

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 13, 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 ERBRICK

3. PLEDGE OF ALLEGIANCE

A. CHASE WILLIAMS - CHRISTA MCAULIFFE ELEMENTARY
SCHOOL

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. NONE

7. APPROVAL OF MINUTES

A. Regular Meeting - January 23, 2017

8. BUSINESS

A. PUBLIC COMMENT - CONSENT AGENDA

A maximum of 60 minutes is set for input of citizens on matters concerning the Consent Agenda; 3 minutes per individual.

B. CONSENT AGENDA

- (1) Resolution 22-17 Approve Agreement CON-PW16-94-GM for Professional Design Services for Streetscape Improvements SE 47th Terrace in which the intended firm, CPH, Inc., was ranked #1, by the Selection Advisory Committee and the ranking approved by Council on December 12, 2016 via Resolution 207-16 which allowed the City Manager to enter into negotiation; and authorize the City Manager or designee to execute this agreement for \$578,099 with a 10% city controlled contingency of \$57,810 for a total project cost of \$635,909; Department: Public Works; Estimated Dollar Value: \$635,909; (CRA Fund/W&S Fund)
- (2) Resolution 23-17 Approve the Selection Advisory Committee (SAC) ranking of the Request for Proposal (RFP) RFP-PW17-24/GM to engage a firm to provide Construction Manager at Risk (CMAR) Services for the Streetscape Improvements SE 47th Terrace and authorize the City Manager or Designee to enter into negotiation with the number one ranked firm, Chris-Tel Company of Southwest Florida, Inc.; Department: Public Works; Dollar Value: N/A; (Fund: N/A)
- (3) Resolution 30-17 Award ITB-UT17-04/KR South Wellfield Drive Panel Design and Fabrication to Commerce Controls, (FLA), LLC, for work required for the design and fabrication of twenty-six (26) panels used to control raw water wells associated with the Southwest Reverse Osmosis Water Treatment Plant, as the lowest responsive, responsible bidder, in the amount of \$285,008 with a 7.5% City controlled contingency of \$21,376 for a total of \$306,384 and authorize the City Manager or designee to execute the contract; Department: Utilities; Dollar Value: \$306,384; (Water and Sewer Fund)
- (4) Resolution 31-17 Award ITB-PW17-22-GM Del Prado Bridge Coatings to CL Coatings, LLC of Lakeland, Florida, for the recoating of five (5) bridges on Del Prado Boulevard, as the lowest responsive, responsible bidder, in the amount of \$59,950 with a 10% city controlled contingency of \$5,995 for a total of \$65,945, and authorize the City Manager or Designee to execute the contract; Department: Public Works; Dollar Value: \$65,945; (General Fund)
- (5) Resolution 33-17 Renewal of Mutual Aid Agreement (MAA) between the Lee County Sheriff's Office (LCSO) and the City of Cape Coral Police Department (CCPD) for Use of Aviation Section Resources and authorizing the City Manager and Chief of Police to execute the Agreement; Department: Police Department; Dollar Value: N/A; (Fund: N/A)

- (6) Resolution 34-17 Approval of Contract for Purchase of Lots 3 and 4, Block 2898, Unit 41, Cape Coral Subdivision, 1523 NW 8th Terrace, to provide a site for a Canal Pump Station facility for the purchase price of \$13,000 plus closing costs not to exceed \$1,200; Department: Financial Services / Real Estate; Dollar Value: \$14,200; (Water and Sewer Fund)
- (7) ADDENDUM: Resolution 35-17 Approval of Interlocal Agreement Between the City of Cape Coral and the Florida Governmental Utility Authority for Use of an Irrigation Water Interconnect; Department: Utilities; Dollar Value: \$4,000,000; (Water and Sewer Fund)

C. CITIZENS INPUT TIME

A maximum of 60 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) Planning & Zoning Commission - 2 Member vacancies and 2 Alternate vacancies
- (2) Youth Council - 14 Vacancies

9. ORDINANCES/RESOLUTIONS

A. Public Hearings

- (1) NONE

B. Introductions

- (1) Ordinance 1-17 Case #LU16-0008 Set Public Hearing date for March 6, 2017

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the Future Land Use Map from Pine Island Road District (PIRD) to Multi-Family Residential (MF) land use for property located at 409-411 Hancock Bridge Parkway.

P&Z Recommendation: At the February 1, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted (7-0) to recommend approval of Ordinance 1-17.

City Management Recommendation: City Management recommended approval of the requested

amendment.

- (2) ADDENDUM: Ordinance 13-17 Set Public Hearing Date for March 6, 2017

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance approving Master Equipment Lease No. TSM04511 between the Cape Coral Charter School Authority and DDI Capital for the lease of Lenovo N22 Chromebooks.

10. UNFINISHED BUSINESS

- A. Water Quality
- B. Legislative Issues - Update
- C. ADDENDUM: Discussion of City Auditor Position

11. NEW BUSINESS

- A. NONE

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 Committee of the Whole Meeting/Joint City Council and Cape Coral Charter School Governing Board is Scheduled for Monday, February 27, 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: 7.A.

Meeting Date: 2/13/2017

Item Type: APPROVAL OF MINUTES

**AGENDA REQUEST
FORM**
CITY OF CAPE CORAL



TITLE:

Regular Meeting - January 23, 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:

LEGAL REVIEW:

EXHIBITS:

Regular Meeting - January 23, 2017

PREPARED BY:

Kimberly
Bruns Division- Managerial Department- City Clerk's
Department

SOURCE OF ADDITIONAL INFORMATION:

Kimberly Bruns
Assistant City Clerk
1-239-242-3243

ATTACHMENTS:

Description

Type

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

January 23, 2017

Council Chambers

4:30 p.m.

Meeting called to order by Mayor Sawicki at 4:30 p.m.

Moment of Silence – Councilmember Carioscia

Pledge of Allegiance – Frank “Tres” Cornelison, III - Diplomat Elementary

Roll Call: Mayor Sawicki, Council Members Burch, Carioscia, Cosden, Erbrick, Leon, Stout, and Williams were present.

CHANGES TO AGENDA/ADOPTION OF AGENDA

Mayor Sawicki requested City Auditor Discussion Item 10(C) be moved immediately after Citizen's Input.

Councilmember Burch moved, seconded by Councilmember Cosden to adopt the agenda, as amended.

Council polled as follows: Carioscia, Cosden, Erbrick, Leon, Sawicki, Stout, Williams, and Burch voted “aye.” Eight “ayes.” Motion carried 8-0.

RECOGNITIONS/ACHIEVEMENTS

SERVICE AWARDS

5 Years
Lisa Depatie/HR

10 Years
Steven Hernden/Fire

APPROVAL OF MINUTES

Regular Meeting – January 9, 2017

Councilmember Burch moved, seconded by Councilmember Stout to approve the minutes for the January 9, 2017 regular meeting as presented. Voice Poll: All “ayes.” Motion carried.

BUSINESS

PUBLIC COMMENT - CONSENT AGENDA

Tony Adinolfi discussed Consent Agenda #2; he would like the Bimini Basin Project to be completed in harmony with the existing community that is the City Center with existing homes and a body of water. He expressed concerns that have been raised and would like to know where things stand in reference to these community concerns such as noise.

Dan Sheppard discussed Consent Agenda #2; he requested the job description and the HR skills that the person would be hired for.

CONSENT AGENDA

Councilmember Burch pulled Consent Item B2 and B4, Councilmember Williams also pulled B3 and B4.

- 1) Resolution 7-17 Award ITB-UT17-02/KR Southwest Reverse Osmosis Water Treatment Plant Wellfield Communication and Controls Upgrade to Commerce Controls, (FLA), LLC. to furnish, deliver and install all materials, equipment, labor and incidentals required to upgrade the communication and controls for thirty three (33) remote raw water production wells associated with the Southwest Reverse Osmosis WTP as outlined in the bid documents, as the lowest responsive, responsible bidder, in the amount of \$691,224 with a 7.5% City controlled contingency of \$51,842 for a total of \$743,066 and authorize the City Manager or designee to execute the contract; Department: Utilities; Dollar Value: \$743,066; (Water and Sewer Fund)
- 5) Resolution 18-17 Utilities Agreement - On Site and Off Site Improvements for Water, Wastewater and Irrigation Facilities, Sandoval Phase IV

Councilmember Stout moved, seconded by Councilmember Burch to approve items 8(B)(1) and (5), as presented.

Council polled as follows: Carioscia, Cosden, Erbrick, Leon, Sawicki, Stout, Williams, and Burch voted "aye." Eight "ayes." Motion carried 8-0.

City Manager Szerlag introduced Kevin Crowder, Economic Director of RMA.

Mr. Crowder answered questions based on item B(2). He reviewed his background throughout the State of Florida.

- 2) Resolution 10-17 Award Proposal RFP-DCD16-73/GM for Bimini Basin Redevelopment Project Management, to Redevelopment Management Associates, LLC for a not to exceed contract amount of \$120,000 plus any City required additional services up to 15% (\$18,000) of the contract, and authorize the City Manager or Designee to execute the contract and any amendments; Department: Department of Community Development (DCD); Dollar Value: \$138,000; (General Fund)

Councilmember Burch mentioned his support of the Bimini Basin Project. His fears included the discussion from the residents' as to quality of life and its importance in relation to the project. Many of the calls he has received are about traffic; he stated that residents are in favor of the project but have concerns to be addressed.

Mayor Sawicki addressed the importance of the marketing campaign.

Councilmember Erbrick inquired with the City Manager as to whether or not we have a Memorandum of Understanding from major property owners.

City Manager Szerlag responded that he had discussions with staff and a few of the property owners three or four months ago. He stated they spoke about the possibility of this project coming to fruition, hiring a project manager, and the hope that the consultant would put together a good business model so that it would have a better return on investment. There was no letter of understanding from anyone but there are property owners who have expressed an interest in moving forward.

Councilmember Erbrick expressed her reservations about spending this money without any Memos of Understanding.

City Manager Szerlag inquired if RMA would have as their first task to reach out to the property owners for support.

Mr. Crowder responded in the affirmative and stated they would balance the community needs and the quality of life with the need for return on investment.

Councilmember Carioscia stated his support of the RMA to market it to the owners of the property.

Councilmember Leon inquired as to the other price submitted from the other submission and wondered why a Parks and Recreation staff member was not on the panel.

City Manager Szerlag responded that there was no particular reason that a Parks staff member was not included.

Assistant City Manager Ilcyszyn stated the other submittal did not have a price in their packet. He discussed the response from RMA vs. the other submittal.

Councilmember Burch moved, seconded by Councilmember Stout to approve item 8(B)(2) as presented.

Council polled as follows: Carioscia, Cosden, Leon, Sawicki, Stout, Williams, and Burch voted "aye." Erbrick voted "nay." Seven "ayes." One "nay." Motion carried 7-1.

- 3) Resolution 12-17 Award ITB-PD17-19/CH for the purchase of ammunition for the Police Department to Florida Bullet, Inc. (Bid Items 1, 2, 4, 5, 6, and 7); Dana Safety Supply, Inc.(Bid items 8, 9, and 11); GT Distributors, Inc. (Bid item 3), at the unit prices bid not to exceed budgetary limits, and authorize the City Manager, or designee, to sign the purchase orders; Department: Police Department; Dollar Value \$99,120; (General Fund)

Councilmember Williams discussed the spending on ammunition and questioned using outdated ammunition for training.

Chief of Police Newlan responded that the higher cost only comes around every 3 years, and they could not use outdated ammunition for training.

Councilmember Williams moved, seconded by Councilmember Leon to approve item 8(B)(3) as presented.

Discussion held in reference to mandatory training with instructors at Lee County area facilities and higher costs based on ranges.

Council polled as follows: Carioscia, Cosden, Erbrick, Leon, Sawicki, Stout, Williams, and Burch voted "aye." Eight "ayes." Motion carried 8-0.

- 4) Resolution 17-17 Approval of Contract for Purchase of Lots 36, 37 and 38, Block 573, Unit 12, Cape Coral Subdivision, 3607 Del Prado Boulevard South, for future access to Master Pump Station 200 for maintenance and repairs, for a purchase price of \$229,500 plus closing costs not to exceed \$500; Department: Financial Services / Real Estate; Dollar Value: \$230,000; (Water and Sewer Fund)

Councilmember Burch inquired in reference to the age of the appraisal. Property Broker Andrews stated the appraisal was from December 2016.

Councilmember Williams inquired if a barter was attempted. Ms. Andrews responded in the affirmative; an attempt was made but was unsuccessful.

Councilmember Williams inquired as to the need for access. Utilities Director Pearson discussed the need for the largest pump station in the entire city; explaining that 32 pump stations feed into this one station which is half of the waste water flow.

Discussion held in reference to upgrading the station.

Councilmember Williams moved, seconded by Councilmember Leon to approve item 8(B)(4) as presented.

Council polled as follows: Carioscia, Cosden, Erbrick, Leon, Sawicki, Stout, Williams, and Burch voted "aye." Eight "ayes." Motion carried 8-0.

CITIZENS INPUT TIME

Carl Veaux appeared today on several environmental concerns. He read an email he was in possession of in reference to making the Old Golf Course property into a park. He reminded Council that there were two initiatives to buy green lands: Amendment One passed with 73% and the 20/20 was 84% of the vote. Save our Recreation petition with thousands of signatures will be supplied in the future. Doctors and dentists in town were given an opportunity to buy into the golf course. If there are two burrowing owls on a nest during nesting season, it should be considered a rearing stance for the owls. Right now we have to prove their eggs and chicks; that is difficult and would like it changed. He was not in favor of a 7-Eleven in the Country Club/Veterans area. If the burrowing owl is going to be our symbol, it will need to be on our ballot.

Dan Sheppard discussed the Bimini Basin project not having agreements with property owners. He heard that the City owns over 1,000 residential lots and 70 homes in Cape Coral; that would be lots of tax money we are without. Why are we not selling now? Buy low and sell high. He would like his community infrastructure completed. He has heard that the City will be sued over the Matlacha annex. Are we going to spend money on this investment that was not in the City? It appears we are in the investment, real estate, and land flipping business. Medians south of Chiquita need to be addressed.

Councilmember Cosden requested the City Manager respond to the ownership of how many parcels we own. City Manager Szerlag requested that Property Broker Andrews respond.

Property Broker Andrews stated that the City does not own 70 homes. She stated we have about 1,500 parcels, that include City buildings and parks. She stated she was working with a land plan, currently with the 491 purchase from April, 2012. We are using that for trade sites and working with two large property owners to see if their properties fall in line with our parks, road improvements, and drainage improvements for a trade.

City Manager stated that once a year we can update our map that are allocated for storm sewer projects, water and sewer projects, parks, and advise Council of that number, as well as parcels that we are willing to trade.

Councilmember Williams would like the properties not identified in these projects to be declared as surplus properties such as the smaller lots.

City Manager Szerlag stated we could make this map part of our Master Economic Development Plan as an addendum that will be updated periodically along with the other maps for infrastructure, zoning, and land use.

UNFINISHED BUSINESS

Discussion and selection of finalists for the City Auditor Position

Mayor Sawicki turned the meeting over to W.D. Higginbotham. Mr. Higginbotham gave a summary of the recruitment process.

Mayor Sawicki requested whether Council would like three or five candidates selected.

Councilmember Burch stated he would prefer three; he mentioned J. Bradley Simmons from Palm Coast, which is pre-platted.

Councilmember Leon – three

Councilmember Stout – three

Councilmember Erbrick – three

Councilmember Williams stated he would be happy to rely on the top three picks from the panel.

Mayor Sawicki went over the information on some of the candidates and how the panel eliminated some candidates. She mentioned the panel preferred candidates were Andrea Butola, J. Bradley Simmons, and T. Paul Tomoser. She noted those were her preferences as well.

Councilmember Leon requested a clarification of the process.

Mr. Higginbotham explained that after three candidates are selected tonight, he would work with an agency to complete the background work. This takes up to two weeks. Next, all three candidates can come to Cape Coral. He recommended a Community Meet and Greet the 2nd week of February with staff, public, and Council to include finger food. The next day all three candidates could be interviewed by Council and then by the end of the day the selection of the next City Auditor could be accomplished.

Council was polled and selected three candidates be brought forward.

Councilmember Cosden recommended Simmons, Butola, and Tomoser.

Councilmember Burch recommended Simmons, Butola, and Tomoser.

Councilmember Carioscia recommended Butola, Henry, and Simmons.

Councilmember Williams recommended Butola, Simmons, and Tomoser.

Mayor Sawicki recommended Butola, Simmons, and Tomoser.

Councilmember Stout recommended Butola, Simmons, and Tomoser.

Councilmember Leon recommended Butola Simmons, and Tomoser.

Councilmember Erbrick recommended Henry, Simmons, and Tomoser.

City Clerk van Deutekom tallied the recommendations: Butola - 8; Henry - 2; Simmons - 8, and Tomoser - 6. The top three are Butola, Simmons, and Tomoser.

Councilmember Carioscia moved, seconded by Councilmember Leon to select three candidates for interviews by Council for City Auditor: Andrea R. Butola, J. Bradley Simmons, and T. Paul Tomoser.

Council polled as follows: Carioscia, Cosden, Erbrick, Leon, Sawicki, Stout, Williams, and Burch voted "aye." Eight "ayes." Motion carried 8-0.

PERSONNEL ACTIONS

None.

PETITIONS TO COUNCIL

None.

APPOINTMENTS TO BOARDS/COMMITTEES/COMMISSIONS

Municipal General Employees' Pension Trust Fund Board of Trustees - 1 Vacancy

City Clerk van Deutekom stated there was one vacancy on the board due to a term expiration. The new term will expire 10/31/2020. Two applications were received from Robert Keppler and Frank Perry. The vacancy was advertised in the Breeze on 11/30/2016 and 12/16/2016, on the City's website, and Facebook.

Robert Keppler – present
Frank Perry – present

City Clerk van Deutekom tallied the participants as follows with a 4/4 decision.

Carioscia/Perry; Cosden/Perry; Erbrick/Keppler; Leon/Perry; Sawicki/Keppler; Stout/Perry; Williams/Keppler; Burch/Keppler.

City Clerk van Deutekom stated there were 4 for Keppler and 4 for Perry.

Carioscia/Perry; Cosden/Perry; Erbrick/Keppler; Leon/Perry; Sawicki/Keppler; Stout/Perry; Williams/Keppler; Burch/Perry.

Second round tallied resulted in a 5/3 decision with the majority in favor of Frank Perry.

Councilmember Leon moved, seconded by Councilmember Stout to appoint Frank Perry to the Municipal General Employees' Pension Trust Fund Board of Trustees.

Council polled as follows: Carioscia, Cosden, Erbrick, Leon, Sawicki, Stout, Williams, and Burch voted "aye." Eight "ayes." Motion carried 8-0.

Council recessed at 5:55 p.m. and reconvened at 6:10 p.m.

ORDINANCES/RESOLUTIONS

PUBLIC HEARINGS

Ordinance 4-17 Public Hearing [This item was advanced by Councilmember Cosden]
WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 2, Administration, Article III, Personnel Rules and Regulations, to prohibit discrimination on the basis of sexual orientation, gender identity, and gender expression.

City Clerk van Deutekom read the title of the Ordinance.

Councilmember Cosden explained what this Ordinance would accomplish and explained the memo she sent to Council.

Public Hearing opened.

Arlene Goldberg, LGBT activist, was present to express her support of the approval of this Ordinance.

Bruce Marvin discussed his Charter Review Commission service in 2014-2015 that addressed City Charter Section 10.02 regarding discrimination in City positions. Ordinance 25-15 had 6 Councilmembers' approval to go forth with a referendum which passed with over 65%. He expressed his support of the approval of this Ordinance.

Councilmember Burch arrived to the dais after the recess at 6:16 p.m.

Dr. Abbe Forman discussed the Cape Coral Breeze editorial concerning the current anti-discrimination law and whether discrimination actually exists in Cape Coral. There is no Federal law protecting the LGBT community; there is discrimination in Cape Coral. Who

does a resident turn to if they had a problem since there are no laws? To make progress in this community, she would like the Council to consider the approval of this Ordinance.

Irene Keppler was present to express her support of the approval of this Ordinance and stated that approving this Ordinance will send a helpful message to our youth.

Lee Waller was present to express his support of the approval of this Ordinance.

Jason Beckman was present to express his support of the approval of this Ordinance.

Public Hearing closed.

Councilmember Cosden moved, seconded by Councilmember Carioscia to adopt Ordinance 4-17.

Mayor Sawicki expressed her support for the approval of this Ordinance.

Councilmember Erbrick requested that the City Attorney address the purpose of the Ordinance.

City Attorney Menendez stated that this is being brought forward to our City of Cape Coral internal personnel.

Councilmember Erbrick expressed support for this Ordinance because it is internal, and it marries up with what the Charter Review Commission accomplished.

Councilmember Cosden discussed results of a poll that she took with employees that are part of the LGBT community.

Councilmember Burch stated this is an administrative correction for our employee code.

Councilmember Leon encouraged the public to bring forward any discrimination they should experience.

Councilmember Stout stated she was in favor of this Ordinance.

Council polled as follows: Carioscia, Cosden, Erbrick, Leon, Sawicki, Stout, Williams, and Burch voted "aye." Eight "ayes." Motion carried 8-0.

Ordinance 5-17 (PDP 16-0001)*

Final Public Hearing

*Quasi-Judicial, All Persons Testifying Must be Sworn In

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance approving a Planned Development Project entitled "Circle K", approving rezoning the subject property from Professional Office (P-1) to Pedestrian Commercial (C-1); approving a special exception to allow an Automotive Service Station, Limited use in a Pedestrian Commercial (C-1) zone; granting a deviation for relief from a setback requirement; granting a deviation for relief from the minimum required separation distance for a driveway on a minor arterial street; property is located at 819 SE 26th Street.

Hearing Examiner Recommendation: The Hearing Examiner recommended approval with all staff conditions following a public hearing held on November 1, 2016.

City Management Recommendation: Recommends approval of this project.

City Clerk van Deutekom read the title of the Ordinance.

City Clerk van Deutekom administered the oath.

Planning Team Coordinator Struve presented a power point titled Circle K PDP 16-0001, with the following slides:

- Ordinance 5-17 PDP16-0001 Circle K
- PDP 16-0001: Owner; Authorized Rep; Project; Location; Area
- Map of the site location
- Project Details
- Development Plan
- Building and Fuel Canopy Elevations
- Rezone Request: P-1 to C-1
- Analysis (LUDR, Sections 2.7.7 and 8.7.3)
- Special Exception
- Analysis (LUDR, Sections 2.7.7 and 8.8.5a-d)
- LUDR Deviation
- Analysis (LUDR, Section 4.2.4.K)
- EDS Deviation
- Project Recommendations

Planning Team Coordinator Struve added that four residents spoke against the project at the November 1st meeting. 26 emails and letters were received; 25 of them were opposed, and one was in support.

Public hearing opened.

Neale Montgomery, Esquire, a partner at Pavese Law Firm, appeared on behalf of the applicant. Ms. Montgomery presented a power point presentation titled Circle K Stores, Inc., Veterans Memorial Pkwy & Country Club Blvd., with the following slides:

- Subject Location
- Current State
- Proposal

Mark Sullivan, P.E., a civil engineer with Florida Engineering and Environmental Services, Inc., presented the following slide:

- Site Plan Details

Ryan Plate, Real Estate Manager with Circle K Stores, presented the following slides:

- Traffic Analysis
- Conditions of Approval: Signage; AirVac relocation; Restricted Deliveries; RedBox; Propane; Lighting
- Light Trespass and Night View
- Aerial Night Rendering
- About Circle K Stores Inc.
- Store Front Rendering
- Store Interior
- Project Recommendation; Correspondence
- Future Land Use Classification Map

Mr. Plate offered for consideration by Council that Circle K can donate a chain link or stalling measure to stop walking traffic from the Circle K and the baseball field on at least 3 sides.

Jeff Maddy discussed his opposition to the Ordinance based on current and future traffic problems.

Robert Ferry discussed his opposition to the Ordinance based on traffic and liability and security of the church property. He acknowledged Circle K's offer to add fencing.

Laurie House Wilcox questioned Council in reference to their knowledge of traffic problems. She is concerned about values of her home and the decrease in safety. This is an inconvenience to the residents.

Debra Parenteau discussed her opposition to the Ordinance based on it being zoned residential in the past, then the change to business. She was also concerned with the reduction of property values and traffic. She discussed the use of dynamite in the area when they built Veteran's Boulevard and the damage that occurred to her home as a result.

Bill Kerth mentioned his opposition to the Ordinance based on traffic concerns.

Robert Carlson discussed his opposition to the Ordinance based on noise, traffic, and the decrease of property values.

Frederick Dickens discussed his opposition to the Ordinance based on traffic concerns.

David Lawrence discussed his opposition to the Ordinance based on statements already given this evening and future traffic concerns.

Caron Cosden discussed her opposition to the Ordinance. She was in favor of the offer by Circle K to mitigate some concerns by putting a fence on the Church property. She requested that Council make the fence a condition if they are going to approve the Ordinance.

Resident (Maria) discussed her opposition to the Ordinance based on research when purchasing her property as a part of a residential neighborhood and traffic concerns.

Cheryl Musselman discussed her opposition to the Ordinance based on traffic concerns.

Dick Jones discussed his opposition to the Ordinance based on traffic concerns and property value depreciation.

Kathy Gable discussed her opposition to the Ordinance based on safety of children at the baseball field and traffic concerns.

Mayor Sawicki confirmed that all the speakers this evening on this topic were sworn in.

Doris Ferry discussed her opposition to the Ordinance based on traffic concerns.

Ed Minazzi discussed his opposition to the Ordinance.

Public Hearing closed.

Councilmember Stout moved, seconded by Councilmember Carioscia to adopt Ordinance 5-17.

Councilmember Carioscia inquired how much revenue this gas station would make for the City. He also questioned if there were any plans for the island or lane changes for the vehicles exiting east to go northbound.

Finance Director Bateman responded that revenues for the City of Cape Coral would be from gasoline tax and real estate taxes.

Traffic Engineer Corbett explained that a full access median opening would remain at this time at Country Club and SE 26th with no changes planned. He stated there would be a dedicated right turn lane from Country Club and an extension of the northbound left turn lane from Country Club on to SE 26th.

Councilmember Leon would like a dedicated left hand turn lane in the future and closing the turn at the islands. The City should monitor traffic improvements as needed. He stated that he would be in favor with staff recommendations and the offer to the church from Circle K to build the fence.

Councilmember Stout discussed the residents' opposition and looking at the vote for the City as a whole. She stated that she would be in favor of the fence for the church.

Councilmember Williams expressed appreciation to the speakers this evening. He inquired about a berm removal. Planning Team Coordinator Struve responded that the review was completed with City Staff and County staff in regards to storm water issues, in the reshaping of that berm and it included a third agency, the SFWMD, to make sure the existing will not be lost or diminished.

Councilmember Williams explained why he could not support this Ordinance, noting that we did not need to fill up the City with low paying jobs.

Councilmember Burch discussed the rezoning from P-1 to C-1. He stated he cannot support this Ordinance.

Councilmember Cosden discussed her opposition to this Ordinance based on the traffic concerns. She would like a sidewalk between the park and the gas station to alleviate a lot of the concerns by the church and the neighbors.

Mayor Sawicki requested that the DCD Director explain the purpose of the Hearing Examiner.

Director Cautero discussed the purpose of the Hearing Examiner. Council selected a Hearing Examiner based on a recommendation from the Zucker Report. It allows for more cases to be heard and takes the emotion out of the public hearing process. The Hearing Examiner reviews the written record to make sure the criteria and standards are met.

Discussion held in reference to the acceptable use of the property in question and the purpose of the Hearing Examiner.

City Clerk van Deutekom requested the motion be clarified.

Councilmember Stout amended her motion, seconded by Councilmember Carioscia to adopt Ordinance 5-17, to include City Staff recommendations, everything agreed to by staff and by the Hearing Examiner.

City Attorney Menendez questioned Mr. Struve that all of staff's recommendations have already been incorporated into the PDP development order before you. Planning Team Coordinator Struve responded in the affirmative.

City Manager Szerlag requested that Transportation Engineer Corbett confirm that after hearing testimony this evening, he still held the same position.

Traffic Engineer Corbett stated there was capacity on Country Club to facilitate all the movements proposed by this development. The dedicated right turn lane in conjunction with the right in only supported the approval for the deviation to the engineering design standards for driveway spacing. The circulation appears to be adequate including the east to northbound left turn from 26th on to Country Club, and there is adequate capacity as well as adequate sight distance at the intersection. The report provided by the applicant is adequate and provides a good analysis of the project. The sidewalk suggested by Councilmember Cosden would be a great idea to connect the site to the parking lot of the ball field and would reduce the opportunity for pedestrians to be walking within the right of way on SE 26th.

Councilmember Cosden asked if that would be added to the motion.

Discussion held regarding adding the fence.

Councilmember Stout amended her motion, seconded by Councilmember Carioscia to adopt Ordinance 5-17, to include City Staff recommendations, everything agreed to by staff and the hearing examiner AND the addition of the sidewalk from the property to the ballfield.

Council polled as follows: Carioscia, Erbrick, Leon, Sawicki, and Stout voted "aye." Cosden, Williams, and Burch voted "nay." Five "ayes." Three "nays." Motion carried 5-3.

Ordinance 6-17 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance approving a Lease Agreement between the City of Cape Coral and SalusCare, Inc., for the lease of property owned by the City of Cape Coral located at 1105 Cultural Park Boulevard for the continuing operation of a substance abuse treatment facility and counseling center.

City Clerk van Deutekom read the title of the Ordinance.

Business Manager Fernandez discussed the purpose of Ordinance 6-17 including the terms of the renewal. Since the introduction, financial information has been provided as requested by Council and information on the number of patients served at the Cape Coral location. Today, a request was made by a Councilmember as to the continuation of the reports on services and patients served at that location. SalusCare has agreed to continue to provide it on a regular basis. Should Council wish to include that in the lease, you could request that provision be added by the Attorney's Office.

Stacey Cook-Hawk, President/CEO of SalusCare, provided a brief overview of what SalusCare provides and discussed the renovations. She introduced Keri Riedel in the event Council had questions.

Public Hearing opened.

No speakers.

Public Hearing closed.

Councilmember Burch moved, seconded by Councilmember Leon to adopt Ordinance 6-17, as presented.

Councilmember Burch confirmed with Stacey Cook-Hawk that SalusCare can provide annual reports. Ms. Cook-Hawk replied in the affirmative.

Discussion held regarding that care will remain for the benefit of residents in Cape Coral.

Council polled as follows: Carioscia, Cosden, Erbrick, Leon, Sawicki, Stout, Williams, and Burch voted "aye." Eight "ayes." Motion carried 8-0.

Introductions

Ordinance 2-17 Set Public Hearing date for February 6, 2017

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.

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for February 6, 2017 in Council Chambers.

Councilmember Leon left the dais at 8:53 p.m.

Housing Team Coordinator Yearsley discussed the purpose and background as well as providing a summary and recommendation and was available for questions.

Councilmember Burch requested staff define disabled individuals and qualifying entity, find out what those are, and what was the basis for the definition.

Ordinance 3-17 Set Public Hearing date for February 6, 2017

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 were no speakers during public hearing.

City Management Recommendation: Recommends approval of the requested amendment.

City Clerk van Deutekom read the title of the Ordinance.

Councilmember Leon returned to the dais at 8:57 p.m.

The public hearing was scheduled for February 6, 2017 in Council Chambers.

Planning Team Coordinator Daltry stated a presentation would be made at the public hearing and he was available for questions.

Councilmember Burch requested staff to supply in reference to the P&Z recommendation which was 5-1 with abstention to please determine who, what, and why and distribute to Council.

Ordinance 7-17 Set Public Hearing date for February 6, 2017

WHAT THE ORDINANCE ACCOMPLISHES

An ordinance declaring a 1,175 square foot 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.

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for February 6, 2017 in Council Chambers.

Property Broker Andrews stated a presentation would be made at the public hearing and was available for questions.

ADDENDUM: Ordinance 8-17 Set Public Hearing Date for February 6, 2017

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.

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for February 6, 2017 in Council Chambers.

City Manager Szerlag stated this has been in the works for about one year. A presentation would be made at the public hearing.

Councilmember Burch requested the City Manager provide an explanation in reference to the bullet points on the memo stating that the rezoning and PDP caused the City to bear cost.

UNFINISHED BUSINESS

Water Quality

A Water Quality back-up memo was provided to Council with the discharges and flow.

Legislative Issues – Update

City Manager Szerlag thanked Council regarding the Resolution approved at the last meeting to have a carve out on proposed legislation for a County-wide fire district. He expressed thanks to Joe Mazurkiewicz and the actuary, Doug Lozan, from Foster and Foster who presented at the delegation.

Fire Chief Cochran also expressed appreciation to Representative Eagle and Lizbeth Benacquisto.

Councilmember Burch gave thanks to Dane Eagle and Lizbeth Benacquisto for the work they did on this.

Discussion and selection of finalists for the City Auditor position **Item moved to directly after Citizen's Input**

NEW BUSINESS

ADDENDUM: Resolution 19-17 Trust for Public Lands; Department: Parks and Recreation; Dollar Value: \$11,000; (Fund: TBD)

Parks and Recreation Director Pohlman discussed the purpose of this Resolution. Now that the Master Plan has been adopted there is a funding question. Research for the referendum needs to be done if Council chose to do one. He stated Pegeen Hanrahan of Trust for Public Lands was present to answer any questions.

Councilmember Stout inquired if the \$11,000 will give us a good feeling of what the vote will turn out in November. Director Pohlman responded in the affirmative.

Councilmember Leon requested that we just put it on the referendum to see if it passes.

Director Pohlman explained that we might be shooting for the whole .43 millage, and they might find it not palatable for our community.

Councilmember Leon would like this done ourselves and break it up for 10 years in phases.

City Manager Szerlag stated he wanted to know whether or not the Council would like to work with the Trust for Public Lands. This recommendation came from a stakeholder to utilize them.

Councilmember Leon stated if this passes, how many people are polled?

Pegeen Hanrahan, Trust for Public Lands, stated it would be between 300 to 500. She stated we would work with staff to understand all options: should it be a bond or direct property taxes, and what are the priorities of the citizens as identified in the Master Plan. Private dollars are raised to run the campaign.

Councilmember Leon stated he was not in favor of the Resolution. He requested that the voters be polled.

Mayor Sawicki explained why she was in favor of this Resolution.

Councilmember Stout inquired if there would be a campaign to have this passed and what the cost would be.

Ms. Hanrahan stated they work with local leadership and mentioned the counties they worked with successfully. She stated they provided technical support driven by local people. She stated they discouraged local governments from spending public dollars on campaigns; they worked with local businesses to hold fund raisers.

Councilmember Stout stated she was in favor of the Resolution to determine if there is an appetite for any taxation.

Councilmember Carioscia moved, seconded by Councilmember Williams to approve Resolution 19-17.

Council polled as follows: Carioscia, Cosden, Sawicki, Stout, and Williams voted "aye." Erbrick, Leon, and Burch voted "nay." Five "ayes." Three "nays." Motion carried 5-3.

ADDENDUM: Bryant Miller and Olive Invoices - Mayor Pro Tem Williams

Mayor Pro Tem Williams discussed if money is required to bring forth ordinances and how will that be. He questioned if this could be discussed at a future COW meeting. He would like a consensus to take this out of the Council budget under Books, Publications, and Memberships to pay the \$3,000 owed.

Councilmember Williams moved, seconded by Councilmember Stout to pay the \$3,000 to Bryant Miller and Olive invoices from the Council Budget.

City Manager Szerlag addressed the question about putting this on Monday's COW meeting and mentioned the items already on that agenda.

Discussion held regarding putting the \$10,000 for future work completing the request to research and prepare legal opinions on extended bar hours on a future meeting.

Councilmember Leon inquired of the ordinances and motions that are passed how many were initiated by staff and how many by Council.

City Manager Szerlag responded that approximately 98% of all ordinances and resolutions are City management-initiated.

Councilmember Leon inquired with the 2%, how much has Council paid for?

Director Bateman responded that if not in the budget, the department that brought it forward pays for the legal fee.

Mayor Sawicki stated that of the legal fees from FY15/FY16, none were paid by City Council.

Councilmember Leon requested that this be paid by the City Manager's budget. The memo incorrectly stated there is \$10,000 more to be spent on this issue. The timeline was June, 2016. There was a 7-0 vote for approval to move forward with researching and developing an Ordinance to come back to another COW meeting for discussion. In the research, working with the City Attorney in December and the City Manager, he stated he would have a meeting with the Attorneys, then staff, and Council would come together for discussion. There was a memo with five different ways to pay for the extended hours. He stated an Ordinance needs to be written up after a phone call to Mr. Roe for confirmation. At that point there could be a meeting of the Committee of the Whole. He stated tonight if there is a majority of Council, we could move forward with bringing back the Ordinance.

Councilmember Burch stated the Extended Bar Hours has been voted down two times. He was opposed to the 4:00 a.m. topic and paying the bills.

Discussion held in reference to Legal Services in the budget and what it encumbers.

Mayor Sawicki requested the tracking of Legal Services/accountability of outside services. Where are the checks and balances and who budgets for outside counsel? She questioned at what point do we bring back looking at an alternate revenue source as a policy decision.

City Manager Szerlag explained the protocol for paying Legal Services that are not currently in the budget. It was a Council-initiated bill, so it was forwarded to Council. Do two head nods allow for funds to be expended? This may be better to readdress at a later date. The current topic may be better for future discussion, too. He stated he spoke to Chris Roe on Friday, and \$10,000 was a suitable estimate that should more than cover future costs.

Councilmember Erbrick discussed the need to pay the bill. If every time Council wants to do something it falls on Council budget, a budget amendment needs to be done and add an item for the City Attorney.

Council polled as follows: Carioscia, Cosden, Erbrick, Stout, Williams, and Burch voted "aye." Leon and Sawicki voted "nay." Six "ayes." Two "nays." Motion carried 6-2.

REPORTS OF THE MAYOR AND COUNCIL MEMBERS

Councilmember Carioscia – Topic: No Report.

Councilmember Cosden – Topic: Live Chat Internet Town Hall Meeting on Tuesday, January 31, 2017 from 5:00 p.m. to 6:30 p.m.

Councilmember Erbrick – Topics: Cape Coral Police Department held a recognition ceremony to cover Acts of Valor and recognized individuals that had recently retired and the Clerk's Office can do Pet Licenses now.

Councilmember Leon – Topic: Washington, D.C. visit - attended the inauguration with around 100 students from High Schools and Colleges.

Councilmember Stout – Topics: Attended both CCIM Real Estate Outlook Conference and the MPO last Friday.

Councilmember Williams – Topics: Attended the CCCIA Awards Ceremony; the delegation presentation along with the City Manager and the Fire Chief and made the Fire District Presentation and attended the Cape Coral Police Department recognition ceremony.

Councilmember Burch – Topic: No Report.

Mayor Sawicki – Topics: Edison Festival of Lights Grand Parade, Saturday, February 18th with vehicles furnished for the Council; Tami Holliday, Regional Director for U.S. Senator Bill Nelson will hold a meeting with area residents on Tuesday, January 31st from 10:30 a.m. and 1:30 p.m. at the Southwest Florida Military Museum; U.S. Conference of Mayors last week; COPS Grant commended Shannon Northorp; and Mayor's Night Out at the Chester Street Resource Center on Tuesday night from 5:00 p.m. to 7:00 p.m.

REPORTS OF THE CITY ATTORNEY AND CITY MANAGER

City Attorney – Topic: No Report.

City Manager – Topic: No Report.

TIME AND PLACE OF FUTURE MEETINGS

A Committee of the Whole meeting was scheduled for Monday, January 30, 2017 at 4:30 p.m. in Council Chambers.

MOTION TO ADJOURN

There being no further business, the meeting adjourned at 9:56 p.m.

Submitted by,

Rebecca van Deutekom, MMC
City Clerk

Item Number: B.(1)
Meeting Date: 2/13/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 22-17 Approve Agreement CON-PW16-94-GM for Professional Design Services for Streetscape Improvements SE 47th Terrace in which the intended firm, CPH, Inc., was ranked #1, by the Selection Advisory Committee and the ranking approved by Council on December 12, 2016 via Resolution 207-16 which allowed the City Manager to enter into negotiation; and authorize the City Manager or designee to execute this agreement for \$578,099 with a 10% city controlled contingency of \$57,810 for a total project cost of \$635,909; Department: Public Works; Estimated Dollar Value: \$635,909; (CRA Fund/W&S 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 C: INVEST IN COMMUNITY INFRASTRUCTURE INCLUDING UTILITIES EXPANSION IMPROVEMENTS TO ENHANCE THE CITY'S ABILITY TO MEET THE NEEDS OF ITS CURRENT AND FUTURE RESIDENTS AND BUSINESSES

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. On October 5, 2016 the City issued a Request for Proposals RFP-PW16-94/GM for experienced and qualified firms for Professional Design Services for Streetscape Improvements SE 47th Terrace in Cape Coral.
2. On October 21, 2016, four (4) firms responded to the Request for Proposal. The four (4) firms in alphabetical order were CPH, Inc. of Fort Myers, Florida, David Douglas Associates, Inc. of Fort Myers, Florida, Q. Grady Minor and Associates, PA of Fort Myers, Florida, and T.Y. Lin International of Fort Myers, Florida.
3. Proposals were evaluated based on the City of Cape Coral, Code of Ordinance Article VII: Purchase and Sale of Real and Personal Property Section 2-144 (h)(3)(d) Consultant's Competitive Negotiation Act.
4. On November 29, 2016, the Selection Advisory Committee (SAC) interviewed the four (4) firms recommended by the evaluation committee and ranked CPH, Inc. as number one.

5. On December 12, 2016, Council approved the SAC ranking on Resolution 207-16. Upon City Council approval of the ranking, staff began negotiations with CPH, Inc.
6. If approved, the contract is for \$578,099.05 with a 10% city controlled contingency of \$57,809.91 for a total project cost of \$635,908.96.
7. The Project Manager is requesting a city controlled contingency: The expenditure of contingency, if any, will be subject to approval of specific change orders by City's Project Manager, if justified, upon identified needs with an appropriate scope and cost to address specific needs.
8. Funding Information: CRA Fund and Water & Sewer funding the Utilities work associated with this project.

LEGAL REVIEW:

Contract was reviewed by Legal

EXHIBITS:

Recommendation Memo
Resolution 22-17

PREPARED BY:

Wanda Division- Procurement Department- Finance
Roop

SOURCE OF ADDITIONAL INFORMATION:

Paul Clinghan, Public Works Director

ATTACHMENTS:

Description	Type
□ Recommendation Memo	Backup Material
□ Resolution 22-17	Resolution

MEMORANDUM

CITY OF CAPE CORAL
PUBLIC WORKS DEPARTMENT

TO: John Szerlag, City Manager

FROM: Paul Clinghan, Public Works Director *PRC*
Victoria Bateman, Financial Services Director *VB*
Wanda Roop, Procurement Manager *WR*
Stephanie Smith, Design and Construction Manager *SRS*

DATE: February 7, 2017

SUBJECT: Streetscape Improvements S.E. 47th Terrace

Background

In October 2016 the City issued a Request for Proposals RFP-PW16-94/GM for experienced and qualified firms for Professional Design Services for Streetscape Improvements S.E. 47th Terrace in Cape Coral. The City received four proposals which were interviewed by the Selection Advisory Committee (SAC). The SAC recommended CPH, Inc to City Council. In December 2016, City Council approved the SAC ranking and staff began negotiations with CPH, Inc.

Recommendation

Through negotiations, staff developed a scope of services and CPH offered a contract for \$578,099 to perform the services. Public Works requests a 10% City controlled contingency for \$57,810 for a total project cost of \$635,909.

Fund Availability

Business Unit 236013: CRA Streetscape \$463,260 plus a City controlled contingency of \$46,326 for a total of \$509,586 and Business Unit 4050163: Utilities \$114,839 plus a City controlled contingency of \$11,484 for a total of \$126,323 and a total project of \$635,909.

VB/WR/PC/SS:sk

RESOLUTION 22 - 17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING AGREEMENT CON PW16-94/GM FOR PROFESSIONAL DESIGN SERVICES FOR SE 47TH TERRACE STREETSCAPE IMPROVEMENTS BETWEEN THE CITY OF CAPE CORAL AND CPH, INC.; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING FOR APPROVAL OF A CONTINGENCY AMOUNT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on October 5, 2016, the City issued Request for Proposal RFP-PW16-94/GM for Professional Design Services for SE 47th Terrace Streetscape Improvements; and

WHEREAS, the City received four (4) proposals on October 21, 2016; and

WHEREAS, the evaluation team evaluated the proposals based on the criteria set forth in the City of Cape Coral Code of Ordinances, Section 2-144(h)(4), and recommended that all four firms be forwarded to the Selection Advisory Committee (SAC) for presentations; and

WHEREAS, on November 29, 2016, the SAC received presentations and identified the third ranked firm as Q. Grady Minor and Associates, but determined that further discussion was required to complete the ranking of the top two firms; and

WHEREAS, on December 1, 2016, the SAC reconvened, and after conducting a second interview with the top two firms, ranked the firms as follows: CPH, Inc., ranked #1; David Douglas Associates, Inc., ranked #2; Q. Grady Minor and Associates, ranked #3; and

WHEREAS, based on the SAC ranking, which was approved by City Council on December 12, 2016, staff began negotiations with CPH, Inc.; and

WHEREAS, based on the negotiations, the City Manager recommends the approval of Agreement CON PW16-94-GM between the City of Cape Coral and CPH, Inc., in the amount of \$578,099, subject to a City-controlled contingency amount not to exceed ten (10) percent of the total amount of the contract.

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

Section 1. The City Council hereby approves Agreement CON PW16-94/GM between the City of Cape Coral and CPH, Inc., for Professional Design Services for SE 47th Terrace Streetscape Improvements in the amount of \$578,099, subject to a City-controlled contingency amount not to exceed five (5) percent of the total amount of the contract, and authorizes the City Manager or his designee to execute Agreement CON PW16-94/GM. A copy of the Agreement is attached hereto as Exhibit 1.

Section 2. The City Council hereby authorizes the City Manager or the City Manager's designee to enter into change orders for work required other than as contemplated in the contract documents with an appropriate scope and cost to address those needs, subject to payment of a City-controlled contingency amount not to exceed ten (10) percent of the total amount of the contract.

Section 3. Effective Date. This resolution shall take effect immediately upon 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 _____
BURCH _____
CARIOSCLA _____
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
res/Approve Contract-CPH Inc

CITY OF CAPE CORAL

Agreement

Professional Services

PROFESSIONAL DESIGN SERVICES FOR STREETSCAPE IMPROVMENTS – SE 47TH TERRACE

CON-PW16-94-GM

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PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2017, by and between the City of Cape Coral, Florida, a municipal corporation of the State of Florida, hereinafter referred to as the "City" and CPH, Inc., a Florida incorporated company, hereinafter referred to as "Consultant."

WITNESSETH:

WHEREAS, the City is a municipality providing to its citizens a comprehensive range of municipal services including general government, public safety, community development, public works, planning, utilities, and parks and recreation; and

WHEREAS, the City desires to contract with the Consultant to provide Professional Design Services for Streetscape Improvements – 47th Terrace. The Consultant shall include all work necessary for the design and assistance with bidding of the project per the scope of professional services; and

WHEREAS, the Consultant hereby certifies that it has been granted and possesses valid, current licenses to do business in the State of Florida, Lee County, Florida and the City of Cape Coral, issued by the respective agencies responsible for regulating and licensing the professional services to be provided and performed by the Consultant pursuant to this Agreement; and

WHEREAS, Consultant has reviewed the professional services required pursuant to this Agreement and is qualified, willing and able to provide and perform all such services in accordance with the provisions, conditions and terms hereinafter set forth; and

WHEREAS, the selection and engagement of the Consultant has been made by the City in accordance with the provisions of the Consultant's Competitive Negotiation Act, Section 287.055, Florida Statutes, and in accordance with the provisions of all City procurement standards.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Consultant, intending to be legally bound, covenant and agree as follows:

ARTICLE 1
RECITALS

The recitals set forth above are true and correct and are incorporated herein by reference.

ARTICLE 2
DEFINITIONS

- 2.1 City: The term "City shall mean the City of Cape Coral
- 2.2 Consultant: The term "Consultant" shall mean CPH, Inc., a Florida incorporated company.
- 2.3 Contract Documents: The term "Contract Documents" shall mean this Agreement, the City's Request for Proposals for the Project ("RFP"), the Consultant's responses and submissions to the RFP, and all drawings and specifications prepared and/or adopted by Consultant and its subconsultants.
- 2.4 Work: The term "Work" shall mean everything expressly or implicitly required to be furnished or done for the design of a fully, constructible, operational and functioning Project, including but not limited to, that work described in Exhibit "A" Scope of Services attached hereto.
- 2.5 Construction: The term "Construction" shall mean everything expressly or implicitly required to construct a fully operational and functioning Project.
- 2.6 Project: The term "Project" shall mean the Professional Design Services for Streetscape Improvements SE 47th Terrace ("Project") situated in the Southern part of the City on SE 47th Terrace from Coronado Parkway to Del Prado and slightly to the west of Coronado Parkway and slightly north and south of SE 47th Terrace along cross streets.

ARTICLE 3
SCOPE OF BASIC PROFESSIONAL
SERVICES

Consultant hereby agrees to provide and perform the professional services required and necessary to complete the services and Work as set forth in Exhibit "A," entitled Scope of Services as indicated in said exhibit which is attached hereto and made a part of this Agreement ("Professional Services"). Consultant shall be responsible for providing and performing all services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks and work set forth in the Scope of

Services attached hereto as Exhibit "A."

ARTICLE 4 CONTRACT MODIFICATIONS

The City reserves the right to make any contract modifications it so desires, including but not limited to the deletion or removal of specific tasks or activities from the scope of the Work to be performed hereunder. All contract modifications shall be performed in accordance with the terms and conditions of this Agreement. No extra Work shall be performed unless ordered in writing by the City prior to the installation of such Work and upon the terms agreed to in advance by the City.

ARTICLE 5 ADDITIONAL PROFESSIONAL SERVICES

The City may, without invalidating this Agreement, require that Consultant perform professional services ("Additional Professional Services") in addition to those identified as Professional Services in this Agreement. If the Consultant believes a professional service to be beyond those included in the Professional Services, Consultant shall notify the City in writing, and obtain the City's written authorization to proceed with such service as an Additional Professional Service for such service to be considered an Additional Professional Service. These Additional Professional Services shall be provided by the Consultant if directed and authorized in advance, in writing, by the City and if Consultant is reasonably qualified to provide the services. Additional Professional Services shall be performed under and governed by the terms and provisions of this Agreement. The City shall pay Consultant for all Additional Professional Services directed and authorized in writing and in advance by the City, except that the City shall not be obligated to pay for any such Additional Professional Services or any other services which result from or are caused by Consultant's breach of its obligations under this Agreement.

Furthermore, and notwithstanding the foregoing and the City's right to require performance of Additional Professional Services under this Agreement, the City may desire to enter into subsequent agreement(s) with Consultant for Consultant to provide further construction bidding services and inspection services. In such event, the City and Consultant will negotiate and endeavor to enter into subsequent agreement(s) for the furnishing of such further services.

ARTICLE 6 TIME FOR PERFORMANCE

- 6.1 Following the execution of this Agreement by both parties and after Consultant has complied with the insurance requirements set forth herein, the City shall issue to

Consultant a written notice to proceed. Following the issuance of such a written notice to proceed, Consultant shall commence Work within 14 calendar days and shall carry on all services and work in a timely and diligent manner to completion within 7 months, except for project/construction/engineering administration services, which shall be completed as required in Exhibit C.

- 6.2 Should Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of Consultant, or its sub consultants and/or subcontractors and not due to their fault or neglect, Consultant shall notify the City, in writing, within five (5) calendar days after the commencement of such delay stating the cause(s) thereof and requesting an extension of Consultant's time of performance. Upon receipt of Consultant's request for an extension of time, the City shall grant the extension if the City, in its sole discretion, determines that the delay(s) encountered by Consultant or its sub consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.
- 6.3 Consultant shall be required as a condition of this Agreement to prepare and submit to the City, Consultant's Work schedule. The Consultant's Work schedule shall set forth in an understandable fashion the schedule for all of the various phases and/or tasks required to perform and complete all of the services set forth or described in Exhibit "C - Milestones." The Consultant's Work schedule of planned and actual Work progress shall be updated and submitted by Consultant to the City no later than the tenth day of each month, commencing with the issuance of the notice to proceed.
- 6.4 Consultant's services shall be performed as expeditiously as is consistent with professional skill and care in the orderly progress of the Project. Consultant represents to the City that it shall deliver its services in accordance with the Schedule of Milestones established for the Project which is attached hereto as Exhibit "C" and shall appropriately adjust the delivery of its services if necessary and approved by the City, as the Project proceeds. Consultant acknowledges that time is of the essence with respect to the delivery of its services hereunder and that the time limits set forth in the City's schedule shall not, except for a written determination by the City that reasonable cause exists for the schedule to be exceeded by Consultant.
- 6.5 NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY CONSULTANT SHALL NOT BE ENTITLED TO RECOVER ANY MONETARY DAMAGES IT MAY SUSTAIN AS A RESULT OF ANY DELAY CAUSED BY THE CITY, ANY SEPARATE DESIGN PROFESSIONAL EMPLOYED BY THE CITY, CONSULTANT OR ANY OTHER CAUSES WHATSOEVER. CONSULTANT FURTHER AGREES THAT IT SHALL MAKE NO CLAIM FOR COMPENSATION FOR SUCH DELAYS AND WILL ACCEPT IN FULL SATISFACTION FOR SUCH DELAYS ANY EXTENSIONS OF TIME WHICH ARE GRANTED TO IT BY THE CITY.

ARTICLE 7
QUALITY CONTROL

- 7 Consultant shall develop and employ a comprehensive quality control program designed to protect the City from patent or latent defects in any Work related to the Project or in Construction Work performed at the Project by third parties. At a minimum, Consultant will follow guidelines listed in the Consultant's most recent quality control and/or practices manual, and any subsequent revisions or updates, provided such guidelines do not conflict with any of the Contract Documents.

ARTICLE 8
CONSULTANT'S PERSONNEL

- 8.1 Licensing. Consultant agrees to obtain and maintain throughout the period this Agreement is in effect, all such licenses as are required to do business in the State of Florida, Lee County, Florida and the City of Cape Coral, including but not limited to, licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by Consultant pursuant to this Agreement. Consultant is required to notify City within 5 calendar days of any pending, or newly initiated, disciplinary or other actions imposed on Consultant or its sub consultants by any regulatory or licensing authority.
- 8.2 Qualified Personnel. Consultant agrees when the services to be provided and performed related to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all Basic Professional Services and Additional Professional Services to be provided pursuant to this Agreement.
- 8.3 Consultant's Project Manager. Consultant agrees to employ and designate in writing, a qualified, and if required by law, a licensed professional to serve as the Consultant's Project Manager. Consultant's Project Manager shall be authorized and responsible to act on behalf of Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement. Consultant's Project Manager shall have full authority to bind and obligate Consultant on any matters arising under this Agreement unless substitute arrangements have been furnished and agreed to with the City in writing. Consultant agrees that the Project Manager shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by Consultant throughout the entire period this Agreement is in effect. During the term of the Project, Consultant's Project Manager shall neither have nor undertake any other assignment or engagement on behalf of Consultant other than serving as Project Manager in connection with the Project, if such assignment interferes with the abilities of Project Manager to complete the work on this assignment or unless otherwise

agreed in advance by the City. The person selected to serve as Consultant's Project Manager shall be subject to the prior approval and acceptance of the City.

- 8.4 Removal of Personnel. Consultant agrees, within ten (10) calendar days of receipt of a written request from the City, to promptly remove and replace the Consultant's Project Manager or any other personnel employed or retained by Consultant or any personnel of a sub consultant or subcontractor engaged by Consultant to provide and/or perform services and or Work pursuant to the requirements of this Agreement, who the City shall request in writing to be removed, which request may be made by the City with or without cause.

ARTICLE 9

SUBCONSULTANTS AND SUBCONTRACTORS

- 9.1 Definition. A subconsultant or subcontractor is a person or organization who has a direct contract with Consultant to perform any part of the Work associated with the Project. Nothing contained in this Agreement shall create any type of contractual relationship between the City and any subcontractor and/or subconsultant.
- 9.2 Consultant's Selection of Subcontractors and Subconsultants. Consultant, within 14 calendar days after execution of this Agreement, shall furnish, in writing to the City, the names of persons or entities proposed to be subconsultants and/or subcontractors on the Project (referred to in this paragraph as "subconsultants"), along with copies of proposals and contracts between Consultant and such subconsultant(s). The City shall promptly reply to Consultant in writing whether or not the City, after due investigation, has reasonable objections to any such proposed person or entity. Failure of the City to reply within fourteen (14) days after its receipt of such information shall constitute notice of no reasonable objection. All sub consultants shall be duly licensed pursuant to any applicable requirements and regulations of the State of Florida. Consultant shall use its best efforts to propose and retain subconsultants appropriately qualified, locally based (Cape Coral - Fort Myers-Lee County, Florida) and/or minority owned and operated Consultants with experience in the Lee County area. Consultant shall not, without reasonable cause and after obtaining the approval of the City (which approval shall not be unreasonably withheld) change a sub consultant or its role which has been previously selected and approved by the City. Consultant shall be responsible to the City for the damages to the extent caused by the negligent acts or omissions of, or services provided by or through its sub consultants. The City's review, approval or rejection of proposed sub consultants or their respective proposals or contracts will not relieve Consultant of its responsibilities under this Agreement, or for the actions or omissions of such sub consultants.
- 9.3 Sub contractual Relations. By an appropriate written agreement, Consultant shall require each subcontractor or subconsultant, to the extent of the Work to be performed by the subcontractor or subconsultant, to be bound to Consultant by the

terms of this Agreement and to assume toward Consultant all obligations and responsibilities which Consultant, by this Agreement, assumes towards the City. Consultant shall make available to each proposed subcontractor or subconsultant prior to the execution of any such agreement, a copy of this Agreement.

- 9.4 Responsibilities for Acts and Omissions. Consultant shall be responsible to the City for the acts and omissions of its employees and agents and its subcontractors and/or subconsultants, their agents and employees, and all other persons performing any Work or supplying any service under a contract with Consultant.

ARTICLE 10 COOPERATION WITH PROJECT PARTICIPANTS

- 10.1 Consultant shall cooperate with the City, and others working on the Project in order to avoid interference, inconvenience or damage. To aid in avoiding conflicts, Consultant, without additional charge or compensation, shall make all reasonable modifications in its services or the scheduling of its services as may be directed by the City. Consultant agrees that it has become familiar with the Project, and accepts responsibility for all necessary coordination of its services with the work of other parties working on the Project or any adjacent projects affected thereby.
- 10.2 Consultant will assume primary coordination of its Work with the work of others. As part of said service, Consultant shall be primarily responsible for the coordination and compilation of all design documents pertaining to the Project.
- 10.3 In the event of a dispute between Consultant and others working on the Project, Consultant and the others working on the project shall present their dispute to the City, who shall make a decision with respect to the matter in dispute. Consultant agrees to proceed with the furnishing of its services in accordance with any decision which is rendered by the City.

ARTICLE 11 COMPENSATION

11. Contract Price. The City shall pay to the Consultant in full and complete satisfaction for all services, materials and equipment furnished by the Consultant under the terms of this Agreement the not to exceed sum of Five Hundred Seventy-Eight Thousand Ninety-Nine Dollars and Five Cents (\$578,099.05) (Exhibit B – Compensation/Schedule of Values). Any additional work required by the City will be negotiated and will utilize the negotiated hourly rates (Exhibit D – Schedule of Rates) contained in this agreement.

Payment of Contract Price.

- 11.1 Basic Compensation. Subject to the Not to Exceed Price and the satisfaction of the conditions precedent set forth in paragraph 11.3 below, and in exchange for the proper performance of the Basic Professional Services, Consultant shall be compensated on an hourly basis in conformity with the Schedule of Rates (Exhibit D) wherein such rates are fixed for the duration of this contract. Exhibit D shall set forth the name of the identity of each individual performing services on the Project for which compensation shall be paid to Consultant by the City together with the corresponding billable rate for each individual. The City shall not be liable to Consultant for payment of services performed by any individual not identified on Exhibit D absent written approval by the City prior to the individual performing services. The billable rate for each individual who is an employee of the Consultant is based upon actual hourly rate of compensation paid by Consultant to the employee as set forth in Schedule D times the agreed upon multiplier. Notwithstanding the foregoing or any provision of Schedule D, the Consultant shall not be entitled to recover any mark-up on services furnished by Consultant's subcontractors or other third parties provided.
- 11.2 Schedule of Values. The Consultant billing shall be based on the Compensation/Schedule of Values (Exhibit B) establishing a separate estimated amount for each Task of the Consultant's work. In no event shall the Consultant be entitled to receive compensation in excess of the amount ascribed to any particular task unless otherwise previously approved by the City in writing. The not to exceed amounts set include not only the fees to the Consultant for its services to be performed but also any third party costs associated with a particular Task. Reimbursable expenses incurred by Consultant are defined in Exhibit E.
- 11.3 Applications for Payment. The Consultant shall deliver to the City an Application for Payment reflecting the tasks completed (listed in Exhibit B, Compensation/Schedule of Values) which shall be approved in writing. Provided the Application for Payment is received not later than the last day of the month, the City shall make payment to the Consultant not later than the last day of the following month. With each Application for Payment, the Consultant shall submit such evidence as may be necessary, in the opinion of the City, to demonstrate the work performed during such month and the percentage of completion of each category of the Work. In no event shall the cost of the Work exceed the Contract Price referred to in Article 11 above.
- 11.4 Certification and Release Documentation. In each Application for Payment, the Consultant shall certify that:

There are no known bond claims outstanding at the date of this application, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of this Application for Payment, and that there is no known basis for the filing of any bond claims on account of the Work, and that all work

has been performed in strict conformity with the requirements of the Contract Documents and that the Consultant is unaware of any defective work.

Concurrent with each Application for Payment, the Consultant shall execute and furnish waiver of claims through the effective date of the previous Application for Payment.

- 11.5 Joint Checks and or Direct Payments. The City reserves the right to issue joint checks to the Consultant and its subcontractors and materialmen, or, to make direct payments to the Consultant's subcontractors or materialmen, if, in the City's sole judgment, it is necessary to do so in order to ensure payment to the aforesaid parties. The amounts of said joint or direct checks shall be deducted from the Contract Price.
- 11.6 Final Payment. Provided that the Consultant has fully performed its obligations hereunder, final payment, including retainage amounts, shall be made by the City to the Consultant on or about thirty (30) days following final performance of all Work and the Consultant's submittal of a final Application for Payment therefore and final Affidavit. In this regard, it is further agreed that the final Application for Payment shall not be made until the Consultant has fully and finally completed all tasks, and delivers to the City a complete release of all claims arising or which could arise out of this Agreement. The acceptance of final payment by the Consultant shall constitute a waiver of all claims by the Consultant except those previously made in writing and identified by the Consultant as unsettled at the time of the final Application for Payment.
- 11.7 Payment is Not Acceptance. The payment of any Application for Payment by the City, including the final Application for Payment does not constitute approval of, or acceptance of that portion of the Work to which such payment relates nor shall such payment relieve the Consultant of its obligations nor constitute a waiver of any claim which the City may then have or thereafter discover.
- 11.8 Payments Withheld. The City may decline to pay an application for payment submitted by Consultant, in whole or in part, to the extent reasonably necessary to protect the City if:
- Consultant is not entitled to payment in the amount specified in the application for payment;
 - Consultant is in default of its obligations hereunder;
 - Appropriate backup data and documentation required by the City is not submitted with the application for payment;
 - The application for payment is not otherwise appropriately substantiated;
 - Any known or alleged, willful, wanton or negligent act, error or omission of Consultant which gives rise to a claim by the City or by some other party against the City; or

- Any other reason the City is permitted to withhold payment under any other provision of this Agreement.
- 11.9 Interest. In the event of a bona fide dispute by the City for any sums for which payment has been requested, no interest shall be due on such disputed sums until the dispute is resolved, provided that all undisputed sums shall have been paid in due course.
- 11.10 Compensation for Additional Professional Services. For Additional Professional Services of Consultant directed and authorized in writing and in advance by the City, as described in Article 5, the City shall pay to Consultant a Not to Exceed Amount, as mutually agreed upon in writing by the parties which shall be the sole and exclusive compensation payable to Consultant in connection with the performance of such Additional Professional Services.

ARTICLE 12 INSURANCE

Consultant shall, at all times during the performance of this Agreement, provide and maintain the following types of insurance protecting the interests of the City and Consultant with coverages and limits of liability not less than those set forth below:

- Workers Compensation Insurance. Consultant shall maintain worker's compensation insurance, insuring its liability under the Workers Compensation and Occupational Disease Laws of the State of Florida, with limits of liability not less than the minimum statutory limits imposed by applicable State and Federal laws. The worker's compensation insurance policy must include employer's liability with a minimum limit of \$1,000,000.00 for each accident.
- Comprehensive General Liability Insurance. Consultant shall maintain comprehensive general liability insurance which shall be written on an "occurrence" basis and afford the following coverages:
 - Premises – operation
 - Explosion, collapse and underground property damage (XCU)
 - Products/completed operations
 - Blanket contractual liability
 - Personal injury
 - Advertising injury
 - Premises medical payments
 - Property damage
 - Additional insureds - employees and temporary workers
 - Newly acquired organizations
 - Property damage liability

- Independent contractors
- The commercial general liability insurance to be maintained by Consultant must include products and completed operations, and contractual liability. The City shall be named as an additional, named insured on the comprehensive general liability policy. The limits of liability associated with Consultant's comprehensive general liability policy shall not be less than the following:

\$1,000,000.00	each occurrence
\$2,000,000.00	aggregate

- Notwithstanding anything contained herein to the contrary, the coverages under the comprehensive general liability policy to be furnished by Consultant must be afforded on a policy form no more restrictive than the last edition of the commercial general liability policy filed by the Insurance Services Office.
- Vehicular Liability Insurance. Consultant shall maintain business vehicular liability insurance covering all owned, non-owned, and hired vehicles used in connection with the Work to be provided hereunder with combined minimum limits of \$1,000,000.00 single limit for bodily injury and property damage per occurrence/aggregate.
- Excess Liability Insurance. Consultant shall maintain excess liability insurance in an amount not less than \$5,000,000 combined single limit bodily/property damage, in excess of the general liability insurance described above.
- Professional Liability Insurance. Consultant shall maintain professional liability insurance with a minimum level of liability coverage of not less than \$2,000,000.00 per occurrence/\$2,000,000.00 in aggregate insuring the City against losses arising out of the delivery of professional services by Consultant and its subconsultants. Consultant shall also ensure that each of its subconsultants shall maintain professional liability insurance with minimum limits of liability coverage not less than \$2,000,000.00 per occurrence/\$2,000,000.00 in aggregate insuring the City against losses arising out of the provision of professional services by each in connection with the Project. The deductibles associated with the professional liability insurance policies to be furnished by Consultant and its subconsultants shall not exceed \$100,000.00 per claim. Consultant shall provide to the City certificates reflecting the City as a certificate holder with respect to the professional liability insurance policies maintained by Consultant and subconsultants.
- Property Insurance. It is Consultant's responsibility to carry its own property insurance including insurance on equipment that will not become an integral part of the Project.

- Certificate of Insurance. Prior to performing any services hereunder, Consultant shall file with the City a certificate of insurance in a form acceptable to the City. The certificate of insurance shall reflect the City as an additional named insured on Consultant's comprehensive general liability, excess liability, and business vehicular liability policies. In addition, the City shall be reflected as the certificate holder with respect to Consultant's professional liability and worker's compensation insurance. The certificate of insurance furnished by Consultant shall contain a provision that the coverages afforded under the policy described thereon will not be cancelled until at least thirty (30) days prior written notice has been given to the City. **Also, the Certificate of Insurance shall state in the comment section "RFP-PW16-94-GM Professional Design Services for Streetscape SE 47th Terrace."**
- Ratings of Companies. All companies issuing the policies provided for herein shall be licensed or approved by the Department of Insurance, State of Florida, and shall have a financial rating no lower than II and a policy holder surplus rating no lower than (A) as listed in A.M. Best TK Rating Guide, current edition or interim report. Companies with ratings lower than those specified herein will be acceptable only upon the written consent of the City.
- Primary Coverage. The insurance required hereunder is primary and direct and shall apply to any loss prior to any insurance coverage carried by the City or any other party.
- Extent of Coverages. The insurance coverages referred to above are set forth in full in their respective policy forms. The foregoing descriptions of such policies are not intended to be complete or to limit any provision of the actual policies and should said description be narrower than the coverages afforded under the actual policies of insurance, the provisions of the actual policies of insurance shall govern.
- Waiver of Subrogation. Consultant's insurance policies shall be endorsed to provide that the insurers waive their rights of subrogation against the City and also to provide that the policies afford primary coverage over any other applicable insurance coverage.
- Subconsultant Insurance Requirements. Except as otherwise specified herein, Consultant shall require that all subconsultants and subcontractors performing Work on the Project to maintain the same coverages and policy limits as Consultant is required to furnish hereunder. An insurance provision, including waivers of subrogation, identical to the provisions of Article 12 of this Agreement shall be included by Consultant in each written subcontract or subconsultant agreement issued by it in conjunction with the Project.

ARTICLE 13
INDEMNIFICATION

In consideration of the first One Hundred and No/100 Dollars (\$100.00) to be paid hereunder and to the fullest extent permitted by law, Consultant agrees to indemnify and hold harmless the City and its agents, servants and employees, from and against any and all claims, costs, expenses, damages, or liability (including reasonable attorneys' fees and costs of defense) caused by, attributable to, arising out of, or resulting from Consultant's negligence, recklessness, or intentional wrongful conduct in the performance of professional services under this Agreement and those of its subconsultants, agents and employees. Consultant is not obligated to indemnify the City in any manner whatsoever for the City's own negligence. Consultant's monetary limitation under this indemnity provision shall be limited to the sum of One Million and No/100 Dollars (\$1,000,000.00). The parties agree that the foregoing sum bears a reasonable relationship to this Agreement. This indemnity provision shall be considered a material part of the specifications governing Consultant's performance under this Agreement. This indemnity provision is intended to comply with Florida laws on indemnity and, specifically, to comply with Sections 725.06 and 725.08, Florida Statutes, and is to be interpreted in such a manner as to be enforceable.

ARTICLE 14
DRAFTING FORMATS AND STANDARDS

In performing professional services hereunder, Consultant shall review and incorporate the City's drafting formats and office drafting standards into any drawings and specifications generated in connection with the provisions of this Agreement.

ARTICLE 15
COPYRIGHTS AND LICENSES

All drawings, sepias, electronic media and specifications prepared in connection with the Project shall remain the property of the City and Consultant shall not be entitled to a repeat design fee or any other compensation should the City elect to utilize said drawings, sepias, electronic media and specifications in connection with additional alterations or remodeling or additions to the Project to which said design documents originally pertain. Consultant hereby assigns to the City any and all right, title, and interest it may possess in the design documents and materials produced in connection with this Agreement, including but not limited to, all statutory and common law copyrights it possesses in said documents and materials. The future use of said materials shall be at the sole discretion of the City. The City agrees to hold Consultant harmless from any claims based upon the future use of said materials in connection with any purpose other than the Project or future maintenance or support of the Project.

ARTICLE 16
PERMITS

Consultant will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the City in obtaining all reviews, approvals and permits, with respect to the Consultant's design, the Existing Design, drawings and specifications required by any governmental body having authority over the Project. Consultant will be similarly responsible for preparing and submitting all required specifications and other supportive information necessary to assist the City in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The City shall, at Consultant's request, assist in obtaining required signatures and provide Consultant with all information known to be available to the City so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

ARTICLE 17
CITY'S RESPONSIBILITIES

- 17.1 The City's Representative. The City shall designate a Project Representative who shall be fully acquainted with the Project and shall define the lines of City authority to approve changes in the Project. He or she shall render decisions promptly and furnish information expeditiously.
- 17.2 Lines of Authority. The City shall establish and maintain lines of authority for its personnel and shall provide this definition to the Consultant and all other affected parties.
- 17.3 Existing Design. The City shall provide to Consultant all design documentation in its possession pertaining to the Project.
- 17.4 Funding. The City shall furnish reasonable evidence satisfactory to Consultant that sufficient funds will be available and committed for the cost of the Project.
- 17.5 Project Fault or Defect. If the City becomes aware of any fault or defect in the Project, or in the specifications or drawings for the Project, it shall give prompt written notice thereof to Consultant.

ARTICLE 18
CONSULTANT'S REPRESENTATIONS

In order to induce the City to enter into this Agreement, Consultant makes the following express representations:

- 18.1 Consultant has reviewed and confirmed that the basis and approach taken by the City in its Project planning represents sound programming and provides an adequate basis for the performance of Consultant's services hereunder.
- 18.2 Consultant has familiarized itself with the Scope of Work and the nature and extent of the Work to be performed, local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner affect costs, progress or performance of the work.
- 18.3 Consultant represents that the Work can be performed within the time frames contemplated in the Consultant's Milestones schedule, a copy of which is attached hereto as Exhibit "C."
- 18.4 Consultant has reviewed the Scope of Work and has provided the City with written notice of all conflicts, errors or discrepancies it has discovered in the Scope of Work and the cost to the City of addressing such conflicts, errors or discrepancies.
- 18.5 Consultant has familiarized itself with the nature and the extent of the proposed Project contemplated under the City's program and local field conditions and affirmatively represents that no field conditions are known to exist which would have a cost or scheduling impact on the Project.

ARTICLE 19
ACCURACY, TECHNICAL SUFFICIENCY OF SERVICES
PROVIDED BY CONSULTANT

- 19.1 Notwithstanding anything contained herein to the contrary, it is understood and agreed between the parties that the City is not examining any data, surveys, studies, designs, specifications, calculations, plans, drawings, or any other documents furnished hereunder by Consultant for accuracy and technical sufficiency, and is not under any obligation to inspect the Project. Furthermore, it is understood and agreed between the parties that neither the review, approval, nor acceptance by the City of data, surveys, studies, designs, specifications, calculations, plans, drawings, or any other documents furnished hereunder by Consultant shall in any way relieve Consultant of responsibility for the adequacy, completeness, and accuracy of its work, and in no event shall the City's review, approval, acceptance of or payment for such services be construed to operate as a waiver of any of the City's rights under this Agreement or of any cause of action it may have, arising out of the performance of this Agreement.
- 19.2 Consultant further acknowledges that it, alone, is responsible for the accuracy, completeness, and technical sufficiency of all Work performed under this Agreement, and that the information contained in the City's Request for Proposals and Project descriptions does not relieve, release, or in any way whatsoever diminish the Consultant's ultimate responsibility for the accuracy, completeness, and technical sufficiency of the Project and any work performed hereunder.

- 19.3 Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, adoption and coordination of all data, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments and other services, work and materials performed, provided and/or furnished by Consultant or by any subconsultant retained or engaged by Consultant pursuant to this Agreement. Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services or materials resulting from the negligent act, errors or omissions or any intentional misconduct of Consultant or any subconsultants engaged by Consultant.

ARTICLE 20
TERMINATION OR SUSPENSION OF AGREEMENT

- 20.1 The City reserves the right to terminate this Agreement without cause and without regard to fault or breach upon ten (10) calendar days written notice to Consultant, effective immediately, unless otherwise provided in said notice. In the event of a termination for the City's convenience, the Consultant shall only be due those sums which are due for Work performed as of the date of termination. Upon Consultant's receipt of such payment, the parties shall have no further obligation hereunder. It is understood and agreed that no fee or other compensation or payment shall be due and payable to Consultant for unperformed Work associated with this Agreement.
- 20.2 If the City fails to make payment on conforming or non-disputed invoices when due for Consultant's services and expenses, Consultant may, upon ten (10) calendar days written notice to the City, suspend performance of services under this Agreement. Unless payment in full is received by Consultant within ten (10) calendar days from the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, Consultant shall have no liability to the City for delay or damages caused the City because of such suspension of services. Should the City fail to satisfy the payment due Consultant within sixty (60) calendar days from the date the payment was originally due, Consultant shall be entitled to terminate this Agreement for cause. If Consultant fails to perform the services described herein or fails to respond with responsible promptness to the City, the City, without waiving the City's right to terminate as a result thereof, may suspend performance of the City's obligations under this Agreement (including, but not limited to, the City's obligation to make payment) on ten (10) calendar days written notice to Consultant.
- 20.3 Notwithstanding anything contained herein to the contrary, the City shall be entitled to terminate this Agreement for cause should Consultant fail to perform the services contemplated herein, perform any of its obligations hereunder, or otherwise fail to respond with reasonable promptness to the requests of the City.

In the event of such a termination for cause, the City shall be entitled to recover from Consultant such additional costs as it incurs in procuring performance of Consultant's remaining obligations hereunder. If the City terminates this Agreement hereunder and it is determined, for any reason, that sufficient ground did not exist for the City to terminate this Agreement hereunder, the Consultant as its sole and exclusive remedy shall be entitled to and due only those sums which are due for Work performed as of the date of termination as if the termination were for no fault or breach.

ARTICLE 21 SPECIAL PROVISIONS

- 21.1 Consultant accepts the relationship of trust and confidence established between it and the City by this Agreement.
- 21.2 Consultant warrants that it has not employed or retained any company or person, other than an employee working solely for Consultant, to solicit or secure this Agreement and that it has not paid any person, company, corporation, individual or Consultant, other than a bona fide employee working solely for Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.
- 21.3 Any 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 or subcontract with a public entity, for construction or repair of a public building or public work, may not submit bids or leases of real property to a public entity, may not be awarded or perform any Work 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, for CATEGORY 2 for a period of thirty-six (36) months from the date of being placed on the Convicted Vendors List. Consultant agrees not to use any subconsultants whose names appear on the Convicted Vendors List.
- 21.4 Consultant represents to the City that it is experienced in design and that it will perform its services under this Agreement in a skillful and competent manner.
- 21.5 Consultant represents that it presently has no interest and shall acquire no interest either direct or indirect, which would conflict in any manner with the performance of services required hereunder. Consultant further agrees that no person having any such interest shall be employed or engaged by Consultant for said performance. If Consultant, for itself or on behalf of its subconsultants, is

about to engage in representing another client, which it in good faith believes would result in a conflict of interest with the Work being performed by Consultant or such subconsultant under this Agreement, then it will promptly bring such potential conflict of interest to the City's attention, in writing. The City will advise Consultant in writing, within ten (10) calendar days as to the period of time required by the City to determine if such a conflict of interest exists. If the City determines there is a conflict of interest, Consultant or such subconsultant shall decline the representation upon written notice by the City. If the City determines that there is not such a conflict of interest, then the City shall give its written consent to such representation.

21.6 If Consultant or subconsultant accepts such a representation without obtaining the City's prior written consent, and if the City subsequently determines that there is a conflict of interest between such representation and the Work being performed by Consultant or such subconsultant under this Agreement, then Consultant or such subconsultant agrees to promptly terminate such representation. Consultant shall require each of its subconsultants to comply with the provisions of this section. Should Consultant fail to advise or notify the City as provided herein above, of representation which could, or does, result in a conflict of interest, or should Consultant fail to discontinue such representation, the City may consider such failure a justifiable cause to terminate this Agreement.

21.7 Consultant agrees to maintain the business ethics expected by the City. In that regard, Consultant shall:

21.7.1 During the course of pursuing contracts with owner and while performing contract work in accordance with this agreement, Consultant agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner's best interests. Consultant shall take reasonable actions to prevent any conditions which could result in a conflict with the City's best interests. These obligations shall apply to the activities of Consultant's employees, agents, subconsultants, subcontractor employees, etc. Consultant employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to the City's representatives, employees or their relatives. Consultant's employees, agents, or subcontractors (or their relatives) should not receive any cash payments, commissions, employment, gifts entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from contractors, representatives of contractors, subcontractors, representatives of subcontractors, or material suppliers or

any other individuals, organizations, or businesses receiving funds in connection with the Project. Consultant agrees to notify the City within 48 hours of any instance where the Consultant becomes aware of a failure to comply with these provisions. The email address to report any concerns related to any possible violations is gmannings@capecoral.net. Upon request of the City, Consultant agrees to provide a certified Management Representation Letter executed by selected Consultant representatives in a form agreeable to City stating that they are not aware of any situations violating the business ethics expectations outlines above or any similar potential conflict of interest situations. Consultant agrees to include this clause in all contracts with sub-consultants and suppliers receiving more than \$25,000 in funds in connections with the City's project. Consultant shall permit interviews of employees, reviews and audits of accounting or other records by City representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Consultant's employees, agents, representatives, vendors, sub-consultants, and other third parties paid by Consultant in their relations with the City's current or former employees or employee relatives. This provision survives the expiration of this Agreement. Consultant agrees to implement a program requiring their employees sign acknowledgements that they have read and understand City's business ethics expectations and the related obligation outlined in this contract.

- 21.7.2 Consultant, subconsultants, subcontractors, and other entities connected with this Project shall permit interviews of employees, reviews and audits of accounting or other records by authorized City representative(s) to evaluate compliance with the business ethics expectations stated in this article. Such reviews and audits will encompass all dealings and activities of Consultant's employees, agents, representatives, vendors, subconsultants, subcontractors, and other third parties paid by Consultant in their relations with the City's current or former employees or employee relatives.
- 21.7.3 Consultant, subconsultants, subcontractors and other entities connected with this Project agree to implement a program requiring their key employees in any connection with this Project sign acknowledgments that they have read and understand the City's Business Ethics Expectations and related obligations outlined in this article.
- 21.7.4 Consultant, by execution of this Agreement, represents that it possesses that degree of care, learning, skill, ability and is properly licensed and qualified to perform the Basic Professional Services and any Additional Professional Services (as directed and approved in Article 3 hereof) and that it and its subconsultants and/or subcontractors will undertake to use the degree of skill and care of performance of obligations

under this Agreement, which are utilized by professionals in the same field performing the same or similar services under the same or similar circumstances for similar infrastructure projects. Consultant acknowledges that all professional services provided under this Agreement will meet or exceed the requirements of this Agreement, including without limitation, the standard of care required by this Agreement; that any design documents prepared by Consultant with respect to the Project will meet or exceed the City's Project requirements as specified in this Agreement or otherwise provided by the City to Consultant. Consultant agrees to use the services of competent, qualified personnel, and, when required by law, properly licensed subconsultants and other professionals for the execution of its services. Consultant will use commercially reasonable efforts and skill to endeavor to protect the interests of the City and the City's residents at all times.

ARTICLE 22 CONSULTANT'S RECORDS

- 22.1 Records of the Consultant's personnel, subconsultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.
- 22.2 Consultant shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Consultant shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Consultant on the Project. Consultant shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.
- 22.3 As the City is subject to the public records requirements of Chapter 119, Florida Statutes, the Consultant shall comply with Florida's Public Records Law. Specifically, the Consultant shall:
 - a. Keep and maintain public records required by the City to perform the service.
 - b. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - c. Ensure that public records that are exempt or confidential and from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City.
 - d. Upon completion of the contract, transfer, at no cost, to the City all public

records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-574-0411, cityclk@capecoral.net, City of Cape Coral, 1015 Cultural Park Boulevard, Cape Coral, FL 33990

ARTICLE 23
RIGHT OF AUDIT - EXAMINATION OF RECORDS

Records for all contracts, specifically including but not limited to Not to Exceed subcontracts (i.e. fixed price or stipulated sum contracts, unit price, costs plus or time & material contracts with or without a guaranteed maximum (or not-to-exceed amounts) shall upon seven (7) calendar days written notice from the City shall be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any City representative or any outside representative engaged by the City for the purpose of examining such records. Such records must be complete and made available at Consultant's offices located in Lee County, Florida. The City or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of four (4) years after final payment or longer if required by law. The City's representatives may (without limitation) conduct verifications such as counting employees at the construction site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Consultant's employees, field and agency labor, subcontractors and vendors.

- 23.1 Consultant's "records" as referred to in this Agreement shall include any and all information, materials, and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in

the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets, payroll registers, payroll records; cancelled payroll checks, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating worksheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other Consultant records which may have a bearing on matters of interest to the City in connection with the Consultant's dealings with the City (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any and all of the following:

- 23.1.1 Compliance with contract requirements for deliverables;
 - 23.1.2 Compliance with approved plans and specifications;
 - 23.1.3 Compliance with the City's business ethics expectations;
 - 23.1.4 Compliance with contract provisions regarding the pricing of change orders;
 - 23.1.5 Accuracy of Consultant's representations regarding the pricing of invoices; And
 - 23.1.6 Accuracy of Consultant representations related to claims submitted by Consultant or any of its payees.
- 23.2 Consultant shall require all payees (examples of payees include subconsultants, subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Consultant and payee. Consultant will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this Agreement.
- 23.3 Owner authorized representative(s) shall have reasonable access to Consultant's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with this article.
- 23.4 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges to the City (of any nature) by Consultant and/or

Consultant's subcontractors and/or subconsultants the City shall be entitled to adjustment and reimbursement or recovery in the amount of such overpricing or overcharging. If the amount of the overpricing or overcharging is determined to be in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00), in addition to making adjustments for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Consultant's invoices and/or record shall be made within a reasonable amount of time (not to exceed forty- five (45) calendar days) from presentation of the City's findings to Consultant. This provision shall survive the expiration of this Agreement.

- 23.5 In addition to the normal paperwork documentation Consultant typically furnishes to the City, in order to facilitate efficient use of the City's resources when reviewing and/or auditing Consultant's billings and related reimbursable cost records, Consultant agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

<u>Type of Record</u>	<u>PC Readable File Format</u>
Monthly Job Cost Detail	.pdf and Excel
Detailed Job Cost History to Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail).	.pdf and Excel
Total Job to date Labor Distribution detail (if not already included)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the Project	.pdf and Excel
Weekly Task Reports listing names and hours and tasks of personnel who worked on the Project	.pdf
Weekly Project Manager Reports	.pdf
Detailed subcontract/subconsultant status reports (showing original subcontract value, approved subcontract/subconsultant change orders, subcontractor/subconsultant invoices, payment to subcontractors/subconsultants/etc.)	.pdf and Excel
Copies of executed subcontracts with all subcontractors/subconsultants	.pdf
Copies of all executed change orders issued to subcontractors/subconsultants	.pdf
Copies of all documentation supporting all reimbursable job costs (subcontractor/ subconsultant) payment applications, vendor invoices, internal cost charges, etc.	.pdf

ARTICLE 24
CLAIMS AND DISPUTES

- 24.1 Prior to the filing of any litigation by the City or Consultant against the other (and, except as described below, as a precondition to any such filing), the City and Consultant shall engage in pre-suit non-binding mediation. Such mediation may be requested by either party, at any time, and shall be conducted the same as if such mediation were ordered by a Florida Circuit Court (i.e., in accordance with, and subject to, all of the laws and rules applicable to court-ordered mediation). Such mediation shall be conducted within a reasonable period of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request that the Circuit Court in Lee County, Florida (or the Mediation Coordinator for the Courts of Lee County, Florida) appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not peremptorily. While the request for and the conducting of such a mediation may be a precondition to the filing of a civil action, in the event either party is in jeopardy of losing its right to sue (e.g., the statute of limitations is about to expire), then suit may be filed before a mediation is conducted provided that mediation is requested before, or simultaneously with the filing of such suit, and is conducted before the named defendant in the suit is required to respond to the complaint. If the scheduling of the mediation requires, the plaintiff in the suit shall grant the defendant an appropriate extension of time to respond to the complaint so as to permit the mediation to be conducted before the defendant must so respond. The mediation contemplated hereunder shall be conducted, unless otherwise agreed by the parties, in Lee County, Florida. The parties shall bear the mediator's fee and any filing fees associated with the mediation equally.
- 24.2 The City and Consultant agree that any litigation between them arising out of, resulting from, or relating to this Agreement or the Project shall be venued in a state court of competent jurisdiction in Lee County, Florida.

ARTICLE 25
DAMAGE TO PROPERTY

Consultant shall be responsible for all claims filed for damage to private property owned by third parties as well as all damage to public property relating in any fashion whatsoever to Consultant's performance of Work hereunder. The Consultant will work cooperatively with the City in establishing a damage claim program acceptable to the City for processing and satisfying property damage which arises during the course of the Project.

ARTICLE 26
EQUAL EMPLOYMENT OPPORTUNITY

During the term of the Agreement, Consultant agrees it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age or national origin. Consultant shall comply with all aspects of the Americans with Disabilities Act ("ADA") during the performance of this Agreement.

ARTICLE 27
PROPRIETARY INFORMATION

Except as otherwise provided in this Agreement, Consultant agrees not to divulge, furnish, or make available to any third parties, Consultant or organization, without the City's prior written consent, or unless instant to the proper performance of Consultant's obligations hereunder, or in the course of any judicial or legislative proceeding where such information has been properly subpoenaed, any nonpublic information concerning services to be rendered by Consultant or any of its subconsultants or subcontractors under this Agreement.

ARTICLE 28
COMPLIANCE WITH IMMIGRATION LAWS

The City will not intentionally award contracts to any party who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 A(e) Section 274 A(e) of the Immigration and Nationality Act ("INA"). The City may consider the employment by Consultant of unauthorized aliens to be a violation of Section 274 A(e) of the INA. Such violation by Consultant of the employment provisions contained in Section 274 A(e) of the INA shall be grounds for unilateral termination of this Agreement by the City. Consultant affirmatively represents to the City that it is fully compliant with all applicable immigration laws, including but not limited to, the 1986 Immigration Act and subsequent amendments.

ARTICLE 29
OBSERVANCE OF LAWS, RULES,
REGULATIONS, CODES AND ORDINANCES

Consultant shall observe and at all times fully comply with any and all applicable laws, rules, regulations, codes and ordinances of any federal, state or local government agency or regulatory body which in any manner affect or apply to the Work or

Consultant's performance hereunder. Consultant shall require all of its agents, representatives, employees and subconsultants to observe and comply with the said laws, rules, regulations, codes and ordinances.

ARTICLE 30 PUBLICITY

Publicity and public announcements pertaining to the Project shall be approved by the City in writing prior to release.

ARTICLE 31 MISCELLANEOUS

- 31.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- 31.2 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, signed by the parties against whom the enforcement of such modification, waiver, amendment, discharge, or change is sought.
- 31.3 Nothing contained in this Agreement shall create a contractual relationship or cause of action in favor of a third party against either the City or Consultant.
- 31.4 This Agreement and the Exhibits attached hereto constitute the entire Agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.
- 31.5 This Agreement shall be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- 31.6 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person(s) or entity may require.
- 31.7 In the event of any conflict between the terms of this Agreement and any other Contract Documents including Specifications for the Project, the provisions of this Agreement shall govern and control.
- 31.8 If any provision or any portion of any provision of this Agreement or the

application of any such provision or portion thereof to any person or circumstance shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement, or the application of such provision held invalid, or unenforceable to persons or circumstances other than those to which it has been invalid or unenforceable, shall not be affected thereby.

- 31.9 In the event of any dispute as to the precise meaning of any term contained herein, the principles of construction and interpretations that written instruments be construed against the drafter shall not apply.
- 31.10 Consultant shall not assign, subcontract or transfer any interest in this Agreement without the prior written consent of the City.
- 31.11 The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.
- 31.12 All articles, titles, or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement and shall not affect the meaning or interpretation of this Agreement.
- 31.13 If Consultant is comprised of more than one (1) entity, each such entity shall be jointly and severally liable hereunder. **HOWEVER, PURSUANT TO F.S. 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.**
- 31.14 All notices, demands, or other communications made pursuant to this Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid at the following address:

Notice to Consultant:

CPH, Inc.
2216 Altamont Ave
Ft. Myers, FL 33901

If to the City:

Stephanie Smith, City of Cape Coral
P.O. Box 150027
Cape Coral, FL 33915

With a copy to:

Dolores D. Menendez, Esq.
Attorney for the City of Cape Coral
P.O. Box 150027
Cape Coral, FL 33915

or to such other address or to such other persons as any party may designate to the other for such purpose in the manner herein above set forth.

- 31.15 The parties hereto shall, at any time and from time to time following the execution hereof, execute and deliver all such further instruments and take all such further action as may be reasonably necessary or appropriate in order to carry out more effectively the purposes of this Agreement.
- 31.16 Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and shall not be strictly construed for or against any party.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

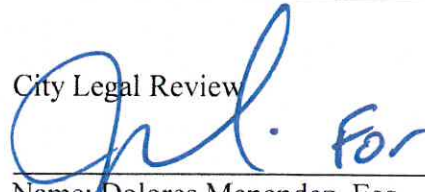
Signed, sealed, and delivered in the
presence of:

By: _____
Name: Rebecca van Deutekom, MMC
Title: City Clerk


City of Cape Coral, Florida

By: _____
Name: John Szerlag
Title: City Manager
Date: _____

City Legal Review


Name: Dolores Menendez, Esq.
Title: City Attorney
Date: 2/6/17

CPH, Inc.

By: 
Printed Name: David A. Gierach
Title: Principal /President
Date: 2/7/17

ATTACHED EXHIBITS

Exhibit "A"	Scope of Services
Exhibit "B"	Compensation/Schedule of Values
Exhibit "C"	Milestones
Exhibit "D"	Schedule of Rates
Exhibit "E"	Reimbursable Expenses
Exhibit "F"	Subconsultant Proposals
Exhibit "G"	Project Site
Exhibit "H"	Man Hours

EXHIBIT A

SCOPE OF SERVICES



2216 Altamont Avenue
Fort Myers, FL 33901
Phone: 239.332.5499
Fax: 239.332.2955

Exhibit A
SCOPE OF SERVICES
FOR
SE 47th Terrace and Club Square
(from west of Coronado Blvd. to east of Del Prado Blvd.)
IN
THE CITY OF CAPE CORAL, FL
February 2, 2017

PROJECT DESCRIPTION

The City of Cape Coral (The City) requests CPH, Inc. (CPH) to perform the design permitting, and construction administration for the SE 47th Terrace, from just west and east of the intersections of Coronado Pkwy and Del Prado Blvd., respectively, and Club Square improvements under the PSA agreement RFQ RFP-PW16-94-GM dated October 5, 2016. A force main extension along 15th Place to Miramar Street east to Del Prado is included. The project area is shown in the enclosed Project Site Exhibit. Through CPH's preliminary review of the corridor, and discussions with CITY staff, CPH is providing the following Scope of Services:

SCOPE OF SERVICES

TASK A – Project Administration

CPH will provide general project management, including, but not limited to preparing project billing, preparing invoice report, and tracking project budget and schedule. CPH will provide project coordination with the CITY and coordinate with design, construction, and maintenance of traffic during construction with the Construction Manager at Risk (CMAR) contractor. Services will include maintaining project directory, schedule management, monthly progress reports during design, and other project management deemed essential by the City and CPH. CPH anticipates the following meetings with the CONTRACTOR/CITY related to the design services: Project kickoff, concept review at the 30%, 60%, 90%, and Final Construction Plans phase; and utility coordination meetings as required to support the design outlined herein. CPH anticipates stakeholder/public coordination meetings as required with attendance by one CPH Senior Project Manager or his/her designee to successfully convey the intent of the design and gain useful feedback to be incorporated into the project. CPH will provide one (1) Powerpoint presentation to be used at the various meetings. Public Outreach is to be led by QCA, with support by CPH. CPH will obtain preconstruction photos prior to the start of construction to document the pre-condition of the corridor. CPH will attend a walk-through of the project with the City and interested citizens to obtain an understanding of the ADA concerns and requirements along the corridor.

CPH will prepare a Conceptual Plan (including two (2) color renderings and a video walk through a sample block) to be used at a Public/Stakeholder Meeting to obtain buy-in and feedback. The renderings and video will be produced after City has approved 60% design plan.

TASK B – Transportation Design and Landscape Architecture Services

CPH will prepare the roadway and streetscape construction plans package. This work effort includes the design needed to provide complete streetscape construction plans and specifications for the

project with sufficient information to allow for permitting, bidding, and constructing the project. The design of the project includes plans for the construction of the roadway and streetscape improvements within the project limits identified above.

CPH will research and prepare a memorandum outlining potential options to aid in "calming" of vehicular traffic along 47th Terrace within the project limits. At a minimum the evaluation will include the following options: narrowing of traffic lanes, vegetated medians, horizontal off-sets (vegetated projections, off-set lanes, etc.), vertical offsets (traffic tables, bumps, etc.), and pavement texture/materials. In addition to industry research, CPH will provide recommendations based on local traffic counts and speeds observed over a 7-day period (tube counts) at four (4) locations along 47th Terrace within the project limits.

CPH will design the roadway improvements in accordance with the CITY, FDOT, MUTCD, and ADA design criteria. The Final Design will review the reconstruction/repair techniques for the roadway, horizontal and vertical alignments revisions, and proper cross-section analysis to ensure proper vehicular and ADA connections to existing grade within the CITY's right-of-way or identified easements. Based on initial review of the roadway and proposed improvements, the vertical profiles of the corridors are anticipated to be lowered to ensure positive drainage from the R/W line is maintained. CPH will design the roadway modifications to enhance the traffic calming measures selected by the City, but at a minimum, will reduce travel lanes to 10-ft wide and reduce the parallel parking spaces to 8-ft wide to allow for larger pedestrian circulation. The roadway improvements include an intersection safety evaluation for the Vincennes intersection to enhance the pedestrian safety. Improvements may include narrowing lanes or eliminating lanes, as determined by the City. The Club Square parking lot will be milled, overlaid and re-striped. Prior to the start of the design, CPH will perform one detailed field review of the site with the CITY and completed survey to evaluate the proposed improvement areas.

CPH will provide Landscape Architecture design services to implement a Streetscape for SE 47th Terrace and Club Square. The Landscape Architects will work with the Transportation Engineers to identify additional street modifications for traffic calming, incorporation of landscape bulb-outs and parking separation islands, and decorative crosswalks. Hardscape elements may include decorative paving patterns for the crosswalks, parking, and/or roadway, landscape planting improvements, information kiosks, and furniture and site/street lighting. Bioswales will be incorporated into the design project within the Club Square Parking lot. Landscape Islands will be incorporated to bring the parking lot up to current code requirements, including sight distance requirements.

Based on the results of the public meeting, CPH will prepare Preliminary Plans (30%) consisting of plan view sheets of the improvements, detailing the proposed streetscape improvements associated with the project. CPH will submit the preliminary plans to the CITY for review, and will make revisions to the plans as requested. The Club Square Improvement Plans will be prepared under separate cover to act as independent project separate from the roadway plans. The 30% Plans for the roadway and Club Square will consist of the following sheets:

- Cover Sheet
- General Notes
- Plan View Sheets
- Typical Cross-Sectional Views (as necessary)

Based on the CITY's review of the Preliminary Plans and coordination with the CMAR, CPH will prepare 60% construction plans on an 11"x17" paper at a reasonable scale to clearly detail the proposed construction required to meet CITY, FDOT, and ADA criteria.

The roadway plan set will consist of the following sheets:

- Cover Sheet
- Summary of Pay Items
- General Notes
- Typical Sections
- Demolition Plans
- Project Layout
- Plan/Profile Sheets
- Intersection Detail Sheets
- Roadway Soil Survey Sheet
- Cross Sections
- Special Details
- Signing and Pavement Marking Plans
- Traffic Control Plans
- Landscape/Irrigation Plans
- Landscape/Irrigation Detail Plans
- Hardscape Plans/Details
- Mechanical, Electrical, Plumbing Plans/Details
- Utility Plans
- Utility Details

The Club Square plan set will consist of the following sheets:

- Cover Sheet
- Summary of Pay Items
- General Notes
- Typical Sections
- Demolition Plans
- Plan Sheets
- Detail Sheets
- Soil Survey Sheet
- Cross Sections
- Signing and Pavement Marking Plans
- Traffic Control Plans
- Landscape/Irrigation Plans
- Landscape/Irrigation Detail Plans
- Hardscape Plans/Details
- Mechanical, Electrical, Plumbing Plans/Details (if needed)

CPH will utilize FDOT Specifications for the roadway construction, incorporating Supplemental Specifications for any revisions, and prepare Technical Specifications for items addressed in the plan and detail sheets, and the current CITY utility specifications and details. CPH will also prepare an Engineer's Estimate of Probable Cost (EEOPC) for the 60% Plans submittal. CPH will submit the 60% Plans, Specifications, and EEOPCC to the CITY for review, and will make necessary revisions as requested.

Based on the CITY's 60% Submittal review, CPH will prepare 90%, and Final Bidding Documents (100%), Specifications, and an updated EEOPCC for submittal to the CITY.

TASK C – Drainage Design and Permitting

CPH will utilize the topographical and as-built information provided by the project SURVEYOR and data from the CITY to prepare a capacity model of the stormwater system along 47th Terrace. The model, generated with the HYDRAFLOW program, will include the layout of the stormwater system and provide pipe sizing calculations accounting for the hydraulic grade line due to altering the system for the other anticipated surface and underground infrastructure changes. No water quality treatment, percolation, basin runoff, attenuation, or ground water modeling is included in this phase. If additional models are required, these will be treated as additional services and the CITY will be provided a proposal for the design.

Upon receipt of the CITY's approval of the 60% plans listed above, CPH will prepare the permit applications and support data for the applicable regulatory agencies, including;

- ❖ South Florida Water Management District (SFWMD) – De Minimis Exemption
- ❖ Florida Department of Environmental Protection (FDEP) – Notification/Application for Constructing a Domestic Wastewater Collection/Transmission System
- ❖ Lee County Health Department (LCHD) - Notice of Intent to Use the General Permit for Construction of Water Main Extensions for PWSs
- ❖ Lee County Department of Transportation (LCDOT) – Limited Development Order

If during the course of the project, any other agencies are identified as required to approve the project, an amendment to this agreement will be prepared. Unless specifically noted in this contract, no Rezoning, Land Use Changes, or Special Use Permits are included in this task. CPH will coordinate the processing of the applications through the regulatory agencies, including attendance a limited number of meetings with the agencies that may be necessary to receive the approval. In order to minimize travel, meetings with multiple agencies will be scheduled, when possible. The CITY will be financially responsible for any application or filing fee required by the agencies.

Any modifications to the plans requested by the Regulatory Agencies pertaining to the infrastructure design in the previously mentioned plans, required to meet code, will be addressed by CPH as part of these services. Any modifications requested that are not code issues, or modifications requested by the CITY will be addressed as additional services and billed at the Standard Hourly Rates enclosed. Any other permits that may arise during the design or review process, and not outlined in this proposal, will be handled as an additional service, and billed in accordance with our Standard Hourly Rates.

Since the site is currently developed, it is assumed that a full stormwater system will not be needed for permitting through SFWMD. It is anticipated that the design will provide treatment of stormwater runoff in available open space areas for the new development, but not any other above or subsurface detention or retention facilities. If this is determined that a full stormwater system design is required by SFWMD, or a different process is required the CITY will be notified, and given an estimate of the cost for design and permitting.

TASK D – Environmental Survey & Permitting

1.1 Basic Services

ENV-1 Preliminary Burrowing Owl Survey

CPH scientists shall conduct a survey of the project area (within the construction limits and 20 feet outside of the construction limits) for the presence of Florida Burrowing Owl Nests. The survey protocol shall follow guidelines established by the Florida Fish and Wildlife Conservation Commission (FFWCC). During the course of the survey CPH scientists shall document the following:

- Burrow location – latitude and longitude
- Burrow Status – Inactive vs Active
- Burrow Photographs
- Number of owls/eggs observed, nest condition
- Nearby structures (distance measured)

CPH scientists shall prepare a memorandum and graphics documenting the survey protocol and findings. The information included in the memorandum shall include, but not be limited to:

- Nest Survey Protocol/Methodology
- Burrows will be identified by number, latitude and longitude, inactive vs active, detailed information on the active status.
- Location of the burrows on a site plan depicting the nest location in relation to construction limits and distance(s) measured.
- Advisement on the permitting requirements and mitigation measures, if burrowing owl nests are found.

ENV – 2 FFWCC Burrowing Owl Permitting

CPH shall apply to the FFWCC online permitting system to request a permit to take a burrowing owl nest(s). CPH shall provide the FFWCC with the following information at a minimum:

- Burrow location
- Statement as to why the burrows may be destroyed
- Provide photographs of the burrows
- Provide site plans with burrows location on the plans and distances measured
- Mitigation statement
- During the permit review process, CPH scientists shall coordinate with FFWCC as required.

Please note Federal Permits are required only if the nest is active (flightless young or eggs). If Federal Permits are required CPH shall provide a scope and fee for additional services.

TASK E – Geotechnical Services

CPH will utilize Arehna Engineering, Inc. (subconsultant) to perform the necessary borings to provide the required soils information to support the design efforts. Please refer to the proposal from Arehna Engineering, Inc. attached to this scope of services.

TASK F –Electrical Services

The following work is included in the basic Electrical Design Services:

Electrical - Provide the following design services for Electrical systems related to Roadway Lighting only:

- Review project power requirements for the Lighting, Signage, and Landscape Lighting within the limits of the project area; and to provide Power stations for events to meet CITY standards.
- Site and available documents review to determine location of power service based on the requirements of the National Electrical Code, and other applicable national standards.
- Select and schedule all feature lighting fixtures in accordance with CITY approved fixtures and accepted standards of IESNA for this project type.
- Specify location of all lighting control systems and devices including switches, photocells, lighting control panels and time clocks.
- Specify circuiting of all power systems including panel and feeder schedules and clearly indicating panel type, voltage and current rating, voltage drop calculations, and AIC rating. Specify circuit wire and conduit sizing.
- Provide power riser or one-line diagram and tabulate load calculations for compliance with the National Electrical Code and all other applicable standards.
- Specify locations of conduit and pull boxes for the ITS Fiber Optic (does not include the fiber optic system or ITS design)

TASK G –Utility Design Services

It is understood that CPH will prepare utility system designs for the replacement of the potable water system as well as design for the installation of a new sanitary force main and reclaimed water/irrigation main along the 47th Terrace corridor as well as extension of the force main outside of the SE 47th Terrace as requested by the Utilities Department and described below. These design services will be performed under the sole direction of the CITY. In the performance of these services, CPH will coordinate its efforts with those of other project team members as required. The CITY shall provide CPH with project-related technical data to which the CITY may have access, including but not limited to site surveys, utility system maps, utility service locations, right-of-way maps, prior design plans for existing utility systems, utility locate information, record drawings, etc. All Utility system designs will be done in accordance with the most current City standards, details and specifications.

CPH will prepare the design of the potable water system to remove and replace the existing AC water main along SE 47th Terrace. Based upon information provided by the City, the water main will connect to the existing 12-inch AC water main in the intersection of Coronado Parkway and SE 47th Terrace and run east for approximately 4,600 LF east to Del Prado Boulevard, where it will connect to an existing 12-inch AC water main along the western R/W line. The design will take into account the need to maintain potable water service to all existing customers along the corridor. The design efforts will need to accommodate both potable water connections as well as fire flow connections for the corridor. Due to the size of the fire flow connections, coordination regarding location, access and configuration will need to be done between the property owners, the fire department and project management staff to ensure that the design of these systems will be both functional and aesthetically comparable to the improvements for the corridor.

CPH will prepare the design of approximately 5,700 LF of new sanitary sewer force main for the corridor in order to provide for future improvements of the City's lift stations in the service area, as outlined in the City's Master plan. Included within this alignment will be a conduit for the City to use for a future fiber optic communication line. The force main will be designed to start at the southeast corner of the intersection of Coronado Parkway and SE 47th Terrace and then run east to SE 15th Avenue, where it will turn south and run down to Miramar Street, where it will turn east and run to the R/W line of Del Prado Boulevard. The sizing and placement of the force main and connection points will be reviewed with the

City utility staff to accommodate the future connections and conveyance capacity needed for the contributing area.

CPH will prepare the design of approximately 4,300 LF of new reclaimed water/irrigation main along the corridor. The reclaimed water/irrigation main will connect to an existing 6-inch PVC stub at the southeast corner of the intersection of Coronado Parkway and SE 47th Terrace and run east to the R/W line of Del Prado Boulevard. Service connections and connection points to the City's existing pipe network will be coordinated with City staff.

CPH will begin performance of the above services upon written notice to proceed from the CITY. The schedule is also subject to timely delivery of information by the CITY and is exclusive of CITY and local review of interim products. If the CITY requests that work under this Agreement be stopped, the schedule is subject to renegotiation when written authorization to continue is received.

Due to anticipated changes in the existing potable water system for both main extensions and service relocations, permitting through LCHD is required. If it is determined that another process through LCHD is required, the CITY will be notified, and given an estimate of the cost for permitting.

As the project will entail changes to the existing sanitary sewer system, forcemain, connections to the City's lift station, and reuse water main extensions, permitting through FDEP is required. If it is determined that another process through FDEP is required, the CITY will be notified, and given an estimate of the cost for permitting.

The CONSULTANT shall prepare the Traffic Control Plans (TCP) consisting of TCP General Notes and the appropriate FDOT Standards, 600 series indices, for the proposed utility construction. Roadway restoration will be shown by means of general notes, typical pavement restoration sections, and the City's details. Based on initial review of the proposed utility work, location of the project, and the posted speed limit along the corridor, it is anticipated that the appropriate FDOT Standard Index 600 series details or aerial based detour maps will be sufficient for the TCPs. The CONSULTANT assumes the CITY will provide the lane closure restriction times (if needed). If the CONSULTANT is required to prepare project specific TCP drawings, roadway plans to detail the roadway restoration, or prepare lane closure analyses, an addendum will be prepared and submitted for approval.

TASK H - Traffic Calming Research Memorandum

CPH will research and prepare a memorandum outlining potential options to aid in "calming" of vehicular traffic along 47th Terrace within the project limits. At a minimum the evaluation will include the following options: narrowing of traffic lanes, vegetated medians, horizontal off-sets (vegetated projections, off-set lanes, etc.), vertical offsets (traffic tables, bumps, etc.), and pavement texture/materials. In addition to industry research, CPH will provide recommendations based on local traffic counts and speeds observed over a 7-day period (tube counts) at four (4) locations along 47th Terrace within the project limits.

TASK I - Public Involvement

CPH will utilize Quest Corporation of America (QCA-subconsultant) to perform the necessary public involvement tasks to support the design efforts. Please refer to the proposal from QCA attached to this scope of services.

TASK J – Construction Administration

Assuming a 12 month construction time frame, CPH proposes to provide shop drawing review, RFI responses to design specific questions, as-built review, preparation of record drawings according to City specifications, and construction certification/permit closeout. Attendance at construction meetings requested by City, one pre-construction meeting, 2 substantial completion inspections (one for roadway, one for landscape), and one final completion inspection are anticipated. Attendance is by one CPH Senior Project Manager or his/her designee. Additional coordination necessary for the successful conveyance of design intent to the CMAR will be provided as may be needed. Out to Bid construction documents will be submitted electronically to CMAR for transmittal.

Task K – Reimbursable Expenses

In addition to the labor compensation outlined above, CPH shall be reimbursed directly for project specific expenditures such as, but not limited to printing and reprographics, postage, and telephone usage. Reimbursable expenses will be billed at their actual cost, without increase.

The following is an estimate of reimbursable expenses based on the rates agreed upon in the continued services contract with the City. Total is \$13,130

- Mileage = \$3000 (IRS Rate)
- 8.5 x 11 BW = \$600 (12000 x \$0.05)
- 8.5 x 11 Color = \$400 (1600 x \$0.25)
- 11x17 BW = \$1600 (8000 x \$0.20)
- 11x17 Color = \$1400 (4000 x \$0.35)
- 24x36 BW = \$960 (1000 x \$0.96)
- 24x36 Color = \$3600 (150 x \$24.00)
- Postage = \$500
- Mounted Boards = \$1000
- Disks = \$70

Task L – Optional Services

Traffic Circle Analysis – If needed, CPH will evaluate the option of adding a traffic circle at the 47th Terrace and Vincennes intersection. The design would be to utilize a Single Lane Urban Roundabout able to accommodate a WB-50 design vehicle

Electrical and Plumbing Design Services for Fountain – If needed, CPH to provide the following design services for components included in the Landscape/ Hardscape plans that require plumbing design services:

- Site and available documents review to determine point of connection for proposed water fountain and plumbing systems based the requirements of the local building code, and other applicable codes and standards.
- Select and schedule all plumbing systems in accordance with CITY provided requirements and accepted standards for this project type.
- Coordinate with the electrical designer on power requirements for fountain.
- Provide detailed plumbing water, drainage risers, and indicate piping sizes based on calculations for compliance with the local plumbing code and all other applicable standards.

Hardscape Design – If needed, CPH will provide construction documents relating to seat wall planters, pergolas, and wayfinding signs for the project. This task includes Landscape Architecture and Structural Engineering design input.

CITY-FURNISHED INFORMATION

It is understood that CPH will perform services under the sole direction of the CITY. In the performance of these services, CPH will coordinate its efforts with those of other project team members as required. The CITY shall provide CPH with project-related technical data to which the CITY may have access, including but not limited to site survey, right-of-way maps, prior design plans, utility locates, record drawings, etc.

CPH will begin performance of the above services upon written notice to proceed from the CITY. The schedule is also subject to timely delivery of information by the CITY and is exclusive of CITY and local review of interim products. If the CITY requests that work under this Agreement be stopped, the schedule is subject to renegotiation when written authorization to continue is received.

SERVICES NOT INCLUDED

The following services are not anticipated and, therefore, not included in this Agreement at this time:

- ❖ Right-of-Way/Boundary Survey
- ❖ Evaluation of ownership and encumbrances
- ❖ Easement or right-of-way vacation or dedication services or platting services
- ❖ Plan revisions of previously accepted tasks that have been completed and require re-work by CPH
- ❖ Decorative Fountain Design
- ❖ Club Square Gateway Feature
- ❖ Any other design elements and/or issues not specifically described in this proposal

Should work be required in any of these areas, or areas not previously described, CONSULTANT will prepare a proposal or amendment, at the CITY's request, that contains the Scope of Services, fee, and schedule required to complete the additional work item.

EXHIBIT B

COMPENSATION/SCHEDULE OF VALUES

EXHIBIT B

COMPENSATION

Labor

CONSULTANT will perform the Scope of Services contained in this Agreement as identified on each task on a lump-sum basis, as identified in the corresponding task of the Scope of Services. The following is the break down of fees for each task.

Task	Task Description	Billing Method	Fee
A.	Project Administration	Hourly NTE	\$44,257.26
B.	Transportation Design and Landscape Architecture Services	Hourly NTE	\$229,508.96
C.	Drainage Design and Permitting	Hourly NTE	\$23,152.44
D.	Environmental Survey & Permitting	Hourly NTE	\$4,337.76
E.	Geotechnical Services (Sub)	Hourly NTE	\$10,150.00
F.	Electrical Design Services	Hourly NTE	\$10,850.16
G.	Utility Engineering with CA	Hourly NTE	\$114,838.82
H.	Traffic Calming Research Memorandum	Hourly NTE	\$5,860.80
I.	Public Involvement (Sub)	Hourly NTE	\$35,483.85
J.	Construction Administration	Hourly NTE	\$35,512.20
K.	Estimated Expenses		\$13,130.00
L.	Optional Services	Hourly NTE	\$51016.80
TOTAL			\$578,099.05

It is understood that fees for the subject project, including but not limited to, application fees, impact fees, above ground utility relocation design fees, utility connection fees, review fees, etc., will be paid directly by the CITY.

CONSULTANT will submit invoices on a monthly basis to the CITY for payment. Tasks to be billed Hourly NTE (Not to Exceed) and expenses are billed directly without markup.

EXHIBIT C

MILESTONES

CPH, Inc.

Professional Design Services Streetscape Improvements

Schedule of Values - Assuming Kickoff Meeting of 3/1/2017

Task	Completion Date
Project Administration**	10/1/2018
Transportation Design & Landscape Architecture Services	9/29/2017
Drainage Design and Permitting	9/29/2017
Environmental Survey & Permitting	5/25/2017
Geotechnical Services (Sub)	9/29/2017
Electrical Design Services	9/29/2017
Utility Engineering with CA**	10/1/2018
Traffic Calming Research Memorandum	4/14/2017
Public Involvement (Sub)	9/29/2017
Construction Administration**	10/1/2018
Estimated Expenses**	10/1/2018
Optional Services	9/29/2017

** will continue through construction

EXHIBIT D

SCHEDULE OF RATES

City of Cape Coral

CPH, Inc. Schedule of Rates

Employee Name	Registration	Years Exp	Labor Category	Billing Rate Per Hour	Exempt/ Non-Exempt
Jeffrey Satfield	P.E.	21	Senior Project Manager	\$195.38	Exempt
Kurt Luman	P.E.	18	Senior Project Manager	\$150.30	Exempt
Joshua Lockhart	P.E.	9	Senior Project Manager	\$146.64	Exempt
N. Katriina Bowman	P.E.	29	Senior Project Manager	\$157.81	Exempt
David Mahler	P.E.	26	Senior Project Manager	\$225.46	Exempt
Matthew Cushman	P.E.	11	Project Manager	\$108.40	Exempt
Rocco Nasso	P.E.	16	Project Manager	\$127.76	Exempt
Arie Elvambuena	P.E.	20	Professional Engineer	\$106.75	Exempt
Joseph LoFaso	E.I.	2	Project Engineer	\$80.64	Exempt
Peter Hernandez	E.I.	2	Project Engineer	\$69.66	Exempt
Kyle Watson	E.I.	4	Project Engineer	\$86.80	Exempt
Eduardo Aviles	E.I.	3	Project Engineer	\$80.64	Exempt
Sandra Gorman	P.E.	23	Senior Traffic Engineer*	\$158.76	Exempt
Amy Daly	LEED AP	23	Principal Environmental Scientist	\$150.30	Exempt
David Landers	n/a	22	Senior Environmental Scientist	\$119.01	Exempt
Richard Orth	GISP	31	GIS Analyst	\$89.79	Exempt
Jose Ortiz	P.E.	19	Principal Structural Engineer	\$161.31	Exempt
Dennis Matula	P.E.	41	Principal MEP Engineer	\$161.31	Exempt
Timothy Nash	P.E.	20	Senior MEP Project Engineer	\$114.38	Exempt
Rebecca Gerena	n/a	20	MEP Design Technician	\$67.10	Non-Exempt
James Winter	RLA	35	Principal Landscape Architect	\$149.94	Exempt
Maxwell Spann	RLA	16	Senior Landscape Architect	\$120.23	Exempt
Rodney Smith	n/a	12	Senior Design Technician	\$67.56	Non-Exempt
John Allen	n/a	17	Design Technician	\$76.25	Non-Exempt
Chris Todd	n/a	12	Design Technician	\$76.25	Non-Exempt
Jorge Martinez	n/a	6	Senior CADD Technician	\$67.10	Non-Exempt
Jonathan Sanchez	n/a	11	Senior CADD Technician	\$67.10	Non-Exempt
Gail Moore	n/a	30	Senior CADD Technician	\$74.57	Non-Exempt
Ivan Rodriguez	n/a	19	Senior CADD Technician	\$61.00	Non-Exempt
Jill Alwine	n/a	30	Administrative	\$63.01	Non-Exempt
Denise Fordham	n/a	16	Administrative	\$61.00	Non-Exempt
Kelly Pearce	n/a	35	Administrative	\$67.22	Non-Exempt
Nik Jindal	GCC	15	Senior Graphic Designer	\$131.97	Exempt

* Part-time employee with no benefits

EXHIBIT E

REIMBURSABLE EXPENSES

Reimbursable Expenses

Postage and Shipping	Actual Cost
Copies 8 1/2 x 11 black and white	.05
Copies 8 1/2 x 11 color	.25
Copies 8 1/2 x 14 black and white	.10
Copies 8 1/2 x 14 color	.30
Copies 11 x 14 black and white	.20
Copies 11 x 14 color	.35
Reproduction (Blue/White Prints)	Actual Cost
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Permit Fees	Actual Cost
CD/DVD	Actual Cost max estimate of \$70 total
Aerials	Actual Cost
Courier Service	Actual Cost
Sub-consultant Fees on their Letterhead	Actual Cost – No Markup
Milage	\$.54 per mile or current IRS rate
Mounted Boards	Estimated \$100 each not to exceed 10 total

EXHIBIT F

SUBCONSULTANT PROPOSALS



January 27, 2017

Mr. Kurt R. Luman, Jr., P.E.
CPH

Email: kluman@cphcorp.com
Phone: 407.322.6841 x 1160

Subject: **Proposal for Geotechnical Engineering Services
Cape Coral Streetscape
SE 47th Terrace
Cape Coral, Florida
AREHNA B.Prop-16-148.rev2**

AREHNA Engineering, Inc. is pleased to present this proposal to provide geotechnical engineering services for the referenced project. This proposal summarizes our understanding of the project, presents our scope of services, and provides a lump sum fee and schedule for our services.

Project Description

The scope of services was developed based on information received via e-mail communications on December 16, 2016 and subsequent email correspondence. The proposed project consists of brick paving, bulbouts to narrow the street and calm traffic, wider sidewalks, street trees, street grates, and lighting. Based on aerials of the site, the roadway is within a commercial area. A permit and maintenance of Traffic (MOT) will be needed in order to perform the proposed work.

Scope of Services

The purpose of our geotechnical study is to obtain information on the general subsurface conditions at the proposed project site. The subsurface materials encountered will then be evaluated with respect to the available project characteristics. In this regard, engineering assessments for the following items will be formulated:

- Identification of the existing ground water levels and estimated normal seasonal high ground water fluctuations.
- General location and description of potentially deleterious materials encountered in the borings which may have an impact on the proposed project.
- Field soil permeability results using SFWMD Constant Head "Usual Condition" Open Hole Test Method.
- Pavement core information to assist with pavement design that will be performed by others.
- General site preparation recommendations including the suitability of excavated soils for use as backfill.
- Environmental tests (pH, Sulfates, Chlorides, and Resistivity) on four soil samples.

The following services will be performed to achieve the above-outlined objectives:

- Request utility location services from Sunshine State One-Call (811).
- Obtained necessary permit with the City of Cape Coral for work within existing right of way (ROW) and roadway.
- Set-up necessary MOT using FDOT Standard Index in order to perform proposed work.
- Perform 10 Standard Penetration Test (SPT) borings for entry features and pergolas. After augering manually for 4-feet, samples will be collected and Standard Penetration Test resistances will be measured at approximate intervals of two feet for the top ten feet and at approximate intervals of five feet thereafter. The following borings will be performed:
 - **Entry Feature** - One boring will extend to a depth of 25 feet below the ground surface.
 - **Pergolas** - Nine (9) borings will extend to a depth of 20 feet below the ground surface.
- Perform a total of 2 SFWMD percolation/exfiltration tests to a depth of 10 feet below the existing ground surface in the area of the Club Square.
- **SE 47th Terrace** - Perform 5 pavement cores with shallow auger borings extending to depths of 5 feet within the existing roadway. The asphalt thickness as well as type and thickness of base material will be recorded.
- **SE 10th Place** - Perform 2 pavement cores with shallow auger borings extending to depths of 5 feet within the existing roadway. The asphalt thickness as well as type and thickness of base material will be recorded.
- Report the results of the field exploration and engineering analysis. The results of the subsurface exploration will be presented in a written letter report, including Report of Core Borings Sheets, signed and sealed by a professional engineer specializing in geotechnical engineering.

The site is understood to be accessible to our truck mounted drilling equipment. This proposal assumes that AREHNA will stake the test locations in the field using offsets from existing landmarks and/or GPS coordinates. We will conduct drilling and sampling in general accordance with applicable ASTM standards. The assessment of site environmental conditions or the presence of pollutants in the soil, rock or groundwater of the site is beyond the proposed scope of this exploration.

Schedule

We typically have a one week backlog, prior to performing the field work. Location of known underground utilities, near the borings and percolation test locations, will be established by Sunshine811 during that time. We anticipate that the field work will take approximately two weeks to complete after the required permits are obtained. Laboratory services are anticipated to require one to two weeks to complete. Our signed and sealed report should be available approximately two weeks later.




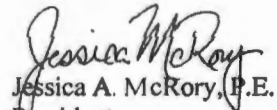
Service Fee

We propose to complete our geotechnical engineering services for an hourly fee not to exceed \$10,150. Please provide us with a written contract between our firms to serve as notice-to-proceed.

We appreciate the opportunity to support you on this project. If you have any questions with regard to this proposal, please do not hesitate to contact us at 813-758-4465.

Sincerely,
AREHNA Engineering, Inc.


Kristina LaCava, P.E.
Geotechnical Engineer


Jessica A. McRory, P.E.
President





PROPOSAL NO: B.Prop-16-148.rev2

JOB NAME: SE 47th Terrace

CLIENT: CPH

PREPARED BY: KSL

DATE: 01/23/17

SCOPE

Location	Scope
Entry Feature	1 SPT to 25'
Pergolas	7 SPT to 15'
Club Square	2 Perc Tests at 10'
SE 47th Terr. & SE 10th Pl.	5 Pavement Cores with 5' HA

ENGINEERING SERVICES

	Quantity	Units	Rate	Subtotal
Principal Engineer	3	Hour	\$ 150.00	\$ 450.00
Staff Engineer	16	Hour	\$ 95.00	\$ 1,520.00
CAD Operator/Utility Coordination	5	Hour	\$ 65.00	\$ 325.00
Clerical	2	Hour	\$ 50.00	\$ 100.00
Technician	12	Hour	\$ 50.00	\$ 600.00
Engineering Services Subtotal				\$ 2,995.00

FIELD SERVICES

	Quantity	Units	Rate	Subtotal
Mobilization	1	Project	\$ 600.00	\$ 600.00
Entry Feature				
Soil Test Borings - 0 to 50 feet	25	Feet	\$ 12.50	\$ 312.50
Borehole Backfill (Bentonite Chips)	25	Feet	\$ 3.00	\$ 75.00
Pergolas				
Soil Test Borings - 0 to 50 feet	105	Feet	\$ 12.50	\$ 1,312.50
Borehole Backfill (Bentonite Chips)	105	Feet	\$ 3.00	\$ 315.00
Club Square - Field Permeability Tests	2	Test	\$ 400.00	\$ 800.00
Pavement Cores W/ 5' HA	5	Test	\$ 150.00	\$ 750.00
MOT - Lane Closure	1.5	Day	\$ 700.00	\$ 1,050.00
Flagmen	6	Hour	\$ 50.00	\$ 300.00
MOT - ROW Work	2	Day	\$ 200.00	\$ 400.00
Permit (City of Cape Coral TTC and ROW Permit)	1	Project	\$ 200.00	\$ 200.00
Field Services Subtotal				\$ 6,115.00

LABORATORY SERVICES

	Quantity	Units	Rate	Subtotal
Natural Soil Moisture Content	7	Test	\$ 15.00	\$ 105.00
Percent Fines	5	Test	\$ 50.00	\$ 250.00
Grain Size	0	Test	\$ 60.00	\$ -
Atterberg Limits	3	Test	\$ 65.00	\$ 195.00
LBR	0	Test	\$ 300.00	\$ -
Lab Permeability	0	Test	\$ 330.00	\$ -
Organic Content	2	Test	\$ 50.00	\$ 100.00
Corrosion Testing	3	Test	\$ 130.00	\$ 390.00
Laboratory Services Subtotal				\$ 1,040.00

GEOTECHNICAL SERVICES TOTAL \$ 10,150.00



**City of Cape Coral's
Design Services of Streetscape Improvements to SE 47th Terrace
Public Involvement - QCA Scope, Schedule and Fee Proposal
Revised 1/23/17**

Nikhil Jindal
CPH, Corp.
500 W. Fulton Street
Sanford, Florida 33928

Dear Mr. Jindal,

Quest Corporation of America, Inc. (QCA) presents the following task-driven scope, schedule and fee proposal to provide Public Involvement support on the City of Cape Coral's Design Services of Streetscape Improvements to SE 47th Terrace.

QCA will serve as an extension of your staff to support design, production, community outreach efforts by executing stakeholder surveys throughout the project limits, coordinate and execute stakeholders outreach surveys, (1) welcome meeting, (2) community association meetings and (2) public meetings, and other key initiatives that ensure community and stakeholder engagement on this improvement project.

Rates include:

Project Manager - Maricelle Venegas	\$103.55 per hour
Sr. Public Involvement Specialist – Lori Buck	\$103.55 per hour
Public Involvement Specialist – Kristie Vazquez	\$86.05 per hour
Graphics – Joe Duhamel	\$75.86 per hour

Thank you for allowing QCA the opportunity to assist you on this project. If you have any questions or recommendations, please contact me at (866) 662-6273. I look forward to speaking with you soon.

Diane Hackney, Senior Vice President
Quest Corporation of America, Inc.
3837 Northdale Blvd, #242
Tampa FL 33624
Toll Free: 866-662-6273
Diane.Hackney@QCAusa.com

ACCEPTED AND AGREED

Signature: _____ Date: _____
Representing CPH, Inc.



The Public Involvement services to be provided by Quest Corporation of America (QCA) shall include working with CPH and the City of Cape Coral to develop clear and consistent communication messages for the project as well as to accurately promote the progress and details in a timely manner. Additionally QCA will coordinate closely with CPH and the City of Cape Coral in all community outreach and public relations endeavors for this project.

City of Cape Coral - Design Services of Streetscape Improvements to SE 47th Terrace

Scope of Services TASK #	Public Involvement / Community Outreach Design Phase	
Task 1.0 Develop Public Outreach Goals, Strategies and Timelines - Prepare Community Awareness Plan (February 2016)	40 hours (5 PM / 35 PIO)	\$3,529.50
Task 2.0 Stakeholder Outreach Surveys - Prepare, administer and report (February 2016)	80 hours (15 PM / 65 PIO)	\$7,146.50
Task 3.0 Preliminary Welcome Meeting - Coordination, facilitation and attendance (March 2016)	40 hours (4 PM / 36 PIO)	\$3,512.00
Task 4.0 Community Association Meetings (total of two) - Coordination, facilitation and attendance (April/June 2016)	20 hrs. per meeting 20 hrs. x 2 = 40 hours (4 PM / 36 PIO)	\$3,512.00
Task 5.0 Public Meetings (total of two) - Coordination, facilitation and attendance (May/July 2016)	20 hrs. per meeting 20 hrs. x 2 = 40 hours (4 PM / 36 PIO)	\$3,512.00
Additional general public involvement services during design phase to consider: On-going Public Involvement / Community Outreach support – Not to exceed an average of 5 hours per week during design phase. Starting on or about February 1, 2017 to July 31, 2017 (26 weeks) Sample inclusions: project fact sheet, website content for the City, database population, telephone hotline, stakeholder correspondence and various public involvement activities.	130 hours (PIO)	\$11,186.50
Graphics – Project logo, fact sheet design, webpage for City website, fliers and additional collateral materials	40 hours (5 PIO / 35 graphics)	\$3,085.35
	Total: 410 hours	\$35,483.85



Scope of Work Descriptions

Task 1.0 - Develop Public Outreach Goals, Strategies and Timelines - Prepare a Community Awareness Plan (CAP) for review and approval by CPH within 30 days after receiving Notice to Proceed. The Plan will be reviewed and updated periodically by the project team throughout the life of the project.

Task 2.0 - Stakeholder Outreach Surveys: Prepare, administer and report findings to support the public involvement needs of the project.

Task 3.0 – Preliminary Welcome Meeting: Coordinate meeting location. Develop materials and coordinate publicity with the City of Cape Coral. Also includes:

- Meeting notices and invites
- Mailing lists
- Press Release / Media Alert
- Handouts
- Agendas and scripts
- Sign-in sheets and Comment Cards
- PowerPoint presentations
- Meeting summary

Task 4.0 - Community Association Meetings (total of two): Coordinate meeting location. Develop coordinate publicity with the City of Cape Coral. Also includes:

- Meeting notices and invites
- Mailing lists
- Press Release / Media Alert
- Handouts
- Agendas and scripts
- Sign-in sheets and Comment Cards
- PowerPoint presentations
- Meeting summary

Task 5.0 – Public Meetings (total of two): Coordinate meeting location. Develop materials and coordinate publicity with the City of Cape Coral. Also includes:

- Meeting notices and invites
- Mailing lists
- Press Release / Media Alert
- Handouts
- Agendas and scripts
- Sign-in sheets and Comment Cards
- PowerPoint presentations



Additional services under general public involvement

Project Hotline: Staff a 24-hour project hotline. Coordinate and document responses to queries and follow-up within 24 hours.

Project Email Address: Monitor and respond to queries submitted via the project email address and document correspondence.

Project Correspondence: Document and coordinate responses to public correspondence.

Project Website Content: Provide web content for the City of Cape Coral website. Work with CPH to update project information. This will include updating the website periodically (during the design phase) to provide project-specific details as the project progresses. All updated information will be approved prior to posting.

Project Collaterals: Develop, design and disseminate project collaterals including, but not limited to:

- Newsletters and/or E-newsletters
- Project Outreach Surveys
- Project Fact Sheets
- Talking Points
- Frequently asked questions
- Fliers

Public/Media Relations: Coordinate with the CPH team and the City of Cape Coral on media outreach, events and responses to media queries including information for Cape TV. Media relations tasks will include, but are not limited to:

- News releases
- News conferences
- Letters to the editor
- Lunch-n-Learns
- Editorial board meetings
- Media tours

Project Database: Update and maintain a database documenting all public interactions and providing periodic contact history reports.

Internal Meetings: Meet as needed with the team to coordinate community outreach activities or to address issues.

Progress Meetings: Attend progress meetings. Report on public issues, and apprise the team of meeting highlights.



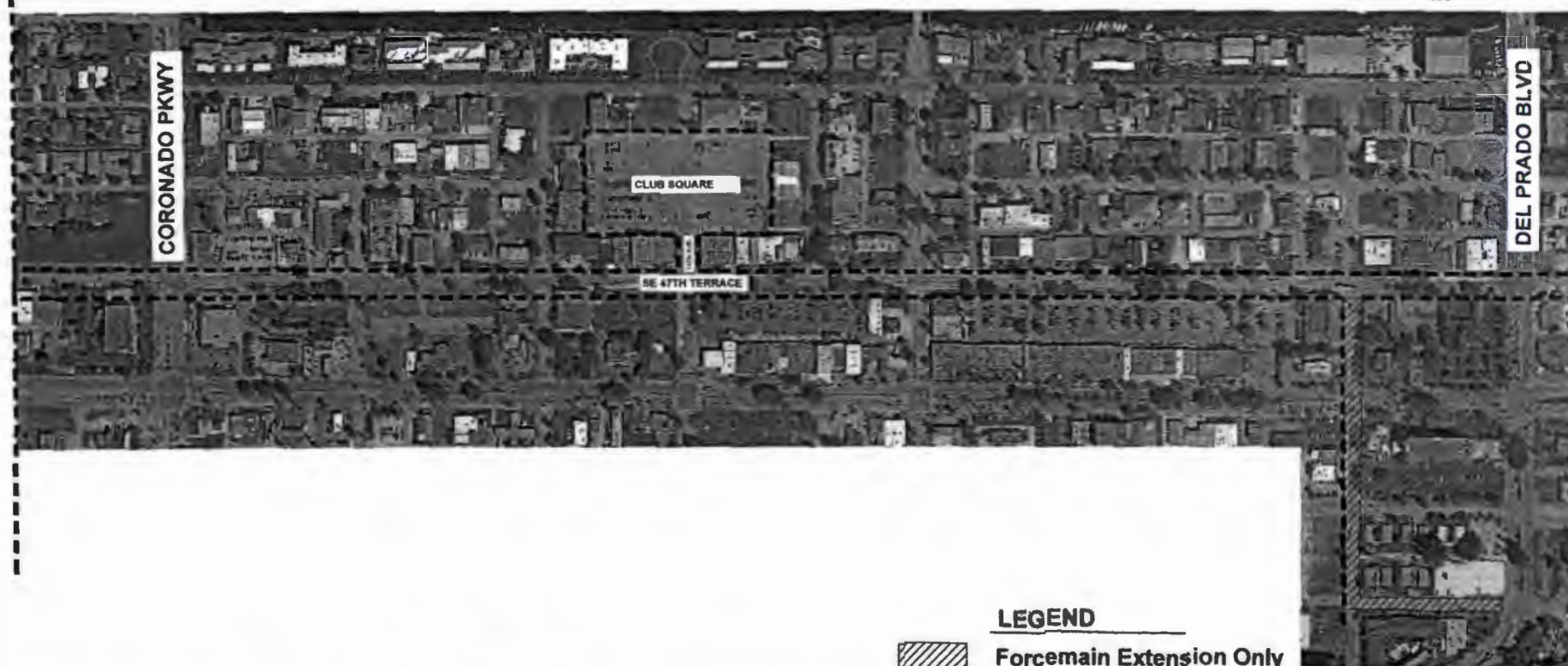
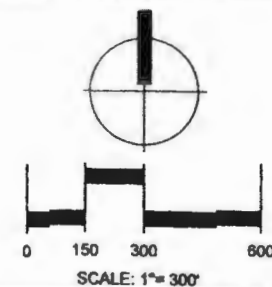
Project Binder: Maintain a hard copy binder of all public information materials, events and efforts and provide as requested to CPH at the completion of the project along with a DVD or thumb drive containing electronic versions of all materials.

ADDITIONAL SERVICES to be provided by QCA if requested:

- **City Officials' Briefings:** Coordinate project briefings of elected and appointed officials and presentations at council and other formal meetings.
- **External Agency Coordination:** For this joint project, QCA will coordinate with CPH and other stakeholders as needed on public outreach endeavors.
- **Social Media Support:** Provide project-specific information as needed and requested for the City of Cape Coral's Facebook and Twitter accounts.
- **Field Meetings:** Conduct field meetings with property owners to address questions and issues.

EXHIBIT G

PROJECT SITE



LEGEND



Forcemain Extension Only

Designed by:	JKW	Date:	12/19/2016
Drawn by:	JM	Job No.:	ZB582
Checked by:	JKW	File:	-
Approved by:	JKW		
Scale:	1" = 300'		



Engineers (C.O.A. No. 5213)
Architects (L.A. No. A.A.360000)
Surveyors (L.S. No. 7545)
Landscape Arch. (L.A. No. LC0000200)
Planners
Environmental Scientists
Construction Management
Design / Build

500 West Fulton Street
Sarasota, FL 34231
P.O. Box 2808
34277-2808
Phone: 941.552.6643
Fax: 941.552.6639

PROJECT SITE EXHIBIT
CITY OF CAPE CORAL
FLORIDA

Sheet No.

L-1

EXHIBIT H

MAN HOURS

Item Number: B.(2)
Meeting Date: 2/13/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 23-17 Approve the Selection Advisory Committee (SAC) ranking of the Request for Proposal (RFP) RFP-PW17-24/GM to engage a firm to provide Construction Manager at Risk (CMAR) Services for the Streetscape Improvements SE 47th Terrace and authorize the City Manager or Designee to enter into negotiation with the number one ranked firm, Chris-Tel Company of Southwest Florida, Inc.; Department: Public Works; 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?
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:

1. On December 7, 2016, the City issued a Request for Proposal RFP-PW17-24/GM for qualified firms to provide Construction Manager at Risk (CMAR) Services for the Streetscape Improvements SE 47th Terrace
2. On January 6, 2017, two (2) firms responded to the RFP. The two (2) firms in alphabetical order were: Chris-Tel Company of Southwest Florida, Inc. dba Chris-Tel Construction and Wright Construction Group, Inc.
3. Proposals were evaluated based on City of Cape Coral, Code of Ordinance Article VII: Purchase and Sale of Real and Personal Property Section 2-144 (h) Consultant's Competitive Negotiation Act.
4. On January 24, 2017 the Selection Advisory Committee (SAC) interviewed the two (2) firms recommended by the evaluation committee. The SAC ranked the firms in the following order: #1 Chris-Tel Company of Southwest Florida, Inc.; #2 Wright Construction Group, Inc.
5. Upon Council approval, staff will begin contract negotiations with the #1 ranked firm and will bring back a contract for Council approval. In the event that the City is unable to negotiate a contract with the #1 ranked firm, staff will begin negotiations with the #2 ranked firm.
6. The negotiated contract will be brought forward to Council for approval on a later date
7. Funding Information: Not applicable at this time

LEGAL REVIEW:

Not applicable

EXHIBITS:

SAC Recommendation
Resolution 23-17


PREPARED BY:



Wanda Division- Procurement Department- Finance
Roop

SOURCE OF ADDITIONAL INFORMATION:**ATTACHMENTS:**

Description	Type
▣ SAC recommendation	Backup Material
▣ Resolution 23-17	Resolution

CITY OF CAPE CORAL
FINANCIAL SERVICES DEPARTMENT
CITY MANAGER
JAN 25 AM 9:36

TO: John Szerlag, City Manager 

FROM: Victoria Bateman, Financial Services Director 
Wanda Roop, Procurement Manager 

DATE: January 25, 2017

SUBJECT: Selection Advisory Committee (SAC) ranking for Request for Proposals Construction Manager at Risk Streetscape Improvements SE 47th Terrace, RFP-PW17-24GM

On January 24, 2017, the Selection Advisory Committee (SAC) interviewed the two (2) firms recommended by the evaluation committee. The two (2) firms in alphabetical order were Chris-Tel Company of Southwest Florida, Inc. and Wright Construction Group, Inc.

They were evaluated based on the proposer's ability to demonstrate understanding of the City's requirements and plans for meeting them; the professional qualifications and related staff experience; the size and organizational structure of the firm; prior experience and prior experience with the City.

The SAC, based on the presentation and evaluation, ranked the firms in the following order:

Rank #1	Chris-Tel Company of Southwest Florida, Inc.
Rank #2	Wright Construction Group, Inc.

The approval of the ranking will be presented to the City Council on February 13, 2017.

cc: SAC committee members

RESOLUTION 23 – 17

A RESOLUTION OF THE CITY OF CAPE CORAL COUNCIL DIRECTING THE CITY MANAGER OR DESIGNEE TO NEGOTIATE A CONTRACT FOR CONSTRUCTION MANAGER AT RISK SERVICES FOR SE 47TH TERRACE STREETSCAPE IMPROVEMENTS BASED ON THE SELECTION ADVISORY COMMITTEE RANKINGS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on December 7, 2016, the City issued Request for Proposal RFP-PW17-24/GM for Construction Manager at Risk Services for SE 47th Terrace Streetscape Improvements; and

WHEREAS, the City received two (2) proposals on January 6, 2017; and

WHEREAS, the evaluation team evaluated the proposals based on the criteria set forth in the City of Cape Coral Code of Ordinances, Section 2-144(h), and recommended that both firms be forwarded to the Selection Advisory Committee (SAC) for presentations; and

WHEREAS, on January 24, 2017, the SAC interviewed the two firms and ranked the firms as follows: Chris-Tel Company of Southwest Florida, Inc., ranked #1; Wright Construction Group, Inc., ranked #2; and

WHEREAS, City Staff has completed the selection process in accordance with the City of Cape Coral Code of Ordinances, Section 2-144, Procurement Procedures; and

WHEREAS, the City Council has carefully considered the recommendation of the SAC, has reviewed the qualifications of the firms, and accepts the ranking of the firms by the SAC.

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 ranking of the SAC and directs the City Manager or his designee to begin negotiations with the #1 ranked firm and to bring the contract to City Council for approval.

Section 2. In the event the City Manager is unable to reach agreement on a Contract with the #1 ranked firm, the City Manager or his designee will begin negotiations with the #2 ranked firm.

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/SAC Ranking – SE 47th Terrace Streetscape CMAR

Item Number: B.(3)
Meeting Date: 2/13/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 30-17 Award ITB-UT17-04/KR South Wellfield Drive Panel Design and Fabrication to Commerce Controls, (FLA), LLC, for work required for the design and fabrication of twenty-six (26) panels used to control raw water wells associated with the Southwest Reverse Osmosis Water Treatment Plant, as the lowest responsive, responsible bidder, in the amount of \$285,008 with a 7.5% City controlled contingency of \$21,376 for a total of \$306,384 and authorize the City Manager or designee to execute the contract; Department: Utilities; Dollar Value: \$306,384; (Water and Sewer 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 C: INVEST IN COMMUNITY INFRASTRUCTURE INCLUDING UTILITIES EXPANSION IMPROVEMENTS TO ENHANCE THE CITY'S ABILITY TO MEET THE NEEDS OF ITS CURRENT AND FUTURE RESIDENTS AND BUSINESSES

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. On November 9, 2016, an Invitation to Bid was issued, ITB-UT17-04 /KR for the Southwest Reverse Osmosis Water Treatment Plant (SW RO WTP) Wellfield Drive Panel Design and Fabrication.
2. The bid, ITB-UT17-04/KR, was issued for work required for the design and fabrication of twenty-six (26) panels used to control raw water wells associated with the Southwest Reverse Osmosis Water Treatment Plant.
3. The overview of work to be provided includes the panel layout design, panel construction, installation of variable frequency drives and all other components in the panel, with the delivery of the panels to the SW RO WTP.
4. On December 14 2016, six (6) bids were received from vendors, shown in alphabetical order; CEC Motors & Utility Services, LLC; Coastal Electric of SWFL, Inc.; Commerce Controls (FLA), LLC; John Mader Enterprises, Inc. (DBA Mader Electric Motors); Nauti Electric, Inc.;

Tampa Armature Works, Inc.

5. After review of the bids, the apparent low bidder was deemed non- responsive. The second apparent low bidder was deemed responsive by meeting all requirements and specifications as outlined in the Bid Documents.

6. Staff recommends awarding to Commerce Controls, (FLA), LLC for the total price of \$285,008, as the lowest responsible, responsive bidder, meeting all the requirements and specifications outlined in the Bid Documents, with a 7.5% City controlled contingency of \$21,375.60 for a total project cost of \$306,383.60.

7. The Project Manager is requesting 7.5% City Controlled Contingency. The expenditure of contingency, if any, will be subject to approval of specific change orders by City's Project Manager, if justified upon identified needs with an appropriate scope and cost to address specific needs.

8. The contract includes a substantial completion of 180 calendar days from when Notice to Proceed is issued.

9. This Item is a budgeted item.

Funding: Account No:4050071.662601 Water and Sewer Capital Fund- SRO-5 Retrofit Wellfield Comm.

LEGAL REVIEW:

Legal has reviewed the contract.

EXHIBITS:

Department Memo

Resolution 30-17

Bid Matrix - ITB-UT17-04/KR

PREPARED BY:

Wanda Division- Procurement Department- Finance
Roop

SOURCE OF ADDITIONAL INFORMATION:

Jeff Pearson, Utilities Director

ATTACHMENTS:



Description	Type
▣ Recommendation Memo	Backup Material
▣ Resolution 30-17	Resolution
▣ Bid Matrix - ITB-UT17-04/KR	Backup Material



City of Cape Coral

Utilities Department

TO: John Szerlag, City Manager
Victoria Bateman, Financial Services Director
Wanda Roop, Procurement Manager
Kathy Rose, Procurement Specialist

FROM : Jeff Pearson, Utilities Director 
William H. Sperry, PE, Principal Engineer PE, Utilities 

DATE: January 11, 2017

SUBJECT: Utilities Department's Recommendation of Award for the South Wellfield Drive Panel Design and Fabrication, ITB-UT17-04/KR

Project Scope:

The Project is generally comprised of the Work required to design and fabricate control panels housing variable frequency drives and related drive components for twenty-six (26) raw water wells serving the Southwest Reverse Osmosis Water Treatment Plant. The Work shall include the panel layout design, panel construction, installation of the variable frequency drives and all other components within the panel as well as delivery of the completed panels to the City for installation by the City's Staff. The City will be providing the variable frequency drives for use by the equipment integrator. These Wellfield Drive Panels will be installed in conjunction with the Wellfield Communications and Control Upgrades previously awarded by the City

Project Bids:

On Wednesday, December 14, 2016, the City of Cape Coral received six (6) Bids from Contractors for the construction of the South Wellfield Drive Panel Design and Fabrication project, ITB-UT17-04/KR. The bid item extensions and the summation of the bid items were checked for accuracy for each bidder. The list of Bidders, listed from apparent low Bid to high Bid and the respective Total Estimated Construction Cost is as follows:

CEC Motors & Utility Services, LLC	\$227,021.08 (*)
Commerce Controls (FL), Inc.	\$293,458.00 (**)
John Mader Enterprises, Inc., DBA	
Mader Electric Motors	\$346,164.00
Nauti Electric, Inc.	\$387,000.00
Tampa Armature Works, Inc.	\$394,727.95
Coastal Electric of SWF	\$528,060.00

(*) The Procurement Department reviewed the Bid submittal package submitted by CEC Motors & Utility Services, LLC and deemed the submittal as non-responsive/non-responsive and therefore rejected the Bid as submitted. The Utilities Department concurs with the decision by the Procurement Department to reject CEC Motors & Utility Services, LLC's Bid for the South Wellfield Drive Panel Design and Fabrication project

(**) With the rejection of the Bid submitted by CEC Motors & Utility Services, LLC, Commerce Controls (FL), Inc. (CCI) becomes the apparent low bidder with a base bid total of \$293,458.00. The base Bid of \$293,458.00 includes the City's acceptance of CCI's add alternate in the amount of \$4,200.00 for the Payment and Performance Bonds. CCI listed the cost for the Payment and Performance Bonds as a separate line item should the City decide they were not necessary for this project. The City requires Payment and Performance Bonds on projects of this magnitude and complexity. Along with their base Bid, CCI also offered a Value Engineering Option for the City to consider. A price deduct in the amount of \$8,450.00 was offered to the City by CCI if CCI were allowed to provide control panel enclosures manufactured by Thermal Designs and Manufacturing (TDM) in lieu of the specified Hoffman enclosures. The panel enclosures would meet the same project Specifications as the Hoffman enclosures. The City has reviewed and accepts the Value Engineering Option proposed by CCI for a total deduct in their bid price of \$8,450.00. Therefore Commerce Controls (FL), Inc.'s revised Total Estimated Construction Cost including acceptance of the Value Engineering Options is as follows:

Commerce Controls (FL), Inc.	\$285,008.00
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A copy of the Bid Tabulation, as prepared by Procurement, is included as an attachment.

Utilities Department Recommendation:

The Utilities Department concurs with the Procurement Department's determination that Commerce Controls (FL), Inc. is a responsible, responsive bidder and subsequently recommends award of the project to Commerce Controls (FL), Inc. for the Revised Total Estimated Construction Cost, including acceptance of the Value Engineering Option deducts, of \$285,008.00. References have been checked by the Utilities Department.

Contingency Funds:

In conjunction with recommending the award of the South Wellfield Drive Panel Design and Fabrication project, the Utilities Department requests a contingency amount of seven and one-half percent (7½%) of the Total Estimated Construction Cost be allocated for this project. We do not anticipate any changes with this project as the work generally entails the design and fabrication of the control panels with the installation of the panels being done by the City. However, the Utilities Department must be prepared to deal with any

unforeseen situations in a timely manner to ensure the project is completed in an expeditious manner. This will minimize disruptions to the Southwest Reverse Osmosis Water Treatment Plant remote water production well operation. Additional costs requested by the contractor will be reviewed by the Engineer of Record and approved by the Utilities Department prior to the work being performed.

Fund Availability:

Funding for this project (\$850,000.00) has been included in the Water and Sewer Capital Projects Fund, Business Unit 4050071.662601, SRO-5 Retrofit Well Field Com, and is presented as a line item in the FY2014 budget. Additionally to cover the City controlled contingency amount of 7½% (\$21,375.60) when added to the bid amount totals \$306,383.60. The \$306,383.60 project total amount is \$446,647.44 below the amount of the FY2014 unencumbered balance remaining for this project of \$753,031.04 and represents a potential savings on this project.

Thank you for your attention to this important matter. Should you have any questions or if we can be of further assistance please give William H. (Bill) Sperry, PE a call at 574-0729.

Attachment: Bid Tabulation, South Wellfield Drive Panel Design and Fabrication,
ITB-UT17-04KR



RESOLUTION 30 – 17

A RESOLUTION OF THE CITY OF CAPE CORAL AWARDING A BID FOR SOUTHWEST REVERSE OSMOSIS WATER TREATMENT PLANT SOUTH WELLFIELD DRIVE PANEL DESIGN AND FABRICATION TO COMMERCE CONTROLS (FLA.), L.L.C.; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT DOCUMENTS BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING FOR APPROVAL OF A CONTINGENCY AMOUNT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 9, 2016, INVITATION TO BID (ITB) #UT17-04/KR was issued for Southwest Reverse Osmosis Water Treatment Plant South Wellfield Drive Panel Design and Fabrication; and

WHEREAS, on December 14, 2016, six (6) bids were received; and

WHEREAS, the City Manager recommends the award of the bid to Commerce Controls (FLA.), L.L.C., as the lowest qualified responsible and responsive bidder meeting the requirements and criteria set forth in the invitation to bid, in the amount of \$285,008, subject to a City-controlled contingency amount not to exceed seven and one-half (7.5) percent of the total amount of the contract.

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

Section 1. The City Council hereby awards the bid for Southwest Reverse Osmosis Water Treatment Plant South Wellfield Drive Panel Design and Fabrication to Commerce Controls (FLA.), L.L.C., in the total amount of \$285,008, subject to a City-controlled contingency amount not to exceed seven and one-half (7.5) percent of the total amount of the contract.

Section 2. The City Council hereby approves the contract between the City of Cape Coral and Commerce Controls (FLA.), L.L.C., for Southwest Reverse Osmosis Water Treatment Plant South Wellfield Drive Panel Design and Fabrication, and authorizes the City Manager or his designee to execute the Contract. A copy of the Contract is attached hereto as Exhibit A.

Section 3. The City Council hereby authorizes the City Manager or the City Manager's designee to enter into change orders for work required other than as contemplated in the contract documents with an appropriate scope and cost to address those needs, subject to payment of a City-controlled contingency amount not to exceed seven and one-half (7.5) percent of the total amount of the contract.

Section 4. 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 _____
CARIOSCLA _____
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
res/Bid Award-Commerce Controls-South Wellfield Panels

**CITY OF CAPE CORAL
CON-UT17-04/KR**

Agreement

This Agreement, made and entered into this _____ day of _____, 2017 by and between the **CITY OF CAPE CORAL, FLORIDA**, hereinafter called "**CITY**", and **Commerce Controls (FLA), LLC** doing business as a Florida Limited Liability Company, hereinafter called "**CONTRACTOR**".

WITNESSETH: that for and in consideration of the payments and agreements mentioned hereinafter:

1. The CONTRACTOR will provide the work required for complete design, fabrication, and delivery of South Wellfield Panels, in accordance with the Bid Documents, Technical Specifications, Drawings, and Contract Documents for Invitation to Bid – ITB-UT17-04/KR.
2. The CONTRACT PRICE will be for all work as outlined in the Bid Documents, Technical Specifications, Drawings and Contract Documents for a total price of: \$285,008.00 and the CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor, delivery of goods and other incidentals or services necessary for the satisfactory completion of the project described in the CONTRACT DOCUMENTS. The total contract price includes payment and performance bonds, insurance and the deducted value engineering substitutions as outlined in the bid proposal submittal.
3. The CONTRACTOR will commence work as required by the CONTRACT DOCUMENTS as stipulated in the written Notice to Proceed or issuance of the fully executed Purchase Order and will complete the same within 180 days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

The City Manager or his designee shall have the authority to approve and execute any authorized contract amendments or revisions that do not exceed \$50,000 during any one year period.
4. The CONTRACTOR agrees to supply all the goods and perform all of the work described for the price listed on the CONTRACTOR's Bid Proposal Submittal during the term of the contract which are shown as Attachment (Contractor's Bid Proposal Submittal).
5. This agreement may be terminated by the CITY for its convenience upon thirty (30) days prior written notice to the CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for services completed to the day of such termination, an amount prorated in accordance with services substantially completed under this agreement. Such amount shall be paid by the CITY after inspection to determine the extent of performance under this agreement, whether completed or in progress.
6. The Term "Contract Documents" shall include this Contract, Addenda(s), Contractor's Bid Proposal Submittal, Technical Specifications, Drawings, except when it conflicts with any other contractual provision, the Notice to Proceed, Certificates and the Invitation to Bid Package prepared and issued by the City. In the event of conflict between any provision of any other document referenced herein as part of the contract and this Contract, the terms of this Contract shall control.

7. All time limits listed in the CONTRACT DOCUMENTS are of the essence in the performance of this agreement.
8. Record Keeping: Records of the CONTRACTOR's personnel, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices. CONTRACTOR shall keep full and detailed accounts and financial records pertaining to the contracted services for the City. Prior to commencing work, CONTRACTOR shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the CONTRACTOR on the Project. CONTRACTOR shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.
9. Assignment: This agreement may not be assigned except at the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assignors of the CONTRACTOR.
10. Disclosure: The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the CONTRACTOR to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or Contractor, other than a bonafide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the agreement.
11. Unauthorized Aliens: The employment of unauthorized aliens by any Contractor is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the CONTRACTOR knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-Contractors used by the CONTRACTOR as well.
12. Administration of Agreement: The Utilities Director, or representative, shall administer this agreement for the CITY.
13. Governing Law: This agreement shall be interpreted, construed, and governed according to the laws of the State of Florida. The parties agree to the venue in Lee County, Florida for any litigation pertaining to this contract. In the event there is litigation pertaining to this agreement, the prevailing party shall be entitled to a reasonable attorney's fee.
14. Amendments: No Amendments or variation of the terms or conditions of this agreement shall be valid unless in writing and signed by the parties.
15. Payments: CITY shall make payment and CONTRACTOR shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice unless, within a fifteen (15) day period, CITY notifies CONTRACTOR in writing of its objection to the amount of such invoice, together with CITY'S determination of the proper amount of such invoice. CITY shall pay any undisputed portion of such invoice within such thirty (30) day period. If CITY shall give such notice to the CONTRACTOR within such fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, CITY shall promptly pay the CONTRACTOR the amount so determined, less any amounts previously paid by CITY with respect to such invoice. In the event it is determined that CITY has overpaid

such invoice, the CONTRACTOR shall promptly refund to the CITY the amount of such overpayment.

16. Contractor's Representations: In order to induce CITY to enter into the Contract CONTRACTOR makes the following representations:

CONTRACTOR has been familiarized with the Contract Documents and the nature and extent of the work required to be performed, locality, local conditions, and Federal, State, and Local laws, ordinances, rules and regulations that in any manner may affect costs, progress or performance of the work.

CONTRACTOR has made or caused to be made examinations, investigations and tests and studies as deemed necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.

17. Indemnity. To the extent permitted by law (F.S. 768.28), the CONTRACTOR shall indemnify and hold harmless the CITY, its 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 and any persons employed or utilized by CONTRACTOR in the performance of this Contract.
18. Damage Liability: The awarded CONTRACTOR shall be responsible for all claims filed for damage to private property, windows, screen enclosures, real estate signs, etc. Additionally, the CONTRACTOR shall be responsible for damage to all public property or utility property, fire hydrants, catch basins, guy wires telephone pedestals, etc.
19. Invalid Provision. The invalidity or unenforceability of any particular provision of this agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
20. Project Records: The CONTRACTOR shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting methods, and the CITY reserves the right to determine the record-keeping method in the event of non-conformity. These records shall be maintained for five (5) years after final payment has been made and shall be readily available to CITY personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.
21. Insurance. Without limiting its liability, the CONTRACTOR shall be required to procure and maintain at its own expense during the life of the Contract, insurance of the types and in the minimum amounts stated below as will protect the CONTRACTOR, from claims which may arise out of or result from the CONTRACTOR execution of the project, whether such execution by himself or by any sub-consultant, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

The following insurance will be required by the CITY OF CAPE CORAL.

The Contractor shall secure, pay for, and file with the Owner prior to commencing any work under the Contract certificates for the types of insurance set forth herein. All such certificates shall provide for minimum coverage in the amounts set forth herein, unless a greater minimum amount is specified elsewhere in the Contract Documents. Contractor shall, at all times during the performance of this Agreement, provide and maintain the following types of insurance. All certificates of insurance must be accompanied by all endorsements being required, including additional insured endorsements, cancellation/material change endorsements, and waivers of subrogation, USL&H Act and Jones Act endorsements.

Workers' Compensation: Coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$ 1,000,000 each accident.

Comprehensive General Liability: Shall have minimum limits of \$ 1,000,000 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations, Independent Contractors and Products and/or Completed Operations, Broad Form Property Damage, XCU Coverage, and a Contractual Liability Endorsement.

Business Auto Policy: Shall have minimum limits of \$ 1,000,000 per occurrence. Combined Single Limit for Bodily Injury and Property Damage Liability. This shall include owned vehicles, hired and non-owned vehicles, and employees' non-ownership.

Certificate of Insurance: The City of Cape Coral is to be specifically included as an additional insured. This does not pertain to Workers' Compensation. The policy endorsements and waivers of subrogation must be included with the certificate of insurance.

In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued thirty (30) days prior to said expiration date.

The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy.

Unless otherwise specified, it shall be the responsibility of the contractor to ensure that all subcontractors comply with the same insurance requirements spelled out above.

All certificates of insurance must be on file with and approved by the City of Cape Coral before the commencement of any work activities.

22. **Payment and Performance Bonds**

Any Contractor entering into a contract for the construction of a public building or public work, or for any repairs upon a building or public work shall, before commencing work, execute, deliver to the City of Cape Coral, and record in the public records of Lee County, Florida, a payment and performance bond issued by a surety authorized to do business in the State of Florida. The amount of the bond shall be 100% of contract amount. The original recorded bond will be returned to City (Procurement) before any work will commence.

23. Unauthorized Aliens.

The employment of unauthorized aliens by CONTRACTOR is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the CONTRACTOR knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this contract. This applies to any sub-consultants used by the CONTRACTOR as well.

24. Entire Agreement. This Contract constitutes the entire agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, OWNER AND CONTRACTOR HAVE SIGNED THIS AGREEMENT. THIS AGREEMENT WILL BE EFFECTIVE ON _____ (WHICH IS THE EFFECTIVE DATE OF THE CONTRACT).

OWNER:

City of Cape Coral, Florida

Signature: _____

Typed Name: **A. John Szerlag**

Title: **City Manager**

Date: _____

Signature

Attest: _____

Title: **City Clerk**

Typed

Name: **Rebecca van Deutekom, MMC**

Date: _____

Address for giving notices:

City of Cape Coral (Attn: Procurement)

1015 Cultural Park Blvd.

2nd Floor

Cape Coral, FL 33990

CONTRACTOR:

Commerce Controls (FLA.), L.L.C.

Signature: _____

Typed

Name: _____

Nick Scoffins

Title: _____

V.P. Business Development
Water Infrastructure

Date: _____

1/24/17

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign with corporate resolution.)

Signature

Attest: _____

Title: _____

Typed

Name: _____

Vice President

Joe Gardynik

Date: _____

1/24/17

Address for giving notices:

41069 Vincent Court

Novi, MI 48375

State of Florida

Contractor License No.:

Bus # L00000012822

(as applicable)

LEGAL REVIEW:

Signature: _____


Typed Name: **Dolores Menendez, ESQ.**

Title: **City Attorney**

Date: _____

01/23/17

BID OPENING ROOM - City Hall - 2nd Floor Conference Room 252

Bid Tabulation Detail Line Items				CEC Motors & Utility Services, LLC Palmetto, FL		Commerce Controls,(FLA), L.L.C. Tampa and Novi, Michigan		John Mader Enterprises, Inc., DBA Mader Electric Motors N. Ft. Myers, FL		Nauti Electric, Inc. Cape Coral, FL		Tampa Armature Works, Inc. Riverview, FL		Coastal Electric of SWF Estero, FL	
ITEM	DESCRIPTION	ESTIMATED QUANTITY (A)	UNIT	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)
1	South Wellfield Drive Panel Design and Fabrication - Initial Panel	1	Each	\$8,731.58	\$8,731.58	\$19,883.00	\$19,883.00	\$13,314.00	\$13,314.00	\$37,000.00	\$37,000.00	\$18,913.45	\$18,913.45	\$20,310.00	\$20,310.00
2	South Wellfield Drive Panel Design and Fabrication - Remaining Panels	25	Each	\$8,731.58	\$218,289.50	\$10,775.00	\$269,375.00	\$13,314.00	\$332,850.00	\$14,000.00	\$350,000.00	\$15,032.58	\$375,814.50	\$20,310.00	\$507,750.00
3	Added - Payment - Performance Bonds	1	Each			\$4,200.00									
Total Base Bid Cost Including all Panels, Installation of Components into Panels and Delivery to FOB Destination - Cape Coral					\$227,021.08		\$293,458.00		\$346,164.00		\$387,000.00		\$394,727.95		\$528,060.00
Substitutes or Deductions Offered by Vendor							(\$8,450.00)								
FINAL BID COST TOTALS 					\$227,021.08		\$285,008.00		\$346,164.00		\$387,000.00		\$394,727.95		\$528,060.00
				BID DEEMED NON-RESPONSIVE											

Item Number: B.(4)
Meeting Date: 2/13/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 31-17 Award ITB-PW17-22-GM Del Prado Bridge Coatings to CL Coatings, LLC of Lakeland, Florida, for the recoating of five (5) bridges on Del Prado Boulevard, as the lowest responsive, responsible bidder, in the amount of \$59,950 with a 10% city controlled contingency of \$5,995 for a total of \$65,945, and authorize the City Manager or Designee to execute the contract; Department: Public Works; Dollar Value: \$65,945; (General 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? No
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:

1. The City, Public Works Department, is responsible for maintaining five (5) bridges constructed as part of the extension of Del Prado Boulevard North. The existing aesthetic surface finishes of these bridges have worn down to a condition that requires the City to clean, patch, reseal, and paint the bridges before any damage is done to the concrete substructure.
2. On November 9, 2016 the City issued an Invitation to Bid (ITB) ITB-PW17-22-GM Del Prado Bridge Coatings, for the existing aesthetic surface finishes of five (5) bridges on Del Prado Boulevard Extension requiring repair and recoating.
3. On December 9, 2016, five (5) bids were received from, in alphabetical order, CL Coatings, LLC of Lakeland, Florida; Extreme Sandblasting and Paintings, Inc. of Tarpon Springs, Florida; Gulf Coast Contracting, LLC of Holiday, Florida; M & J Construction Company of Pinellas County, Inc. of Tarpon Springs, Florida; and Worth Contracting, Inc. of Jacksonville, Florida.
4. Staff recommends awarding to CL Coatings, LLC as the lowest responsive responsible bidder meeting the requirements and specifications outlined in the bid document.
5. Staff is requesting approval for the bid award of \$59,950 with a 10% (\$5,995) City Controlled Contingency for a total project cost of \$65,945.
6. The Project Manager is requesting a City Controlled Contingency: The expenditure of

contingency, if any, will be subject to approval of specific change orders by City's Project Manager, if justified, upon identified needs with an appropriate scope and cost to address specific needs.

7. Funding Information: Bridge Maintenance -130103.653102

LEGAL REVIEW:

Contract approved by Legal

EXHIBITS:

Department Recommendation

Resolution 31-17

Bid Matrix - ITB-PW17-22-GM

PREPARED BY:

Wanda Division- Procurement Department- Finance
Roop

SOURCE OF ADDITIONAL INFORMATION:

Paul Clinghan, Public Works Director

ATTACHMENTS:

Description	Type
▣ Department Recommendation	Backup Material
▣ Resolution 31-17	Resolution
▣ Bid Matrix - ITB-PW17-22-GM	Backup Material

MEMORANDUM

CITY OF CAPE CORAL
PUBLIC WORKS DEPARTMENT

TO: John Szerlag, City Manager

FROM: Victoria Bateman, Financial Services Director
Wanda Roop, Procurement Manager
Paul Clinghan, Public Works Director *PRC*
Gary Gasperini, Public Works Maintenance Division Manager *GG*

DATE: January 17, 2017

SUBJECT: Contract for Del Prado Blvd. Extension Bridge Aesthetic Repairs

Background

The Public Works Department is responsible for maintaining five (5) bridges constructed as part of the extension of Del Prado Boulevard North. The existing aesthetic surface finishes of these bridges have worn down to a condition that requires the City to clean, patch, reseal, and paint the bridges before any damage is done to the concrete substructure.

Recommendation

The Procurement Division received five (5) bids for cleaning, patching, resealing, and painting the bridges on Del Prado Boulevard North. The Public Works Maintenance Division recommends awarding a contract in the amount of \$59,950 to CL Coatings, LLC, with a 10% City controlled contingency, for a total of \$65,945, to address the aesthetic deficiencies of all five (5) bridges. CL Coatings, LLC, provided the lowest, responsive bid, and in 2016 satisfactorily performed the painting of the water tanks at the Utility Departments' North Reverse Osmosis Plant.

Fund Availability

These purchases are funded in Transportation account 130103.653102 (Maintenance/Bridge Maintenance).

PC/GG: dk (contractfordelpradoblvdextensionbridgeaestheticrepairs)

RESOLUTION 31 – 17

A RESOLUTION OF THE CITY OF CAPE CORAL AWARDING A BID FOR DEL PRADO BRIDGE COATINGS TO CL COATINGS, LLC; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT DOCUMENTS BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING FOR APPROVAL OF A CONTINGENCY AMOUNT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 9, 2016, INVITATION TO BID (ITB) #PW17-22/GM was issued for Del Prado Bridge Coatings for the cleaning, patching, resealing and painting of five bridges constructed as part of the extension of Del Prado Boulevard North; and

WHEREAS, on December 9, 2016, five (5) bids were received; and

WHEREAS, the City Manager recommends the award of the bid to CL Coatings, LLC, as the lowest qualified responsible and responsive bidder meeting the requirements and criteria set forth in the invitation to bid, in the amount of \$59,950, subject to a City-controlled contingency amount not to exceed ten (10) percent of the total amount of the contract.

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

Section 1. The City Council hereby awards the bid for Del Prado Bridge Coatings to CL Coatings, LLC, in the total amount of \$59,950, subject to a City-controlled contingency amount not to exceed ten (10) percent of the total amount of the contract.

Section 2. The City Council hereby approves the contract between the City of Cape Coral and CL Coatings, LLC, for Del Prado Bridge Coatings, and authorizes the City Manager or his designee to execute the Contract. A copy of the Contract is attached hereto as Exhibit 1.

Section 3. The City Council hereby authorizes the City Manager or the City Manager's designee to enter into change orders for work required other than as contemplated in the contract documents with an appropriate scope and cost to address those needs, subject to payment of a City-controlled contingency amount not to exceed ten (10) percent of the total amount of the contract.

Section 4. 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
res/Bid Award-CL Coatings LLC

**CITY OF CAPE CORAL
DEL PRADO BRIDGE COATINGS
CONTRACT #CON-PW17-22GM
Page 1 of 6**

THIS CONTRACT is made this _____ day of _____, 2017 by and between the **CITY OF CAPE CORAL, FLORIDA**, hereinafter called "**CITY**", and **CL Coatings, LLC**, doing business as a corporation, hereinafter called "**CONTRACTOR**".

WITNESSETH: For and in **consideration of the payments** and agreements mentioned hereinafter:

1. The CONTRACTOR will provide **Del Prado Bridge Coatings** in accordance with the Contract Documents.
2. The CONTRACTOR **will furnish** all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the services described in the Contract Documents. Time is of the essence in the performance of this Contract.
3. The CONTRACTOR **will commence** work as required by the CONTRACT DOCUMENTS within 10 calendar days after the receipt of the written Notice to Proceed and shall complete the same within 120 days. Liquidated damages of \$500.00 per day for each day not completed after the 120 days will be assessed against final invoice.
4. The CONTRACTOR **agrees** to perform all of the WORK described in the CONTRACT DOCUMENTS for the total sum of Fifty Nine Thousand Nine Hundred Fifty Dollars (\$59,950.00) as listed on the CONTRACTOR'S Official Bid Proposal Form (Exhibit A).
5. The **term** of the contract is 120 days.
6. This Contract **may be terminated** by the CITY for its convenience upon thirty (30) days prior written notice to the CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract. Such amount shall be paid by the CITY after inspection of the work to determine the extent of performance under this Contract, whether completed or in progress.
7. The Term "**Contract Documents**" shall include this Contract, addenda, Contractor's Bid except when it conflicts with any other contractual provision, the Notice to Proceed, Certificates, and the Bid Package prepared and issued by the City. In the event of conflict between any provision of any other document referenced herein as part of the contract and this Contract, the terms of this Contract shall control.

**CITY OF CAPE CORAL
DEL PRADO BRIDGE COATINGS
CONTRACT #CON-PW17-22GM
Page 2 of 6**

8. **Assignment:** This Contract may not be assigned except with the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
9. **Disclosure:** The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the Contract.
10. **Administration of Contract:** The Public Works Director, or his representative, shall administer this Contract for the CITY.
11. **Governing Law:** The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claims and/or dispute resolutions 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, each party shall be responsible to pay for its own reasonable costs and attorney's fees.
12. **Amendments:** No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties.
13. **Payments:** CITY shall make payment and CONTRACTOR shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice unless, within a fifteen (15) day period, CITY notifies CONTRACTOR in writing of its objection to the amount of such invoice, together with CITY'S determination of the proper amount of such invoice. CITY shall pay any undisputed portion of such invoice within such thirty (30) day period. CITY shall give such notice to the CONTRACTOR within a fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, CITY shall promptly pay the CONTRACTOR the amount so determined, less any amounts previously paid by CITY with respect to such invoice. In the event it is determined that CITY has overpaid such invoice, the CONTRACTOR shall promptly refund to the CITY the amount of such overpayment.
14. **Contractor's Representations:** In order to induce CITY to enter into the Contract CONTRACTOR makes the following representations:

CONTRACTOR has been familiarized with the Contract Documents and the nature and extent of the work required to be performed, locality, local conditions, and Federal, State, and Local laws, ordinances, rules and regulations that in any manner may affect costs, progress or performance of the work.

**CITY OF CAPE CORAL
DEL PRADO BRIDGE COATINGS
CONTRACT #CON-PW17-22GM
Page 3 of 6**

CONTRACTOR has made or caused to be made examinations, investigations and tests and studies as deemed necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.

CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents. CONTRACTOR has given CITY written notice of all conflicts, errors or discrepancies that have been discovered in the CONTRACT DOCUMENTS and the written resolution thereof by CITY is acceptable to CONTRACTOR.

15. **Indemnity:** To the extent permitted by law (F.S. 768.28), the CONTRACTOR shall indemnify and hold harmless the CITY, its 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 and any persons employed or utilized by CONTRACTOR in the performance of this Contract.
16. **Damage Liability:** The awarded CONTRACTOR shall be responsible for all claims filed for damage to private property, windows, screen enclosures, real estate signs, etc. Additionally, the CONTRACTOR shall be responsible for damage to all public property or utility property, fire hydrants, catch basins, guy wires telephone pedestals, etc. Copies of all damage claims shall be submitted to the Procurement Division.
17. **Invalid Provision:** The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
18. **Project Records:** The CONTRACTOR shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting methods, and the CITY reserves the right to determine the record-keeping method in the event of non-conformity. These records shall be maintained for five (5) years after final payment has been made and shall be readily available to CITY personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.

**CITY OF CAPE CORAL
DEL PRADO BRIDGE COATINGS
CONTRACT #CON-PW17-22GM
Page 4 of 6**

19. **Insurance:** Unless otherwise specified, CONTRACTOR shall, at its own expense, carry and maintain the following minimum insurance coverage, as well as any insurance coverage required by law:
- a. Worker's Compensation Insurance with limits that comply with statutory requirements and Employer's Liability Insurance with a lower limit of \$1,000,000 per occurrence, including, without limitation, coverage for Occupational Diseases, to provide for the payment of benefits to its employees employed on or in connection with the Work covered by this Agreement and/or to their dependents.
 - b. Broad Form Commercial General Liability Insurance (on an occurrence basis), with a minimum combined single limit for Bodily Injury, including Death of \$1,000,000 per occurrence and for Property Damage of at least \$1,000,000 per occurrence.
 - c. Business Auto Liability Insurance with minimum Bodily Injury and Death Limit per accident of \$1,000,000 and a minimum Property Damage Limit per accident of \$1,000,000.
 - d. FIRM shall require its subcontractors to provide for such benefits and carry and maintain the foregoing types of insurance at no expense to CITY. CITY shall be named as an "Additional Insured" under the CONTRACTOR'S General Liability Insurance Policy with respect to the services performed by the CONTRACTOR.
 - f. Prior to commencing any Work under this Agreement, FIRM shall submit to CITY a certificate or certificates of insurance evidencing that such benefits have been provided, and that such insurance is being carried and maintained. Such certificates shall stipulate that the insurance will not be cancelled or materially changed without thirty (30) days prior written notice by certified mail to CITY, and shall also specify the date such benefits and insurance expire. FIRM agrees that such benefits shall be provided and such insurance carried and maintained until the Work has been completed and accepted by CITY.
 - e. Such benefits and such coverage as are required herein, or in any other document to be considered a part hereof, shall not be deemed to limit Firm's liability under this Agreement.
20. **Unauthorized Aliens:** The employment of unauthorized aliens by any Contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-contractors used by the Contractor as well.

**CITY OF CAPE CORAL
DEL PRADO BRIDGE COATINGS
CONTRACT #CON-PW17-22GM
Page 5 of 6**

21. **Entire Agreement:** This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

(Balance of page left blank)

City of Cape Coral
FY2016 Resurfacing of Miscellaneous Roadways
Contract PW16-71-GM
Page 6 of 6

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials this Agreement in two (2) counterparts which shall be deemed an original on the date last signed as below written.

(CITY SEAL)
ATTEST:

CITY:

City of Cape Coral, Florida

Signature

Signature

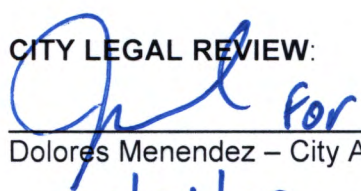
Rebecca van Deutekom
Name

A. John Szerlag
Name

City Clerk
Title

City Manager
Title

CITY LEGAL REVIEW:



Dolores Menendez – City Attorney

Date

1/24/17
Date

CONTRACTOR:

CL Coatings, LLC
Company

Signature

State of Florida Contractor License #

Typed/Printed Name

Date

Title

EXHIBIT A

CITY OF CAPE CORAL OFFICIAL BID PROPOSAL

Page 2 of 2

BID NUMBER: ITB-PW17-22-GMDATE December 9, 2016BID TITLE: Del Prado Bridge Coatings

Bridge #125200, NE 17 th Place, South of NE 23 rd Terrace	\$	8,760 ⁰⁰
Bridge #125201, NE 14 th Place, South of NE 23 rd Terrace	\$	8,760 ⁰⁰
Bridge #125202, NE 16 th Place, South of NE 12 th Terrace	\$	8,760 ⁰⁰
Bridge #125203, Del Prado Blvd, South of NE 14 th Street	\$	18,310 ⁰⁰
Bridge #125204, Del Prado Blvd, North of NE 23 rd Street	\$	15,360 ⁰⁰
Grand Total	\$	59,950 ⁰⁰

Remarks by Bidder:

If there are deviations, they MUST be listed below, otherwise none will be allowed. If additional space is required, attach a second sheet to this Bid Proposal Form. If nothing is listed below, it will be interpreted as meaning NO DEVIATIONS.

City of Cape Coral

Del Prado Bride Coatings ITB-PW17-22-GM

Open Date: 12/16/2016

Name	CL Coatings, LLC 5840 Brannen Rd S Lakeland, FL	Extreme Sandblasting & Painting, Inc. 720 Charlotte Ave Tarpon Springs, FL	M & J Construction Company of Pinellas County, Inc. 809 S Safford Ave Tarpon Springs, FL	Gulf Coast Contracting, Inc. 4125 Louis Ave Holiday, FL	Worth Contracting, Inc. 2112 Jernigan Rd Jacksonville, FL
Bridge #125200	\$ 8,760.00	\$ 25,353.732	\$ 48,165.00	\$ 83,800.00	\$ 100,000.00
Bridge #125201	\$ 8,760.00	\$ 25,353.732	\$ 48,165.00	\$ 83,800.00	\$ 100,000.00
Bridge #125202	\$ 8,760.00	\$ 25,353.732	\$ 48,165.00	\$ 83,800.00	\$ 100,000.00
Bridge #125203	\$ 18,310.00	\$ 28,336.524	\$ 70,898.00	\$ 83,800.00	\$ 150,000.00
Bridge #125204	\$ 15,360.00	\$ 44,741.880	\$ 48,165.00	\$ 83,800.00	\$ 100,000.00
Grand Total	\$ 59,950.00	\$ 149,139.600	\$ 263,558.00	\$ 419,000.00	\$ 550,000.00

Item Number: B.(5)
Meeting Date: 2/13/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 33-17 Renewal of Mutual Aid Agreement (MAA) between the Lee County Sheriff's Office (LCSO) and the City of Cape Coral Police Department (CCPD) for Use of Aviation Section Resources and authorizing the City Manager and Chief of Police to execute the Agreement; 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? No

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. In order to provide adequate levels of police services, the City of Cape Coral entered into a Mutual Aid Agreement with LCSO in 2005, subsequently renewed in 2013, with the current Agreement expired January 21, 2017. The MAA with LCSO tracks the incumbent's term of office with our renewal at the beginning of each term.
2. The MAA sets forth certain requirements:
 - a. CCPD will provide a full-time certified Law Enforcement Officer to the LCSO Aviation Section.
 - b. Operating and maintenance costs are the responsibility of the Lee County Sheriff's Office.
 - c. Usual and customary provisions as set forth in Florida State Statutes apply.
3. The cost of providing law enforcement aviation resources to the City of Cape Coral is limited to the salary and benefits of the pilot and training toward obtaining a Private Pilot Certificate.
4. LCSO will provide all flight training toward Commercial Pilot Certification, Single-Engine Land and Rotorcraft, and Airplane and Rotorcraft Instrument Ratings, with the exception of

fees associated with the required FAA Practical Tests.

5. The Mutual Aid Agreement will be in effect until January 21, 2021, unless terminated by either party with no less than six months' notification.

LEGAL REVIEW:

Legal has reviewed and is approving original copies.

EXHIBITS:

Mutual Aid Agreement between Lee County Sheriff's Office and City of Cape Coral Police Department for Use of Aviation Section Resources.

PREPARED BY:

Bonnie
Demuth Division- Administration Department- Police

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▣ Resolution 33-17	Resolution

RESOLUTION 33 - 17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING THE MUTUAL AID AGREEMENT BETWEEN THE CITY OF CAPE CORAL POLICE DEPARTMENT AND THE LEE COUNTY SHERIFF'S OFFICE FOR THE USE OF AVIATION SECTION RESOURCES; AUTHORIZING THE CITY MANAGER AND 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 Lee County Sheriff's Office to ensure the public safety of the citizens of both the City of Cape Coral and Lee County by providing adequate levels of police services through the use of Aviation Section resources 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 Lee County Sheriff's Office for the use of Aviation Section resources. The Mutual Aid Agreement is attached hereto as Exhibit A.

Section 2. The City Council hereby authorizes the City Manager and 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 _____
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

res/Mutual Aid Agreement-LCSO Aviation Resources

MUTUAL AID AGREEMENT

Between Lee County Sheriff's Office and
City of Cape Coral Police Department for
Use of Aviation Section Resources

WHEREAS, it is the responsibility of the governments of the Lee County Sheriff's Office (LCSO) and Cape Coral Police Department (CCPD) 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 the 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 LCSO and CCPD; and

WHEREAS, in order to ensure that preparation of these law enforcement 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 of Lee County, and the participating CCPD; and

WHEREAS, LCSO and CCPD have the authority under Chapter 23, Florida Statutes, Florida Mutual Aid Act, to enter into a Mutual Aid Agreement;

NOW, THEREFORE, BE IT KNOWN that the LCSO and CCPD, political subdivisions of State of Florida, and the 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 - Aviation Section Resources.

2. Description: Since this MAA provides for the requesting and rendering of assistance for the parties' use and maintenance of LCSO aircraft, this MAA 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. Agency or participating law enforcement agency: Either LCSO or CCPD.
- b. Agency head: Either the Sheriff of Lee County, or the Sheriff's designees or the Chief of Cape Coral Police Department, or the Chief's designees.
- c. Participating municipal police department: The agency that has approved and executed this Agreement upon the approval of the governing body of that Police Department.
- d. Certified law enforcement employee: Any law enforcement employee certified as provided in Chapter 943, Florida Statutes. LCSO Deputy Sheriff and CCPD Officer are two examples.
- e. Pilot: That member of the LCSO Aviation Section that has obtained the appropriate FAA Certificates and Ratings to act as Pilot-in-Command of the unit's aircraft and has demonstrated to the Chief Pilot the ability to safely carry-out the standard missions performed by the LCSO Aviation Section.
- f. Tactical Flight Officer (TFO): That member of the LCSO Aviation Section that performs the co-pilot or Second-in-Command functions in flight. These tasks include navigation, communicating on multiple radios, and operating specialized mission equipment.

4. General:

a. The CCPD has agreed to provide one (1) full time certified law enforcement employee (Officer) to the LCSO Aviation Section. This Officer may fill the role of either Tactical Flight Officer (TFO) or Pilot and will be mutually agreed upon (satisfactory to both agencies).

b. The CCPD Officer will serve as TFO/Pilot and be prepared to respond to all calls for service regardless of the requesting agency as would any member of the Section.

c. During his time serving with the LCSO Aviation Section, the CCPD Officer will report directly to and be supervised by the LCSO Chief Pilot.

d. This MAA will be reviewed annually for effectiveness. Any line item(s) that needs to be modified, revised, or added will require the mutual agreement of both agencies.

e. If at any time either agency desires to terminate this MAA, a notification of not less than six months is required unless both agencies are in agreement that it is in the best interest of both parties to terminate earlier.

5. Training:

a. CCPD Officers will start their tenure with the LCSO Aviation Section serving as Tactical Flight Officers (TFOs) regardless of their experience or pilot ratings held.

b. Initial TFO training takes approximately three months to complete. After serving as a TFO for six months, those CCPD Officers desiring to become Pilots can start that training while continuing to serve as TFOs.

c. Those CCPD Officers that do not already possess at least a Private Pilot Certificate, Single-Engine Land and Rotorcraft, will be required to obtain both at the CCPD's expense. These costs will include fees associated with all formal courses, seminars, and written and practical tests toward FAA certification.

d. All training and progress toward attainment of the Private Pilot Certificates will be monitored by the LCSO Chief Pilot.

e. Once the CCPD Officer has obtained his Private Pilot Certificate, the LCSO Aviation Section will provide all flight training toward Commercial Pilot Certificate, Single-Engine Land and Rotorcraft, and Airplane and Rotorcraft Instrument Ratings, with the exception of the fees associated with the required FAA Practical Tests (Check Rides). FAA Practical Test fees will be at CCPD's expense.

f. In-flight training will often occur before, during, or after the performance of a required mission.

g. It will be understood by both parties that flight instruction is secondary to the mission of each agency. Specific FAA required flights will be incorporated into missions whenever possible. As a result, reasonable delays in flight instruction may occur.

6. Responses:

a. As stated previously; the CCPD Officer will act as any other member of the LCSO Aviation Section and therefore be prepared to respond to any missions assigned. In the event each agency needs Aviation assistance at the same time, the Watch Commanders from each agency can communicate and determine which call Aviation should respond to first. Unless otherwise directed, the duty Pilot will prioritize

simultaneous Calls-for-Service (CFS) based upon the perceived urgency, regardless of which agency has requested assistance.

b. The decision to accept any flight requires the consent of both the Pilot and the TFO on duty. In-flight, all final decisions are made by the Pilot-in-Command.

c. The CCPD employee will be subject to call-back by the CCPD for other duties, provided that flight missions will take priority unless there is an extreme emergency requiring such call-back.

d. Actual flight time over Cape Coral will vary depending upon the volume of Calls-for-Service (CFS) with patrol flights scheduled proportionally throughout the county. All flight time in support of Cape Coral shall be annotated on applicable Flight Logs. Requests for General Patrol flights over Cape Coral will be accommodated whenever possible. While in airspace over Cape Coral, all LCSO aircraft will monitor and transmit on the appropriate CCPD dispatch radio channel. All LCSO aircraft are programmed to allow this communication.

e. Whenever possible, the parties will endeavor to schedule planned activities in advance in order to avoid conflicts in scheduling.

f. It is understood by the parties that missions and staffing take absolute priority over training.

g. If an aviation asset is committed to a call that cannot be terminated (due to safety or security reasons), additional personnel will be called in, if possible, to handle any subsequent call(s). During normal business hours the LCSO Aviation Section often has more than one aircraft and crew available.

7. Powers, Privileges, Immunities, and Costs:

a. All employees of the participating municipal department, including certified law enforcement employees as defined in Chapter 943, Florida Statutes, during such time that said employees are actually using the aircraft outside of the jurisdictional limits of the employing municipality 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 municipality in which they are normally employed.

b. The local government having financial responsibility for the law enforcement agency providing aid pursuant to this Agreement shall compensate all of its employees operating pursuant to this Agreement during the time of such use and shall defray the actual travel and maintenance expenses of such employees. Such compensation shall include any amounts paid or due for compensation due to personal injury or death while such employees are engaged in rendering such aid. Such compensation shall also include all benefits normally due such employees.

c. All exemption from ordinance and rules, and all pension, insurance, relief, disability, workers' compensation, salary, death and other benefits which apply to the activity of such officers, agents, or employees of any such agency when performing their respective functions within the territorial limits of their respective agencies shall apply to 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 Agreement.

8. Indemnification: The local government having financial responsibility for each law enforcement agency to this Agreement agrees to assume liability for the negligent acts of its officers, employees, and agents during the performance of this

Agreement, and will defend all claims, causes of action, damages, suits, or other actions which any person may pursue based on the negligent acts of its officers, employees, or agents alleged to have occurred during the performance of this Agreement. No liability is assumed by either party beyond that allowed by Section 768.28, Florida Statutes,

9. Effective Date and Duration: This Agreement shall be in effect from the date of signing, through and including January 21, 2021. Under no circumstances may this Agreement be renewed, amended, or extended except in writing.

10. Filing requirements: Pursuant to Section 23.1225(4), Florida Statutes, a copy of this MAA shall be filed with the Florida Department of Law Enforcement within fourteen (14) days after it is approved and executed by both parties.

AGREED TO AND ACKNOWLEDGED this ____ day of _____
2017.

Signature of City Manager _____

Printed Name of City Manager A. John Szerlag
City of Cape Coral O/B/O Cape Coral Police Department
Cape Coral, Florida

Date: _____

APPROVED AS TO FORM:
Y: 
City Attorney's Office
1/25/17

Signature of Chief _____

Printed Name of Chief _____ David Newlan _____

City of Cape Coral O/B/O Cape Coral Police Department

Cape Coral, Florida

Date: _____

Signature of Sheriff _____

Printed Name of Sheriff _____ Mike Scott _____

Lee County Sheriff's Office

Fort Myers, Florida

Date: _____

Item Number: B.(6)
Meeting Date: 2/13/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 34-17 Approval of Contract for Purchase of Lots 3 and 4, Block 2898, Unit 41, Cape Coral Subdivision, 1523 NW 8th Terrace, to provide a site for a Canal Pump Station facility for the purchase price of \$13,000 plus closing costs not to exceed \$1,200; Department: Financial Services / Real Estate; Dollar Value: \$14,200; (Water and Sewer 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 C: INVEST IN COMMUNITY INFRASTRUCTURE INCLUDING UTILITIES EXPANSION IMPROVEMENTS TO ENHANCE THE CITY'S ABILITY TO MEET THE NEEDS OF ITS CURRENT AND FUTURE RESIDENTS AND BUSINESSES

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. The expansion of the City's utilities into the SW 6 & 7 Utility Extension Project area (UEP) has provided water, sewer and irrigation services to the majority of the properties south of Pine Island Road within the City limits. Subsequently City Council approved the design contract for the next phase of the UEP into the North 2 area.
2. The City's Utility Capital Improvement Plan (CIP) includes in the approved budget for the City to construct two additional Canal Pump Station facilities in order to effectively service the properties within SW 6 & 7 and future parcels in North 2.
3. The City's irrigation source consists of surface water (canals) and reuse (effluent) from the Water Reclamation Facility's (WRF). Presently five (5) existing Canal Pump Stations (CPS) utilize surface water to pressurize the irrigation system beyond the WRF pressure zones.
4. During the dry season the major source of irrigation water comes from the City's freshwater canal system. The City's irrigation service areas have a high peak demand in the dry season

(typically October through May) with potentially a four to five month extreme dry period. During this dry period, the canal system has difficulty meeting instantaneous peak demands.

5. At this location, the City currently owns two of the three parcels needed for the proposed canal pump station facility. However, they are separated by the subject parcel which is required to construct and complete the facility.

6. Staff submitted a contract offer to purchase the property based on an appraisal, performed by an independent State Certified Appraiser, reflecting a market value of \$12,600. The Seller countered the City's offer at \$13,000. Although the Seller's counter offer is slightly above the City's appraised value, it has been determined to be within reason when considering all the costs of litigation (i.e., attorney fees and expert costs) if the City were to proceed with condemning the property.

-

7. Staff recommends approval of the purchase contract for Lots 3 and 4, Block 2898, Unit 41, Cape Coral Subdivision, 1523 NW 8th Terrace, for the purchase price of \$13,000 plus closing costs not to exceed \$1,200.

LEGAL REVIEW:

EXHIBITS:

Resolution 34-17

Property Appraiser Printout

Location Map

PREPARED BY:

Dawn Y. Andrews, Property
Broker

Division- Real
Estate

Department- Financial
Services

SOURCE OF ADDITIONAL INFORMATION:

Dawn Y. Andrews, Property Broker
Financial Services / Real Estate Division
239-574-0735

Greg Spivey, Property Acquisition Agent
Financial Services / Real Estate Division
239-574-0711

ATTACHMENTS:

Description	Type
▣ Resolution 34-17	Resolution
▣ Property Appraiser Sheet - Blk 2898, Lots 3-4	Backup Material
▣ Location Map - Blk 2898, Lots 3-4	Backup Material

RESOLUTION 34 - 17

A RESOLUTION OF THE CITY OF CAPE CORAL AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR SALE AND PURCHASE BETWEEN REYNALDO PASCUAL AND THE CITY OF CAPE CORAL FOR PROPERTY LOCATED AT 1523 NW 8TH TERRACE IN ORDER TO CONSTRUCT A CANAL PUMP STATION IN THE NORTH 2 UTILITY EXPANSION PROJECT AREA; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral currently has five existing Canal Pump Stations that utilize surface water to pressurize the City's irrigation system beyond the Water Reclamation Facility pressure zones; and

WHEREAS, due to the expansion of the City's utilities into the SW 6 & 7 Utilities Expansion Project (UEP) area and the upcoming expansion into the North 2 UEP area, the City's Utility Capital Improvement Plan includes the construction of two additional Canal Pump Stations to service the SW 6 & 7 and North 2 UEP areas; and

WHEREAS, the City currently owns two of the three parcels required for the proposed Canal Pump Station location on NW 8th Terrace; and

WHEREAS, the subject property separates the two parcels currently owned by the City and is required to construct and complete the proposed Canal Pump Station facility; and

WHEREAS, the City has obtained a recent appraisal pursuant to Section 2-152 of the City of Cape Coral Code of Ordinances; and

WHEREAS, City staff recommends that the City purchase the subject property pursuant to the terms and price set forth in the contract; and

WHEREAS, the City Manager requests approval to enter into the Contract for Sale and Purchase.

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

Section 1. The City Council hereby authorizes the City Manager to execute a Contract for Sale and Purchase between Reynaldo Pascual and the City of Cape Coral in the amount of \$13,000 for property described as Lots 3 and 4, Block 2898, Unit 41, Cape Coral Subdivision, as more fully described in the Contract. The property is located at 1523 NW 8th Terrace. The City Council also authorizes an additional \$1,200 for closing costs of the transaction. A copy of the Contract for Sale and Purchase is 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:

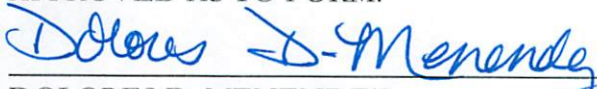
SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

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

Res/Purchase Real Property Canal Pump Station West B2898

OFFER TO PURCHASE

THIS IS A LEGALLY BINDING CONTRACT WHEN PROPERLY COMPLETED AND EXECUTED. IF NOT FULLY UNDERSTOOD, SEEK LEGAL ADVICE BEFORE SIGNING.

PARTIES: Reynaldo Pascual, 7376 W 18th Ave., Hialeah, FL, 33014 as "**SELLER**", and City of Cape Coral, a Florida Municipal Corporation, P.O. Box 150027, Cape Coral, Florida 33915-0027, successors or assigns, as "**BUYER**", hereby agree that the **SELLER** shall sell and **BUYER** shall buy the following described property (hereinafter referred to as "**PROPERTY**") upon the following terms and conditions:

1. **LEGAL DESCRIPTION** of real estate located in Lee County, Florida:
Lots 3 and 4, Block 2898, Unit 41, Cape Coral Subdivision, as recorded in Plat Book 17, Pages 2-14, inclusive, of the Public Records of Lee County, Florida.
2. **PURCHASE PRICE**

~~\$12,600.00~~ 4P
\$ 13,000.00
3. **TERMS OF CONTRACT.** This contract for sale and purchase is an effective binding contract once it is executed by the **SELLER** and by the City Manager or the City Manager's designee on behalf of the **BUYER**. This contract is subject to applicable Florida probate proceedings, if required. **BUYER** and **SELLER** understand and agree that in the event probate proceedings are necessary, **SELLER** shall be solely responsible for any and all expenses necessary to complete said probate proceedings.
4. **EFFECTIVE DATE & CLOSING DATE.** The Effective Date of this contract shall be the date upon which it is executed by the **SELLER**. This contract shall be closed and the deed shall be delivered within 30 business days after execution by the **SELLER**, unless extended by other provisions of this contract. Such other provisions shall include, but not be limited to, paragraph 7. Possession shall be granted on the day of closing unless otherwise agreed in writing.

5. **CONVEYANCE.** **SELLER** shall convey title to the property to **BUYER** by Warranty Deed subject only to matters contained in this contract and taxes for the year of closing.

6. **RESTRICTIONS AND EASEMENTS.** **BUYER** shall take title subject to:

- (a) Zoning and restrictions and prohibitions imposed by governmental authority;
- (b) Restrictive covenants of record;
- (c) Public utility easements of record, provided however said easements are located along the perimeter of the property and are not more than six feet (6') in width;
- (d) Taxes for the year of closing and subsequent years;

Provided, however, that none of the foregoing shall prevent use of the entire property for the purpose of right-of-way or any other governmental purpose.

7. **EVIDENCE OF TITLE.** Within fifteen (15) days from the date of this contract, **BUYER** shall at **BUYER'S** expense, obtain a title insurance binder issued by a qualified title insurer of its choice, agreeing to issue to **BUYER**, upon the recording of the deed hereafter mentioned, a title insurance policy in the amount of the purchase price insuring the title to that real property. **BUYER** shall have fifteen (15) days from the date of receiving the evidence of title to examine same. If title is found to be defective, **BUYER** or closing agent shall, within said period of time, notify **SELLER** in writing specifying defects that need to be cured. For purposes of this contract, a requirement by the title insurer that the **SELLER** institute and complete a quiet title action shall be deemed to be a title defect that shall be cured by **SELLER**. If said defects render the title unmarketable or *uninsurable* **SELLER** shall have ninety (90) days from the receipt of such notice to cure the defects, and if after said period **SELLER** shall not have cured the defects, then **BUYER** shall have the option of (1) accepting the title as it then is; (2) affording **SELLER** additional time to cure the defect(s); or (3) terminate the contract by providing written notice to the **SELLER**.

8. **EXISTING MORTGAGES.** **SELLER** shall furnish estoppel letters from mortgagee(s) setting forth the principal balance, escrow balance, method of payment, and whether the

mortgage is in good standing. It shall be **SELLER'S** obligation to obtain any satisfactions of mortgage required for closing.

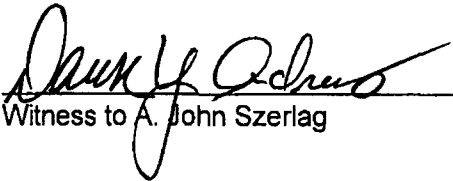
9. **SURVEY.** If **BUYER** desires a survey, **BUYER** shall have the property surveyed at its expense prior to closing date. If the survey shows an encroachment, the same shall be treated as a title defect.
10. **OTHER AGREEMENTS.** No agreements or representations, unless incorporated in this contract, shall be binding upon any of the parties, unless they be in writing and agreed to by all parties.
11. **MECHANIC'S LIENS.** **SELLER** shall execute an affidavit that there have been no improvements to the subject property and that **SELLER** has not entered any contracts for the provision of goods or services that could give rise to a mechanic's lien for the ninety (90) days immediately preceding the date of closing.
12. **TIME IS OF THE ESSENCE** in the performance of this contract.
13. **DOCUMENTS FOR CLOSING.** **SELLER** shall execute a Warranty Deed, Seller's Affidavit and other necessary closing documents provided by closing agent.
14. **EXPENSES.** State surtax, title insurance, title search, title exam and settlement fee shall be paid by **BUYER**.
15. **PRORATION OF TAXES (REAL AND PERSONAL).** Taxes shall be prorated based upon the current year's tax without regard to discount. If the closing takes place and the current year's taxes are not fixed, and the current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If the current year's assessment is not available, then taxes will be prorated on the prior year's tax, provided, however, if there is a completed improvement of the subject premises by January 1 of the year of closing, then the taxes shall be prorated to the date of closing based upon the prior year's millage. It is further agreed that should, upon receipt of current tax statement, the taxes be different by more than Ten Dollars (\$10.00) than those estimated, the proration shall be adjusted.

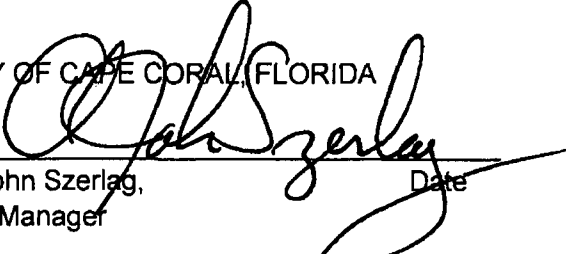
16. **ATTORNEY'S FEES AND COSTS.** In connection with any litigation arising out of the contract, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees. The parties agree to venue in Lee County, Florida for any action arising out of this Contract.
17. **DEFAULT BY SELLER.** If **SELLER** fails to perform any of the covenants of this contract other than the failure of **SELLER** to render his title marketable after diligent effort **BUYER** may proceed at law or in equity to enforce its legal rights under this contract, including, but not limited to, the right to bring suit for specific performance.
18. All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors and assigns of the respective parties.
19. This agreement shall be interpreted, construed, and governed according to the Laws of the State of Florida.
20. The invalidity or unenforceability of any particular provision of this agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid and unenforceable provisions were omitted.
21. **SELLER** and **BUYER** hereby agree that this contract to purchase the real property described above is for a proper municipal purpose and grants the **BUYER** the right to enter the real property described above for the purpose of surveying, soil borings, or any other work as deemed necessary by the **BUYER**. The parties herein further agree that the purchase of this property does not destroy or cause any damage whatsoever to **SELLER** or his successor or assigns with respect to any commercial or residential property owned by them whose lands are being so purchased or located upon adjoining lands.
22. The place of closing and delivery of the deed to **BUYER** shall be at any local office located within the City of Cape Coral designated by **BUYER**.
23. **ENVIRONMENTAL AUDIT.** **BUYER** may perform or have performed, at **BUYER'S** expense, an environmental audit of the property. If such an audit identifies environmental



problems unacceptable to the **BUYER** then **BUYER** may elect to accept the property in its existing condition or **BUYER** may terminate this Contract without obligation.

24. **REAL ESTATE COMMISSIONS.** **BUYER** and **SELLER** understand and agree that in the event **BUYER** has knowledge of any listing agreement for the subject property, then **BUYER**, at its option, may elect to notify and provide a copy of this contract to the listing Broker. **SELLER** shall be solely responsible for any Broker compensation, Realtor notification or any other terms and conditions of any listing agreement. **SELLER** shall also be responsible for any Realtor transaction fee or administration fee.
25. **DISCLOSURE OF BENEFICIAL INTERESTS.** **SELLER** agrees to comply with the provisions of Section 286.23(1), Florida Statutes. Said section requires that, before property that is owned by a partnership, limited partnership, corporation, trust or any other form of representative capacity whatsoever for others, is conveyed to a governmental unit, the representative of the owner/entity shall make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state the names and addresses of every person having a beneficial interest in the Real Property, however small or minimal.
26. If this offer is not executed by **SELLER** and delivered to **BUYER** within forty-five days (45) days after the date of signature by the **BUYER'S** authorized representative as stated below, or 30 days from the date of receipt by the **SELLER** as evidenced by the certified return receipt, whichever occurs first, then this offer shall be deemed withdrawn and shall be of no further force or effect whatsoever.
27. It is understood by the parties that this contract is entered by **SELLER** under the threat and in lieu of condemnation and is inclusive of all compensation for all attorney fees and costs incurred by **SELLER**.

IN WITNESS THEREOF, BUYER and SELLER have signed this contract on the date set forth below.

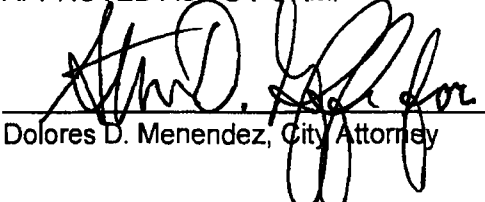

Witness to A. John Szerlag

CITY OF CAPE CORAL, FLORIDA
BY: 
A. John Szerlag, Date
City Manager


Witness
Print Name: Orcade Lynette

Witness
Print Name: Tiana Pennington

BY: Jennifer Pascual 1/23/17
Reynaldo Pascual Date
Power of attorney
for Reynaldo Pascual

APPROVED AS TO FORM:


Dolores D. Menendez, City Attorney



Property Data

STRAP: 03-44-23-C4-02898.0030 Folio ID: 10052086

Owner Of Record

PASCUAL REYNALDO
7376 W 18TH AVE
HIALEAH FL 33014

Site Address

1523 NW 8TH TER
CAPE CORAL FL 33993

Property Description

CAPE CORAL UNIT 41
BLK 2898 PB 17 PG 3
LOTS 3 + 4

Classification / DOR Code

VACANT COMMERCIAL / 10

[Tax Map Viewer]



[Pictometry Aerial Viewer]



Current Working Values



Just

11,686

As Of

06/30/2016

Attributes

Land Units Of Measure	SF
Units	10623.60
Frontage	85
Depth	125
Total Number of Buildings	0
Total Bedrooms / Bathrooms	0
Total Living Area	0
1st Year Building on Tax Roll	0
Historic District	No

Image of Structure



Exemptions



Values (2016 Tax Roll)



Taxing Authorities



Sales / Transactions

Sale Price	Date	OR Number	Type	Description	Vacant/Improved
25,000.00	05/15/2003	3942/1153	08	Sales disqualified as a result of examination of the deed Disqualified (Doc Stamps Greater than .70/SP Gr. than \$100)	V
4,292,500.00	05/15/2000	3261/4222	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V
2,640,000.00	04/19/2000	3261/4135	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V

4,685,000.00	06/30/1999	3141/523	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V
100.00	11/15/1988	2032/1977	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V



Parcel Numbering History



Location Information



Solid Waste (Garbage) Roll Data



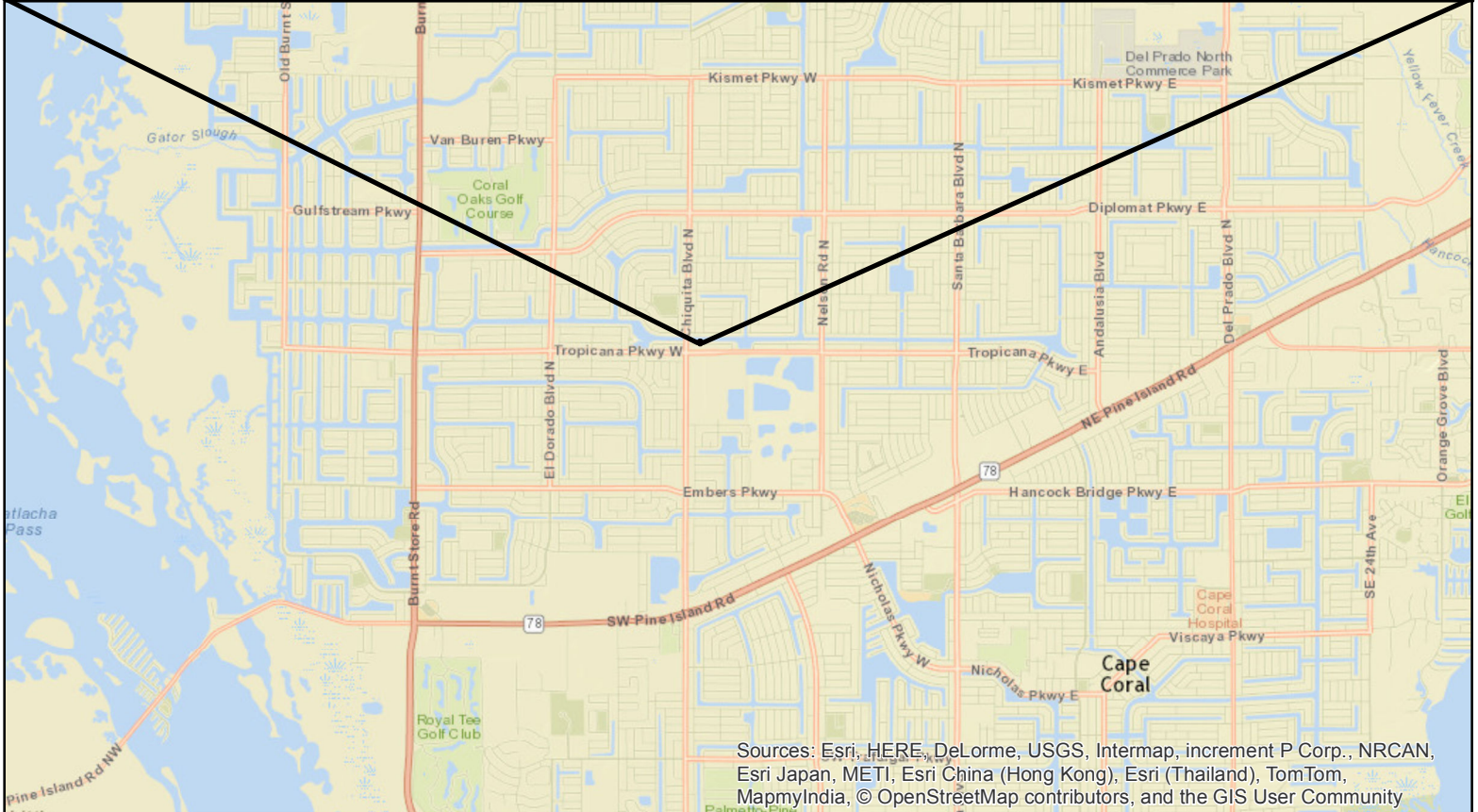
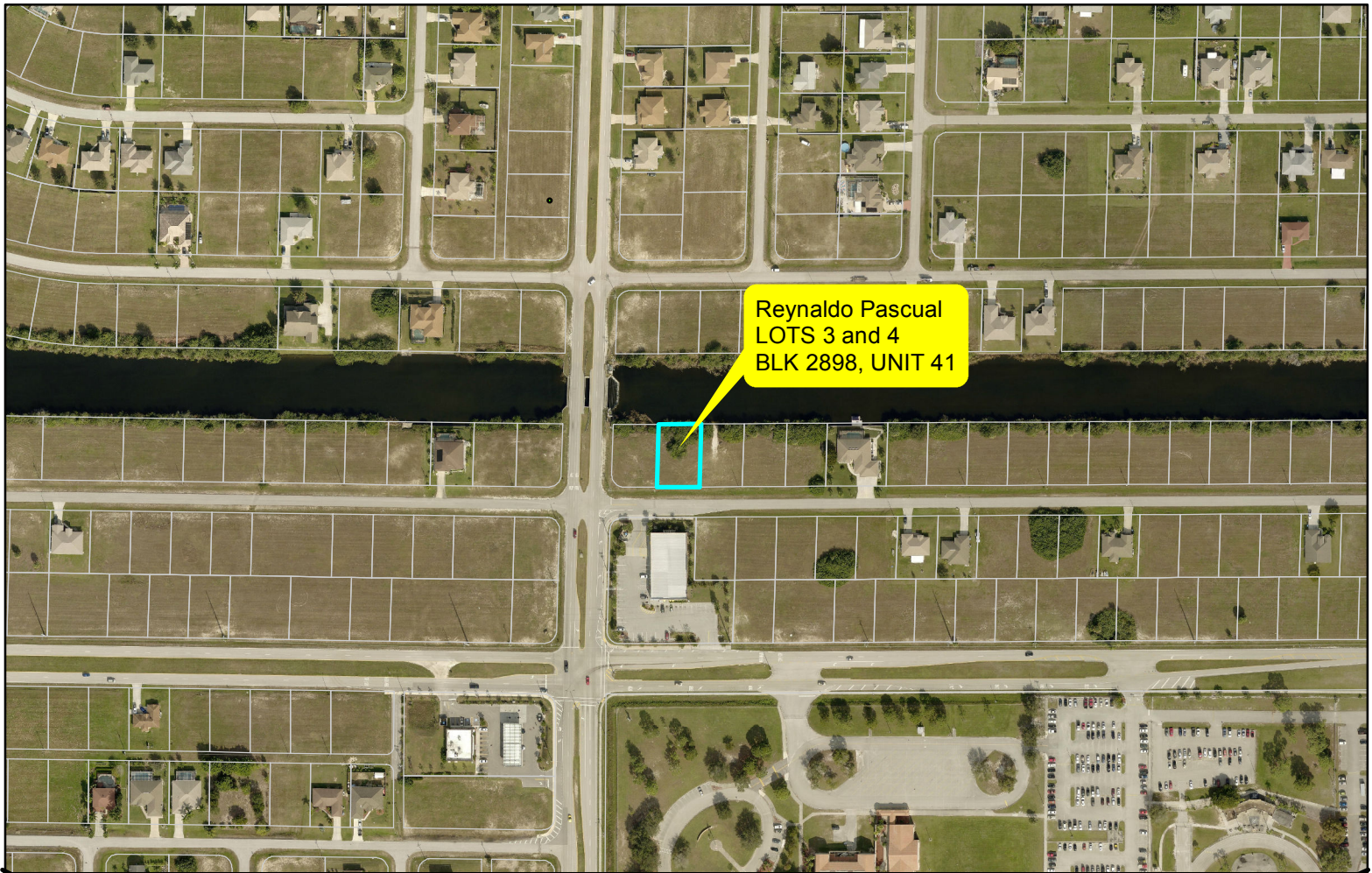
Flood and Storm Information



Appraisal Details (2016 Tax Roll)

TRIM (proposed tax) Notices are available for the following tax years
[[2007](#) [2008](#) [2009](#) [2010](#) [2011](#) [2012](#) [2013](#) [2014](#) [2015](#) [2016](#)]

[Previous Parcel Number](#) [Next Parcel Number](#) [New Query](#) [Search Results](#) [Home](#)



Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

Item Number: B.(7)
Meeting Date: 2/13/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

ADDENDUM: Resolution 35-17 Approval of Interlocal Agreement Between the City of Cape Coral and the Florida Governmental Utility Authority for Use of an Irrigation Water Interconnect;
Department: Utilities; Dollar Value: \$4,000,000; (Water and Sewer Fund)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? Yes

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 C: INVEST IN COMMUNITY INFRASTRUCTURE INCLUDING UTILITIES EXPANSION IMPROVEMENTS TO ENHANCE THE CITY'S ABILITY TO MEET THE NEEDS OF ITS CURRENT AND FUTURE RESIDENTS AND BUSINESSES

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

A Resolution authorizing the Mayor of the City of Cape Coral to execute an interlocal agreement between the City Cape Coral and Florida Governmental Utility Authority for the use of an irrigation water interconnect.

LEGAL REVIEW:

EXHIBITS:

Resolution 35-17

Memorandum of Understanding

NFMU 2004 Agreement (referenced in Agreement)

FGUA 2012 Agreement (referenced in Agreement)

PREPARED BY:

Kelley
Fernandez

Division- Administration

Department- City Manager's
Office

SOURCE OF ADDITIONAL INFORMATION:

John Szerlag, City Manager
Jeff Pearson, Utilities Director

ATTACHMENTS:

Description	Type
▣ Resolution 35-17	Backup Material
▣ Memorandum of Understanding	Backup Material
▣ NFMU 2004 Agreement (referenced in Agreement)	Backup Material
▣ FGUA 2012 Agreement (referenced in Agreement)	Backup Material

RESOLUTION 35 - 17

A RESOLUTION OF THE CITY OF CAPE CORAL AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF CAPE CORAL AND FLORIDA GOVERNMENTAL UTILITY AUTHORITY FOR THE USE OF AN IRRIGATION WATER INTERCONNECT PROVIDING FOR THE DELIVERY OF REUSE IRRIGATION WATER TO THE CITY AND PROVIDING TERMS FOR THE VOLUNTARY DISMISSAL OF THE CITY'S ADMINISTRATIVE PROCEEDING CHALLENGING THE CONSTRUCTION OF A CLASS V INJECTION WELL AT THE DEL PRADO WASTEWATER TREATMENT FACILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City operates a secondary water distribution system in and around the City and wishes to expand the current capability of such system; and

WHEREAS, the Florida Governmental Utility Authority (the Authority) operates a wastewater facility known as the Del Prado Water Reclamation Facility and has expanded the treatment capacity of the facility; and

WHEREAS, the City currently receives reuse water through a distribution system interconnect from the Authority pursuant to an Interlocal Agreement; and

WHEREAS, due to the expansion of the facility, the City desires to receive additional quantities of reuse irrigation water and the Authority desires to deliver additional quantities to the City; and

WHEREAS, the City's secondary reuse water distribution is not contiguous and the lack of interconnection within the City service area limits the City's ability to accept more reuse water from the Authority; and

WHEREAS, in order to increase capacity and serve the North 1 Utilities Expansion Program area, the City and the Authority have jointly taken steps to determine that the City will construct Reuse System Improvements for an estimated amount of \$3.5 million dollars, and the Authority will contribute \$500,000 toward the construction in the form of a credit against future reuse irrigation water purchases; and

WHEREAS, upon completion of the improvements, the Authority will deliver and the City will accept a minimum of 1.5 million gallons per day from the Authority, to be charged at a rate that is twenty-five percent (25%) less than the lowest reuse irrigation water rate per 1000 gallons included in the approved Authority rate resolution for the North Fort Myers system (which is currently \$.25 per 1000 gallons); and

WHEREAS, the City and the Authority desire to amicably resolve the Administrative Proceeding pending before the Division of Administrative Hearings concerning the construction by the Authority of a Class V injection well at the Authority's Del Prado Wastewater Treatment Facility.

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

Section 1. The City Council hereby approves and authorizes the Mayor to enter into the Interlocal Agreement Between the City of Cape Coral and the Florida Governmental Utility Authority for the use of an Irrigation Water Interconnect providing for the delivery of reuse irrigation water to the City and providing terms for the voluntary dismissal of the Administrative Proceeding styled as: The City of Cape Coral v. Florida Department of Environmental Protection and Florida Government Utility Authority, DOAH case number 16-3831. The Agreement is 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

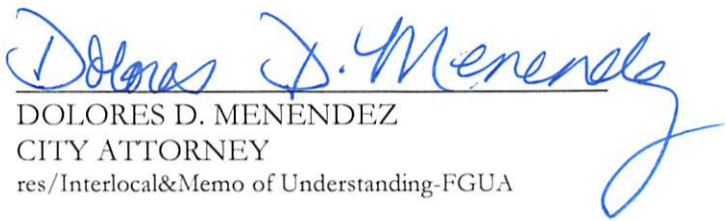
VOTE OF MAYOR AND COUNCILMEMBERS:

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/Interlocal&Memo of Understanding-FGUA

Exhibit A

AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF CAPE CORAL AND THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY FOR USE OF AN IRRIGATION WATER INTERCONNECT

This Agreement is made and entered into this ____ day of February, 2017, by and between the City of Cape Coral, a Florida Municipal Corporation, hereinafter called "the CITY" and the Florida Governmental Utility Authority, a legal entity and public body created pursuant to section 163.01(7)(g), Florida Statutes, acting by and through its Board of Directors, the governing body thereof, hereinafter referred to as "the AUTHORITY".

WHEREAS the CITY entered into an Agreement with North Fort Myers Utility, Inc. (NFMU) in December, 2004 to establish an interconnection, located near the intersection of Del Prado Boulevard and U. S. 41, with the NFMU reuse irrigation water distribution system, and subsequently approved Addendum One to the Agreement in August 2007; and

WHEREAS the AUTHORITY purchased the North Fort Myers utility system from NFMU in 2010; and

WHEREAS the CITY would like to receive additional reuse irrigation water from the AUTHORITY; and

WHEREAS the AUTHORITY has expanded the treatment capacity of its Del Prado Water Reclamation Facility and desires to deliver additional quantities of reuse irrigation water to the CITY; and

WHEREAS the CITY's secondary reuse irrigation water distribution system is not contiguous and the lack of interconnection within the CITY service area limits the CITY's ability to accept increased quantities of reuse irrigation water from the AUTHORITY; and

WHEREAS the CITY and the AUTHORITY entered into a Memorandum of Agreement in October 2012 to jointly fund a reuse irrigation infrastructure feasibility study to determine the feasibility of installing a new reuse transmission line (Reuse System Improvements) to enhance the capacity of the existing system; and

WHEREAS the CITY and the AUTHORITY desire to implement the Reuse System Improvements necessary to deliver increased quantities of reuse irrigation water to the CITY; and

WHEREAS both parties acknowledge a system benefit as well as a regional benefit from completing the Reuse System Improvements to facilitate the delivery of increased quantities of reuse irrigation water to the CITY.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. The foregoing preambles are true and correct and hereby incorporated herein by reference. This Interlocal Agreement shall replace and supersede the prior Interlocal Agreement dated December 6, 2004, and Addendum dated August 8, 2007.
2. The AUTHORITY agrees to continue to provide reuse irrigation water to the CITY through the existing interconnect located near the intersection of Del Prado Boulevard and U.S.41 between the AUTHORITY's irrigation water distribution system and CITY's irrigation water distribution system for the term of this Agreement and any renewal term. An existing irrigation water meter has been located near the intersection of Del Prado Boulevard and U.S. 41, which shall be known as the "point of connection".
3. The CITY shall be responsible for all maintenance and repairs to the CITY's irrigation water distribution system up to the point of connection. The AUTHORITY shall be responsible for all maintenance and repairs to the AUTHORITY's irrigation water transmission system from the AUTHORITY's

Del Prado plant to the point of connection, including the meter.

4.a. The AUTHORITY shall charge the CITY on a monthly basis for reuse irrigation water provided to the CITY as measured by the meter installed at the point of connection except as provided otherwise in this Agreement. The rate per one thousand gallons will be charged as established by the AUTHORITY Board of Directors in an approved FGUA rate resolution for the North Fort Myers system. The CITY will be charged the lowest reuse irrigation water rate per thousand gallons included in the approved FGUA rate resolution for the North Fort Myers system. Upon completion and activation of the Reuse System Improvements, the CITY will be charged twenty-five percent (25%) less than the lowest reuse irrigation water rate per one thousand gallons included in the approved FGUA rate resolution for the North Fort Myers system (which is \$.25 per 1000 gallons under the FGUA rate in effect as of the execution of this Agreement). Monthly fees and charges, including but not limited to, monthly customer billing charge (per bill), monthly base facility charge, etc. shall not be charged to the CITY. The AUTHORITY may apply an annual rate index adjustment equal to seventy-five percent (75%) of the annual change in the "U.S. Bureau of Labor Statistics, Consumer Price Index-All Urban Consumers, U.S. City Average, Services", or four percent (4%), whichever is less, for the month of April immediately preceding the October 1 adjustment date. On or prior to, July 1st of each year the AUTHORITY shall notify the CITY of any reuse irrigation water rate increase/decrease. Any increase, or decrease, in the reuse irrigation water rate to be charged the CITY shall take effect on October 1st of the same year. The CITY shall submit payment for reuse irrigation water to the AUTHORITY within thirty (30) days of the billing date.

4.b. Any increase in rates over and above the annual rate index adjustment must be supported by a rate study of the reuse irrigation water only, excluding potable water or other utility improvements, performed by a professional rate consultant.

4.c. The AUTHORITY agrees that there will be no rate increases over and above

the annual rate index adjustment for the first five (5) years of the Agreement. After the initial five (5) years of the Agreement, the AUTHORITY agrees to limit the total increase in rates, over and above the annual rate index adjustment, to no more than ten percent (10%) in any five (5) year period.

5. All reuse irrigation water to be provided by the AUTHORITY shall flow through the existing irrigation water meter at the point of connection. All charges for reuse irrigation water shall be based upon the meter reading except as otherwise provided in this Agreement. The existing meter shall remain the property of the AUTHORITY, which shall be responsible for all maintenance, repairs, testing, and calibrations of its meter. The meter shall be tested by the AUTHORITY as deemed necessary in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standards. A copy of the test report(s) will be provided to the CITY. The CITY reserves the right to test the meter at its expense. In the event a recalibration of the meter is performed by the AUTHORITY or the CITY, and it registers an accuracy error that is greater than the standards prescribed for the accuracy of such devices by the American Water Works Association, then the parties agree that the AUTHORITY shall refund to CITY the amount billed in error for one-half the period, not to exceed six (6) months, since the last test, provided, however, that if it can be shown that the error was due to some cause, the date of which can be fixed, the overcharge shall be computed back to but not beyond such date. Whenever the meter is found to register less than the standard described above, the AUTHORITY may bill the CITY any additional amount due for one-half the period since the last test, said one-half period not to exceed six (6) months, provided, however, that if it can be shown that the error was due to some cause, the date of which can be fixed, the undercharge shall be computed back to but not beyond such date.

6. The AUTHORITY agrees that the quality and delivery of reuse irrigation water provided to the CITY pursuant to this Agreement shall be the same quality as is delivered to the AUTHORITY's retail customers, both residential and

commercial, and will meet all requirements for public access irrigation water quality parameters as established by the State of Florida Department of Environmental Protection (DEP).

The AUTHORITY will immediately notify the CITY of any sampling parameters that become out of compliance with the Florida DEP requirements. The CITY reserves the rights to install monitoring devices/equipment on the CITY's side of the metered interconnect to further minimize the risk of deficient/substandard reuse irrigation water entering the reuse irrigation water distribution system/Entrada storage tank. In the unlikely event deficient/substandard reuse irrigation water enters the reuse irrigation water distribution system/Entrada storage tank, the CITY will immediately cease, upon knowledge of the event, accepting reuse irrigation water from the AUTHORITY and will not accept additional reuse irrigation water from the AUTHORITY until such time as the storage tank and associated piping and appurtenances have been cleaned and cleared for the renewed acceptance of acceptable reuse irrigation water. The CITY will use its best efforts to provide notice (verbal, electronic, or letter) to the AUTHORITY prior to ceasing acceptance of reuse irrigation water from the AUTHORITY. The AUTHORITY will be responsible for correcting any circumstance(s) that may have caused the delivery of deficient/substandard reuse irrigation water to the CITY as well as ensuring all deficient/substandard reuse irrigation water is removed/flushed from the AUTHORITY's supply system leading up to and including the appurtenances on the AUTHORITY's side of the interconnect. Verifiable acceptable reuse irrigation water sample test results, taken at or near the interconnect, will be required prior to the reactivation of the interconnect between the AUTHORITY and the CITY. The CITY's obligation to accept reuse irrigation water from the AUTHORITY will not be in effect during the interconnect shutdown. The CITY will not be liable to the AUTHORITY for any regulatory action, disposal costs or other required mitigation actions resulting from the CITY not accepting reuse irrigation water during any time period when the interconnect is out of service, due to the reuse irrigation water not meeting DEP quality standards.

7. The AUTHORITY agrees to reserve, up to 250,000 gallons per day of reuse irrigation water capacity for CITY use, until such time as the Reuse System Improvements, are completed and placed into service. Upon completion and activation of the Reuse System Improvements, the AUTHORITY agrees to reserve up to 1.5 million gallons per day of reuse irrigation water capacity for use by the CITY. The AUTHORITY and the CITY understand and agree that the AUTHORITY is relying on the commitments in this Agreement to establish minimum disposal requirements for regulatory purposes. For this reason if the Authority has reuse irrigation water available up to 3.5 million gallons per day on an annual average flow basis the City shall accept 3.5 million gallons per day of reuse irrigation water on an annual average flow basis. The AUTHORITY represents to the CITY that it will, during the term of this Agreement, have sufficient reuse irrigation water capacity to provide the 1.5 million gallons per day of reuse irrigation water on an annual average daily flow basis, except for those events beyond the AUTHORITY's control. Such events shall include, but are not limited to, mechanical failures, emergency repairs, or Acts of God. In the event of an interruption of reuse irrigation service, the AUTHORITY shall use its best efforts to provide notice forty-eight (48) hours in advance of any action to discontinue service under emergency conditions and to return service as soon as possible following such emergency. The AUTHORITY agrees to use all reasonable efforts to avoid emergency conditions, and will follow-up said discontinuance of service notice with a written report explaining the conditions under which the emergency was declared and the actions taken, or to be taken, to avoid recurrence. In the event additional regulation by State or Federal agencies, which would potentially alter the provision of irrigation service, is imposed upon the AUTHORITY, the AUTHORITY shall provide the CITY with immediate notification of the regulation and its effect upon the irrigation service to be provided in this Agreement.

The CITY represents to the AUTHORITY that it will, during the term of this Agreement, have sufficient reuse irrigation water acceptance capacity and/or

storage capacity to accept the 3.5 million gallons per day of reuse irrigation water on an annual average daily flow basis with peak flow of up to 6 million gallons per day, except for those events beyond the CITY's control and as provided in paragraph 6 above. Such events shall include, but are not limited to, mechanical failures, emergency repairs, or Acts of God. In the event of an interruption of reuse irrigation water acceptance service, the CITY shall use its best efforts to provide notice forty-eight (48) hours in advance of any action to discontinue acceptance service under emergency conditions and to return to acceptance service as soon as possible following such emergency. The CITY agrees to use all reasonable efforts to avoid emergency conditions, and will follow-up said discontinuance of reuse irrigation water acceptance service notice with a written report explaining the conditions under which the emergency was declared and the actions taken, or to be taken, to avoid recurrence. In the event additional regulation by State or Federal agencies, which would potentially alter the provision of irrigation reuse water acceptance service, is imposed upon the CITY the CITY shall provide the AUTHORITY with immediate notification of the regulation and its effect upon the irrigation reuse water acceptance service to be provided in this Agreement. The CITY will not be liable to the AUTHORITY for any regulatory action, disposal costs or other required mitigation actions resulting from the occurrence of events beyond the CITY's control and as provided in paragraph 6 above. Such events shall include, but are not limited to, mechanical failures, emergency repairs, Acts of God, or the interconnect being out of service due to an interruption of the supply of reuse irrigation water due to the reuse irrigation water not meeting DEP quality standards, and/or any remediation activities associated with acceptance of the substandard reuse irrigation water.

8. The City will be required to pay for up to 2 million gallons per day in accordance with the rate calculated pursuant to paragraph 4 of this Agreement. The City will not be required to pay, and the AUTHORITY will not be charged, for water delivered by the AUTHORITY over 2 million gallons per day.

9. The CITY shall design, permit, and construct the Reuse System Improvements,

and will provide its best effort to complete and place the improvements into service no later than November 30, 2018. However, the Parties understand this date is tentative and subject to change due to design considerations, permit approval from various governmental and regulatory agencies that are not under the control of the CITY, and the bidding and overall construction process. In addition, the CITY shall not be liable for any delays as a result of Acts of God, including, but not limited to, storms, hurricanes, or other natural disasters. The CITY shall own and maintain the constructed improvements. The AUTHORITY shall provide a contribution of \$500,000 toward the construction of the improvements, which shall be in the form of a credit (distributed evenly over ten (10) years) against future reuse irrigation water purchases by the CITY. Commencing with the first billing period after the completion and activation of the aforementioned Reuse System Improvements, the AUTHORITY shall apply the credit to each monthly bill until the total contribution amount has been fully depleted. The AUTHORITY shall provide to the CITY a quarterly statement outlining the outstanding amount of credit toward future purchases.

10. The CITY agrees to file a voluntary dismissal, with prejudice, in the Administrative Proceeding styled as: The City of Cape Coral v. Florida Department of Environmental Protection and Florida Governmental Utility Authority, DOAH case number 16-3831 promptly upon execution of this Agreement. The voluntary dismissal will state, and the parties hereby agree, that all parties have agreed to be responsible for their own attorney's fees and costs incurred in connection with the Administrative Proceeding, DOAH case number 16-3831.

11. The AUTHORITY agrees to not construct, test, or operate a Class V injection well at the Del Prado wastewater treatment facility unless: a) the CITY breaches this Agreement; b) this Agreement is terminated; or c) the Department of Environmental Protection (or other governmental agency with regulatory authority over the operation of the Del Prado wastewater treatment facility) determines that there is inadequate disposal capacity at the Del Prado facility

despite the parties' good faith efforts to comply with this Agreement.

12. With the exception of existing customers as of the date of this Agreement, the CITY will be the AUTHORITY's exclusive bulk customer of the current capacity of reclaim water from the Del Prado wastewater treatment facility.

13. This Agreement may be amended at any time upon mutual consent of both parties in order to increase or decrease the gallons of capacity to be reserved by the AUTHORITY and to add or terminate other interconnect locations.

14. The AUTHORITY and the CITY agree that there are no reuse irrigation water impact fees due by the CITY to the AUTHORITY.

15. The initial term of this Agreement shall be thirty (30) years from the effective date, which shall be the date of approval and execution by both parties as provided in paragraph 19 below. Thereafter, this Agreement may be renewed for successive additional five (5) year terms by mutual Agreement of the parties. This Agreement may be terminated during the initial term or renewal term by mutual Agreement of the parties only.

16. The parties shall perform all their obligations under this Agreement in accordance with good faith and prudent practice.

17. To the extent permitted by law, each party shall indemnify and hold harmless the other party, its 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 indemnifying party and any persons employed or utilized by the indemnifying party in the performance of this Agreement. This provision shall not be construed as a waiver by the CITY or AUTHORITY of its sovereign immunity as specified in section 768.28, Florida Statutes.

18. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter contained herein and may not be amended, modified or rescinded unless otherwise provided in this Agreement, except in writing and signed by all the parties hereto. Should any provision of this Agreement be declared to be illegal, invalid, unenforceable, or unconstitutional, or in violation of any bond covenants of the CITY, by any Court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, unless when such provision is found to be illegal, invalid, unenforceable or unconstitutional, altering substantially the benefits of the Agreement for either of the parties or rendering the statutory and regulatory obligations unperformable. The parties agree to negotiate in good faith to replace any illegal, invalid, unenforceable, or unconstitutional provision(s) of this Agreement with a provision(s) that is legal, valid, enforceable, and constitutional and that expresses the intention of the original provision.

19. This Agreement shall be governed by the laws of the State of Florida.

20. This Agreement is conditioned upon the AUTHORITY maintaining all necessary approvals from all regulatory authorities to provide public access reuse irrigation water service. The CITY shall provide to the AUTHORITY from time to time with the legal description and other information required by the AUTHORITY to add the property to be irrigated pursuant to this Agreement to its area-wide reuse permit granted by the Florida Department of Environmental Protection.

21. The parties hereby acknowledge and agree to cooperate and to work together to resolve any dispute between them including, but not limited to, mandatory mediation to resolve such disagreement prior to either party initiating litigation. If, after sixty (60) days' notice of a disagreement or dispute, such disagreement or dispute remains unresolved, then the party may request resolution by court of competent jurisdiction. In the event of such litigation, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable attorney's and

paralegal fees incurred in connection therewith, through and including all other legal expenses and the cost of any appeals in appellate courts related thereto. The first two sentences of this subsection shall not apply if a party prevails in obtaining injunctive relief against the other party.

22. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any party assigning its rights hereunder shall give the other party thirty (30) days' written notice of such assignment. All notices and communications required hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail or other letter courier service (UPS or Federal Express) to the parties at the following addresses:

As to the AUTHORITY:

Stephen M. Spratt
System Manager
280 Wekiva Springs Rd., Suite 2070
Longwood, FL 32779

Kevin Grace
Asst. System Manager
280 Wekiva Springs Rd., Suite 2070
Longwood, FL 32779

John Pelham
General Counsel
215 South Monroe Street
2nd Floor
Tallahassee, FL 32302-2095

As to the CITY:

Jeff Pearson
Utilities Director
Utilities Department
City of Cape Coral

PO Box 150027
Cape Coral, FL 33915-0027

Dolores Menendez
City Attorney
City of Cape Coral
PO Box 150027
Cape Coral, FL 33915-0027

23. This Agreement may be executed in multiple counterparts each of which shall be deemed to be an original and all of which together shall constitute one and the same document.

24. Nothing in this Agreement shall be construed or interpreted as a waiver of the maximum statutory liability of the CITY or the AUTHORITY.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and such of them as are corporations have caused these presents to be signed by their duly authorized officers.

(SEAL)

**CITY COUNCIL OF CAPE CORAL,
FLORIDA**

Attest:

Rebecca van Deutekom, City Clerk

Marni L. Sawicki, Mayor

Approved as to form:

Dolores Menendez, City Attorney

(SEAL)

Attest:

**FLORIDA GOVERNMENTAL
1 UTILITY AUTHORITY**

Board Clerk, FGUA

Chairperson

MEMORANDUM OF UNDERSTANDING

WHEREAS, the Florida Governmental Utility Authority ("FGUA") filed an application with the Florida Department of Environmental Protection ("DEP") for a permit to construct and test a Class V injection well at FGUA's Del Prado Wastewater Treatment Facility in Lee County, Florida;

WHEREAS, DEP provided a Notice of Intent to issue a construction permit for the proposed project;

WHEREAS, the City of Cape Coral, Florida ("Cape Coral") initiated an administrative challenge to the issuance of a Class V well permit to FGUA;

WHEREAS, Cape Coral is the Petitioner and FGUA and the DEP are Respondents in the resulting administrative proceeding now pending before the Division of Administrative Hearings, DOAH case number 16-3831 (the "Administrative Proceeding");

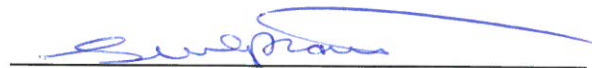
WHEREAS, the signatories to this Settlement Agreement now desire to resolve the Administrative Proceeding amicably in accordance with the terms and conditions of this Settlement Agreement and to that end agree to recommend the execution of the attached Interlocal Agreement Between the City of Cape Coral and the Florida Governmental Utility Authority for Use of and Irrigation Water Interconnect (the "Interlocal Agreement") to their respective board/council rather than incur the expense and uncertainty of continued litigation.

NOW THEREFORE, in exchange for the mutual covenants set forth below, and other good and valuable consideration the sufficiency of which is hereby acknowledged, the parties to this Memorandum of Understanding hereby agree as follows:

1. The authorized representatives of Cape Coral and FGUA who have signed this Memorandum of Understanding hereby agree that the terms and conditions of the attached Interlocal Agreement are fair and equitable to both parties.
2. The authorized representatives of Cape Coral and FGUA who have executed this Settlement Agreement hereby agree to recommend and speak in favor of approval of the terms and conditions set forth in the attached Interlocal Agreement and to present it to their respective governing board/council for approval at their next scheduled meeting, or sooner if possible.
3. Cape Coral will file a voluntary dismissal, with prejudice, in the Administrative Proceeding promptly upon execution of the Interlocal Agreement. The voluntary dismissal will state, and the parties hereby agree, that all parties have agreed to be responsible for their own attorney's fees and costs incurred in connection with the Administrative Proceeding, DOAH case number 16-3831 if the Administrative Proceeding is dismissed by Cape Coral pursuant to this Settlement Agreement.
4. All terms and conditions of this Settlement Agreement are null and void if the Interlocal Agreement is not approved by the governing board/council of FGUA and Cape Coral on or before 5:00 p.m., February 17, 2017.

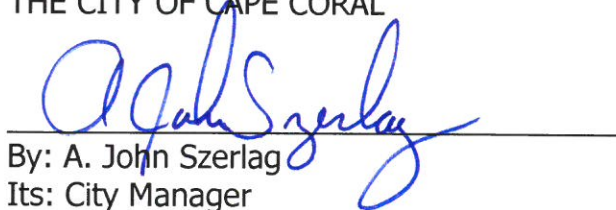
ACCEPTED and AGREED to this 10th day of February, 2017, by:

FLORIDA GOVERNMENTAL
UTILITY AUTHORITY



By: Stephen M. Spratt
Its: Systems Manager

THE CITY OF CAPE CORAL



By: A. John Szerlag
Its: City Manager

**AN AGREEMENT BETWEEN
THE CITY OF CAPE CORAL AND NORTH FORT MYERS UTILITY INC.
ESTABLISHING PROCEDURES FOR USE OF AN
IRRIGATION WATER INTERCONNECT**

This agreement is made and entered into this 6th day of December, 2004, by and between the CITY OF CAPE CORAL, a Florida Municipal Corporation, hereinafter called "City" and NORTH FORT MYERS UTILITY, INC., a Florida corporation, hereinafter called "NFM Utility."

Whereas, the City operates an irrigation water distribution system in and around the City but does not currently have an irrigation water distribution system to service certain areas of Northeast Cape Coral; and

Whereas, NFM Utility operates an irrigation water distribution system serving areas adjacent to the northeast area of the City; and

Whereas, the City of Coral has requested an interconnect to the irrigation water distribution system (hereinafter referred to as "irrigation service") operated by NFM Utility; and

Whereas, NFM Utility has the ability to supply irrigation service to the City through an interconnect;

Now, therefore, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. NFM Utility agrees to continuously provide irrigation service to the City through an interconnect located near the intersection of Del Prado Boulevard and U.S. 41 between NFM Utility's irrigation water distribution system and City's irrigation water distribution system for the term of this agreement and any renewal term. City shall be responsible for installation and material costs for the interconnect. An irrigation water

meter shall be located at a mutually agreeable point near the intersection of Del Prado Boulevard and U.S. 41, which shall be known as the "point of connection".

2. Maintenance of or repairs to the irrigation water distribution system within the City limits to the point of interconnection shall be the responsibility of the City. Maintenance of or repairs to the irrigation water distribution system outside the City limits to the point of interconnection shall be the responsibility of NFM Utility.

3. NFM Utility shall charge the City a rate of \$0.25 per thousand gallons of irrigation water provided to City as measured at the meter installed at the interconnection location. NFM Utility, its successors and assigns, may revise its rate to the City by the same percentage that NFM Utility increases its wastewater rates to its customers based upon the Florida Public Service Commission rules regarding indexing and pass-through rate increases. City shall submit payment for irrigation service to NFM Utility within twenty (20) days of the billing date.

4. All irrigation service to be provided by NFM Utility shall flow through an irrigation water meter. All charges for irrigation service shall be based upon the meter reading. The City shall be responsible for the cost of the meter and the cost for installing the meter, but the meter shall remain the property of NFM Utility. NFM Utility shall be responsible for all maintenance, repairs, testing, and calibrations of its meter. The meter shall be tested by NFM Utility as deemed necessary in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standards. A copy of the test report(s) will be provided to the City. The City reserves the right to test the meter at its expense. In the event a recalibration of the meter is performed by NFM Utility or the City, and it registers an accuracy error that is greater than the standards prescribed for the accuracy of such devices by the American Water Works Association, then the parties agree that NFM Utility shall refund to City the amount billed in error for one-half the period, not to exceed six months, since the last test, provided, however, that if it can be show that the error was due to some cause, the date of which can be fixed, the overcharge shall be computed back to but not beyond

such date. Whenever the meter is found to register less than the standard described above, NFM Utility may bill the City any additional amount due for one-half the period since the last test, said one-half period not to exceed six months, provided, however, that if it can be shown that the error was due to some cause, the date of which can be fixed, the undercharge shall be computed back to but not beyond such date.

6. NFM Utility agrees that the quality and delivery of irrigation service provided to City pursuant to this agreement shall be equivalent to that which is delivered to NFM Utility's retail customers, both residential and commercial, and will meet all requirements for public access irrigation quality parameters

7. NFM Utility agrees to reserve, as needed by the City, up to plus or minus 1.0 million gallons of irrigation water capacity per day for City use. NFM Utility represents to the City that it will, during the term of this Agreement, have sufficient irrigation water capacity to provide the irrigation service except for those events beyond NFM Utility's control. Such events shall include, but not be limited to mechanical failures beyond the control of NFM Utility, emergency repairs, or Acts of God. In the event of an interruption of irrigation service, NFM Utility shall provide notice one (1) hour in advance of any action to discontinue service under emergency conditions and to return service as soon as possible following such emergency. NFM agrees to use all reasonable efforts to avoid emergency conditions. NFM will follow-up said discontinuance of service oral notice with a written report explaining the conditions under which the emergency was declared and the actions taken, or to be taken, to avoid recurrence. In the event additional regulation by State or Federal agencies which would potentially alter the provision of irrigation service is imposed upon NFM Utility, NFM Utility shall provide the City with immediate notification of the regulation and its effect upon the irrigation service to be provided in this agreement.

8. This agreement may be amended at any time upon mutual consent of both parties in order to increase or decrease the gallons of capacity to be reserved by NFM Utility and to add or terminate other interconnect locations.

9. NFM Utility and the City agree that there are no irrigation water impact fees due by the City to NFM Utility. In the event the PSC grants approval for NFM Utility to charge an irrigation water impact fee to its customers, NFM Utility may impose the fee as approved by the PSC upon the City.

10. NFM Utility agrees to provide irrigation service to City for a period of twenty (20) years, subject to being terminated by City as provided below. Thereafter, this agreement shall be automatically renewed for successive additional five (5) year terms unless either party gives notice to the other not less than thirty-six (36) months' prior to the end of any term of its intent not to renew the agreement. This agreement may be terminated by City at any time if City determines that it is able to provide its own wastewater service to the customers covered by this agreement. In that event, City agrees to provide NFM Utility with a minimum of thirty-six (36) months' prior notice of its intent to begin providing its own wastewater service to the customers covered by this agreement. The parties agree that in no event will termination occur during the first seven (7) years of this agreement.

11. The parties shall perform all their obligations under this Agreement in accordance with good faith and prudent practice.

12. To the extent permitted by law, each party shall indemnify and hold harmless the other party, its 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 indemnifying party and any persons employed or utilized by the indemnifying party in the performance of this Agreement.

13. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and may not be amended, modified or rescinded unless otherwise provided in this Agreement, except in writing and signed by

all the parties hereto. Should any provision of this Agreement be declared to be illegal, invalid, unenforceable, or unconstitutional, or in violation of any bond covenants of the City of Cape Coral, by any Court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, unless when such provision is found to be illegal, invalid, unenforceable or unconstitutional, altering substantially the benefits of the Agreement for either of the parties or rendering the statutory and regulatory obligations unperformable. The parties agree to negotiate in good faith to replace any illegal, invalid, unenforceable, or unconstitutional provision(s) of this agreement with a provision(s) that is legal, valid, enforceable, and constitutional and that expresses the intention of the original provision.

14. This Agreement shall be governed by the laws of the State of Florida.

15. This Agreement is conditioned upon NFM Utility obtaining all necessary approvals from all regulatory authorities. City shall provide NFM Utility from time to time with the legal description and other information required by NFM Utility to add the property to be irrigated pursuant to this Agreement to its area-wide reuse permit granted by the Florida Department of Environmental Protection.

16. The parties hereby acknowledge and agree to cooperate and to work together to resolve any dispute between them including, but not limited to, mandatory mediation to resolve such disagreement prior to either party initiating litigation. If, after sixty (60) days' notice of a disagreement or dispute, such disagreement or dispute remains unresolved, then the party may request resolution by court of competent jurisdiction. In the event of such litigation, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable attorney's and paralegal fees incurred in connection therewith, through and including all other legal expenses and the cost of any appeals in appellate courts related thereto. The first two sentences of this subsection shall not apply if a party prevails in obtaining injunctive relief against the other party.

17. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns. Any party assigning its rights hereunder shall give the other party thirty (30) days' written notice of such assignment.

As to North Fort Myers Utility Inc.:

A.A. Reeves, Vice President
North Fort Myers Utility Inc.
5660 Bayshore Road, Suite 36
North Fort Myers, FL 33917

Martin S. Friedman
Rose, Sundstrom & Bentley, LLP
2548 Blainstone Pines Drive
Tallahassee, FL 32301

As to City of Cape Coral:

Public Works Director
Department of Public Works
City of Cape Coral
PO Box 150027
Cape Coral, FL 33915-0027

Utilities Manager
Department of Public Works
City of Cape Coral
PO Box 150027
Cape Coral, FL 33915-0027

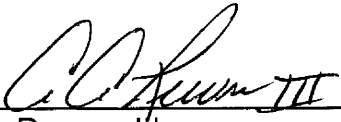
City Attorney
City of Cape Coral
PO Box 150027
Cape Coral, FL 33915-0027

18. This Agreement may be executed in multiple counterparts each of which shall be deemed to be an original and all of which together shall constitute one and the same document.

19. Nothing in this Agreement shall be construed or interpreted as a waiver of the maximum statutory liability of the City or NFM Utility.

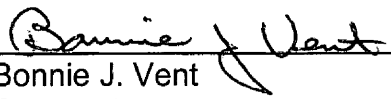
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and such of them as are corporations have caused these presents to be signed by their duly authorized officers.

NORTH FORT MYERS UTILITY INC.

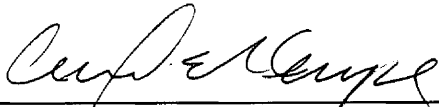
By: 
A.A. Reeves III
Vice President

Date: 11-22-04

ATTEST

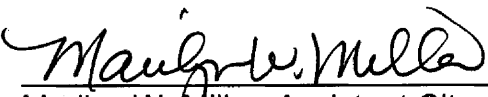

Bonnie J. Vent
City Clerk

CITY OF CAPE CORAL

By: 
Arnold E. Kempe
Mayor

Date: 12-7-04

LEGAL REVIEW


Marilyn W. Miller, Assistant City Attorney

11/23/04
Date

As authorized for execution by City of Cape Coral at its December 6, 2004, regular meeting.

**AN AGREEMENT BETWEEN
THE CITY OF CAPE CORAL AND NORTH FORT MYERS UTILITY INC.
ESTABLISHING PROCEDURES FOR USE OF AN
IRRIGATION WATER INTERCONNECT**

This agreement is made and entered into this 6th day of December, 2004, by and between the CITY OF CAPE CORAL, a Florida Municipal Corporation, hereinafter called "City" and NORTH FORT MYERS UTILITY, INC., a Florida corporation, hereinafter called "NFM Utility."

Whereas, the City operates an irrigation water distribution system in and around the City but does not currently have an irrigation water distribution system to service certain areas of Northeast Cape Coral; and

Whereas, NFM Utility operates an irrigation water distribution system serving areas adjacent to the northeast area of the City; and

Whereas, the City of Coral has requested an interconnect to the irrigation water distribution system (hereinafter referred to as "irrigation service") operated by NFM Utility; and

Whereas, NFM Utility has the ability to supply irrigation service to the City through an interconnect;

Now, therefore, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. NFM Utility agrees to continuously provide irrigation service to the City through an interconnect located near the intersection of Del Prado Boulevard and U.S. 41 between NFM Utility's irrigation water distribution system and City's irrigation water distribution system for the term of this agreement and any renewal term. City shall be responsible for installation and material costs for the interconnect. An irrigation water

meter shall be located at a mutually agreeable point near the intersection of Del Prado Boulevard and U.S. 41, which shall be known as the "point of connection".

2. Maintenance of or repairs to the irrigation water distribution system within the City limits to the point of interconnection shall be the responsibility of the City. Maintenance of or repairs to the irrigation water distribution system outside the City limits to the point of interconnection shall be the responsibility of NFM Utility.

3. NFM Utility shall charge the City a rate of \$0.25 per thousand gallons of irrigation water provided to City as measured at the meter installed at the interconnection location. NFM Utility, its successors and assigns, may revise its rate to the City by the same percentage that NFM Utility increases its wastewater rates to its customers based upon the Florida Public Service Commission rules regarding indexing and pass-through rate increases. City shall submit payment for irrigation service to NFM Utility within twenty (20) days of the billing date.

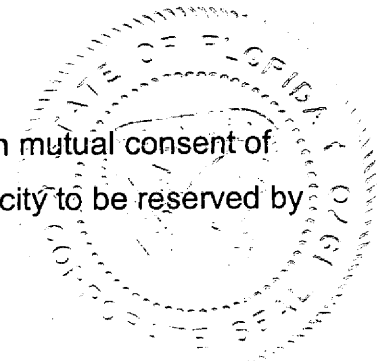
4. All irrigation service to be provided by NFM Utility shall flow through an irrigation water meter. All charges for irrigation service shall be based upon the meter reading. The City shall be responsible for the cost of the meter and the cost for installing the meter, but the meter shall remain the property of NFM Utility. NFM Utility shall be responsible for all maintenance, repairs, testing, and calibrations of its meter. The meter shall be tested by NFM Utility as deemed necessary in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standards. A copy of the test report(s) will be provided to the City. The City reserves the right to test the meter at its expense. In the event a recalibration of the meter is performed by NFM Utility or the City, and it registers an accuracy error that is greater than the standards prescribed for the accuracy of such devices by the American Water Works Association, then the parties agree that NFM Utility shall refund to City the amount billed in error for one-half the period, not to exceed six months, since the last test, provided, however, that if it can be show that the error was due to some cause, the date of which can be fixed, the overcharge shall be computed back to but not beyond

such date. Whenever the meter is found to register less than the standard described above, NFM Utility may bill the City any additional amount due for one-half the period since the last test, said one-half period not to exceed six months, provided, however, that if it can be shown that the error was due to some cause, the date of which can be fixed, the undercharge shall be computed back to but not beyond such date.

6. NFM Utility agrees that the quality and delivery of irrigation service provided to City pursuant to this agreement shall be equivalent to that which is delivered to NFM Utility's retail customers, both residential and commercial, and will meet all requirements for public access irrigation quality parameters

7. NFM Utility agrees to reserve, as needed by the City, up to plus or minus 1.0 million gallons of irrigation water capacity per day for City use. NFM Utility represents to the City that it will, during the term of this Agreement, have sufficient irrigation water capacity to provide the irrigation service except for those events beyond NFM Utility's control. Such events shall include, but not be limited to mechanical failures beyond the control of NFM Utility, emergency repairs, or Acts of God. In the event of an interruption of irrigation service, NFM Utility shall provide notice one (1) hour in advance of any action to discontinue service under emergency conditions and to return service as soon as possible following such emergency. NFM agrees to use all reasonable efforts to avoid emergency conditions. NFM will follow-up said discontinuance of service oral notice with a written report explaining the conditions under which the emergency was declared and the actions taken, or to be taken, to avoid recurrence. In the event additional regulation by State or Federal agencies which would potentially alter the provision of irrigation service is imposed upon NFM Utility, NFM Utility shall provide the City with immediate notification of the regulation and its effect upon the irrigation service to be provided in this agreement.

8. This agreement may be amended at any time upon mutual consent of both parties in order to increase or decrease the gallons of capacity to be reserved by NFM Utility and to add or terminate other interconnect locations.



9. NFM Utility and the City agree that there are no irrigation water impact fees due by the City to NFM Utility. In the event the PSC grants approval for NFM Utility to charge an irrigation water impact fee to its customers, NFM Utility may impose the fee as approved by the PSC upon the City.

10. NFM Utility agrees to provide irrigation service to City for a period of twenty (20) years, subject to being terminated by City as provided below. Thereafter, this agreement shall be automatically renewed for successive additional five (5) year terms unless either party gives notice to the other not less than thirty-six (36) months' prior to the end of any term of its intent not to renew the agreement. This agreement may be terminated by City at any time if City determines that it is able to provide its own wastewater service to the customers covered by this agreement. In that event, City agrees to provide NFM Utility with a minimum of thirty-six (36) months' prior notice of its intent to begin providing its own wastewater service to the customers covered by this agreement. The parties agree that in no event will termination occur during the first seven (7) years of this agreement.

11. The parties shall perform all their obligations under this Agreement in accordance with good faith and prudent practice.

12. To the extent permitted by law, each party shall indemnify and hold harmless the other party, its 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 indemnifying party and any persons employed or utilized by the indemnifying party in the performance of this Agreement.

13. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and may not be amended, modified or rescinded unless otherwise provided in this Agreement, except in writing and signed by

all the parties hereto. Should any provision of this Agreement be declared to be illegal, invalid, unenforceable, or unconstitutional, or in violation of any bond covenants of the City of Cape Coral, by any Court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, unless when such provision is found to be illegal, invalid, unenforceable or unconstitutional, altering substantially the benefits of the Agreement for either of the parties or rendering the statutory and regulatory obligations unperformable. The parties agree to negotiate in good faith to replace any illegal, invalid, unenforceable, or unconstitutional provision(s) of this agreement with a provision(s) that is legal, valid, enforceable, and constitutional and that expresses the intention of the original provision.

14. This Agreement shall be governed by the laws of the State of Florida.

15. This Agreement is conditioned upon NFM Utility obtaining all necessary approvals from all regulatory authorities. City shall provide NFM Utility from time to time with the legal description and other information required by NFM Utility to add the property to be irrigated pursuant to this Agreement to its area-wide reuse permit granted by the Florida Department of Environmental Protection.

16. The parties hereby acknowledge and agree to cooperate and to work together to resolve any dispute between them including, but not limited to, mandatory mediation to resolve such disagreement prior to either party initiating litigation. If, after sixty (60) days' notice of a disagreement or dispute, such disagreement or dispute remains unresolved, then the party may request resolution by court of competent jurisdiction. In the event of such litigation, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable attorney's and paralegal fees incurred in connection therewith, through and including all other legal expenses and the cost of any appeals in appellate courts related thereto. The first two sentences of this subsection shall not apply if a party prevails in obtaining injunctive relief against the other party.

17. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns. Any party assigning its rights hereunder shall give the other party thirty (30) days' written notice of such assignment.

As to North Fort Myers Utility Inc.:

A.A. Reeves, Vice President
North Fort Myers Utility Inc.
5660 Bayshore Road, Suite 36
North Fort Myers, FL 33917

Martin S. Friedman
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

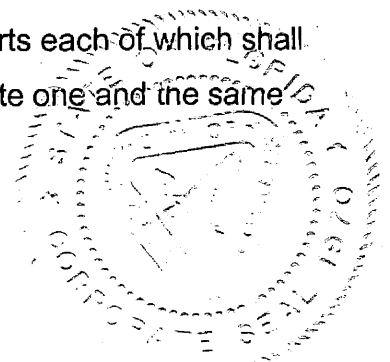
As to City of Cape Coral:

Public Works Director
Department of Public Works
City of Cape Coral
PO Box 150027
Cape Coral, FL 33915-0027

Utilities Manager
Department of Public Works
City of Cape Coral
PO Box 150027
Cape Coral, FL 33915-0027

City Attorney
City of Cape Coral
PO Box 150027
Cape Coral, FL 33915-0027

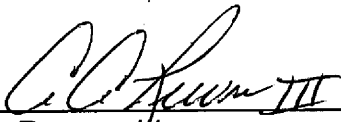
18. This Agreement may be executed in multiple counterparts each of which shall be deemed to be an original and all of which together shall constitute one and the same document.



19. Nothing in this Agreement shall be construed or interpreted as a waiver of the maximum statutory liability of the City or NFM Utility.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and such of them as are corporations have caused these presents to be signed by their duly authorized officers.

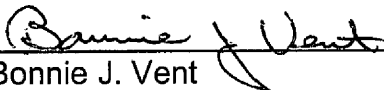
NORTH FORT MYERS UTILITY INC.

By: 
A.A. Reeves III
Vice President

(corporate seal)

Date: 11.22.04

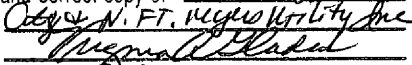

ATTEST


Bonnie J. Vent
City Clerk

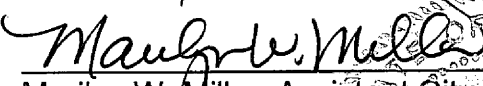
CITY OF CAPE CORAL

By: 
Arnold E. Kempe
Mayor

Date: 12-7-04

I HEREBY CERTIFY that I am the duly appointed and qualified Clerk of the City of Cape Coral, Florida, and the keeper of the records and corporate seal of said municipality; that this is a true and correct copy of P/G of Agreement
City of N. Ft. Myers Utility Inc

 City Clerk

LEGAL REVIEW


Marilyn W. Miller, Assistant City Attorney
11/23/04
Date

As authorized for execution by City of Cape Coral at its December 6, 2004 regular meeting.

**ADDENDUM ONE TO AN AGREEMENT BETWEEN
THE CITY OF CAPE CORAL AND NORTH FORT MYERS UTILITY INC.
ESTABLISHING PROCEDURES FOR USE OF AN
IRRIGATION WATER INTERCONNECT**

This agreement is made and entered into this 8th day of August, 2007, amends the above-captioned Agreement entered into 12/6/04 by and between the CITY OF CAPE CORAL, a Florida Municipal Corporation, hereinafter called "City" and NORTH FORT MYERS UTILITY, INC., a Florida corporation, hereinafter called "NFM Utility."

Whereas, the City operates an irrigation water distribution system in and around the City but does not currently have an irrigation water distribution system to service certain areas of Northeast Cape Coral; and

Whereas, NFM Utility operates an irrigation water distribution system serving areas adjacent to the northeast area of the City; and

Whereas, the City of Coral has requested an interconnect to the irrigation water distribution system (hereinafter referred to as "irrigation service") operated by NFM Utility; and

Whereas, NFM Utility has the ability to supply irrigation service to the City through an interconnect;

Now, therefore, for and in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

1. Paragraph 1 of the Agreement is deleted and replaced with the following:


NFM Utility agrees to continuously provide irrigation service to the City through an interconnect located near the intersection of Del Prado

Boulevard and U.S. 41 and located at the intersection of DeNavarra Parkway and Garden Boulevard between NFM Utility's irrigation water distribution system and City's irrigation water distribution system for the term of this agreement and any renewal term. City shall be responsible for installation and material costs for the interconnect. An irrigation water meter shall be located at a mutually agreeable point near the intersection of Del Prado Boulevard and U.S. 41 and a second point near the intersection of DeNavarra Parkway and Garden Boulevard, which shall be known as the "points of connection".

2. The first sentence of Paragraph 7 shall be deleted and replaced with the following:
NFM Utility agrees to reserve, as needed by the City, up to plus or minus 1,075,000 million gallons of irrigation water capacity per day for City use.
3. Except as specifically amended hereby, the parties reaffirm the terms and conditions of the Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and such of them are corporations have caused these presents to be signed by their duly authorized officers.

NORTH FORT MYERS UTILITY INC.

By: 
A.A. Reeves III
Vice President

(corporate seal)



Date: 7-23-07

ATTEST

Bonnie J. Potter
Bonnie J. Potter
City Clerk

CITY OF CAPE CORAL

By: Eric P. Feichthaler
Eric P. Feichthaler
Mayor

Date: 8/8/07

LEGAL REVIEW

Marilyn W. Miller
Marilyn W. Miller, Assistant City Attorney

7/25/07
Date

As authorized for execution by City of Cape Coral at its August 6, 2007,
regular meeting.

**ADDENDUM ONE TO AN AGREEMENT BETWEEN
THE CITY OF CAPE CORAL AND NORTH FORT MYERS UTILITY INC.
ESTABLISHING PROCEDURES FOR USE OF AN
IRRIGATION WATER INTERCONNECT**

This agreement is made and entered into this 8th day of August, 2007, amends the above-captioned Agreement entered into 12/6/04 by and between the CITY OF CAPE CORAL, a Florida Municipal Corporation, hereinafter called "City" and NORTH FORT MYERS UTILITY, INC., a Florida corporation, hereinafter called "NFM Utility."

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Whereas, NFM Utility operates an irrigation water distribution system serving areas adjacent to the northeast area of the City; and

Whereas, the City of Coral has requested an interconnect to the irrigation water distribution system (hereinafter referred to as "irrigation service") operated by NFM Utility; and

Whereas, NFM Utility has the ability to supply irrigation service to the City through an interconnect;

Now, therefore, for and in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

1. Paragraph 1 of the Agreement is deleted and replaced with the following:

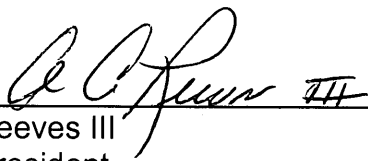
NFM Utility agrees to continuously provide irrigation service to the City through an interconnect located near the intersection of Del Prado

Boulevard and U.S. 41 and located at the intersection of DeNavarra Parkway and Garden Boulevard between NFM Utility's irrigation water distribution system and City's irrigation water distribution system for the term of this agreement and any renewal term. City shall be responsible for installation and material costs for the interconnect. An irrigation water meter shall be located at a mutually agreeable point near the intersection of Del Prado Boulevard and U.S. 41 and a second point near the intersection of DeNavarra Parkway and Garden Boulevard, which shall be known as the "points of connection".

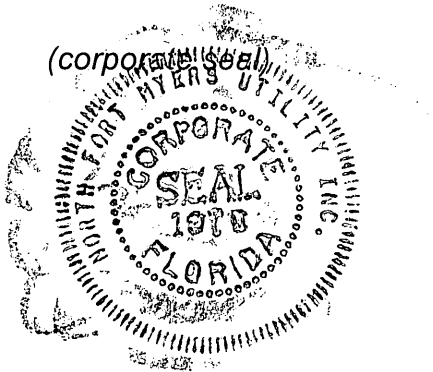
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3. Except as specifically amended hereby, the parties reaffirm the terms and conditions of the Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and such of them are corporations have caused these presents to be signed by their duly authorized officers.

NORTH FORT MYERS UTILITY INC.

By: 
A.A. Reeves III
Vice President

Date: 7-23-07



ATTEST

Bonnie J. Potter
Bonnie J. Potter
City Clerk

CITY OF CAPE CORAL

By: Eric P. Feichthaler
Eric P. Feichthaler
Mayor

Date: 8/8/07

LEGAL REVIEW

Marilyn W. Miller
Marilyn W. Miller, Assistant City Attorney
7/25/07
Date

As authorized for execution by City of Cape Coral at its August 6, 2007,
regular meeting.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF CAPE CORAL AND THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY
REGARDING REUSE WATER INFRASTRUCTURE FEASIBILITY STUDY**

This agreement is made and entered into this 1st day of Oct., 2012, by and between the Florida Governmental Utility Authority, a legal entity and public body created by interlocal agreement pursuant to section 163.01(7)(g), Florida Statutes, acting by and through its Board of Directors, the governing body thereof, hereinafter referred to as "AUTHORITY", and the City of Cape Coral, a political subdivision of the State of Florida, acting by and through its City Council, the governing body thereof, hereinafter referred to as "CITY".

WHEREAS, the City operates a secondary water distribution system in and around the City and wishes to expand the current capability of such system; and

WHEREAS, the Authority operates a wastewater facility known as the Del Prado Water Reclamation Facility; and

WHEREAS the City currently receives reuse water through a distribution system interconnect from the Authority pursuant to an interlocal agreement and the City would like to receive additional reuse water from the Authority; and

WHEREAS, the Authority is expanding the treatment capacity of the Del Prado Water Reclamation Facility and desires to deliver additional quantities of reuse water from such treatment to the City; and

WHEREAS, the current interconnect between the City and the Authority is not large enough to allow for the passage of larger quantities of reclaimed water; and

WHEREAS, the City's secondary reuse water distribution is not contiguous and the lack of interconnection within the City service area limits the City's ability to accept more reuse water from the Authority; and

WHEREAS, both Parties acknowledge a system benefit, as well as a regional benefit, from adding an additional interconnect to facilitate the delivery of additional reuse water; and

WHEREAS, both parties in anticipation of such benefits, wish to clearly define the cost and scope of an interconnect project that would allow for this additional use of reuse water.

NOW THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the Parties agree as follows:

1. The City will contract with an engineering firm prequalified and selected by the City to perform a feasibility study for the installation of a reuse transmission line from the intersection of Del Prado Boulevard & Garden Boulevard to the intersection of Northeast 24th Avenue & Pine Island Road. The City shall seek the Authority's concurrence on the engineering firm selected to perform the work and the scope of the work prior to executing the contract. The feasibility study shall be based upon the maximum amount of reuse water the Authority can deliver through the existing interconnection near the intersection of Del Prado Boulevard and U.S. 41. Also, the Authority shall be invited by the City to attend any meetings between the City and selected engineering firm.
2. Such feasibility study is to be completed within 120 days of the date an engineering contract is awarded and shall include the engineer's best estimate of probable total project cost and a detailed time line showing critical project milestones including, but not necessarily limited to engineering completion, permitting, right of way and easement acquisitions if necessary, construction, testing, and Florida Department of Environmental Protection (FDEP) certification.
3. Upon completion and delivery of the feasibility study by the City to the Authority, the City shall bill the Authority for up to 50% of the cost of the feasibility study and the Authority shall pay such amount within 30 days to the City, such amount in any case not to exceed \$20,000 twenty-thousand dollars.
4. Any future related costs regarding the engineering study or construction of the interconnect will be agreed to at a future time and any previous costs regarding this issue by either party are not considered herein, nor will be considered for recovery at a future time.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement on the day and year first written above.

(SEAL)

CITY COUNCIL OF CAPE CORAL, FLORIDA

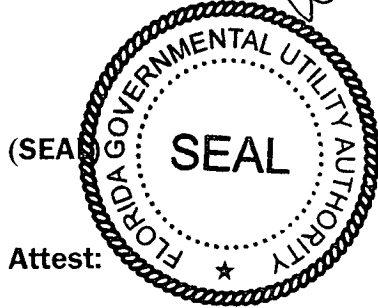
Attest:

Rebecca van Deutekom

John Sullivan
John Sullivan, Mayor

Approved as to form:

Alma D. Lopez
Dolores Menendez, City Attorney



Attest:

[Signature]
Board Clerk, FGUA

FLORIDA GOVERNMENTAL
UTILITY AUTHORITY

[Signature]
Chairperson

Approved as to form:

John C. Sullivan
General Counsel

Florida Governmental Utility Authority

Budget Transfer

NORTH FORT MYERS

9/20/2012

1) Decrease - Various

Organization	Object/Project	Description	Available Budget	Increase (Decrease)	Revised Budget
41619127	534007 NF003	ENGINEERING	21,142.00	(20,000.00)	1,142.00
Totals			21,142.00	(20,000.00)	1,142.00

2) Increase - Construction Services

Organization	Object/Project	Description	Available Budget	Increase (Decrease)	Revised Budget
41619127	534007 NF020	ENGINEERING	-	20,000.00	20,000.00
Totals			-	20,000.00	20,000.00

OP 2 TBD \$ 20,000.00

Florida Governmental Utility Authority

Board Agenda Item

Thursday, September 20, 2012

Item

OP 2 Approval of Memorandum of Agreement with the City of Cape Coral Regarding Reuse Water Infrastructure Connecting to the North Fort Myers Utility System

Summary

The FGUA has an existing reuse water agreement with the City of Cape Coral that was inherited from the previous owners of the utility system. The current agreement indicates that the North Fort Myers (NFM) system will reserve up to 1.075 mgd of reuse water for the City on an as needed basis. In October 2011, the City sent a letter to the FGUA providing notice that the FGUA was not meeting its responsibilities to reserve and provide the referenced amount of reuse water. In response, the FGUA took action to begin charging all reuse customers, and exploring the options for installing automated system controls to ensure the utility's control of the amounts delivered to each customer.

In recent months, the FGUA conducted a 45-day test period whereby no reuse was placed into the deep well. This condition is intended to demonstrate that a second deep well is not required to support the wastewater system in NFM. The permit condition also requires that a second 45-day test be completed after the Waterway Estates flow is diverted to Del Prado. If the FGUA cannot successfully meet the second 45-day test requirement within the established timeframe, it could be required to construct the additional deep well at an estimated cost of \$5 million. As the FGUA staff prepared to undertake the initial test period, it became apparent that the City of Cape Coral was physically unable to accept the quantities of reuse water contemplated in the agreement referenced earlier. Based on the existing interconnect, the City can only take approximately 200k gpd. This had made the initial test period more difficult than anticipated, and necessitated a request that the golf course customers use as much water as possible during this period with the understanding that they would receive a credit on their bills for water used during the test period. The initial 45-day test was successful.

It is anticipated that the Waterway Estates flow will be diverted to the Del Prado plant at the end of September. The FGUA will then have 18 months in which to complete the second test period. With the increased flow and the current customer demands, it will be very difficult for the FGUA to successfully complete the second 45-day test period. Therefore, discussions have been conducted with Cape Coral to construct a new reuse connection that will allow for the delivery of significant quantities of reuse water from the NFM system to the main irrigation system of the City.

The general discussion points with the City representatives have been as follows:

1. The connection would benefit both the City and the FGUA; City will enhance its supply and lessen dependence on canal water for irrigation; FGUA will eliminate potential requirement for a 2nd deep well (\$5 million);
2. The initial approach is to split the costs of the project on a 50/50 basis; feasibility analysis is needed first to better define project costs, which are estimated at \$600k; City understands that the NFM system has little cash available, and that some or all of the FGUA share may be in the form of credits against future reuse charges;
3. Upon completion of the feasibility analysis, a new reuse agreement will be negotiated with the City;
4. City has indicated that once this connection is completed, they will be willing to take all reuse that the FGUA can send to them, as well as during the wet season. They are willing to contractually commit (take or pay) to the amounts that are available.

Based upon these discussions with the City of Cape Coral, staff recommends that the FGUA Board approve the Memorandum of Agreement to proceed with the feasibility analysis for the reuse line project and to authorize funding of the FGUA's share of the study up to \$20,000.

Recommendation

Staff recommends that the FGUA Board approve the Memorandum of Agreement to proceed with the feasibility analysis for the reuse line project and to authorize funding of the FGUA’s share of the study up to \$20,000.

Budget Impact

Project Number:	NF020	Original Project Budget:	\$ 000,000.00
ORG Number:	41619127	Amendments:	00,000.00
OBJ Number:	534007	Previous Expenses:	\$ 000,000.00
		Previous Encumbrances:	00,000.00
		Available Project Balance:	\$ 000,000.00
		Budget Transfers:	20,000.00
		This Project:	\$ (20,000.00)
		Balance Amount:	00,000.00

Board Action

Moved by:	Seconded by:	Action Taken:
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Item Number:	F.(1)
Meeting Date:	2/13/2017
Item Type:	APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Planning & Zoning Commission - 2 Member vacancies and 2 Alternate vacancies

REQUESTED ACTION:

Appoint

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:

Planning and Zoning Commission's Board Member's appointments/re-appointments:

At the February 1, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted to recommend the following:

Reappoint Ryan Peterson and appoint Ron Marmo as full members (7 Ayes).

Appoint Raymond Dezendorf and Giovanni Robinson as alternate (7 Ayes).

SUMMARY EXPLANATION AND BACKGROUND:

Vacancies: Four vacancies were created by term expirations of two members and two alternates.

Expirations: The terms will expire for the members and for the alternates in 2/28/2017. Newly appointed Member terms will expire on 2/28/2020. Newly appointed Alternate Terms will expire on 2/28/2018.

Applicants: Four: Raymond Dezendorf, Jr.; Ronald Marmo (Current Alternate); Ryan Peterson (Re-Appointment); and Giovanni Robinson

Advertisement: Vacancies were advertised in the Breeze on 12/9/16 and 12/23/16, and they were posted on the City's web site and Facebook page. Alternates may be chosen from the same pool of applicants.

LEGAL REVIEW:

EXHIBITS:

1. Board Sheet
2. Raymond Dezendorf, Jr.
3. Ronald Marmo
4. Ryan Peterson
5. Giovanni Robinson

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:**ATTACHMENTS:**

Description	Type
▣ Board Sheet	Backup Material
▣ Raymond Dezendorf, Jr.	Backup Material
▣ Ronald Marmo	Backup Material
▣ Ryan Peterson	Backup Material
▣ Giovanni Robinson	Backup Material

PLANNING & ZONING COMMISSION

BOARD INFO	MEMBERS	PHONE NUMBER	INITIAL APPOINT	LAST	TERM
<p>Established by Ordinance 4-72 Alternate Positions Established By Ordinance 56-99, 48-01, 67-01 and 173-06. Seven Members Two Alternates Quorum - 4 Members Regular Members - Three year terms Alternate Members - One year terms Terms effective March 1st</p> <p>Qualifications: All members shall be citizens of the United States and residents of the City of Cape Coral.</p> <p>Financial Disclosure required: Yes</p> <p>Reviews all changes in Land Use, Zoning, and Land Use and Development Regulations and provide recommendations to City Council concerning land use matters. They also review and grant all requests for variances and special exceptions in accordance with the Cape Coral Land Use Code of Ordinances.</p> <p>Meeting: 1st Wednesday of every month</p> <p>Liaison: Council Member Rana Erbrick rerbrick@capecoral.net (paper copy)</p> <p>Board Secretary: Elisabeth Delgado (239) 574-4415 edelgado@capecoral.net</p>	Daniel D. Read, CHAIR 112 SW 59th Terrace Cape Coral, FL 33914 landbrokers@comcast.net	542-0002 (W) 225-3182 (C)	3/1/2002 (alt.) 8/4/2003 (reg.)	2/22/2016	2/28/2019
	James Ranfranz, VICE CHAIR 4929 SW 17th Ave Cape Coral, FL 33914 elscientifico@yahoo.com	542-0194 (h) 699-5762 (c)	10/18/2004 (alt) 10/23/2006 (reg.)	2/22/2016	2/28/2019
	Ryan Peterson 527 NW 37th Avenue Cape Coral, FL 33993 rlpete119@gmail.com	433-3030 (o) 904 838-7020 (c)	2/9/2015		2/28/2017
	Glenn Hewitt 224 SE 27th Terrace Cape Coral, FL 33904 HEWITTGB@GMAIL.COM	458-7438 989 297-0699	2/11/2013 (alt.) 7/22/2013(reg.)	2/9/2015	2/28/2018
	Joseph Kibitlewski, Ph.D. EXEMPT (Paper copy) jkibitle@yahoo.com		2/11/2013 (alt.) 7/22/2013 (reg.)	2/9/2015	2/28/2018
	Ron Marmo (alternate) 140 SW 12th Street Cape Coral, FL 33991 ronmarmo@juno.com	612 245-9013	10/26/2015 (alt.)	2/22/2016	2/28/2017
	Graham Madison Morris 5205 Calusa Court Cape Coral, FL 33904 GmorrisPZ@outlook.com	501 499-3251 (h)	2/10/2014		2/28/2017
	Todd Koskinas (alternate) 1310 SW 43rd Terrace Cape Coral, FL 33914 Toddhk@comcast.net	738-3123 (h) 673-8311 (o) 738-3123 (cell)	2/9/2015 (alt.)	2/22/2016	2/28/2017
	James Schneider 1834 SE 5th Street Cape Coral, FL 33990 Jaime@HomesInTheSunshine.com	829-4579 (o) 410 218-7377 (cell)	2/9/2015 (alt.)	2/22/2016	2/28/2019

RECEIVED

CITY OF CAPE CORAL
APPOINTMENT INFORMATION
FORM

JAN 5 2017

CITY OF CAPE CORAL
CITY CLERKS OFFICE

This Appointment Information Form, when completed, signed and filed with the City Clerk's Office,

is a PUBLIC RECORD under Chapter 119, Florida Statutes, and, therefore, is open to public inspection by any person.

YOU ARE RESPONSIBLE TO KEEP THE INFORMATION ON THIS FORM CURRENT. APPLICATIONS WILL BE RETAINED IN THE CLERK'S OFFICE IN ACCORDANCE WITH STATE RECORDS RETENTION LAWS.

Please Type, if possible (or print clearly)

Date: 01/03/17

Name: RAYMOND C DEZEN DORF JR
(Last) (Middle) (First)

E-mail address: YELLOWDOG@COMCAST.NET

Address: (H) 5316 CORAL AVE Zip Code 33904

(O) Zip Code

Phone: (H) 239-471-7736 (O) (C) 845-222-5284

Occupation: RETIRED

Employer Position: How Long:

Education: Highest education level achieved and institutions attended:

Name & Location Dates Attended Degrees Earned

Have you ever held a professional or business license or certificate? Yes No

If "Yes", please provide the title, issue date and issuing authority.

License/Certificate Title	Issue Date	Issuing Authority
MASTER PLUMBER	1980	POTSDAM COUNTY, N.Y.
MASTER PLUMBER	1988	TOWN OF Poughkeepsie N.Y.
MASTER PLUMBER	1998	CITY OF Poughkeepsie N.Y.

Board(s) /Commission(s) for which you are applying:

PLANNING & ZONING /LOCAL PLANNING Agency

1. Are you a U.S. Citizen?

Yes

2. Are you a Cape Coral Resident?

Yes

3. Are you currently serving on a City

Board(s)? NO

Yes N/A If yes, ☒ No
which Board(s) and since when? No
No _____

4. Have you ever served on a City Board(s)?

☒ Yes No

If yes, which Board(s) and when?

SEE BELOW

5. Are you currently serving on a Board, Authority, or Commission for another governmental agency?
Yes ☒ No If yes, what Board, etc. and since when?

NO

#4: City Boards Service:

Planning Board, Town of Union Vale, N.Y.

Town Board, Councilman Town of Union Vale N.Y.
2000 - 2010

Dutchess County Planning Federation
2001 - 2010

Work Experience:

FIRE CAPTAIN - CITY OF YONKERS NEW YORK 1979-2011
PLUMBING CONTRACTOR - PUTNAM/DUTCHESS COUNTY N.Y.
COUNCILMAN - TOWN OF UNION VALLEY, NEW YORK 1980-2010
Community Involvement:
MEMBER: EAGLES, ELKS, MOOSE CLUBS 2010-2010
ELECTIONS INSPECTOR LEE COUNTY
CERT TRAINING

Interests/Activities:

PLANNING & ZONING
LANDSCAPING/GARDENING

Why do you desire to serve on this/these Board(s)?

How did you learn about the vacancy? ☒ Cape Coral Website ☐ Newspaper ☐ Facebook ☐ Word of Mouth

A resume or separate sheet with additional information may be included.

Florida law requires that members of certain Boards file a financial disclosure form. Would you be willing to file a financial disclosure form? Yes ☒ No ☐

The City of Cape Coral Code of Ordinances, Section 2-60 has a limitation on offices held; however, this can be waived by a two-thirds (2/3) vote of City Council. If you are already serving on a Board, Authority, or Commission for the City of Cape Coral or for another governmental agency, you would have to be approved by a two-thirds (2/3) vote.

The City of Cape Coral Code of Ordinances, Section 2-57 states that an applicant for membership on a board, committee, or commission or a sitting member of those bodies shall not have any delinquent accounts with the City of Cape Coral at the time of appointment.

I understand the responsibilities associated with being a Board member, and I have adequate time to serve on the above Board(s).

Signature



Date

01/03/17

If you have any questions, please call the office of the City Clerk at (239) 574-0411. Return this form to:

City of Cape Coral, City Clerk's Office, P.O. Box 150027, Cape Coral, Florida 33915-0027

FOR OFFICIAL USE ONLY

Yes ☐ No ☐

Interviewed: Date: _____

Council Action: Date: _____

**CITY OF CAPE CORAL
APPOINTMENT INFORMATION FORM**

RECEIVED

JAN 3 2017

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person.

**CITY OF CAPE CORAL
CITY CLERK'S OFFICE**

YOU ARE RESPONSIBLE TO KEEP THE INFORMATION ON THIS FORM CURRENT. APPLICANTS WILL BE RETAINED IN THE CLERK'S OFFICE IN ACCORDANCE WITH STATE RECORDS RETENTION LAWS.

Please Type, if possible (or print clearly)

Date: 12/31/16

Name: Marmo Ronald Philip
(Last) (First) (Middle)

E-mail address: ronmarmo@juno.com

Address: (H) 140 SW 12 St. Zip Code 33991
(O) _____ Zip Code _____

Phone: (H) _____ (O) _____ (C) 6122459013

Occupation: Retired Attorney

Employer: _____ Position: _____ How Long: _____

Education: Highest education level achieved and institutions attended:

<u>Name & Location</u>	<u>Dates Attended</u>	<u>Degrees Earned</u>
William Mitchell College of Law	1986 to 1990	Juris Doctor
University of east Anglia Norwich England	1972 to 1975	BA

Have you ever held a professional or business license or certificate?
If "Yes", please provide the title, issue date and issuing authority.

Yes ☒ No ☐

<u>License/Certificate Title</u>	<u>Issue Date</u>	<u>Issuing Authority</u>
License to Practice Law	June 1990	Minnesota supreme Court

Board(s) /Commission(s) for which you are applying:
Planning and Zoning

1. Are you a U.S. Citizen? Yes ☒ No ☐
2. Are you a Cape Coral Resident? Yes ☒ No ☐
3. Are you currently serving on a City Board(s)? Yes ☒ No ☐

If yes, which Board(s) and since when?
Planning and Zoning

4. Have you ever served on a City Board(s)? Yes ☒ No ☐

If yes, which Board(s) and when?

I served on Planning and zoning commissions for 15 years in Inver grove Heights and White Bear

5. Are you currently serving on a Board, Authority, or Commission for another governmental agency?

Yes ☐ No ☒ If yes, what Board, etc. and since when?

Work Experience:

Responsible for technology licensing, contract negotiation and compliance, dispute resolution, acquisition of technology and vendor management. Adjunct lecturer in Business Law at University of Phoenix Minneapolis campus. see Resume.

Community Involvement:

I served as a planning commissioner in two separate cities in Minnesota for a total of 15 years. My wife and I moved to Cape Coral as permanent residents in September of 2013 and we were wintering here since 2010. I enjoy the contact with community affairs and would like to serve where I am most useful. I believe that would be on the Planning and zoning commission.

Interests/Activities:

We love to kayak, fish, boat. We are members of a number of clubs. Attend various plays and other social events. I also cut and polish semi-precious stones.

Why do you desire to serve on this/these Board(s)?

As I mentioned above, I miss the contact with community affairs. I have a good understanding of land use planning and enjoy getting involved in shaping the future our city. I have the desire, experience and education to serve on this commission and want to serve where I can do the most good.

A resume or separate sheet with additional information may be included.

Florida law requires that members of certain Boards file a financial disclosure form. Would you be willing to file a financial disclosure form? Yes ☒ No ☐

The City of Cape Coral Code of Ordinances, Section 2-60 has a limitation on offices held; however, this can be waived by a two-thirds (2/3) vote of City Council. If you are already serving on a Board, Authority, or Commission for the City of Cape Coral or for another governmental agency, you would have to be approved by a two-thirds (2/3) vote.

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I understand the responsibilities associated with being a Board member, and I have adequate time to serve on the above Board(s).


Signature

12/31/16
Date

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City of Cape Coral, City Clerk's Office, P.O. Box 150027, Cape Coral, Florida 33915-0027

FOR OFFICIAL USE ONLY

Interviewed: Date: _____

Yes _____ No _____

Council Action: Date: _____

Ronald P Marmo
140 SW 12th Street
Cape Coral FL 33991

ronmarmo@juno.com
Cell (612) 245-9013
Home (651) 762-5652

EDUCATION

University East Anglia, England, B.A., Social Sciences. 1972-1975
(Sociology of Work and Business Interaction, minor in Philosophy)
William Mitchell College of Law, St. Paul, Juris Doctor. 1986-1989

OBJECTIVE

To contribute to the growth of a progressive organization.

EMPLOYMENT HISTORY

University of Phoenix, (Adjunct Business Law Lecturer, Minneapolis Campus ground school) June 2009 to June 2014

Facilitate classes and lecture to graduate and undergraduate level business law, employment law and ethics students. Provide real world business insights and encourage team and individual participation. Teach and encourage the use of accepted methodologies used in the analysis of issues students face in their daily work lives as business managers.

Ecolab Inc., IT Procurement. June 2009 to June 2012 (Retired)

Responsible for contract negotiation, dispute resolution, technology licensing, license compliance, acquisition of Technology, software products, software hosting, outsourcing, consulting and development agreements and related professional services. Provide vendor management and guidance to business users in vendor selection. Identify opportunities to reduce cost and contractual risk. Lead supplier selection, e-sourcing, (RFP/RFI) process, contract negotiation and execution, contract/program implementation, and high-level supplier/contract management. Accountable for results of contract negotiations involving complex business and legal objectives and on-going legal interpretation of contract language. Serve as a vital interface to internal and external customers, including senior management, as a recognized source of expertise for all contract activities. Working knowledge of Ariba Buyer, and other tools and process.

American Express Global Procurement (Technology Products and Services) May 2005 to June 2009. (Contract Negotiator/ Purchasing Manager)

Responsible for contract negotiation and administration of Distributed Technology, software products, software hosting, outsourcing (BPO) and related professional services. Identify opportunities to reduce cost and contractual risk. Lead supplier selection, e-sourcing, (RFP/RFI) process, contract negotiation and execution, contract/program implementation, and high-level supplier/contract management for assigned commodities. Provide vendor management and guidance to business users in vendor selection. Accountable for results of contract negotiations involving complex business and legal objectives. Serve as a vital interface to internal and external customers, including senior management, as a recognized source of expertise for all

contract activities. Working knowledge of Ariba Buyer, Global Contract Database, Document Express, and other tools and process.

HIPAAAnswers Vice President of Business Development Feb 2005 to May 2005 full time and continue as an advisor and seminar and Webex presenter for HIPAA and Cal GLBA to large and small groups.

Short-term position. Responsible for the business development and contract negotiation of the 50 state preemption product, a HIPAA compliance database. Also responsible for planning and implementation of other compliance software products, interaction with potential clients, HIPAA compliance presentations, writing articles for trade and legal publications, researching and developing legal content for compliance products including the California Financial Information Privacy Act (Cal. GLBA) and assisting clients with compliance issues.

Legal Research Center Inc., Senior Vice-President, Feb 2004 to Oct 2004

Short-term position. Responsible for the development of a sales solution for a new search engine specifically designed for the legal community and large corporate law departments. Duties include: analysis of product features, presentation of product, (on-line and in person) strategic process development, outreach, proposal development, negotiation of contracts and close. Objective of position completed. Process is developed and has been successfully used to create awareness of and generate interest in the search engine.

Quality Business Solutions, Vice President of Sales & General Counsel, Dec 2001 to Jan 2004

Legal duties included, but were not limited to: negotiating and drafting software development contracts, software license and maintenance agreements, independent contractor, non-compete, non-disclosure, and various other agreements. Dealing with all transactional matters. Creating strategic plan and implementing tactical functions. Providing legal counsel to management and generally advising on transactional and other IP issues. Instructing outside counsel for selected issues (Immigration, stock transfer, M&A, Litigation, and others). Assisting management with long-term planning. Creating outreach for initial contact of M&A targets and channel partners. Negotiating details with partners and acquisition targets. Managing new client, employee, contractor, and infrastructure issues, and negotiating new product issues with partners and strategic alliances.

Sales duties included, but were not limited to: responsible for sales of software and consulting services, hired and managed software sales team, initial contact to new clients, presented company services and products, recruited development teams, generally provided a company wide sales direction and marketing plan.

Provided client support as a billing consultant in matters related to HIPAA and other compliance issues. Guided clients in the analysis and development of a compliance plan for HIPAA Privacy, Security, and Transaction and Code Sets. Developed policy and trained clients' staff in the implementation of rules and policy.

ZinnCorp (I.T. Doctors), Senior Account Manager/ Contracts Administrator, Sept 1999 to Dec 2001

Legal duties included: business development, contract drafting and negotiation, reviewing legal documents and advising executive management on specific implications of new terms and conditions required by a vendor, partner or client. Reviewing copyright and trademark issues and advising management on same. Instructing outside counsel, developing relationships with client and partner legal departments and directing interaction with client senior executives. Making formal training and informational presentations on HIPAA compliance and implementation, acting as resident source of information for HIPAA and other compliance issues.

Sales duties included: discussing client project needs and develop solutions, interviewing appropriate staff for particular projects, recommending hiring of consultants, monitoring progress of projects (relative to accuracy of delivery of service in a timely fashion and within budget), managing consultants, dealing with personnel issues for consultants assigned to projects, developing strategic process and direction with executive management and implementing same.

Norrell Information Services, Senior Account Manager, Mar 1999 to Aug 1999

(Norrell was purchased by Interim Technology shortly after I joined. Interim was not the company I agreed to work for when I joined Norrell. Once the merger took effect I decided to join ZinnCorp). Primary duties included: business development, contract negotiation, reviewing legal documents and advising executive management on specific implications of a given negotiation, developing client relationships, direct interaction with client senior executives, discussing client project needs and develop solutions, interviewing appropriate staff for particular projects, recommending hiring of consultants, monitoring progress of projects (relative to accuracy of delivery of service in a timely fashion and within budget), managing consultants and dealing with personnel issues, developing strategic process and direction with executive management and implement same.

Cap Gemini Client Services Executive and Staffing Specialist, Apr 1997 to Feb 1999

Originally hired as a Client Services Executive to develop the financial markets. Moved to Staffing Specialist position in July 97 to develop and set some process in place in order to increase number of quality hires and decrease cost per hire. Budget for project was \$200,000. Accomplished goals of the project within budget and returned to full-time client development in June 1998.

Duties included: building new and existing relationships with clients hiring consultants and staffing projects, managing and resolving consultant personnel issues and dealing with project and client issues, high level technical needs analysis for potential clients and technical interviews of potential employees, developing and implementing marketing plan, planning and implementing seminars, trade shows and mini road shows, establish and manage a new outreach telemarketing program.

Systems Engineering Services, Technical Recruiter, Short-term contract: Jan 1997 to Apr 1997

Brief engagement to assist in the development of a new local branch. Duties included: recruiting and assisting with sales, and mentoring sales and recruiting team with respect to the Twin Cities market.

Computron Software Inc. (Accounting and Work Flow Imaging Software), Senior Business Development Manager for upper Midwest, July 1996 to Jan 1997

Responsible for opening local office. Territory included Minnesota, South Dakota North Dakota and most of Wisconsin. Clients were generally above \$500 million in revenue. Duties included: outreach to appropriate clients, initial presentation, strategic planning of sales cycle, organizing and coordinating demonstrations, technical interviews, corporate visits and contract negotiations, responsible for strategic alliances with accounting and consulting firms, planning and implementing marketing seminars, executive presentations, trade shows and general marketing relationships. In the first four months of this position I turned an empty pipeline into eight active prospects ready to close. Upon office closing, I was asked to move to Chicago but was unable to do so.

APG-USA, Business Development Manager, Contracts Administrator, Feb 1994 to July 1996

Legal duties included: drafting documents and advising management regarding software protection and license issues. Providing legal counsel for other transactional issues and instructing outside counsel for selected issues. Assisting management with long-term strategic planning, creating outreach for initial contact of M&A targets and channel partners, suggesting creative structuring of negotiations and final arrangements to encourage clients to choose APG-USA. Responsible for client relationships on an ongoing basis.

Additional duties included: strategic marketing and sales of management and information systems services, responsible for the identification of opportunities and the placement of consultants on a contract basis, outreach to clients and performance of initial qualification and needs analysis on client site, developing client relationships and strategic alliances, negotiating terms of engagements and developing statements of work, establishing profitable pricing model and maintaining acceptable profit margins.

Established contact with potential APG employees with relevant experience. Performed initial screening and interview. Recommend potential candidates for technical screening. Rejected unsuitable candidates. Managed projects, facilitated status meetings, required reporting on milestones, and corrected issues to achieve on-time delivery. Arranged and worked in trade shows and seminars. Organized radio and television advertising. Negotiated strategic alliances.

Professional Processing Inc., VP Sales, Dec 1989 to Nov 1993, General Counsel May 1990 to Sept 1996 (I continued to act as legal counsel after 1993 on a contract basis until 1996), Legal Counsel, 1990 to 1996

Upon graduation and admittance to the Bar I was asked to take on responsibility as corporate counsel. Duties included but were not limited to: negotiation of agreements with clients and vendors, drafting legal documents and advising on all legal matters, responsible for litigation, court appearances, instructing outside counsel, settling contract, copyright, licensing and other disputes, advising management regarding strategic direction and formation of new profit centers,

establishment of new subsidiary corporations including an international joint venture between SDV Pluramedia, a French company, and PPI, negotiated and implemented strategic alliance with US West (now Centurylink).

Originally hired as Business Development Manager for Real Time Job Management job shop manufacturing software and Results Distribution and Accounting Software. Promoted to Vice President of software sales within one year. Exceeded all previous sales record for the job shop package. Initiated and implemented sales of the X.25 information services and the trade show list management service and sales

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Manager responsible for sales of Shopman Manufacturing software and Controller wholesale distribution, accounting and job cost software. Exceeded all previous sales for job shop package. Instituted sales, training, and demonstration procedures for software. Supervised sales people and an outbound telemarketing program used to successfully prospect for new clients. Trained staff and clients in the use of software. Held training sessions for sales people on the effective ways of finding solutions to clients' problems.

Cedar Consultants Inc., Salesman / Manager, Jan 1985 to Apr 1988

Originally hired as salesman. Promoted to sales manager within 15 months. Exceeded all sales figures for Controller Distribution/Accounting Software. First salesperson to recognize that Controller could be sold profitably on a microcomputer running PICK, thus opening a large new customer base. Sold the largest system ever sold for company at the time. Primary duties included, but were not limited to: supervising sales and initiating an outbound prospecting telemarketing program, training staff and clients in use of software, initiating and monitoring outbound telemarketing, organizing and attending trade shows.

Company closed and sold marketing rights to Jobtrak. I continued as a sales manager for Jobtrak manufacturing software and Controller distribution accounting and job cost software. Sold and supervised software sales of accounting, distribution and job shop software. Trained staff and clients in the proper use of the software. Trained sales personnel in the proper sales methods when seeking solutions for clients. Instituted outbound prospecting telemarketing program.

Central Stores (England), Owner/Operator, May 1974 to Dec 1984

Owned and operated a chain of five variety stores. Trained a staff of up to 30 people. Worked with customer complaints and was primarily responsible for all operations. Negotiated all leases and contracts. Before returning to the United States, I instituted a plan to liquidate all inventory and divide the real estate owned by the business into 5 small stores and one apartment. The property has been successfully rented since 1984.

ADDITIONAL RELEVANT EXPERIENCE / EDUCATION

Minnesota State Bar Computer Law Governing Council 1991 to 2004

Continuing Legal Education:

Faculty, The Computer Law Institute, 2003 Topic: Outsourcing, Off-Shore (India)

Faculty, The Computer Law Institute, 1995 Topic: Software License Agreements,
Lecture to various organizations: "HIPAA and Information Security"

Member of the Super Bowl Technical Task Force

Past Chairman of Inver Grove Heights Aircraft Noise Abatement Commission

Appointed Commissioner, Vice-Chairman and ultimately Co-Chair of Inver Grove Heights Planning Commission, 1995 to 2001

Appointed Commissioner and Vice Chairman of the White Bear Township Planning Commission, September 2002 to 2011

Chairman of the "MAINSTREET" Improvement Committee

- o Raised in excess of \$100,000 and managed a volunteer group of over 200 people for special events

Additional Courses Attended:

Guerrilla Marketing and Advertising Seminars, Jay Conrad Levinson

Business, Finance, Real Estate, Employment Law, Intellectual Property, Franchise, Advertising Law, and other related topics

Ronald P Marmo
140 SW 12th Street
Cape Coral FL 33991

ronmarmo@juno.com
Cell (612) 245-9013
Home (651) 762-5652

EDUCATION

University East Anglia, England, B.A., Social Sciences. 1972-1975
(Sociology of Work and Business Interaction, minor in Philosophy)
William Mitchell College of Law, St. Paul, Juris Doctor. 1986-1989

OBJECTIVE

To contribute to the growth of a progressive organization.

EMPLOYMENT HISTORY

University of Phoenix, (Adjunct Business Law Lecturer, Minneapolis Campus ground school) June 2009 to June 2014

Facilitate classes and lecture to graduate and undergraduate level business law, employment law and ethics students. Provide real world business insights and encourage team and individual participation. Teach and encourage the use of accepted methodologies used in the analysis of issues students face in their daily work lives as business managers.

Ecolab Inc., IT Procurement. June 2009 to June 2012 (Retired)

Responsible for contract negotiation, dispute resolution, technology licensing, license compliance, acquisition of Technology, software products, software hosting, outsourcing, consulting and development agreements and related professional services. Provide vendor management and guidance to business users in vendor selection. Identify opportunities to reduce cost and contractual risk. Lead supplier selection, e-sourcing, (RFP/RFI) process, contract negotiation and execution, contract/program implementation, and high-level supplier/contract management. Accountable for results of contract negotiations involving complex business and legal objectives and on-going legal interpretation of contract language. Serve as a vital interface to internal and external customers, including senior management, as a recognized source of expertise for all contract activities. Working knowledge of Ariba Buyer, and other tools and process.

American Express Global Procurement (Technology Products and Services) May 2005 to June 2009. (Contract Negotiator/ Purchasing Manager)

Responsible for contract negotiation and administration of Distributed Technology, software products, software hosting, outsourcing (BPO) and related professional services. Identify opportunities to reduce cost and contractual risk. Lead supplier selection, e-sourcing, (RFP/RFI) process, contract negotiation and execution, contract/program implementation, and high-level supplier/contract management for assigned commodities. Provide vendor management and guidance to business users in vendor selection. Accountable for results of contract negotiations involving complex business and legal objectives. Serve as a vital interface to internal and external customers, including senior management, as a recognized source of expertise for all

contract activities. Working knowledge of Ariba Buyer, Global Contract Database, Document Express, and other tools and process.

HIPAAAnswers Vice President of Business Development Feb 2005 to May 2005 full time and continue as an advisor and seminar and Webex presenter for HIPAA and Cal GLBA to large and small groups.

Short-term position. Responsible for the business development and contract negotiation of the 50 state preemption product, a HIPAA compliance database. Also responsible for planning and implementation of other compliance software products, interaction with potential clients, HIPAA compliance presentations, writing articles for trade and legal publications, researching and developing legal content for compliance products including the California Financial Information Privacy Act (Cal. GLBA) and assisting clients with compliance issues.

Legal Research Center Inc., Senior Vice-President, Feb 2004 to Oct 2004

Short-term position. Responsible for the development of a sales solution for a new search engine specifically designed for the legal community and large corporate law departments. Duties include: analysis of product features, presentation of product, (on-line and in person) strategic process development, outreach, proposal development, negotiation of contracts and close. Objective of position completed. Process is developed and has been successfully used to create awareness of and generate interest in the search engine.

Quality Business Solutions, Vice President of Sales & General Counsel, Dec 2001 to Jan 2004

Legal duties included, but were not limited to: negotiating and drafting software development contracts, software license and maintenance agreements, independent contractor, non-compete, non-disclosure, and various other agreements. Dealing with all transactional matters. Creating strategic plan and implementing tactical functions. Providing legal counsel to management and generally advising on transactional and other IP issues. Instructing outside counsel for selected issues (Immigration, stock transfer, M&A, Litigation, and others). Assisting management with long-term planning. Creating outreach for initial contact of M&A targets and channel partners. Negotiating details with partners and acquisition targets. Managing new client, employee, contractor, and infrastructure issues, and negotiating new product issues with partners and strategic alliances.

Sales duties included, but were not limited to: responsible for sales of software and consulting services, hired and managed software sales team, initial contact to new clients, presented company services and products, recruited development teams, generally provided a company wide sales direction and marketing plan.

Provided client support as a billing consultant in matters related to HIPAA and other compliance issues. Guided clients in the analysis and development of a compliance plan for HIPAA Privacy, Security, and Transaction and Code Sets. Developed policy and trained clients' staff in the implementation of rules and policy.

ZinnCorp (I.T. Doctors), Senior Account Manager/ Contracts Administrator, Sept 1999 to Dec 2001

Legal duties included: business development, contract drafting and negotiation, reviewing legal documents and advising executive management on specific implications of new terms and conditions required by a vendor, partner or client. Reviewing copyright and trademark issues and advising management on same. Instructing outside counsel, developing relationships with client and partner legal departments and directing interaction with client senior executives. Making formal training and informational presentations on HIPAA compliance and implementation, acting as resident source of information for HIPAA and other compliance issues.

Sales duties included: discussing client project needs and develop solutions, interviewing appropriate staff for particular projects, recommending hiring of consultants, monitoring progress of projects (relative to accuracy of delivery of service in a timely fashion and within budget), managing consultants, dealing with personnel issues for consultants assigned to projects, developing strategic process and direction with executive management and implementing same.

Norrell Information Services, Senior Account Manager, Mar 1999 to Aug 1999

(Norrell was purchased by Interim Technology shortly after I joined. Interim was not the company I agreed to work for when I joined Norrell. Once the merger took effect I decided to join ZinnCorp). Primary duties included: business development, contract negotiation, reviewing legal documents and advising executive management on specific implications of a given negotiation, developing client relationships, direct interaction with client senior executives, discussing client project needs and develop solutions, interviewing appropriate staff for particular projects, recommending hiring of consultants, monitoring progress of projects (relative to accuracy of delivery of service in a timely fashion and within budget), managing consultants and dealing with personnel issues, developing strategic process and direction with executive management and implement same.

Cap Gemini Client Services Executive and Staffing Specialist, Apr 1997 to Feb 1999

Originally hired as a Client Services Executive to develop the financial markets. Moved to Staffing Specialist position in July 97 to develop and set some process in place in order to increase number of quality hires and decrease cost per hire. Budget for project was \$200,000. Accomplished goals of the project within budget and returned to full-time client development in June 1998.

Duties included: building new and existing relationships with clients hiring consultants and staffing projects, managing and resolving consultant personnel issues and dealing with project and client issues, high level technical needs analysis for potential clients and technical interviews of potential employees, developing and implementing marketing plan, planning and implementing seminars, trade shows and mini road shows, establish and manage a new outreach telemarketing program.

Systems Engineering Services, Technical Recruiter, Short-term contract: Jan 1997 to Apr 1997

Brief engagement to assist in the development of a new local branch. Duties included: recruiting and assisting with sales, and mentoring sales and recruiting team with respect to the Twin Cities market.

Computron Software Inc. (Accounting and Work Flow Imaging Software), Senior Business Development Manager for upper Midwest, July 1996 to Jan 1997

Responsible for opening local office. Territory included Minnesota, South Dakota North Dakota and most of Wisconsin. Clients were generally above \$500 million in revenue. Duties included: outreach to appropriate clients, initial presentation, strategic planning of sales cycle, organizing and coordinating demonstrations, technical interviews, corporate visits and contract negotiations, responsible for strategic alliances with accounting and consulting firms, planning and implementing marketing seminars, executive presentations, trade shows and general marketing relationships. In the first four months of this position I turned an empty pipeline into eight active prospects ready to close. Upon office closing, I was asked to move to Chicago but was unable to do so.

APG-USA, Business Development Manager, Contracts Administrator, Feb 1994 to July 1996

Legal duties included: drafting documents and advising management regarding software protection and license issues. Providing legal counsel for other transactional issues and instructing outside counsel for selected issues. Assisting management with long-term strategic planning, creating outreach for initial contact of M&A targets and channel partners, suggesting creative structuring of negotiations and final arrangements to encourage clients to choose APG-USA. Responsible for client relationships on an ongoing basis.

Additional duties included: strategic marketing and sales of management and information systems services, responsible for the identification of opportunities and the placement of consultants on a contract basis, outreach to clients and performance of initial qualification and needs analysis on client site, developing client relationships and strategic alliances, negotiating terms of engagements and developing statements of work, establishing profitable pricing model and maintaining acceptable profit margins.

Established contact with potential APG employees with relevant experience. Performed initial screening and interview. Recommend potential candidates for technical screening. Rejected unsuitable candidates. Managed projects, facilitated status meetings, required reporting on milestones, and corrected issues to achieve on-time delivery. Arranged and worked in trade shows and seminars. Organized radio and television advertising. Negotiated strategic alliances.

Professional Processing Inc., VP Sales, Dec 1989 to Nov 1993, General Counsel May 1990 to Sept 1996 (I continued to act as legal counsel after 1993 on a contract basis until 1996), Legal Counsel, 1990 to 1996

Upon graduation and admittance to the Bar I was asked to take on responsibility as corporate counsel. Duties included but were not limited to: negotiation of agreements with clients and vendors, drafting legal documents and advising on all legal matters, responsible for litigation, court appearances, instructing outside counsel, settling contract, copyright, licensing and other disputes, advising management regarding strategic direction and formation of new profit centers,

establishment of new subsidiary corporations including an international joint venture between SDV Pluramedia, a French company, and PPI, negotiated and implemented strategic alliance with US West (now Centurylink).

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Continuing Legal Education:

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Faculty, The Computer Law Institute, 1995 Topic: Software License Agreements,
Lecture to various organizations: "HIPAA and Information Security"

Member of the Super Bowl Technical Task Force

Past Chairman of Inver Grove Heights Aircraft Noise Abatement Commission

Appointed Commissioner, Vice-Chairman and ultimately Co-Chair of Inver Grove Heights
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- o Raised in excess of \$100,000 and managed a volunteer group of over 200 people
for special events

Additional Courses Attended:

Guerrilla Marketing and Advertising Seminars, Jay Conrad Levinson

Business, Finance, Real Estate, Employment Law, Intellectual Property, Franchise, Advertising
Law, and other related topics

**CITY OF CAPE CORAL
APPOINTMENT INFORMATION FORM**

This Appointment Information Form, when completed, signed and filed with the City Clerk's Office, is a PUBLIC RECORD under Chapter 119, Florida Statutes, and, therefore, is open to public inspection by any person.

YOU ARE RESPONSIBLE TO KEEP THE INFORMATION ON THIS FORM CURRENT. APPLICATIONS WILL BE RETAINED IN THE CLERK'S OFFICE IN ACCORDANCE WITH STATE RECORDS RETENTION LAWS.

Please Type, if possible (or print clearly) Date: 12/20/2016

Name: Peterson Ryan Lee
(Last) (First) (Middle)

E-mail address: rlpetell19@gmail.com

Address: (H) 527 NW 37th Avenue Zip Code 33993
(O) 4683 Laredo Avenue Zip Code 33905

Phone: (H) _____ (O) 239-935-7073 (C) _____

Occupation: Branch Manager

Employer: Wayne Automatic Position: Branch Manager How Long: 20 yrs
Fire Sprinklers

Education: Highest education level achieved and institutions attended:

<u>Name & Location</u>	<u>Dates Attended</u>	<u>Degrees Earned</u>
<u>St. Johns River; Orange Park, Fl.</u>	<u>2004-05</u>	
<u>Valencia; Orlando, Fl.</u>	<u>2006-07</u>	<u>Associate Degree</u>

Have you ever held a professional or business license or certificate? Yes X No _____

If "Yes", please provide the title, issue date and issuing authority.

<u>License/Certificate Title</u>	<u>Issue Date</u>	<u>Issuing Authority</u>
<u>Florida Fire Sprinkler Contractor</u>	<u>2014</u>	<u>State of Florida</u>
<u>Florida Fire Alarm Contractor</u>	<u>2016</u>	<u>State of Florida</u>
<u>Mississippi Fire Sprinkler Contractor</u>	<u>2014</u>	<u>State of Mississippi</u>

Board(s) /Commission(s) for which you are applying:

Planning and Zoning Commission

1. Are you a U.S. Citizen? Yes X No _____
2. Are you a Cape Coral Resident? Yes X No _____
3. Are you currently serving on a City Board(s)? Yes X No _____

If yes, which Board(s) and since when?

Planning and Zoning Commission

4. Have you ever served on a City Board(s)? Yes X No _____

If yes, which Board(s) and when?

Planning and Zoning Commission Currently

5. Are you currently serving on a Board, Authority, or Commission for another governmental agency?

Yes _____ No X If yes, what Board, etc. and since when?

Work Experience:

US Navy Veteran, 20 years experience in fire/life safety in several different capacities: Fitter, Foreman, Designer, Design Manager, Development Coordinator, and Branch Manager

Community Involvement:

Member of the Lee County Fire Marshal and Inspectors Association
Board of Directors of Tri-County Apprenticeship Academy
Board of Directors of Florida Fire Sprinkler Association

Interests/Activities:

Fishing, paddle boarding, running, biking

Why do you desire to serve on this/these Board(s)?

I believe it is important to be actively involved in community
I live in and to share what ever expertise and experience might be beneficial to our community.

How did you learn about the vacancy? ☐ Cape Coral Website ☐ Newspaper ☐ Facebook ☒ Word of Mouth

A resume or separate sheet with additional information may be included.

Florida law requires that members of certain Boards file a financial disclosure form. Would you be willing to file a financial disclosure form? Yes ☒ No ☐

The City of Cape Coral Code of Ordinances, Section 2-60 has a limitation on offices held; however, this can be waived by a two-thirds (2/3) vote of City Council. If you are already serving on a Board, Authority, or Commission for the City of Cape Coral or for another governmental agency, you would have to be approved by a two-thirds (2/3) vote.

The City of Cape Coral Code of Ordinances, Section 2-57 states that an applicant for membership on a board, committee, or commission or a sitting member of those bodies shall not have any delinquent accounts with the City of Cape Coral at the time of appointment.

I understand the responsibilities associated with being a Board member, and I have adequate time to serve on the above Board(s).

Signature

12/20/2016

Date

If you have any questions, please call the office of the City Clerk at (239) 574-0411. Return this form to:

City of Cape Coral, City Clerk's Office, P.O. Box 150027, Cape Coral, Florida 33915-0027

FOR OFFICIAL USE ONLY

Interviewed: Date: _____

Yes _____ No _____

Council Action: Date: _____

EXEMPT

Per Section 119.07(3)(i) of the State Statutes, the home address and telephone numbers of this applicant must be redacted.

**CITY OF CAPE CORAL
APPOINTMENT INFORMATION FORM**

RECEIVED

JAN 6 2017

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Please Type, if possible (or print clearly)

Date: 3 January 2017

Name: Robinson Giovanni
(Last) (First) (Middle)

E-mail address: giovanni.robinson@icloud.com

Address: (H) [REDACTED] Zip Code [REDACTED]

(O) [REDACTED] Zip Code [REDACTED]

Phone: (H) [REDACTED] (O) [REDACTED] (C) [REDACTED]

Occupation: US Army Instructor

Employer: _____ Position: Dunbar High School How Long: _____

Education: Highest education level achieved and institutions attended:

<u>Name & Location</u>	<u>Dates Attended</u>	<u>Degrees Earned</u>
Columbia Southern University	May 2013	Associates Degree

Have you ever held a professional or business license or certificate? Yes _____ No X

If "Yes", please provide the title, issue date and issuing authority.

<u>License/Certificate Title</u>	<u>Issue Date</u>	<u>Issuing Authority</u>

Board(s) /Commission(s) for which you are applying:

Charter Review Commission and or Planning & Zoning/Local Planning Agency

1. Are you a U.S. Citizen? Yes X No _____

2. Are you a Cape Coral Resident? Yes X No _____

3. Are you currently serving on a City Board(s)? Yes _____ No X

If yes, which Board(s) and since when?

4. Have you ever served on a City Board(s)? Yes _____ No X

If yes, which Board(s) and when?

5. Are you currently serving on a Board, Authority, or Commission for another governmental agency?

Yes _____ No X If yes, what Board, etc. and since when?

Work Experience:

US Army (ret) Senior Military Police Leader

Community Involvement:

Ex- volunteer Firefighter (Hampton, VA for 6 years). Currently applying for volunteer status with the City of Cape Coral

Police department.

Interests/Activities:

Making the City of Cape Coral better and ministering to troubled youth.

Why do you desire to serve on this/these Board(s)?

To assist in making the life and experiences of the citizens and visitors of Cape Coral better, through public service.

How did you learn about the vacancy? ☒ X Cape Coral Website ☐ Newspaper ☐ Facebook ☐ Word of Mouth

A resume or separate sheet with additional information may be included.

Florida law requires that members of certain Boards file a financial disclosure form. Would you be willing to file a financial disclosure form? Yes ☒ X No ☐

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Signature



Date

5 Jan 2017

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FOR OFFICIAL USE ONLY

Interviewed: Date: _____

Yes ☐ No ☐

Council Action: Date: _____

Item Number:	F.(2)
Meeting Date:	2/13/2017
Item Type:	APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Youth Council - 14 Vacancies

REQUESTED ACTION:

Appoint

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:

Council approved Ordinance 47-16 on September 26, 2016 which created the Cape Coral Youth Council.

Vacancies: 14 vacancies

Expiration: Senior terms expire on 5/1/2017 & Junior terms expire on 5/1/2018.

Applications: Thirty applications were received from the following: Mariner High School, Ida Baker High School; Island Coast High School; Oasis High School; Cape Coral High School and North Fort Myers High School; and At-Large category.

Advertisement: Application packets were distributed in December, 2016 via mail and email to the Administrative Office of the school listed above. At large packets were distributed via email to Bishop Verot High School, Canterbury, Evangelical Christian School, Charter School contact for Cape Coral residents attending other Charter Schools in Lee County, and Home School contact for Cape Coral residents that are home schooled. A deadline of 12/20/2016 was initially established to receive all applications. Based on the combination of mid-terms and Winter break, an extension was granted to receive additional applications up through January 12, 2017.

Discussion of the first meeting date: Friday, February 17, 2017 or Friday, February 24, 2017.

LEGAL REVIEW:

EXHIBITS:

Schools - memo sent the School Administrators

At Large - memo sent to the At Large students

Application Email

February 2017 Calendar

PREPARED BY:

Kimberly

Bruns

Division- Managerial Department- City Clerk's
Department

SOURCE OF ADDITIONAL INFORMATION:

Kimberly Bruns

Assistant City Clerk

1-239-242-3243

ATTACHMENTS:

Description	Type
Schools - Letter sent to School Administrators	Backup Material
At Large - Letter sent to the At Large students	Backup Material
Applications Email	Backup Material
February 2017 Calendar	Backup Material



December 7, 2016

City of Cape Coral

Office of the Mayor and City Council

Dear School Representative:

The City of Cape Coral is proud to announce a new and exciting opportunity for juniors and seniors that are residents of Cape Coral to participate in a City Youth Council through City Ordinance 47-16. The City's new Youth Council will provide our youth an opportunity to increase their knowledge of civic education through practical hands-on experience and have the ability to make decisions and bring forward to Council issues facing the youth in our City.

The initial Youth Council will be comprised of seven seniors for an abbreviated year one term and seven juniors for a two year term. Year two and moving forward, the City Council will appoint seven juniors to a two year term. Of the 14 members, there will be two At Large members. Each member will meet in the Cape Coral Council Chambers located at 1015 Cultural Park Boulevard every other week. Youth Council meetings will be televised, streamed on-line, recorded, and have staff support by the City Clerk's Office. This Youth Council will abide by the Sunshine Law and meetings will be advertised and open to the public. Participation in the Chamber of Commerce Junior Leadership Program is strongly preferred, but not required to apply.

Along with the 14 member Youth Council, there will be a non-voting City Council Liaison and adult advisors to work with them to provide City Council with information concerning youth issues. There will be a huge learning opportunity for these students along with a chance to make a difference while participating in a city government environment.

Students will be selected through a competitive application and interview process where two junior and two senior applications will be chosen by the school and submitted to the City Council for consideration. Of the four applications submitted, the school will give a recommendation for one junior and one senior. City Council members may also interview the applicants. Please have students follow the instructions high-lighted in yellow at the top of the application.

Schools should return the four applications and school recommendation no later than Tuesday, December 20, 2016, to:
 City of Cape Coral
 Attn: City Clerk's Office
 1015 Cultural Park Boulevard
 Cape Coral, Florida 33990

For more information or have any questions regarding the enclosed documents, please call Gianna Pack, Executive Legislative Assistant to Council at 239-574-0437 or email at gpack@capecoral.net.

Sincerely,

Rick Williams
 Mayor ProTem

Enclosures:

- 4 – Applications (2 Juniors and 2 Seniors)
- Youth Council General Information
- Ordinance 47-16



CITY OF CAPE CORAL YOUTH COUNCIL APPLICATION

This Youth Council Application, when completed, signed and filed with school administration is a PUBLIC RECORD under Chapter 119, Florida Statutes, and, therefore, is open to public inspection by any person. Applications will be retained in accordance with State Records Retention laws.

DATE: _____

NAME: _____

ADDRESS: _____

CITY: _____ ZIP CODE: _____

HOME PHONE: _____ CELL: _____

E-MAIL ADDRESS: _____

PARENT(S) FIRST AND LAST NAME: _____

HOME PHONE: _____ CELL: _____

E-MAIL ADDRESS: _____

HOW LONG HAVE YOU LIVED IN CAPE CORAL? _____

ARE YOU A U.S. CITIZEN? _____

SCHOOL: _____

CURRENT GRADE: _____ GPA: _____

1. HOW DID YOU HEAR ABOUT THE CITY'S YOUTH COUNCIL? _____

2. LIST YOUR INTERESTS & ACTIVITIES (HOBBIES, ORGANIZATIONS, CLUBS, SPORTS, POSITIONS HELD, ETC.): _____

3. LIST UP TO FIVE CLUBS, ORGANIZATIONS OR SPORTS PROGRAMS IN WHICH YOU HAVE PARTICIPATED DURING THE LAST TWO YEARS.

NAME OF SCHOOL, CLUB/ORGANIZATION/SPORT

WHEN INVOLVED

WHAT WAS YOUR ROLE IN THE ACTIVITY?

1) _____	_____	_____
2) _____	_____	_____
3) _____	_____	_____
4) _____	_____	_____
5) _____	_____	_____

4. WHAT DO YOU SEE AS THE ROLE OF YOUTH IN OUR SOCIETY AND HOW WOULD YOU LIKE THAT TO CHANGE IN THE FUTURE?

5. LIST ANY SPECIAL RECOGNITION OR HONORS FOR ACADEMIC, SCHOOL, RELIGIOUS OR COMMUNITY RELATED ACTIVITIES YOU HAVE RECEIVED OVER THE LAST TWO YEARS.

6. WHAT ARE YOUR CAREER GOALS? _____

7. DESCRIBE A TIME WHEN YOUR ACTIONS POSITIVELY AFFECTED A PERSON, YOUR SCHOOL, OR YOUR COMMUNITY.

8. IF YOU COULD CHANGE ANYTHING ABOUT YOUR COMMUNITY OR SCHOOL, WHAT WOULD IT BE AND WHY?

9. WHY DO YOU WANT TO SERVE ON THE CITY'S YOUTH COUNCIL? (PLEASE BE SPECIFIC)

10. ARE YOU WILLING TO ATTEND YOUTH COUNCIL MEETINGS EVERY OTHER WEEK?

___ YES ___ NO

11. PLEASE PROVIDE TWO REFERENCES. PLEASE SEE PAGES 4 AND 5 OF THIS APPLICATION FOR REFERENCE INFORMATION.

REFERENCE #1

NAME: _____

ADDRESS: _____

DAYTIME PHONE: _____

REFERENCE #2

NAME: _____

ADDRESS: _____

DAYTIME PHONE: _____

I understand that if I am selected as a member of the City of Cape Coral Youth Council I will need to attend Youth Council meetings every other week, and participate in a manner that brings honor and respect to the citizens of the City of Cape Coral.

Signature

Date

I give permission for _____ to apply for the City of Cape Coral Youth Council. If selected, I will support him/her in attending meetings and functions related to the City's Youth Council. PARENTAL CONSENT REQUIRED (unless the applicant has reached the age of majority).

Signature of Parent or Guardian

Date

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Reference's Name: _____

Address: _____

City, State, and Zip Code: _____

Home Phone: _____ Work Phone: _____

1. How long have you know the applicant? _____

2. What is your relationship to the applicant? _____

3. Is the applicant dependable? _____

4. Why would you recommend the applicant for this position? _____

Signature: _____ Date: _____

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Home Phone: _____ Work Phone: _____

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Signature: _____ Date: _____

CAPE CORAL YOUTH COUNCIL

Purpose:

This group will be youth in this city that will assist our city government with identifying the needs and wants of our young folks and will be an advisory group to the City Council that will help us identify solutions, and participate in those solutions and recommendations. The Youth Council will vote on issues, control a small budget, and bring recommendations forward to the City Council.

Structure:

The Cape Coral Youth Council will consist of 14 council members.

One Junior and one Senior from:

- Mariner High School
- Ida Baker High School
- Island Coast High School
- Oasis High School
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- N. Ft Myers High School (must be Cape Coral residents)
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All will be appointed by the City Council from a pool of candidates from the above schools. The first year the City Council will appoint 7 seniors to a one year term and 7 juniors to a two year term. Year two and beyond the City Council will appoint 7 juniors to a two year term.

There will be an application process, and a group of advisors will interview the applicants. City Council members may also interview the applicants. Participation in the Chamber of Commerce Junior Leadership Program is strongly preferred but not required.

The appointed Youth Council will elect a Chairman and Vice Chairman. Preferably a senior Chair and Junior Vice Chair.

Meetings:

The Cape Coral Youth Council will meet every other week (this may be adjusted as we progress) in the Council Chambers. Their meetings will mirror the City Council meetings. There will be City Councilmember serving as a liaison to the Youth Council. The Youth Council will be supported by staff as any of the City Council appointed advisory board or committees are. Agendas will be prepared, minutes will be kept and they will follow Roberts Rules. All documentation will be preserved

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A lot of what we do every week on the dais in some way affects all of the residents, including our youth. We need their input and opinions. The Youth Council Members are still in school and interact daily with their peers. Once the other students realize that there are a couple of their friends that are in a position to make a difference, we hopefully will start to see a lot more input from the youth in this city.

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A youth council is an advisory body composed of local youth (usually high-school aged). They provide advice and counsel to the local governing body and its affiliated advisory and regulatory boards, as well as other community organizations. Additionally, youth councils can implement and participate in a variety of youth-identified community initiatives.

II. Why create a youth council?

According to the Census Bureau, 24.6 percent of the U.S. population is under the age of 18. It goes without saying that young people are the future of our communities. Therefore, it is vitally important that they are vested with the knowledge, skills and abilities to be the next generation of local leaders. Youth councils are an excellent means of doing so because they promote regular and active civic engagement among youth.

Youth councils promote civic engagement among youth by:

- Giving them a formal role in local decision making
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III. Who benefits?

Youth councils enable **young people** to:

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ORDINANCE 47 - 16

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE V, BOARDS AND COMMISSIONS, AMENDING SECTIONS 2-57, 2-59, AND 2-60, AND CREATING DIVISION 12, SECTION 2-120.49, TO CREATE AND ESTABLISH A YOUTH COUNCIL; PROVIDING FOR CREATION AND PURPOSE; PROVIDING FOR COMPOSITION, QUALIFICATIONS, AND TERMS; PROVIDING FOR PARENTAL CONSENT AND APPLICATION; PROVIDING FOR ELECTION OF OFFICERS; PROVIDING FOR VACANCIES AND REMOVAL; PROVIDING FOR MEETINGS, QUORUM, FORFEITURE OF OFFICE, MINUTES, RECORDS, AND COMPENSATION; PROVIDING FOR RULES AND REGULATIONS; PROVIDING FOR DUTIES AND RESPONSIBILITIES; PROVIDING FOR REPORTING; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral City Council wishes to more actively engage and involve the youth of the community in the local government process; and

WHEREAS, the creation of a Youth Council will serve as a catalyst for youth participation and promote community involvement by the youth of the community and will assist with promoting ideas and local government issues; and

WHEREAS, the establishment of a Youth Council will provide an opportunity for the youth of the City of Cape Coral to acquire a greater knowledge of, and appreciation for, the American political system through active participation in that system; 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 Code of Ordinances, Chapter 2, Article V, Section 2-57, is hereby amended as follows:

§ 2-57 Qualifications of members generally.

(a) Members of all advisory boards, committees, commissions, appeals boards, councils, and task forces serving the city shall, in addition to meeting other membership qualifications as imposed by law, be persons who are citizens of the United States and who permanently reside in the city. Any person who meets the foregoing qualifications when appointed, but who later becomes unqualified, shall forfeit his or her office.

(b) (1) An applicant for membership on a board, committee, commission, council, or task force, or a sitting member of those bodies shall not have any delinquent accounts with the city at the time of appointment to the board, committee, commission, council, or task force, or thereafter in cases of members.

...

SECTION 2. The City of Cape Coral Code of Ordinances, Chapter 2, Article V, Section 2-59, is hereby amended as follows:

§ 2-59 Annual review of boards, task forces, committees and commissions.

(a) On or before July 1 of each even-numbered year, the City Council shall conduct an annual review of the benefits derived from the continued existence of the boards, task forces, committees, councils, and commissions, designated in subsection (b) below, created by ordinance, resolution or otherwise by the City Council. Upon finding that there are substantial benefits derived from the continued existence of the board, task force, committee, council, or commission, the City Council shall adopt a resolution continuing the existence and functions of the board, task force, committee, council, or commission. Any board, task force, committee, council, or commission for which no resolution is adopted shall automatically be abolished and, if it was created by ordinance or resolution,

the ordinance or resolution creating and establishing it shall automatically be repealed as of August 1 of that year.

(b) The following boards, task forces, committees, councils, and commissions are subject to the review requirements of this section:

- (1) Parks and Recreation Advisory Board;
- (2) Transportation Advisory Commission;
- (3) Golf Course Advisory Board; and
- (4) ~~Minority Issues/citizens Advisory Committee~~ Youth Council.

SECTION 3. The City of Cape Coral Code of Ordinances, Chapter 2, Article V, Section 2-60, is hereby amended as follows:

§ 2-60 Limitation on offices held.

(a) *Applicability.* Members of all advisory boards, commissions, councils, and appeal boards serving the city shall hold no other office on any other board, commission, council, appeal board or the City Council. This regulation is meant to and shall apply to all appointed offices within the city; with the exception of those persons serving on comprehensive task forces, said task force members being permitted to sit on two or more task forces but not to sit on other bodies. Alternate membership shall classify a person as a member for purposes of this section.

...

SECTION 4. The City of Cape Coral Code of Ordinances, Chapter 2, Article V, is hereby amended to create Division 12, Section 2-120.49, as follows:

DIVISION 12. YOUTH COUNCIL

§ 2-120.49 Youth Council.

(a) *Creation and purpose.* There is hereby created and established a Youth Council. In order to serve the Cape Coral City Council in an advisory capacity on matters concerning the youth of the community, the Youth Council is created to make recommendations and furnish input and helpful information to the City Council to assist them in their policy making as it pertains to issues that affect the City's youth.

(b) *Composition; qualifications; and terms.*

(1) The Youth Council shall be composed of fourteen (14) members, appointed by the City Council on or before May 1 of each year. Youth Council members shall be residents of the City of Cape Coral and enrolled in a source identified below at all times while serving on the Youth Council. The Youth Council shall be composed of one (1) junior and one (1) senior student from each of the following sources:

- a. Mariner High School;
- b. Ida Baker High School;
- c. Island Coast High School;
- d. Oasis High School;
- e. Cape Coral High School;
- f. North Fort Myers High School; and
- g. At-large from home schooling or other source, including but not limited to a private school, charter school, or virtual school.

(2) For the initial Youth Council, seven (7) seniors shall serve a term beginning upon appointment by the City Council until a successor is appointed on or before May 1, 2017, and seven (7) juniors shall serve a term beginning upon appointment by the City Council until a successor is appointed on or before May 1, 2018. On or before May 1, 2017, and each year thereafter, the City Council shall appoint seven (7) rising juniors to the Youth Council to serve a term of two (2) years, or until a successor is appointed, unless a member is no longer qualified hereunder or is removed pursuant to subsection (e) below.

- (3) In the event that a Youth Council member shall no longer be enrolled in the school source that the member was appointed from, the member shall immediately forfeit the member's seat and the seat shall be declared vacant.
 - (4) In the event that there is no available student applicant from a class or source identified in subsection (1) in any given year, the City Council may appoint a substitute student from one of the other subsection (1) sources to serve that applicable term.
 - (5) The City Council shall appoint a City Council member to serve as a liaison between the City Council and the Youth Council.
- (c) Parental consent and application. Each Youth Council member shall, as a prerequisite for serving, take an Oath of Office and complete an application and parental consent form. The format of the application and parental consent form shall be provided by the City. Notwithstanding the foregoing, a prospective member that has reached the age of majority shall not be required to complete a parental consent form. The City Council shall appoint Youth Council members from the pool of candidates submitting an application and meeting the qualifications of subsection (b) above. Prospective members' participation in the Chamber of Commerce Junior Leadership Program is strongly preferred, but not required.
- (d) Election of officers. Members of the Youth Council shall annually elect a chairperson and vice-chairperson from among its members, each of whom shall serve until a successor is elected and qualified. Elections shall be held at the first regular meeting of the Youth Council after annual appointments are made by the City Council. The chairperson shall preside at all meetings and exercise all the usual rights, duties, and prerogatives of chairperson. The vice-chairperson shall perform the duties of the chairperson in the absence or disability of the chairperson. Vacancies of either office shall be filled by an existing Youth Council member for the unexpired term by a new election of the members.
- (e) Vacancies and removal.
- (1) Vacancies on the Youth Council shall be filled by appointment of the City Council. In the event of vacancies on the Youth Council due to resignation, illness, death, lack of attendance, removal, or lack of qualifications, the City Council shall appoint a replacement member to serve for the remainder of that term.
 - (2) Youth Council members may be removed from the Youth Council by the City Council, for cause.
- (f) Meetings; quorum; forfeiture of office; minutes, records; and compensation.
- (1) Regular meetings of the Youth Council shall be held every other week, unless there is no business to transact by three (3) days before a regular meeting date. Special meetings may be called by the chairperson or vice-chairperson of the Youth Council.
 - (2) The presence of a majority of the members of the Youth Council shall constitute a quorum for the transaction of business.
 - (3) Youth Council members shall be subject to the forfeiture of office provisions of Section 2-58 of this article.
 - (4) Notice of the date, time, and location and the agenda for all meetings of the Youth Council shall be provided to the City Clerk in a timely manner prior to the meeting for inclusion in the notice of public meetings in order to comply with Sunshine Law regulations. The City Clerk shall keep minutes and records of all meetings of the Youth Council, and all meetings shall be open to the public.
 - (5) Youth Council members shall serve without compensation.
- (g) Rules and regulations. Robert's Rules of Order shall govern all meetings of the Youth Council.
- (h) Duties and responsibilities. The Youth Council shall have the duty and responsibility to:
- (1) Evaluate and review problems facing youth in the City.

- (2) Facilitate neighborhood meetings with youth to discuss problems, needs, and suggested improvements for the community.
 - (3) Meet with the City Council to share ideas and discuss issues, concerns, and needed improvements.
 - (4) Present recommendations to the City Council for public projects and programs.
 - (5) Assist in planning youth/recreation activities.
 - (6) Evaluate and advise the City Council on issues forwarded to the Youth Council for advice.
- (i) Reporting. The Youth Council shall make recommendations to the City Council by written memoranda, on the first day of October, January, March, and May of each year, or more frequently as deemed necessary by the City Council. The Youth Council should make every effort to attend the meetings of the City Council where the recommendations or written memoranda of the Youth Council are to be presented or considered.

SECTION 5. 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 6. 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 26th DAY OF September, 2016.


MARNI L. RETZER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

RETZER
BURCH
CARIOSCIA
STOUT

aye
aye
aye
excused

LEON
ERBRICK
WILLIAMS
COSDEN

aye
aye
aye
aye

ATTESTED TO AND FILED IN MY OFFICE THIS 6th DAY OF October, 2016.


REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:


DOLORES D. MENENDEZ
CITY ATTORNEY



December 7, 2016

City of Cape Coral

Office of the Mayor and City Council

Dear Representative:

The City of Cape Coral is proud to announce a new and exciting opportunity for juniors and seniors that are residents of Cape Coral to participate in a City Youth Council through City Ordinance 47-16. The City's new Youth Council will provide our youth an opportunity to increase their knowledge of civic education through practical hands-on experience and have the ability to make decisions and bring forward to Council issues facing the youth in our City.

The initial Youth Council will be comprised of seven seniors for an abbreviated year one term and seven juniors for a two year term. Year two and moving forward, the City Council will appoint seven juniors to a two year term. Of the 14 members, there will be two At Large members. Each member will meet in the Cape Coral Council Chambers located at 1015 Cultural Park Boulevard every other week. Youth Council meetings will be televised, streamed on-line, recorded, and have staff support by the City Clerk's Office. This Youth Council will abide by the Sunshine Law and meetings will be advertised and open to the public. Participation in the Chamber of Commerce Junior Leadership Program is strongly preferred, but not required to apply.

Along with the 14 member Youth Council, there will be a non-voting City Council Liaison and adult advisors to work with them to provide City Council with information concerning youth issues. There will be a huge learning opportunity for these students along with a chance to make a difference while participating in a city government environment.

At Large students will be selected through a competitive application and interview process where applications will be submitted to the City Council for consideration through the City Clerk's Office. City Council members may interview the applicants.

Please return your application no later than Tuesday, December 20, 2016, directly to:

City of Cape Coral
Attn: City Clerk's Office
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

For more information or have any questions regarding the enclosed documents, please call Gianna Pack, Executive Legislative Assistant to Council at 239-574-0437 or email at gpack@capecoral.net.

Sincerely,

Rick Williams
Mayor ProTem

Enclosures:

- Application
- Youth Council General Information
- Ordinance 47-16



CITY OF CAPE CORAL YOUTH COUNCIL APPLICATION

This Youth Council Application, when completed, signed, and filed with the City Clerk's Office, is a PUBLIC RECORD under Chapter 119, Florida Statutes, and, therefore, is open to public inspection by any person. Applications will be retained in accordance with State Records Retention laws.

DATE: _____

NAME: _____

ADDRESS: _____

CITY: _____ ZIP CODE: _____

HOME PHONE: _____ CELL: _____

E-MAIL ADDRESS: _____

PARENT(S) FIRST AND LAST NAME: _____

HOME PHONE: _____ CELL: _____

E-MAIL ADDRESS: _____

HOW LONG HAVE YOU LIVED IN CAPE CORAL? _____

ARE YOU A U.S. CITIZEN? _____

SCHOOL: _____

CURRENT GRADE: _____ GPA: _____

1. HOW DID YOU HEAR ABOUT THE CITY'S YOUTH COUNCIL? _____

2. LIST YOUR INTERESTS & ACTIVITIES (HOBBIES, ORGANIZATIONS, CLUBS, SPORTS, POSITIONS HELD, ETC.): _____

3. LIST UP TO FIVE CLUBS, ORGANIZATIONS OR SPORTS PROGRAMS IN WHICH YOU HAVE PARTICIPATED DURING THE LAST TWO YEARS.

NAME OF SCHOOL, CLUB/ORGANIZATION/SPORT

WHEN INVOLVED

WHAT WAS YOUR ROLE IN THE ACTIVITY?

1) _____	_____	_____
2) _____	_____	_____
3) _____	_____	_____
4) _____	_____	_____
5) _____	_____	_____

4. WHAT DO YOU SEE AS THE ROLE OF YOUTH IN OUR SOCIETY AND HOW WOULD YOU LIKE THAT TO CHANGE IN THE FUTURE?

5. LIST ANY SPECIAL RECOGNITION OR HONORS FOR ACADEMIC, SCHOOL, RELIGIOUS OR COMMUNITY RELATED ACTIVITIES YOU HAVE RECEIVED OVER THE LAST TWO YEARS.

6. WHAT ARE YOUR CAREER GOALS? _____

7. DESCRIBE A TIME WHEN YOUR ACTIONS POSITIVELY AFFECTED A PERSON, YOUR SCHOOL, OR YOUR COMMUNITY.

8. IF YOU COULD CHANGE ANYTHING ABOUT YOUR COMMUNITY OR SCHOOL, WHAT WOULD IT BE AND WHY?

9. WHY DO YOU WANT TO SERVE ON THE CITY'S YOUTH COUNCIL? (PLEASE BE SPECIFIC)

10. ARE YOU WILLING TO ATTEND YOUTH COUNCIL MEETINGS EVERY OTHER WEEK?

___ YES ___ NO

11. PLEASE PROVIDE TWO REFERENCES. PLEASE SEE PAGES 4 AND 5 OF THIS APPLICATION FOR REFERENCE INFORMATION.

REFERENCE #1

NAME: _____

ADDRESS: _____

DAYTIME PHONE: _____

REFERENCE #2

NAME: _____

ADDRESS: _____

DAYTIME PHONE: _____

I understand that if I am selected as a member of the City of Cape Coral Youth Council I will need to attend Youth Council meetings every other week, and participate in a manner that brings honor and respect to the citizens of the City of Cape Coral.

Signature

Date

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Pages 4-10 of the guide are reprinted with permission from the **North Carolina Civic Education Consortium**. Some slight modifications have been made for League members. Special thanks to the consortium for providing a template for this document. For more information on the consortium and its other resources, please visit <http://www.sog.unc.edu/programs/civiced/index.php>.

ORDINANCE 47 - 16

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE V, BOARDS AND COMMISSIONS, AMENDING SECTIONS 2-57, 2-59, AND 2-60, AND CREATING DIVISION 12, SECTION 2-120.49, TO CREATE AND ESTABLISH A YOUTH COUNCIL; PROVIDING FOR CREATION AND PURPOSE; PROVIDING FOR COMPOSITION, QUALIFICATIONS, AND TERMS; PROVIDING FOR PARENTAL CONSENT AND APPLICATION; PROVIDING FOR ELECTION OF OFFICERS; PROVIDING FOR VACANCIES AND REMOVAL; PROVIDING FOR MEETINGS, QUORUM, FORFEITURE OF OFFICE, MINUTES, RECORDS, AND COMPENSATION; PROVIDING FOR RULES AND REGULATIONS; PROVIDING FOR DUTIES AND RESPONSIBILITIES; PROVIDING FOR REPORTING; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral City Council wishes to more actively engage and involve the youth of the community in the local government process; and

WHEREAS, the creation of a Youth Council will serve as a catalyst for youth participation and promote community involvement by the youth of the community and will assist with promoting ideas and local government issues; and

WHEREAS, the establishment of a Youth Council will provide an opportunity for the youth of the City of Cape Coral to acquire a greater knowledge of, and appreciation for, the American political system through active participation in that system; 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 Code of Ordinances, Chapter 2, Article V, Section 2-57, is hereby amended as follows:

§ 2-57 Qualifications of members generally.

(a) Members of all advisory boards, committees, commissions, appeals boards, councils, and task forces serving the city shall, in addition to meeting other membership qualifications as imposed by law, be persons who are citizens of the United States and who permanently reside in the city. Any person who meets the foregoing qualifications when appointed, but who later becomes unqualified, shall forfeit his or her office.

(b) (1) An applicant for membership on a board, committee, commission, council, or task force, or a sitting member of those bodies shall not have any delinquent accounts with the city at the time of appointment to the board, committee, commission, council, or task force, or thereafter in cases of members.

...

SECTION 2. The City of Cape Coral Code of Ordinances, Chapter 2, Article V, Section 2-59, is hereby amended as follows:

§ 2-59 Annual review of boards, task forces, committees and commissions.

(a) On or before July 1 of each even-numbered year, the City Council shall conduct an annual review of the benefits derived from the continued existence of the boards, task forces, committees, councils, and commissions, designated in subsection (b) below, created by ordinance, resolution or otherwise by the City Council. Upon finding that there are substantial benefits derived from the continued existence of the board, task force, committee, council, or commission, the City Council shall adopt a resolution continuing the existence and functions of the board, task force, committee, council, or commission. Any board, task force, committee, council, or commission for which no resolution is adopted shall automatically be abolished and, if it was created by ordinance or resolution,

the ordinance or resolution creating and establishing it shall automatically be repealed as of August 1 of that year.

(b) The following boards, task forces, committees, councils, and commissions are subject to the review requirements of this section:

- (1) Parks and Recreation Advisory Board;
- (2) Transportation Advisory Commission;
- (3) Golf Course Advisory Board; and
- (4) ~~Minority Issues/citizens Advisory Committee~~ Youth Council.

SECTION 3. The City of Cape Coral Code of Ordinances, Chapter 2, Article V, Section 2-60, is hereby amended as follows:

§ 2-60 Limitation on offices held.

(a) *Applicability.* Members of all advisory boards, commissions, councils, and appeal boards serving the city shall hold no other office on any other board, commission, council, appeal board or the City Council. This regulation is meant to and shall apply to all appointed offices within the city; with the exception of those persons serving on comprehensive task forces, said task force members being permitted to sit on two or more task forces but not to sit on other bodies. Alternate membership shall classify a person as a member for purposes of this section.

...

SECTION 4. The City of Cape Coral Code of Ordinances, Chapter 2, Article V, is hereby amended to create Division 12, Section 2-120.49, as follows:

DIVISION 12. YOUTH COUNCIL

§ 2-120.49 Youth Council.

(a) *Creation and purpose.* There is hereby created and established a Youth Council. In order to serve the Cape Coral City Council in an advisory capacity on matters concerning the youth of the community, the Youth Council is created to make recommendations and furnish input and helpful information to the City Council to assist them in their policy making as it pertains to issues that affect the City's youth.

(b) *Composition; qualifications; and terms.*

(1) The Youth Council shall be composed of fourteen (14) members, appointed by the City Council on or before May 1 of each year. Youth Council members shall be residents of the City of Cape Coral and enrolled in a source identified below at all times while serving on the Youth Council. The Youth Council shall be composed of one (1) junior and one (1) senior student from each of the following sources:

- a. Mariner High School;
- b. Ida Baker High School;
- c. Island Coast High School;
- d. Oasis High School;
- e. Cape Coral High School;
- f. North Fort Myers High School; and
- g. At-large from home schooling or other source, including but not limited to a private school, charter school, or virtual school.

(2) For the initial Youth Council, seven (7) seniors shall serve a term beginning upon appointment by the City Council until a successor is appointed on or before May 1, 2017, and seven (7) juniors shall serve a term beginning upon appointment by the City Council until a successor is appointed on or before May 1, 2018. On or before May 1, 2017, and each year thereafter, the City Council shall appoint seven (7) rising juniors to the Youth Council to serve a term of two (2) years, or until a successor is appointed, unless a member is no longer qualified hereunder or is removed pursuant to subsection (e) below.

- (3) In the event that a Youth Council member shall no longer be enrolled in the school source that the member was appointed from, the member shall immediately forfeit the member's seat and the seat shall be declared vacant.
 - (4) In the event that there is no available student applicant from a class or source identified in subsection (1) in any given year, the City Council may appoint a substitute student from one of the other subsection (1) sources to serve that applicable term.
 - (5) The City Council shall appoint a City Council member to serve as a liaison between the City Council and the Youth Council.
- (c) Parental consent and application. Each Youth Council member shall, as a prerequisite for serving, take an Oath of Office and complete an application and parental consent form. The format of the application and parental consent form shall be provided by the City. Notwithstanding the foregoing, a prospective member that has reached the age of majority shall not be required to complete a parental consent form. The City Council shall appoint Youth Council members from the pool of candidates submitting an application and meeting the qualifications of subsection (b) above. Prospective members' participation in the Chamber of Commerce Junior Leadership Program is strongly preferred, but not required.
- (d) Election of officers. Members of the Youth Council shall annually elect a chairperson and vice-chairperson from among its members, each of whom shall serve until a successor is elected and qualified. Elections shall be held at the first regular meeting of the Youth Council after annual appointments are made by the City Council. The chairperson shall preside at all meetings and exercise all the usual rights, duties, and prerogatives of chairperson. The vice-chairperson shall perform the duties of the chairperson in the absence or disability of the chairperson. Vacancies of either office shall be filled by an existing Youth Council member for the unexpired term by a new election of the members.
- (e) Vacancies and removal.
- (1) Vacancies on the Youth Council shall be filled by appointment of the City Council. In the event of vacancies on the Youth Council due to resignation, illness, death, lack of attendance, removal, or lack of qualifications, the City Council shall appoint a replacement member to serve for the remainder of that term.
 - (2) Youth Council members may be removed from the Youth Council by the City Council, for cause.
- (f) Meetings; quorum; forfeiture of office; minutes, records; and compensation.
- (1) Regular meetings of the Youth Council shall be held every other week, unless there is no business to transact by three (3) days before a regular meeting date. Special meetings may be called by the chairperson or vice-chairperson of the Youth Council.
 - (2) The presence of a majority of the members of the Youth Council shall constitute a quorum for the transaction of business.
 - (3) Youth Council members shall be subject to the forfeiture of office provisions of Section 2-58 of this article.
 - (4) Notice of the date, time, and location and the agenda for all meetings of the Youth Council shall be provided to the City Clerk in a timely manner prior to the meeting for inclusion in the notice of public meetings in order to comply with Sunshine Law regulations. The City Clerk shall keep minutes and records of all meetings of the Youth Council, and all meetings shall be open to the public.
 - (5) Youth Council members shall serve without compensation.
- (g) Rules and regulations. Robert's Rules of Order shall govern all meetings of the Youth Council.
- (h) Duties and responsibilities. The Youth Council shall have the duty and responsibility to:
- (1) Evaluate and review problems facing youth in the City.

- (2) Facilitate neighborhood meetings with youth to discuss problems, needs, and suggested improvements for the community.
 - (3) Meet with the City Council to share ideas and discuss issues, concerns, and needed improvements.
 - (4) Present recommendations to the City Council for public projects and programs.
 - (5) Assist in planning youth/recreation activities.
 - (6) Evaluate and advise the City Council on issues forwarded to the Youth Council for advice.
- (i) Reporting. The Youth Council shall make recommendations to the City Council by written memoranda, on the first day of October, January, March, and May of each year, or more frequently as deemed necessary by the City Council. The Youth Council should make every effort to attend the meetings of the City Council where the recommendations or written memoranda of the Youth Council are to be presented or considered.

SECTION 5. 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 6. 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 26th DAY OF September, 2016.


MARNI L. RETZER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

RETZER
BURCH
CARIOSCIA
STOUT

aye
aye
aye
excused

LEON
ERBRICK
WILLIAMS
COSDEN

aye
aye
aye
aye

ATTESTED TO AND FILED IN MY OFFICE THIS 6th DAY OF October, 2016.


REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:


DOLORES D. MENENDEZ
CITY ATTORNEY

Kimberly Bruns

From: Kimberly Bruns
Sent: Friday, January 13, 2017 4:13 PM
To: City Council
Cc: Rebecca vanDeutekom
Subject: Youth Council Applications
Attachments: Cape Coral High School.pdf; Ida Baker High School.pdf; Island Coast High School.pdf; Mariner High School.pdf; North Fort Myers High School.pdf; Oasis High School.pdf; At Large.pdf

Mayor and Council,

I've attached the Youth Council applications for your review and consideration. I have included a listing of all applicants for your convenience below. Names that are highlighted in yellow are recommendations from the participating schools. Please note that when speaking with the school staffing, it was made clear that the applicants are top notch and the selection of a recommendation was extremely difficult.

As with Council packets, I have delivered a paper copy for Council Members Burch and Williams. In addition, I have also delivered two extra paper copies in the event anyone would like to review them in paper format. Please let me know if you require any additional paper packets.

School	Grade	Candidate Names
Cape Coral High School	Junior	Jocelyn Arroyo
	Junior	Maxwell Slafer
	Junior	Tuan N. Tran
	Senior	Shreeya Desai
	Senior	Javier Diaz
Ida Baker High School	Junior	Alexis Ellsworth
	Junior	Sophia Kukla
	Junior	Helena Shawver
	Senior	Tabatha Lehmann
Island Coast High School	Junior	Riley Hare
	Junior	Michael Nallon
	Senior	Janelle Flecha
	Senior	Max Mcardle-Sykes
Mariner High School	Junior	Madeline Miller
	Junior	Malik Reid
	Senior	Michael Gibbs
	Senior	Joseph LaMountain
	Senior	Alivia Olsen
North Fort Myers High School	Junior	Brittany DuBois
	Junior	Austin Wilson

	Senior	Sofia Pultro
	Senior	
Oasis High School	Junior	Madison Bouthillette
	Junior	Oriana Troche
	Senior	Shane Broadstone
	Senior	Alec Dopkins
	Senior	Melaineey Lowe
	Senior	Branden Pearson
At Large Candidates	Junior	Olivia Cerretani
	Junior	Derek Stayoch
	Senior	Jacob Williamson

NOTE: yellow highlight
indicates school
recommended candidate

Kimberly Bruns
Assistant City Clerk
Cape Coral City Clerk's Office
1-239-242-3243 PHONE #3243
1-239-242-5344 FAX

Note: Florida has a very broad public records law. Most written communications to or from city staff regarding city business are considered to be public records and will be made available to the public and the media upon request. Therefore, your email message may be subject to public disclosure. Also, under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Please consider the environment before printing this email.

February 2017

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

Item Number:	B.(1)
Meeting Date:	2/13/2017
Item Type:	ORDINANCES/RESOLUTIONS - Introductions

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 1-17 Case #LU16-0008 Set Public Hearing date for March 6, 2017

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 February 1, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted (7-0) to recommend approval of Ordinance 1-17.

Staff Recommendation:

Staff recommended approval of the requested amendment.

SUMMARY EXPLANATION AND BACKGROUND:

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the Future Land Use Map from Pine Island Road District (PIRD) to Multi-Family Residential (MF) land use for property located at 409-411 Hancock Bridge Parkway.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 1-17 LU16-0008
Back-Up Material
Staff Presentation

PREPARED BY:

Kristin
Kantarze

Division- Planning

Department- Community
Development

SOURCE OF ADDITIONAL INFORMATION:

Chad Boyko, AICP, Principal Planner
(239) 573-3162
cboyko@capecoral.net

ATTACHMENTS:

Description	Type
▣ Ordinance 1-17 (LU 16-0008)	Backup Material
▣ Backup Material	Backup Material
▣ Staff presentation	Backup Material

ORDINANCE 1 - 17

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM PINE ISLAND ROAD DISTRICT (PIRD) TO MULTI-FAMILY RESIDENTIAL (MF) LAND USE FOR PROPERTY DESCRIBED AS LOTS 44-47, BLOCK 1095, UNIT 23, CAPE CORAL SUBDIVISION; PROPERTY LOCATED AT 409-411 HANCOCK BRIDGE PARKWAY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral on February 13, 1989, adopted a Comprehensive Plan pursuant to the Comprehensive Planning Act; and

WHEREAS, as part of the Comprehensive Plan the City of Cape Coral adopted therewith a future land use map designating land uses and proposed land uses throughout the City of Cape Coral consistent with the Comprehensive Plan and Comprehensive Planning Act; and

WHEREAS, the City of Cape Coral City Council has considered the testimony, evidence, and documentation for the Land Use Amendment initiated by G & I MANAGEMENT SERVICES, LLC, regarding the below described property, and considered the recommendation of the Planning & Zoning Commission/Local Planning Agency and City staff.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. That the below described real property located within the City of Cape Coral, Florida, is hereby amended consistent with the City of Cape Coral Comprehensive Plan as follows:

FROM PINE ISLAND ROAD DISTRICT (PIRD) TO MULTI-FAMILY RESIDENTIAL (MF)

LOTS 44, 45, 46, AND 47, BLOCK 1095, CAPE CORAL SUBDIVISION UNIT 23, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 14, PAGES 39-52, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

PROPERTY LOCATED AT: 409-411 HANCOCK BRIDGE PARKWAY

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 small scale development amendment to the Comprehensive Plan shall be thirty-one (31) days after the adoption of this ordinance. Alternatively, if the small scale development amendment adopted by this ordinance is challenged by an "affected person" within thirty (30) days after adoption, then the effective date of this amendment shall be the date upon which either the state land planning agency or the Administration Commission issues a "final order" determining that this small scale development amendment is "in compliance" as provided in Section 163.3187(5), Florida Statutes.

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:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/lu16-0008



DEPARTMENT OF COMMUNITY DEVELOPMENT
REQUEST TO PLANNING & ZONING COMMISSION/LOCAL PLANNING AGENCY AND COUNCIL
FOR A LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT

FEE \$1,225.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

CASE # LU16-0008

OWNER OF PROPERTY

G & I MANAGEMENT SERVICES LLC

Email: netmdiaz@hotmail.com

Address: 314 SE 19 TER

City: CAPE CORAL State: FL Zip 33990

Phone: 239 464 3310

AUTHORIZED REPRESENTATIVE

MIGUEL DIAZ

Email: netmdiaz@hotmail.com

Address: 314 SE 19 TER

City: CAPE CORAL State: FL Zip 33990

Phone: 239 464 3310

Unit 23 Block 1095 Lot(s) 44/45/46/47 Subdivision CAPE CORAL

Legal Description 409 - 411 HANCOCK BRIDGE PKWY N, CAPE CORAL, FL 33990

Address of Property 409 - 411 HANCOCK BRIDGE PKWY N, CAPE CORAL, FL 33990

Current Zoning CORR Plat _____ Page _____
Current Land Use PIRD Strap Number 134423C2010950440/134423C2010950460
Proposed Land Use MF

Parcel Size: Width 80 Depth 132.34/132.49 Sq. Ft. 10,688 Acreage _____
Soil Type: 132.49/132.63

Urban Services Area: (check one) ☐ Infill ☐ Transition ☐ Reserve

Natural Resources: (state habitat type, e.g. high lands, wetlands, upland forest, oak hammocks, etc.):

Animal Species: (list any endangered, threatened, or species of special concern on-site)

Estimated Development:

Estimate total lot coverage: _____ %

Estimate total building floor area _____ sq. ft.

Estimate type of future development and percentages (e.g. business offices, commercial retail, automotive repair, etc.)

ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I, or my representative, must attend any applicable meetings scheduled for the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals, and Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

I hereby acknowledge that I have read and understood the above affidavit on the

31 day of May, 2014

MIGUEL DIAZ
NAME (PLEASE TYPE OR PRINT)

[Signature]
APPLICANT'S SIGNATURE

STATE OF FL., COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 31 day of May, 2014 by Miguel Diaz who is personally known or produced as identification.

Exp. Date:

11/30/17

Commission Number:

FF060852

Signature of Notary Public:

[Signature]

Printed name of Notary Public:

Michelle A. Miller



Estimated peak hour trip ends:

If 300 or less peak hour trip ends are projected, the applicant must provide the source of the traffic projection. If more than 300 peak hour trip ends are projected, a traffic impact study must be completed and submitted as part of the application (see attachments).

City Sewer: Yes ☒ No ☐
City Water: Yes ☒ No ☐

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

MIGUEL DIAZ
NAME (PLEASE TYPE OR PRINT) AUTHORIZED SIGNATURE [Signature]
STATE OF FL COUNTY OF Lee (SIGNATURE MUST BE NOTARIZED)
Sworn to (or affirmed) and subscribed before me this 31 day of May, 2014, by Miguel Diaz who is personally known or produced as identification.

Exp. Date: 11/30/17 Commission Number: FF060852



Signature of Notary Public: [Signature]
Printed name of Notary Public: MICHELLE A MILLER

Letter of Intent

Date: 05/31/2016

To: City of Cape Coral

From: Miguel Diaz, Owner
G & I Management Services, LLC
314 SE 19 Ter, Cape Coral, FL 33990

RE: Rezoning and Future Land Use Amendment Request for the following property locations:

- **409 Hancock Bridge Parkway North, Cape Coral, FL 33990 (Lots 44/45, Block 1095, Unit 23) Strap # 134423C2010950440**
- **411 Hancock Bridge Parkway North, Cape Coral, FL 33990 (Lots 46/47, Block 1095, Unit 23) Strap # 134423C2010950460**

I, Miguel Diaz sincerely request a Rezoning of the properties mentioned above from actual zoning (CORR) to (R3-Multifamily) and also request Future Land Use amendment from (PIRD) to (MF-Multifamily)

The granting of this Amendment will not be injurious to the area and as you can see the Land lots are surrounded (side by side) by other multifamily properties and the adjacent property located at **415 Hancock Bridge Parkway North, Cape Coral, FL 33990** is actually classified as (Zoning **R3-Multifamily**) and (**MF- Multifamily Future Land Use**)

I purchased the properties stated above in May 2016 and my intention is to build a multifamily building as per Cape Coral Building and Zoning regulations. We respectfully request the amendment to be approved.

Thank you for considering our request.

Sincerely,

Miguel Diaz

A handwritten signature in black ink, appearing to be 'Miguel Diaz', written over the printed name.

Planning Division Case Report

Case No: LU16-0008

Applicant: G & I Management Services, LLC

Request: Approval of a Future Land Use Amendment from Pine Island Road District (PIRD) to Multi-Family Residential (MF).

**Staff
Recommendation:**

Location Information:

The site is two undeveloped properties totaling 20,000 sq. ft. along Hancock Bridge Parkway. The surrounding area is commercial development to the north and combination of undeveloped properties and residential dwelling units¹ to the east, west and south. The site is in the Urban Service Transition area and centralized utilities are available.

<i>Subject Property:</i>	<i>Future Land Use</i>	<i>Zoning</i>
<i>Current:</i>	Pine Island Road District (PIRD)	Corridor (CORR)
<i>Proposed:</i>	Multi-Family Residential (MF)	N/A
	<i>Surrounding Future Land Use</i>	<i>Surrounding Zoning</i>
<i>North:</i>	PIRD	CORR
<i>South:</i>	Multi-Family Residential (MF)	R-3
<i>East:</i>	MF	R-3
<i>West:</i>	PIRD	CORR

Summary:

The site has a Pine Island Road District (PIRD) Future Land Use designation and is zoned Corridor (CORR). Previously, the site had a Multi-Family Residential (MF) Future Land Use designation and a Multi-Family Residential (R-3) zoning designation. The Future Land Use and the zoning were amended in 2002 and 2004, respectively. The site is two lots within Block 1095. Duplexes are directly adjacent on the left and right sides of the site. The site is developed with a multi-family residence that has was built in 1973. The request is to amend the Future Land Use to Multi-Family Residential (MF) in order to allow the applicant to build residential dwelling units on the site. The applicant has also filed a rezoning application to amend the zoning from CORR to Multi-Family Residential (R-3).

¹ A mixture of single-family homes and duplexes.

The property has access from Hancock Bridge Parkway and is adjacent to properties with a PIRD Future Land Use to the north and south, however, properties with an MF Future Land Use designation are adjacent to the east. The proposed Future Land Use amendment would decrease the amount of land available for commercial development, however, the site is boxed in by existing duplexes that could make commercial development challenging. The proposed amendment would allow the property to develop with up to six residential dwelling units.

The request is consistent with Comprehensive Plan Policies 8.4 and 8.5 of the Future Land Use Element that state multi-family is encouraged as a buffer between commercial and single-family residential uses. Further review indicates that the property is not entirely consistent with Comprehensive Policy 1.15 of the Future Land Use Element regarding commercial siting guidelines and is appropriate for multi-family development.

Staff recommends approval of the requested amendment.

Positive Aspects of Application:	<ul style="list-style-type: none">• Allow for development of duplex or multi-family residential units.• Allows development of a challenging site.• Maintains buffer for single-family residences to the east.
Negative Aspects of Application:	<ul style="list-style-type: none">• Reduces commercial land along a corridor.



NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: LU16-0008

REQUEST: AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM PINE ISLAND ROAD DISTRICT (PIRD) TO MULTI-FAMILY RESIDENTIAL (MF) LAND USE FOR PROPERTY DESCRIBED AS LOTS 44-47, BLOCK 1095, UNIT 23, CAPE CORAL SUBDIVISION; PROPERTY LOCATED AT 409-411 HANCOCK BRIDGE PARKWAY.

LOCATION: 409-411 Hancock Bridge Parkway.

CAPE CORAL STAFF CONTACT: Chad Boyko, 239-573-3162, cboyko@capecoral.net

PROPERTY OWNER(S): G & I Management Services LLC

AUTHORIZED REPRESENTATIVE: Miguel Diaz, G & I Management Services LLC

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Local Planning Agency will hold a public hearing on Ordinance 1-17 at 9:00am on January 4, 2017 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

The City Council will hear Ordinance 1-17 on February 6, 2017 in the Council Chambers at City Hall.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publichearing (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

APPEALS: 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.

ORDINANCE 1 - 17

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM PINE ISLAND ROAD DISTRICT (PIRD) TO MULTI-FAMILY RESIDENTIAL (MF) LAND USE FOR PROPERTY DESCRIBED AS LOTS 44-47, BLOCK 1095, UNIT 23, CAPE CORAL SUBDIVISION; PROPERTY LOCATED AT 409-411 HANCOCK BRIDGE PARKWAY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral on February 13, 1989, adopted a Comprehensive Plan pursuant to the Comprehensive Planning Act; and

WHEREAS, as part of the Comprehensive Plan the City of Cape Coral adopted therewith a future land use map designating land uses and proposed land uses throughout the City of Cape Coral consistent with the Comprehensive Plan and Comprehensive Planning Act; and

WHEREAS, the City of Cape Coral City Council has considered the testimony, evidence, and documentation for the Land Use Amendment initiated by G & I MANAGEMENT SERVICES, LLC, regarding the below described property, and considered the recommendation of the Planning & Zoning Commission/Local Planning Agency and City staff.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. That the below described real property located within the City of Cape Coral, Florida, is hereby amended consistent with the City of Cape Coral Comprehensive Plan as follows:

FROM PINE ISLAND ROAD DISTRICT (PIRD) TO MULTI-FAMILY RESIDENTIAL (MF)

LOTS 44, 45, 46, AND 47, BLOCK 1095, CAPE CORAL SUBDIVISION UNIT 23, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 14, PAGES 39-52, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

PROPERTY LOCATED AT: 409-411 HANCOCK BRIDGE PARKWAY

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 small scale development amendment to the Comprehensive Plan shall be thirty-one (31) days after the adoption of this ordinance. Alternatively, if the small scale development amendment adopted by this ordinance is challenged by an "affected person" within thirty (30) days after adoption, then the effective date of this amendment shall be the date upon which either the state land planning agency or the Administration Commission issues a "final order" determining that this small scale development amendment is "in compliance" as provided in Section 163.3187(5), Florida Statutes.

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:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/lu16-0008

NOTICE OF CHANGE OF LAND USE

The City of Cape Coral proposes to adopt AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM PINE ISLAND ROAD DISTRICT (PIRD) TO MULTI-FAMILY RESIDENTIAL (MF) LAND USE FOR PROPERTY DESCRIBED AS LOTS 44-47, BLOCK 1095, UNIT 23, CAPE CORAL SUBDIVISION; PROPERTY LOCATED AT 409-411 HANCOCK BRIDGE PARKWAY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

A public hearing on the ordinance will be held Wednesday, February 1, 2017 at 9:00 a.m. at the City of Cape Coral, City Hall Chambers, 1015 Cultural Park Blvd., Cape Coral, Florida 33990. At this public hearing, the Planning and Zoning Commission will consider a recommendation to change the City's future land use map amendment request. Accordingly, members of the general public and real property owners in the community are invited to appear and speak at the public hearing. Written comments filed with the Director will also be entered into the record. A copy of the map and the proposed amendment under consideration will be available for inspection and will be provided to the public at cost at the City Clerk's office between 7:30 a.m. and 4:30 p.m., Monday through Friday excluding holidays. Any person who decides to appeal any decision made by the City Council at that meeting will need a record of proceedings, and that subject person 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 based. In accordance with Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this meeting should contact the City Clerk no later than 4:00 p.m. on the day prior to the meeting.

Rebecca Van Deutekom, CMC
City Clerk



NP-0000923179

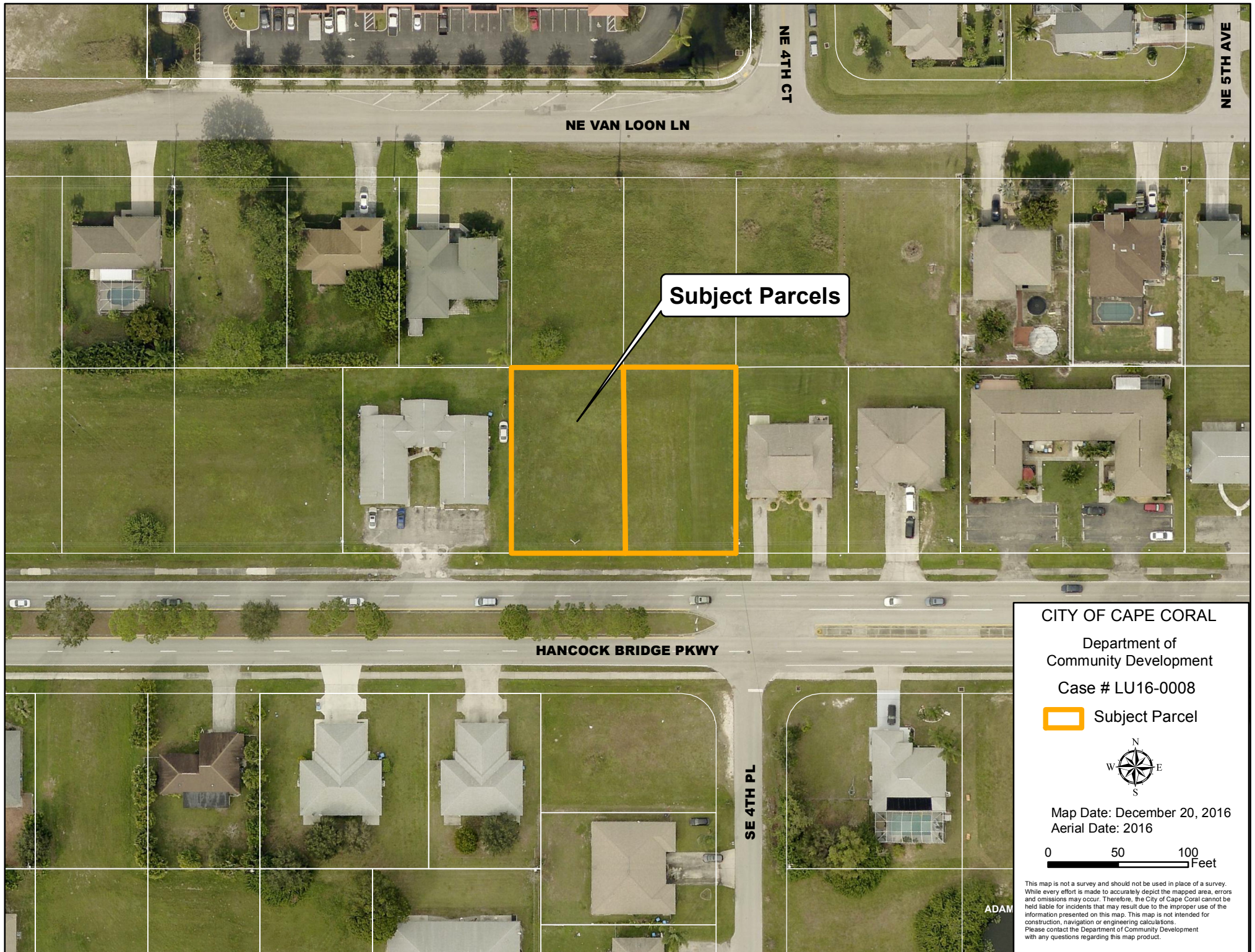
☐ PROOF O.K. BY: _____ ☐ O.K. WITH CORRECTIONS BY: _____

PLEASE READ CAREFULLY • SUBMIT CORRECTIONS ONLINE

ADVERTISER: CITY OF CAPE CORAL_DEPT
SALES PERSON: Legal Display
PUBLICATION: NP-CAPE SUN PRESS
SIZE: 3 col X 9.25 in

PROOF CREATED AT: 1/18/2017 12:52 PM
PROOF DUE: -
NEXT RUN DATE: 01/22/17


NP-0000923179.INDD



CITY OF CAPE CORAL

Department of
Community Development

Case # LU16-0008

 Subject Parcel



Map Date: December 20, 2016
Aerial Date: 2016

0 50 100
Feet

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, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

ADAM






CITY OF CAPE CORAL

Department of
Community Development
Planning Division

CURRENT ZONING MAP
500 Proximity Boundary

Case No. LU16-0008
Lot: 44-47

Legend

-  Subject Parcels
-  500' Boundary
-  CORR
-  R-1B
-  R-3

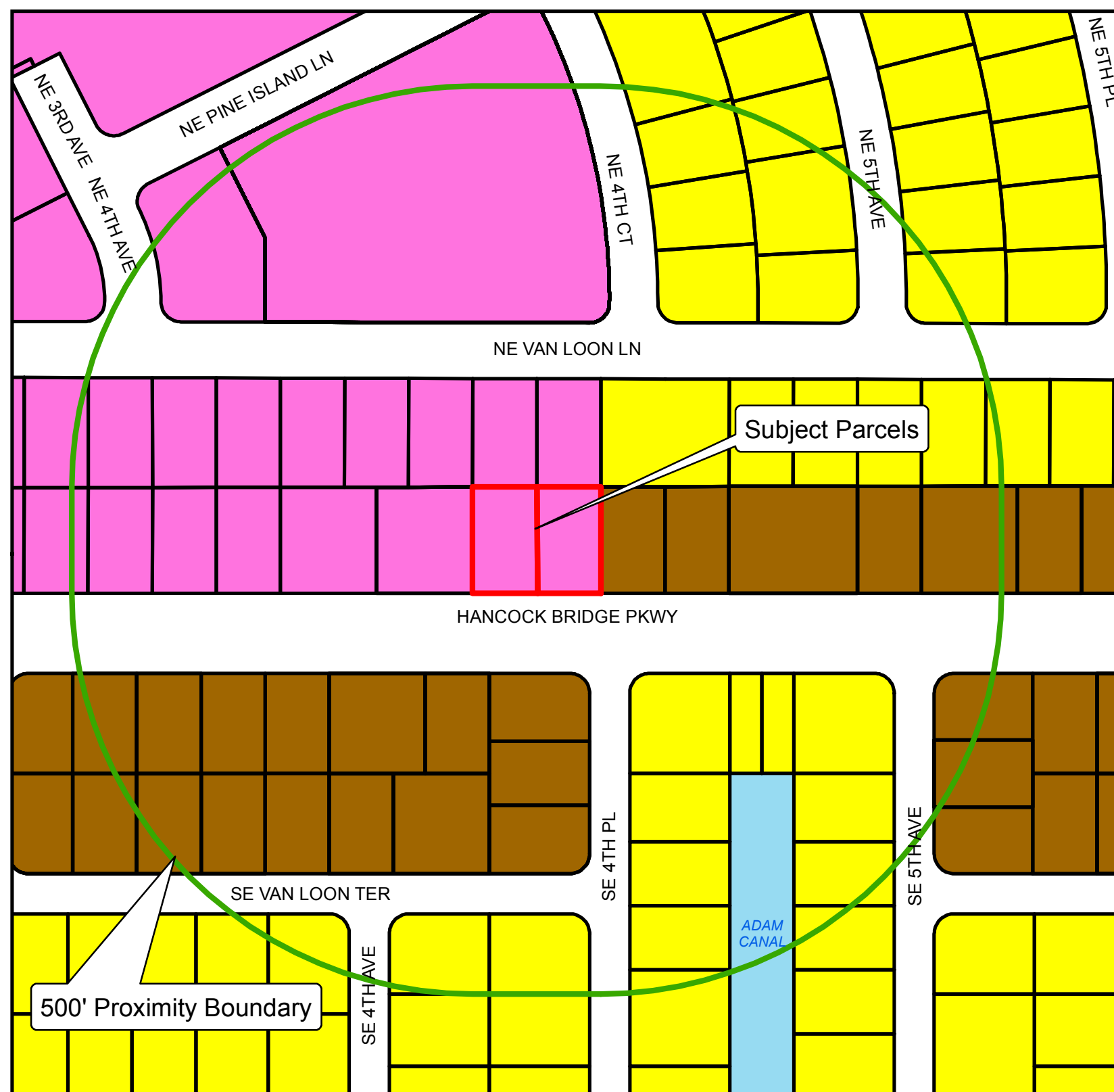


DECEMBER 9, 2016

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Feet

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KRKA





CITY OF CAPE CORAL

Department of
Community Development
Planning Division

**FUTURE LAND
USE MAP**
500 Proximity Boundary

Case No. LU16-0008
Lot: 44-47

Legend

-  Subject Parcels
-  500' Boundary

Future Land Use

-  SF
-  MF
-  PIRD

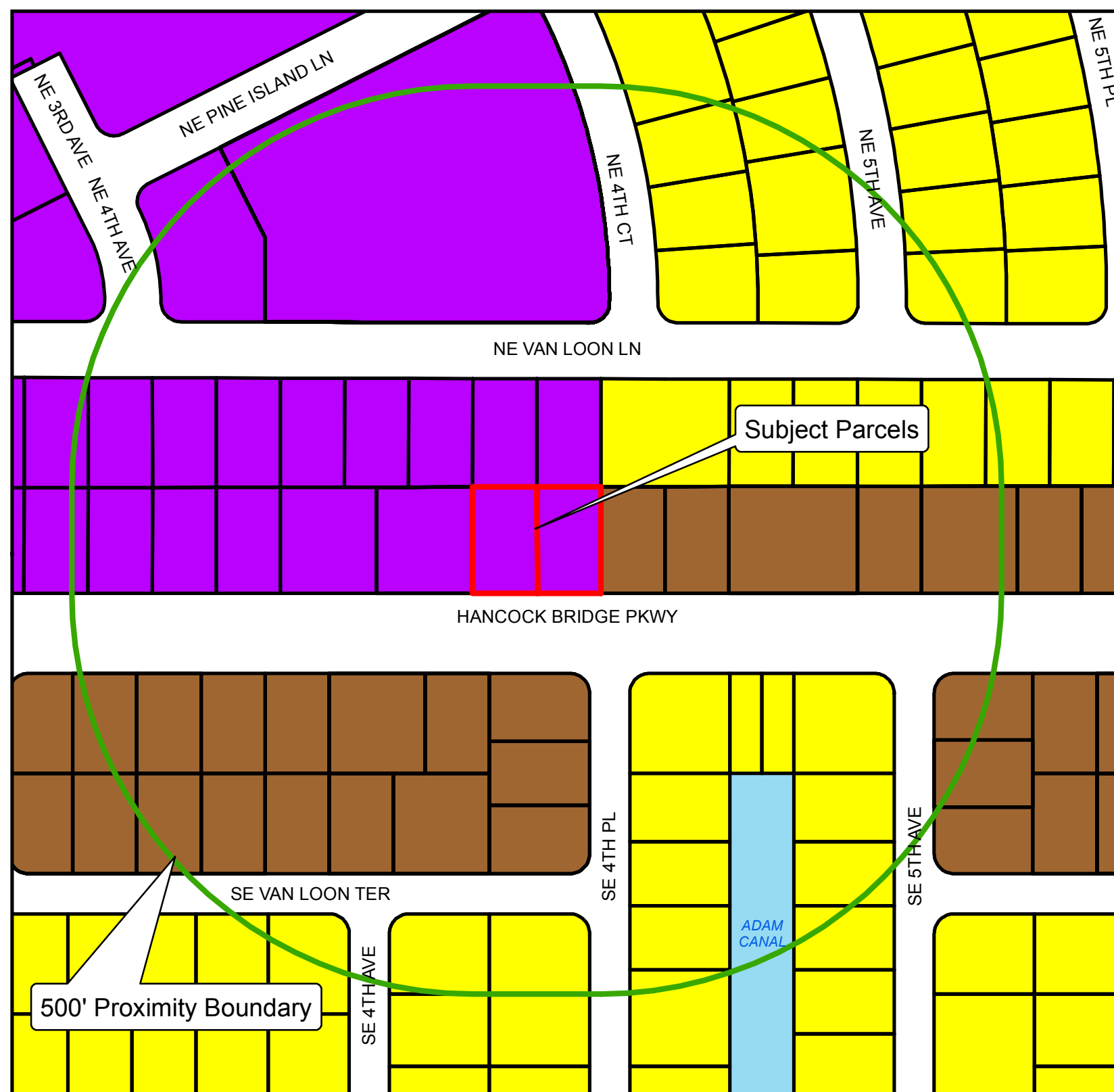


DECEMBER 9, 2016

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Feet

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KRKA



CITY OF CAPE CORAL

Department of
Community Development
Planning Division


PROPOSED LAND USE MAP


500 Proximity Boundary

Case No. LU16-0008

Lot: 44-47

Legend

 Subject Parcels

 500' Boundary

Future Land Use

 SF

 MF

 PIRD

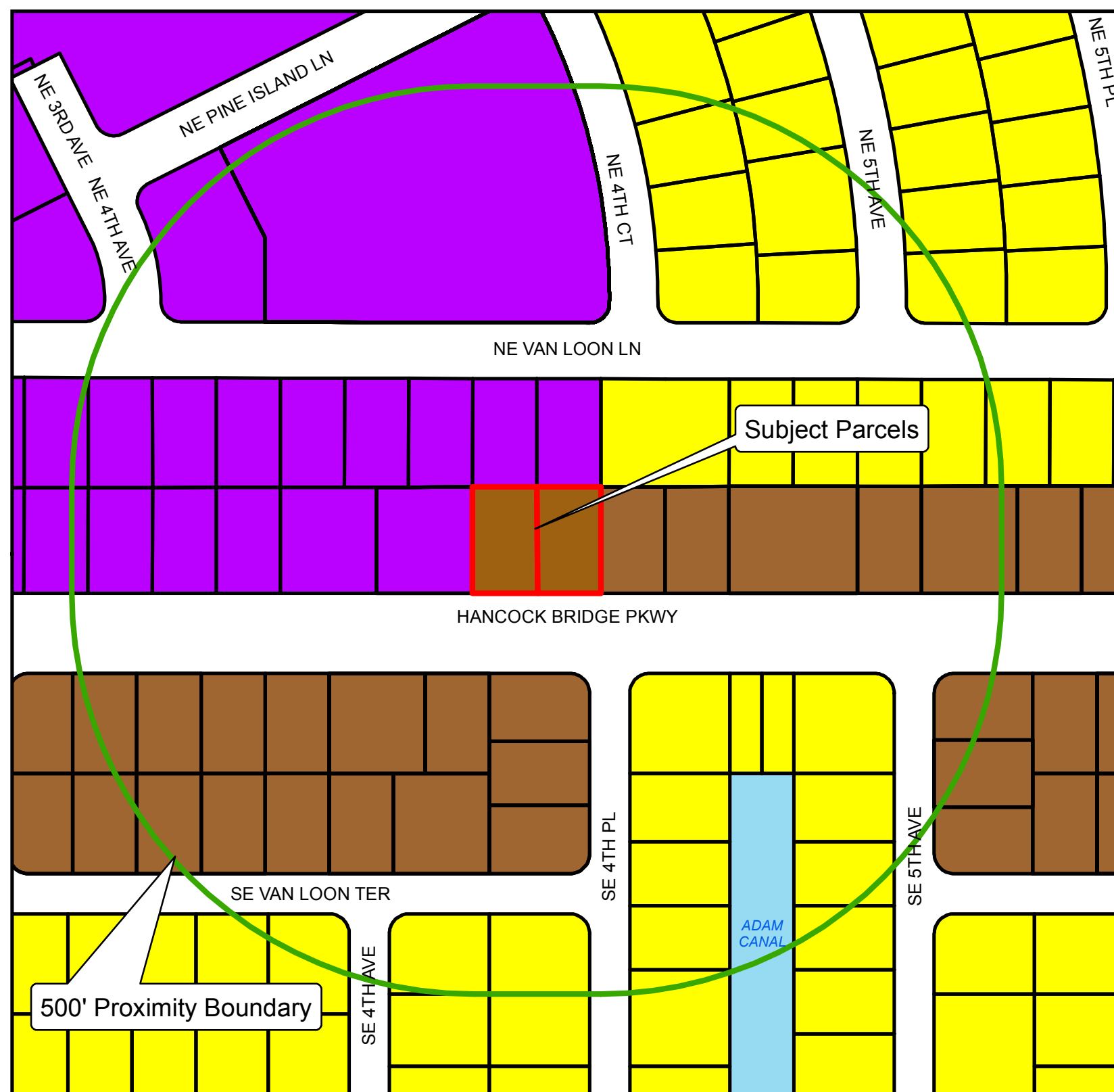


DECEMBER 9, 2016

0 60 120 180 240
Feet

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KRKA



Ordinance 1-17 LU16-00008

Cape Coral City Council

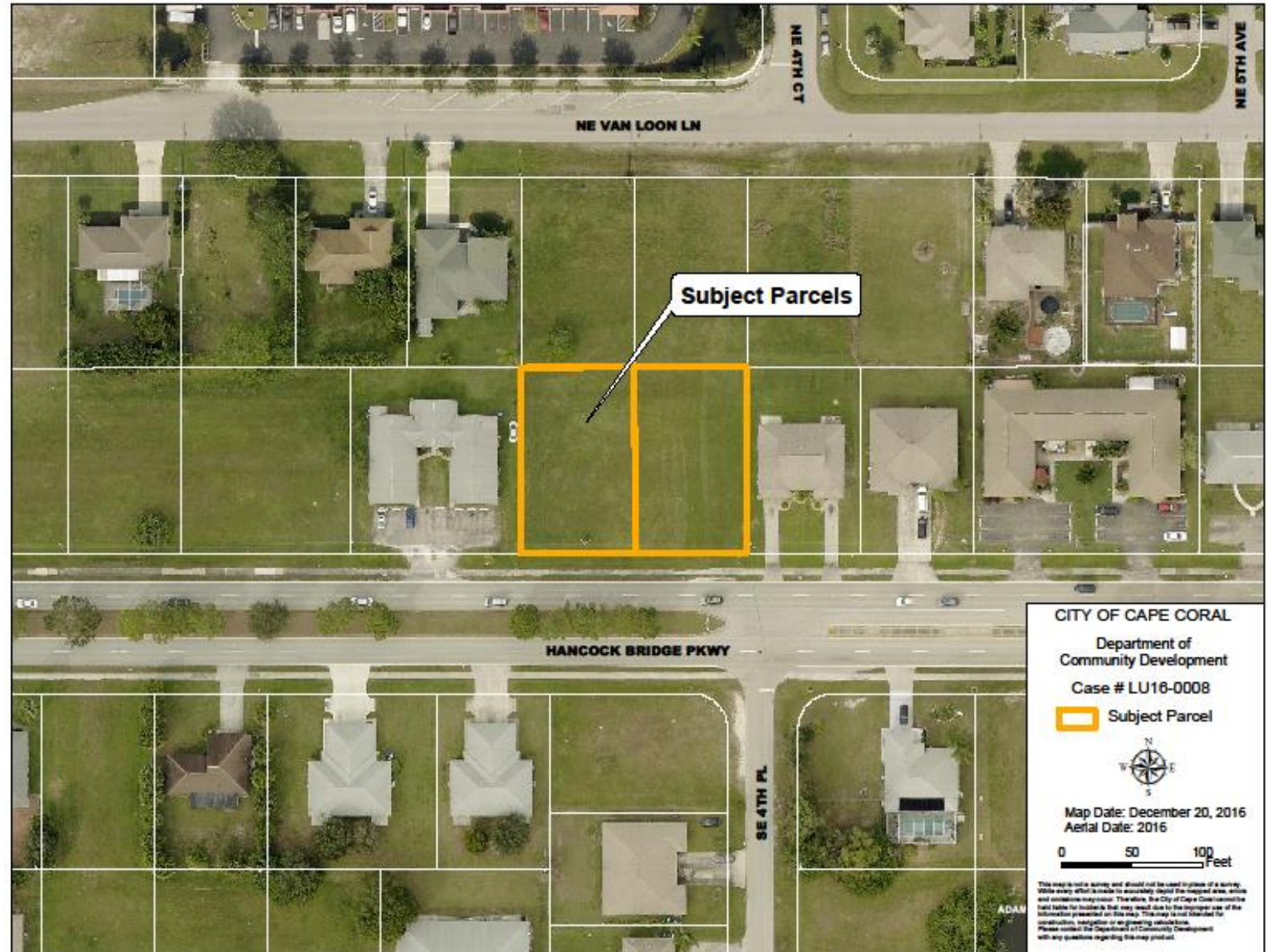
Ord. 1-17

Applicant: G and I
Management Services, LLC

Location: 409-411 Hancock
Bridge Parkway

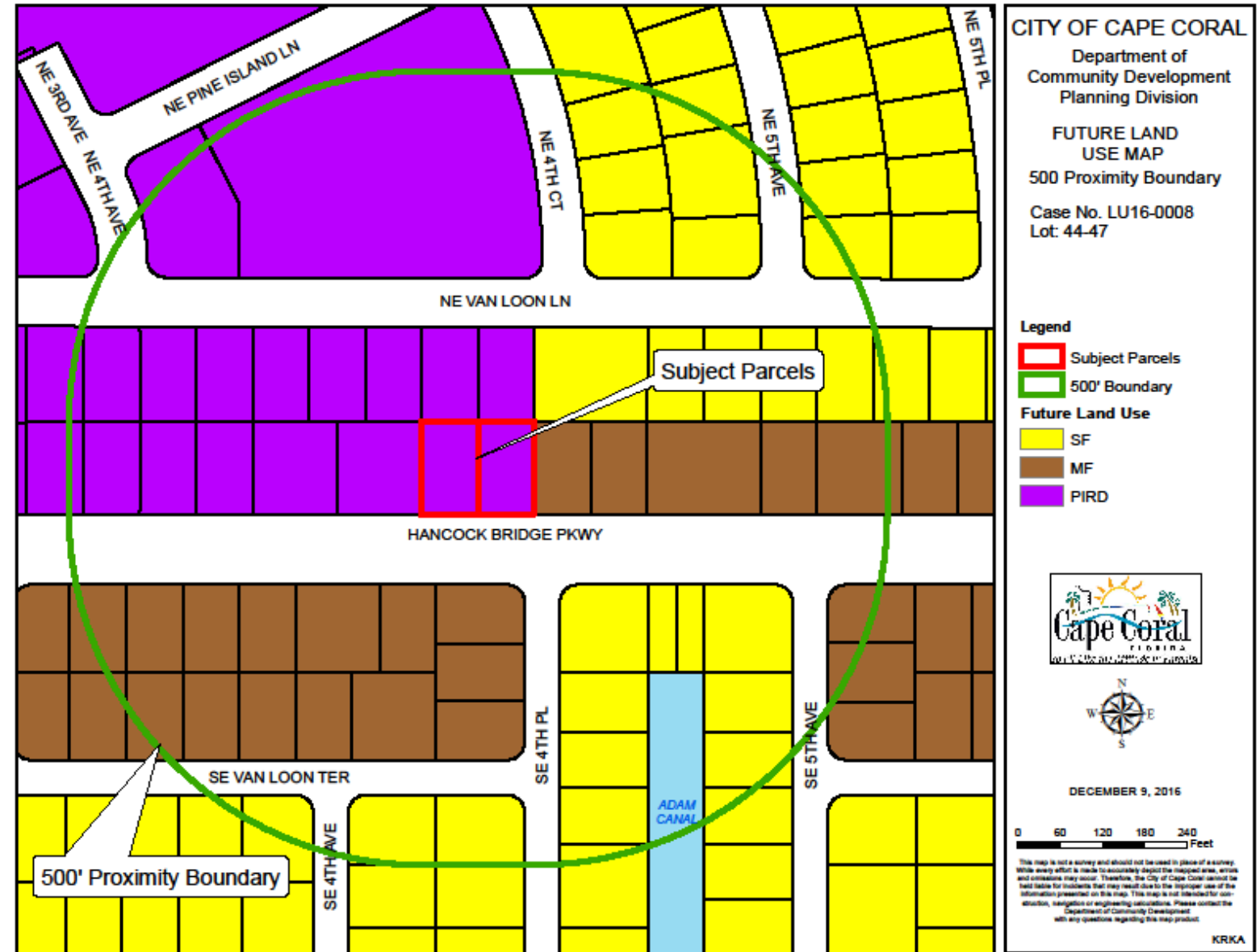
Size: 20,000 sq. ft.

Request: Future Land Use
Map Amendment from Pine
Island Road District (PIRD)
to Multi-Family Residential
(MF)



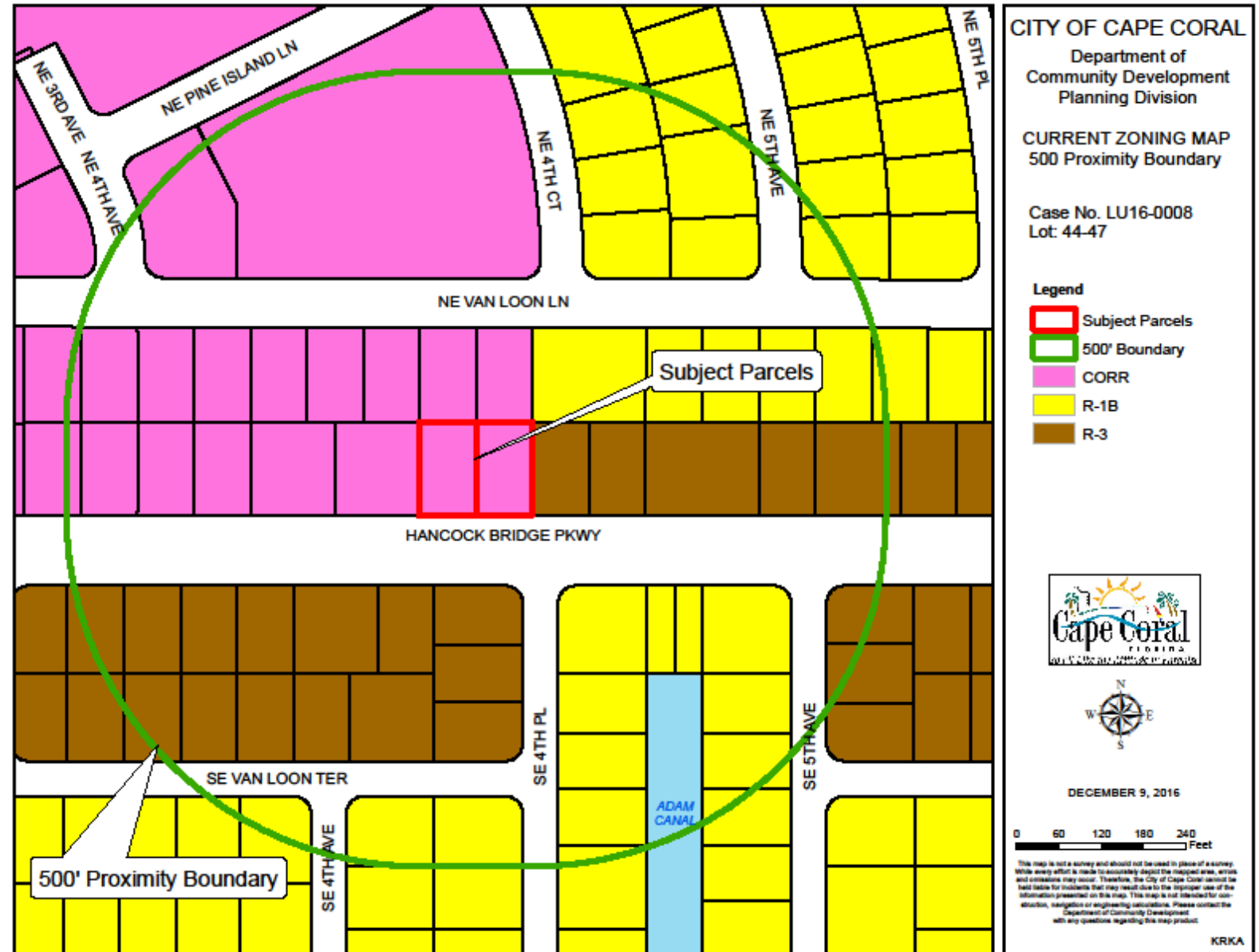
Future Land Use

Pine Island Road District (PIRD)



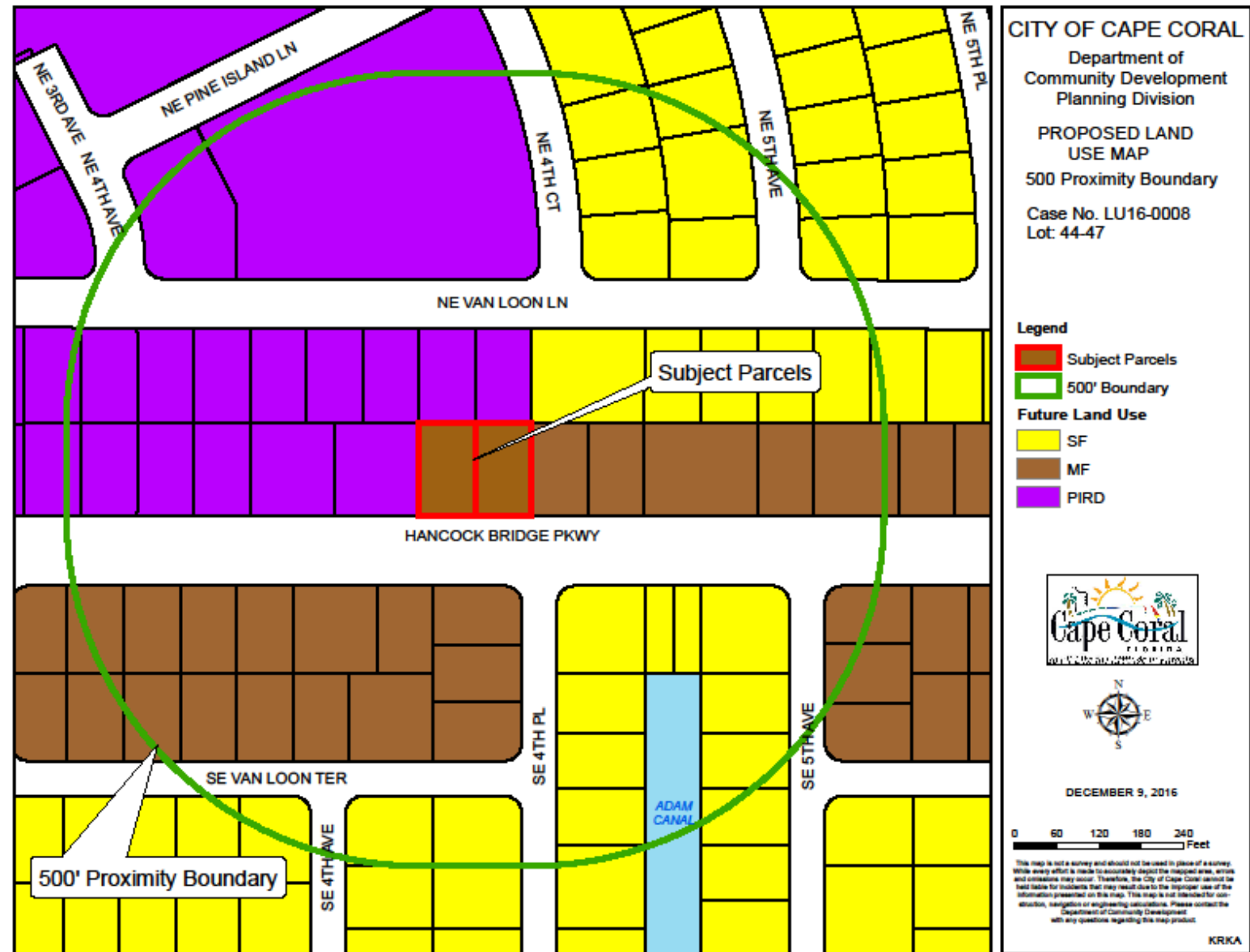
Existing Zoning

Corridor (CORR)



Proposed FLU

Multi-Family Residential (MF)



Background

- Site is 2 undeveloped lots along Hancock Bridge Parkway
- Site is in Block 1095 which has both PIRD and MF properties
- Western end of block is developed with commercial uses
- Eastern end of block is developed with residential uses
- Property is situated between 2 residential developments
- Applicant has stated intent to build duplexes
- FLU of the site was amended in 2002 / Zoning in 2004

Justification

- 8 Commercial siting guidelines in Policy 1.14 of Comp Plan
- The site partially meets 1 guideline
 - Access
- The site meets 2 guidelines
 - Major intersection
 - Compactness
- The site does not meet 5 guidelines
 - Integration
 - Adequate depth
 - Assembly
 - Intrusion
 - Ownership Pattern

Justification

- The MF FLU is consistent with Policy 8.5 to utilize MF properties as buffers between single-family uses and commercial uses
- MF FLU is not consistent with Objective 3, Policy 3.3 as it would remove commercial acreage along Hancock Bridge Parkway
 - Area is small / residential uses on both sides. Site unlikely to develop into large commercial center.

Recommendation

- MF FLU is appropriate for the surrounding area and is consistent with Policy 1.15.B and Policy 8.5 of the Comprehensive Plan
- Planning staff recommends approval of Ordinance 1-17
- The Planning and Zoning Commission recommended approval by a vote of 8-0.
- No correspondence has been received

Item Number:	B.(2)
Meeting Date:	2/13/2017
Item Type:	ORDINANCES/RESOLUTIONS - Introductions

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

ADDENDUM: Ordinance 13-17 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:

An ordinance approving Master Equipment Lease No. TSM04511 between the Cape Coral Charter School Authority and DDI Capital for the lease of Lenovo N22 Chromebooks.

LEGAL REVIEW:

Dolores D. Menendez, City Attorney

EXHIBITS:

Charter School Authority Memo
Procurement Waiver Memo
Ordinance 13-17

PREPARED BY:

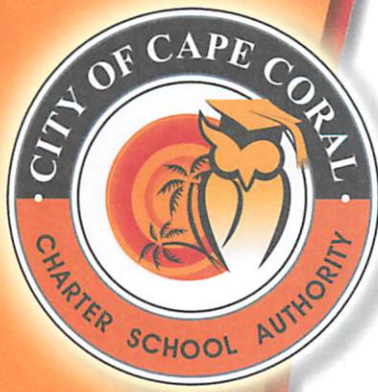
Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Victoria Bateman, Finance Director

ATTACHMENTS:

Description	Type
▣ Charter School Authority Memo	Backup Material
▣ Procurement Waiver Memo	Backup Material
▣ Ordinance 13-17	Ordinance



TO: Mayor and City Council Members

FROM: Nelson Stephenson, Superintendent

DATE: 2/8/17

SUBJECT: Chromebook Lease

Charter School
Administration
3519 Oasis Blvd.
Cape Coral, FL 33914

Phone: (239) 424-6100
Fax: (239) 541-1039

By the school year 2019 we are being required to provide students with one to one devices (computers) by the State of Florida. After careful consideration of a variety of options we have determined that we would like to first try a lease program. The lease program has a lot of advantages for our system especially in regards to allowing us to maximize our funds.

We have worked with both legal and procurement departments to try to secure these devices and to ensure that we are following proper procedure and policy. At this moment due to the continued need for infrastructure testing (State Education Department Mandated) which requires us to have these computers setup and on during specific time frames we are asking that you approve our lease request.

I have attached to this document more information on how we obtained quotes and how we have thought out this process and are confident that we are providing the best purchase for the lowest dollars while still ensuring that students are getting the best product.

At our January 12th Governing Board meeting we had this lease approved under the direction that they would not be considered a capital lease as at the end of the lease the computers would be returned. We have since been informed that this is not correct based on policy so we are asking that you assist us in making sure that we have these computers as soon as possible.

I would be happy to field any questions regarding the need for these computers and carts should any arise.

Thank you for your consideration,

A handwritten signature in blue ink that reads "Nelson Stephenson".

F. Nelson Stephenson
Superintendent
M.P.A., M.Ed.

Oasis High School
3519 Oasis Blvd.
Cape Coral, FL 33914
Phone: (239) 541-1167
Fax: (239) 541-1590

Oasis Middle School
3507 Oasis Blvd.
Cape Coral, FL 33914
Phone: (239) 945-1999
Fax: (239) 540-7677

Christa McAuliffe
Elementary School
2817 SW 3rd Lane
Cape Coral, FL 33991
Phone: (239) 283-4511
Fax: (239) 282-0376

Oasis Elementary School
3415 Oasis Blvd.
Cape Coral, FL 33914
Phone: (239) 542-1577
Fax: (239) 549-7662

www.CapeCharterSchools.org



Cape Coral Charter School Authority

Administration Division

TO: Cape Coral Charter School Authority Governing Board

THRU: Nelson Stephenson, Superintendent

FROM: Danielle Jensen, Director of Procurement and Food Services

DATE: January 11, 2017

SUBJECT: Procurement waiver on Chromebooks

The State of Florida is requiring that each school provide one to one devices to students by 2019. As a school system, in order to ensure we are in compliance with this requirement and stay within our funding limitations, we will need to phase the purchase of devices over the next three years. Today we will discuss the purchase of the first phase.

Oasis Elementary, Christa McAuliffe Elementary and Oasis Middle School have researched and sampled various units to determine which device would best fit their needs and the decision was made to purchase Chromebooks for third through eighth grade. In total, we will purchase 620 Chromebooks and 23 charging carts. Each elementary will have 175 Chromebooks and 7 charging carts while the middle school will have 270 devices and 9 charging carts. It was agreed that we would need a three year extended service agreement, Google Chrome and Go Guardian filtering on each device. This will allow us to protect our investment while ensuring student safety. The carts will provide easy storage, transporting and security of the units.

While this evaluation was being processed, funding sources were being explored. First attempts at Donor's choose accounts, were met with little interest. Both elementary schools decided to do the Jog-a-thon fundraiser to raise funds. Oasis Middle School had money allocated in their budget. Once funding was finalized and secured from the fundraisers in November, the first phase scoped was defined. The next issue addressed is that the state of FL is requiring an infrastructure test be completed by February 1 to ensure their system can handle all devices being used at the same time for testing. This meant we needed to move quickly to get the devices ordered on time.

Due to the time constraints, specification and quantities were sent to several vendors for competitive quotes versus going through the competitive bid process. We received quotes from Office Depot, Staples, Scholarbuys and Firefly. Firefly did not quote the same specifications on GB and filtering software and they were not considered in our final analysis. We requested

financing options to purchase outright, lease with the option to purchase at FMV and lease with the option to purchase at \$1.00. Since our strategic plan is to replenish the devices every 3 years with a new lease as opposed to purchasing old equipment, the best option is to lease at the FMV option. While Staples had the best purchase price, Scholarbuys offered a better leasing program which fits our funding. We decided to lease for 3 years from Scholarbuys at the FMV option without the lock in charge baskets. The annual cost to the school system will be \$54,357. Each elementary will be allocated \$15,342.70 and the middle school will be allocated \$23,671.60.

While the lease is only \$54,357 per year, to purchase the items would have been \$163,071.00 which puts us over the \$100,000 threshold where the usual process would be to use competitive bid packages. The schools do not have the time to go out for this process with the impending testing requirements. Competitive quotes from vendors were obtained with better pricing than state contracts with the lease option. The city procurement and legal departments have reviewed this and they are comfortable that we obtained competitive quotes and maintained the integrity of the procurement process. The school is requesting that the board approve the procurement process waiver

2016-17 Chromebooks

OES, OMS, CME

	Qty	Office Depot	Staples	Scholarbuys	Firefly	Scholarbuys
Lenovo N22 Chromebook	620	94,723.60	76,520.40	98,580.00	92,380.00	98,580.00
Extended 3 year service agreement	620	46,810.00	44,584.20	21,526.40	36,580.00	21,526.40
Google Chrome OS Management Console	620	16,120.00	14,880.00	16,213.00	15,500.00	16,213.00
Go Guardian for Admins	620	8,680.00	14,247.60	10,230.00	918.00	10,230.00
LocknCharge Baskets	23	5,272.75	2,254.00	9,177.00		
Charging Cart	23	26,038.30	21,563.88	22,517.00	22,083.00	22,517.00
White Glove					3,720.00	
Shipping		999.70		360.00		360.00
Total Purchase		198,644.35	174,050.08	178,603.40	171,181.00	169,426.40
36 month lease \$1.00 payout		5,921.27	5,361.00	5,502.00		5,502.00
Annualized \$1.00 payout		71,055.24	64,332.00	63,747.00	-	63,747.00
3 year \$1.00 payout Lease Cost		213,165.72	192,996.00	191,241.00	-	191,241.00
36 month lease FMV		5,653.90	5,029.00	4,830.00		4,830.00
Annualized FMV		67,846.80	60,348.00	56,561.00	-	54,357.00
3 year Lease FMV Cost		203,540.40	181,044.00	169,683.00	-	163,071.00
Shipping at the end to return						1,000.00

Firefly not quoting same specs, different GB, LanSchool as opposed to Go Guardian

Per Terry Moran from DDI Leasing, the lease will be less expensive because we can trade in the Chromebooks and they can redistribute them. DDI leasing is for Scholarbuys.

ORDINANCE 13 - 17

AN ORDINANCE OF THE CITY OF CAPE CORAL APPROVING MASTER EQUIPMENT LEASE NO. TSM04511 BETWEEN THE CAPE CORAL CHARTER SCHOOL AUTHORITY AND DDI CAPITAL; A COPY OF THE LEASE AGREEMENT IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Charter School Authority desires to enter into a lease with DDI Capital for 620 Lenovo N22 Chromebooks and associated equipment, software, licenses and service agreement; and

WHEREAS, due to time constraints, the Charter School Authority Governing Board determined that it was in the Charter School Authority's best interest to waive the normal procurement procedures; and

WHEREAS, the Charter School Authority obtained competitive quotes for the Chromebooks and determined that the best option was to enter into a lease with DDI Capital; and

WHEREAS, pursuant to Chapter 26, Cape Coral Charter School Authority, Section 26-15, Powers and duties of Charter School Authority, Superintendent and City, the Charter School Authority has the right to lease real and/or personal property for the use of charter school(s) and charter school facilities, if the lease is first approved by the city; and

WHEREAS, the City Council desires to approve Master Equipment Lease No. TSM04511 between the Cape Coral Charter School Authority and DDI Capital.

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

SECTION 1. The City Council hereby approves Master Equipment Lease No. TMS04511 between the Cape Coral Charter School Authority and DDI Capital. A copy of the lease is attached hereto as Exhibit A

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.

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

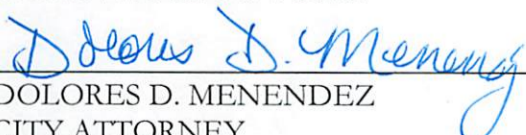
MARNI L. SAWICKI, MAYOR

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
ord\Approve Charter School Lease with DDI Capital



MASTER EQUIPMENT LEASE

TSM04511

Cape Coral Charter School Authority

Master Equipment Lease No.
December 19, 2016

Name of Lessee

Master Equipment Lease Date

3519 Oasis Blvd., Cape Coral, FL 33914

Address of Lessee

DDI CAPITAL ("DDI") and the Lessee stated above ("Customer"), in consideration of the mutual agreements set forth herein and in any schedule or schedules hereto and the payment of rent as provided herein and therein, hereby agree to the terms of this Master Equipment Lease and any schedule or schedules hereto.

1. **EQUIPMENT LEASED:** This contract is a Master Equipment Lease and the terms of each schedule ("Schedule") hereto are subject to any and all conditions and provisions set forth herein as they may from time to time be amended. Each Schedule shall incorporate therein all of the terms and conditions of this Master Equipment Lease and shall contain such additional terms and conditions as DDI and Customer shall agree upon. Each Schedule is enforceable according to the terms and conditions contained therein. In the event of a conflict between the language of this Master Equipment Lease and any Schedule hereto, the terms of the Schedule shall prevail with respect to that Schedule. This Master Equipment Lease and all Schedules hereto are collectively referred to as the "Agreement."

DDI agrees to lease to Customer, and Customer agrees to lease from DDI, in accordance with the terms and conditions herein, the equipment and features, together with all replacements, parts, repairs, additions, attachments and accessories incorporated therein (collectively called the "Equipment") described in each executed Schedule. Customer shall have no right, title or interest in the Equipment, except as expressly set forth in the Agreement, and DDI shall have no obligation hereunder until the execution and delivery of a Schedule by DDI and Customer.

CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER THE MANUFACTURER, THE SUPPLIER, NOR ANY SALESMAN, REPRESENTATIVE OR OTHER AGENT OF THE MANUFACTURER OR SUPPLIER, IS AN AGENT OF DDI. NO SALESMAN, REPRESENTATIVE OR AGENT OF THE MANUFACTURER OR SUPPLIER IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THE AGREEMENT AND NO REPRESENTATION AS TO THE EQUIPMENT OR ANY OTHER MATTER BY THE MANUFACTURER OR SUPPLIER SHALL IN ANY WAY AFFECT CUSTOMER'S DUTY TO PAY RENT AND PERFORM ITS OTHER OBLIGATIONS AS SET FORTH IN THE AGREEMENT.

2. **TERM, PRELIMINARY FINANCING AND RENT:** The term of this Master Equipment Lease shall commence on the date set forth above and shall continue thereafter so long as any Schedule remains in effect.

The initial term of each Schedule ("Initial Term") shall commence on the date set forth in such Schedule ("Commencement Date"). The Initial Term shall continue for the period of time specified in such Schedule. The renewal term ("Renewal Term"), if any, shall commence on the expiration of, as applicable, the Initial Term or preceding Renewal Term.

Customer shall pay the first rental payment (and advance rent, if any, if required under the proposal and/or commitment and any required interim rent), as specified in the applicable Schedule ("Rental Payment") on or before the Commencement Date, and shall pay DDI the remaining periodic Rental Payments on or before the periodic payment date specified in the Schedule. If no date is specified for the subsequent payments, they shall be due and payable in advance on the first day of each month, in the case of monthly rent, and quarter, in the case of quarterly rent following the Commencement Date. The Customer must provide DDI with at least one hundred and twenty (120) days prior written notice of an intention to terminate a Schedule at the end of its Initial Term or a Renewal Term.

Except as otherwise hereinafter expressly provided, the DDI periodic rental charges for all the Equipment listed in each Schedule during the Initial Term shall be the charges set forth in the Schedule relating thereto.

After expiration of the Initial Term specified in a Schedule and so long thereafter as this Agreement shall remain in effect, the periodic rental charge for the Equipment set forth in such Schedule shall be the aggregate periodic rental charges for such Equipment in effect with respect to the last month or quarter of the Initial Term relating thereto.

In situations where the Equipment on a Schedule is to be delivered over a period of time that exceeds thirty (30) days and requires partial payments before all of the Equipment has been delivered, DDI and Customer may execute a preliminary schedule ("Preliminary Schedule") which provides for a payment

of administrative fees plus rental pending execution of a Schedule. Such Preliminary Schedule will, for all purposes under this Agreement, be a Schedule except that it shall not be renewable and shall convert into the Schedule that is attached to it no later than the end of the term for such Preliminary Schedule.

THE AGREEMENT IS NONCANCELLABLE FOR ITS ENTIRE TERM, AND CUSTOMER HEREBY AGREES THAT CUSTOMER'S OBLIGATION TO PAY ALL RENT AND ANY OTHER AMOUNTS OWING HEREUNDER SHALL BE ABSOLUTE AND UNCONDITIONAL, AND CUSTOMER HAS NO RIGHT OF PRE-PAYMENT UNLESS SPECIFICALLY GRANTED TO CUSTOMER IN A WRITTEN RIDER SIGNED BY THE PARTIES HERETO.

3. LATE CHARGES: At its discretion, DDI shall have the right to charge and collect, and Customer agrees to pay, late charges for rental and other amounts due hereunder not paid when due, said late charges to be charged at the rate of 1 1/4 % per month on the unpaid installment or the highest amount permitted by applicable law, whichever is lower. These charges will be billed in the following period and like the Rental Payments will be due the first day of the month or quarter. No notice of default shall be required to be given to Customer as a condition to Customer's becoming obligated to pay late charges.

4. PAYMENT OF TAXES: Customer covenants and agrees to pay, upon invoice by DDI, and to reimburse and indemnify and hold DDI harmless from and against, all taxes, fees or other charges, however designated or levied, on the Customer, on this Agreement, on the Equipment or their sale, use or value for tax purposes, including (but not limited to) state and local privilege or excise taxes based on gross revenue and any taxes or amounts in addition thereto or in lieu thereof paid or payable by DDI, except any taxes based upon the net income of DDI. Customer shall pay DDI a fee as invoiced for DDI's collection, remittance and administration of taxes as provided herein.

5. TITLE: The Equipment is and shall at all times be the property of DDI. Customer shall have no right, title or interest therein except as set forth in the Schedule. Each Schedule shall constitute a lease of personal property, and Customer agrees to take all action necessary or reasonably requested by DDI to ensure that the Equipment shall be and remain personal property. If Customer is granted a \$1.00 purchase option or the Agreement shall be deemed a security agreement, Customer has title to the Equipment and Customer hereby grants and conveys to DDI a security interest in the Equipment to secure all of Customer's obligations hereunder, as well as to secure any and all other obligations of Customer to DDI and DDI may file a Uniform Commercial Code Financing Statement (or its equivalent) without the signature of Customer and the security interest then retained by DDI shall include the Equipment, lease, all rent and additional rent now or hereafter due, other specified property and the proceeds of all of the foregoing.

6. LIENS: Customer shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, pledge, charge, lien, encumbrance or claim on or with respect to the Equipment, title thereto or any interest therein, except (a) the respective rights of DDI and Customer as herein provided, (b) liens of encumbrances which result from any action or inaction of DDI or from any claim against DDI (other than any such liens or encumbrances which arise from Customer's failure to perform any obligation of Customer hereunder), (c) liens or taxes either not yet due or being contested in the opinion of DDI in good faith and by appropriate proceedings. Customer will immediately notify DDI of, and Customer will immediately at its own cost and expense take whatever action is necessary to duly discharge, any such mortgage, security interest, pledge, charge, lien, encumbrance or claim not excepted in (b) and (c) above, when the same may arise at any time, until the return of the Equipment as provided hereunder.

7. MAINTENANCE: Customer at its sole expense shall maintain the Equipment in good operating order, repair, condition and appearance and protect the Equipment from deterioration, other than normal wear and tear. Customer at its sole expense shall enter into, and maintain in force in accordance with the terms thereof a Maintenance Agreement covering the Equipment with DDI, the manufacturer of the Equipment, or such other party as shall be acceptable to DDI (the "Maintenance Vendor"), which Maintenance Agreement shall be effective as of the Commencement Date of this Agreement, and Customer shall supply an executed copy thereof to DDI and authorize the Maintenance Vendor to notify DDI in the event maintenance charges are not paid by Customer when due. In such event, DDI shall have the right, but not the obligation, to pay all such charges and treat such amounts as additional rental hereunder. If Customer has any Equipment maintained by a party other than DDI or the manufacturer thereof, Customer hereby assumes and agrees to pay any costs necessary to have the manufacturer recertify the Equipment at the scheduled expiration of the term of this Agreement, which term shall continue upon the same terms and conditions until such recertification has been obtained. Customer will cause the Maintenance Vendor to keep the Equipment in good working order in accordance with the provisions of said Maintenance Agreement. All maintenance and service charges, whether under said Maintenance Agreement or otherwise, and in addition to the expenses, if any, of the Maintenance Vendor's customer engineers charged by such Vendor in connection with maintenance and repair services, shall be borne by Customer.

Upon the request of DDI, Customer shall at reasonable times during business hours make the Equipment and its maintenance records available for inspections.

8. USE: Customer shall provide safe storage and proper care for the Equipment and shall at all times use, operate and enjoy the same strictly in accordance with all laws, ordinances and regulations from time to time in force and in accordance with any Manufacturer's manual or instructions. Cards, tapes, other supplies, accessories and disk devices used to operate the Equipment shall meet applicable specifications of the respective Equipment manufacturer(s). Customer hereby confirms that the lease of Equipment contemplated hereunder is solely for commercial or business purposes, and not for consumer, personal, family or household purposes.

9. ALTERATIONS AND ATTACHMENTS: Customer may, at its own expense and after prior written notice to DDI, make alterations in or attachments to the Equipment, provided that such alterations and attachments consist only of (i) any accessory equipment or device manufactured or sold by the manufacturer of the Equipment for installation on the Equipment and installed in compliance with said manufacturer's installation procedures, or (ii) any other accessory, equipment or device installed on the Equipment so long as such item does not interfere with the normal operation of the Equipment, increase the cost of maintenance of the Equipment, or create a safety hazard, and is capable of being removed without causing damage to the Equipment. Any alteration or attachment proposed by Customer for the Equipment shall at DDI's option, be purchased or leased from DDI, subject to the then prevailing fair market value of such alteration or attachment and, if applicable, the then prevailing market interest rate for customers with like credit standing as Customer in similar transactions. All such alterations and attachments, unless DDI shall otherwise direct in writing, shall be removed by Customer and the Equipment restored to their original condition, reasonable wear and tear excepted, upon termination of the Schedule. Any unremoved alterations and attachments and replacements made to or placed in or upon the Equipment shall become a component part thereof and title therein shall immediately vest in DDI and shall be included under the terms and provisions of this Agreement. Customer shall not, without the prior written consent of DDI and subject

to such conditions as DDI may impose for its protection, affix the Equipment to any real property if, as a result thereof, the Equipment will become a fixture under applicable law. Notwithstanding the above provisions, the manufacturer of the Equipment may incorporate engineering changes or make temporary alterations to the Equipment without the consent of DDI.

10. RISK OF LOSS AND INSURANCE: All risk of loss, theft, destruction and damage to the Equipment, from whatever cause, are assumed by Customer. Should the Equipment be damaged, Customer shall repair the Equipment to DDI's satisfaction and after making such repair Customer shall be entitled to reimbursement by DDI to the extent of insurance proceeds received by DDI for such charges as Customer has incurred. Should the Equipment be irreparably damaged, lost or destroyed, Customer shall pay DDI the value thereof, which shall be deemed to be the Stipulated Loss Value for such Equipment as listed on the Schedules relating thereto, and after making such payment Customer shall be entitled to reimbursement by DDI to the extent of insurance proceeds received by DDI.

Customer will maintain extended fire, loss, theft and damage insurance coverage for the term of the Agreement on the Equipment for no less than the Stipulated Loss Value, and will maintain public liability insurance with respect to the Equipment with minimum limits of liability per any one occurrence of not less than \$250,000. All such insurance shall name DDI, its successors and assigns as additional assureds and as loss payees as their interest may appear, shall be with such insurers as shall be satisfactory to DDI and shall provide that the same may be altered or cancelled only after ten (10) days' prior written notice to such assureds and loss payees. If any loss shall be paid to Customer and DDI jointly, DDI is hereby appointed Customer's attorney-in-fact for the purpose of endorsing Customer's name on the check or draft constituting such payment. Customer shall deliver to DDI promptly after the beginning of the term of the Agreement or prior to the effective date of any cancellation or expiration of such insurance, as the case may be, the insurance policy or a certificate or other evidence, satisfactory to DDI, of the maintenance of such insurance. Customer agrees to give DDI prompt notice of any damage to or loss of the Equipment or any part thereof, and to take such action as required by the paragraph within thirty (30) days of such damage or loss. If Customer does not provide such insurance coverage, DDI has the right, but not the obligation, to obtain such insurance and add an insurance fee to the amount due from Customer, on which DDI may make a profit.

11. INDEMNITY: Customer agrees that it shall at all times defend, indemnify, and hold DDI, its successors and assigns, harmless from and against any and all claims, costs, expenses, damages and liabilities (including, but not limited to, liability for death, bodily injury and property damage), including reasonable attorneys' fees, resulting from or pertaining to the purchase, ownership, rental, use, operation or return of the Equipment during or upon the expiration of the initial or any extended term of this Agreement, except for any of the foregoing that result from the sole gross negligence or willful misconduct of DDI (provided, however, that such exception to indemnity shall not relieve Customer's of its obligation to indemnify any assignee of DDI). This indemnity shall survive the Agreement. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, DDI SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY, FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED HEREUNDER, WHETHER IN AN ACTION BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, OR BENEFITS OF USE OR LOSS OF BUSINESS, EVEN IF DDI IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.**

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES, IS INTENDED BY THE PARTIES TO BE SEVERABLE FROM ANY OTHER PROVISION AND IS A SEPARABLE AND INDEPENDENT ELEMENT OF RISK ALLOCATION AND IS INTENDED TO BE ENFORCED AS SUCH. Customer also agrees that the Agreement has been entered into on the assumption that we will be entitled to certain tax benefits available to the owner of the Equipment. Customer agrees to indemnify DDI for the loss of any income tax benefits caused by Customer's acts or omissions inconsistent with such assumption or the Agreement. In the event of any such loss, DDI may increase the payments and other amounts due to offset any such adverse effect.

12. DISCLAIMER OF WARRANTIES: IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT DDI MAKES NO WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, FITNESS, CONDITION, QUALITY, CAPACITY OR DURABILITY OF THE EQUIPMENT OR ANY PART THEREOF. THE CUSTOMER ACCEPTS THE EQUIPMENT "AS IS". THERE IS NO WARRANTY THAT THE EQUIPMENT WILL BE FIT FOR A PARTICULAR PURPOSE. DDI SHALL NOT BE OBLIGATED TO PROVIDE REPLACEMENT FOR ANY OF THE EQUIPMENT WHICH MAY BE DESTROYED BY FIRE, THEFT, OR OTHER CASUALTY. **DISCLAIMER OF WARRANTIES:** CUSTOMER AGREES THAT DDI SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND CAUSED, DIRECTLY OR INDIRECTLY, BY THE INADEQUACY OF ANY EQUIPMENT FOR ANY PURPOSE OR ANY DEFICIENCY OR DEFECT THEREIN OR ANY DELAY IN PROVIDING OR FAILURE TO PROVIDE ANY THEREOF, OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF, OR ANY LOSS OF BUSINESS AND AGREES THAT IT WILL, NOTWITHSTANDING OF ANY SUCH CLAIM, LOSS, DAMAGE OR EXPENSE, CONTINUE TO PAY ALL PERIODIC RENTAL CHARGES IN THE AMOUNTS STATED HEREIN WHICH MAY COME DUE DURING THE INITIAL TERM HEREOF AND THEREAFTER SO LONG AS THIS AGREEMENT IS NOT TERMINATED IN ACCORDANCE WITH ITS TERMS.

13. REPRESENTATIONS AND WARRANTIES OF CUSTOMER: Customer hereby represents and warrants for the benefit of DDI that:

- (a) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of Customer.
- (b) Each individual executing such on behalf of Customer was duly authorized to do so.
- (c) This Agreement constitutes a legal, valid and binding agreement of the Customer enforceable in accordance with its terms.
- (d) The Equipment shall be deemed to be personal property even though attached to a realty and will not become fixtures under applicable law.

14. MOVING EQUIPMENT: Customer may move all the Equipment, at its expense, upon thirty (30) days' prior written notice to DDI, its successors and assigns, to any other location of Customer, but not to any location of any division or subsidiary of Customer without DDI's prior written consent, within the continental United States (but in no event to any location outside the continental United States); provided, however, that the state of such relocation shall have in effect the Uniform Commercial Code and that all costs (including, without limitation, additional property taxes or other taxes, any additional expense of insurance coverage, and any expense associated with the protection of the title and interest of DDI, its successors and assigns to and in the Equipment) resulting from such movement shall be borne by Customer. In the event of such movement, Customer and such division or subsidiary of Customer, if any, shall cooperate with DDI in taking all necessary, appropriate and reasonable measures to protect the title of DDI, and the interest of any successor or assignee of DDI, to and in the Equipment.

15. **NOTICE:** Service of all notice under this Agreement shall be sufficient if in writing and given personally or mailed to the party involved at its respective address herein set forth, or any such other address as such party may provide in writing from time to time. Any such notices mailed to such address shall be effective when deposited in the United States mail, duly addressed with postage prepaid.

16. **TRANSPORTATION AND INSTALLATION:** All transportation, rigging, traffic and drayage charges upon delivery of the Equipment to Customer's site and upon final re-delivery of the Equipment to a location designated by DDI (including, without limitation, the costs of in-transit insurance) are to be paid by Customer. All costs involved in installation and removal by qualified labor are the responsibility of the Customer.

17. **RETURN OR PURCHASE OF EQUIPMENT:** Upon the expiration of the Initial Term or any Renewal Term of a Schedule, unless Customer has entered into a Renewal Term or purchases all of the Equipment, Customer shall, at Customer's sole cost and expense, deinstall, inspect and properly pack all of the Equipment and return all of the Equipment, free of all liens and rights of others, by delivering on board such common carrier as DDI specifies with the freight prepaid to any destination within the United States specified by DDI. The Equipment shall be accompanied by an inventory completed by the person performing the deinstallation. Customer agrees that the Equipment, when returned to DDI, shall be in the same condition as when delivered to Customer, reasonable wear and tear excepted, and certified as being eligible for the manufacturer's generally available maintenance contract at then prevailing rates, without DDI incurring any expense to repair, rehabilitate or certify such Equipment (Customer shall be liable for all costs and expenses DDI incurs to place the Equipment in such condition). If requested by DDI, Customer, at its expense, shall store the Equipment on its premises for a reasonable period, not to exceed ten (10) business days during which period the Equipment shall be subject to all of the terms and conditions hereof, except for the obligation to make Rental Payments. In all instances where Customer is returning Equipment to DDI, Customer shall provide DDI with one hundred twenty days (120) written notice thereof, and shall return the Equipment to DDI within one week of deinstallation. If Customer fails to provide the aforementioned notice or return the Equipment to DDI in the time and manner provided above, the Initial Term or Renewal Term (as the case may be) shall be extended for successive one hundred twenty (120) day periods until Customer returns the Equipment in accordance with this paragraph, or DDI terminates this Agreement or any Schedule by ten (10) days written notice to Customer. If any Schedule is extended pursuant to the preceding sentence, Customer shall continue to pay the higher of either the periodic Rental Payments in effect prior to the expiration of the then existing term of the applicable Schedule (whether it be the Initial Term or any Renewal Term (Applicable Term) or the Fair Rental Value (as defined below), whichever is greater, or such other periodic rental payment amount as is specified for such extension period in the Schedule, and all other provisions of this Agreement shall continue to apply.

If Customer elects to purchase the Equipment, no Default exists, and no event has occurred and is continuing which with notice or the lapse of time, or both, would constitute a Default, and Customer delivers to DDI an irrevocable written election notice at least one hundred twenty (120) days prior to the expiration of the Initial or Renewal Term, Customer may purchase all (but not less than all) of the Equipment at the end of such term at Fair Market Value (as defined below). If Customer elects to purchase the Equipment, it shall pay DDI the Fair Market Value amount prior to the expiration of such term, and Customer shall make all other payments required hereunder during the remaining Term of this Schedule. Should Customer provide written notice of an intent to purchase but either: (i) fail to do so with the one hundred twenty (120) day notice required above; or (ii) fail to pay DDI the Fair Market Value amount as specified above, the Applicable Term shall be extended for successive one hundred twenty (120) day periods until Customer returns the Equipment to DDI in accordance with the Agreement, or DDI terminates this Schedule by ten (10) days' written notice to Customer or Customer fulfills its written notice of intention to purchase by making the requisite payment in a timely fashion. In the event a Schedule is extended pursuant to the preceding sentence, Customer shall continue to pay DDI either the periodic Rental Payments in effect prior to the expiration of the term, or the Fair Rental Value (as defined below), whichever is greater, and all other provisions of the Agreement shall continue to apply. Fair Rental Value and Fair Market Value for the Equipment shall be determined by agreement of DDI and Customer, or, at Customer's sole expense, by an independent appraiser selected by DDI. Fair Rental Value means the periodic amount which would be payable for the Equipment in an arm's length lease transaction between an informed and willing lessee and an informed and willing lessor, neither under compulsion to lease. Fair Market Value means the total price that would be paid for the Equipment in an arm's length sale transaction between an informed and willing buyer (other than a used equipment dealer) under no compulsion to buy and an informed and willing seller under no compulsion to sell. In determining Fair Rental Value or Fair Market Value, the costs of removing the Equipment from the Equipment Location and moving it to a new location shall not be deducted from its value. If Customer elects to purchase the Equipment, and has completely fulfilled the terms and conditions of the Agreement and this purchase provision, then on the last day of the Applicable Term: (i) the Schedule with respect to such purchased Equipment shall terminate and (ii) Customer shall be entitled to DDI's interest in the Equipment "AS IS, WHERE IS," and without any warranty, express or implied from DDI, other than the absence of any liens by, through or under DDI.

18. **LEASING ONLY:** This Agreement is one of leasing only and Customer shall not have or acquire any right, title or interest in or to any of the Equipment except the right to use and operate the same as herein provided. Labels or other markings may be affixed and maintained on the Equipment by DDI indicating DDI as the owner thereof. Customer shall keep the Equipment free from any marking or labeling which might be interpreted as a claim of ownership thereof or other interest therein.

19. **REIMBURSEMENT:** All advances made by DDI to discharge and pay any charges or any liens or encumbrances on the Equipment for which Customer is liable hereunder shall be added to the unpaid balance of the periodic rental charge due and to become due and collectible as rent hereunder and shall be repayable by Customer to DDI immediately, together with interest thereon at 1 1/4% per month or the highest lawful rate, whichever is lower.

20. **ASSIGNMENT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and (to the extent specified in any assignment) assigns. Customer, however, shall not assign this Agreement or sublet any Equipment without first obtaining the written consent of DDI, which such consent shall not be unreasonably withheld, provided that in no event will it be deemed unreasonable for DDI to require as a condition to any such consent that Customer not be relieved of liability hereunder. In the event of any assignment or sublet by Customer, Customer, its assigns and its sublessee, if any shall cooperate with DDI in taking all reasonable measures to protect the interest or title of DDI, its successors and assigns, in or to the Equipment. Customer acknowledges and understands that DDI anticipates either selling and assigning its interest in certain or all of the Equipment to one or more persons, or granting a security interest in the Equipment to a lender or lenders in consideration of a loan or loans to DDI. Customer agrees that with respect to the periodic rental charges and any other payments due and to become due to DDI under this Agreement, it shall not, as to any assignee of DDI's rights under this Agreement, assert against such assignee, any defense, set-off or counterclaim (including recoupment against or any diminution of amounts payable by Customer to such assignee) which it may have against DDI. DDI covenants that Customer shall quietly possess the Equipment under this Agreement notwithstanding any such assignment DDI, subject to and in accordance with the provisions of this Agreement, so long as Customer is not in default hereunder. DDI may without notice, sell, transfer, or assign its interest in this Agreement, the Equipment,

or any Rental Payments or other sums due hereunder. If DDI makes any such assignment or transfer, the assignee will have all DDI's rights and benefits, but none of DDI's obligations.

21. DEFAULT BY CUSTOMER: It shall be deemed a Default by Customer or any guarantor hereunder if the Customer or any guarantor (a) defaults in the payment of any sum of money due hereunder beyond the tenth (10th) day after the same shall become due hereunder; (b) defaults in the performance of any other of its obligations under this Master Equipment Lease or under any Schedule or any other agreement between Customer and DDI and/or DDI's assignee; (c) performs any affirmative act of insolvency or files any petition or takes any other action under any bankruptcy, reorganization, insolvency or moratorium law or any other law or laws for the relief of, or relating to, debtors; (d) is the subject of filing of any involuntary petition under any bankruptcy statute which is not dismissed within sixty (60) days thereafter or the appointment of any receiver or trustee to take possession of the properties of Customer, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment; (e) has a substantial part of its property or any part of the Equipment subjected to any levy, seizure, assignment or sale for or by a creditor or governmental agency, or shall sell all or substantially all of its assets; (f) defaults under any other agreement between Customer and DDI, its successors or assigns; or (g) death or bankruptcy of any guarantor.

In the event of any Default, DDI, its successors or assigns, may at its option: (i) terminate this Agreement; (ii) whether or not this Agreement is terminated, take immediate possession of any or all of the Equipment, wherever situated, and for such purpose enter upon any premises without liability for so doing; (iii) sell, dispose of, hold, use or lease any Equipment as DDI in its sole discretion may decide, without any duty to account to Customer, and Customer shall remain liable for the remaining unpaid rent for the balance of the respective Initial Term relating to such Equipment and for other charges payable by Customer in accordance with this Agreement as provided herein; (iv) declare immediately due and payable, as liquidated damages and not a penalty, (a) all Rental Payments and other sums then outstanding and payable, plus (b) all Rental Payments payable for the remaining term of the Schedule(s) and the estimated residual value of the Equipment at the end of the Initial Term, with the sum of this subparagraph (b) discounted to present value at the lesser of (1) a per annum interest rate equivalent to that of a U.S. Treasury constant maturity obligation (as reported by the U.S. Treasury Department that would have a repayment term equal to the remaining Initial Term or Renewal Term, as applicable, all as reasonably determined by DDI, or (2) 3%; and (v) exercise any other right or remedy which may be available in law or equity. Notwithstanding DDI's exercise of any of the foregoing remedies, DDI may recover from Customer all rentals and other sums accrued and unpaid under any terms hereof. The above remedies, to the extent permitted by law, shall be deemed cumulative and may be exercised successively or concurrently. The Customer's sole remedy for the breach of any Manufacturer's warranty shall be against the Manufacturer and not against DDI or DDI's assignee. No such breach shall have any effect whatsoever on the rights and obligations of either party to this Agreement.

22. REIMBURSEMENT: Customer shall reimburse DDI for all charges, costs, expenses and attorneys' fees incurred by DDI: (a) in defending or protecting its interests in the Equipment; (b) in the execution, delivery, administration, amendment and enforcement of this Lease or the collection of any installment of rent under this Lease; and (c) in any lawsuit or other legal proceeding to which this Lease gives rise, including, but not limited to, actions in tort.

23. INSPECTION: DDI shall have the right and Customer shall provide access for inspection of the Equipment upon reasonable notice.

24. FINANCING LEASE AND NONCANCELABLE NET LEASE; THE PARTIES AGREE THAT THIS AGREEMENT IS INTENDED TO QUALIFY AS A "FINANCE LEASE" UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER HEREBY WAIVES ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON CUSTOMER BY SECTIONS 2A-508 THROUGH 2A-522 OF THE UCC, INCLUDING BUT NOT LIMITED TO CUSTOMER'S RIGHTS TO: (I) CANCEL THIS AGREEMENT; (II) REPUDIATE THIS AGREEMENT; (III) REJECT THE EQUIPMENT; (IV) REVOKE ACCEPTANCE OF THE EQUIPMENT; (V) RECOVER DAMAGES FROM DDI FOR ANY BREACHES OF WARRANTY OR FOR ANY OTHER REASON; (VI) A SECURITY INTEREST IN THE EQUIPMENT IN LESSEE'S POSSESSION OR CONTROL FOR ANY REASON; (VII) DEDUCT ALL OR ANY PART OF ANY CLAIMED DAMAGES RESULTING FROM DDI'S DEFAULT, IF ANY, UNDER THIS AGREEMENT; (VIII) ACCEPT PARTIAL DELIVERY OF THE EQUIPMENT; (IX) "COVER" BY MAKING ANY PURCHASE, OR LEASE OF, OR CONTRACT TO PURCHASE OR LEASE EQUIPMENT IN SUBSTITUTION FOR THOSE DUE FROM DDI; (X) RECOVER ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, FOR ANY REASON WHATSOEVER; AND (XI) SPECIFIC PERFORMANCE, REPLEVIN, DETINUE, SEQUESTRATION, CLAIM AND DELIVERY OR THE LIKE FOR ANY EQUIPMENT IDENTIFIED TO THIS AGREEMENT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER ALSO HEREBY WAIVES ANY RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE OR OTHERWISE WHICH MAY REQUIRE DDI TO SELL, LEASE OR OTHERWISE USE ANY EQUIPMENT IN MITIGATION OF DDI'S DAMAGES AS SET FORTH IN PARAGRAPH 21 OR WHICH MAY OTHERWISE LIMIT OR MODIFY ANY OF DDI'S RIGHTS OR REMEDIES UNDER PARAGRAPH 21. ANY CLAIM OR ACTION SHALL BE COMMENCED BY CUSTOMER WITHIN ONE (1) YEAR AFTER ANY SUCH CAUSE OF ACTION ACCRUES. CUSTOMER ACKNOWLEDGES THAT (A) CUSTOMER HAS RECEIVED A COPY OF THE CONTRACT BY WHICH DDI ACQUIRED THE EQUIPMENT (THE "SUPPLY CONTRACT"), OR (B) CUSTOMER HAS REVIEWED AND APPROVED OF THE SUPPLY CONTRACT, OR (C) DDI HAS INFORMED CUSTOMER IN WRITING THAT CUSTOMER MAY HAVE RIGHTS UNDER THE SUPPLY CONTRACT AND THAT CUSTOMER SHOULD CONTACT THE SUPPLIER FOR A DESCRIPTION OF ANY SUCH RIGHTS. ALL SCHEDULES HEREUNDER SHALL BE NON-CANCELABLE NET LEASES, AND CUSTOMER AGREES THAT IT HAS AN UNCONDITIONAL OBLIGATION TO PAY ALL RENTAL PAYMENTS AND OTHER AMOUNTS WHEN DUE. CUSTOMER IS NOT ENTITLED TO ABATE OR REDUCE RENTAL PAYMENTS OR ANY OTHER AMOUNTS DUE OR SET OFF ANY CHARGES AGAINST THOSE AMOUNTS. CUSTOMER SHALL NOT BE ENTITLED TO ANY CROSS-CLAIMS, COUNTERCLAIMS, OR OTHER DEFENSES TO ANY RENTAL PAYMENTS OR OTHER AMOUNTS WHETHER THOSE DEFENSES ARISE OUT OF CLAIMS BY CUSTOMER AGAINST DDI, THE EQUIPMENT SUPPLIERS, THIS AGREEMENT OR ANY SCHEDULE, EXCEPT IF THE EXCLUSION OF SUCH CLAIMS IS FORBIDDEN BY APPLICABLE LAW. UNLESS CUSTOMER'S OBLIGATION TO PAY RENTAL PAYMENTS AND OTHER AMOUNTS HAS BEEN TERMINATED PURSUANT TO THE EXPRESS TERMS OF THIS AGREEMENT, ALL RENTAL PAYMENTS AND OTHER AMOUNTS DUE SHALL CONTINUE TO BE DUE AND PAYABLE HEREUNDER.

25. FINANCIAL INFORMATION: As soon as practicable after the close of each fiscal year of Customer, Customer will furnish to DDI a copy of its annual audit report prepared by independent certified accountants, or other accountants satisfactory to DDI, unless the equivalent of such report is available to DDI upon request, without charge or investment in the form of Customer's annual report to shareholders, during each such year at such time.

26. FINANCING OF ADDITIONS: If, under any Schedule, Customer intends to make any addition to the Equipment, Customer shall, in writing, request DDI to finance the costs of such addition. Customer shall provide DDI with the terms under which it hopes to obtain the financing, and upon receiving such a request DDI

shall determine, in its sole discretion, whether to provide such financing. If DDI does not, within 20 days after receiving Customer's request, offer to finance the addition upon the terms requested by Customer, Customer may obtain offers from third parties for financing the addition, and Customer shall notify DDI of the details of any third party financing offer Customer would like to accept (a "Third Party Offer"). If DDI has not made a financing offer to Customer on terms substantially similar to the Third Party Offer within 20 days of receiving Customer's notice, Customer may accept the Third Party Offer unless: (a) the aggregate cost to Customer of obtaining financing from the Third Party Offer is greater than the aggregate cost under DDI's financing offer; or (b) the Third Party Offer would create a security interest in, or a lien on, the Equipment; or (c) the addition is not permitted under paragraph 9 of this Agreement.

27. GENERAL: The terms and conditions of this Agreement supersede those of all previous agreements between the parties with respect to the use of the Equipment, and such use hereafter is subject to the terms and conditions of this Agreement. Customer represents that: (a) it has authority to enter into the Agreement and by so doing Customer will not violate any law or agreement; and (b) the Agreement is signed by Customer's authorized officer or agent. The Agreement is the entire agreement between the parties. All financial information Customer has provided is true and a reasonable representation of Customer's financial condition. Customer authorizes DDI or our agent to: (a) obtain credit reports and make credit inquiries; and (b) furnish payment history to credit reporting agencies. If a court finds any provision of the Agreement to be unenforceable, all other terms shall remain in effect and enforceable. Customer authorizes DDI to insert or correct missing information on the Agreement, including Customer's proper legal name, serial numbers and any other information describing the Equipment. If Customer so requests, and DDI permits the early termination of a Schedule, Customer agrees to pay a fee for such privilege.

No term or provision of this Lease may be amended, altered, waived, discharged or terminated except by a written instrument signed by the parties hereto and in compliance with Section 2A - 208(2) of the Uniform Commercial Code requiring separate signature of this provision, Customer has signed in the space provided: _____ (Initials). Any such waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any provision hereof prohibited by, or unlawful or unenforceable under, any applicable law of any jurisdiction shall be ineffective without invalidating the remaining provisions of this Agreement; provided, however, that where the provisions of any such applicable law may be waived, they are hereby waived by Customer to the full extent permitted by law to the end that this Agreement shall be deemed to be a valid and binding agreement enforceable in accordance with its terms.

THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY (WITHOUT REGARD TO CONFLICT OF LAWS) AND CONSTITUTES THE ENTIRE AGREEMENT BETWEEN CUSTOMER AND DDI WITH RESPECT TO THE FURNISHING OF EQUIPMENT USE HEREUNDER. CUSTOMER AND ANY AND ALL GUARANTORS CONSENT TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS OF NEW JERSEY AND ANY LITIGATION ARISING OUT OF THIS AGREEMENT OR THE CONDUCT OF THE RELATIONSHIP OF THE PARTIES MAY BE BROUGHT IN THE STATE OF NEW JERSEY FEDERAL OR STATE COURTS. CUSTOMER AND DDI HEREBY WAIVE THE RIGHT TO JURY TRIAL OF ANY MATTERS ARISING OUT OF THIS AGREEMENT OR THE CONDUCT OF THE RELATIONSHIP BETWEEN DDI AND CUSTOMER.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on behalf of each of them as of the date set forth at the beginning of this Agreement.

DDI CAPITAL

Cape Coral Charter School Authority

By: _____

Its duly authorized representative

By: _____

Print Name: _____

Title: _____

Date: _____

AMENDMENT TO MASTER EQUIPMENT LEASE AGREEMENT

Please fax completed and signed to 1-888-329-8795
Questions or need assistance? Call 1-888-550-8795

RE MASTER EQUIPMENT LEASE AGREEMENT NUMBER: 41473740 BY AND BETWEEN

LESSEE: CAPE CORAL CHARTER SCHOOL AUTHORITY

LESSOR: DDI LEASING, INC. DBA DDI CAPITAL

The above referenced Master Equipment Lease Agreement (the "Agreement") is hereby amended as follows:

Section 4. PAYMENT OF TAXES:

The following language is hereby inserted after the second sentence of this section: "The Authority is a tax exempt municipal charter school, and is except from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased."

Section 11. INDEMNITY:

The following language is hereby inserted to the beginning of the first sentence of this section: "As permitted by Florida Law,"

Section 22. REIMBURSEMENT:

In the preamble of this section, the word "reasonable" is hereby inserted between "for all" and "charges."

Section 27. GENERAL:

In this section, the words "NEW JERSEY" are hereby deleted and replaced with "FLORIDA."

The above Agreement may also be identified as Master Lease Agreement Number #TSM04511

All other terms and conditions in the Agreement shall remain in full force and effect.

DDI LEASING, INC. DBA DDI CAPITAL


Lessor

X

Authorized Signature

Print Name and Title

Date


Gregory T. Napp, CFO
1/24/17

CAPE CORAL CHARTER SCHOOL AUTHORITY


Lessee

X

Authorized Signature

Print Name and Title

Date


Nelson Stephenson, Superintendent
1/19/17



SCHEDULE A DATED December 19, 2016

TO MASTER EQUIPMENT LEASE NO. TSM04511 DATED December 19, 2016

CUSTOMER: Cape Coral Charter School Authority
EQUIPMENT LOCATION: 3507 Oasis Blvd., Cape Coral, FL 33914
COMMENCEMENT DATE: Upon Acceptance
MANUFACTURER: various
INITIAL TERM (ANNUAL): 3 Annual Payments

<u>Quantity</u>	<u>Type</u>	<u>Model</u>	<u>Description</u>	<u>Serial No.</u>	<u>Annual Rent (Excludes Tax)</u>	<u>Stipulated Loss Value</u>
					\$54,357.00	\$169,426.40
620			Lenovo N22Chrome OS 11.6" N3050 2GB Memory, 16GB EMMC, 1 year Mail In Warranty			
620			Google Management Console Licenses			
620			GoGuardian Admin licenses 36 Month Subscription (qty 500-1499)			
620			2 Year Extension of Manufacturing Warranty plus Accidental Damage Protection From Day 1 (Computer Warranty Services)			
23			Lock n Charge Joey 30 Carts Delivery			

ADVANCE RENTAL PAYMENT(S): Advance rental payments, if required by proposal and/or commitment, shall be paid contemporaneously with lessee's entry into the lease and this schedule.

FIRST RENTAL PAYMENT DUE DATE: The first day of the calendar month immediately following the month in which the Commencement Date for the last leased item to be installed under this Equipment Schedule occurs (the Last Commencement Date).

RENTAL PAYMENT: The first Rental Payment shall consist of the sum of the following: one (1) Annual Rental Payment plus an amount equal to 1/365th of an Annual Rental Payment multiplied by the number of days from and including the Commencement Date to, but excluding, the First Rental Payment Due Date.

MASTER EQUIPMENT LEASE: This schedule is entered into pursuant to the Master Equipment Lease identified above, a copy of which each party hereto has been provided. All terms, conditions, representations and warranties of the Master Equipment Lease are hereby incorporated by reference herein and made a part hereof as if they were expressly set forth in this Schedule. This Schedule constitutes a separate lease with respect to the Equipment described herein. By their execution and delivery of this Schedule, the parties hereby reaffirm as of the date hereof all of the terms, conditions, representations and warranties of the Master Equipment Lease, except as modified herein.

DDI CAPITAL

By: [Signature]
Its duly authorized representative

Cape Coral Charter School Authority
Customer
By: [Signature]
Print Name: Nelson Stephenson
Title: Superintendent
Date: 11/19/17



**CUSTOMER'S ACKNOWLEDGEMENT OF
INSURANCE OBLIGATION**

As lessee under Master Equipment Lease # TSM04511 dated December 19, 2016
with DDI Capital, as lessor, we hereby acknowledge our obligation to promptly
furnish a Certificate of Evidence of Insurance providing coverage on the equipment in
our Lease Schedule A dated December 19, 2016.

The Loss Payable clause will be in favor of "DDI Capital and its Successors and
Assigns, as their interest may appear," and the amount will be \$169,426.40.

Please be advised that this request has been made of

_____ of _____, _____
(Customer's Insurance Agent) (Location) (Telephone Number)

and that such Certificate of Evidence of Insurance will be shortly forthcoming.

Customer: Cape Coral Charter School Authority
By: [Signature]
Title: Superintendent
Date: 1/19/17

CERTIFICATE OF COVERAGE

Certificate Holder

DDI CAPITAL
221 SOMERVILLE ROAD
BEDMINSTER NEW JERSEY 07921

Administrator

Issue Date 1/19/17

Florida League of Cities, Inc.
Department of Insurance and Financial Services
P.O. Box 530065
Orlando, Florida 32853-0065

COVERAGES

THIS IS TO CERTIFY THAT THE AGREEMENT BELOW HAS BEEN ISSUED TO THE DESIGNATED MEMBER FOR THE COVERAGE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE AFFORDED BY THE AGREEMENT DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH AGREEMENT.

COVERAGE PROVIDED BY:

FLORIDA MUNICIPAL INSURANCE TRUST

AGREEMENT NUMBER: FMIT 1478

COVERAGE PERIOD: FROM 10/01/16

COVERAGE PERIOD: TO 10/01/17 12:01 AM STANDARD TIME

TYPE OF COVERAGE - LIABILITY

General Liability

- ☒ Comprehensive General Liability, Bodily Injury, Property Damage, Personal Injury and Advertising Injury: \$3,000,000 Limit
- ☒ Medical Attendants/Medical Directors' Malpractice Liability
- ☒ Broad Form Property Damage
- ☐ Law Enforcement Liability
- ☒ Underground, Explosion & Collapse Hazard
- ☒ School Board/Educators Legal Liability & EPLI: \$3,000,000 Limit
- ☒ School Board Legal Liability Limited Sexual Abuse

Limits of Liability
* Combined Single Limit

Deductible N/A

Automobile Liability

- ☒ All owned Autos (Private Passenger)
- ☒ All owned Autos (Other than Private Passenger)
- ☒ Hired Autos
- ☒ Non-Owned Autos

Limits of Liability
* Combined Single Limit

Deductible N/A

TYPE OF COVERAGE - PROPERTY

- ☒ Buildings (per schedule on file)
 - ☐ Basic Form
 - ☒ Special Form
- ☒ Personal Property (per schedule on file)
 - ☐ Basic Form
 - ☒ Special Form
 - ☒ Agreed Amount
 - ☒ Deductible \$1,000
 - ☒ Coinsurance 100%
 - ☐ Blanket
 - ☐ Specific
 - ☒ Replacement Cost
 - ☐ Actual Cash Value
- ☒ Miscellaneous
 - ☐ Inland Marine
 - ☒ Electronic Data Processing
 - ☒ Bond
 - ☒ Faithful
 - Performance/Employee Theft
\$500,000 Limit / \$1,000 Deductible
 - ☒ Forgery or Alteration/Theft of Money & Securities/
Robbery of Safe Burglary of Other Property/Outside Prem
Computer & Funds Transfer Fraud
\$100,000 Limit / \$10,000 Deductible
 - Money Orders & Counterfeit Currency
\$100,000 Limit
 - Finance Director
\$ 600,000 Limit

Limits of Liability on File with Administrator

TYPE OF COVERAGE - WORKERS' COMPENSATION

- ☒ Statutory Workers' Compensation
- ☒ Employers Liability
 - \$1,000,000 Each Accident
 - \$1,000,000 By Disease
 - \$1,000,000 Aggregate By Disease
- ☒ Deductible N/A
- ☐

Automobile/Equipment - Deductible

- ☒ Physical Damage Per Schedule - Comprehensive - Auto Per Schedule - Collision - Auto N/A - Miscellaneous Equipment

Other

The limit of liability is \$200,000 Bodily Injury and/or Property Damage per person or \$300,000 Bodily Injury and/or Property Damage per occurrence. These specific limits of liability are increased to \$3,000,000 for General Liability and \$1,000,000 for Automobile Liability (combined single limit) per occurrence, solely for any liability resulting from entry of a claims bill pursuant to Section 768.28 (6) Florida Statutes or liability/settlement for which no claims bill has been filed or liability imposed pursuant to Federal Law or actions outside the State of Florida.

Description of Operations/Locations/Vehicles/Special Items

Re: Master Equipment Lease # TSM04511, Lease Schedule A, Chromebooks, Value \$169,426.40

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE AGREEMENT ABOVE.

DESIGNATED MEMBER

CITY OF CAPE CORAL CHARTER SCHOOL
1015 CULTURAL PARK BOULEVARD
CAPE CORAL, FL 33990

CANCELLATIONS
SHOULD ANY PART OF THE ABOVE DESCRIBED AGREEMENT BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED ABOVE, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE PROGRAM, ITS AGENTS OR REPRESENTATIVES

AUTHORIZED REPRESENTATIVE



**CUSTOMER'S CERTIFICATE OF ACCEPTANCE
AND
ACKNOWLEDGEMENT OF ASSIGNMENT**

As lessee under Master Equipment Lease #TSM04511 dated December 19, 2016, ("Lease") entered into with DDI Capital ("DDI"), we do hereby certify that we have as of the date hereof inspected each item of equipment described on Schedule A, a copy of each of which is attached hereto, and found the same to be in good operating condition; and, by execution and delivery of this Certificate, we do hereby unconditionally accept each said item of equipment as installed for the Lease.

In addition, we hereby acknowledge that we have been advised by DDI that DDI anticipates assigning the Schedule to an Assignee identified below ("Assignee") in return for consideration from such Assignee. We hereby authorize DDI to enter the Assignee's name in the space provided below. Return of a copy of this certificate to us including the Assignee's name below, counter-executed by DDI, will constitute our acknowledgement of this assignment. We will thereafter remit all future rental payments to the Assignee at the address given below.

For the express benefit of the Assignee, we hereby affirm all of our covenants and agreements under the Lease; we hereby affirm that the Lease and Schedule are in full force and effect and that as of the date hereof no event of default has occurred under the Lease; and we hereby specifically covenant and agree that, with respect to the periodic rental charges and other payments due and to become due under the Lease, we shall not assert for any reason whatsoever against the Assignee, as assignee of DDI, any defense, set-off, or counterclaim (including recoupment against or any diminution of amounts payable by lessee to the Assignee which we may have against DDI.

Customer: Cape Coral Charter School Authority

By: [Signature]

Title: Superintendent

Date: 1-19-17

Schedule A has been assigned to:

Assignee's Name: EverBank Commercial Finance, Inc.

Assignee's Address: 10 Waterview Blvd.

Parsippany, NJ 07054

Signed: [Signature]

DDI Capital

Date 1/24/17

NON APPROPRIATION RIDER

This Non-Appropriation Rider to the Master Equipment Lease No.TSM04511 dated as of December 19, 2016 (the "Lease"), is by and between DDI Capital (Lessor) and Cape Coral Charter School Authority (Lessee). Capitalized terms used herein without definition shall be defined as provided in the Lease.

Notwithstanding anything contained in the Lease to the contrary,

1. Lessee presently intends to continue the Lease for its entire term and to pay all rentals or other payments relating thereto and shall do all things lawfully within its power to obtain and maintain funds from which the rentals and all other payments owing thereunder may be made. To the extent permitted by law, the person or entity in charge of preparing Lessee's budget will include in the budget request for each fiscal year during the term of the Lease the rentals to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all rentals coming due therein. The parties acknowledge that appropriation for rentals is a governmental function which Lessee cannot contractually commit itself in advance to perform and the Lease does not constitute such a commitment. However, Lessee reasonably believes that moneys in an amount sufficient to make all rentals can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the term of the Lease.
2. If Lessee's governing body fails to appropriate sufficient moneys in any fiscal year for rentals or other payments due under the Lease and if other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then: (i) Lessee shall give Lessor immediate notice of such Non-Appropriation and provide written evidence of such failure by Lessee's governing body at least sixty (60) days prior to the end of the then current fiscal year or if Non-Appropriation has not occurred by that date, immediately upon such Non-Appropriation; (ii) no later than the last day of the fiscal year for which appropriations were made for the rentals due under the Lease (the "Return Date"), Lessee shall return to Lessor all, but not less than all, of the Equipment covered by the Lease, at Lessee's sole expense, in accordance with the terms hereof; and (iii) the Lease shall terminate on the Return Date without penalty or expense to Lessee and Lessee shall not be obligated to pay the rentals beyond such fiscal year, provided, that Lessee shall pay all rentals and other payments due under the Lease for which moneys shall have been appropriated or are otherwise available, provided further, that Lessee shall pay month-to-month rent at the rate set forth in the Lease for each month or part thereof that Lessee fails to return the Equipment as required herein.
3. The Lease shall be deemed executory only to the extent of monies appropriated and available for the purpose of the Lease, and no liability on account thereof shall be incurred by the Lessee beyond the amount of such monies. The Lease is not a general obligation of the Lessee. Neither the full faith and credit nor the taxing power of the Lessee are pledged to the payment of any amount due or to become due under the Lease. It is understood that neither the Lease nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the Lease.
4. The Lessee and Lessor agree that they intend the Lease to be an operating lease and that by the execution thereof, Lessee acquires no ownership interest in the Equipment whether vested or contingent. The Lessee's interest in the Equipment is limited to that of a lessee and Lessor retains all the rights of owner therein. Any provisions indicating to the contrary in this Rider are for precautionary purposes only.

IN WITNESS WHEREOF, each of the parties hereto has caused this Rider to be executed as of the day of , 2017

DDI Capital
(Lessor)

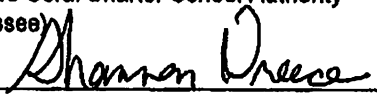
By


(Date)

Name/Title Gregory J. Naffi CFO

Cape Coral Charter School Authority
(Lessee)

By


(Date)

Name/Title Shannon Treece Principal



Cape Coral Charter School Authority Delegation of Authority

I, NELSON STEPHENSON do hereby delegate: SHANNON TREECE
Name of Employee Delegating Authority *Name of Employee Being Delegated*

to be authorized during my absence beginning on 1.24.17 and ending on 1.25.17
as follows:

- On behalf of my duties as SUPERINTENDENT

With exception of:

- Approval of expenditures up to a maximum of \$ 50,000.00 or my established level of authority (whichever is less).

This includes expense pre-approvals, purchase requests, payment vouchers and check requests, and authorizations to use credit cards as approved by the policies of the Cape Coral Charter School Authority.

- If the delegate named above is not able to perform the duties specified above,
_____ shall be authorized to serve as an alternate delegate.

Name of Alternative Delegate



Signature of Employee Delegating Authority

1.23.17

Date

A copy of this letter should accompany all official documents when delegation is in effect.

Item Number: 10.A.

Meeting

Date: 2/13/2017

Item Type:

**UNFINISHED
BUSINESS**

**AGENDA REQUEST
FORM**
CITY OF CAPE CORAL



TITLE:

Water Quality

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?

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

☐ Water Quality Memo

Type

Backup Material

MEMORANDUM

CITY OF CAPE CORAL
PUBLIC WORKS DEPARTMENT

TO: Mayor Sawicki and Council Members

FROM: Paul Clinghan, Public Works Director *PRC*
Connie Jarvis, Environmental Resources Manager *[Signature]*

DATE: February 10, 2017

SUBJECT: Lake Okeechobee Level and Release Information 02/10/2017

As of Thursday, February 9, 2017, the elevation of Lake Okeechobee was 13.79 feet. Inflows into the lake were 373 cfs, total outflows were 2,474 cfs. Current discharges at S-77 were 634 cfs, and 419 cfs at S-79.

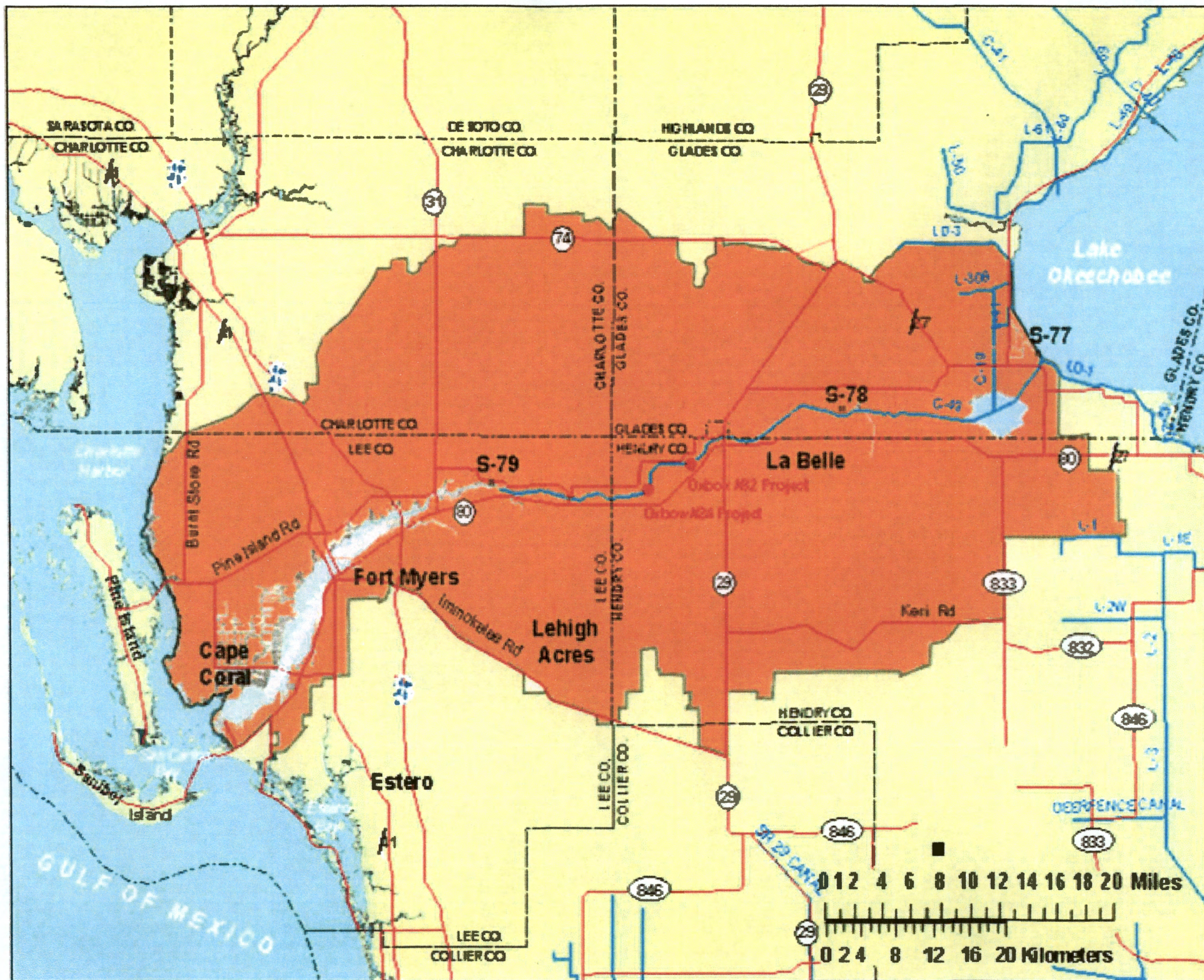
Salinities in the river near Fort Myers were 10.2 PSU. Salinities at Shell Point were 23.99 PSU. Red tide was detected at very low to low concentrations at 6 sites in the nearshore Lee County waters, with higher levels in the offshore waters for the week of 1/31 -2/7.

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

The Corps is continuing with dry season average flows of 650 cfs. However, salinities in the upper portion of the river remain in the harmful range for tapegrass.

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

PC/CJ:ol (Weekly Lake Okeechobee Level and Release Information 02/10/2017)
Attachment; Caloosahatchee River Locks map



Item Number: 10.C.

Meeting Date: 2/13/2017

Item Type: UNFINISHED
BUSINESS

**AGENDA REQUEST
FORM**
CITY OF CAPE CORAL



TITLE:

ADDENDUM: Discussion of City Auditor Position

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:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

PT Division- Department- Council
Offices

SOURCE OF ADDITIONAL INFORMATION:

Council Offices