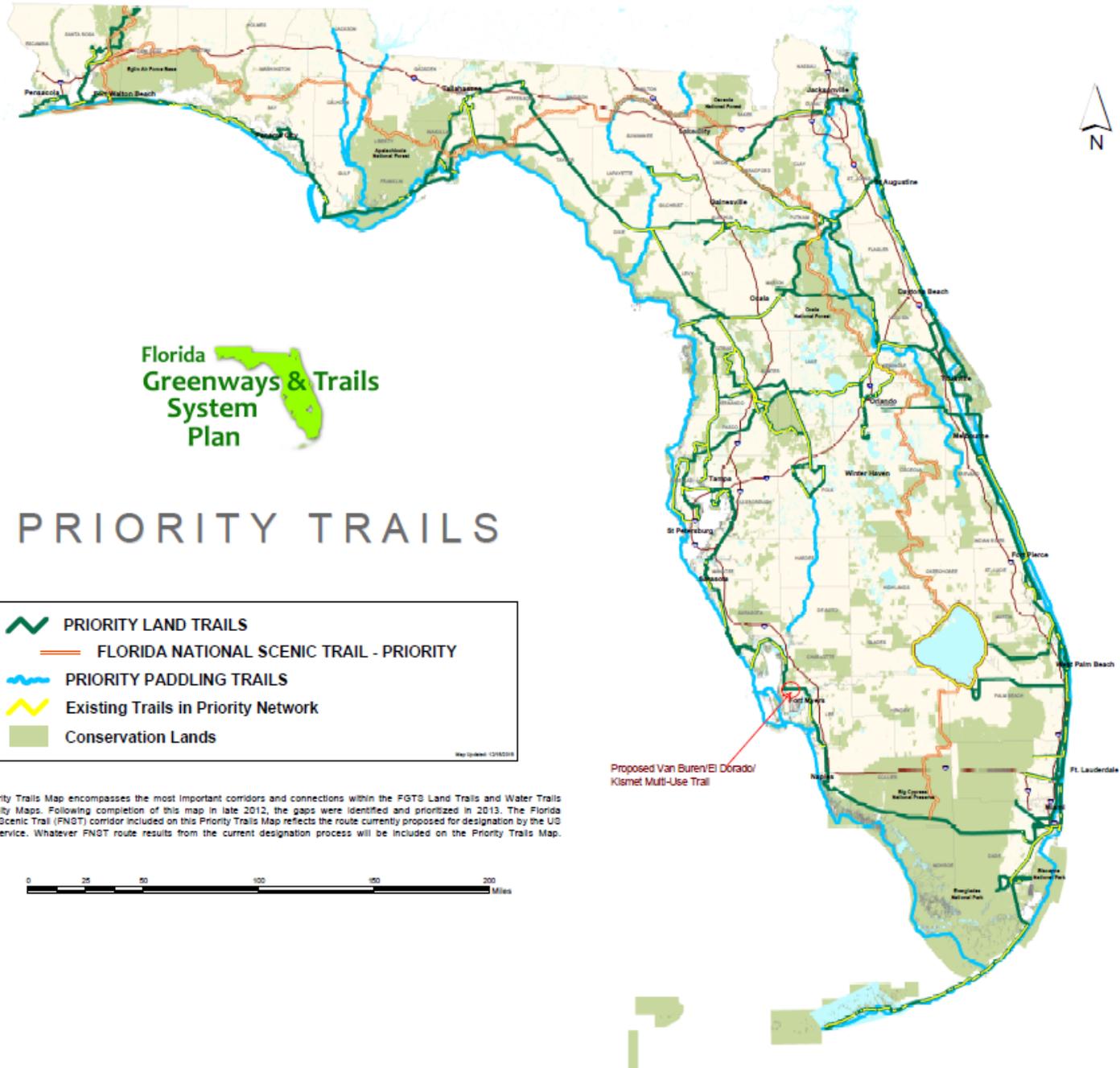
AGENCY RESOLUTION

(SEE ATTACHED)



SUN Trail Grant

Van Buren/El Dorado/Kismet Parkway Multi-Use Trail



Florida
Greenways & Trails
System
Plan

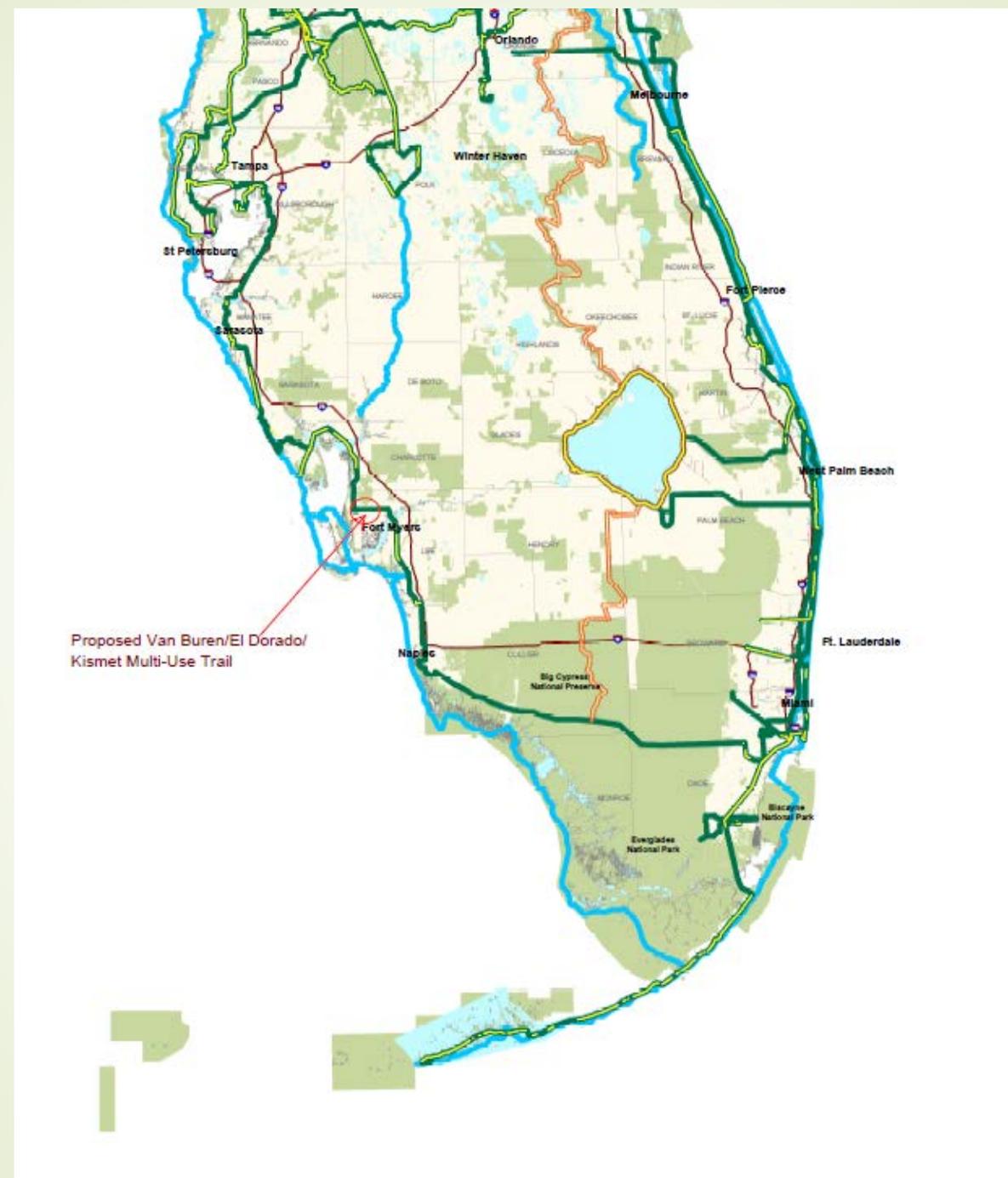
PRIORITY TRAILS

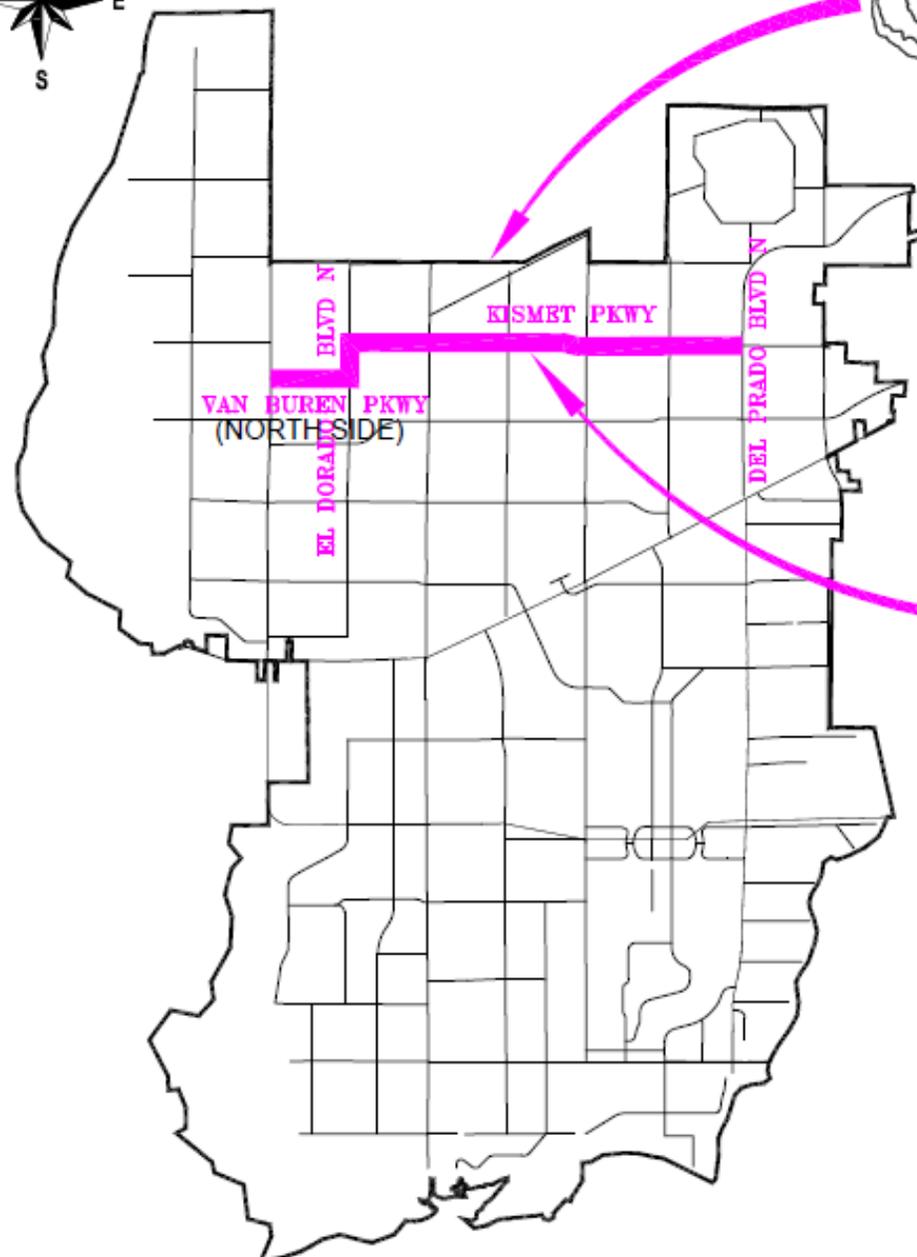
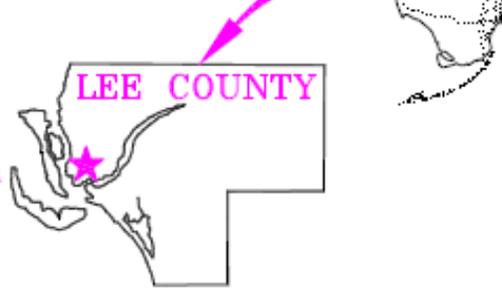
-  PRIORITY LAND TRAILS
-  FLORIDA NATIONAL SCENIC TRAIL - PRIORITY
-  PRIORITY PADDLING TRAILS
-  Existing Trails in Priority Network
-  Conservation Lands

The Priority Trails Map encompasses the most important corridors and connections within the FGTS Land Trails and Water Trails Opportunity Maps. Following completion of this map in late 2012, the gaps were identified and prioritized in 2013. The Florida National Scenic Trail (FNST) corridor included on this Priority Trails Map reflects the route currently proposed for designation by the US Forest Service. Whatever FNST route results from the current designation process will be included on the Priority Trails Map.



Proposed Van Buren/EI Dorado/
Kismet Multi-Use Trail

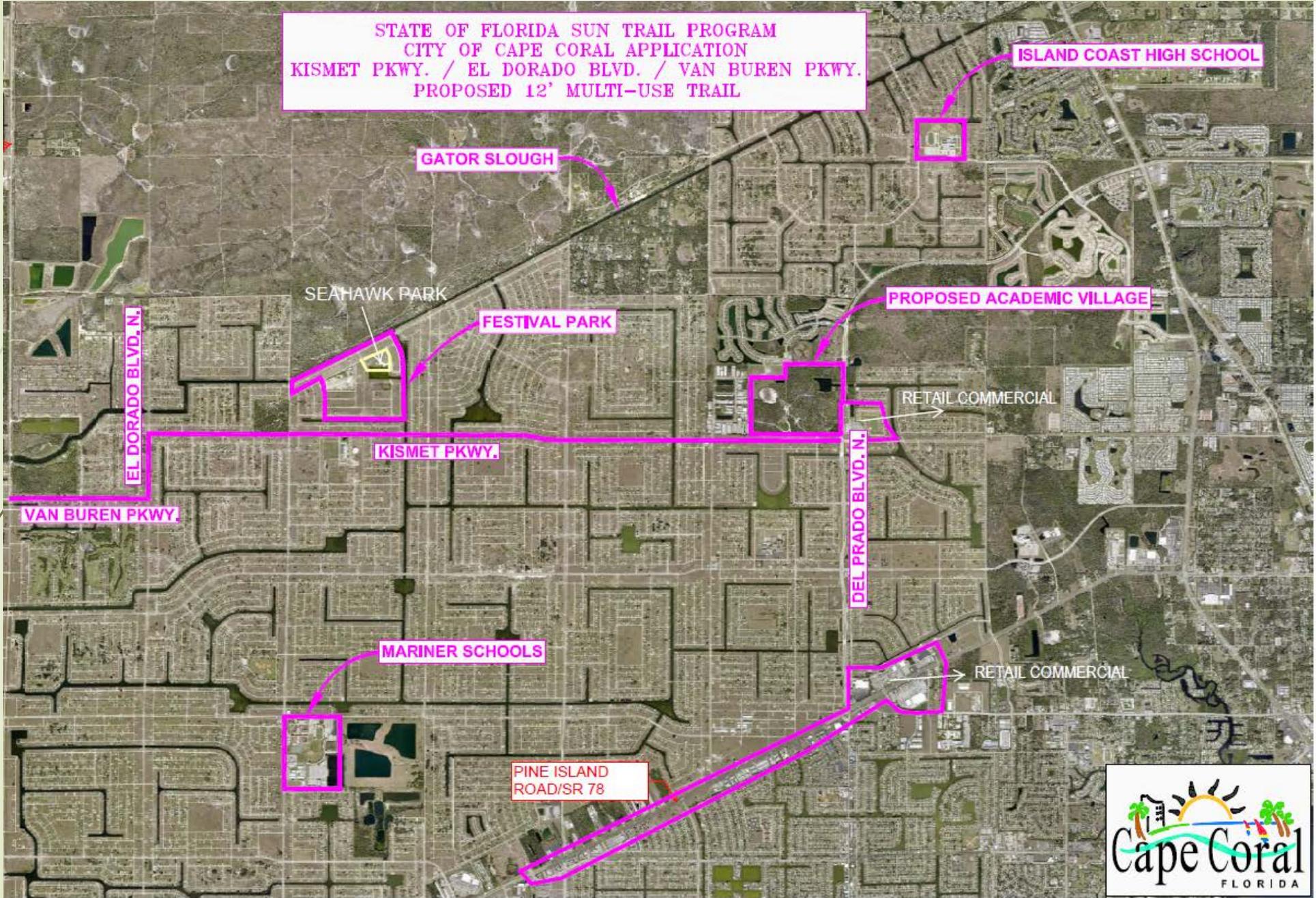




PROJECT LOCATION
KISMET PKWY
(NORTH SIDE)



STATE OF FLORIDA SUN TRAIL PROGRAM
CITY OF CAPE CORAL APPLICATION
KISMET PKWY. / EL DORADO BLVD. / VAN BUREN PKWY.
PROPOSED 12' MULTI-USE TRAIL





Highlights

- First year of the program
- \$44.4 million available statewide
- \$1.78 awarded to the City in FY 2017
- Funds are for design
- 7 mile 12' wide multi-use trail
- Includes 3 canal crossings (bridges)
- Application pending for \$8 million –construction
- Will provide a signature destination for recreational activity in the north Cape



Team Effort

- ▶ **Ron Gogoi**, MPO Transportation Planning Administrator
 - ▶ **Persides Zambrano**, Public Works Planning Manager
 - ▶ **Gary Gasperini**, Public Works Maintenance Manager
 - ▶ **Gabe Nappi**, CAD/GIS design Specialist
- 



The following organizations provided (in record time) letters of support:

- ▶ **Carolyn Conant**, Chairperson Cape Coral Bike-Ped
- ▶ **Darla Letourneau**, Steering Committee Bike-Walk Lee
- ▶ **Donna Germain**, CEO, Cape Coral Chamber of Commerce
- ▶ **Robbie Roepstorff**, Chairman Healthy Lee
- ▶ **Tamara Pigott**, Executive Director, Lee County Visitor and Convention Bureau
- ▶ **Jim Nathan**, President Lee Memorial Health System

Item Number: B.(3)
Meeting Date: 2/6/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 25-17 Approve Use of State Forfeiture Funds in compliance with F.S.S. 932.7055:
Department: Police Department; Dollar Value: \$9,551; (Special Revenue Fund)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? Yes
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan?

ELEMENT E: INCREASE QUALITY OF LIFE FOR OUR CITIZENS BY DELIVERING PROGRAMS AND SERVICES THAT FOSTER A SAFE COMMUNITY

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. FSS 932.7055(5)(c)(3) states: After July 1, 1992, and during every Fiscal Year thereafter, any local law enforcement agency that acquires at least \$15,000 pursuant to the Florida Contraband Forfeiture Act within a Fiscal Year must expend or donate no less than 15% of such proceeds for the support or operation of any drug treatment, drug abuse education, crime prevention and safe neighborhood programs. The local law enforcement agency has the discretion to determine which program (s) will receive the designated proceeds.
2. FY2016, Law Enforcement Trust Fund (LETf) proceeds totaled \$63,674.22. Fifteen (15%) percent of this requires the expenditure of \$9,551.13.
3. On November 22, 2016, a Notice of Funding Availability (NOFA) was sent to local agencies that the Police Department partners with, requesting those interested to complete an application by January 4, 2017.
4. The following organizations will obtain funds based on the applications submitted: Coalition for a Drug Free SWFL, Lee County Homeless Coalition, Lifeline Family Center, Northwest Regional Library, Project Lifesaver, Candlelight Ceremony, Water Safety Day and Bicycle Safety Program.

LEGAL REVIEW:

EXHIBITS:

Resolution 25-17
Community Requests
Certifications
Notice of Funding Availability

PREPARED BY:

Shannon Division- Administration Department- Police
Northorp

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▣ Resolution 25-17	Resolution
▣ Community Requests	Backup Material
▣ Certification	Backup Material
▣ Notice of Funding Availability	Backup Material

RESOLUTION 25 – 17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING THE DONATION OF \$9,551.13 OF LAW ENFORCEMENT TRUST FUNDS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral Police Department has received revenues as a result of criminal proceedings or forfeiture proceedings that have been deposited into the Law Enforcement Trust Fund (LETF); and

WHEREAS, pursuant to the Florida Contraband Forfeiture Act, Section 932.7055(5), agencies may apply to the Chief of Police to receive funds from the LETF, but such funds must be used for purposes specified; and

WHEREAS, when the police department acquires at least \$15,000 within the fiscal year, they must expend or donate no less than 15 percent of the proceeds with the Chief of Police having the discretion to determine which programs will receive the funds; and

WHEREAS, the Chief of Police has reviewed applications submitted to him and has made a determination of the agencies to receive donations from the LETF and the amounts to be donated to each agency; and

WHEREAS, the Chief of Police requests that the City Council approve the donations as set forth in Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby approves the donation of \$9,551.13 of the Law Enforcement Trust Funds as determined by the Chief of Police. The list of agencies that will receive a donation and the amount of each donation is attached hereto as Exhibit A. The Chief of Police has certified that the expenditure of funds complies with the provisions of the Florida Contraband Forfeiture Act. A copy of the certification is attached hereto as Exhibit B.

Section 2. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
res\LETF Donations

FY 2017 Law Enforcement Trust Fund Community Outreach Requests

Total 15% required community outreach donation = \$9,551.13

Coalition for a Drug-Free SWFL	\$1,000	Drug House Odyssey
Lee County Homeless Coalition	\$750	Direct services and membership
Lifeline Family Center	\$1,575	Educational Instructors Kit
Northwest Regional Library	\$2,250	Teen Makers Area
Cape Coral Police Department Service Programs:		
Project Lifesaver	\$2,100	Transmitters
Candlelight Ceremony	\$300	Printed materials
Water Safety Day	\$800	Educational materials
Bicycle Safety Program	\$776.13	Educational materials & equipment

1. *Coalition for a Drug-Free SWFL* hosts the Drug House Odyssey educational awareness event on an annual basis. Drug House Odyssey is a walk through play that illustrates the deadly effects of drinking and driving. Cape Coral schools are involved as attendees, as well as, volunteer actors. The Police Department is an active participant in this annual event. Funds will be used to assist with the cost of the event, which is free to attend.

2. *Lee County Homeless Coalition* advocates, educates and promotes awareness of issues and obstacles facing homeless individuals in Lee County through community collaboration, planning and implementation of solutions. Funds will be used support educational and awareness of homelessness, particularly as it intersects with substance abuse and continue the City’s support through the continuum of care.

3. *Lifeline Family Center, Inc.* is a two year residential program in Cape Coral serving homeless, at-risk, young pregnant women and their children. Lifeline has begun to present, Relationships Under Construction curriculum to their residence, as well as, schools. Relationships Under Construction covers topics that include, but are not limited to: character development, healthy and unhealthy relationships, and dating violence. Funds will be used to purchase one instructors kit to expand the program locally.

4. *Northwest Regional Library* is a community library that is located between Mariner High School and Mariner Middle School (a Title 1 school). On any given school day, approximately 50-60 students spend time at the library for various reasons. There is a large percentage of students that use the library as a place to hangout. The teen makers’ area will be used to encourage students to stay within the designated area to provide an engaging space to keep their minds and bodies active in a positive and supervised manner. Actively engaging youth, is just one form of preventing delinquent behavior. Funds will be used to purchase the needed hands-on activities.

5. *Cape Coral Police Department Service Programs:*

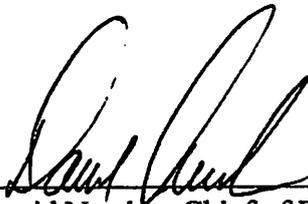
- a. *Project Lifesaver* is a program designed to track and locate qualified individuals that are affected by Alzheimer's, Dementia, Autism and Down Syndrome, who tend to wander off and become lost. Funds will be used to purchase additional transmitter units.
- b. *Candlelight Ceremony* is an event that supports and honors Cape Coral victims and their families that have experienced trauma and/or death. Funds will be used to purchase educational grief booklets.
- c. *Water Safety Day* is a City-wide event educating community members on water safety and drowning prevention. The event is held in May during Water Safety Month. Funds will be used to purchase educational books, CDs, and coloring books specific to water safety.
- d. *Bicycle Safety Program* is a new youth program designed to educate youth on the importance of bicycle safety, rules of the road, and wearing of personal protective equipment. Funds will be used to purchase educational materials and personal protection equipment.

**CERTIFICATION FOR APPROPRIATION AND EXPENDITURE FROM THE LAW
ENFORCEMENT TRUST FUND**

I hereby certify to the Cape Coral City Council for purposes of the Law Enforcement Trust Fund, that this request for appropriation and expenditure of funds complies with the provisions of the Florida Contraband Forfeiture Act (Sections 932.701-932.706, F.S.) and that such funds are intended to be used for:

Community outreach donations in the total amount of \$9,551.13 (see attached description).

1/10/17
Date



David Newlan, Chief of Police
City of Cape Coral, Fl.

FY 2017 Law Enforcement Trust Fund Community Outreach Requests

Total 15% required community outreach donation = \$9,551.13

Coalition for a Drug-Free SWFL	\$1,000	Drug House Odyssey
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2. *Lee County Homeless Coalition* advocates, educates and promotes awareness of issues and obstacles facing homeless individuals in Lee County through community collaboration, planning and implementation of solutions. Funds will be used support educational and awareness of homelessness, particularly as it intersects with substance abuse and continue the City’s support through the continuum of care.
3. *Lifeline Family Center, Inc.* is a two year residential program in Cape Coral serving homeless, at-risk, young pregnant women and their children. Lifeline has begun to present, Relationships Under Construction curriculum to their residence, as well as, schools. Relationships Under Construction covers topics that include, but are not limited to: character development, healthy and unhealthy relationships, and dating violence. Funds will be used to purchase one instructors kit to expand the program locally.
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5. *Cape Coral Police Department Service Programs:*

- a. *Project Lifesaver* is a program designed to track and locate qualified individuals that are affected by Alzheimer's, Dementia, Autism and Down Syndrome, who tend to wander off and become lost. Funds will be used to purchase additional transmitter units.
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- c. *Water Safety Day* is a City-wide event educating community members on water safety and drowning prevention. The event is held in May during Water Safety Month. Funds will be used to purchase educational books, CDs, and coloring books specific to water safety.
- d. *Bicycle Safety Program* is a new youth program designed to educate youth on the importance of bicycle safety, rules of the road, and wearing of personal protective equipment. Funds will be used to purchase educational materials and personal protection equipment.

**CERTIFICATION FOR APPROPRIATION AND EXPENDITURE FROM THE LAW
ENFORCEMENT TRUST FUND**

I hereby certify to the Cape Coral City Council for purposes of the Law Enforcement Trust Fund, that this request for appropriation and expenditure of funds complies with the provisions of the Florida Contraband Forfeiture Act (Sections 932.701-932.706, F.S.) and that such funds are intended to be used for:

Community outreach donations in the total amount of \$9,551.13 (see attached description).

1/10/17
Date



David Newlan, Chief of Police
City of Cape Coral, Fl.

LAW ENFORCEMENT TRUST FUND
COMMUNITY OUTREACH DONATION PROGRAM
FY 2017 NOTICE OF FUNDING AVAILABILITY

The Cape Coral Police Department is seeking applications for funding under the *Law Enforcement Trust Fund Community Outreach Donation Program*. Pursuant to the Florida Contraband Forfeiture Act, the Police Department must expend or donate no less than 15% of such proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program(s). This program furthers the Department's mission, to ensure the safety and well-being of our community through a partnership with our citizens.

Eligibility

Applicants are limited to units of local government and private, non-profit organization, pursuant to 26 U.S.C. § 501(c)(3) or (4). The applicant must be primarily engaged in providing a program that is both community-based and supportive of and consistent with a law enforcement effort, policy, or initiative.

Deadline

Applicants must submit the *Application for Law Enforcement Trust Fund Community Outreach Donation* by **January 4, 2017**. The Cape Coral Police Department will not accept applications that are received after January 4, 2017. Completed applications, along with a cover letter signed by the head of the agency or their authorized signatory, are to be mailed to:

Cape Coral Police Department
C/o Shannon Northorp
P.O. Box 150027
Cape Coral, Fl. 33915-0027

Contact Information

For technical assistance with this solicitation, contact Shannon Northorp, Grant Writer/Coordinator at 239-574-0675 or snorthor@capecoral.net.

Release date: November 22, 2016

Item Number: B.(4)
Meeting Date: 2/6/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 26-17 Renewal of the Mutual Aid Agreement (MAA) Between the City of Cape Coral o/b/o the Cape Coral Police Department and the Charlotte County Sheriff's Office and authorizing the Chief of Police to execute all necessary documents; Department: Police Department; Dollar Value: N/A; (Fund: N/A)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? Yes
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan?

ELEMENT E: INCREASE QUALITY OF LIFE FOR OUR CITIZENS BY DELIVERING PROGRAMS AND SERVICES THAT FOSTER A SAFE COMMUNITY

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. The City of Cape Coral entered into a MAA with Charlotte County Sheriff's Office (CCSO) for the use of SWAT Team resources in 2007, subsequently renewed in 2013, with the current MAA expiring January 3, 2017. The MAA with CCSO tracks the Sheriff's term of office with our renewal at the beginning of each term.
2. The purpose of this MAA is to ensure the public safety of the citizens of both the City of Cape Coral and Charlotte County by providing adequate levels of police services through the use of Special Response Teams to address foreseeable routine (specific circumstances) or emergency situations.
3. The MAA is constructed in accordance with Chapter 23, Florida Statutes, Florida Mutual Aid Act.
4. The MAA will be in effect until January 3, 2021, unless cancelled upon sixty (60) days written notice.
5. No party shall be required to deplete unreasonably its own manpower, equipment, facilities, and other resources and services in rendering such assistance.

LEGAL REVIEW:

Legal has reviewed/approved

EXHIBITS:

Resolution 26-17 including attachment of Mutual Aid Agreement Between the Cape Coral Police Department and the Charlotte County Sheriff's Office for the Use of SWAT Team Resources

PREPARED BY:

Bonnie
Demuth Division- Administration Department- Police

SOURCE OF ADDITIONAL INFORMATION:

Police Special Operations Captain Kurt Graf, 574-0669 (x4669)

ATTACHMENTS:

Description	Type
□ Resolution 26-17	Resolution

RESOLUTION 26 - 17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING THE MUTUAL AID AGREEMENT BETWEEN THE CITY OF CAPE CORAL O/B/O THE CAPE CORAL POLICE DEPARTMENT AND THE CHARLOTTE COUNTY SHERIFF'S OFFICE FOR THE USE OF SWAT TEAM RESOURCES; AUTHORIZING THE CHIEF OF POLICE TO EXECUTE ALL DOCUMENTS RELATED TO THE AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 23, Florida Statutes, the "Florida Mutual Aid Act," allows agencies to enter into voluntary agreements for cooperation and assistance of a routine law enforcement nature that crosses jurisdictional lines; and

WHEREAS, the City of Cape Coral Police Department desires to enter into a mutual aid agreement with the Charlotte County Sheriff's Office to ensure the public safety of the citizens of both the City of Cape Coral and Charlotte County by providing adequate levels of police services through the use of Special Response Teams to address foreseeable routine (specific circumstances) or emergency situations; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby approves entering into a Mutual Aid Agreement with the Charlotte County Sheriff's Office for the use of SWAT Team resources. The Mutual Aid Agreement is attached hereto as Exhibit A.

Section 2. The City Council hereby authorizes the Chief of Police to execute the Mutual Aid Agreement and any other documents required under the agreement.

Section 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY

res/Mutual Aid Agreement-Charlotte County SWAT Resources

MUTUAL AID AGREEMENT
BETWEEN THE CAPE CORAL POLICE DEPARTMENT
AND THE CHARLOTTE COUNTY SHERIFF'S OFFICE
FOR THE USE OF SWAT TEAM RESOURCES

This agreement is entered into between the City of Cape Coral o/b/o the Cape Coral Police Department and the Charlotte County Sheriff's Office.

WHEREAS, it is the responsibility of the governments of the Charlotte County Sheriff's Office and the Cape Coral Police Department, herein referred to as "Participating Agencies" to ensure the public safety of their citizens by providing adequate levels of police services to address any foreseeable routine or emergency situation; and

WHEREAS, because of existing and continuing possibility of the occurrence of law enforcement problems and other natural and man-made conditions which are, or are likely to be, beyond the control of the services, personnel, equipment, or facilities of the Participating Agencies; and

WHEREAS, in order to ensure that preparation of these Participating Agencies will be adequate to address any and all of these conditions, to protect the public peace and safety, and to preserve the lives and property of the people throughout the City of Cape Coral and Charlotte County; and

WHEREAS, the City of Cape Coral o/b/o the Cape Coral Police Department and Charlotte County Sheriff's Office have the authority under Chapter 23, Florida Statutes, Florida Mutual Aid Act, to enter into a mutual aid agreement;

NOW, THEREFORE, LET IT BE KNOWN, that the City of Cape Coral o/b/o the Cape Coral Police Department and Charlotte County Sheriff's Office, political subdivisions of the State of Florida, by and through their undersigned representatives, in

consideration for mutual promises to render valuable aid in times of necessity, do hereby agree to fully and faithfully abide by and be bound by the following terms and conditions:

1. Short title: Mutual Aid Agreement.

2. Description: Since this Mutual Aid Agreement provides for the requesting and rendering of assistance for both routine and law enforcement intensive situations requiring the use of Special Response Teams, this Mutual Aid Agreement combines the elements of both a voluntary cooperation agreement and a requested operational assistance agreement, as described in Chapter 23, Florida Statutes.

3. Definitions:

a. Joint declaration: A document which enumerates the various conditions or situations where aid may be requested or rendered pursuant to this Agreement, as determined by concerned agency heads. Subsequent to execution by the concerned agency heads, the joint declaration shall be filed with the Florida Department of Law Enforcement. Said declaration may be amended or supplemented at any time by the agency heads by filing subsequent declarations with the Florida Department of Law Enforcement.

b. Participating Agencies or participating law enforcement agency; CAPE CORAL POLICE DEPARTMENT and CHARLOTTE COUNTY SHERIFF'S OFFICE.

c. Agency heads: Chief of Cape Coral Police Department or the Chief's designee's; and the Sheriff of Charlotte County or the Sheriff's designees.

d. Participating municipal police department; Cape Coral Police Department and Charlotte County Sheriff's Office that has approved and executed this Agreement upon approval of the governing body of those law enforcement agencies.

e. Certified law enforcement employee: Any law enforcement employee certified, as provided in Chapter 943, Florida Statutes.

4. Operations:

a. In the event that a party to this Agreement is in need of assistance as specified in the joint declaration, an authorized representative of the Cape Coral Police Department or Charlotte County Sheriff's Office requiring assistance shall notify that agency from whom such assistance is requested. The authorized agency representative whose assistance is sought shall evaluate the situation and his/her available resources, and will respond in a manner deemed appropriate.

b. Each party to this Agreement agrees to furnish necessary manpower, equipment, facilities, and other resources, at their own costs, to render services to the other party as required to assist the requesting party in addressing the situation which caused the request; provided, however, that no party shall be required to deplete unreasonably its own manpower, equipment, facilities, and other resources and services in rendering such assistance.

c. The agency heads of the participating law enforcement agencies, or their designees shall establish procedures for giving control of the mission definition to the requesting agency, and for giving tactical control over accomplishing and such assigned mission and supervisory control over all personnel or equipment provided pursuant to this Agreement to the requesting agency.

5. Powers, Privileges, Immunities and Costs:

a. All employees of the participating agencies, including certified law enforcement employees as defined in Chapter 943, Florida Statutes, during such time that said employees are actually providing aid outside of the jurisdictional limits of the employing agency pursuant to a request for aid made in accordance with this Agreement, shall, pursuant to the provisions of Chapter 23, Florida Statutes, have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivision or jurisdiction in which they are normally employed.

b. The political subdivision or governing body having financial responsibility for the law enforcement agency providing services, personnel, equipment, or facilities pursuant to the provisions of this Agreement shall bear any loss or damage to same and shall pay any and all expenses incurred in the maintenance and operation of same.

c. The political subdivision or governing body having financial responsibility for the law enforcement agency providing aid to the requesting agency pursuant to this Agreement, shall be responsible for compensating its employees while rendering aid pursuant to this Agreement and shall pay actual travel and maintenance expenses of its employees rendering such aid. Such compensation shall include any amounts paid or due for compensation resulting from personal injury or death while such employees are engaged in rendering such aid. Such compensation shall also include, to the extent allowable by law, all benefits normally due such employees by responding agency.

d. All exemption from ordinance and rules, and all pension, insurance, relief, disability, worker's compensation, salary, death, and other benefits which apply to the activity of such officers, agents, or employees of ant such agency when performing their respective functions within the territorial limits of their respective agencies shall apply them to the same degree, manner, and extent while engaged in the performance of their functions and duties extra territorially under the provisions of this Mutual Aid Agreement. The provisions of this Agreement shall apply with equal effect to paid auxiliary employees.

6. Indemnification: The political subdivision or governing body having financial responsibility for the law enforcement agency providing aid pursuant to this Agreement agrees to hold harmless, defend, and indemnify the requesting law enforcement agency and its political subdivision or governing body in any suit, action, or claim for damages resulting from any and all acts or conduct of employees of said providing agency while providing agency aid pursuant to this Agreement, subject to Chapter 768, Florida Statutes, where applicable.

7. Conflicts: Any conflicts between this Agreement and the Florida Mutual Aid Act will be controlled by the provisions of the latter, whenever conditions exist that are within the definitions stated in Chapter 23, Florida Statutes.

8. Effective Date and Duration: This Agreement shall be in effect from the date of signing, through and including January 1, 2021. Under no circumstances may this Agreement be renewed, amended, or extended except in writing.

9. Cancellation: This Agreement may be cancelled by any party upon Sixty (60) days written notice to the other party. Cancellation will be at the discretion of the chief executive officers of the parties hereto.

AGREED TO AND ACKNOWLEDGED this _____ day of _____, 2017.

CHIEF DAVID NEWLAN
Cape Coral Police Department

SHERIFF BILL PRUMMELL
Charlotte County Sheriff's Office

APPROVED AS TO FORM:

By: William Bentley for 01/20/17
City Attorney's Office

Item Number: B.(5)
Meeting Date: 2/6/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 27-17 Acceptance of Permanent Utility and Drainage Easement at 1707 Cape Coral Parkway East (Block 363, Lots 1-7 & 24-30, Unit 7, Cape Coral Subdivision ~ Strap #08-45-24-C4-00363-0010) as required as part of the Downtowner Car Wash Site Plan Review (SP15-0044); Department: Financial Services / Real Estate; Dollar Value: N/A; (Fund: N/A)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. The subject project, Downtowner Car Wash, is located east of Del Prado Boulevard between Cape Coral Parkway and SE 47th Terrace in southeast Cape Coral at 1707 Cape Coral Parkway East.
2. Resolution 184-15 vacated the alley and underlying easements in Block 363 and required the relocation of utilities.
3. The subject easement expands the platted 6.00 foot wide utility and drainage easement in this location to 10.00 feet. Acceptance of this easement will provide the City of Cape Coral the right to access and maintain its facilities at this location.
4. This easement is being provided at no cost to the City. The property owner will be responsible to pay the Lee County Clerk of Court recording fees.
5. Recommend acceptance of the Permanent Utility and Drainage Easement at 1707 Cape Coral Parkway East as required as part of the Downtowner Car Wash Site Plan Review (SP15-0044).

LEGAL REVIEW:

EXHIBITS:

Resolution 27-17
Location Map

PREPARED BY:

Dawn Y. Andrews, Property
Broker

Division- Real
Estate

Department- Financial
Services

SOURCE OF ADDITIONAL INFORMATION:

Dawn Y. Andrews, Property Broker
239-574-0735

ATTACHMENTS:

Description	Type
▣ Resolution 27-17	Resolution
▣ Location Map - Easement - Blk 363	Backup Material

RESOLUTION 27 - 17

A RESOLUTION OF THE CITY OF CAPE CORAL ACCEPTING A PERMANENT UTILITY AND DRAINAGE EASEMENT LOCATED IN LOT 24, BLOCK 363, UNIT 7, CAPE CORAL SUBDIVISION; PROPERTY IS LOCATED AT 1707 CAPE CORAL PARKWAY EAST; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the subject property is located at 1707 Cape Coral Parkway East; and

WHEREAS, Resolution 184-15 vacated the alley and underlying and adjacent easements located in Block 363 and required the relocation of drainage and utility facilities located within the existing easements; and

WHEREAS, acceptance of the easement attached hereto as Exhibit A from the current property owner will expand the platted 6-foot-wide existing utility and drainage easement to a width of 10 feet and will provide the City the right to access and maintain its facilities at this location; and

WHEREAS, the easement will be provided to the City at no cost; the property owner is to pay the Lee County recording fees.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby accepts the Permanent Utility and Drainage Easement attached hereto as Exhibit A.

Section 2. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

RETZER	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
res/Accept Utility Easement-Downtowner Car Wash

**PERMANENT UTILITY & DRAINAGE
EASEMENT**

This Grant of Easement, made this 9th day of January, 2017 by and between **1707 Cape Coral, LLC, a Florida Limited Liability Company**, 312 Bayshore Drive, Cape Coral, Florida 33904 as "Grantor(s)", and the **CITY OF CAPE CORAL, a Florida municipal corporation**, as "Grantee".

WITNESSETH that said Grantor, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted and conveyed to the said Grantee, and Grantee's successors and assigns forever, a perpetual non-exclusive easement to survey, construct, operate, maintain, remove, replace or abandon drainage and/or utility facilities, in, along, under, above and upon the following described land, situate, lying and being in Lee County, Florida, to wit:

A parcel of land being 10.00 feet wide for Public Utility and Drainage Easement purposes lying in Lot 24 and part of the vacated 15.00 foot wide alley, Block 363, Cape Coral Subdivision Unit 7 as recorded in Plat Book 12, Pages 101 through 128 of the Public Records of Lee County, Florida and being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference.

Reserving unto the Grantor, its successors and assigns forever, the right to construct, maintain, and place upon the property being herein conveyed any surface improvements, excluding buildings, to include but not be limited to, driveways, curbing, landscaping provided that such does not unreasonably interfere with the drainage and/or utility facilities constructed within said property. Grantor, its successors and assigns, agrees to assume all liability for any damage to any surface improvements constructed by Grantor within the above easement, which result from the actions of the Grantee, including but not limited to any construction, maintenance or repairs to the drainage and/or utility facilities located within the above described easement in accordance with Section 3.14.5 of the City of Cape Coral Land Use and Development Regulations.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

In Witness Whereof, Grantor(s) has hereunto set their hand(s) the day and year first above written.

1707 Cape Coral LLC, a Florida Limited Liability Company

Rosemary Roberts
Witness - Signature

Rosemary Roberts
Witness - Print or Type Name

Jay W. Montpetit
Managing Member

[Signature]
Witness - Signature

Clifford Reppargen
Witness - Print or Type Name

STATE OF: FL s

COUNTY OF: Lee s

The foregoing instrument was acknowledged before me this 9th day of January, 2017 by Jay W. Montpetit, Managing Member of 1707 Cape Coral, LLC, a Florida Limited Liability Company who is is not personally known by me or has produced _____ as identification. (DESCRIBE IDENTIFICATION)



Linda Lee Miller
Notary Signature
Print Name: Linda Lee Miller
(seal)

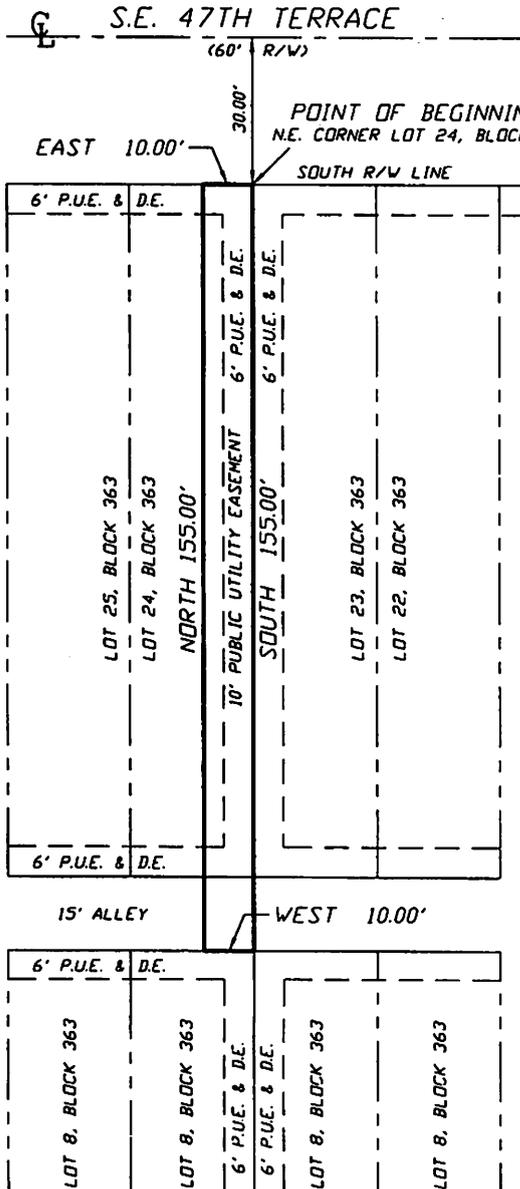
Prepared by:
CITY OF CAPE CORAL
P.O. BOX 150027
CAPE CORAL, FLORIDA 33915-0027
STRAP: 08-45-24-C4-00363.0010

DESCRIPTION:

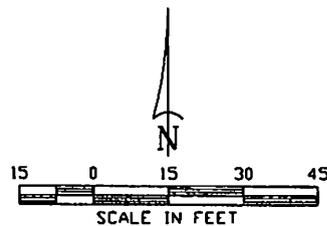
A TRACT OR PARCEL OF LAND BEING A 10.00 FEET WIDE PUBLIC UTILITY EASEMENT, LYING IN LOT 24 AND PART OF THE VACATED 15.00 FEET WIDE ALLEY, BLOCK 363, CAPE CORAL SUBDIVISION, UNIT 7 AS RECORDED IN PLAT BOOK 12, PAGES 101 THROUGH 128, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 24, OF THE AFORESAID BLOCK 363; THENCE RUN SOUTH ALONG THE EAST LINE OF SAID LOT 24 FOR 155.00 FEET TO THE NORTHEAST CORNER OF LOT 8 OF SAID BLOCK 363; THENCE RUN WEST ALONG THE NORTH LINE OF SAID LOT 8 FOR 10.00 FEET; THENCE RUN NORTH (10.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF LOT 24) FOR 155.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF S.E. 47TH TERRACE (60.00 FEET WIDE); THENCE RUN EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE FOR 10.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 1,550 SQUARE FEET, MORE OR LESS.



SKETCH OF LEGAL DESCRIPTION OF
**10.00 FEET WIDE
 PUBLIC UTILITY EASEMENT
 LYING IN BLOCK 363, UNIT 7
 CAPE CORAL SUBDIVISION**
 SECTION 8, TOWNSHIP 45 SOUTH, RANGE 24 EAST
 (PLAT BOOK 12, PAGES 101-128)
 LEE COUNTY, FLORIDA



LEGEND:

P.U.E. PUBLIC UTILITY EASEMENT
 D.E. DRAINAGE EASEMENT
 R/W RIGHT-OF-WAY

Phillip M. Mould

PHILLIP M. MOULD
 PROFESSIONAL SURVEYOR AND MAPPER
 #6515 - STATE OF FLORIDA

HARRIS-JORGENSEN, INC.
 3046 DEL PRADO BLVD. S. 3A
 CAPE CORAL, FLORIDA 33904
 PHONE: (239) 257-2624
 FAX: (239) 257-2921

DRAWN: FBH	CHECK: PMM	SCALE 1"=30'	PROJ. # 363-24 PUE
SKETCH DATE 12/15/15		FILE NO. 45-24-8	SHT.- 1 OF - 2

FLORIDA CERTIFICATE OF AUTHORIZATION # LB 6921

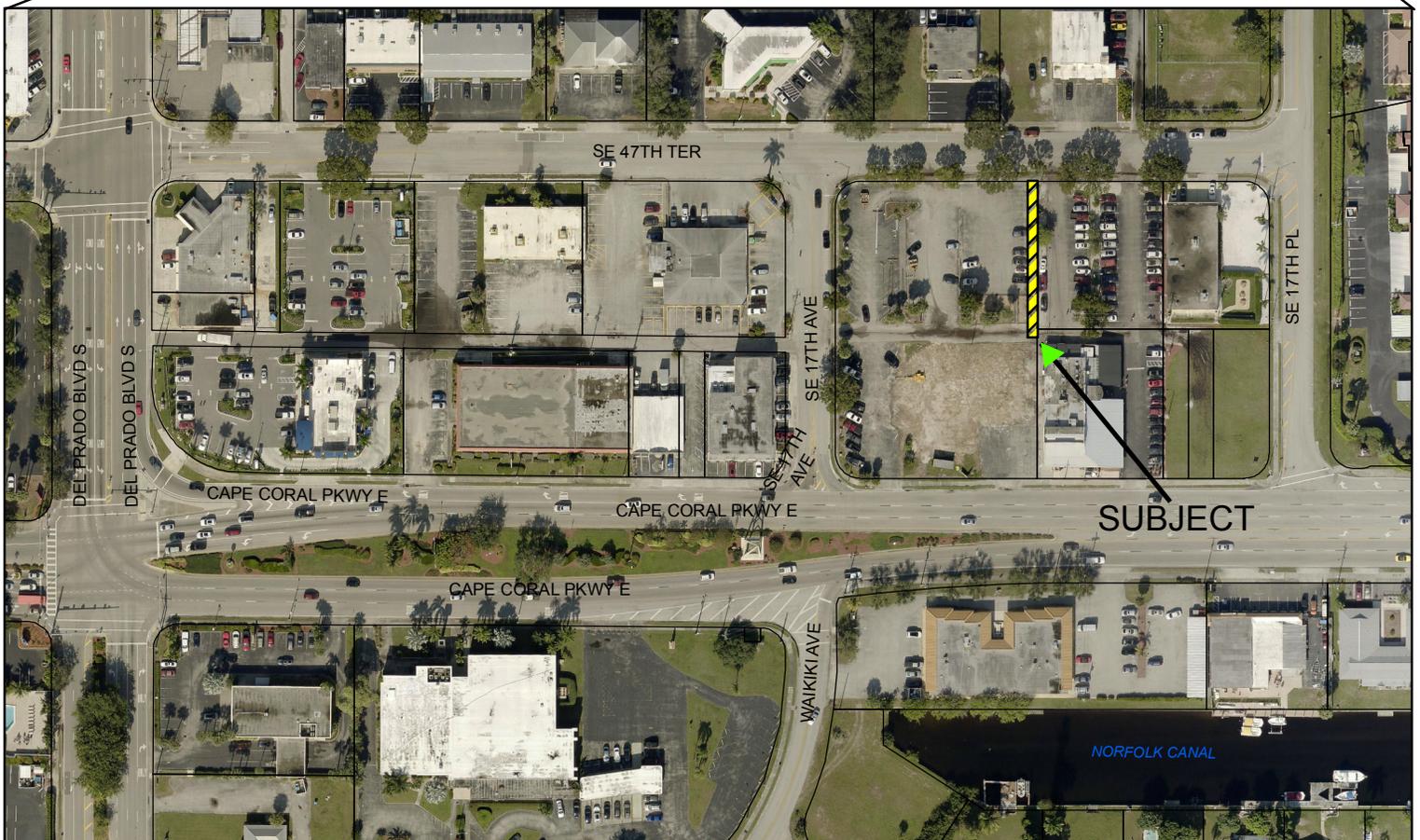
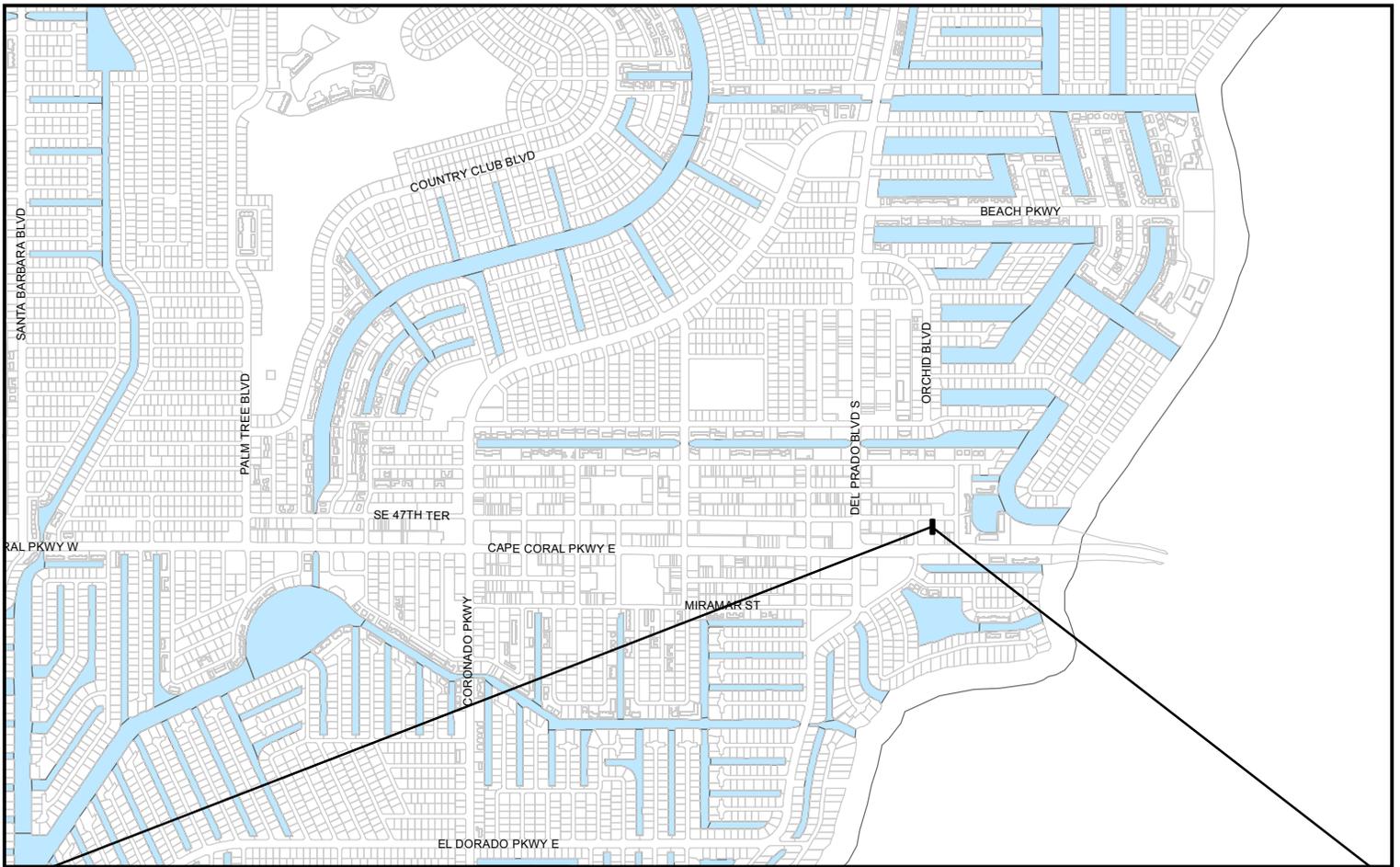
DESCRIPTION:

A TRACT OR PARCEL OF LAND BEING A 10.00 FEET WIDE PUBLIC UTILITY EASEMENT, LYING IN LOT 24 AND PART OF THE VACATED 15.00 FEET WIDE ALLEY, BLOCK 363, CAPE CORAL SUBDIVISION, UNIT 7 AS RECORDED IN PLAT BOOK 12, PAGES 101 THROUGH 128, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

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SAID TRACT CONTAINS 1,550 SQUARE FEET, MORE OR LESS.


PHILIP M. MORAND
LS #6515
DECEMBER 15, 2015
COUNTY CLERK



10FT. PUBLIC UTILITY EASEMENT
 Block 363, Unit 7
 1707 CAPE CORAL PKWY E



This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, site location or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product. Prepared by: The City of CAPE CORAL, Real Estate Division-Gregory L. Spivey



Item Number:	A.(1)
Meeting Date:	2/6/2017
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA
REQUEST FORM
CITY OF CAPE
CORAL**



TITLE:

Ordinance 2-17 Final Public Hearing

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

P&Z recommendation:

At the January 4, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted (7-0) to recommend approval of Ordinance 2-17. There was one speaker during public hearing.

Staff Recommendation:

Planning Division Staff recommends approval of the requested amendment.

SUMMARY EXPLANATION AND BACKGROUND:

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending Article VIII, Administration, of the City of Cape Coral Land Use and Development Regulations, creating Section 8.14, Reasonable Accommodation Procedures, to implement a procedure for reasonable accommodation with respect to Zoning and Land Use Regulations, Ordinances, rules and policies for persons with disabilities; providing severability and an effective date.

LEGAL REVIEW:

EXHIBITS:

Ordinance 2-17
Staff Presentation
Revised Staff Presentation

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Vince Caetero, DCD Director

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Ordinance 2-17	Ordinance
<input type="checkbox"/> Staff Presentation	Backup Material
<input type="checkbox"/> Revised Staff Presentation	Backup Material

AN ORDINANCE AMENDING ARTICLE VIII, ADMINISTRATION, OF THE CITY OF CAPE CORAL LAND USE AND DEVELOPMENT REGULATIONS, CREATING SECTION 8.14, REASONABLE ACCOMMODATION PROCEDURES, TO IMPLEMENT A PROCEDURE FOR REASONABLE ACCOMMODATION WITH RESPECT TO ZONING AND LAND USE REGULATIONS, ORDINANCES, RULES, AND POLICIES FOR PERSONS WITH DISABILITIES; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Federal Fair Housing Act (42 U.S.C. 3601 et seq.) ("FHA") has as one of its principal aims, the prevention of discrimination against persons with handicaps, in the use or enjoyment of a dwelling; and

WHEREAS, Title II of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.) ("ADA") prohibits state and local governments from discriminating against individuals with disabilities; and

WHEREAS, the Department of Community Development recommends a text amendment to the Cape Coral Land Use and Development Regulations to allow reasonable accommodation to the City's zoning and land use regulations, rules, ordinances, policies, and procedures for persons with disabilities, in compliance with federal law; and

WHEREAS, the Cape Coral City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Land Use and Development Regulations, Article VIII, Administration, is hereby amended to create a new Section 8.14, Reasonable Accommodation Procedures, as follows:

§ 8.14 Reasonable Accommodation Procedures.

.1 Purpose and general provisions. This section implements the policy of the city regarding requests for reasonable accommodation to its zoning and land use regulations, rules, ordinances, policies, and procedures for persons with disabilities to use and enjoy housing, as provided by the Federal Fair Housing Act (42 U.S.C. 3601 et seq.) ("FHA") and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.) ("ADA").

A. For purposes of this section, a "disabled" individual or person is an individual who qualifies as disabled and/or handicapped under the FHA and/or ADA. Any person who is disabled (or qualifying entities) may request reasonable accommodation with respect to the city's zoning and land use regulations, rules, ordinances, policies, and procedures as provided by the FHA and the ADA pursuant to the procedures set out in this section. For purposes of this section, a "qualifying entity" shall mean, a licensed service provider of the state of Florida as defined by Section 397.311, Florida Statutes, as amended from time to time. All qualifying entities shall submit as part of an application for a reasonable accommodation, proof of the licensable service component the qualifying entity holds pursuant to Chapter 397, Florida Statutes, as amended from time to time.

B. The following general provisions shall be applicable:

1. The city shall display a notice on the city's webpage (and shall maintain copies available for review in the City Clerk's Office) advising the public that disabled individuals (and qualifying entities) may request reasonable accommodation as provided herein.
2. A disabled person may apply for a reasonable accommodation on his/her own behalf or may be represented at all stages of the reasonable accommodation process by a person designated in writing by the disabled person.
3. The city shall provide assistance and accommodation as is required pursuant to the FHA and ADA in connection with a disabled person's request for reasonable accommodation, including without limitation, assistance with reading application questions, responding to questions, completing the

necessary forms, filing an appeal, and appearing at a hearing to ensure the process is accessible.

.2 Reasonable accommodation request form. A request by an applicant for reasonable accommodation under this section shall be made in writing by completion of a reasonable accommodation request form and submitted to the Department of Community Development. The reasonable accommodation request form is maintained by the Department of Community Development and shall contain such questions and requests for information as are necessary for processing the reasonable accommodation request. The reasonable accommodation request form shall, at a minimum, require the following information:

- A. Name and contact information for applicant;
- B. Address of housing or other location at which accommodation is requested;
- C. Name and mailing address of subject property owner;
- D. Description of reasonable accommodation requested;
- E. Description of the specific regulation(s) and/or procedure(s) from which accommodation is sought;
- F. Reasons the reasonable accommodation may be necessary for the individual(s) with disabilities to use and enjoy the housing or other service;
- G. Name and contact information for applicant's authorized representative, if applicable; and
- H. Signature of applicant, or authorized representative.

.3 Medical information; confidentiality. Should the information provided by the disabled person to the city include medical information or records, including records indicating the medical condition, diagnosis or medical history of the disabled person, such individual may, at the time of submitting such medical information, request that the city, to the extent allowed by law, treat such medical information as confidential information of the disabled person. The city shall thereafter endeavor to provide written notice to the disabled person, and/or their representative, of any request received by the city for disclosure of the medical information or documentation which the disabled person has previously requested be treated as confidential by the city. The city will cooperate with the disabled person, to the extent allowed by law, in actions initiated by such individual to oppose the disclosure of such medical information or documentation, but the city shall have no obligation to initiate, prosecute, or pursue any such action, or to incur any legal or other expense (whether by retention of outside counsel or allocation of internal resources) in connection therewith, and may comply with any judicial order without prior notice to the disabled person.

.4 Determination process. The city manager, or designee, shall have the authority to consider and act on requests for reasonable accommodation. When a reasonable accommodation request form has been completed and submitted to the Department of Community Development, it shall be referred to the city manager, or designee, for review and consideration.

- A. The city manager, or designee, shall issue a written determination within forty-five (45) days of the date of receipt of a completed application, except as provided in paragraph C. below, and may, in accordance with federal law, (1) grant the accommodation request, (2) grant a portion of the request and deny a portion of the request and/or impose conditions upon the grant of the request, or (3) deny the request, in accordance with federal law. If the request is denied, the determination shall state the grounds therefore. All written determinations shall give notice of the right to appeal.
- B. The notice of determination shall be sent to the requesting party (i.e., the disabled individual or authorized representative) by certified mail, return receipt requested.
- C. If reasonably necessary to reach a determination on the request for reasonable accommodation, the city manager, or designee, may, prior to the end of said forty-five (45) day period, request additional information from the requesting party, specifying in detail what information is required. Such additional information may include, but not be limited to, additional medical information from the requesting party. The requesting party shall have fifteen (15) days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the forty-five (45) day period to issue a written determination shall no longer be applicable, and the city manager, or designee, shall issue a written determination within thirty (30) days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said fifteen (15) day period, the city manager, or designee, shall issue a written notice advising that the requesting party had failed to

timely submit the additional information and therefore the request for reasonable accommodation shall be deemed abandoned and/or withdrawn and no further action by the city with regard to said reasonable accommodation request shall be required.

.5 *Criteria for determination.* In determining whether the reasonable accommodation request shall be granted or denied, the requesting party shall be required to establish that they are protected under the FHA and/or ADA by demonstrating that they are handicapped or disabled, as defined in the FHA and/or ADA. For purposes of this section, the disabled individual must demonstrate to the city:

- A. (i) A physical or mental impairment which substantially limits one (1) or more major life activities; (ii) a record of having such impairment; or (iii) that they are regarded as having such impairment; and
- B. That the proposed accommodation being sought is reasonable and necessary to afford handicapped/disabled persons equal opportunity to use and enjoy housing.

.6 *Required findings.* A request for reasonable accommodation pursuant to this section shall be approved, with or without conditions, if the city manager, or designee, finds, based upon all of the evidence presented, that all of the following findings are made:

- A. The property or dwelling that is the subject of the request for reasonable accommodation will be occupied by a disabled person;
- B. The requested accommodation is necessary to provide a disabled person with an equal opportunity to use and enjoy a dwelling;
- C. The requested accommodation will not impose an undue financial or administrative burden on the city; and
- D. The requested modification will not require a fundamental alteration in the nature of a city program or law.

.7 *Conditions of approval.* In granting a request for reasonable accommodation, the city manager, or designee, may impose conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings of this section, including, but not limited to the following:

- A. Inspection of the property periodically, as specified, to verify compliance with this section and any conditions of approval.
- B. Recordation of a deed restriction requiring removal of the improvements when the need for which the accommodation was granted no longer exists, except where the city manager, or designee, finds that removal would constitute an unreasonable financial burden and/or is physically integrated with the structure and cannot feasibly be removed. If applicable, the restrictive covenant shall provide that the reasonable accommodation does not run with the land and shall terminate upon any sale, transfer, lease, or other conveyance of the property.
- C. Time limits and/or expiration of the approval, if the need for which the accommodation was granted no longer exists.
- D. Measures to reduce the impact on surrounding uses.
- E. Measures in consideration of the physical attributes of the property and structures.
- F. Other conditions necessary to protect the public health, safety, and welfare.

.8 *Appeal of determination.* Within thirty (30) days from the date of the city manager's, or designee's, determination on a reasonable accommodation request or a revocation or modification of a reasonable accommodation, the applicant may appeal the decision. All appeals shall contain a written statement containing sufficient detail of the grounds for the appeal. Appeals pursuant to this section shall be to the City Council who shall, after public notice and a public hearing, render a written determination as soon as reasonably practicable, but in no event later than sixty (60) days after an appeal has been filed. Notice of any public hearing hereunder shall be provided to the applicant at least ten (10) days in advance of the public hearing.

.9 *Fees.* There shall be no fee imposed by the city in connection with a request for reasonable accommodation under this section or an appeal of a determination on such request to the City Council, and the city shall have no obligation to pay a requesting party's (or an appealing party's, as applicable) attorneys' fees or costs in connection with the request, or an appeal.

.10 Stay of enforcement. While an application for reasonable accommodation, or appeal or a determination of same, is pending before the city, the city will not enforce the subject zoning ordinance, rules, policies, and procedures against the applicant. However, should the applicant proceed with any property purchase, building, construction, or other work associated with establishing a project or residence housing individuals covered by the FHA or the ADA while an application or appeal for reasonable accommodation is pending, the applicant understands that any of these actions are done at the applicant's own risk because the application or appeal may be denied.

.11 Revocation of reasonable accommodation. Any reasonable accommodation received shall be subject to revocation or modification if the holder of the reasonable accommodation or the property upon which the accommodation is granted is found in violation of any provision of the written determination granting the reasonable accommodation by a court of law or by the special magistrate hearing code enforcement cases, and the holder of the reasonable accommodation has failed to correct such violation. The city shall send a notice of hearing on a proposed revocation or modification of a reasonable accommodation by certified mail, return receipt requested, to the holder of the reasonable accommodation at least thirty (30) days prior to the date of the hearing. The city manager, or designee, shall have the authority to consider and act on a revocation or modification of a reasonable accommodation, after notice and hearing during which the reasonable accommodation holder shall have the opportunity to present evidence and be heard.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

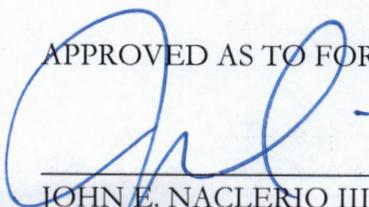
SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



JOHN E. NACLERIO III
ASSISTANT CITY ATTORNEY
ORD/Reasonable Accommodation
DRAFT: 12/9/16

Ordinance 2-17

Purpose and Background

- **Implements reasonable accommodation procedures in the Land Use and Development Regulations**
- **Federal Fair Housing law prevents discrimination against persons with handicaps in the use of a dwelling**
 - **Applicable to zoning and land use, ordinances, rules, and policies**
- **ADA prohibits state and local governments from discriminating against individuals with disabilities**

Ordinance 2-17

Summary and Recommendation

- **Defines a “disabled” individual/person and “Qualifying Entity”**
- **Provisions for the following:**
 - **Application**
 - **Medical Information and Confidentiality**
 - **Determination Process**
 - **Conditions**
 - **Appeals**
 - **Enforcement/Revocation**
- **Effective upon adoption**
- **Staff recommends APPROVAL**

Ordinance 2-17

Purpose and Background

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- **ADA prohibits state and local governments from discriminating against individuals with disabilities**

Ordinance 2-17

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- **Defines a “disabled” individual/person and “Qualifying Entity”**
- **Provisions for the following:**
 - **Application**
 - **Medical Information and Confidentiality**
 - **Determination Process**
 - **Conditions**
 - **Appeals**
 - **Enforcement/Revocation**
- **Effective upon adoption**
- **Staff recommends APPROVAL**
- **Planning and Zoning Commission/Local Planning Agency voted (7-0) to recommend APPROVAL of Ordinance 2-17**

Definition of Disabled and Qualifying Entity

- **Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment.**
- **Qualifying entity shall mean a licensed service provider of the state of Florida as defined by Section 397 .311 Florida Statutes.**
- **Definitions taken directly from Fair Housing Act (federal) and Florida Statutes**

Item Number:	A.(2)
Meeting Date:	2/6/2017
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA
REQUEST FORM
CITY OF CAPE
CORAL**



TITLE:
Ordinance 3-17 Public Hearing for Transmittal

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

P&Z recommendation:
At the January 4, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted (5-1 with 1 abstention) to recommend approval of Ordinance 3-17.

Staff Recommendation:
Planning Division Staff recommends approval of the requested amendment.

SUMMARY EXPLANATION AND BACKGROUND:

WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending the City of Cape Coral Comprehensive Plan by Amending the Future Land Use element; providing for severability and an effective date.

LEGAL REVIEW:

- EXHIBITS:**
- Memo from DCD to CM
 - Ordinance 3-17
 - FLU Policy 1.15.n Staff Summary TXT16-0001
 - Staff Presentation

Updated Staff Presentation

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Wyatt Daltry, Planning Team Coordinator

ATTACHMENTS:

Description	Type
▣ Memo from DCD to CM	Backup Material
▣ Ordinance 3-17	Ordinance
▣ FLU Policy 1.15.n Staff Summary TXT 16-0001	Backup Material
▣ Staff Presentation	Backup Material
▣ Updated Staff Presentation	Backup Material

MEMORANDUM

CITY OF CAPE CORAL
DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: John Szerlag, City Manager

THRU: Vincent A. Cautero, Community Development Director 

FROM: Robert H. Pederson, Planning Manager 

DATE: January 17, 2017

SUBJECT: Flexibility in the CAC Comprehensive Plan Text Amendment (TXT16-0001)

Per your request, this memo provides additional information on the additional flexibility that will be created if this Comprehensive Plan amendment is approved by Council.

Background

The CAC Comprehensive Plan Text Amendment was developed by staff in response to Council direction in mid-2016 to improve flexibility within the CAC Future Land Use Classification. Since the CAC category was created and mapped in 2004, there has been little market acceptance and almost no new development in areas designated CAC. Several owners, real estate professionals, and developers have noted that the inflexible nature of the CAC category has thwarted development opportunities in several locations around the City.

This memo will identify how flexibility will be improved with the proposed changes.

CAC Flexibility

Efforts to improve CAC flexibility include the following changes:

1. Permit development of multi-family residential uses, including duplexes, for properties isolated from commercial development opportunities (see "detached properties"). Currently such development is not permitted.
2. Permit properties between 5 to 20 acres to develop multi-family residential projects, in addition to the existing commercial and mixed use opportunities. Currently, 20 acres is the minimum parcel for multi-family.
3. Removes the requirement for all development in CAC to be approved through a PDP. This requirement has especially stymied small-scale development opportunities.
4. Removes the 20% minimum compound use component requirement and permits stand alone commercial or compound use projects on parcels 10 acres or larger.

If there are any questions or additional concerns, please do not hesitate to contact me.

VAC/RHP:wd (Memo CACflex.docx)

C: Dolores Menendez, City Attorney
Rebecca vanDeutekom, City Clerk

ORDINANCE 3 - 17

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE ELEMENT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS AS FOLLOWS:

Section 1. The City of Cape Coral hereby adopts Comprehensive Plan amendments necessary to update the Comprehensive Plan as follows:

The amendment to Policy 1.15 of the Future Land Use Element provides for greater development flexibility within the Commercial Activity Center (CAC) Future Land Use Classification. The amendment to the Future Land Use Element is described in Exhibit A, attached hereto and incorporated herein by reference.

Section 2. Severability. In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this plan amendment shall be thirty-one (31) days after the state land planning agency notifies the City that the plan amendment package is complete, or if timely challenged, the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184(3)(c)4., F.S., whichever is applicable.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:

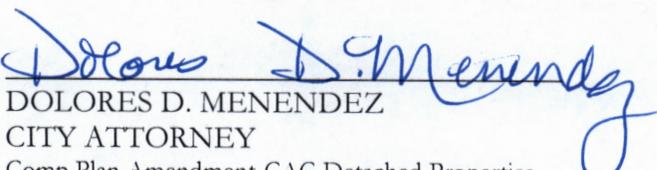

DOLORES D. MENENDEZ
CITY ATTORNEY
Comp Plan Amendment-CAC Detached Properties

EXHIBIT A

FUTURE LAND USE ELEMENT

GOAL: TO PROTECT THE PUBLIC INVESTMENT BY ENCOURAGING THE EFFICIENT USE OF COMMUNITY INFRASTRUCTURE AND NATURAL RESOURCES; ASSURE THE ORDERLY, EFFICIENT GROWTH OF THE CITY BY ENCOURAGING DEVELOPMENT IN THOSE AREAS WHICH ARE BEST SERVED BY INFRASTRUCTURE AND COMMUNITY SERVICES; PROMOTE NEW LAND USES WHICH CREATE THE LEAST POSSIBLE DISRUPTION TO EXISTING USES; CREATE A STRATEGY WHICH ANTICIPATES FUTURE COMMUNITY NEEDS BY ACQUIRING AND ASSEMBLING PLATTED LANDS; AND PROTECT THE RIGHTS OF INDIVIDUAL PROPERTY OWNERSHIP, CONSISTENT WITH PUBLIC NEEDS.

OBJECTIVE 1: Managing Future Growth and Development: The City of Cape Coral will manage future growth and land development by adopting, implementing, and enforcing new regulatory vehicles. All land development regulations called for in this Plan shall be adopted and implemented in accordance with the provisions of S. 163.3202, Florida Statutes. The short-term planning timeframe shall be established as up to the year 2020, while the long-term planning horizon shall be the year 2035.

...

Policy 1.15: Land development regulations adopted to implement this comprehensive plan will be based on, and will be consistent with, the standards for uses and densities/intensities as described in the following future land use classifications. In no case shall maximum densities allowable by the following classifications conflict with Policy 4.3.3 of the Conservation and Coastal Management Element regulating density of development within the Coastal High Hazard Area.

...

- n. **Commercial Activity Center (CAC):** The purpose of this future land use classification is to promote non-residential and mixed-use development at key locations, within close proximity to major corridors throughout the City of Cape Coral in areas where a mix of uses may be developed. The Commercial Activity Center classification is a mixed-use classification designed to minimize the need for vehicle trips through the development of both residential and non-residential uses in a single project. Furthermore, the purpose of the Commercial Activity Center is to integrate all uses through landscape, site, and architectural design standards. In addition, the Commercial Activity Center land use classification is intended to provide locations that offer employment opportunities and daily goods and services to the local community and, in some instances, attract patrons from the region. Commercial Activity Centers are intended to be pedestrian friendly and interconnected with adjacent projects – whether residential or non-residential.

Pre-Existing Single Family Residences Allowed

It is the desire of the City of Cape Coral to protect the rights of owners of single family homes located within a Commercial Activity Center (CAC), which homes had either:

- a) Been lawfully constructed, or had applied for or received a building permit at their current locations prior to the designation of the subject as part of a CAC future land use classification; or,
- b) Been lawfully constructed, or had applied for or received a building permit at their current locations under a former CAC future land use classification.

~~The Commercial Activity Center Future Land Use Classification shall specifically acknowledge that such~~ In this classification single family residences that meet the

criteria stated above may continue to be maintained, remodeled, expanded, or rebuilt, and that the owners of such properties may continue to enjoy all of the rights, privileges and responsibilities of home ownership, including the ability to sell or rent their homes to other parties. In and of themselves, pre-existing single family residences do not necessarily constitute **Free-Standing Residential** development, unless they otherwise meet the criteria for such development, as discussed under **Use Area Allocations**, below. If pre-existing single family residences, as defined in this section, are included as part of a larger approved development project, the preexisting status of the residences is lost, and such residences become subject to the City Land Use and Development Regulations regarding non-conforming structures.

Detached Properties

Development of duplex and multi-family residential uses in the Commercial Activity Center is permitted for properties that are deemed to be detached, in order to promote compatibility and continuity of existing development. Detached properties are those that share specific features that constitute obstacles to non-residential development, such as physical or topographical constraints, significant residential development patterns in the vicinity, relatively small property area, and lack of viable access to collector or arterial roads. Criteria used to determine whether a property is a detached property shall be defined in the Land Use and Development Regulations.

If deemed a detached property, the property shall be identified as such in the City's records. Owners of such properties may continue to enjoy all of the rights, privileges, and responsibilities of home ownership, including the ability to sell or rent their homes to other parties. Development of duplex or multi-family uses within detached properties shall be permitted with a maximum density of 16 units per acre.

Density, Intensity, and Use Area Allocations

As an incentive for land assembly, the allowable densities, intensities, and use area allocations within a Commercial Activity Center vary with the land area within the development project. The land area within a development project is determined by the land area encompassed by a single application for development project approval. A development project approval can consist of one or more properties that are the subject of a single application for development including, but not limited to, a Planned Development Project or Site Plan. Amendment of an approved development project to expand or contract the land area does not alter its status as a single application for development project approval. If an application for development consists of properties that are not contiguous, the application must demonstrate that the properties function as a unified development. If the application for development approval is a Planned Development Project that includes a request for vacation of right-of-way, then that portion of the vacated area of right-of-way, which would be owned or controlled by the project developer, can be included in the development project size calculation.

Density: In development projects that qualify for residential uses (see below), the baseline residential density shall be 4.4 dwelling units per acre. The baseline density is the maximum density available to projects that are not eligible to receive density exceeding the baseline density, or to projects that are eligible but that do not participate in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.

In order to be eligible to receive density exceeding the baseline density through the Transfer of Development Rights (TDR) Program and/or the Development Incentive Program (DIP), a development project within a Commercial Activity Center (CAC) must consist of at least 5 acres of contiguous platted lots, or platted or unplatted tract(s), or any combination thereof.

If the above criterion has been met, the project becomes eligible to seek density exceeding the baseline density through the TDR Program, the DIP, or a

combination of the two programs. To derive density exceeding the baseline density through the TDR Program or DIP, an applicant must complete the processes identified within the City of Cape Coral Land Use and Development Regulations.

If the applicant for density exceeding the baseline density opts to participate in the City of Cape Coral's Development Incentive Program (DIP), the applicant would be required to contribute to the City of Cape Coral's Public Improvement Fund (PIF) in an amount sufficient to qualify for 25% (or between 25% and 50% for projects that meet the criteria to provide up to 50% of the differential between the baseline and maximum permitted density and/or intensity in any DIP category) of the credit points necessary to attain the density exceeding the baseline density. Such contribution to the PIF category shall be counted as a creditable activity required to support the application for increased density. Administration, collection, and disbursement of monies within the fund are set forth in the Land Use and Development Regulations.

Intensity: The baseline intensity of non-residential uses shall be a Floor Area Ratio (FAR) of 0.5, regardless of the size of the development. The baseline intensity is the maximum intensity available without participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program. Increases above the baseline intensity may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program. Note that, if the CAC project developer is only seeking an intensity increase (and not a density increase), said developer is not subject to the eligibility requirement, as referenced above under **Density**, and is neither required to participate nor prohibited from participation in the Public Improvement Fund (PIF).

Limitations on Density and Intensity within CACs

In the Urban Services Reserve Area, where central water and sewer are not available, residential uses are restricted to 4.4 dwelling units per acre and non-residential uses are limited to uses that do not generate an estimated flow of more than 1,320 gallons of sewage per acre per day. Estimated flows shall be based on 64E-6.008 Florida Administrative Code, as may be amended from time to time.

Use Area Allocations: All land areas within a CAC shall be categorized as one of the three following use areas:

- 1) **Free-standing Non-Residential;**
Free-standing non-residential areas include the footprint and land areas associated with buildings that contain no residential units.
- 2) **Free-standing Residential;**
Free-standing residential areas include the footprint and land areas associated with buildings that contain residential units and buildings that contain nonresidential floor area usage that is less than thirty (30) percent of the building's floor area. In calculating the floor area of the building, the total floor area of the building is the floor area of the building remaining after the area of any structured parking is excluded. Also, any pre-existing single family residences do not necessarily constitute Free- Standing Residential development, unless such residences otherwise meet the criteria for such development.
- 3) **Compound Use.**
Compound use areas include the footprint and land areas associated with compound use buildings that, for the purposes of this section, are defined as

buildings with at least thirty percent (30%) of their floor areas allocated to non-residential uses. In calculating the floor area of the building, the total floor area of the building is the floor area of the building remaining after the area of any structured parking is excluded.

The land area that may be allocated to any of the 3 use area allocations varies with the size of the development project, with generally increasing flexibility as a function of the total land area of the development. Densities and intensities associated with any of the three use area categories apply only to the land area of the project that is allocated to that specific use. In determining the land area within any of the three use area allocations, the area of any common areas, including, but not limited to, areas for surface water management, parking, landscaping, and circulation, shall be apportioned among the three use area allocations in the same proportion as the non-common areas relate to the area of the development project, excluding common areas.

Use of the PDP Process

~~Every development project, regardless of size or use area allocations, is required to be approved through the PDP process. Pre-existing single family residences, as defined within this future land use classification, which are being maintained, remodeled, expanded, or rebuilt, are not required to be reviewed through the PDP process.~~

Development Projects Less Than 5 Acres in Area

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to 100 percent of the development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas are not required but may constitute up to 100 percent of the development project area. No increases above the baseline density of 4.4 units per acre may be permitted.

Free-standing Residential:

Free-standing residential areas are not allowed, except on sites identified as a "detached property".

Development Projects 5 acres or larger, but less than 10 acres

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to 100 percent of ~~the a~~ development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas are not required but may constitute up to 100 percent of ~~the a~~ development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density allowed (10 units per acre), through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Free-standing Residential:

Free-standing residential areas are not ~~allowed~~ required, but may constitute up to 100 percent of a development project area. Only multi-family residential development shall be permitted as free-standing residential.

Development Projects 10 acres or larger, but less than 20 acres

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to ~~80~~ 100 percent of ~~the~~ a development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) ~~and/or~~ Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas ~~shall constitute no less than 20 percent of the land area and are not required but~~ may constitute up to 100 percent of the land a development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of ~~12~~ 16 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Free-standing Residential:

~~Free-standing residential areas are not allowed.~~ Free-standing residential areas are not required but may constitute up to 100 percent of a development project area. Only multi-family residential development shall be permitted as free-standing residential.

Development Projects 20 Acres or Larger

Free-standing Non-Residential:

Free-standing non-residential areas ~~shall constitute no less than 20 percent of the land area and may constitute a maximum of 80~~ are not required but may constitute up to 100 percent of ~~the land a~~ development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas ~~shall constitute no less than 20 percent of the land area and may constitute 80~~ are not required but may constitute up to 100 percent of ~~the land a~~ development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of 20 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Free-standing Residential:

Free-standing residential areas ~~may constitute a maximum of 20~~ are not required but may constitute up to 50 percent of ~~the land a~~ development project area. ~~Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of 8 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under Density, above.~~ Only multi-family residential development shall be permitted as free-standing residential.

Table of CAC Development Parameters				
	Land Area of Development Project			
	Less than 5 acres in area	5 acres or larger, but less than 10 acres	10 acres or larger, but less than 20 acres	20 or more acres
PDP Required	Yes	Yes	Yes	Yes
Free-Standing Non-Residential Area (not including Compound Use) Minimum	0%	0%	0%	20 0%
Maximum	100%	100%	80 100%	80 100%
Minimum Intensity	0.5 ²	0.5 ²	0.5 ²	0.5 ²
Maximum Intensity	2.0 ²	2.0 ²	2.0 ²	2.0 ²
Compound Use Minimum Area	0%	0%	20 0%	20 0%
Maximum Area	100%	100%	100%	80 100%
Baseline Density (dwelling units(DU)/acre)	4.4	4.4 ^{1,3}	4.4 ^{1,3}	4.4 ^{1,3}
Maximum Density DU/acre)	Not allowed	10.0 ^{1,3}	12.0 16 ^{1,3}	20.0 ^{1,3}
Free-Standing Residential Minimum Area	0%	0%	0%	0%
Maximum Area	0 100% ^a	0 100%	0 100%	20 50%
Baseline Density (DU/acre)	Not allowed	Not allowed	Not allowed	4.4 ^{1,3}
Maximum Density (DU/acre)	Not allowed 16 ^a	Not allowed 16 ³	Not allowed 16 ³	8.0 ^{1,3} 16 ³

- 1 Increases in density above the baseline density are permitted only through participation in the Development Incentive Program (DIP) and/or the City's Transfer of Development Rights (TDR) program, as described under **Density**, above.
- 2 Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.
- 3 In the Urban Services Reserve Area, where central water and sewer are not available, residential uses are restricted to 4.4 dwelling units per acre and non-residential uses are limited to uses that do not generate an estimated flow of more than 1,320 gallons of sewage per acre per day. Estimated flows shall be based on 64E-6.008 Florida Administrative Code, as may be amended from time to time.

^a Detached properties only

The City has adopted the Marketplace-Residential (MR) zoning district as consistent with the Commercial Activity Center Future Land Use Classification. Additional zoning districts may be developed in the future to implement this land use initiative.

Although, the Pedestrian Commercial (C-1) and Professional Office (P-1) zoning districts were formerly considered to be consistent with, but generally discouraged within, the Commercial Activity Center future land use classification,

these zoning districts are currently considered to be inconsistent with the CAC Future Land Use Classification.

The factors to consider during review of a rezoning petition are as follows:

~~The amount, type and location of existing zoned commercial and residential land, and developed commercial uses, within the Commercial Activity Center and along the corridor segment, as identified in the Commercial Corridor Study;~~

~~Market demand for the allowable uses within the requested zoning district;~~

~~Existing patterns of land use within the Commercial Activity Center and within two radial miles;~~

~~Adequacy of existing and planned infrastructure capacity, particularly roads, corresponding to the anticipated development of the proposed uses;~~

~~Compatibility of the proposed zoning with adjoining properties;~~

~~Natural or manmade constraints;~~

~~Rezoning criteria identified in the Land Use and Development Regulations;~~

~~The existence of an adopted Access Management Plan;~~

...

Review Date: December 14, 2016

Applicant: The City of Cape Coral

Authorized Agent: Planning Division, Department of Community Development

Case Staff: Wyatt Daltry, AICP, Planning Team Coordinator

Review Approval: Robert Pederson, AICP, Planning Manager

Request:

- To change the text of the Comprehensive Plan CAC Classification, (Future Land Use Element Policy 1.15.n) through the expedited state review process.

Purpose:

The purpose of the proposed amendment is to revise Policy 1.15.n of the Future Land Use Element, the Commercial Activity Center (CAC) Future Land Use Classification. The proposed revisions are intended to permit greater development flexibility within this land use classification.

This change is known as a text amendment, and is being processed through the “expedited state review process,” a process that takes approximately six (6) months to complete.

<p>Positive Aspects of Application:</p>	<ul style="list-style-type: none"> • Provides development opportunities for isolated properties surrounded by improved parcels. • Provides further multi-family development opportunities within CAC. • Removes PDP requirement, thereby streamlines development timelines. • Removes the required development proportions and provides easier-to-understand development guidance.
<p>Negative Aspects of Application:</p>	<ul style="list-style-type: none"> • Additional multi-family development opportunities may reduce mixed-use and commercial development on sites designated CAC.
<p>Mitigating Factors:</p>	<ul style="list-style-type: none"> • The CAC classification has not seen any substantial development since it was established in 2004. The proposed changes may make this classification more viable.

Background:

In 2004, the City of Cape Coral identified a need for a mixed-use, light-commercial future land use map classification. This became known as the Commercial Activity Center (CAC) classification. Creating this classification was intended to reduce residential potential in CAC areas by mandating strict development proportions based on the size of a development site. Further revisions to the CAC classification in 2007 specified that all development be reviewed through the PDP process.

In 2010, there was a statewide amendment effort to require future land use map amendments be approved by the voters via referendum. This led the City of Cape Coral to review 31 future land use map amendments to commercial and mixed use classifications. 24 of these amendments were adopted, adding ±2,200 acres of commercial and mixed use land; 44% of which was to CAC.

The 2010 amendments resulted in multiple blocks of CAC with sporadic development patterns of existing single-family and duplex residences. Residential development is not permitted in CAC for sites less than 20 acres. For sites greater than 20 acres, the residential component may only constitute a maximum of 20% of the site.

Aside from a couple of model homes, the CAC classification has not resulted in any new development. Multiple developers have noted that the strict development proportions and PDP mandate make CAC properties much less valuable or desirable than other commercial land use classifications. As a result, some property owners have requested changes for their properties to a more amenable future land use classification, such as Commercial/Professional.

Earlier in 2016, two separate requests were presented to Council to change CAC to the Multi-Family residential classification. In each case, a vacant property was located between two existing duplexes and the applicants wished to develop a duplex in accordance with the established development pattern. In the late Spring of 2016, Council directed staff to review Policy 1.15.n to provide alternatives for these properties. In addition, staff has taken the opportunity to address other long-standing issues with the CAC classification.

Proposed Changes

This section address proposed changes to Policy 1.15.n. Proposed new language is indicated via underline; while language to be removed is identified by ~~strikethrough~~. Similar changes are proposed for the Marketplace-Residential zoning district in the future, which is the zoning counterpart to the CAC future land use.

Staff recommends the following changes to address Council's direction to permit limited multi-family development for areas where property assemblage is unlikely.

Detached Properties

Development of duplex and multi-family residential uses in the Commercial Activity Center is permitted for properties that are deemed to be detached, in order to promote compatibility and continuity of existing development. Detached properties

are those that share specific features that constitute obstacles to non-residential development, such as physical or topographical constraints, significant residential development patterns in the vicinity, relatively small property area, and lack of viable access to collector or arterial roads. Criteria used to determine whether a property is a detached property shall be defined in the Land Use and Development Regulations.

If deemed a detached property, the property shall be identified as such in the City's records. Owners of such properties may continue to enjoy all of the rights, privileges, and responsibilities of home ownership, including the ability to sell or rent their homes to other parties. Development of duplex or multi-family uses within detached properties shall be permitted with a maximum density of 16 units per acre.

The recommended change below will eliminate the PDP requirement for development within the CAC future land use map classification.

Use of the PDP Process

~~Every development project, regardless of size or use area allocations, is required to be approved through the PDP process. Pre-existing single family residences, as defined within this future land use classification, which are being maintained, remodeled, expanded, or rebuilt, are not required to be reviewed through the PDP process.~~

The following change below is proposed to permit multi-family residential development on detached properties.

Development Projects Less Than 5 Acres in Area

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to 100 percent of the development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas are not required but may constitute up to 100 percent of the development project area. No increases above the baseline density of 4.4 units per acre may be permitted.

Freestanding Residential:

Free-standing residential areas are not allowed, except on sites identified as a "detached property."

This change below is intended to make the CAC classification more flexible; thereby providing additional opportunities for multi-family residential development, of which the City is deficient.

Development Projects 5 acres or larger, but less than 10 acres

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to 100 percent of ~~the~~ a development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) ~~and/or~~ Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas ~~are~~ not required but may constitute up to 100 percent of ~~the~~ a development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density allowed (10 units per acre), through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Freestanding Residential:

Free-standing residential areas are not required but may constitute up to 100 percent of a development project area. Only multi-family residential development shall be permitted as freestanding residential ~~allowed~~.

Development Projects 10 acres or larger, but less than 20 acres

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to ~~80~~ 100 percent of the development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) ~~and/or~~ Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas ~~shall constitute no less than 20 percent of the land area and are not~~ required but may constitute up to 100 percent of the ~~land~~ development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of ~~12~~ 16 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Freestanding Residential:

Free-standing residential areas are not required but may constitute up to 100 percent of a development project area. Only multi-family residential development shall be permitted as freestanding residential. ~~Free-standing residential areas are not allowed.~~

Development Projects 20 Acres or Larger

Free-standing Non-Residential:

Free-standing non-residential areas ~~shall constitute no less than 20 percent of the land area and may constitute a maximum of 80~~ are not required but may constitute up to 100 percent of a the land development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) ~~and/or~~ Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas ~~shall constitute no less than 20 percent of the land area and may constitute a maximum of 80~~ are not required but may constitute up to 100 percent of a the land development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of 20 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Freestanding Residential:

Free-standing residential areas ~~may constitute a maximum of 20~~ are not required but may constitute up to 50 percent of a the land development project area. Only multi-family residential development shall be permitted as freestanding residential. ~~Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of 8 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under~~ **Density**, above.

The CAC Development Parameter table below indicates the breadth of changes proposed for the CAC, affecting densities and development proportions.

Table of CAC Development Parameters				
	Land Area of Development Project			
	Less than 5 acres in area	5 acres or larger, but less than 10 acres	10 acres or larger, but less than 20 acres	20 or more acres
PDP Required	Yes	Yes	Yes	Yes
Free-Standing Non-Residential Area (not including Compound Use)				
Minimum	0%	0%	0%	20 0%
Maximum	100%	100%	80 100%	80 100%
Minimum Intensity	0.5 ²	0.5 ²	0.5 ²	0.5 ²
Maximum Intensity	2.0 ²	2.0 ²	2.0 ²	2.0 ²

Compound Use				
Minimum Area	0%	0%	20 0%	20 0%
Maximum Area	100%	100%	100%	80 100%
Baseline Density (dwelling units(DU)/acre)	4.4	4.4 ^{1,3}	4.4 ^{1,3}	4.4 ^{1,3}
Maximum Density DU/acre)	Not allowed	10.0 ^{1,3}	12 16 ^{1,3}	20.0 ^{1,3}
Free-Standing Residential				
Minimum Area	0%	0%	0%	0%
Maximum Area	0 100% ^a	0 100%	0 100%	20 50%
Baseline Density (DU/acre)	Not Allowed	Not Allowed	Not Allowed	4.4 ^{1,3}
Maximum Density (DU/acre)	Not Allowed 16 ^a	Not Allowed 16 ³	Not Allowed 16 ³	Not Allowed 16 ³

- 1 Increases in density above the baseline density are permitted only through participation in the Development Incentive Program (DIP) and/or the City's Transfer of Development Rights (TDR) program, as described under **Density**, above.
- 2 Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.
- 3 In the Urban Services Reserve Area, where central water and sewer are not available, residential uses are restricted to 4.4 dwelling units per acre and non-residential uses are limited to uses that do not generate an estimated flow of more than 1,320 gallons of sewage per acre per day. Estimated flows shall be based on 64E-6.008 Florida Administrative Code, as may be amended from time to time.

^a Detached Properties only.

Finally, there are housekeeping changes that staff recommends to make the policy more user-friendly and less regulatory, as follows:

“Although, the Pedestrian Commercial (C-1) and Professional Office (P-1) zoning districts were formerly considered to be consistent with, but generally discouraged within, the Commercial Activity Center future land use classification, these zoning districts are currently considered to be inconsistent with the CAC Future Land Use Classification.

~~The factors to consider during review of a rezoning petition are as follows:~~

~~The amount, type and location of existing zoned commercial and residential land, and developed commercial uses, within the Commercial Activity Center and along the corridor segment, as identified in the Commercial Corridor Study;~~

~~Market demand for the allowable uses within the requested zoning district;~~

~~Existing patterns of land use within the Commercial Activity Center and within two radial miles;~~

December 14, 2016

TXT 16-0001

Page 7 of 7

~~-Adequacy of existing and planned infrastructure capacity, particularly roads, corresponding to the anticipated development of the proposed uses;~~

~~-Compatibility of the proposed zoning with adjoining properties;~~

~~-Natural or man-made constraints;~~

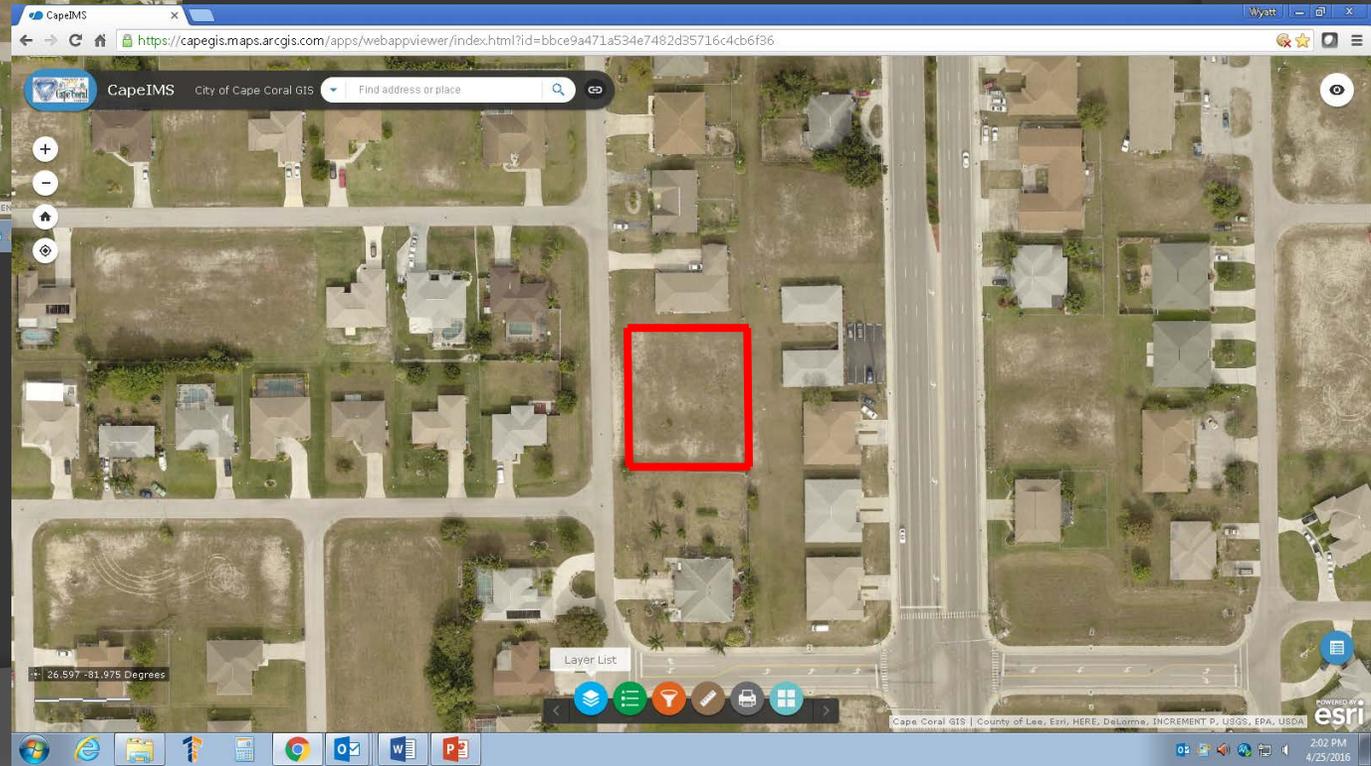
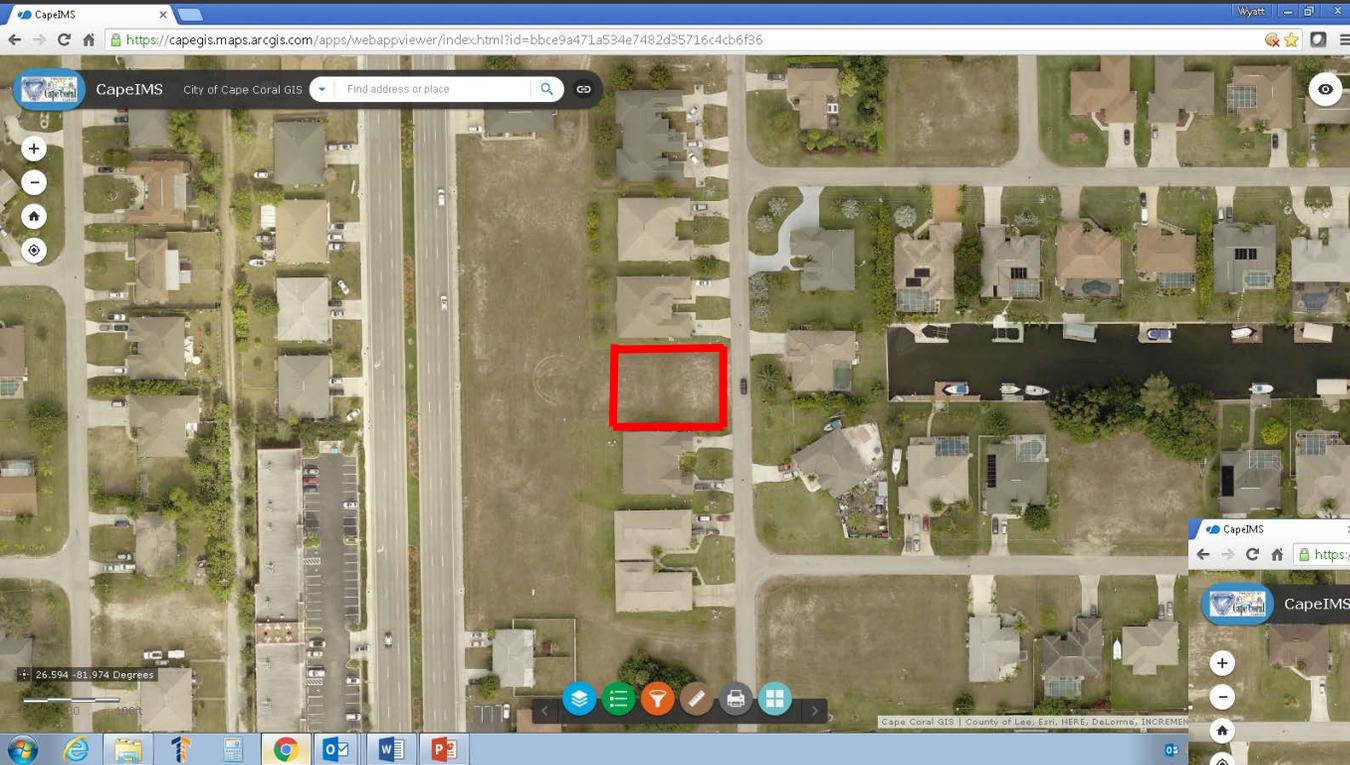
~~-Rezoning criteria identified in the Land Use and Development Regulations;~~

~~-The existence of an adopted Access Management Plan;"~~

Recommendation:

Planning Division staff recommends **approval** of the proposed text amendments.

ORDINANCE 3-17 TXT16-0001 CAC REVISIONS



Purpose

- **Provide flexibility in the Commercial Activity Center (CAC) FLU for properties detached from commercial potential, while minimizing the potential loss of mixed use and commercial development.**
- **Remove the PDP requirement.**
- **Revise the development allocations for projects in the CAC (e.g. reducing required percentages).**
- **Other changes to remove extraneous language.**

Background

- Many blocks designated CAC between 2004-2010 have a large number of residences.
- CAC does not allow new residences (<20 acres).
- Some undeveloped properties are located between existing duplexes and multi-family residences, limiting potential for commercial or mixed use projects.
- Staff recommends Approval

- Minimum allocations have been removed from Free Standing Non-Residential and Compound Use developments also to relax proscriptive regulations.

Table of CAC Development Parameters				
	Land Area of Development Project			
	Less than 5 acres in area	5 acres or larger, but less than 10 acres	10 acres or larger, but less than 20 acres	20 or more acres
PDP Required	Yes	Yes	Yes	Yes
Free-Standing Non-Residential Area (not including Compound Use)				
Minimum	0%	0%	0%	20 0%
Maximum	100%	100%	80 100%	80 100%
Minimum Intensity	0.5 ²	0.5 ²	0.5 ²	0.5 ²
Maximum Intensity	2.0 ²	2.0 ²	2.0 ²	2.0 ²
Compound Use				
Minimum Area	0%	0%	20 0%	20 0%
Maximum Area	100%	100%	100%	80 100%
Baseline Density (dwelling units(DU)/acre)	4.4	4.4 ^{1,3}	4.4 ^{1,3}	4.4 ^{1,3}
Maximum Density DU/acre)	Not allowed	10.0 ^{1,3}	12 16 ^{1,3}	20.0 ^{1,3}
Free-Standing Residential				
Minimum Area	0%	0%	0%	0%
Maximum Area	0 100% ^a	0 100%	0 100%	20 50%
Baseline Density (DU/acre)	Not Allowed	Not Allowed	Not Allowed	4.4 ^{1,3}
Maximum Density (DU/acre)	Not Allowed 16 ^a	Not Allowed 16 ³	Not Allowed 16 ³	Not Allowed 16 ³

City Council Meeting

February 6, 2017

ORDINANCE 3-17

TXT16-0001

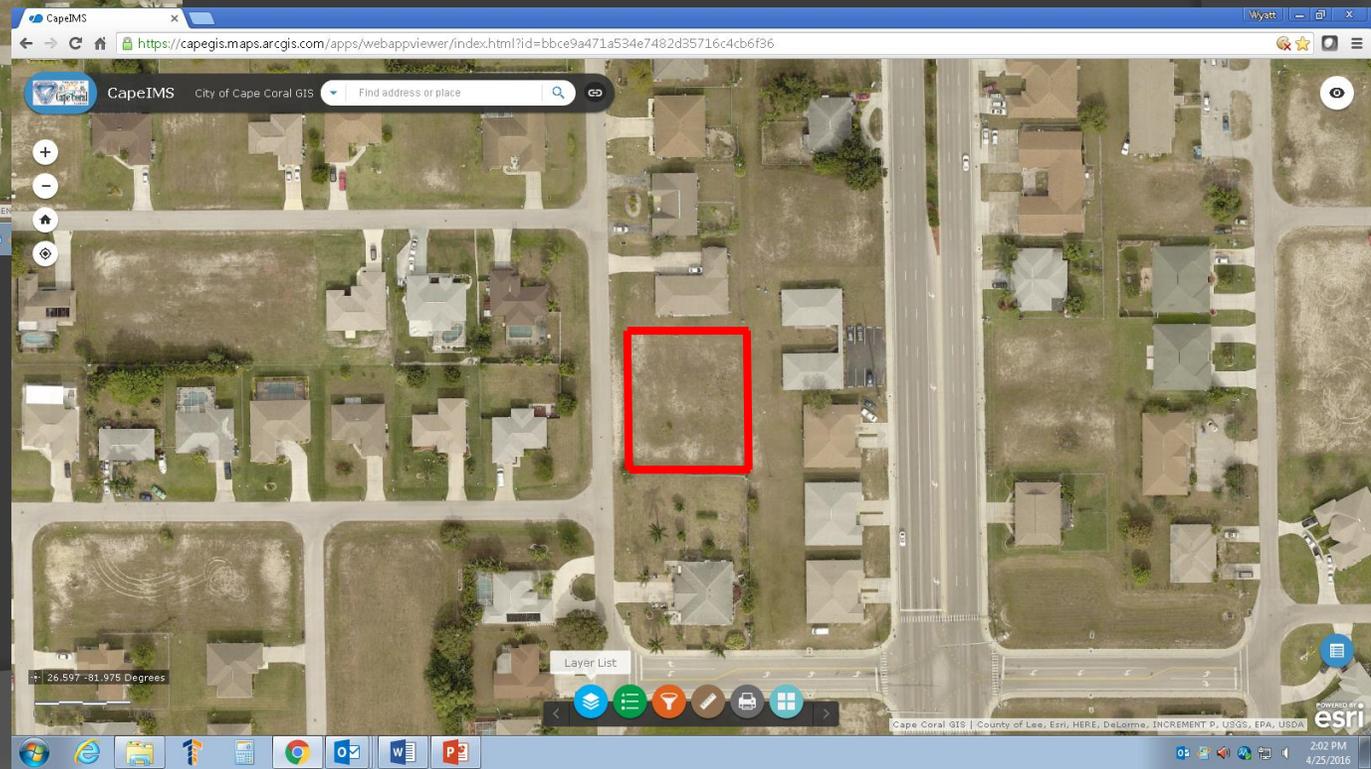
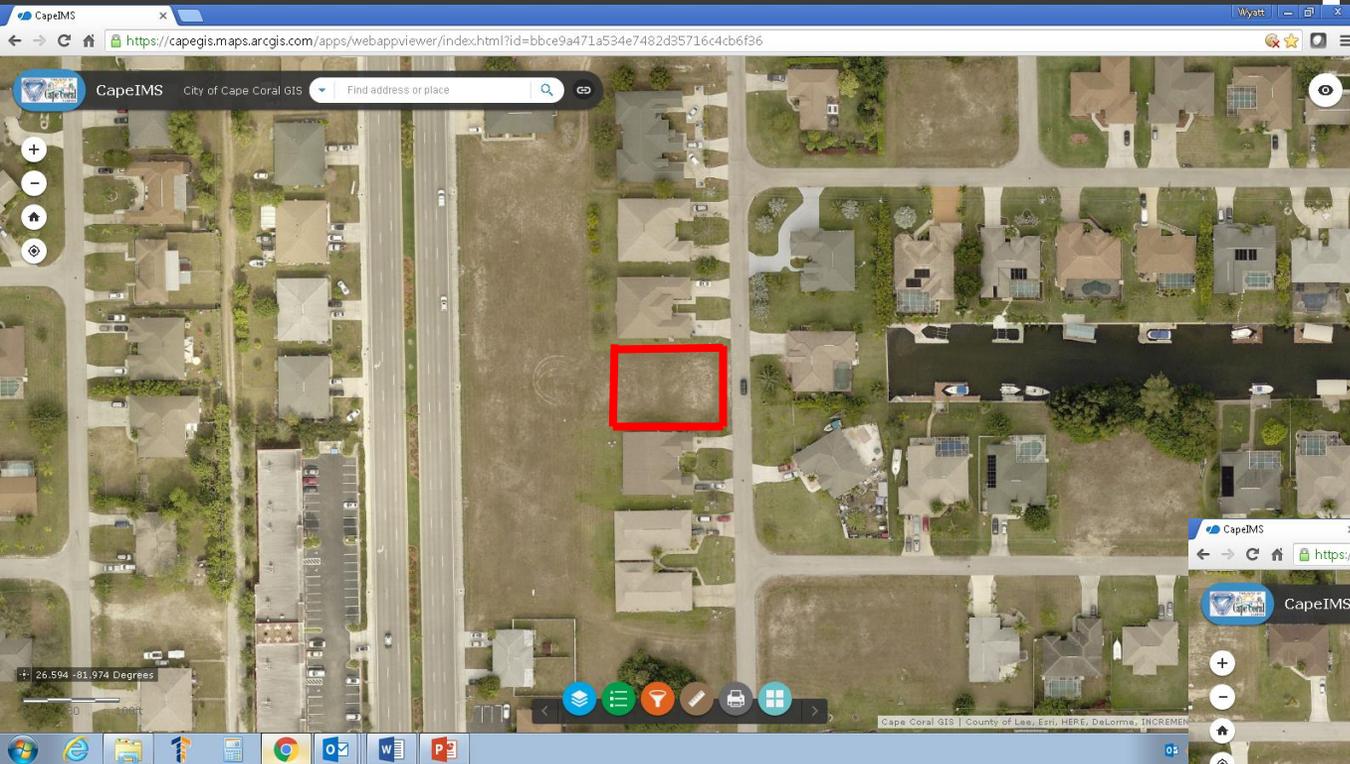
Purpose

- **Provide flexibility in the Commercial Activity Center (CAC) FLU for properties detached from commercial potential, while minimizing the potential loss of mixed use and commercial development.**
- **Remove the PDP requirement.**
- **Revise the development allocations for projects in the CAC (e.g. reducing required percentages).**
- **Other changes to remove extraneous language.**

Background

- **Many blocks designated CAC between 2004-2010 have a large number of residences.**
- **CAC does not allow new residences (<20 acres).**
- **Some undeveloped properties are located between existing duplexes and multi-family residences, limiting potential for commercial or mixed use projects.**

Examples



Proposed Change: Detached Properties

- ⦿ **Allows multi-family residences for sites with obstacles to non-residential development, such as physical constraints, significant residential development patterns in the vicinity, relatively small sites, and lack of access to collector or arterial roads.**
- ⦿ **Proposed maximum density of 16 dwelling units per acre, similar to other multi-family residential districts.**

Proposed Change: Removal of PDP

- ① **Staff recommends removal of the PDP requirement for development in the CAC.**
- ② **Currently, a PDP is required for any development in the CAC, no matter how minor.**
- ③ **Normal protections for adjacent residential properties still exist. Development of these sites will still require a PDP or enhanced buffer.**

Proposed Change: Development Parameters

- Remove certain restrictions based on type of development and size of property.
- Example: “Free-standing residential areas are not required but may constitute up to 100 percent of a development project area. Only multi-family residential development shall be permitted as freestanding residential allowed.”

- Minimum allocations have been removed from Free Standing Non-Residential and Compound Use developments also to relax proscriptive regulations.

Table of CAC Development Parameters				
	Land Area of Development Project			
	Less than 5 acres in area	5 acres or larger, but less than 10 acres	10 acres or larger, but less than 20 acres	20 or more acres
PDP Required	Yes	Yes	Yes	Yes
Free-Standing Non-Residential Area (not including Compound Use)				
Minimum	0%	0%	0%	20 0%
Maximum	100%	100%	80 100%	80 100%
Minimum Intensity	0.5 ²	0.5 ²	0.5 ²	0.5 ²
Maximum Intensity	2.0 ²	2.0 ²	2.0 ²	2.0 ²
Compound Use				
Minimum Area	0%	0%	20 0%	20 0%
Maximum Area	100%	100%	100%	80 100%
Baseline Density (dwelling units(DU)/acre)	4.4	4.4 ^{1,3}	4.4 ^{1,3}	4.4 ^{1,3}
Maximum Density DU/acre)	Not allowed	10.0 ^{1,3}	12 <u>16</u> ^{1,3}	20.0 ^{1,3}
Free-Standing Residential				
Minimum Area	0%	0%	0%	0%
Maximum Area	0 <u>100%</u> ^a	0 <u>100%</u>	0 <u>100%</u>	20 <u>50%</u>
Baseline Density (DU/acre)	Not Allowed	Not Allowed	Not Allowed	4.4 ^{1,3}
Maximum Density (DU/acre)	Not Allowed <u>16</u> ^a	Not Allowed <u>16</u> ³	Not Allowed <u>16</u> ³	Not Allowed <u>16</u> ³

Conclusion

- ◎ **Some minor housekeeping revisions are also included.**
- ◎ **The proposed changes will result in an overhaul of the CAC. Current requirements have not been accepted by the development community.**
- ◎ **Staff is developing similar proposed changes to the Marketplace Residential zoning district, to be adopted concurrently with the text amendment.**
- ◎ **Staff recommends approval for transmittal.**

P&Z Recommendation

- **At the January 4, 2017 meeting, the Planning and Zoning Commission recommended approval for transmittal with a vote of (5-1, with 1 abstention). There was one speaker in support at the public hearing.**

Proposed Change: Detached Properties

“Detached Properties

Development of duplex and multi-family residential uses in the Commercial Activity Center is permitted for properties that are deemed to be detached, in order to promote compatibility and continuity of existing development. Detached properties are those that share specific features that constitute obstacles to non-residential development, such as physical or topographical constraints, significant residential development patterns in the vicinity, relatively small property area, and lack of viable access to collector or arterial roads. Criteria used to determine whether a property is a detached property shall be defined in the Land Use and Development Regulations.

If deemed a detached property, the property shall be identified as such in the City’s records. Owners of such properties may continue to enjoy all of the rights, privileges, and responsibilities of home ownership, including the ability to sell or rent their homes to other parties. Development of duplex or multi-family uses within detached properties shall be permitted with a maximum density of 16 units per acre.”

Item Number:	A.(3)
Meeting Date:	2/6/2017
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA
REQUEST FORM
CITY OF CAPE
CORAL**



TITLE:

Ordinance 7-17 Public Hearing

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

- 1. Will this action result in a Budget Amendment? No
- 2. Is this a Strategic Decision? No
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan? No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance declaring a triangular shaped parcel of property being a part of Highlander Canal right-of-way as unusable municipal surplus real property and deeding it to the property owner, subject to public utility, drainage, roadway, and bridge maintenance easements, and subject to the grantee constructing a seawall upon said property within 12 months of deed conveyance; property is located at 1935 SW 8th Court.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 7-17
Aerial photo presented at meeting

PREPARED BY:

Division- Department- City Attorney

SOURCE OF ADDITIONAL INFORMATION:

Dawn Andrews, Property Broker

Tom Chernesky, Survey Division Manager

ATTACHMENTS:

Description	Type
▣ Ordinance 7-17	Ordinance
▣ Aerial Photo presented at meeting	Backup Material

ORDINANCE 7 - 17

AN ORDINANCE DECLARING A TRIANGULAR-SHAPED PARCEL OF PROPERTY BEING A PART OF HIGHLANDER CANAL RIGHT-OF-WAY ADJOINING LOTS 36 AND 37, BLOCK 4377, AS SHOWN ON THE PLAT OF CAPE CORAL UNIT 63, AS RECORDED IN PLAT BOOK 21 AT PAGES 48 THROUGH 81 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AS MORE PARTICULARLY DESCRIBED HEREIN, LOCATED AT 1935 SW 8TH COURT, AS UNUSABLE MUNICIPAL SURPLUS REAL PROPERTY NO LONGER NEEDED BY THE CITY; AUTHORIZING AND DIRECTING THE MAYOR AND CLERK TO EXECUTE A DEED CONVEYING THE AFOREMENTIONED SURPLUS REAL PROPERTY TO JASON S. MCHENRY SUBJECT TO THE GRANTEE HEREIN CONSTRUCTING A SEAWALL UPON SAID PROPERTY; A COPY OF THE PROPOSED DEED IS ATTACHED HERETO AS EXHIBIT "1"; RESERVING RIGHT-OF-WAY AND UTILITY EASEMENTS FOR THE CITY OF CAPE CORAL; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral Public Works Department and the City Manager have recommended that a parcel of land being a portion of Highlander Canal Right of Way adjoining Lots 36 and 37, Block 4377 as shown on the plat of Cape Coral Unit 63 as recorded in Plat Book 21 at Pages 48-81 of the Public Records of Lee County, Florida, is of no value and use to the City of Cape Coral, and would be of greater value to the City of Cape Coral if deeded to the property owner because of increased tax revenues; and

WHEREAS, after examination of the canal and after considering the recommendations of the Engineering Division of the Public Works Department and City Staff, it is evident that it would be in the best interest of the City to deed said parcel subject to right-of-way and utility easements for City of Cape Coral and Lee County in the future.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

Section 1. That the parcel of land being a portion of Highlander Canal Right of Way adjoining Lots 36 and 37, Block 4377 as shown on the plat of Cape Coral Unit 63, said parcel being near the intersection of SW 19th Lane and the bridge spanning the Highlander Canal, as more particularly described as follows:

A parcel of land being a portion of Highlander Canal Right of Way adjoining Lots 36 and 37, Block 4377 as shown on the plat of Cape Coral Unit 63 as recorded in Plat Book 21 at Pages 48-81 of the Public Records of Lee County, Florida; more particularly described as follows:

Begin the Southeast corner of Lot 36, Block 4377 as shown on the plat of Cape Coral Unit 63 as recorded in Plat Book 21 at Pages 48-81 of the Public Records of Lee County, Florida; Thence run N 00°12'55" E for a distance of 88.35 feet to a point on the Southerly Right of Way line of S.W. 19th Lane (60 feet wide), also being the Northeast corner of Lot 37, said Block 4377; Thence run N 89°34'44" E, along said Southerly Right of Way line for a distance of 26.60 feet to a point on the water-ward face of a concrete seawall; Thence run S 16°55'02" W, along said water-ward face of seawall, for a distance of 92.55 to Southeast corner said Lot 36, Block 4377, also being the Point of Beginning.

Said Parcel contains 1,175 square feet, more or less.

Reserving therefrom, the Northerly 25 feet as a Public Utilities, Drainage, Roadway and Bridge Maintenance Easement; and reserving therefrom the Easterly 6 feet as a Public Utilities and Drainage Easement.

Bearings are based on the recorded plat of the Cape Coral Unit 63, according to Plat Book 21, Pages 48 through 81, of the Public Records of Lee County, Florida.

Said parcel is hereby declared to be of no use to the City of Cape Coral because of its odd shape and location and as surplus property is no longer needed for municipal use or purposes that require retaining municipal ownership.

The above described property shall immediately revert to grantor herein should grantee, his successors or assigns, fail to apply for a seawall permit(s) within six (6) months of the date of the deed, and complete construction of the seawall upon the waterway portion of the above described property within twelve (12) months of the date of the deed.

Section 2. That upon the recommendations of the City staff, it is in the best interest of the City of Cape Coral to deed the above-described property to the owner of Lots 36 and 37, Block 4377, Cape Coral Subdivision, Unit 63, according to the plat thereof, as recorded in Plat Book 21, Pages 48-81, of the Public Records of Lee County, Florida, subject to any easements, restrictions and reservations of record because the City will receive additional tax revenues by this grant. Accordingly, the Mayor and the Clerk of the City of Cape Coral are hereby authorized to effectuate a quit claim deed granting the property described herein to Jason S. McHenry, the owner of property located at 1935 SW 8th Court, Cape Coral, Florida. Said grant shall be subject to the City retaining a right-of-way easement across the property as described herein granted for the purpose of, but not limited to, entering upon said property for the expansion of the canal system, including a right-of-way easement across said parcel for the maintenance, construction, and renovation of the canal or bridge system, and reserving an easement across said parcel for any utility lines including water, sewer, or electrical, and a drainage easement to enlarge the existing channel in the future; a copy of the quit claim deed is attached hereto as Exhibit "1."

Section 3. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

Section 4. Effective Date. This ordinance shall become effective immediately upon its adoption.

ADOPTED AT A REGULAR COUNCIL MEETING THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/triprop-McHenry

QUIT-CLAIM DEED

Prepared by:
Brian R. Bartos
City of Cape Coral
PO Box 150027
Cape Coral, FL 33915-0027
Strap #:27-44-23-C2-04377.0360
City of Cape Coral Ordinance 7-17

THIS QUIT-CLAIM DEED, executed this _____ day of _____, 2017 by first party:

CITY OF CAPE CORAL, A FLORIDA MUNICIPAL CORPORATION

whose post office address is: Post Office Box 150027, Cape Coral, Florida 33915-0027

to second party **Jason S. McHenry**
whose post office address is: 310 S.E 31st Street
Cape Coral, Fl. 33904

WITNESSETH, that the said first party, for and in consideration of the sum of \$10.00, in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described lot, piece or parcel of land, situate, lying and being in the County of Lee, State of Florida to wit:

A parcel of land being a portion of Highlander Canal Right of Way adjoining Lots 36 and 37, Block 4377 as shown on the plat of Cape Coral Unit 63 as recorded in Plat Book 21 at Pages 48-81 of the Public Records of Lee County, Florida; being more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Reserving therefrom, the Northerly 25 feet as a Public Utilities, Drainage, Roadway and Bridge Maintenance Easement (along S.W. 19th Lane); and reserving therefrom the Easterly 6 feet as a Public Utilities and Drainage Easement (along Highlander Canal).

THIS CONVEYANCE IS SUBJECT TO THE FOLLOWING CONDITIONS: Grantee, or his/her/their/its successors or assigns, shall apply for a seawall permit(s) within six (6) months of the date of this deed, and complete construction of the seawall upon the waterway portion of the above described property within twelve (12) months from the date of this deed. Grantee, or his/her/their/its successors or assigns, shall obtain the required permitting approval from all applicable Local, State, or Federal governmental agencies. The violation of the aforementioned conditional time frame to complete construction of said seawall shall result in the immediate reversion of title, of the above described property, to the Grantor or its successors and/or assigns.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever.

IN WITNESS WHEREOF, the said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:

City of Cape Coral, a Florida municipal corporation

(Signature) _____
(Print)

Marni L. Sawicki, Mayor

(Signature) _____
(Print)

STATE OF: Florida §
COUNTY OF: Lee §

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared Marni L. Sawicki, Mayor of the City of Cape Coral, a Florida municipal corporation, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same. Witness my hand and official seal in the County and State aforesaid this _____ day of _____, 2017.

(seal)

Notary Public (Signature)

Signed, sealed and delivered in presence of:

City of Cape Coral, a Florida municipal corporation

(Signature) _____
(Print)

Rebecca van Deutekom, City Clerk

(Signature) _____
(Print)

STATE OF: Florida §
COUNTY OF: Lee §

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared Rebecca van Deutekom, City Clerk of the City of Cape Coral, a Florida municipal corporation, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same. Witness my hand and official seal in the County and State aforesaid this _____ day of _____, 2017.

(seal)

Notary Public (Signature)

Exhibit "A"

A parcel of land being a portion of Highlander Canal Right of Way adjoining Lots 36 and 37, Block 4377 as shown on the plat of Cape Coral Unit 63 as recorded in Plat Book 21 at Pages 48-81 of the Public Records of Lee County, Florida; more particularly described as follows:

Begin the Southeast corner of Lot 36, Block 4377 as shown on the plat of Cape Coral Unit 63 as recorded in Plat Book 21 at Pages 48-81 of the Public Records of Lee County, Florida; Thence run N 00°12'55" E for a distance of 88.35 feet to a point on the Southerly Right of Way line of S.W. 19th Lane (60 feet wide), also being the Northeast corner of Lot 37, said Block 4377; Thence run N 89°34'44" E, along said Southerly Right of Way line for a distance of 26.60 feet to a point on the water-ward face of a concrete seawall; Thence run S 16°55'02" W, along said water-ward face of seawall, for a distance of 92.55 to Southeast corner said Lot 36, Block 4377, also being the Point of Beginning.

Said Parcel contains 1,175 square feet, more or less.

Reserving therefrom, the Northerly 25 feet as a Public Utilities, Drainage, Roadway and Bridge Maintenance Easement; and reserving therefrom the Easterly 6 feet as a Public Utilities and Drainage Easement.

Bearings are based on the recorded plat of the Cape Coral Unit 63, according to Plat Book 21, Pages 48 through 81, of the Public Records of Lee County, Florida,

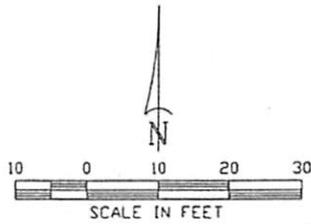
POINT OF INTERSECTION

S.W. 19TH LANE
ASPHALT ROADWAY (60' R/W)

SKETCH TO ACCOMPANY DESCRIPTION
**PORTION OF HIGHLANDER
CANAL, CAPE CORAL, UNIT 63,**

PLAT BOOK 21, PAGES 48-81, SECTION 27, TOWNSHIP 44 SOUTH,
RANGE 23 EAST PUBLIC RECORDS OF LEE COUNTY, FLORIDA

(SEE EXHIBIT "A" FOR DESCRIPTION TO ACCOMPANY SKETCH)



N.89°34'44"E.
26.60'

CONCRETE
SEAWALL

SOUTH R/W LINE

6' P.U.E. & D.E.

NE. CORNER
LOT 37, BLOCK 4377

LOT 37 BLOCK 4377

6' P.U.E. & D.E.

DRAIN CLAIM AREA

S.16°55'02"W. 92.55'

EDGE OF WATER

HIGHLANDER CANAL

S.W. 8TH COURT
ASPHALT ROADWAY (60' R/W)

N.00°12'55"E. 63.63'

6' P.U.E. & D.E.

LOT 36 BLOCK 4377

P.O.C / P.O.B.
S.E. CORNER
LOT 36, BLOCK 4377

N.00°12'55"E. 88.35'

30.00'

6' P.U.E. & D.E.

FENCE END
2.3' SOUTH

EAST R/W LINE

6' P.U.E. & D.E.

LOT 35 BLOCK 4377

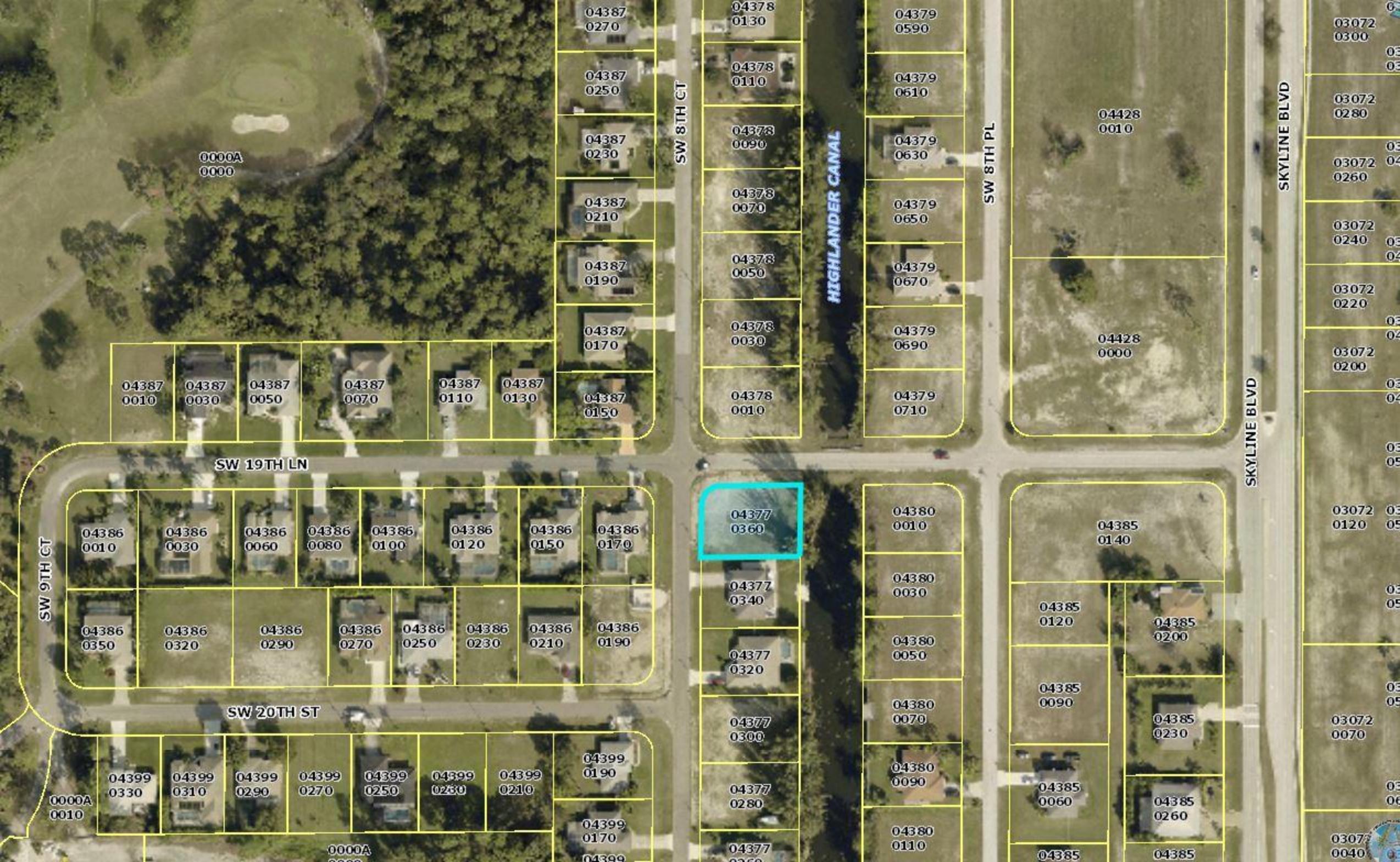
CONCRETE SEAWALL

LEGEND:

- P.U.E. PUBLIC UTILITY EASEMENT
- D.E. DRAINAGE EASEMENT
- R/W RIGHT-OF-WAY
- 6' CENTERLINE
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

NOT A BOUNDARY SURVEY

JARRIS ORGENSEN, INC. 20048 BEL PRADO BLVD. S. 3A CAPE CORAL, FLORIDA 33904 (888) 257-2624 (239) 257-2921			
DRAWN PHM	CHECK FBM	SCALE 1"=20'	PROJ. # CC-09-292-14 OC
SKETCH DATE 11/04/16	FILE NO. 45-23-12	SHT.-2 OF - 2	



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SOURCE OF ADDITIONAL INFORMATION:

Steve Pohlman, Parks & Recreation Director
Dawn Andrews, Property Broker

ATTACHMENTS:

Description	Type
☐ Memo to Mayor and City Council	Backup Material
☐ Ordinance 8-17	Ordinance

MEMORANDUM

CITY OF CAPE CORAL
CITY MANAGER'S OFFICE

TO: Mayor Sawicki and Council Members

FROM: John Szerlag, City Manager 
Kelley Fernandez, Business Manager 
Dawn Andrews, Property Broker 

DATE: January 19, 2017

SUBJECT: Ord. 8 -17 – Animal Shelter Ground Lease and Purchase Agreement
Cape Coral Animal Shelter Corporation

Cape Coral Animal Shelter Corporation and city management recommend a 99-year ground lease for a no-kill animal shelter on City property. The request is for a 4.2 acre site adjacent and south of the Youth Center, north of SunSplash on SW 2nd Avenue. Staff has reviewed the future use for this property and determined the property is not currently identified as required for any upcoming projects. Staff also recognized an animal shelter would provide a valuable service for the community.

City staff met with President JoAnn Elardo and Board Member Gloria Tate to negotiate the various lease terms. Key elements of the lease are as follows:

- Term & Rent – 99 years for \$1.00 per year
- Use of Premises – No kill animal shelter and adoption facility with ancillary services
- Construction of Improvements – by Lessee after all construction funds have been obtained (no bond or letter of credit required)
- Earliest Termination Date – Upon Lessee's dissolution of the corporation or ceasing to operate as an animal shelter
- Right to Purchase Site – Lessee may purchase site at appraised land value
- Right of First Refusal – Lessee shall provide City the right of first refusal to purchase improvements at depreciated value if operations cease or corporation dissolves
- Rezoning & PDP Costs – City to bear costs
- Taxes and Utilities – Lessee to bear all costs

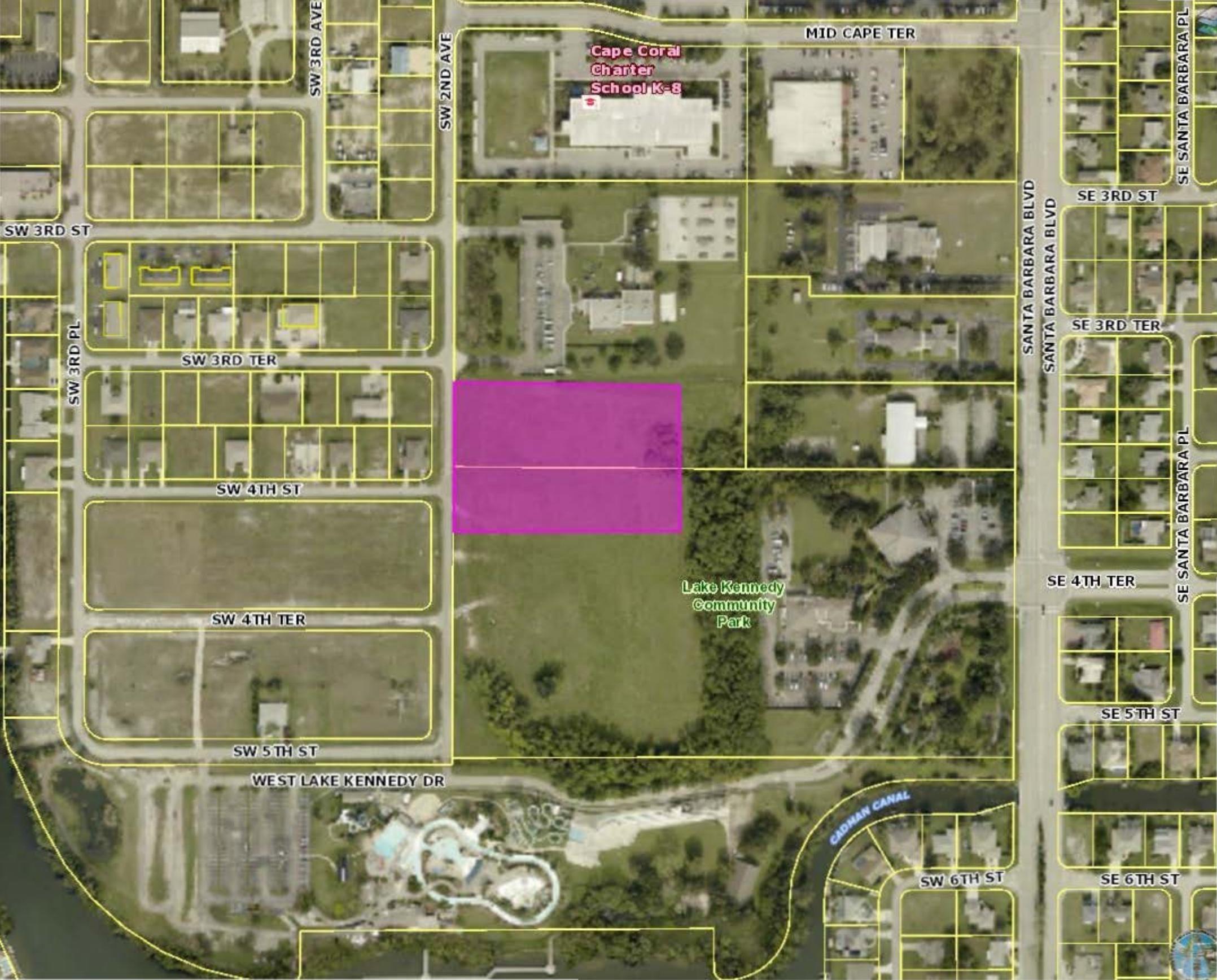
Staff recommends approval of the requested ground lease. Representatives of Cape Coral Animal Shelter Corporation will be in attendance to address any questions at the Public Hearing.

Should you have any questions, please feel free to contact my office.

JS/KF/da

Attachment: Location Map

C: Dolores Menendez, City Attorney
Brian Bartos, Assistant City Attorney
JoAnn Elardo, President, Cape Coral Animal Shelter Corporation
Gloria Tate, Board Member, Cape Coral Animal Shelter Corporation



Cape Coral
Charter
School K-8

Lake Kennedy
Community
Park

CADMAN CANAL

SW 3RD AVE

SW 2ND AVE

MID CAPE TER

SW 3RD ST

SW 3RD PL

SW 3RD TER

SW 4TH ST

SW 4TH TER

SW 5TH ST

WEST LAKE KENNEDY DR

SW 6TH ST

SANTA BARBARA BLVD

SANTA BARBARA BLVD

SE 3RD ST

SE 3RD TER

SE 4TH TER

SE 5TH ST

SE 6TH ST

SE SANTA BARBARA PL

SE SANTA BARBARA PL

ORDINANCE 8 - 17

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN ANIMAL SHELTER GROUND LEASE AND PURCHASE AGREEMENT WITH CAPE CORAL ANIMAL SHELTER CORPORATION FOR THE LEASE OF PROPERTY OWNED BY THE CITY OF CAPE CORAL LOCATED AT 325 SW 2ND AVENUE FOR THE OPERATION OF AN ANIMAL SHELTER AND ADOPTION FACILITY; A COPY OF THE ANIMAL SHELTER GROUND LEASE AND PURCHASE AGREEMENT IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral owns the property located at 325 SW 2nd Avenue; and

WHEREAS, the City Council desires to enter into an Animal Shelter Ground Lease and Purchase Agreement with Cape Coral Animal Shelter Corporation for the operation of an animal shelter and adoption facility, along with providing ancillary services associated with an animal shelter, such as veterinarian clinic services, animal grooming services, educational activities, or other animal related services and activities permitted within the zoning district under the terms and conditions as set forth in the attached agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1. That the City Manager is hereby authorized and directed to enter into an Animal Shelter Ground Lease and Purchase Agreement between the City of Cape Coral and Cape Coral Animal Shelter Corporation for the lease of property located at 325 SW 2nd Avenue for the operation of an animal shelter and adoption facility under the terms and conditions as set forth in the agreement, attached hereto as Exhibit 1 and incorporated herein by reference.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
Ord/Animal Shelter Ground Lease

ANIMAL SHELTER GROUND LEASE AND PURCHASE AGREEMENT

This Animal Shelter Ground Lease and Purchase Agreement ("Agreement"), made and entered into this _____ day of _____, 2017, by and between CAPE CORAL ANIMAL SHELTER CORPORATION, a not-for-profit corporation, hereinafter referred to as "LESSEE", and the CITY OF CAPE CORAL, a Florida municipal corporation, hereinafter referred to as "LESSOR."

WHEREAS, there exists an identified need in the City of Cape Coral for animal rescue, shelter, adoption, health and educational services in addition to what other entities are able to provide; and

WHEREAS, LESSEE is desirous of providing such services in exchange for a ground lease and purchase agreement in a manner anticipated to augment and improve the delivery of services by other entities; and

WHEREAS, LESSEE and LESSOR have mutually agreed on the terms and conditions set forth herein below, for the Lessee to lease from the LESSOR premises to construct buildings for Animal Control services such that the synergy created provides a greater benefit to the citizens of Cape Coral.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the LESSOR hereby demises and leases to the LESSEE the following described Premises, which lease agreement shall become effective on the dates as set forth herein on the following terms and conditions:

1. **Premises.** The LESSOR hereby leases to the LESSEE, and LESSEE hereby leases from the LESSOR, certain real property, as more particularly described in Exhibit "A" which is attached hereto and made a part hereof by reference, subject to the terms, covenants, agreements and conditions set forth below. LESSEE hereby acknowledges and agrees that pursuant to section 4.17 of the City of Cape Coral Charter, the conveyance or lease of any lands of the City shall be by ordinance adopted by the Cape Coral City Council.
2. **Term.** The term of this Agreement shall be for ninety-nine (99) years, commencing _____, 2017, and ending _____, 2116 if the premises has not been conveyed to LESSEE as provided for herein.
3. **Condition of Premises.** LESSEE has inspected and knows the condition of the Premises, and accepts the same in its present condition for the purposes set out in this lease.
4. **Rent.** LESSEE covenants and agrees to pay to LESSOR as Rent for the Premises One Dollar (\$1.00) per year for the entire term of the lease.
5. **Use of premises.** LESSEE shall only occupy or use the Premises for the primary purpose of operating an animal shelter and adoption facility. LESSEE may provide ancillary services associated with an animal shelter, such as veterinarian clinic services, animal grooming services, educational activities, or other animal related services and activities permitted within the zoning district.
6. **Zoning.** LESSEE acknowledges that the Premises is currently zoned R-1A (Single Family), a zoning designation that does not allow the Premises to be used for the purposes identified herein. LESSEE

shall submit an application to the LESSOR to rezone the Premises to an appropriate zoning district allowing for the uses contemplated by this Lease. LESSEE shall comply with all regulations within the zoning district, or other Federal, State, County, or City regulations, including, but not limited to, any requirements to proceed through the Planned Development Project process, obtaining approval for special exception uses, deviations, etc. LESSOR shall bear all costs associated with rezoning, PDP, Special Exceptions, or other such processes. Should the LESSEE's request to rezone the Premises be denied, this Lease shall be null and void.

7. **Construction of Lessee Improvements.** LESSEE shall commence construction on the Premises during the first twenty-four (24) months of the term of a facility suitable for providing animal shelter and adoption services including, but not limited to, a minimum five-thousand (5000) square foot animal shelter for the adoption of animals to the public, including veterinarian clinic services, educational activities indoors and outdoors, outdoor walking and interaction areas, together with accessory structures, parking areas, driveways, landscaping and other improvements (collectively "Lessee Improvements") as may be deemed appropriate by LESSEE for the use and operation of the Premises for such purposes. LESSEE agrees commencement of construction shall not begin until all construction funds have been obtained. LESSEE shall provide to LESSOR a Financial Statement, and a cost of construction statement from the general contractor, prior to the issuance of the building permit. Such construction shall meet City Code standards and all building permits shall be obtained. LESSEE shall have full control over the design, layout and materials used in the construction of the Lessee Improvements, subject to the aforementioned code standards. LESSEE will retain title to and rights of ownership of the Lessee Improvements during the Term and upon conveyance of title to the Premises to LESSEE, unless otherwise conveyed as stated hereinbelow. Notwithstanding the above, if LESSEE commences construction on the Premises and fails to complete the Lessee Improvement(s), so the Lessee Improvement(s) are left in a partially constructed state, the LESSEE acknowledges and agrees to convey the partially completed Lessee Improvement(s) to the LESSOR free of all encumbrances and acknowledges and agrees the LESSOR may take any action regarding the partially completed Lessee Improvement(s) as the LESSOR deems appropriate. In such event, the LESSEE shall be deemed in default of this Lease and this Lease shall be terminated. Factors determining whether the LESSEE has failed to complete the Lessee Improvement(s) include, but are not limited to, cessation of construction activity to the Lessee Improvement(s) on the Premises for a period of six (6) months, or the expiration of any permit(s) without the LESSEE applying for and receiving an extension of the permit(s).
8. **Sublease and Use of Premises.** LESSEE may not assign or sublease this Lease without the prior written consent of LESSOR. LESSEE may not sublease a portion of the facilities to businesses that assist in providing care and services ancillary to the uses stated in paragraph 5, above, such as, but not limited to, grooming services, training, and a gift shop, without the prior written consent of the LESSOR.
9. **Insurance and Indemnity.**
 - (A) LESSEE agrees to name LESSOR as an additional insured on (1) a policy covering premises liability up to One Million Dollars, and (2) a Fire and Extended Coverage Policy for each of the Premises sufficient to reconstruct the Lessee Improvements. LESSEE shall cause the company issuing such insurance to notify LESSOR at least thirty (30) days prior to any cancellation of the policy which shall be evidenced by a certificate of insurance providing for such notice. It is agreed and understood that the LESSEE shall not change the use of the Premises from that which is contemplated by the parties at the time this Agreement is signed. LESSEE shall also keep in full force and effect during the Term adequate liability insurance.

- (B) LESSEE agrees to defend, indemnify and hold harmless LESSOR, its officials, agents and employees from and against any and all claims of and liabilities (including attorney fees and costs of defense) actually imposed by law to any person, including officers, agents, employees, contractors, or invitees of the LESSEE and any other third persons or parties, for death, bodily injury or property damage or any other loss whatsoever arising from or connected with the LESSEE's use of the Premises, including but not limited to any such claims and liabilities from the allegedly dangerous condition of the Premises.
10. **Utilities and Taxes.** The LESSEE will pay for all utility services including electricity, water, gas, sewer and solid waste (garbage) removal. In addition, LESSEE agrees to pay all ad valorem, non-ad valorem and personal property taxes, if any, as well as all local government assessments, if any, levied or assessed against the Premises during the lease term, or any taxes arising from the Premises as a result of the improvement or other activity of LESSEE on the Premises.
11. **Maintenance and Repairs.**
- (A) **Lessee's Maintenance Obligations.** LESSEE shall at all times during the Term of this Lease maintain or cause any subtenant to maintain the Premises and the Lessee Improvements in good condition and repair, including without limitation all landscaping, parking areas, sidewalks, and driveways, the structure of the roof, all plumbing, lighting, heating, ventilation and air conditioning facilities, electrical wiring and equipment, walls, floors and ceilings, and including replacement of parts and equipment if necessary.
- (B) **Exterior and Grounds.** LESSEE shall be responsible for all mowing of grass and lawn care, and trash and garbage removal from the Premises.
- (C) **Lessor's Maintenance Obligations.** LESSOR shall have no obligation to maintain or repair the Lessee Improvements nor care for the exterior and grounds leased to LESSEE hereunder.
12. **Damage to Lessee's Improvements.** As soon as is reasonably possible after damage or destruction to any or all of Lessee's Improvements on the Premises, but no later than 18 months after such damage or destruction, LESSEE shall, at LESSEE's sole cost and expense, commence to either repair and restore the Lessee's Improvements as completely as possible to their condition immediately prior to the damage, or, in the alternative, replace the Lessee's Improvements. If the Premises have become wholly untenable due to the damage or destruction of the Lessee's Improvements, LESSEE may elect to not make the repairs or replacements and terminate this Lease thirty (30) days after serving LESSOR with written notice of LESSEE's intent to terminate the Lease. If LESSEE elects not to make repairs and to terminate this Lease, LESSEE shall remove all remaining improvements from the Premises and return the Premises to the LESSOR in its original condition at the time of entering into this Lease. In no case shall the LESSOR be obligated to make the repairs or replacements or otherwise rebuild the Lessee's Improvements, or to restore the Premises to its original condition, upon the LESSEE terminating this Lease.
13. **Condemnation of Premises.** In the event of condemnation or taking aforesaid, whether whole or partial, the award paid for such condemnation shall be apportioned equitably between the LESSOR and the LESSEE and the value of the Lessee Improvements shall be awarded first to the Lessee.
14. **Environmental Matters.** LESSOR warrants and represents to LESSEE that to the best of LESSOR's

knowledge as of the commencement of the Term of the Lease, the Premises do not have any underground storage tanks and are not subject to any environmental hazardous conditions.

15. **Right to Purchase During Term.** The parties acknowledge that LESSEE is providing a valuable service to the community and through its successful efforts will relieve the burden on the LESSOR through many of its services including, but not limited to, animal shelter for the adoption of animals to the public, veterinary clinic services, and pet owner education. The parties hereby agree that LESSEE may purchase the Premises at any time during the term of this lease for the appraised value, at such time, of the Premises (real property only, excluding improvements), as described in Exhibit "A" attached hereto and made a part hereof.
16. **Rights upon Lessee's dissolution of the corporation or ceasing the operation of an animal shelter; Right of Lessor's first refusal to purchase from Lessee.** Should LESSEE at any time during the term of this Lease decide to dissolve the corporation or cease operating the animal shelter, LESSEE shall notify the LESSOR ninety (90) days prior to the dissolution or cessation of the operation of the animal shelter. LESSEE shall arrange for alternative placement, or adoption, of all animals prior to the dissolution or cessation of the animal shelter operation. LESSEE hereby grants LESSOR a right of first refusal to purchase the Lessee Improvements after receiving written notice from LESSEE of its decision to sell Lessee's Improvements, at the original costs of the Lessee's Improvements less depreciation amortized over a forty (40) year period for structures, and a 10 year period for other property improvements. LESSEE agrees to accept said value. LESSEE shall provide LESSOR a complete accounting of the original costs to construct said facility(s) within 30 days of issuance of a certificate of use. Should LESSOR decide not to exercise the right of first refusal, LESSEE shall have the right to sell Lessee's Improvements to a third party subject to the third party operating the animal shelter and permitted ancillary uses, all other terms of this Lease, and upon LESSOR's approval. In the event LESSOR decides not to exercise the right of first refusal to purchase the Lessee's Improvements and the LESSEE has not conveyed the Lessee's Improvements to a third party within twelve (12) months of the LESSOR's right of first refusal, the LESSEE shall convey the Lessee's Improvements to the LESSOR, excluding any and all encumbrances.
17. **Right to Mortgage.** LESSEE shall have the right to use the term of the lease as collateral for a loan to construct the facility, provided it also engages in a capital campaign to raise funds for construction. In no event shall the LESSEE mortgage the Leased Premises, or otherwise encumber the Leased Premises.
18. **Liens.** LESSOR'S interest in the Premises shall not be subject to any lien for any construction, alterations, installations, improvements, or work as provided in section 713.10, Florida Statutes. LESSEE shall notify all persons and entities constructing improvements or performing work on the Premises, or supplying materials, equipment rental, or other services for the improvements or work, that this Lease does not allow any liens to attach to LESSOR's property. Further, LESSEE acknowledges and shall advise all such persons and entities that the Premises is governmental property not subject to any lien or right to claim a lien. LESSEE shall cause its contractor(s) to provide a final waiver and release of all claims, in the form approved by the LESSOR, upon completion of the improvements and before making final payment to LESSEE's contractor(s). Such final release shall certify that full and final payment was made to all of the contractor(s) subcontractors. If, notwithstanding the foregoing, and mechanic's, materialman's, laborer's, or any other lien, or any order or judgment for payment of money, shall be recorded against the Premises or any part thereof or against LESSOR's leasehold interest or otherwise asserted against LESSOR's interest (whether or not

legally effective), then LESSEE shall, at LESSEE's own cost and expense, cause the same to be satisfied, cancelled, and discharged of record and, further, shall indemnify and hold the LESSOR harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees and expert fees, through trial and appeal, resulting therefrom or by reason thereof.

19. **Default.** In the event of default by either party, each shall have such remedies as are available under the law. In case of default of any term herein, the party claiming default shall first send written notice to other party notifying them of the breach and providing ten (10) days to cure said breach.
20. **Entire Agreement.** This Agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.
21. **Notice.** All notices required or permitted hereunder and required to be in writing to the LESSOR may be given by first class mail addressed to the City Manager, P.O. Box 150027, Cape Coral, Florida 33915, and to LESSEE at 1217 Cape Coral Pkwy East, Suite 234, Cape Coral, Florida, 33904.
22. **Venue.** This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Florida and venue for any lawsuit arising therefrom shall lie exclusively in Lee County, Florida.
23. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, except that Lessee may elect to declare the lease void in the event a provision that affects the value of the Tenant Improvements to Lessee is held invalid, and seek reimbursement for the value of such Improvements from Lessor.
24. **Compliance With Laws.** The parties hereby agree that they will comply with all applicable federal, state and local laws relating to the activities hereunder.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

CAPE CORAL ANIMAL SHELTER
CORPORATION

Linda Biondi

Print: LINDA BIONDI

D. Hackworth

Print: Dennis Hackworth

By: Joann Elardo
JOANN ELARDO, PRESIDENT

ATTESTED TO BY:

CITY OF CAPE CORAL, FLORIDA

REBECCA VANDEUTEKOM
CITY CLERK

By: _____
JOHN SZERLAG, CITY MANAGER

APPROVED AS TO FORM:

BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
Agmt/Leases/Animal Shelter Lease

EXHIBIT "A"

Parcel "A"

A Parcel of land lying in the Northwest Quarter (NW ¼) of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) of Section 14, Township 44 South, Range 23 East, City of Cape Coral, Lee County, Florida; being more particularly described as follows:

The Northwest Quarter (NW ¼) of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) of Section 14, Township 44 South, Range 23 East, City of Cape Coral, Lee County, Florida; **LESS** the North 460 feet thereof and **LESS** the East 177 feet thereof.

and

Parcel "B"

A Parcel of land lying in the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) of Section 14, Township 44 South, Range 23 East, City of Cape Coral, Lee County, Florida; being more particularly described as follows:

The North 162 feet of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) of Section 14, Township 44 South, Range 23 East, City of Cape Coral, Lee County, Florida; **LESS** the East 177 feet thereof.

Parcels "A" & "B" combined contain 4.2 Acres +/-.

Item Number: B.(1)
Meeting Date: 2/6/2017
Item Type: ORDINANCES/RESOLUTIONS - Introductions

**AGENDA
REQUEST FORM
CITY OF CAPE
CORAL**



TITLE:

Resolution 20-17 (AP 16-0001*) Set Public Hearing Date for March 6, 2017

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

A resolution either approving or reversing the decision of the Board of Zoning Adjustment and Appeals that denied Resolution SE 1-2016, which concerned an amendment to Resolution 9-2000, which granted a special exception for a Rental Establishment, Group III (Automotive) use in a Pedestrian Commercial (C-1) zone; property is located at 2200 Santa Barbara Boulevard.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Resolution 20-17 Approving Denial
Resolution 20-17 Reversing Denial

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Mike Struve, Planning Team Coordinator

ATTACHMENTS:

Description	Type
▣ Resolution 20-17 Approve Denial	Resolution
▣ Resolution 20-17 Reverse Denial	Resolution

RESOLUTION 20 - 17

A RESOLUTION PURSUANT TO THE CITY OF CAPE CORAL LAND USE AND DEVELOPMENT REGULATIONS, ARTICLE VIII, ADMINISTRATION, SECTION 8.3, PUBLIC HEARINGS, SECTION 8.8, SPECIAL EXCEPTIONS, AND SECTION 8.9, APPEALS, AND THE CITY OF CAPE CORAL COMPREHENSIVE PLAN, APPROVING THE DECISION OF THE BOARD OF ZONING ADJUSTMENT AND APPEALS THAT DENIED RESOLUTION SE 1-2016 WHICH CONCERNED AN AMENDMENT TO RESOLUTION 9-2000, WHICH GRANTED A SPECIAL EXCEPTION FOR A RENTAL ESTABLISHMENT, GROUP III (AUTOMOTIVE) USE IN A PEDESTRIAN COMMERCIAL (C-1) ZONE ON REAL PROPERTY DESCRIBED AS LOTS 54-57, BLOCK 3047, CAPE CORAL UNIT 62; PROPERTY LOCATED AT 2200 SANTA BARBARA BOULEVARD; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral Board of Zoning Adjustment and Appeals has specifically considered the request of the applicant, DEBONO'S INC., for an amendment to a Special Exception as described herein, and, at a Public Hearing on June 1, 2016, denied the aforesaid request by denying Resolution SE 1-2016.

WHEREAS, the Applicant, DEBONO'S, INC., is exercising its right to appeal to the Cape Coral City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA:

Section 1. That the City of Cape Coral City Council having specifically considered the decision of the Cape Coral Board of Zoning Adjustment and Appeals, the recommendation of the City of Cape Coral Planning and Zoning Commission, Local Planning Agency, and the Planning Division of the City of Cape Coral, and the presentation made by the Applicant(s) before this Board at a public meeting, and the criteria set forth in the City of Cape Coral Land Use and Development Regulations, Article VIII, Administration, Section 8.3, Public Hearings, and Section 8.8, Special Exceptions, the City of Cape Coral Comprehensive Plan, the application materials submitted with Application AP 16-0001, and all other evidence presented, hereby approves the decision of the Board of Zoning Adjustment and Appeals that denied Resolution SE 1-2016 which concerned AN AMENDMENT TO RESOLUTION 9-2000, WHICH GRANTED A SPECIAL EXCEPTION FOR A RENTAL ESTABLISHMENT, GROUP III (AUTOMOTIVE) USE IN A PEDESTRIAN COMMERCIAL (C-1) ZONE for the below-described property:

LEGAL DESCRIPTION: A PARCEL OF LAND LOCATED IN SECTION 26, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF LOTS 54, 55, 56, AND 57, BLOCK 3047; AS SHOWN ON THE PLAT OF CAPE CORAL UNIT 62, RECORDED IN PLAT BOOK 21 AT PAGES 21 THROUGH 35 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

PROPERTY LOCATED AT: 2200 SANTA BARBARA BOULEVARD

for the reason that the aforesaid special exception does not meet all of the criteria identified in the City of Cape Coral Land Use and Development Regulations, Section 8.8, Special Exceptions.

Section 2. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____,
2017.

REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:

BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
res/ap16-0001confirmdenialse

RESOLUTION 20 – 17

A RESOLUTION PURSUANT TO THE CITY OF CAPE CORAL LAND USE AND DEVELOPMENT REGULATIONS, ARTICLE VIII, ADMINISTRATION, SECTION 8.3, PUBLIC HEARINGS, SECTION 8.8, SPECIAL EXCEPTIONS, AND SECTION 8.9, APPEALS, AND THE CITY OF CAPE CORAL COMPREHENSIVE PLAN, REVERSING THE DECISION OF THE BOARD OF ZONING ADJUSTMENT AND APPEALS THAT DENIED RESOLUTION SE 1-2016 AND GRANTING AN AMENDMENT TO RESOLUTION 9-2000, WHICH GRANTED A SPECIAL EXCEPTION FOR A RENTAL ESTABLISHMENT, GROUP III (AUTOMOTIVE) USE IN A PEDESTRIAN COMMERCIAL (C-1) ZONE ON REAL PROPERTY DESCRIBED AS LOTS 54-57, BLOCK 3047, CAPE CORAL UNIT 62; PROPERTY LOCATED AT 2200 SANTA BARBARA BOULEVARD; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral Board of Zoning Adjustment and Appeals has specifically considered the request of the applicant, DEBONO'S, INC., for an amendment to a Special Exception as described herein, and, at a Public Hearing on June 1, 2016, denied the aforesaid request by denying Resolution SE 1-2016.

WHEREAS, the Applicant, DEBONO'S, INC., is exercising its right to appeal to the Cape Coral City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA:

Section 1. That the City of Cape Coral City Council having specifically considered the decision of the Cape Coral Board of Zoning Adjustment and Appeals, the recommendation of the City of Cape Coral Planning and Zoning Commission, Local Planning Agency, and the Planning Division of the City of Cape Coral, and the presentation made by the Applicant(s) before the City Council at a public meeting, and the criteria set forth in the City of Cape Coral Land Use and Development Regulations, Article VIII, Administration, Section 8.3, Public Hearings, and Section 8.8, Special Exceptions, the City of Cape Coral Comprehensive Plan, the application materials submitted with Application AP 16-0001, and all other evidence presented, hereby reverses the decision of the Board of Zoning Adjustment and Appeals that denied Resolution SE 1-2016 and grants AN AMENDMENT TO RESOLUTION 9-2000, WHICH GRANTED A SPECIAL EXCEPTION FOR A RENTAL ESTABLISHMENT, GROUP III (AUTOMOTIVE) USE IN A PEDESTRIAN COMMERCIAL (C-1) ZONE for the below-described property:

LEGAL DESCRIPTION: A PARCEL OF LAND LOCATED IN SECTION 26, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF LOTS 54, 55, 56, AND 57, BLOCK 3047; AS SHOWN ON THE PLAT OF CAPE CORAL UNIT 62, RECORDED IN PLAT BOOK 21 AT PAGES 21 THROUGH 35 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

PROPERTY LOCATED AT: 2200 SANTA BARBARA BOULEVARD

for the reason that the aforesaid special exception meets the criteria identified in the City of Cape Coral Land Use and Development Regulations, Section 8.8, Special Exceptions.

Section 2. The conditions contained within Resolution 9-2000 are hereby repealed and replaced with the following:

1. All rental vehicles and trailers shall be located within striped parking stalls. No rental vehicle or trailer may be parked outside of an unmarked area. The City shall not issue a certificate of use for a Rental Establishment, Group III use until all rental vehicle and trailer spaces have been clearly identified with striping on the site.
2. No rental vehicles or trailers shall be located in existing parking spaces located to the immediate east side of the building. These spaces shall be reserved solely for customer parking.

3. A maximum of ten (10) rental trucks may be located in the rear yard of the subject property. The maximum length of these trucks shall not exceed 26 feet, as measured from front to rear bumper. Regardless of the length of the truck, no portion of any truck shall extend into the alley located to the west of the subject site.
4. A maximum of two (2) pick-up trucks or two (2) vans, or any combination thereof not to exceed two (2) vehicles may be parked at the southeast corner of the property. Except for those two (2) vehicles parked at the southeast corner of the property, rental trucks and vans are restricted to areas located along the north property line of the subject property.
5. A maximum of ten (10) trailers may be parked within the area located between the north side of the building and the diesel fuel pumps, and along the north property line of the subject property.

Section 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:

BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
res/ap16-0001 repeal denial se

Item Number: 10.A.
Meeting Date: 2/6/2017
Item Type: UNFINISHED BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:
Water Quality

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:
Water Quality Memo

PREPARED BY:
Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Water Quality memo	Cover Memo

MEMORANDUM

CITY OF CAPE CORAL
PUBLIC WORKS DEPARTMENT

TO: Mayor Sawicki and Council Members

FROM: Paul Clinghan, Public Works Director *PRC*
Kraig Hankins, Environmental Resources Manager (Acting) *KRH*

DATE: February 3, 2017

SUBJECT: Lake Okeechobee Level and Release Information 02/03/2017

The U. S. Army Corps of Engineers, Lake Okeechobee Data web site is not available this morning. As of Tuesday, January 31, 2017, the elevation of Lake Okeechobee was 13.85 feet. Inflows into the lake were 346 cfs, total outflows were 932 cfs. Current discharges at S-77 were 508 cfs, and 535 cfs at S-79.

Salinities in the river near Fort Myers were 15.3 PSU. Salinities at Shell Point were 30.08 PSU. Red tide was detected at very low concentrations at 7 sites in Lee County last week.

In the Lee County weekly check, blue green algae was not present at any of the sampling locations.

The Corps is continuing with a reduced discharge of 535 cfs, which is less than the target dry season flow of 650 cfs.

Attached is a map showing the position of Caloosahatchee River Locks.

PC/KH:ol (Weekly Lake Okeechobee Level and Release Information 02/03/2017)
Attachment; Caloosahatchee River Locks map

Item Number: 11.A.
Meeting Date: 2/6/2017
Item Type: NEW BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 21-17 Amend Council Agenda Rules of Procedure to expand time frame for public comment. [This item was advanced by Councilmember Stout]

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

The resolution amends Resolution 3-01, as amended, which adopted rules of procedure for the City Council agendas and meetings, to amend Section Q. to expand the time frame for public comment.

LEGAL REVIEW:

EXHIBITS:

Resolution 21-17

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
□ Resolution 21-17	Backup Material

RESOLUTION 21 - 17

A RESOLUTION OF THE CITY OF CAPE CORAL, AMENDING RESOLUTION 3-01, AS AMENDED, WHICH ADOPTED RULES OF PROCEDURE FOR THE CITY COUNCIL AGENDAS AND MEETING, TO AMEND SECTION Q. TO EXPAND THE TIME FRAME FOR PUBLIC COMMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, City Council meetings have been held on Monday of each week with the exception of Mondays on which a holiday falls or is observed; and

WHEREAS, City Council recently voted to adopt a meeting schedule for 2017 that contemplates two Council meetings per month rather than weekly; and

WHEREAS, due to the frequency of meetings decreasing, it is the desire of City Council to allow a longer period of time for citizens to provide public comment at each meeting.

Section 1. The Council Agenda Rules of Procedure are hereby amended as attached hereto as Exhibit A.

Section 2. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

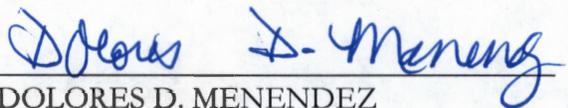
VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
res/Council Rules-Agendas Citizens Input
1/10/17

COUNCIL AGENDA RULES OF PROCEDURE

A. MEETINGS HELD; TIMES AND DATES

City Council holds meetings to accomplish the business of the City. Depending on the type of business to be conducted or timeliness of the business, meetings can be in the form of Regular meetings, Special meetings, or Committee of the Whole meetings.

Regular meetings are voting meetings where Council takes action on items on the agenda and public hearings are held for ordinances and resolutions. Unless otherwise resolved, regular meetings of the Cape Coral City Council shall convene at 4:30 p.m. on Mondays, as set forth on the yearly calendar of City Council Regular and Committee of the Whole meetings adopted by Council prior to January each year. ~~except in any week when~~ In the event Monday is a paid holiday recognized by the City, which includes New Year's Day, Martin Luther King Jr.'s Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, and Christmas Day. ~~In the event Monday is such a paid holiday,~~ then no regular meeting of the City Council shall be scheduled for that week, unless otherwise resolved. ~~During the months of June, July, December, and January, City Council may, upon vote of Council, hold meetings less frequently, but~~ Council shall hold not less than two regular meetings per month.

When setting its meeting schedule for the year, City Council shall decide whether to hold a regular meeting on any other holiday not recognized by the City as a paid holiday that happens to fall on a Monday during the course of the year. If Council votes to cancel a regular meeting that falls on a holiday not recognized by the City as a paid holiday, then Council shall also vote to decide whether to hold the meeting on a day other than this holiday or cancel the meeting for the entire week of the holiday.

Upon the setting of its regular meeting schedule for the year, City Council shall vote to adopt the schedule; however, additional meetings or special meetings may be called at any time upon vote of Council as provided herein.

Committee of the Whole meetings shall be held when called by the Mayor or any four (4) members of Council upon at least a twelve (12) hour notice. Items scheduled for such meetings shall be informational for the general discussion of matters, and to provide Council with the opportunity to become familiar with issues facing the City and discuss the items with staff in order to have any questions or concerns resolved. Any votes, if taken, shall not be binding but shall only be a recommendation ~~to~~ of the City Council.

Special meetings are voting meetings called when matters are not scheduled on a regular meeting due to time constraints or urgency and importance of the matter. The Mayor or any four members of Council may call special meetings, whenever practicable, upon at least a twelve hour notice.

Meetings allow citizens the opportunity to provide input at the designated Citizens Input times, however, public hearings are not held at Committee of the Whole meetings and items scheduled for Public Hearing or Public Input are not to be addressed by citizens during Citizens' Input, but are to be addressed at the time of the Public Hearing or Public Input.

B. AGENDA PREPARATION AND AGENDA

For Regular meetings, all reports, communications, contract documents or other matters, including position approvals, discussion items, and consent agenda items shall be submitted as follows:

- Monday, 3:00 pm (two weeks prior to regular meeting – submitted to City Manager
- Tuesday, 3:00 pm (prior to regular meeting) – all packet materials submitted to City Clerk
- Tuesday, 4:00 pm (prior to regular meeting) – agenda provided to Mayor for approval
- Wednesday, 3:00 pm (prior to regular meeting) – packets distributed/published

Backup documentation for all agenda items will be provided upon placement of the item on the agenda. Resolutions and Ordinances may be placed on the agenda if submitted by 12:00 noon on the Tuesday before the regular meeting of Council at which they are to be introduced, provided all required public notice and advertising are completed. The Council shall adopt its order of business on the agenda and, in the absence of Council action, the Mayor shall adopt the order of business on the agenda.

Citizen's petitions to council shall be submitted as a request in writing to the Mayor's office specifying the subject on which they will speak, along with the specific request and together with any backup information pertaining to the request. The petition to council shall be considered at a council meeting as soon as practicable after submission. The Mayor's office shall provide the petitions to council to the City Clerk's office no later than 3:00 p.m. on the Tuesday before the regular meeting of Council at which such matter is to be considered. The Council shall adopt its order of business on the agenda and, in the absence of Council action, the Mayor shall adopt the order of business on the agenda.

For Committee of the Whole (COW) meetings all reports, communications, contract documents or other materials to support items on the COW agenda shall be submitted as follows:

- Monday, 3:00 pm (week prior to COW meeting) – submitted to City Manager
- Tuesday, 3:00 pm (week prior to COW meeting) – all packet materials submitted to City Clerk
- Tuesday, 4:00 pm (week prior to COW meeting) – agenda provided to Mayor for approval
- Wednesday, 3:00 pm (week prior to COW meeting) – packets distributed/published

All scheduled COW meetings shall follow the submitting schedule above. For additional or special COW meetings the submitting schedule should be followed unless time does not permit following the above schedule. In such cases packet materials will be distributed by the City Clerk's Office upon receipt from staff and/or Council to include both paper copies and electronically scanned documents.

All scheduled Special meetings shall follow the submitting schedule set forth above for COW meetings unless time does not permit. In such cases packet materials will be distributed by the City Clerk's office upon receipt from staff and/or Council to include both paper copies and electronically scanned documents.

C. PRESIDING OFFICER

The Mayor, or in his absence, the Mayor Pro Tem, shall, at the time the meeting convenes, call the meeting to order and chair the meeting. In the absence of both the Mayor and Mayor Pro Tem, the members may appoint a member to chair the meeting, but such appointment shall not extend beyond the arrival of the Mayor, the Mayor Pro Tem, or the adjournment for the day, whichever occurs first. A majority vote of all Council members present, but not less than four (4), shall be required to overrule a decision of the presiding officer.

D. INVOCATION/INSPIRATIONAL MESSAGE, OR MOMENT OF SILENCE

After the meeting is called to order, the Councilmember scheduled to recite the invocation/inspirational message for that meeting shall have the option to recite one of the invocations/inspirational messages previously approved by City Council for such purpose for the Council's benefit may choose to observe a moment of silence for personal reflection, or may recite another message that complies with the restrictions contained herein. One Councilmember shall be scheduled for each meeting on a rotating basis in alphabetical order by last name for all meetings occurring during that, and then repeated accordingly. City Council hereby approves the following invocations/inspirational messages:

1. We pray/ask that tonight laws are rightly administered and enacted. We pray/ask tonight for guidance for our President, for all of our elected officials at the national level; for our State and County officials; and for this Council. May decisions be for the good of the people they serve. May Council always encourage due respect and virtue in life, and as we live out our daily existence in this community. May the Council execute laws and make decisions with justice and mercy, and seek to help all people live in freedom. May we always seek to preserve peace, to promote national happiness; and to continue to bring the blessings of liberty and quality for all people. Amen.
2. We come here tonight to celebrate the beauty of this City; the beauty of the weather that we have; and the beauty of the people who live here. We celebrate the fact that we have a government that listens to its people, in which we have a voice, in which we can speak and make suggestions. We celebrate tonight a government in which we can elect our officials and are heard. Amen.
3. Let us pray. Lord God, we are mindful of your promise to remain with us always. We are mindful that you work through your people, through those who open their lives to you. Lord, we pray this day, for that openness, for your will to be done in us, and through us. We seek Lord your special blessing upon this gathering, this meeting. May your spirit abound, and may our hearts always give you praise by what we do, and by what we say. Guide us and lead us, even as you call us, to guide and to lead. This is a prayer we ask, we ask it with trust, and with hope. For we pray as your faithful people always and forever. Amen.

Additional invocations/inspirational messages may be utilized provided that the tone, tenor and content of the invocation or inspirational message does not advance or disparage any specific religion. The invocation or inspirational message must be non-sectarian with elements of the American civil

religion and must not be used to proselytize or advance any particular faith, belief, sect, creed or religion or to disparage any particular faith, belief, sect, creed or religion. The invocation or inspirational message shall not refer to any particular religious holiday, significant religious date, holy day or religious event and shall not contain any direct quote from any sectarian book, doctrine or material.

E. ROLL CALL; QUORUM

After a brief invocation or meditation, and the Pledge of Allegiance, a roll of the members shall be called and the names of members present and the members absent shall be entered in the Council minutes. Five Members of the Council shall constitute a quorum to do business.

F. ORGANIZATIONAL MEETING OF COUNCIL

Following each general election, the first regularly scheduled meeting of the Cape Coral City Council shall commence as an organizational meeting. During the organizational meeting, matters pertaining to the organization of the City Council or the method or manner of how it conducts its business shall be considered. After the organizational matters have been considered, the City Council may conduct other city business with the majority consent of the City Council.

G. ORDER OF BUSINESS

After the roll call, the first order of business shall be a vote on the adoption of the agenda for the meeting. Matters not listed on the agenda may be added to the agenda by a majority vote of all members of the Council prior to the adoption of the agenda for the meeting and not at any other time during the meeting. The presiding officer may take matters out of their order on the agenda for the convenience of the public, unless overruled by a majority vote of Council members present, but not less than four (4). Any matter of a non-controversial nature may be placed on the consent agenda, which may immediately precede other matters on the agenda for the meeting. The matters on the consent agenda may be acted upon by a single motion by the Council without debate. A member of the Council or the Mayor may remove any matter from the consent agenda by requesting removal prior to the voting thereon.

H. MOTION AND RESOLUTION

No motion or resolution shall be debated or voted on unless it has been seconded. The presiding officer may require a motion or resolution to be read in full unless the reading is dispensed with by unanimous consent of the Council. After a motion has been made, it is in the possession of the Council and, unless withdrawn before it is voted upon, or before adjournment that day, it shall be entered in the minutes, together with the name of the member offering it. No member may make two motions at the same time.

I. ORDER AND DIVISION OF A QUESTION

A division of any question, which contains several points, may be made. A motion to strike and insert shall not be divisible. Except in the case of a privileged question or as otherwise provided by these rules, questions shall be put in the order in which they are moved. When filling blanks, or on any

other matter not otherwise provided for herein, a motion that puts the question farthest away from enactment shall be considered first.

J. THE PREVIOUS QUESTION

A motion calling for the previous question must be seconded. If a motion for the previous question is ordered by the vote of the Council, it shall have the effect of cutting off all debate and bringing the Council to a vote on the question. When the previous question is decided in the negative, the main question remains under debate until disposed of by the vote or in some other manner.

K. MOTION TO BE GERMANE

No motion or proposition on a subject, different from that under consideration, shall be admitted under the guise of its being an amendment.

L. MOTION FOR RECONSIDERATION

When a question has been decided, either in the affirmative or the negative, it shall be in order for any member who voted with the prevailing side to move its reconsideration, provided that such a motion is made either on the same day or on or before the next regular scheduled Council meeting.

M. PRECEDENCE OF MOTIONS

When a question is under debate, no motion shall be received except the following, the first five of which shall be decided without debate:

- (1) To adjourn
- (2) To recess
- (3) To table or postpone indefinitely
- (4) To commit or refer
- (5) For the previous question
- (6) To Continue or postpone to a day certain
- (7) To amend

The motions shall have precedence in the order listed.

N. MOTION TO ADJOURN

A motion to adjourn shall always be in order except during roll call. When a motion to adjourn is made, it shall be in order for the presiding officer before putting the question to permit any member to state reasons which would seem to render adjournment improper at that time. But debate thereon shall not be had.

O. DEBATE AND DECORUM

Every Councilmember, before speaking, shall wait to be recognized by the presiding officer. When two or more members wish to speak at the same time, the presiding officer shall designate the member to speak first. No member shall speak more than once until every other member wishing to speak on

the pending question has had an opportunity to do so. No member shall walk out of the meeting while a roll call is being taken. After roll call, any member wishing to leave the dais shall advise the presiding officer of his or her desire to do so prior to departing. No more than three (3) members shall leave the dais at any one time so as to maintain a quorum.

P. COUNCIL COMMITTEES

The Council may, from time to time, refer matters to a committee composed of members of the City Council to study an issue or matter, and report its findings and or recommendation to the City Council.

Q. PUBLIC COMMENT OPPORTUNITIES

- (1) Citizens are given several opportunities to be heard concerning matters scheduled on the Council Agenda, and on any other matters of interest or concern to them. In order to promote an orderly system of holding a public meeting, to give every person an opportunity to be heard, and to ensure that individuals are not embarrassed or harassed as a result of the exercise of their right of free speech, the following rules and guidelines are established:
 - (a) When recognized by the presiding officer, a speaker shall address the City Council from the designated speaker's lectern, and shall state his or her name and whom, if anyone, he or she represents. An address shall only be required if necessary to comply with a federal, state, or local law.
 - (b) When the City Council has placed a limit on the time a speaker may speak, such time limitation shall be announced by the Mayor. When the designated time limit has been reached by a speaker, the Mayor shall inform the speaker accordingly, and the speaker's remarks shall be terminated. A speaker may not yield any part of the speaker's time to any other person nor may any person yield his or her time to a speaker. Except during quasi-judicial proceedings, no speaker may be heard more than once, unless permitted to do so by a majority vote of the City Council.
 - (c) Speakers shall address their comments to the City Council as a whole, rather than to individual Councilmembers, City Staff, or to members of the audience. In order to avoid redundant comments, persons having the same or similar viewpoints on a subject are encouraged to appoint one representative speaker to comment on their behalf.
 - (d) Proper decorum shall be maintained at all times. Only persons who have been recognized by the presiding officer shall address the City Council or make audible remarks during a meeting. Unauthorized remarks, stamping of feet, whistling, or similar demonstrations shall not be permitted during any meeting of the City Council. Furthermore, during any meeting of the City Council, no person shall:
 - (i) Interrupt the Council's proceedings or the comments of any person recognized by the Mayor or any City Councilmember in any manner;

- (ii) Make personal or profane remarks or gestures;
 - (iii) Behave in a disorderly manner;
 - (iv) Display any banner, placard, or sign (except as part of a presentation to the City Council by a person recognized by the Mayor or a Councilmember.) Any banner, placard, or sign displayed as part of a presentation shall not bear a message that is personal, obscene, or profane;
 - (v) Distribute any handouts or materials to members of the audience; or
 - (vi) Refuse to follow the instructions of the Mayor or City Council or to comply with these policies or any other rules governing the Council's proceedings.
- (e) Any person who engages in behavior that is prohibited herein and/or who is boisterous or disruptive in any manner to the conduct of a meeting shall be asked to leave by the presiding officer and may be escorted from the meeting room by the Police Department. Any person so removed from a Council meeting shall be barred from further attendance at that Council meeting unless expressly permitted to return by a majority vote of the City Council.
- (2) The following opportunities for citizen participation are scheduled on each Council Agenda:
- (a) Petitions to Council.

Citizens may submit in writing a specific request to Council to be heard at a Council regular meeting under Petitions to Council. Citizens who submit petitions to Council pursuant to Section B. shall be allowed a maximum of ten (10) minutes per petition, and the speaker shall be limited to the particular subject stated.
 - (b) Public Comment on Consent Agenda. Prior to Council addressing items on the Consent Agenda, citizens may address Council only on items listed on the Consent Agenda. Public comment shall be limited to a maximum of ~~three (3)~~ five (5) minutes per individual, with a maximum of ~~forty-five (45)~~ sixty (60) minutes total, unless time is extended as described in subsection Q(3) below.
 - (c) Citizen's Input Time.
 - (i) Time is set aside for any citizen to address the City Council on matters within Council jurisdiction during Citizens' Input Time. No prior scheduling is necessary.

- (ii) Citizens' Input shall be limited to a maximum of ~~three (3)~~ five (5) minutes per individual, with a maximum of ~~forty-five (45)~~ sixty (60) minutes total, unless time is extended as described in subsection Q(3) below.
- (iii) Items scheduled for Public Hearing or Public Input are not to be addressed by citizens during Citizens' Input, but are to be addressed at the time of the Public Hearing or Public Input.
- (iv) There shall be no discussion on the issues presented during Citizens' Input by City Councilmembers or City Staff during Public Comment. Once Public Comment has been closed, the items may be addressed in the order presented by first the Councilmembers, Mayor, City Manager, and City Attorney. During this time, without objection, the Mayor or Councilmember may recognize any other individual concerning the issue.

(d) Public Hearing/Public Input for Ordinances and Resolutions

At the time an ordinance is scheduled for public hearing, or a resolution is scheduled for public input, citizens have the opportunity to express their opinions concerning the ordinance or resolution being heard pursuant to Section T. and herein. Appropriate time limits may be placed on speakers by the presiding officer or by a majority vote of the City Council.

- (3) The Mayor and Council shall have discretion in implementing certain procedures as follows:
 - (a) The Council, by motion, or the Mayor, with the majority consent of the City Council, may extend time limits for citizen input and/or public comment at regular Council meetings or at COW meetings and also set time limits on the length of time each individual may speak.
 - (b) There shall be no public input on issues scheduled as Discussion items unless a majority of Council approves the recognition of a member of the public for the purpose of providing clarification or asking a relevant question. Any other public input during a Discussion item shall not be heard unless approved by a majority vote of City Council. However, citizens may speak during Citizen's Input on any matter scheduled as a Discussion item.

R. ADVISORY COMMITTEES, BOARDS AND COMMISSIONS

The names, addresses, and background information of all persons to be considered for appointment by City Council to various City Advisory Committees, Boards, or Commissions shall be submitted in writing on a form provided by the City Clerk. Before Council action, the applications may be considered in the Committee of the Whole. Advisory committees, such as Task Forces, are to be composed of eight (8) representatives, one appointed by the Mayor and each Councilmember, unless otherwise decided by Council.

S. ROLL CALL

Roll Call votes at City Council Meetings shall be taken in a rotating alphabetical order; that is, rotating one Council Member's name alphabetically after each Council Meeting.

T. ORDINANCE AND RESOLUTION ADOPTION PROCEDURE

Ordinances and resolutions may be prepared and brought before City Council as initiated by the City Manager or City Attorney, or by the request of the Mayor or a City Councilmember.

- (1) When an ordinance or resolution is proposed by the Mayor or a Councilmember, the Mayor or Councilmember shall present the subject matter of the ordinance or resolution to City Council prior to proceeding with drafting the proposed ordinance in order for Council to decide if the concept is one that it would like to see developed. At least one (1) member of Council must concur with the initiating member in order for the initiating Councilmember or Mayor to advance the ordinance or resolution to staff and ultimately to Council. Although not required, the Mayor or Councilmember who initiates an ordinance or resolution may sponsor that ordinance or resolution.
- (2) Ordinances or resolutions initiated by either the City Manager or City Attorney do not need to be brought before Council for conceptual review. Ordinances and resolutions initiated by the City Manager or City Attorney may include, but are not limited to:
 - (a) Ordinances or resolutions required to be prepared upon application by members of the public, including but not limited to applications by property owners for land use and zoning amendments, vacations of plats, appeals, or planned development projects shall be prepared and brought before the City Council without any prior approval of the Council; and
 - (b) Ordinances or resolutions required by the City of Cape Coral Code of Ordinances, Land Use and Development Regulations, City Charter, or State Statutes shall be prepared to comply with the required regulation or legislation and brought before the City Council without any prior approval of the Council.
- (3) All ordinances and resolutions shall be reviewed and approved by the City Attorney or an Assistant City Attorney for legal sufficiency or form or both prior to the ordinance or resolution being brought before City Council.
- (4) At first reading of a proposed ordinance, the City Manager or City Attorney shall explain the proposed ordinance and answer questions of Councilmembers. The City Council shall set the date(s) of the public hearing(s) on the ordinance. At first reading, the City Council may amend a proposed ordinance; however, if an amendment encompasses substantive changes not within the subject matter described in the title of the ordinance, the ordinance will then be placed on a City Council Agenda for another first reading.

- (5) The provisions of this subsection shall be adopted to accommodate any requirements of State Statute for particular ordinances or types of ordinances.
- (6) Public Hearings on ordinances shall be conducted as follows:
 - (a) The City Clerk shall read the title of the ordinance into the record.
 - (b) When applicable, City staff shall make a presentation.
 - (c) The Mayor shall, without comment, open the Public Hearing.
 - (d) Any person wishing to speak shall state their name prior to addressing council. Each individual wishing to address council on the ordinance shall have one opportunity to address City Council during the public hearing. Except during quasi-judicial proceedings, no speaker may be heard more than once, unless permitted to do so by a majority vote of the City Council.
 - (e) The Mayor shall close the Public Hearing.
 - (f) There shall be no discussion by City Council on the ordinance until a motion is made and seconded. Once each Councilmember has been given the opportunity to address the motion, the Mayor shall recognize Councilmembers in the order of the additional request to speak. The Mayor shall maintain a list of Councilmembers, as they are recognized, to avoid confusion as to the order of the requests. After all Councilmembers have been given full opportunity to comment on the motion, the Mayor shall have the final opportunity to address the motion prior to calling the roll.
- (7) At the time a resolution is presented to City Council for adoption, there shall be public input time allowing citizens to provide input on the proposed resolution. Citizens may provide public input concerning any resolution as follows:
 - (a) When required by law, or when requested by the Mayor or a Councilmember, public input shall be scheduled and held at the time the resolution is considered by council. The procedure for such public input shall be the same as that identified for Public Hearings in Section T.(6) above;
 - (b) If the resolution is scheduled on the Consent Agenda, citizens may provide public input during Public Comment on the Consent Agenda; or
 - (c) If the resolution is scheduled on the agenda anywhere other than the Consent Agenda, and public input is not scheduled for when the resolution is being considered by Council, citizens may provide public input during the regularly scheduled Citizen's Input time.

U. ROBERTS RULES OF ORDER

Matters not expressly covered by these rules shall be governed by the current edition of Robert's Rules, newly revised, as the parliamentary procedure for the City Council of the City of Cape Coral. A copy of said Robert's Rules shall be kept on file in the Office of the City Clerk of the City of Cape Coral.

V. SUSPENSION OR AMENDMENT OF THE RULES

The concurrence of a majority of the members elect shall be required to amend or suspend any of the Permanent Rules of the City Council of Cape Coral.

W. COUNCILMEMBER ABSENCES

Pursuant to Section 4.11 of the Charter, any member who has three consecutive, unexcused absences from regular meetings will be removed from office. Absences are presumed excused, and are unexcused only by a motion to hold the absence unexcused and a majority vote in favor of that motion. Such motion and vote must occur on the next regularly scheduled Council meeting after the date absent.