Mayor

Joe Coviello

Council Members

<u>District 1</u>: John Gunter

District 2: John M. Carioscia Sr.

District 3: Marilyn Stout
District 4: Jennifer I. Nelson
District 5: Dave Stokes
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
Andrea R. Butola
City Clerk
Kimberly Bruns

AGENDA FOR THE REGULAR MEETING OF THE CAPE CORAL CITY COUNCIL

May 13, 2019 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 COVIELLO

2. INVOCATION/MOMENT OF SILENCE

A. TRIBUTE TO A SOLDIER - COUNCILMEMBER WILLIAMS

3. PLEDGE OF ALLEGIANCE

A. NATIONAL ANTHEM - EMILY SANSONE, OASIS HIGH SCHOOL

4. ROLL CALL

A. MAYOR COVIELLO, COUNCIL MEMBERS CARIOSCIA, COSDEN, GUNTER, NELSON, STOKES, STOUT, WILLIAMS

5. CHANGES TO AGENDA/ADOPTION OF AGENDA

6. RECOGNITIONS/ACHIEVEMENTS

A. Recognition of Citizen's Academy Graduates - Presented by Maureen Buice, Public Information Officer, City Manager's Office

7. APPROVAL OF MINUTES

A. NONE

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 76-19 Award ITB-PW19-51/CV for the Purchase and Delivery of Gasoline and Diesel Fuel to Palmdale Oil Company, Inc, as the lowest responsive responsible bidder, at the fixed markup price stated on the bid, for an estimated amount of \$2,000,000 not to exceed budgetary limit; And authorize the City Manager or Designee to execute the contract and all renewals; Department: Public Works; Estimated Annual Dollar Value \$2,000,000; (Internal Service Fund)
- (2) Resolution 79-19 Approve Staff Cost Proposal (SCP) SCP JE-08 with Johnson Engineering, Inc. for Professional Engineering Services to complete the Cape Coral Southeast Quadrant Dredge Management Master Plan (DMMP) update for a Not-to-Exceed (NTE) amount of \$200,000 and authorize the City Manager or designee to execute the agreement; Department: Public Works; Dollar Value \$200,000; (Stormwater funds)
- (3) Resolution 82-19 A resolution recognizing the importance of breastfeeding in accordance with Florida state laws and statutes. (Brought forward by Councilmember Cosden)
- (4) Resolution 89-19 Approve the piggyback of Lee County Solicitation RFP180313KLC Athletic Turf Maintenance and Reconstruction with JSM Services, Inc., for the purchase and installation of athletic TifTuf Bermuda sod for the Multi Sports Complex and Pelican Soccer Complex at the estimated cost of \$87,490 not to exceed budgetary limits in accordance with the City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) Purchases of Goods or Services from Contracts Awarded by other Governmental or Not-for-Profit Entities by Competitive Bid or Request for Proposal; and authorize the City Manager or Designee to execute the purchase order; Department: Parks & Recreation; Estimated Dollar Value: \$87,490; (General Fund)
- (5) Resolution 98-19 Approval of Contract for Purchase of Lots 9 and 10, Block 2156, Unit 32, Cape Coral Subdivision, 1116 Kismet Parkway East, Cape Coral, for the Lake Meade Park Expansion project for the purchase price of \$11,000 plus costs not to exceed \$1,500; Department: Financial Services / Real Estate Division; Dollar Value: \$12,500; (Parks Capital Project/GO Bond Fund) Note: Trade offer rejected by Seller.
- (6) Resolution 99-19 Approval of Contract for Purchase of Lots 31 and 32, Block 3013, Unit 43, Cape Coral Subdivision, 1130 NW 25th Terrace, Cape Coral, for the Festival Park project for

the purchase price of \$11,000 plus closing costs not to exceed \$1,500; Department: Financial Services / Real Estate Division; Dollar Value: \$12,500; (Parks Capital Project/GO Bond Fund) Note: Trade offer rejected by Seller.

- (7) Resolution 100-19 Approval of Contract for Purchase of 1239 NW 25th Street, Cape Coral, an improved property located on Lots 65 and 66, Block 3013, Unit 43, Cape Coral Subdivision, for the Festival Park project for the purchase price of \$150,000 plus closing costs not to exceed \$2,700; Department: Financial Services / Real Estate Division; Dollar Value: \$152,700; (Parks Capital Project/GO Bond Fund) Note: Trade offer rejected by Seller.
- (8) Resolution 101-19 Approval of Seller's counter offer to purchase Lots 9 and 10, Block 3021, Unit 43, Cape Coral Subdivision, 1240 NW 26th Street, Cape Coral, for the Festival Park project for the purchase price of \$13,000 plus closing costs not to exceed \$1,500; Department: Financial Services / Real Estate Division; Dollar Value: \$14,500; (Parks Capital Project/GO Bond Fund) Note: Trade offer rejected by Seller.
- (9) Resolution 102-19 Shared-Use Non-motorized (SUN) Trail Network Agreement between the State of Florida Department of Transportation (FDOT) and the City of Cape Coral; SUN Trail Construction Phase 1 (Burnt Store Road to Nelson Road); Department: Public Works; Dollar Value: N/A; FDOT Grant: \$5,297,641; (Fund; N/A)

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) Resolution 95-19 Approve and Ratify Collective Bargaining Agreement with Firefighters Local 2424, Supervisory and Rank and File Bargaining Units
- (2) Resolution 97-19 Approve the Fire Department to Add Six Additional Full Time Equivalents (Firefighters); Dollar Amount: \$464,430; (General Fund)

E. PETITIONS TO COUNCIL

- (1) NONE
- F. APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS
 - (1) NONE

9. ORDINANCES/RESOLUTIONS

A. Public Hearings

- *Quasi-Judicial, All Persons Testifying Must be Sworn In WHAT THE RESOLUTION ACCOMPLISHES:
 A resolution providing for the vacation of plat for a portion of Lafayette Canal and Malibu Basin rights-of-way and the underlying public utility and drainage easements located adjacent to Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision; providing for the vacation of plat for public utility and drainage easements associated with Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision; property is located at 5362 Malibu Court. (Applicant: Michael and Carolyn Mitch) Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions as set forth in Recommendation 5-2019.
 - City Management Recommendation: City Management recommends approval subject to the conditions that appear in Resolution 80-19.
- (2) Ordinance 22-19 First Public Hearing (After 5:00 p.m.); Set Second and Final Public Hearing for June 3, 2019 WHAT THE ORDINANCE ACCOMPLISHES: An ordinance amending the City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .15, South Cape Downtown District (SC), by eliminating the South Cape Redevelopment Incentive Program (SCRIP), amending the maximum floor area ratio, maximum residential density, and maximum building height in the South Cape Downtown District, establishing regulations to allow certain architectural elements in City easements and rights-of-way in the South Cape Downtown District, and establishing regulations to allow outdoor dining on public rights-of-way and City-owned parking lots in the South Cape Downtown District.

NOTE: Ordinance 22-19 is a City-initiated change to Section 2.7.15, Land Use and Development Regulations (South Cape Downtown Zoning District). The changes will increase the maximum density to 75 units per acre, increase the maximum Floor Area Ratio to 4.0, and increase the maximum height to 160'. This will allow more design flexibility in downtown Cape Coral to encourage economic development. With these changes the South Cape Redevelopment Incentive Program (SCRIP) regulations are no longer needed. This change also permits architectural improvements such as colonnades and balconies to project into public easements and rights-of-way. Regulations for outdoor dining are also included. (Applicant: Brought forward by City Management.)

Planning and Zoning Commission/Local Planning Agency voted unanimously to recommend approval of Ordinance 22-19. City Management Recommendation: City Management recommends approval.

(3) Ordinance 23-19 Public Hearing for Transmittal WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending the City of Cape Coral Comprehensive Plan by amending Policy 1.15 of the Future Land Use Element.

NOTE: Ordinance 23-19 changes Policy 1.15 of the Future Land Use (Comprehensive Plan) by removing affordable housing density doubling language and reducing Commercial Activity Center residential densities from 25 to 16 units/acre per direction received in the February Council public hearings. In addition, Downtown Mixed residential densities are proposed to be increased from 75 to 125 units/acre per City Manager direction (Applicant: Brought forward by City Management.) P&Z Recommendation: At their May 1, 2019 Regular Meeting, the Planning and Zoning Commission/Local Planning Agency voted unanimously to recommend approval of Ordinance 23-19.

City Management Recommendation: City Management recommends approval.

B. Introductions

(1) Resolution 88-19 (VP 19-0005*) Set Public Hearing Date for June 10, 2019

*Quasi-Judicial, All Persons Testifying Must Be Sworn In WHAT THE RESOLUTION ACCOMPLISHES:
A resolution providing for the vacation of plat for public utility and drainage easements underlying a previously vacated alley located between Lots 26-31 and Lots 42-47, Block 1484, Cape Coral Unit 17; providing for the vacation of plat for public utility and drainage easements along the east side of Lots 26-31 and the west side of Lots 42-47, Block 1484, Cape Coral Unit 17; property located at 112 Del Prado Boulevard North. (Applicant: Floriland Real Estate Investments, LLC) Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions set forth in HEX Recommendation Order 6-2019.

City Management Recommendation: City Management recommends approval of both vacation requests with conditions. Conditions of approval recommended by staff mirror the conditions of approval recommended by the Hearing Examiner for this case.

(2) Resolution 106-19 (AP 19-0001*) Set Public Hearing Date for

June 10, 2019

*Quasi-Judicial, All Persons Testifying Must be Sworn In WHAT THE RESOLUTION ACCOMPLISHES:
A resolution either affirming or reversing the decision of the Hearing Examiner rendered on January 18, 2019, in DE HEX Order 1-2019, that denied a deviation of nine (9) feet from the minimum side setback requirement of twelve (12) feet for marine improvements that extend more than six (6) feet into a waterway to allow a side setback of three (3) feet for expansion of an existing dock in a Single-Family Residential (R-1B) zone; property located at 2523 SE 23rd Place. (Applicant: Donald C. Frick)

- (3) Ordinance 20-19 Set Public Hearing Date for June 10, 2019 WHAT THE ORDINANCE ACCOMPLISHES:
 An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 23, "Protected Species," Article II, "Burrowing Owl Protection," by renaming Article II to read "Burrowing Owl and Gopher Tortoise Protection," and to include protections for gopher tortoises located in the city. (Applicant: Brought forward by Councilmember Carioscia)
- (4) Ordinance 21-19 Set Public Hearing Date for June 10, 2019 WHAT THE ORDINANCE ACCOMPLISHES: An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 6, "Contractors and Construction Regulation Board," Article I, "General Provisions," Section 6-10.1, pertaining to disciplinary proceedings for contractor violations in the City. (Applicant: Brought forward by City Management.)
- (5) Ordinance 26-19 Set Public Hearing Date for June 3, 2019 WHAT THE ORDINANCE ACCOMPLISHES: An ordinance approving and granting to South Florida Water Management District a perpetual Conservation Easement upon property owned by the City located in the area of the Academic Village; authorizing and directing the Mayor to execute the Deed of Conservation Easement - Passive Recreational Uses. (Applicant: Brought forward by City Management.)
- (6) Ordinance 27-19 Set Public Hearing Date for June 3, 2019 WHAT THE ORDINANCE ACCOMPLISHES: An ordinance authorizing the City Manager to exchange municipal surplus property described as Lots 27 and 28, Block 5162, Unit 83, Cape Coral Subdivision, for real property described as Lot 25, Block 5162, Unit 83, Cape Coral Subdivision; authorizing the conveyance of surplus real property described herein pursuant to Section 2-155 of the City of Cape Coral Code of ordinances; authorizing and directing the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property. (Applicant: Brought

(7) forward by City Management.)
Ordinance 28-19 (VP 18-0007*) Set Public Hearing Date for June 10, 2019

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

An ordinance providing for the release of the right-of-way easement reserved by the City within Ordinance 56-02; authorizing the Mayor to execute a Release of said easement; providing for the vacation of plat for a portion of Rose Canal right-of-way and the underlying public utility and drainage easements located adjacent to Lot 23, Block 4944, Unit 74, Cape Coral Subdivision, as more particularly described herein; providing for the vacation of plat for public utility and drainage easements associated with Lot 23, Block 4944, Unit 74, Cape Coral Subdivision, as more particularly described herein; property located at 4033 Oasis Boulevard. (Applicants: Keith D. Finkelstein and Elizabeth A. Macguidwin)

Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the requested vacations and release, subject to the conditions set forth in VP HEX Recommendation 3-2019.

City Management Recommendation: City Management recommends approval.

(8) Ordinance 30-19 Set Public Hearing Date for June 3, 2019 WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 12 1/2, "Parks and Recreation," Article I, "Regulations," Section 12 1/2-2, "Definitions," and Section 12 1/2-4, "Rules and Regulations," to regulate commercial activity in City parks. (Applicant: Brought forward by City Management.)

10. UNFINISHED BUSINESS

- A. Water Quality Update
- B. Follow Up Items for Council

11. NEW BUSINESS

- A. Resolution 87-19 Amend City Council Rules of Procedure Brought forward by Councilmember Cosden
- B. Resolution 107-19 Approve temporary waiver of installation fees required in the South Cape Banner Program
- 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 is Scheduled for Monday, May

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 <u>must</u> 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 of 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:

- 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.
- 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: B.(1)

Meeting Date: 5/13/2019

Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 76-19 Award ITB-PW19-51/CV for the Purchase and Delivery of Gasoline and Diesel Fuel to Palmdale Oil Company, Inc, as the lowest responsive responsible bidder, at the fixed markup price stated on the bid, for an estimated amount of \$2,000,000 not to exceed budgetary limit; And authorize the City Manager or Designee to execute the contract and all renewals; Department: Public Works; Estimated Annual Dollar Value \$2,000,000; (Internal Service 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?

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 March 6, 2019, Invitation to Bid ITB-PW19-51/CV was issued to obtain vendor(s) to deliver gasoline and diesel fuel to the City's fuel locations on an as-need basis.
- 2. Bidders were required to provide a firm markup price to the daily Data Transaction Network (DTN) FastRacks Average Prices, which is an index common to the industry. The fixed markup price submitted included the bidder's fees, charges and all related costs.
- 3. On March 29, 2019, two (2) bids were received. The vendors in alphabetical order were: Mansfield Oil Company of Gainesville, Inc. and Palmdale Oil Company, Inc..
- 4. After evaluation and review, staff recommends awarding the contract for both Tank Wagon (less than 7,000 gallon) and Transport (greater than 7,000 gallons) to Palmdale Oil Company.
- 5. The awarded vendor is required to submit invoices to the City based on the Daily Published Average Price plus the fixed "markup" price. The Daily Published Average Prices includes proof of price, wholesaler, purchaser, fuel depot location, prices of each product and effective dates of prices
- 6. The estimated quantities, are as follows; Gasoline 575,000 gallons, Clear Diesel 240,000 gallons and Dyed Diesel 30,000 gallons. The estimated annual spent is \$2,000,000 recognizing that the annual amount spent fluctuates based on the daily average rack price.
- 7. In FY18, the City purchased an estimated 550,000 gallons of Gasoline (unleaded fuel) and 225,500 gallons of Diesel Fuel in the amount of \$1,195,560 for unleaded fuel and \$464,422 on Diesel.
- 8. This contract will supply the City Departments with uninterrupted purchase of unleaded and

- diesel fuel for use in City owned vehicles and equipment.
- 9. If approved the term of the contract will be for three (3) years from the date of award with two (2) additional one (1) year periods..
- 10. This is a budgeted item.
- 11. Funding: Funds are available in multiple City Departmental Budgets

LEGAL REVIEW:

Contract reviewed by Legal

EXHIBITS:

Department Recommendation Memo Resolution 76-19 Procurement Memo Bid Tabulation ITB-PW19-51/CV

PREPARED BY:

Wanda Roop Division- Procurement Department-Finance

SOURCE OF ADDITIONAL INFORMATION:

Paul Clinghan, Public Works Director

ATTACHMENTS:

| | Description | Туре |
|---|-------------------------------|-----------------|
| D | Department Recommedation Memo | Backup Material |
| D | Resolution 76-19 | Resolution |
| D | Procurement Memo | Backup Material |
| D | Bid Tabulation ITB-PW19-51/CV | Backup Material |

MEMORANDOM

CITY OF CAPE CORAL PUBLIC WORKS DEPARTMENT

TO:

John Szerlag, City Manager

Victoria Bateman, Financial Services Director

Wanda Roop, Procurement Manager

FROM:

Paul Clinghan, Public Works Director Paul Clinghan, Public Works Director

Marilyn Rawlings, Fleet Manager

DATE:

April 2, 2019

SUBJECT:

Recommendation for Purchase of Gasoline and Diesel Fuel

Background

Fleet Management is responsible for maintaining fuel inventory for the City of Cape Coral. The Fleet Management Staff developed and submitted specifications to Procurement for the purchase of the annual supply of fuel. On March 29, 2019, Procurement received bids from Mansfield Oil Company and Palmdale Oil Company for ITB-PW19-51/CV - Annual Purchase of Gasoline and Diesel Fuel.

Fund Availability

Funds are available in multiple City Departmental Budgets.

Recommendation

Fleet Management Staff recommends awarding the contract to Palmdale Oil Company, the low bidder meeting specifications.

MR/gm: (recommendationmemofuelpurchaseFY2019)

cc:

Gary Manning, Fleet Superintendent Vickie Alan, Fleet Accounts Coordinator

RESOLUTION 76 - 19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AWARDING ITB #PW19-51/CV FOR THE PURCHASE AND DELIVERY OF GASOLINE AND DIESEL FUEL TO PALMDALE OIL COMPANY, INC.; AUTHORIZING THE RENEWAL OF THE CONTRACT FOR TWO ADDITIONAL ONE-YEAR PERIODS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND FUTURE RENEWALS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 6, 2019, INVITATION TO BID (ITB) #PW19-51/CV was issued to obtain vendor(s) to deliver gasoline and diesel fuel to the City's fuel locations on an as-needed basis; and

WHEREAS, bidders were required to provide a firm markup to the daily Data Transaction Network (DTN) FastRacks Average Prices which is an index common to the industry. All of bidder's fees, charges and costs are included in the markup; and

WHEREAS, on March 29, 2019, two (2) bids were received; and

WHEREAS, after evaluation of said bids, staff recommends awarding both Group A-Tank Wagon Lots (less than 7,000 gallons) and, Group B-Transport Lots (greater than 7,000 gallons) to Palmdale Oil Company, Inc., as the lowest responsive and responsible bidder meeting the specifications, in the estimated annual amount of \$2,000,000; and

WHEREAS, the term of the agreement will be three years from the date of award by City Council with two (2) one-year renewal periods at the same terms and conditions; and

WHEREAS, the City of Cape Coral desires to award the bid for the Purchase and Delivery of Gasoline and Diesel Fuel to Palmdale Oil Company, Inc., and to approve the renewal of the contract for two additional one-year periods if the City Manager deems the renewal to be in the best interest of the City.

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

Section 1. The City Council hereby awards the bid for the Purchase and Delivery of Gasoline and Diesel Fuel to Palmdale Oil Company, Inc., in the total amount of \$200,000,000 annually, not to exceed budgetary limits.

Section 2. The City Council hereby approves the contract between the City of Cape Coral and Palmdale Oil Company, Inc., for the Purchase of and Delivery of Gasoline and Diesel Fuel, and authorizes the City Manager to execute the contract, attached hereto as Exhibit 1.

Section 3. The City Council hereby authorizes the City Manager to approve the renewal of the contract for two additional one-year periods and authorizes the City Manager to execute any future contract documents associated with such renewal, should the City Manager deem it to be in the best interest of the City.

Section 4. Effective Date. This resolution shall take effect immediately upon its adoption by the Cape Coral City Council.

| ADOPTED BY THE CITY COUNCIL SESSION THIS | | | L AT ITS REGULAR |
|---|---|------------------|--|
| | Ī | OE COVIELLO, MAY | ······································ |

| VOTE OF MAYOR AND COUNCILMEM | BERS: | | | | |
|--|--|--|--|--|--|
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN | | | | |
| ATTESTED TO AND FILED IN MY OFFICE THIS DAY OF2019. | | | | | |
| | KIMBERLY CITY CLER | | | | |
| APPROVED AS TO FORM: | | | | | |
| DOLORES D. MENENDEZ CITY ATTORNEY res/Bid Award-Palmdale Oil Company | | | | | |

| This Agreement, made and entered into this | day of | , 2019 by and between |
|--|--------|--|
| the CITY OF CAPE CORAL, FLORIDA, hereinafter | called | "CITY", and PALMDALE Oil Company, Inc. located |
| 911 North 2 nd Street, Ft Pierce FL 34950 hereinafter | called | "CONTRACTOR". |

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

- 1. The CONTRACTOR will supply <u>Gasoline and Diesel Fuel in Tank Wagon and Transport Quantity</u>
 <u>Deliveries</u> in accordance with the Contract Documents.
- The term of this agreement shall be for three (3) years from date of award by Cape Coral City Council and may be renewed for two (2) additional one-year periods upon mutual agreement of the CITY and CONTRACTOR.
- 3. This CONTRACTOR agrees to supply products described in the CONTRACT DOCUMENTS at the unit prices based on daily Data Transmission Network (DTN) FastRacks Average Price (day of delivery Tampa, Florida Terminal plus markup as follows:

| The second secon | ALMDALE OIL COMPAN | |
|--|----------------------|--------------|
| Group A - Tank Wagon Lots | D: 0 " | F: 14 1 11D |
| No minimum delivery | Price per Gallon | Firm Mark-UP |
| Jnleaded Gasoline 87 | Various OPIS | |
| (No Tax Included) | Fast Racks Tampa Avg | \$ 0.1277 |
| Diesel - Ultra Low Sulfur | Various OPIS | |
| (No Tax Included) | Fast Racks Tampa Avg | \$ 0.1412 |
| Diesel - Ultra Low Sulfur Dyed | Various OPIS | |
| (No Tax Included) | Fast Racks Tampa Avg | \$ 0.1474 |
| Group B - Transport | | |
| Unleaded Gasoline 87 | Various OPIS | |
| (No Tax Included) | Fast Racks Tampa Avg | \$ 0.0277 |
| Diesel - Ultra Low Sulfur | Various OPIS | |
| (No Tax Included) | Fast Racks Tampa Avg | \$ 0.0412 |
| Diesel - Ultra Low Sulfur Dyed | Various OPIS | |
| (No Tax Included) | Fast Racks Tampa Avg | \$ 0.0474 |

Prices shall be F.O.B. City of Cape Coral's tanks and Shall include CONTRACTOR'S costs for all transportation, labor and equipment used in Delivering fuel to the point of delivery.

Invoice fuel prices will not include any State of Florida and/or Federal taxes from which the City is exempt.

If required by the City, the Contractor shall supply fuel transport quantities at the transport prices as submitted in its bid.

- This agreement may be terminated by the CITY for its convenience upon thirty (30) calendar days' prior written notice to the CONTRACTOR.
- 5. The Term "Contract Documents" means and includes the following:
 - A. Specifications Prepared and Issued by the CITY.
 - B. Submitted Response of CONTRACTOR to the CITY, except when it conflicts with any other contractual provision.
 - C. This Contract as well as all other documents attached hereto and/or referenced herein.

In the event of conflict between any provision of any other document referenced herein as part of the contract and this agreement, the terms of this agreement shall control.

- 6. All time limits listed in the contract documents are of the essence in the performance of this agreement.
- 7. 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 principles, 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 with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.
- 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 assigns of the CONTRACTOR.
- 9. <u>Disclosure:</u> 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 agreement 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 agreement.
- 10. <u>Administration of Agreement:</u> The Public Works Director, or his representative, shall administer this agreement 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 claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees.
- 12. <u>Amendments:</u> No Amendments or variation of the terms or conditions of this agreement shall be valid unless in writing and signed by the parties

- 13. <u>Indemnity:</u> 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.
- 14. <u>Invalid Provision:</u> 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.
- 15. <u>Insurance:</u> 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. Workers' Compensation Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws. The policy must include Employer's Liability with a minimum limit of \$3,000,000 for each accident.
 - Comprehensive General Liability coverage shall have minimum limits of \$3,000,000 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; and Contractual Liability Endorsement
 - c. Business Vehicular Liability coverage shall have minimum limits of \$3,000,000 per occurrence. Combined Single Limit for Bodily Injury Liability, and Property Damage Liability: This shall include Owned Vehicles, Hired and non-Owned Vehicles and Employees Non-Ownership.
 - d. Pollution Liability covering a transporter moving hazardous products or waste as cargo aboard the transporter's truck. Shall have a minimum limit of \$3,000,000 per occurrence. Combined Single Limit for Bodily Injury, Property Damage Liability and Cleanup, including wrongful delivery. This shall include owned vehicles, hired and non-owned vehicles.
 - e. CONTRACTOR shall require its subcontractors to provide for such benefits and carry and maintain the foregoing types of insurance at no expense to CITY.
 - f. The CITY shall be named as an Additional Insured under the General Liability policy. In the event the insurance coverage expires prior to completion of the project, a renewal certificate shall be issued 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.
 - g. Prior to commencing any Work under this Agreement, CONTRACTOR 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) calendar days prior written notice by certified mail to CITY, and shall also specify the date such benefits and insurance expire. CONTRACTOR agrees that such benefits shall be provided and such insurance carried and maintained until the Work has been completed and accepted by CITY.
 - h. 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 CONTRACTOR'S liability under this Agreement.

- 16. <u>Annual Appropriation Contingency:</u> Pursuant to FL Statute §166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Contract is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City if the City Council reduces or eliminates appropriations.
- 17. <u>Safety and OSHA Compliance:</u> The Contractor shall comply in all respects with all Federal, State and Local safety and health regulations. Copies of the Federal regulations may be obtained from the U.S. Department of Labor, Occupation Safety and Health Administration (OSHA), Washington, DC 20210 or their regional offices.

The Contractor shall comply in all respects with the applicable Workman's Compensation Laws.

- 18. <u>Unauthorized Aliens:</u> 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.
- 19. <u>Public Records</u>: Pursuant to Florida Statute §287.058 (1) (c), this contract may be unilaterally cancelled by the City if the Consultant, refuses to allow public access to all documents, papers, letters, or other material made or received by the Consultant in conjunction with this contract, unless the records are exempt from disclosure.

THIS SPACE INTENTIOALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials this Agreement on the date last signed as below written.

| (SEAL) ATTEST: | CITY: City of Cape Coral, Florida |
|--------------------------------|------------------------------------|
| | Signature: |
| Typed Name: Kimberly Bruns | Typed Name: A. John Szerlag |
| Title: Interim City Clerk | Title: City Manager |
| | Date: |
| CONTRACTOR: | CONTRACTOR WITNESS: |
| Palmdale Oil Company, Inc | -M |
| Signature: // // // Signature: | Signature: |
| Typed Name: Lachlan Chestham | Typed Name: Tonga lae |
| Title: President | Title: Executive assistant |
| Date: 4/18/19 | Date: 4/18/2019 |
| | |
| LEGAL REVIEW: 4/16/19 | |
| City Attorney | |



TO:

John Szerlag, City Manager

FROM:

Victoria Bateman, Financial Services Director

Wanda Roop, Procurement

Gina Lanzilotta, Senior Buyer 🕠

DATE:

April 19, 2019

SUBJECT:

Purchase of Gasoline and Diesel Fuel ITB19-51o/CV

On March 6, 2019, the City of Cape Coral issued bid ITB19-51/CV for the purchase of Gasoline and Diesel Fuel. On March 29, 2019, The City received two bids from the following firms;

- Mansfield Oil Company of Gainesville, Inc.
- Palmdale Oil Company, Inc.

Public Works/ Fleet staff reviewed the submittals and recommends awarding to Palmdale Oil Company, LLC, as the lowest responsive, responsible bidder meeting the specifications.

The estimated quantities are as follows; Gasoline 575,000 gallons, Clear Diesel 240,000 gallons and Dyed Diesel 30,000 gallons for an estimated annual dollar amount of \$2,000,000.

The awarded vendor is required to submit invoices to the City based on the Daily Published Average Price plus the fixed markup price. The Daily Published Average Prices shall be provided to the City's Fleet Management Division each day and shall include proof of price, wholesaler, purchaser, fuel depot location, prices of each product and effective dates of the prices.

In FY18 the City purchased, an estimated 550,000 gallons of Gasoline (unleaded fuel) at the cost \$1,195,560 and 225,500 gallons of Diesel Fuel at the cost of \$464,422.

If awarded the contract term will be for three (3) years with two (2) additional one (1) year periods

Procurement is in agreement with the department recommendation.

If you have any questions, please feel free to contact Gina Lanzilotta, Senior Buyer at ext. 4834

VB/WR/gl: (consent resolution 76-19 purchase of gasoline and diesel fuel- procurement memo 04192019)



PURCHASE OF GASOLINE AND DIESEL FUEL ITB-PW19-51/CV

BID DUE DATE: MARCH 29, 2019

| PALMDALE OIL COMPANY | | | | | | Mansfield | Oil Company o | of Gainesville, Inc | |
|--------------------------------|----|---------------------|------|-----------|----|------------------------|---------------------|---------------------|------------------------|
| Group A - Tank Wagon | F | Price per gallon | Firr | n Mark-UP | | tal Price er gallon | Price per gallon | Firm Mark-UP | Total Price per gallon |
| Unleaded Gasoline | \$ | 1.8398 | \$ | 0.1277 | \$ | 1.9675 | no bid | no bid | no bid |
| Diesel - Ultra Low Sulfur | \$ | 2.0944 | \$ | 0.1412 | \$ | 2.2356 | no bid | no bid | no bid |
| Diesel - Ultra Low Sulfur Dyed | \$ | 2.0969 | \$ | 0.1474 | \$ | 2.2443 | no bid | no bid | no bid |
| | | | | | | | | | |
| Total Price for Tank Wagon | \$ | 6.0311 | \$ | 0.4163 | \$ | 6.4474 | | | No Bid |
| | | | | | | | | | |
| Group B - Transport | | | | | | | | | |
| Unleaded Gasoline | \$ | 1.8398 | \$ | 0.02770 | \$ | 1.8675 | \$ 1.83980 | \$ 0.08350 | \$ 1.9233 |
| Diesel - Ultra Low Sulfur | \$ | 2.0944 | \$ | 0.04120 | \$ | 2.1356 | \$ 2.09440 | \$ 0.09040 | \$ 2.1848 |
| Diesel - Ultra Low Sulfur Dyed | \$ | 2.0969 | \$ | 0.04740 | \$ | 2.1443 | \$ 2.09690 | \$ 0.09040 | \$ 2.1873 |
| | | _ | | _ | | _ | _ | | \$ - |
| Total Price for Transport | \$ | 6.03110 | \$ | 0.1163 | \$ | 6.1474 | \$ 6.03110 | \$ 0.2643 | \$ 6.2954 |
| | | | | | | | | | |

Item Number: B.(2)

Meeting Date: 5/13/2019

Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 79-19 Approve Staff Cost Proposal (SCP) SCP JE-08 with Johnson Engineering, Inc. for Professional Engineering Services to complete the Cape Coral Southeast Quadrant Dredge Management Master Plan (DMMP) update for a Not-to-Exceed (NTE) amount of \$200,000 and authorize the City Manager or designee to execute the agreement; Department: Public Works; Dollar Value \$200,000; (Stormwater funds)

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.

iisted below.

If No, will it harm the intent or success of

the Strategic Plan?

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

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- On August 8, 2016, Resolution 106-16 was approved by City Council creating a
 Miscellaneous Professional Engineering Services Library. It allows any project specific
 contract via a Staffing Cost Proposal (SCP), which is greater than \$50,000 but less than the
 Florida Statute (287.055) (g) threshold, which is currently \$200,000, to be brought to Council
 for approval.
- On August 20, 2018, Letters of Interest for participation were issued, in accordance with the City's Miscellaneous Engineering Library, requesting proposals to provide professional services based on the scope of work provided for Bathymetric Survey of SE Canal for future Dredging Needs.
- 3. The seven (7) firms contacted in alphabetical order were as follows: AIM Engineering & Surveying, Inc.; Cardno, Inc.; CPH, Inc.; Hole Montes; Johnson Engineering, Inc.; Q. Grady Minor & Associates, Inc.; Stantec Consulting Services, Inc.;
- 4. On September 7, 2018, four (4) firms provided a Letter of interest and a preliminary proposal for the Bathymetric Survey.
- 5. The Department evaluated the responses, ranked the firms and chose the highest ranked firm, Johnson Engineering, Inc. to begin development of a staffing cost proposal to provide professional services for the scope of work that was requested.

- 6. A Staffing Cost Proposal (SCP) SCP JE-08 was negotiated with Johnson Engineering, Inc. for a Not-to-Exceed (NTE) fee of \$200,000 and the scope of service for this effort includes the following tasks: Canal Sounding Investigation; Data Collection and Review; Level of Service Evaluation; Hydrographic Results, Reports and Documents with GIS Map of Surveyed Locations.
- 7. Staff is recommending City Council to approve the proposed (SCP) SCP JE-08 for the submitted professional services and support described above for the Not-to-Exceed (NTE) dollar amount of \$200,000 to Johnson Engineering, Inc.
- 8. After a formal Notice-to-Proceed is issued to Johnson Engineering, Inc., the estimated completion time for the design services is 60 days.
- 9. This is a budgeted item.
- 10. Funding Source: Public Works Stormwater Operations Dredging Outside Services 440024.634120 with an unencumbered balance of \$495,501

LEGAL REVIEW:

Contract reviewed by Legal

EXHIBITS:

Department Recommendation Memo Resolution 79-19 SE Quadrant Canal Map

PREPARED BY:

Wanda Roop Division- Procurement Department-Finance

SOURCE OF ADDITIONAL INFORMATION:

Paul Clinghan, Public Works Director

ATTACHMENTS:

| | Description | Туре |
|---|--------------------------------|-----------------|
| D | Department Recommendation Memo | Backup Material |
| D | Resolution 79-19 | Resolution |
| D | SE Quadrant Canal Map | Backup Material |

MEMORANDUM

CITY OF CAPE CORAL PUBLIC WORKS DEPARTMENT

TO:

John Szerlag, City Manager

FROM:

Paul Clinghan, Public Works Director 126

Michael Ilczyszyn, Senior Public Works Manager

DATE:

April 4, 2019

SUBJECT: Dredging Management Master Plan Update - Johnson Engineering

RECOMMENDATION:

The Public Works Department recommends awarding the Dredging Management Master Plan Update to Johnson Engineering as the most qualified and responsive firm to perform the required work.

BACKGROUND:

In 2012 the City developed a Dredging Management Master Plan to establish a ranking and decision-making process to remove material from the City's canal system. Over four years, analyzing 1 quadrant annually, a contractor was hired to: 1) survey the canal bottom, 2) quantify the amount of material needing removal, and 3) establish a master plan for dredging.

To evaluate current conditions, the rate of sediment deposition and, to establish comparative data, the City needs to conduct another 4-year bathymetric data gathering cycle.

Through the procurement process, Public Works requested proposals from firms on the miscellaneous engineering contract to start year one of a 4-year bathymetric data gathering cycle. This contract only covers the first-year data collection which will occur in the south eastern quadrant of the city - see attached map. This aligns with the first quadrant that was recommended to be dredged in the initial data gathering cycle.

After reviewing several proposals received for this master plan update, an evaluation team ranked Johnson Engineering as the most qualified firm to perform this bathymetric surveying work. Staff has worked with the firm to develop a Staffing and Cost Proposal

John Szerlag - Dredging Management Master Plan Update—Johnson Engineering April 4, 2019
Page 2 of 2

for the work. The tasks to update our Dredging Management Master Plan include the following:

- 1. Canal Sounding and Investigation
- 2. Data Collection and Review
- 3. Level of Service Evaluation
- 4. Hydrographic Results
- 5. Report and Documentation

FUNDING SOURCE:

The work will be completed within 60 working days from notice to proceed. The total amount for this survey work, level of service evaluation and final report is \$200,000. The funds are budgeted in the Stormwater Fund in Business Unit 440024 in Account 634120.

PC/MI:cam

Attachments: City of Cape Coral Dredging SE Canal System
South Bridge Area – Johnson Example

cc: Wanda Roop, Procurement Manager Kathy Rose, Contact Specialist

RESOLUTION 79 – 19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING STAFFING AND COST PROPOSAL NO. JE-08 BETWEEN THE CITY OF CAPE CORAL AND JOHNSON ENGINEERING, INC., FOR PROFESSIONAL ENGINEERING SERVICES TO UPDATE THE CAPE CORAL SOUTHEAST QUADRANT CANALS DREDGING MANAGEMENT MASTER PLAN; PROVIDING FOR SUBSEQUENT EXECUTION OF THE STAFFING AND COST PROPOSAL BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on August 8, 2016, the City Council adopted Resolution 106-16, creating a Miscellaneous Professional Engineering Services Library of firms to be utilized on an as-needed basis, by various City Departments, for project-specific contracts via Staffing Cost Proposals negotiated with the best qualified firms for each particular project and providing that any project with an estimated cost exceeding \$50,000, but below the threshold set by Florida Statute, will be brought back to Council for approval; and

WHEREAS, in August 2018, Letters of Interest in Participation were issued requesting proposals to provide professional engineering services for the bathymetric survey of Southeast Cape Coral canals for future dredging needs, based on the scope of work provided; and

WHEREAS, four firms provided responses to the Letter of Interest, and a Staffing and Cost Proposal (SCP) was negotiated with the highest ranked firm, Johnson Engineering, Inc., for a not-to-exceed fee of \$200,000, for the scope of services agreed upon in the SCP for the bathymetric survey of Southeast Cape Coral canals for future dredging needs; and

WHEREAS, the Staffing and Cost Proposal is governed by the City's Miscellaneous Engineering Services Contract #CON UT15-21/KR-N with Johnson Engineering, Inc.; and

WHEREAS, the City Manager recommends the approval of Staffing and Cost Proposal JE-08 between the City of Cape Coral and Johnson Engineering, Inc., for an amount not to exceed \$200,000 for engineering services to perform an update to the 2012 Cape Coral Southeast Quadrant Canals Dredging Management Master Plan.

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

Section 1. The City Council hereby approves Staffing and Cost Proposal JE-08 between the City of Cape Coral and Johnson Engineering, Inc., for engineering services to perform an update to the 2012 Cape Coral Southeast Quadrant Canals Dredging Management Master Plan for an amount not to exceed \$200,000, and authorizes the City Manager or his designee to execute Staffing and Cost Proposal JE-08. A copy of the Staffing and Cost Proposal is attached hereto as Exhibit 1.

Section 2. Effective Date. This resolution shall take effect immediately upon its adoption by the Cape Coral City Council.

| | COUNCIL OF THE CITY OF C | CAPE CORAL AT ITS REGULAR , 2019. |
|---------------------------------|-------------------------------|--------------------------------------|
| | JOE CO | VIELLO, MAYOR |
| VOTE OF MAYOR AND CO | OUNCILMEMBERS: | |
| COVIELLO GUNTER CARIOSCIA STOUT | MELSON STOKES WILLIAMS COSDEN | |

| 2019. | OFFICE THIS DAY OF |
|-------|--------------------|
| | KIMBERLY BRUNS |

APPROVED AS TO FORM:

DOLORES D. MENENDEZ CITY ATTORNEY res/SCP-Johnson Engineering

STAFFING and COST PROPOSAL No. JE-08

to

AGREEMENT for MISCELLANEOUS PROFFESSIONAL ENGINEERING SERVICES

between

The City of Cape Coral

and

Johnson Engineering, Inc.

THIS DOCUMENT, executed this _____ day of _____, 20__, is STAFFING COST PROPOSAL (SCP) No. JE-08, to Contract CON-UT15-21/KR-N, Miscellaneous Professional Engineering Services executed between the **City of Cape Coral** (CITY) and **Johnson Engineering, Inc.** on August 31, 2016, (hereafter called "Agreement") shall be in effect for the time noted in this agreement, or as mutually agreeable to meet the requirements of the Staffing Cost Proposal.

A. GENERAL

The CITY and Johnson Engineering (CONSULTANT) have entered into an Agreement to provide professional engineering services in connection with Miscellaneous Professional Engineering Services. The Agreement provides for services to be performed on the basis of a Staffing and Cost Proposal (SCP) to be prepared by the CONSULTANT. The SCP will be executed once CONSULTANT and CITY have a fully signed Staffing Cost Proposal and a Purchase Order has been provided to the Firm by the CITY for services described in the Staffing Cost Proposal. The CITY's expectation is for work under this Staffing Cost Proposal to be self performed by the CONSULTANT firm, whenever possible.

B. DESCRIPTION OF ASSIGNMENT:

Cape Coral Southeast Quadrant Canals Dredging Management Master Plan (DMMP) Update

C. PROJECT OVERVIEW:

The CITY has requested CONSULTANT to perform an update to the Cape Coral Southeast (SE) Quadrant Canals Dredging Management Master Plan (DMMP) (February 2012). Such canals are comprised of a saltwater canal system located in Southeast Cape Coral (Attachment - SE Quadrant Canals), excluding the rim canal. The focus of this effort is to update the DMMP with a characterization of existing conditions of the canal systems, identification of level of service to define areas requiring dredging, prioritization of projects and long-term management plan for south-east Cape Coral.

D. SCOPE OF SERVICES

TASK 1: CANAL SOUNDING INVESTIGATION

The CONSULTANT will collect hydrographic sounding data from the above CITY-selected canals located in the south-east Cape Coral Canal System. Approximately 93 miles of canals within 55 different named canals are anticipated for sounding. The collected sounding data will be related to water depths at mean low water and North American Vertical Datum (NAVD88). The results of the collected data shall be summarized in tabular format. Sounding depths shall be recorded along the centerline, right centerline (approximately 20-30 feet from shoreline), and left of centerline (approximately 20-30 feet from the shoreline).

Water (tide) levels shall be determined by using existing published benchmarks. The horizontal coordinates shall be determined from field GPS and aerial photography. Horizontal coordinates shall be referenced to the Florida State Plane Coordinate System and vertical datum (elevations) shall be referenced to the North American Vertical Datum of 1988 (NAVD88). Cross-sections shall be created indicating measured water depths referenced to NAVD and mean low water (MLW). Standard survey quality depth-sounding equipment will be used to recover water depth data.

Depending upon the results of the sounding investigation, CITY staff may at a later date, select Units for more detailed data collection, hydrographic/bathymetric survey, and sediment sampling as required for specific canal dredging cost estimates. Such additional work will require written authorization between both parties.

TASK 2: DATA COLLECTION AND REVIEW

The CONSULTANT will collect and review existing data relevant to the project area south-east Cape Coral Canal System. Data collected will include:

- Geographic information system (GIS) data
- Aerial photography
- Citizen complaint records

TASK 3: LEVEL OF SERVICE EVALUATION

The City previously developed Level of Service (LOS) criteria, which is identified in the Cities Dredging Management Master Plan dated February 2012. This Level of Service is found in Table 3-1 in Section 3 of the Master Plan.

Based on the results of Tasks 1-3 the City is looking to identify those areas where the existing system does not provide an acceptable Level of Service. The Level of Service criteria at a minimum will be based upon the data collected from the canal sounding and hydrographic/bathymetric survey obtained in this request and citizen complaints provided by the City from the City's 311 Call Center.

TASK 4: HYDROGRAPHIC RESULTS

The CONSULTANT will prepare detailed hydrographic exhibits for each of the 55 canals with consideration of the following:

- Quantity of material
- Volume of material to be dredged (CY)
- Citizen complaint areas
- Colored contour maps over laid of recent aerial image

TASK 5 REPORT AND DOCUMENTATION

The CONSULTANT will prepare the final report presenting the findings and recommendations for the Canal Dredging Work Plan. The final report will include the following items:

- · GIS Map of Surveyed locations; and
- Deliverables from work Tasks above in print and electronic formats.

E. PROJECT TASKS (DELIVERABLES BY TASK)

Task 1: Canal Sounding Investigation

- Table of Survey data collected in 55 named canals
 - a. Survey date
 - b. Survey time
 - c. Canal name
 - d. Latitude
 - e. Longitude
 - f. Water depth (ft)
 - g. MWL elevation = 0.71 feet (NAVD88) MHW elevation = 0.12 feet (NAVD88)

The mean low water (MLW) and mean high water (MHW) elevations were provided by the Florida Department of Environmental Protection on ten tide interpolation points along the eastern limits of the project. An approval was received that stated an elevation based on the mean of the ten referenced points is an acceptable method of determining a reference elevation within the limits of this project.

- h. Canal bottom (ft-NAVD88)
- i. Canal bottom below (ft-MLW)

Task 2: Data Collection and Review

· List of documents referenced

Task 3: Level of Service Evaluation

 A table of canal names with water depth less than -5.0 MLW ranked using the LOS criteria previously established in the February 2012 dredging master plan document. • Design of level of service depth score (grade A-D)

Task 4: Hydrographic Results

- Hydrographic Exhibit for each canal
- Cut/Fill, quantity table for each canal

Task 5: Report and Documentation

- Final Report
- GIS Map of Surveyed location
- Deliverables from work tasks above in print and electronic format

F. PROPOSED STAFFING

The following staff is proposed for performing the services authorized in this SCP. These position titles and fees should match those shown in the Master Agreement for Miscellaneous Professional Services.

| Labor Classification | General Assignment | | | | | | |
|----------------------|--|--|--|--|--|--|--|
| Project Manager | Task 1, Task 2, Task 3, Task 4, Task 5 | | | | | | |
| Sr. Land Surveyor | Task 1, Task 2, Task 3, Task 4, Task 5 | | | | | | |
| Survey Crew Chief | Task 1 | | | | | | |
| Survey Technician | Task 1 | | | | | | |
| Clerical Support | Task 1, Task 2, Task 3, Task 4, Task 5 | | | | | | |
| CAD Technician 2 | Task 1, Task 2, Task 3, Task 4, Task 5 | | | | | | |

Proposed Sub-Consultants - None.

G. TIMELINES BY TASK

| Project Completion | = 60 days |
|--------------------------------------|-----------|
| Task 5: Report and Documentation | = 10 days |
| Task 4: Hydrographic Results | = 10 days |
| Task 3: Level of Service Evaluation | = 5 days |
| Task 2: Data Collection and Review | = 5 days |
| Task 1: Canal Sounding Investigation | = 30 days |

H. CITY RESPONSIBILITIES

The CITY will designate Dave Kenney, as the CITY's project manager/representative and primary contact for the CONSULTANT. The CONSULTANT will rely on the CITY'S designated project manager/representative for instructions and approval of CONSULTANT's services.

I. COMPENSATION

Based on the scope of services and the schedule outlined above, CONSULTANT has prepared a detailed labor disaggregation for the proposed tasks. Summarized in an Attachment A – Cost Proposal (hereby attached and incorporated herein) which is a summary spreadsheet that details the man-hours for each task for *Johnson Engineering* personnel titles as shown in the contract and sub-consultants service fees will be included. All anticipated other direct expenses will be outlined in spreadsheet. Sub-consultant fees will also be shown on the spreadsheet and additional attachment on Sub-Consultant's Letterhead as an attachment to the Staffing Cost Proposal. No Mark-up on Sub-consultant fees will be accepted. All fees will be shown as "Not to Exceed".

No LUMP SUM fees will be accepted.

For the professional services as set forth in this SCP, the CITY shall pay the CONSULTANT a not-to-exceed fee in the amount of Two Hundred Thousand Dollars and 00 Cents (\$200,000.00) as displayed in the attached price proposal. Payment is estimated to be distributed to the CONSULTANT in monthly progress payments based on work performed during each monthly billing period. Certain assumptions have been made in developing the fees for services. To the extent possible, all fees will be shown in the proposal. If changes to the work should result in changes in the level of effort presented in this proposal the scope of services and fee budget will be revised by mutual agreement and will follow CITY guidelines for authorization and approval.

All Other Direct Cost (ODC):

All other direct costs (Examples Include: Travel, Hotel, Mileage, Meals, Copies, Equipment Rental, etc.) will be shown at actual cost as shown in Master Agreement for miscellaneous professional services. No mark up on Sub-Consultant Services or Other Direct Cost Expenses will be accepted.

Appropriations

Pursuant to FL Statute § 166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Contract is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City, if the City Council reduces or eliminates appropriations.

(END OF SECTION)

| IN WITNESS WHEREOF, the parties hereto have No to be effective as of this day | eve executed STAFFING COST PROPOSAL of of 2019. |
|---|--|
| ATTEST: | FIRM NAME: JOHNSON ENGINEERING, INC. |
| Signature: Cen Col | Signature: Manuell |
| Typed Name: Kevin RisCassi, PSM | Typed Name: Matthew M. Howard, PSM, Director of Surveying Services |
| Date: 4-16-19 | Date: 4-16-19 |
| | |
| ATTEST: | CITY OF CAPE CORAL |
| | or everaging attention to the transfer of the contragger of |
| Ву: | Signature: |
| Kimberly Bruns, CMC Interim City Clerk | A. John Szerlag, City Manager (if over \$25,000) Wanda Roop, Procurement Manager or Victoria Bateman, Financial Services Director (if under \$25,000) |
| Date: | Date: |
| LEGAL REVIEW: | |
| By: Dolores Menendez, Esq. | |
| City Attorney | |
| Date: | |



| | Attachment 'A' - Fina | ncial Mana | age | ment Pla | n | | | | |
|-----------------------------|--|--------------------------|--------------------|-----------|----------------------|---|----------------------------|----------------------|-----------------|
| | | | | | | | | | |
| Project: Project Number: | Miscellaneous Professional Engineering Services CON-UT15-21/KR-N (JE-08) | | | | | | | | |
| Project Manager: | Kevin RisCassi | | | | | | | | No. of the last |
| Date: | 3/7/2019 | | SEN. | | Review Control | | | | TATAL PAR |
| | | | _ | | | CCTIMAT | EDLABOD | | |
| TASK OUTLINE | | TOTALS | ESTIMATED LABOR | | | | | | |
| | | | Project Manager | | Sr. Land Surveyor | Survey Crew Chief | Survey Technician | Clerical Support | CAD Tech 2 |
| 1 | Dredging Management Master Plan | \$ 200,000.00 | Г | 200 | 40 | 436 | 436 | 48 | 584 |
| 1.1 | Canal Sounding Investigation | \$ 126,590.00 | 198 | 65 | 8 | 436 | 436 | 8 | 20 |
| 1.2 | Data Collection and Review | \$ 6,330.00 | 10000 | 19 | 8 | | | 8 | 20 |
| 1.3 | Level of Service Evaluation | \$ 8,970.00 | | 27 | 8 | | | 8 | 38 |
| 1.4 | Hydrographic Results | \$ 48,630.00 | | 65 | 8 | | | 16 | 456 |
| 1.5 | Report and Documentation | \$ 9,480.00 | 8425 | 24 | 8 | 5 17 S. S. S. S. | G. S. H. Levis | 8 | 50 |
| | TOTAL LABOR HOURS | 1,744.0 | | 200 | 40 | 436 | 436 | 48 | 584 |
| | LABOR BILLING RATE | 1 | \$ | 150.00 | \$ 170.00 | \$ 160.00 | \$ 100.00 | | |
| | TOTAL LABOR COST | \$ 200,000.00 | \$ | 30,000.00 | \$ 6,800.00 | \$ 69,760.00 | \$ 43,600.00 | \$ 3,120.00 | \$ 46,720.00 |
| Materials | None | COST | Т | | | | the last pain to be again. | | |
| | | 0031 | 1 | | | | | | |
| | | | 1 | | | | | | |
| | TOTAL MATERIAL COST | | 1 | | | | | | |
| | | s - | 1 | | | | | | |
| Subcontractors | | | _ | | Committee Committee | | | emples Agents (See) | |
| 3 | None | COST | - | | | | | | |
| | | | ı | | | | | | |
| | | | 1 | | | | | | |
| | | | 1 | | | | | | |
| (| TOTAL SUBCONTRACTOR COST | | 1 | | | | | | |
| | TOTAL SUBCONTRACTOR COST | ls - | 1 | | | | | | |
| Reimbursables | | Terror of the content of | _ | | | | | | |
| | | COST | | | | *************************************** | | | |
| Miscellaneous | TOTAL LABOR HOURS | 1744 | Т | | | | | | |
| | TOTAL LABOR COST | \$ 200,000.00 | 1 | | | | | | |
| | TOTAL MATERIAL COST | \$ - | 1 | | | | | | |
| | 1.01.2.10.12.10.2.001 | \$ 200,000.00 | 1 | | | | | | |
| ı. | | | _ | | | | | | |

HYDROGRAPHIC SURVEY SOUTH BRIDGE AREA WATERWAYS

SECTION 32, TOWNSHIP 40 SOUTH, RANGE 23 EAST SECTIONS 5 & 6, TOWNSHIP 41 SOUTH, RANGE 23 EAST CHARLOTTE COUNTY, FLORIDA

VICINITY MAP

1. DATE OF LAST FIELDWORK: SEPTEMBER 21, 2018.

NOTES:

- COORDINATES AND HORIZONTAL DATA SHOWN HEREON ARE IN FEET AND ARE PROJECTED ONTO THE FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NORTH AMERICAN DATUM OF 1983 (NAD83), 2011 ADJUSTMENT.
- VERTICAL DATA (ELEVATIONS) SHOWN HEREON ARE IN FEET AND ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88). THE REFERENCE BENCHMARK IS N.G.S. DESIGNATION L 636, PID DJ3468, WITH A PUBLISHED ELEVATION OF 4.44 FEET(NAVD88).
- ELEVATION OF MEAN LOW WATER LINE AS REFERENCED HEREON IS BASED ON FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AGENCY TIDE INTERPOLATION POINT, HAVING A POINT IDENTIFICATION NUMBER OF 216 AND A PUBLISHED MEAN LOW WATER ELEVATION (MLW) OF -1.17' (NAVD88).
- 5. SUBSTANTIAL VISIBLE IMPROVEMENTS OTHER THAN THOSE SHOWN, NOT LOCATED. UNDERGROUND IMPROVEMENTS AND/OR ENCROACHMENTS WERE NOT LOCATED AS A PART OF THIS SURVEY
- THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH. A



TIDE INTERPOLATION POINT 216 SHORE CHANNEL SHEETS 8-12 SHORE/RIVER -INTERSECTION SHEETS 9 & 15 BENCHMARK 3 RIVER CHANNEL BENCHMARK 2 SHEETS 13-17 KLIPSIE CANAL BENCHMARK 1 SHEETS 4-5 ORCHID CANAL COOPER CANAL SHEETS 6-7 SHEET 2 LANDINGS CANAL SHEET 3

SHEET MAP

TITLE COMMITMENT AND/OR ABSTRACT OF TITLE WAS NOT PROVIDED TO THE SURVEYOR.

- THIS SURVEY DOES NOT MAKE ANY REPRESENTATION AS TO ZONING OR DEVELOPMENT RESTRICTIONS ON THE SUBJECT
- NO ENVIRONMENTAL ASSESSMENT OR AUDIT WAS PERFORMED ON THE SURVEYED PARCEL BY THIS FIRM. THIS SURVEY WAS PERFORMED FOR THE PURPOSE SHOWN HEREON AND DOES NOT MAKE ANY REPRESENTATION AS TO THE DELINEATION OF ANY JURISDICTIONAL LINES EXCEPT AS SHOWN OR NOTED. THIS SURVEY DOES NOT PURPORT TO DELINEATE THE REGULATORY JURISDICTION OF ANY FEDERAL, STATE OR LOCAL AGENCY.
- THIS SURVEY DOES NOT DETERMINE PROPERTY OWNERSHIP OR PROPERTY RIGHTS. THIS SURVEY LOCATED THE BOUNDARY IN ACCORDANCE WITH AND IN RELATION TO THE LEGAL DESCRIPTION
- ADDITIONS OR DELETIONS TO THIS SURVEY MAP OR REPORT BY OTHER THAN THE SIGNING PARTY IS PROHIBITED
- LAND BOUNDARY INFORMATION SYSTEM (LABINS)
 INTERACTIVE WEB SITE AND IS DATED 2014, IT IS INCLUDED FOR ORIENTATION PURPOSES ONLY.

WITHOUT THE WRITTEN CONSENT OF THE SIGNING PARTY.

11. AERIAL PHOTOGRAPHY SHOWN HEREON WAS OBTAIN FROM

THIS SURVEY IS ONLY FOR THE BENEFIT OF:

CHARLOTTE COUNTY

DATE

NO OTHER PERSON OR ENTITY MAY RELY ON THIS SURVEY.

I HEREBY CERTIFY, TO THE BEST OF MY KNOT EDGE AND BELIEF, THAT THIS SURVEY WAS PREPARE IN ACCORDANCE WITH THE APPLICABLE PROMISING. CHAPTER 153-117.05, FLORIDA ADMINISTRATIVE CODE, PU SUANT TO 0 APTER 472, 140910 APTER 472. FLORIDA STATUTES

FIRM L.B. 642) EYOR AND MAPPER

SIGNED NOT VAME WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. THIS CERTIFICATION IS TO THE DATE OF LAST FIELD WORK AS SHOWN IN NOTE 1 AND NOT THE SIGNATURE DATE.

ENGINEERING

SOUTH BRIDGE AREA WATERWAYS

FILE NO. 05-41-2

COVER

SHEET NUMBER 1 OF 17

LANDINGS CANAI 818.96 SHEET 3 KLISPIE CANAL 596.42 SHEETS 4 - 5 ORCHID CANAL 1.949.33 SHEETS 6 - 7 SHORE CHANNEL 4 318 59 SHEETS 8 - 12 RIVER CHANNEL 1,192,48 SHEETS 13 - 17

OVERALL CUT VOLUME TABLE (CUBIC YARDS)

870.32

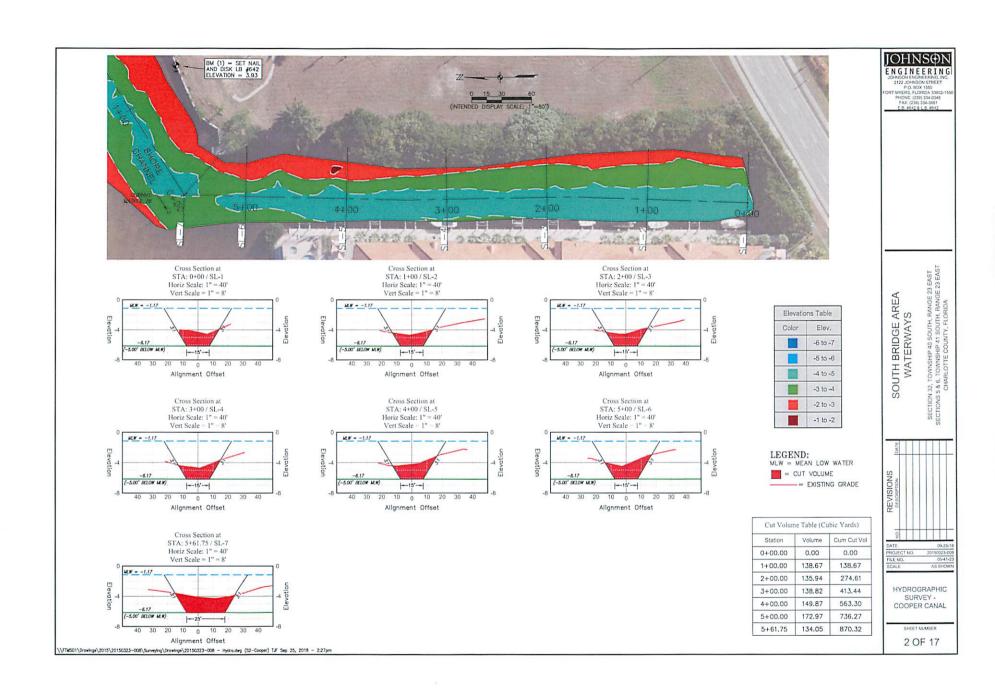
SHEET 2

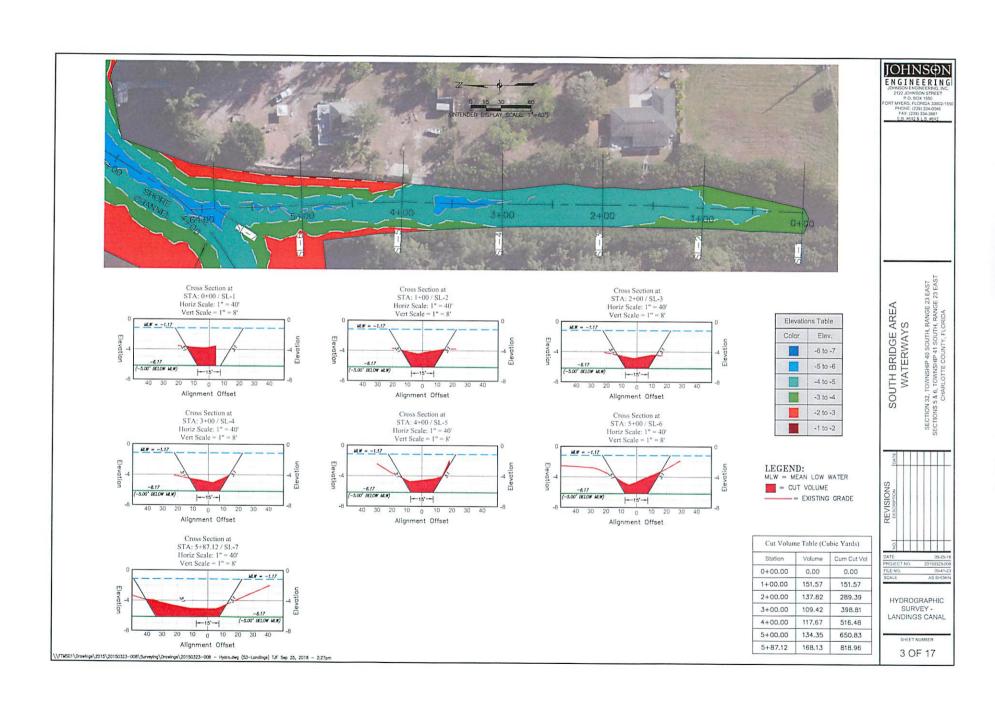
COOPER CANAL

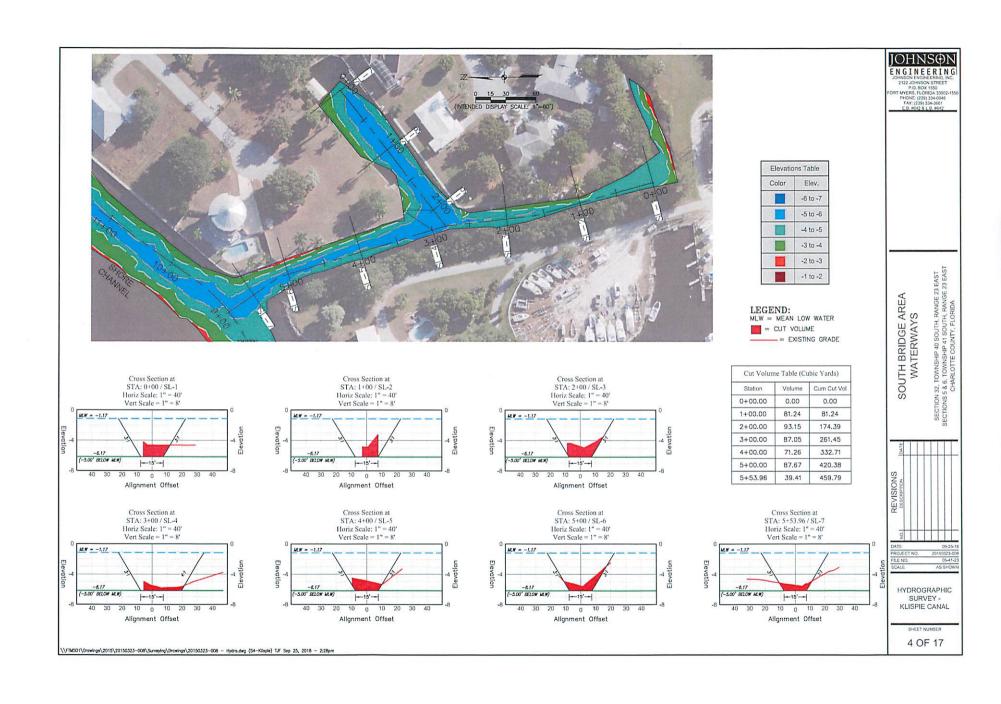
SHORE/RIVER INTERSECTION 580.03 SHEETS 9 & 15 TOTAL CUT VOLUME (±) 10.326.13 SHEETS 2 - 17

\FTMS01\Drawings\2015\20150323-008\Surveying\Drawings\20150323-008 - Hydro.dwg (S1-Cover) TJF Sep 25, 2018 - 2:27pm

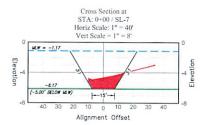
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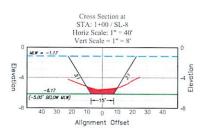


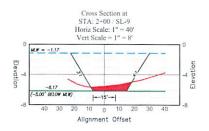














| Elevation | ns Table |
|-----------|----------|
| Color | Elev. |
| | -6 to -7 |
| | -5 to -6 |
| | -4 to -5 |
| | -3 to -4 |
| | -2 to -3 |
| | -1 to -2 |

LEGEND:
MLW = MEAN LOW WATER

= CUT VOLUME

= EXISTING GRADE

| Cut Volun | ne Table (Cu | abic Yards) |
|-----------|--------------|-------------|
| Station | Volume | Cum Cut Vo |
| 0+00.00 | 0.00 | 0.00 |
| 1+00.00 | 79.17 | 79.17 |
| 2+00.00 | 57.47 | 136.63 |

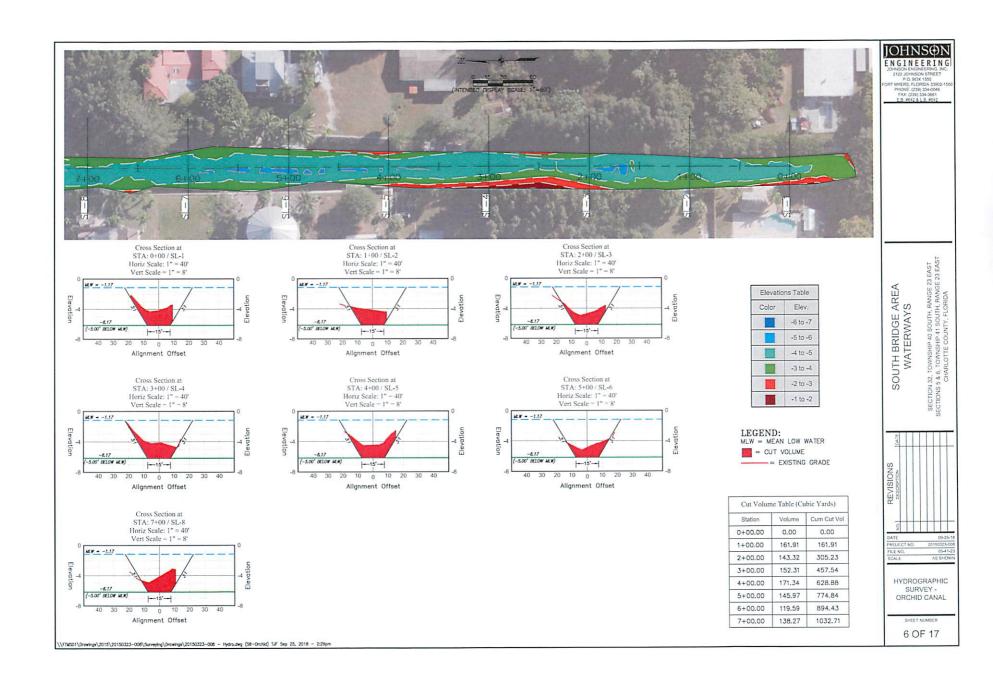
JOHNSON ENGINEERING JOHNSON ENGINEERING, INC.

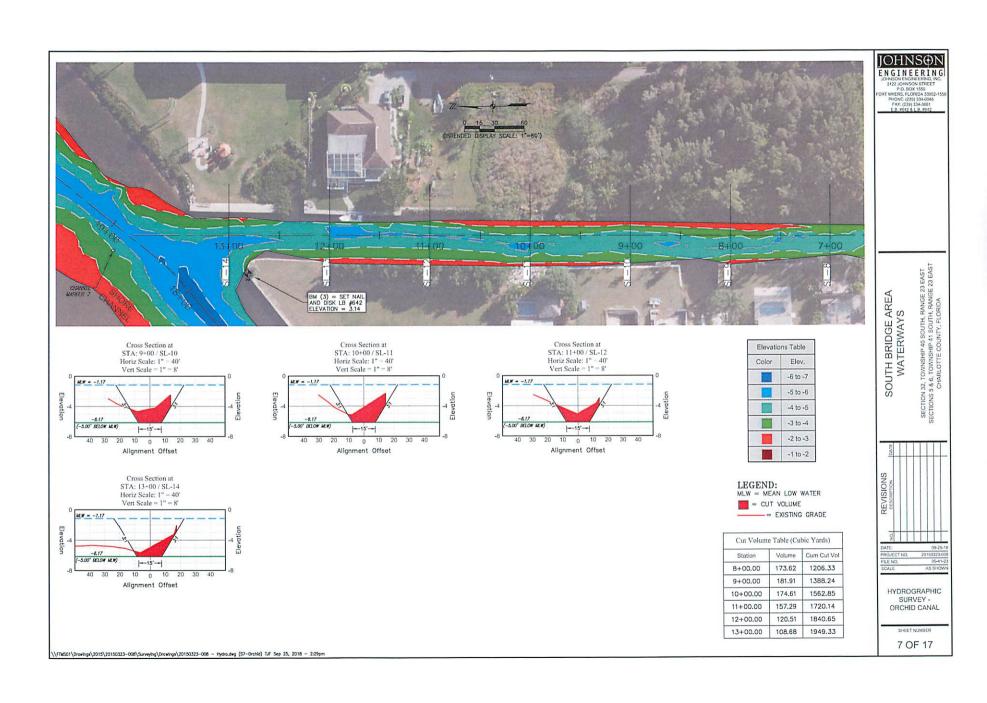
JOHNSON ENGINEERING, INC. 2122 JOHNSON STREET P.O. BOX 1550 FORT MYERS, FLORIDA 33802-1550 PHONE: (239) 334-0046 FAX: (239) 334-3661 FB 8402-21 B 8612

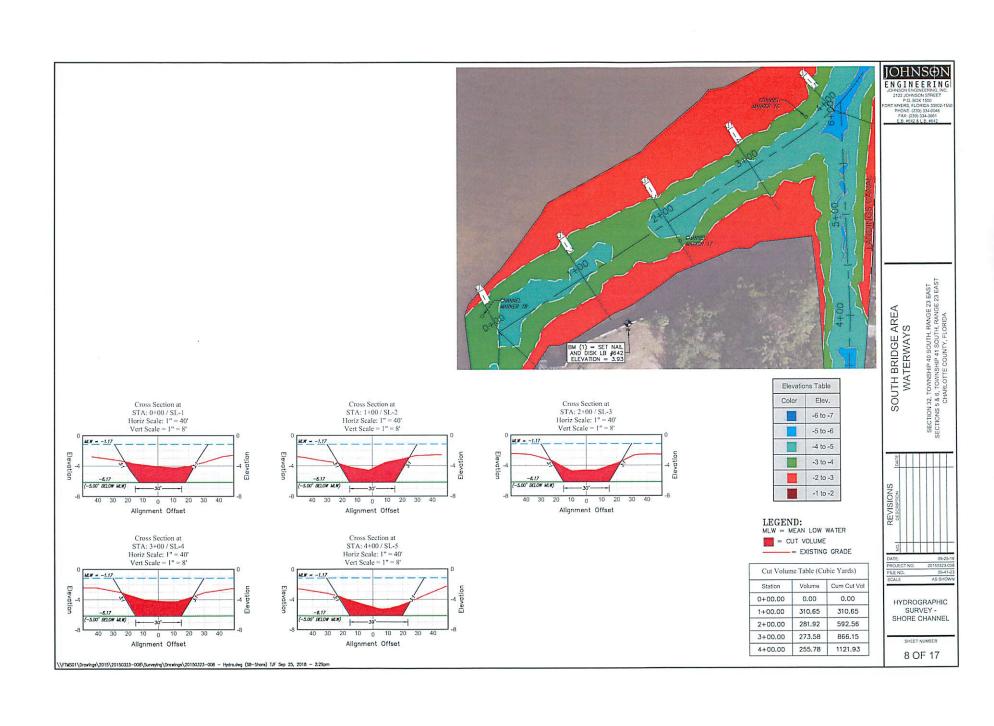
SOUTH BRIDGE AREA WATERWAYS

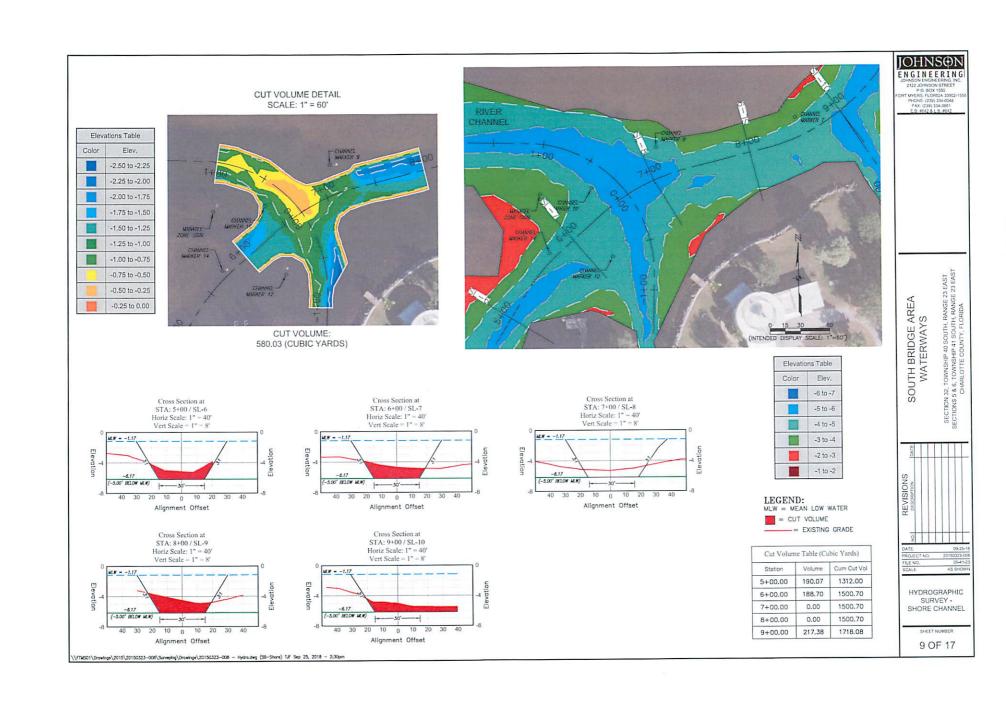
HYDROGRAPHIC SURVEY -KLISPIE CANAL

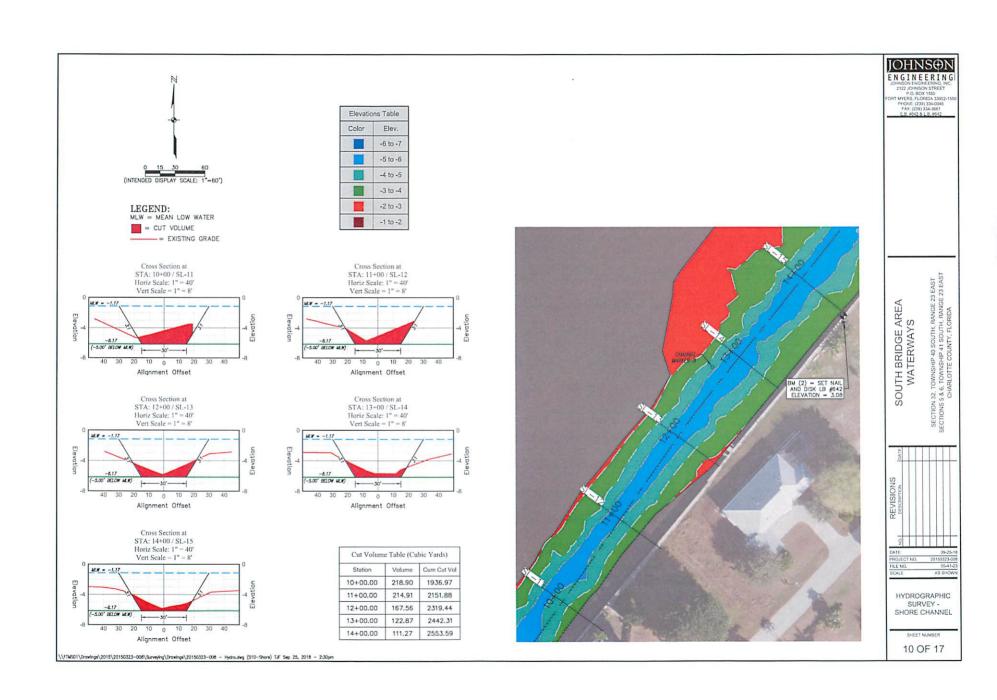
5 OF 17

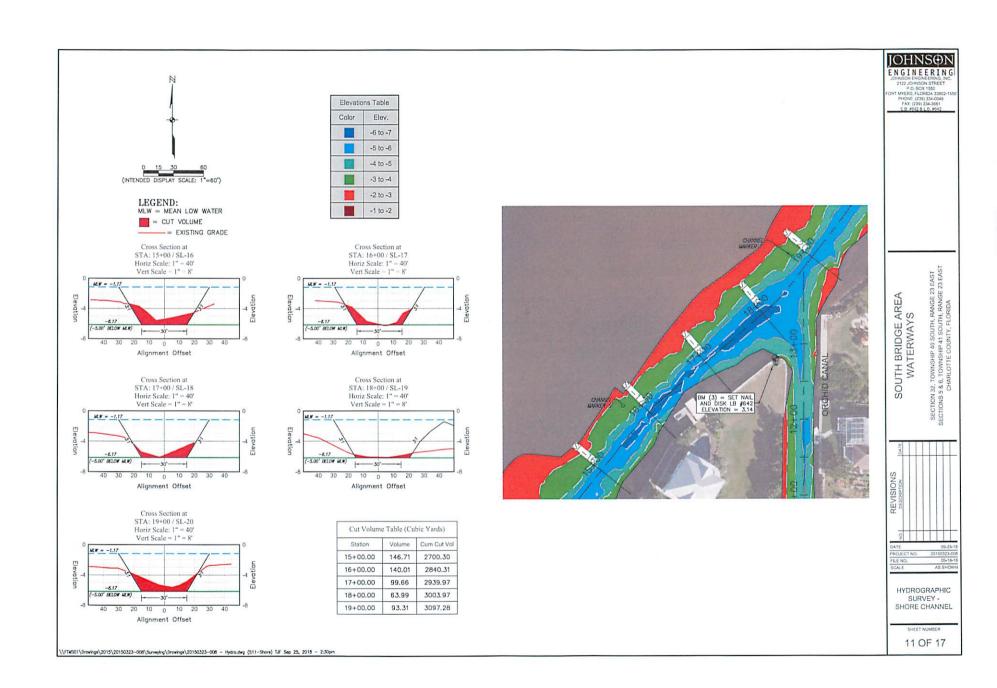


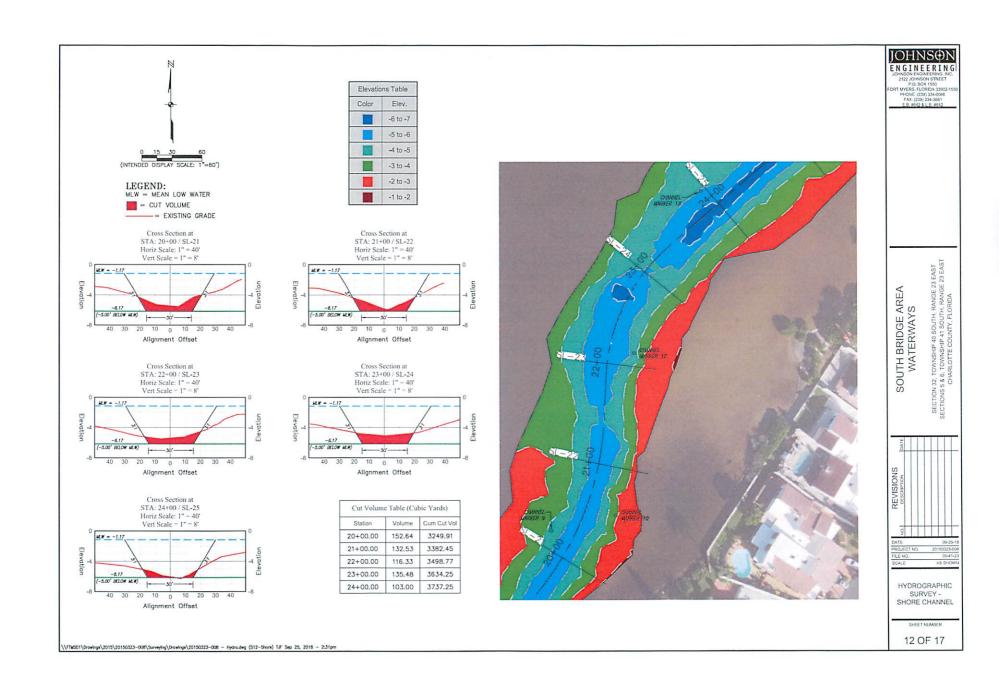


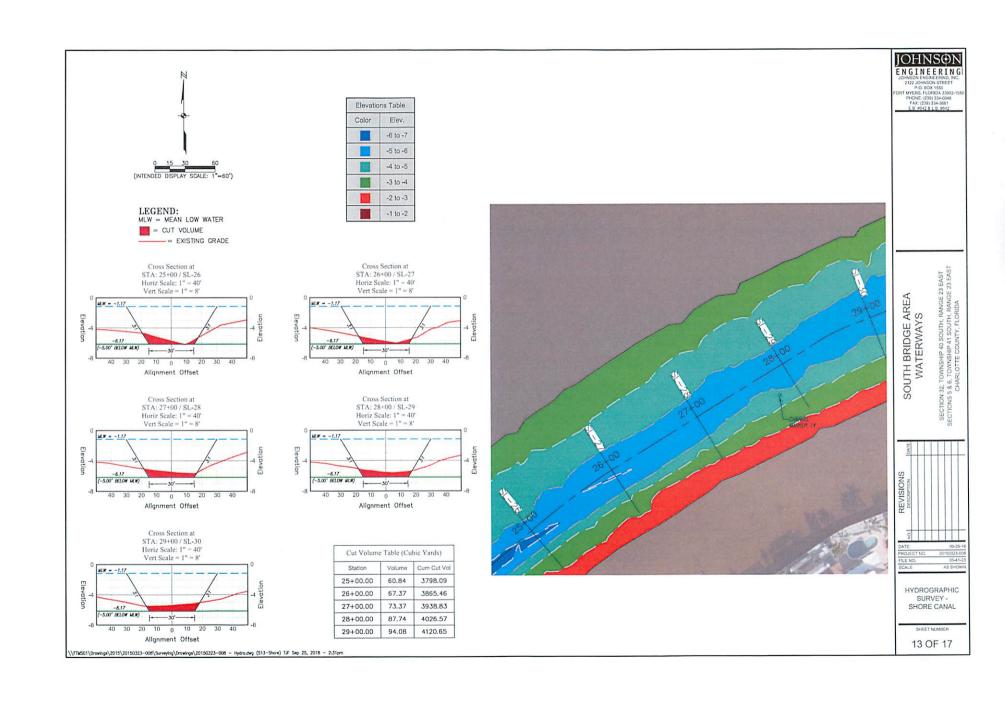


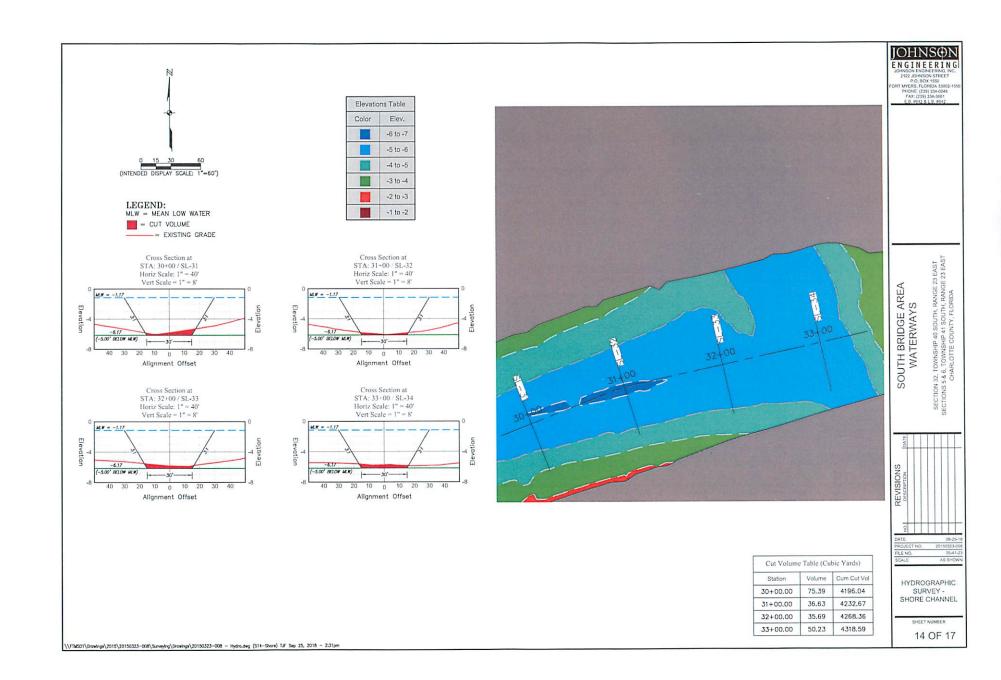


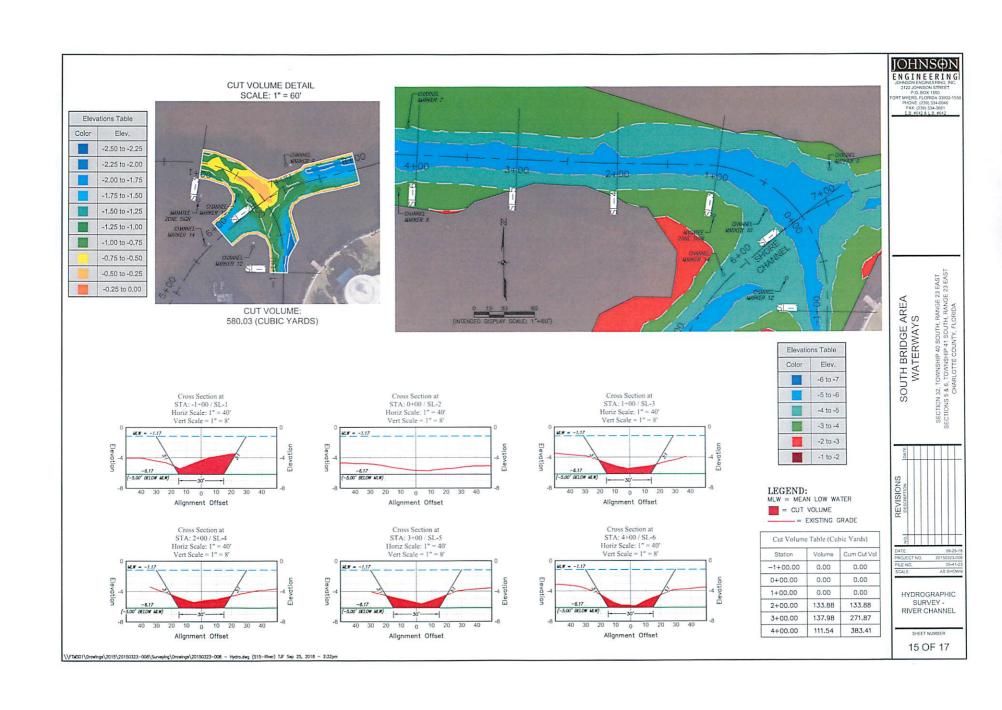


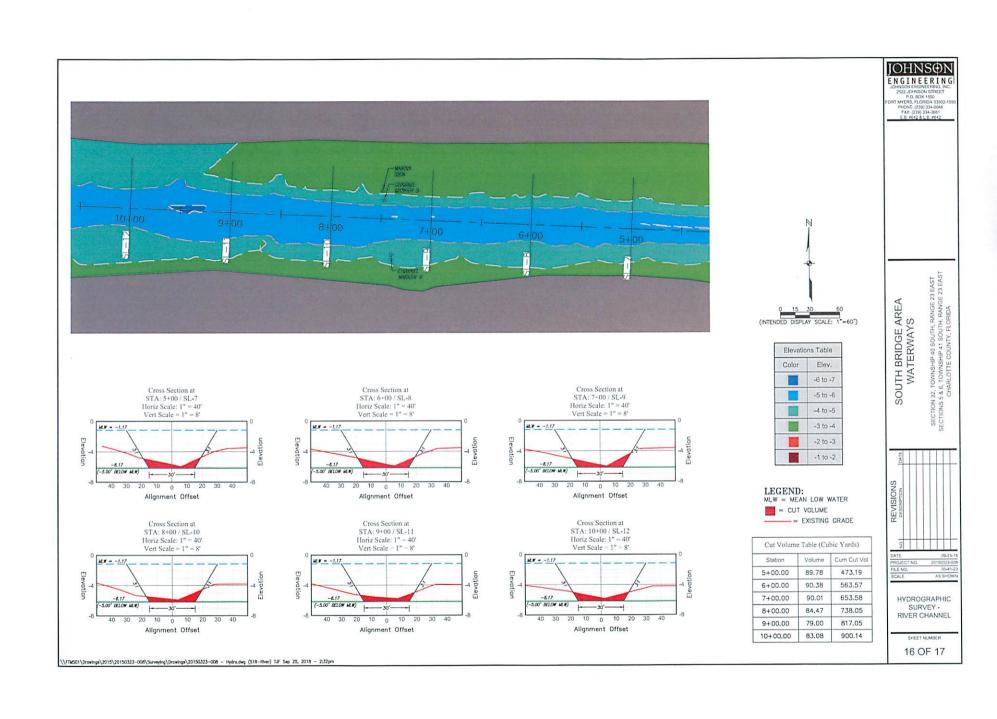


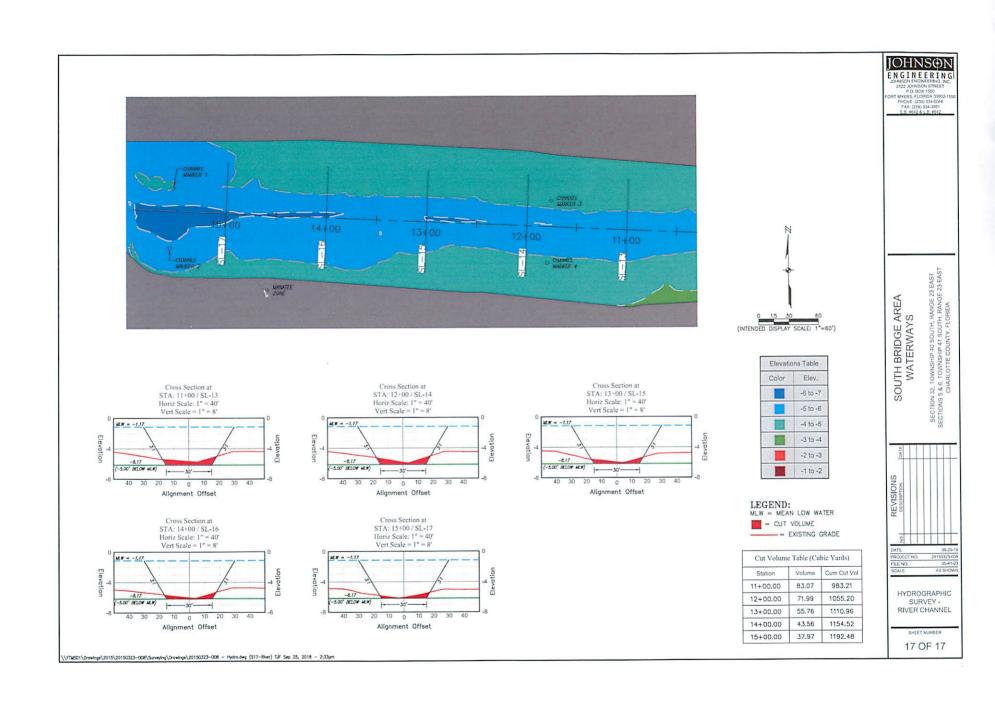


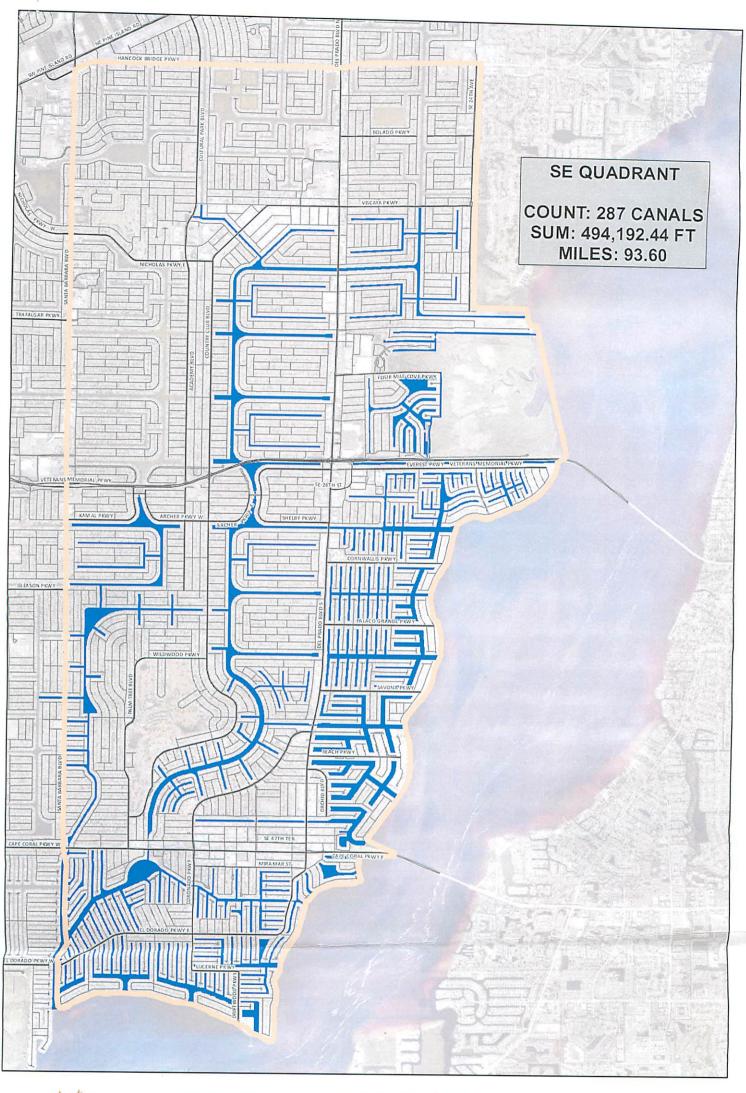














SALT WATER CANALS

SE QUADRANT

This map is not a survey and should not be used in place of a survey. While every effor is made to accumitely depic it the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held false for incidents that may result due to improper use of the information presented on this map. This map is not intended by construction, navigation or engineering calculations, Please contact the Public Works Department Planning and Permitting Division with any questions regarding

Item Number: B.(3)

Meeting Date: 5/13/2019

Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 82-19 A resolution recognizing the importance of breastfeeding in accordance with Florida state laws and statutes. (Brought forward by Councilmember Cosden)

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:

A resolution recognizing the importance of breastfeeding in accordance with Florida state laws and statutes.

LEGAL REVIEW:

Dolores D. Menendez, City Attorney

EXHIBITS:

Resolution 82-19

Presentation

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description Type

Resolution 82-19
 Resolution

Presentation Backup Material

RESOLUTION 82 - 19

A RESOLUTION OF THE CITY OF CAPE CORAL RECOGNIZING THE IMPORTANCE OF BREASTFEEDING IN ACCORDANCE WITH FLORIDA STATE LAWS AND STATUTES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and American Academy of Family Physicians, the Academy of Breastfeeding Medicine, and the World Health Organization recommend that babies be exclusively breastfed for the first six months of an infant's life and continue to be breastfed until 12 months of age or longer as mutually desired; and

WHEREAS, in January 2011, the United States Surgeon General announced a "Call to Action to Support Breastfeeding" that identifies barriers to optimal breastfeeding in health care practices, employment, communities, research, public health infrastructure, and social networks, and recommended methods in which families, communities, employers, and health care professionals could help eliminate those barriers to improve breastfeeding rates and increase support for breastfeeding; and

WHEREAS, the breastfeeding of a baby is an important and basic act of nurture which must be encouraged in the interests of maternal and child health and family values; and

WHEREAS, a mother may breastfeed her baby in any location, public or private, where the mother is otherwise authorized to be; and

WHEREAS, the health benefits to breastfed children and their mothers result in lower health care costs for employers, less employee time off to care for sick children, and higher productivity and employee loyalty; and

WHEREAS, mothers who breastfeed have a decreased risk of breast, uterine and ovarian cancer, postpartum depression, and osteoporosis later in life; and

WHEREAS, the nutrients exclusive to human milk are vital to the growth, development, and maintenance of the human brain and cannot be manufactured; and

WHEREAS, employers, employees, and society benefit by supporting a mother's decision to breastfeed and by helping to reduce obstacles to initiating and continuing breastfeeding.

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

Section 1. The City of Cape Coral does hereby recognize the unique health, economic, and societal benefits that breastfeeding provides to babies, mothers, families, and the community and affirms that barriers to initiation and continuation of breastfeeding should be removed.

Section 2. The City of Cape Coral encourages employers to strongly support and encourage breastfeeding by striving to provide accommodations of appropriate space and time to allow employees to express their milk.

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

| ADOPTED BY THE CITY CO | UNCIL OF THE CITY (| OF CAPE CORAL AT IT | S REGULAF |
|------------------------|---------------------|---------------------|-----------|
| COUNCIL SESSION THIS | DAY OF | , 2019. | |
| | | | |
| | | | |
| | ĪOF | E COVIELLO, MAYOR | |

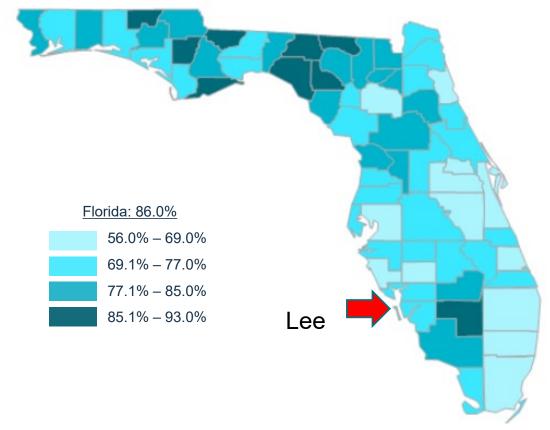
| VOTE OF MATOR AND COUNCILMEN | DEKS: | |
|---|--|-----------------------|
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN | |
| ATTESTED TO AND FILED IN MY OFF 2019. | FICE THIS | DAY OF |
| | KIMBERL INTERIM | Y BRUNS CITY CLERK |
| 1 DDD 0177D 10 TO 70D11 | | |
| APPROVED AS TO FORM: | | |
| DOLORES D. MENENDEZ CITY ATTORNEY res/Breastfeeding | _ | |



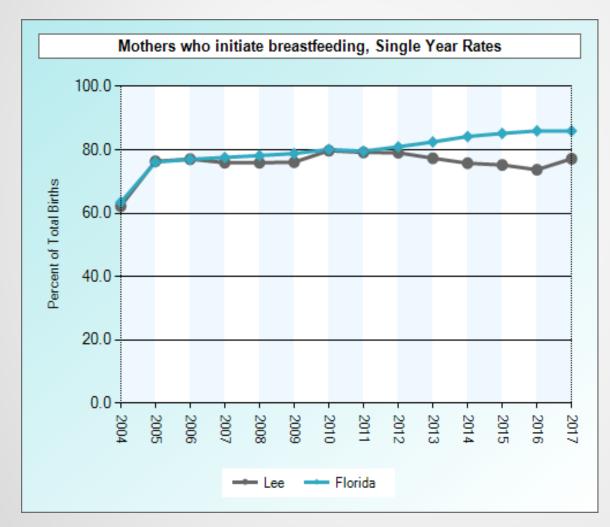
BREASTFEEDING COALITION

OF LEE COUNTY

Florida Breastfeeding Initiation by County, 2017



Breastfeeding initiation Rates: Lee County



| | Mothers who initiate breastfeeding, Single Year Rates | | | | | | | |
|------|---|-------|---------|-------|---------|---------|---------|---------|
| | Lee | Lee | Lee | Lee | Florida | Florida | Florida | Florida |
| | | | | MOV | | | | MOV |
| Year | Count | Denom | Percent | (+/-) | Count | Denom | Percent | (+/-) |
| 2017 | 5,156 | 6,679 | 77.2 | 1.0 | 192,199 | 223,579 | 86.0 | 0.1 |
| 2016 | 4,977 | 6,751 | 73.7 | 1.0 | 193,508 | 225,018 | 86.0 | 0.1 |
| 2015 | 5,098 | 6,776 | 75.2 | 1.0 | 191,057 | 224,273 | 85.2 | 0.1 |
| 2014 | 4,814 | 6,352 | 75.8 | 1.1 | 185,186 | 219,905 | 84.2 | 0.2 |
| 2013 | 4,950 | 6,399 | 77.4 | 1.0 | 177,535 | 215,194 | 82.5 | 0.2 |
| 2012 | 5,063 | 6,401 | 79.1 | 1.0 | 172,427 | 212,954 | 81.0 | 0.2 |
| 2011 | 4,966 | 6,270 | 79.2 | 1.0 | 169,717 | 213,237 | 79.6 | 0.2 |
| 2010 | 5,037 | 6,316 | 79.7 | 1.0 | 171,905 | 214,519 | 80.1 | 0.2 |

Source: http://www.flhealthcharts.com/charts/DataViewer/BirthViewer/BirthViewer.aspx?cid=0637

Why Breastfeeding?

- Every major health organization in the world supports human milk feeding as the preferred feeding type for infants
- As a country we do poorly
- Human milk feeding has primary, secondary, and tertiary health benefits for mother and baby
- HUGE potential cost savings

\$3.6 BILLION

THE ECONOMIC BENEFITS OF BREASTFEEDING: A REVIEW AND ANALYSIS

Weimer, Jon P.

Wellilel, Joli

Abstract: A minimum of \$3.6 billion would be saved if breastfeeding were increased from current levels (64 percent in-hospital, 29 percent at 6 months) to those recommended by the U.S. Surgeon General (75 and 50 percent). This figure is likely an underestimation of the total savings because it represents cost savings from the treatment of only three childhood illnesses: otitis media, gastroenteritis, and necrotizing enterocolitis. This report reviews breastfeeding trends and previous studies that assessed the economic benefits of breastfeeding.

URI: http://purl.umn.edu/33813

What the law says about breastfeeding and work

O The federal Break Time for Nursing Mothers law requires employers covered by the Fair Labor Standards Act (FLSA) to provide basic accommodations for breastfeeding mothers at work. These accommodations include time for women to express milk and a private space that is not a bathroom each time they need to pump. Learn more about what is required of employers and what employees need to know.

Retrieved 5/1/2019 from: <u>https://www.womenshealth.gov/supporting-nursing-moms-work/what-law-says-about-breastfeeding-and-work</u>

Item Number: B.(4)

Meeting Date: 5/13/2019

Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 89-19 Approve the piggyback of Lee County Solicitation RFP180313KLC Athletic Turf Maintenance and Reconstruction with JSM Services, Inc., for the purchase and installation of athletic TifTuf Bermuda sod for the Multi Sports Complex and Pelican Soccer Complex at the estimated cost of \$87,490 not to exceed budgetary limits in accordance with the City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) Purchases of Goods or Services from Contracts Awarded by other Governmental or Not-for-Profit Entities by Competitive Bid or Request for Proposal; and authorize the City Manager or Designee to execute the purchase order; Department: Parks & Recreation; Estimated Dollar Value: \$87,490; (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? Yes

If Yes, Priority Goals Supported are listed below.

If No, will it harm the intent or success of the Strategic Plan?

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

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- 1. The soccer fields at Cape Coral Multi Sports Compex and Pelican Soccer Complex have large dead areas on eight (8) soccer fields combined. These dead and worn out areas on the playing surface create an unsafe and unsightly condition.
- 2. The scope of this project would include removal of damaged areas, grading, and installing new Bermuda sod intended for high impact athletic fields.
- 3. Staff is requesting the approval of the Lee county contract RFP180313KLC issued on September 28, 2018 with award made to JSM Services, Inc., with contracted services beginning on November 20, 2018.
- 4. This purchase is in accordance with City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) of the Procurement Ordinance "Purchases of Goods or Services from Contracts Awarded by other Governmental Entities or Not by Profit Entities by Competitive Bid."
- 5. If approved, the purchase order to JSM Services, Inc will be for the turf restoration and

reconstruction on eight (8) soccer fields at the Multi Sports Complex and Pelican Soccer Complex at an estimated dollar value of \$87,489.70.

- 6. This is a budgeted item.
- 7. Funding Information: Account: 172001.634120 Parks Maintenance / Outside Services

LEGAL REVIEW:

Purchase order will be issued.

EXHIBITS:

Department Memo Resolution 89-19 Contract Award Summary from Lee County Proposal from JSM Services, Inc.

PREPARED BY:

Wanda Roop Division- Procurement Department-Finance

SOURCE OF ADDITIONAL INFORMATION:

Kerry Runyon, Parks & Recreation Director

ATTACHMENTS:

| | Description | Туре |
|---|--|-----------------|
| ם | Department Memo | Backup Material |
| ם | Resolution 89-19 | Resolution |
| ם | Contract Award Summary from Lee County | Backup Material |
| D | Proposal from JSM Services, Inc | Backup Material |

CITY OF CAPE CORAL PARKS & RECREATION DEPARTMENT

TO: John Szerlag, City Manager

FROM: Victoria Bateman, Financial Services Director

Wanda Roop, Procurement Manager

Kerry Runyon, Parks and Recreation Director

DATE: April 25, 2019

SUBJECT: Requisition FY2019 – Parks Maintenance Division

Requisition over \$50,000 – Sod/Turf Restoration

Background

The soccer fields at Cape Coral Multi Sports Complex and Pelican Soccer Complex have large dead areas on eight (8) soccer fields combined. These dead and worn out areas on the playing surface create an unsafe and unsightly condition. Sod restoration and replacement are necessary to make the fields safe and improve playability. The scope of this project would include removal of damaged areas, grading, and installing new Bermuda sod intended for high impact athletic fields. The window of time for major sod renovations is from May 15th to July 23nd, when soccer leagues are not in season. This is also peak growing season and will increase turf establishment.

Recommendation

The Parks Division requests to utilize JSM Services Inc. for turf restoration and reconstruction on eight (8) soccer fields at the Multi Sports and Pelican Soccer Complexes, piggybacking on the Lee County Contract.

Multi Sports Complex: 23,427 square feet restoration Pelican Complex: 52,651 square feet restoration

Estimated dollar amount to complete project is \$87,489.70.

Fund Availability

Parks Maintenance Outside Services Account - 172001.634120 - \$90,000

If you have any questions and/or need any additional information, please contact Matt Creed, Parks Superintendent, at 573-3115

KR/MC/tl(SodRestoration)

C: Kim Swartz, Buyer

RESOLUTION 89 - 19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING THE PURCHASE AND INSTALLATION OF ATHLETIC TIFTUF BERMUDA SOD FOR THE MULTI SPORTS COMPLEX AND PELICAN SOCCER COMPLEX FROM JSM SERVICES, INC., IN ACCORDANCE WITH LEE COUNTY SOLICITATION #RFP180313KLC; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE PURCHASE ORDER(S); PROVIDING AN EFFECTIVE DATE.

WHEREAS, the turf on eight of the soccer fields at the Cape Coral Multi Sports Complex and Pelican Soccer Complex has large dead and worn out areas; and

WHEREAS, the playing surfaces require sod restoration and replacement to make the fields safe; and

WHEREAS, staff is requesting approval for the purchase and installation of athletic TifTuf Bermuda sod for turf restoration and reconstruction on eight soccer fields at the Multi Sports Complex and Pelican Soccer Complex from JSM Services, Inc., in accordance with Lee County Solicitation #RFP180313KLC, in the estimated amount of \$87,490; and

WHEREAS, Section 2-144(f) of the City of Cape Coral Code of Ordinances authorizes the City to purchase goods or services from contracts awarded by other governmental entities by competitive bid; and

WHEREAS, the Procurement Manager has made the determination required by Section 2-144(f) of the City of Cape Coral Code of Ordinances that time and expense factors make it financially advantageous for the City to purchase from a contract awarded by another governmental entity; and

WHEREAS, the Procurement Manager has considered the requirements stated in Section 2-144(f) of the Code of Ordinances in making her recommendation to use the Lee County contract; and

WHEREAS, the City Council desires to approve the purchase and installation of athletic TifTuf Bermuda sod for turf restoration and reconstruction on eight soccer fields at the Multi Sports Complex and Pelican Soccer Complex from JSM Services, Inc., in accordance with Lee County Solicitation #RFP180313KLC, in the estimated amount of \$87,490.

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

Section 1. The City Council hereby approves the purchase and installation of athletic TifTuf Bermuda sod for turf restoration and reconstruction on eight soccer fields at the Multi Sports Complex and Pelican Soccer Complex from JSM Services, Inc., in accordance with Lee County Solicitation #RFP180313KLC, in the estimated amount of \$87,490.

Section 2. The City Council hereby authorizes the City Manager or his designee to execute the purchase order(s).

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

| | | L OF THE CITY OI DAY OF | F CAPE CORAL AT ITS , 2019. | S SPECIAL |
|---------------------------------|---------------|------------------------------|--------------------------------|-----------|
| | | JOE CC | VIELLO, MAYOR | |
| VOTE OF MAYO | r and council | MEMBERS: | | |
| COVIELLO GUNTER CARIOSCIA | | NELSON STOKES WILLIAMS | | |

COSDEN

STOUT

| ATTESTE 2019. | ED TO AND FILED IN MY O | FFICE THIS DAY OF | |
|---------------|-------------------------|------------------------------|--|
| | | KIMBERLY BRUNS CITY CLERK | |
| APPROVI | ED AS TO FORM: | | |
| | TO CAM AN | | |

DOLORES D. MENENDEZ

CITY ATTORNEY

res/Piggyback Lee County-JSM Services

CONTRACT SUMMARY INFORMATION

SUMMARY: Purchase is made in accordance with the Terms and

Conditions of Lee County Solicitation Number RFP180313KLC

Solicitation No.: RFP180313KLC

Project Title: Athletic Turf Maintenance and Reconstruction - Annual

Procurement Analyst: Kathy Ciccarelli

Start Date: November 20, 2018

Expiration Date: November 19, 2020

Board Date: November 20, 2018 Blue Sheet No.: Item No. 15

Term: Two years

Renewal Options: Three additional one-year periods

Address Book No.: 107913

Awarded Vendor: JSM Services, Inc. Contact Person: James W. Stamps

Phone No.: 863-533-6850 Fax No.:863-533-6852

Cell Phone/Pager No.: 239-8480074

Email Address: jwstampsjr@jsmservicesinc.com

Contact Person: Jimmy Stamps Cell Phone No.: 239-850-8025

Email Address: <u>istamps3@jsmservicesinc.com</u>

Local Business Tax No.: 9900570 Local Vendor Preference Used: No

Award Amount or details:

Notes:



Proposal

April 25th, 2019

To:

City of Cape Coral

Dan Lott

klott@capecoral.net

From: Chad Fulghum

cfulghum@jsmservicesinc.com

C: (239)850-2527

Pelican Soccer Complex- Soccer Spot Sod

Field 1

Demo/ Install 23,333sf x \$1.15sf=\$26,832.95

Field 2

• Demo/ Install 8,823sf x \$1.15sf=\$10,146.45

Field 3

Demo/ Install 3,792sf x \$1.15sf=\$4,360.80

Field 4

Demo/ Install 16,703sf x 1.15sf=\$19,208.45

Grand Total: \$60,548.65

| Approved by: | | Date: | |
|--------------|-----------|--------|---|
| | Signature | | - |
| Name: | | Title: | |

^{*}Material to be dumped on-site within ¼ mile of jobsite.

^{*} Certified TifTuf Roll Sod to be used.



Proposal

April 25th, 2019

To: City of Cape Coral

Dan Lott

klott@capecoral.net

From: Chad Fulghum

cfulghum@jsmservicesinc.com

C: (239)850-2527

Cape Coral Sports Complex- Soccer Spot Sod

Field 1

Demo/ Install 5,246sf x \$1.15sf=\$6032.90

Field 2

• Demo/ Install 7,313sf x \$1.15sf=\$8,409.95

Field 3

• Demo/ Install 6,515sf x \$1.15sf=\$7,492.25

Field 4

• Demo/Install 4,353sf x \$1.15sf=\$5,005.95

Grand Total: \$26,941.05

| Approved by:Signature | Date: |
|-----------------------|--------|
| Name: | Title: |

^{*}Material to be dumped on-site within $\frac{1}{4}$ mile of jobsite.

^{*} Certified TifTuf Roll Sod to be used.

Item Number: B.(5)

Meeting Date: 5/13/2019

Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 98-19 Approval of Contract for Purchase of Lots 9 and 10, Block 2156, Unit 32, Cape Coral Subdivision, 1116 Kismet Parkway East, Cape Coral, for the Lake Meade Park Expansion project for the purchase price of \$11,000 plus costs not to exceed \$1,500; Department: Financial Services / Real Estate Division; Dollar Value: \$12,500; (Parks Capital Project/GO Bond Fund) Note: Trade offer rejected by Seller.

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 F: ENHANCE THE QUALITY OF LIFE THROUGH ARTS AND CULTURE TO CREATE AND PROMOTE A VIBRANT, CULTURALLY DIVERSE COMMUNITY.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- 1. Subject property is an off-water parcel with a future land use of Park, as designated by the City of Cape Coral Land Use map adopted February 13, 1989. This area is part of the Lake Meade Park expansion.
- 2. Over the years, Staff has been working with various owners in the park area to purchase additional properties on a voluntary basis based on current independent state-certified appraisals. There are 15 vacant sites and two improved parcels remaining under private ownership within the park area. The City currently owns 86 of the 103 required park parcels.
- 3. With the recent Go Bond approval, City Staff has notified property owners within the Lake Meade Park area of the City's desire to complete its acquisitions within the park. Staff submitted an offer to purchase the site based on an appraisal of a similar two-lot site by an independent state-certified appraiser, which has been accepted by the Seller. The contract requires the City to pay the closing costs incurred by the title company and the Seller to complete a suit for quiet title.
- 4. Staff recommends approval of the purchase contract to purchase Lots 9 and 10, Block 2156, Unit 32, Cape Coral Subdivision, for the Lake Meade Park Expansion for the purchase price of \$11,000 plus closing costs not to exceed \$1,500.

LEGAL REVIEW:

EXHIBITS:

Resolution 98-19 Property Appraiser Sheet Location Map Appraisal

PREPARED BY:

Dawn Andrews, Property
Broker

DivisionReal
Estate

DepartmentFinancial
Services

SOURCE OF ADDITIONAL INFORMATION:

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

Doug Sayers, Property Acquisition Agent Financial Services / Real Estate Division 239-574-0714

ATTACHMENTS:

| | Description | Туре |
|---|--------------------------------------|-----------------|
| D | Resolution 98-19 | Resolution |
| D | PA Sheet - Lots 9-10, Block 2156 | Backup Material |
| D | Location Map - Lots 9-10, Block 2156 | Backup Material |
| D | Appraisal - 2-Lot off water - LM | Backup Material |

RESOLUTION 98 - 19

A RESOLUTION OF THE CITY OF CAPE CORAL AUTHORIZING THE CITY MANAGER TO ENTER INTO A "CONTRACT FOR SALE AND PURCHASE" BETWEEN ABLDVC, LLC, AND THE CITY OF CAPE CORAL FOR THE PURCHASE OF LOTS 9-10, BLOCK 2156, UNIT 32, CAPE CORAL SUBDIVISION, FOR THE LAKE MEADE PARK EXPANSION; PROPERTY LOCATED AT 1116 KISMET PARKWAY EAST; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral has been working with various property owners in the Lake Meade Park area to purchase additional properties on a voluntary basis to expand the park; and

WHEREAS, the City has obtained a recent appraisal of a similar off-water property 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 and the City Clerk to execute a "Contract for Sale and Purchase" between ABLDVC, LLC, and the City of Cape Coral for the purchase of Lots 9-10, Block 2156, Unit 32, Cape Coral Subdivision, as more fully described in the Contract, in the amount of \$11,000, plus closing costs not to exceed \$1,500. The property is located at 1116 Kismet Parkway East. 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 COUNCIL SESSION THIS DAY | | |
|--|--|-------------------|
| | JOE CO | VIELLO, MAYOR |
| VOTE OF MAYOR AND COUNCILME | MBERS: | |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN | |
| ATTESTED TO AND FILED IN MY 0 2019. | OFFICE THIS | DAY OF, |
| | KIMBEI CITY CI | RLY BRUNS LERK |

APPROVED AS TO FORM:

DOLORES D. MENENDEZ

CITY ATTORNEY

Res/Purchase Real Property Lake Meade L9-10 B2156

CONTRACT FOR SALE AND PURCHASE

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

PARTIES: ABLDVC, LLC, 745 US Highway Suite 302, North Palm Beach, Florida 33408 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 (hereinafter referred to as "PROPERTY") described property upon the following terms and conditions:

LEGAL DESCRIPTION of real estate located in Lee County, Florida:
 Lots 9 & 10, Block 2156, Unit 32, Cape Coral Subdivision, as recorded in Plat
 Book 16, Pages 1 - 13, inclusive of the Public Records of Lee County, Florida.

2. PURCHASE PRICE

\$11,000.00

3. CONDITIONAL CONTRACT. This contract for sale and purchase is a binding contract once it is executed by the SELLER and by the City Manager on behalf of the BUYER. However, this contract is expressly subject to approval by the Cape Coral City Council. If the Cape Coral City Council fails or refuses to approve the purchase within 45 calendar days of the date when the City Manager has signed this contract, then this contract shall be null and void. 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 of Council authorization. This contract shall be closed and the deed shall be delivered within 30 business days after Council authorization 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.** Documentary stamps, 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.
- 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 office 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



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

CITY OF CAPE CORAL, FLORIDA

| | BY: | |
|--|---|--------------|
| Witness to A. John Szerlag | A. John Szerlag City Manager | Date |
| Witness to Kimberly Bruns | BY: Kimberly Bruns Interim City Clerk | Date |
| Witness Print Name: Billie INTAGLIATA Witness Print Name: Sylvester KAMINSKI APPROVED AS TO FORM: | ABLDVC, LLC BY: Meffell MAND Print Name: M/Ped S. D. Title: Mangger | Date Mott ID |
| Dolores D. Menendez, City Attorney | | |

Addendum to Contract

Buyer has been informed that the property is currently in a quiet title suit. Closing date to be set on or before July 9, 2019. Seller will inform Buyer when the quiet title suit has been settled. Buyer shall obtain, at Buyer's expense, a title insurance binder within 15 days of written notification. Buyer shall proceed with the required approvals of the City of Cape Coral, subject to clear title evidence. The closing date may be extended by written agreement of both Parties.

The City Manager is authorized to execute such agreement extending the closing date. This addendum is in addition to the provisions contained in Paragraph 7 of the Contract for Sale and Purchase.

| Seller: | Alfred S. DeMott, III Managing Member | Date: 4/11/19 | |
|---------|---------------------------------------|---------------|-------|
| Seller: | | Date: | |
| Buyer: | A John Szerlag City Manager | Date: | |
| Buyer: | | Date: | 71 12 |

DISCLOSURE AFFIDAVIT

| Project Name: STRAP Number: | Lake Meade Expansion 314324C1021560090 | | |
|---------------------------------|---|-----------------------------------|------------------------------------|
| Project Parcel ID: | LM-005 | | |
| STATE OF FLORE | DA | COUNTY OF_ | Lee |
| RECORE ME the unde | rsigned authority in said County | and State personally appeared | NIFEDS Dellas a |
| beroke ivie, the unde | who heing firs | t duly sworn, deposes and says | - MINCO 1 - O 101) W |
| | wite being ins | . daily sworn, deposes and says | • |
| 1. THAT he/she is: | | | |
| () a. President (or | Vice President) of | | |
| Corporation, a corpora | ation under the laws of the State | of | ; |
| | | | |
| or () b. A Partner (or | limited Partner) of the firm of | | |
| composed of | the name of | and | |
| | | | |
| or () c. Mana | ging Member of ABL | ove LLC | |
| the name and addres | d addresses listed on Exhibit "A" s of every person having a bene cape Coral Subdivision, however | ficial interest in the real prope | |
| 3. THIS Affidavit is pro | vided to comply with the provisi | ons of Section 286.23, Florida S | Statutes. |
| Under penalties of per | jury, I do hereby declare that the | e information contained in this | Affidavit is true and correct. |
| | | Arpell & | MA |
| | | (Signature) Print Name: | 5. D. Mon so |
| | | Title: MANNOWN | |
| | | Address: 748 US | SHmy I St. to 302 ENCH, K 33408 |
| Δ | ed before me this | | |
| | DEMOTT, TIL as | | who is personally known by |
| me or has produced _ | (describe identification) | as ic | dentification. |
| My Commission Expire | | Bieno | Introliata |
| iviy Commission Expire | | Notary Public (Signat | ture) |
| (soal) Not | BILLIE INTAGLIATA Ary Public - State of Florida | | TNITAGIINTA |

Notary Public (Print Name)

EXHIBIT "A"

The following is a list of every person with a beneficial interest in the real property described as <u>Lots 9 & 10, Block 2156, Unit 32, Cape Coral Subdivision</u>:

| NAME _ | ALFREDS, DeMOTION | NAME — | |
|---------|---------------------------|---------|---|
| ADDRESS | 745 US Wy 1 #302 | ADDRESS | |
| ADDRESS | North Palm Beach 12 33408 | ADDRESS | |
| NAME _ | * | NAME | |
| ADDRESS | | ADDRESS | |
| ADDRESS | | ADDRESS | |
| NAME _ | | NAME | |
| ADDRESS | | ADDRESS | |
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| NAME _ | | NAME | |
| ADDRESS | | ADDRESS | |
| ADDRESS | | ADDRESS | |
| NAME_ | | NAME | |
| ADDRESS | | ADDRESS | *************************************** |
| ADDRESS | | ADDRESS | |

QUESTIONNAIRE

| Project: | Lake Meade Expansion Parcel Str | ap: 314324C | 1021560090 | | Project Parcel: | LM-005 |
|---|---|----------------|----------------|------------|--|--|
| F | Please complete the following qu | uestions that | t pertain to y | ou and r | eturn to this offic | e. |
| 1. Are yo | ou the owner of the property identif | ied above? | Yes | \times | No | |
| 2. Is this | property listed with a realtor? | | Yes | X | No | |
| | Agents Name: ALFRE DE | MOT | | 7 | | |
| | Real Estate Company's Name: <u></u> | UXURY 1 | STATES | REAL | PY +MANAG | Emsni |
| 8 | Telephone No.: <u>≤61-)と)-3</u> | 971 | | | | ************************************** |
| 3. Have | you sold or are you in the process | of selling the | property? | ١ | res No | × |
| | Name: | | | | = | |
| | Address: | | | | | |
| | Closing Date | | | | | |
| 4. Other | than my spouse, I share ownershi | p of this prop | erty with: | | | |
| | Name: | | | | | |
| 12 | Name:Address: | | | | | |
| 0. | Telephone No.: | | | | | |
| 6. Pleas | e list the appropriate contact perso | n for this pro | perty: | | | |
| | Name and Title: ALFRED | DEmi | 511, 14 | bnab | SP | |
| | Address: 745 US Hu | 41,5 | ute 30 | 2, NY | 08, 5 | |
| | Telephone No.: <u>561 727-39</u> | 171 | | | , | |
| | re an ongoing business on this site If yes, who owns the business? | ? | Yes | No | | |
| | Name: | | | | | |
| | Address: | | Telephone I | No.: | | |
| 0 \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ | anal Comments: | | | | | |
| o. Additi | onal Comments: | A | | | X-759E-1 | |
| | | 1.4 | | | STATE OF THE STATE | - |
| 0 | refull I Month | 4/11 | 19 | | 2 (M. 1989) (M. | TO POST OF THE PROPERTY OF |
| Property | Owner's Signature | Date | | | | |
| | Alfred S. D. Mon | m, Mx | mages | ۷ | 56/127 | 3971 |
| Printed N | Name & Title | 202 | | Tele | phone Number | |
| Street A | ddress) n / 1 | 211/0 | A | Facs | imile Number | 0.0 |
| City | H Prim Heach, PL State | 7in | <u></u> | 9/1 Em- | reddemon | sympil. Gm |
| OILY | State | Zip | | ⊏ma | il address | |



Tax Year V

Next Parcel Number Previous Parcel Number Tax Estimator Cape Coral Fees Tax Bills Print



Owner Of Record - Sole Owner
ABLDVC LLC
745 US HWY # STE 302
NORTH PALM BEACH FL 33408

Site Address

1116 KISMET PKWY E CAPE CORAL FL 33909

Property Description
Do not use for legal documents!

CAPE CORAL UNIT 32 BLK.2156 PB 16 PG 12 LOTS 9 + 10

Classification / DOR Code

VACANT RESIDENTIAL / 00



[Pictometry Aerial Viewer]

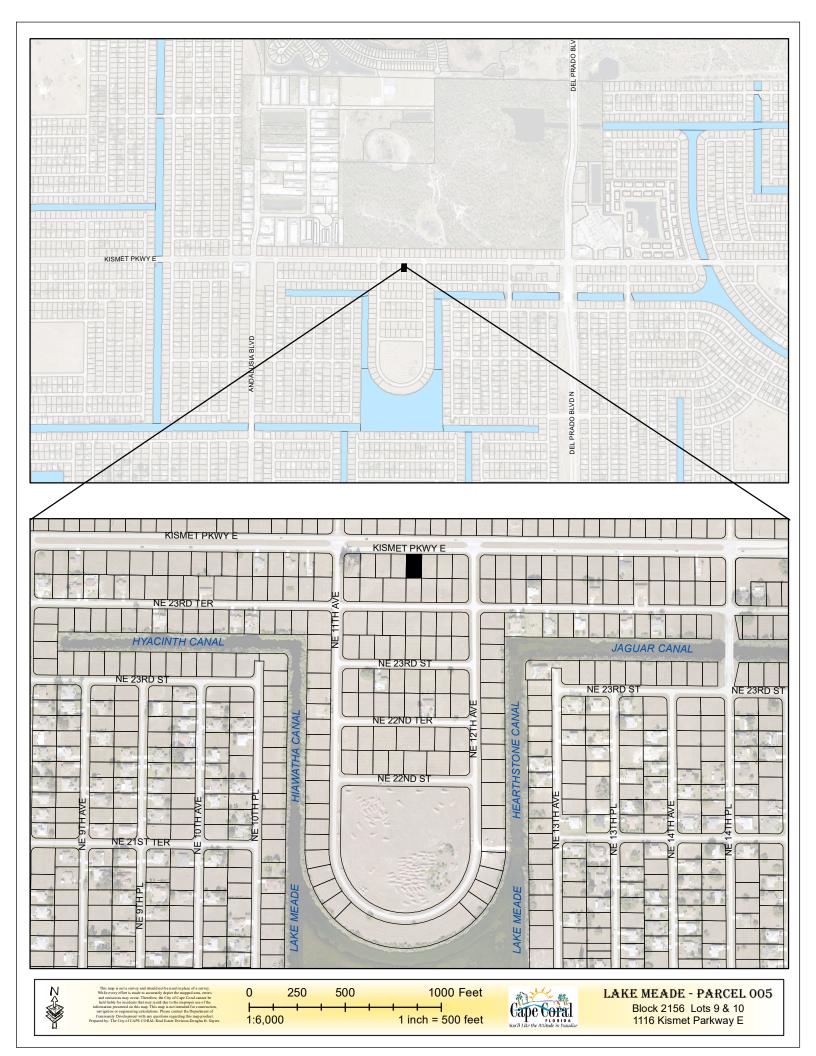




| + | Exemptions |
|---|-----------------------------------|
| | Exemptions |
| + | Values (2018 Tax Roll) |
| + | Taxing Authorities |
| + | Sales / Transactions 9 |
| + | Parcel Numbering History |
| + | Location Information |
| + | Solid Waste (Garbage) Roll Data |
| + | Flood and Storm Information |
| + | Appraisal Details (2018 Tax Roll) |
| | |

Appraisal Details (Current Working Values)

TRIM (proposed tax) Notices are available for the following tax years [2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018]



LAND APPRAISAL REPORT

| 느 | AND APPRAISAL REPUR | = | | | | | |
|-------------------|--|---|--|--|--|--|--|
| | Property Address: 1105 NE 22nd Ter | City: Cape Coral State: FL Zip Code: 33909 | | | | | |
| | County: Lee Legal Descr | ription: Lots 29+30, Blk.2158, Cape Coral Unit 32, PB 16 PG 12 | | | | | |
| | | | | | | | |
| | | | | | | | |
| L | Accessoria Davidal #1 04 40 04 04 004 50 0000 | Tou Very 2040 D. F. Toures & 440.00 Cheered Accessments & 2 | | | | | |
| ပြ | Assessor's Parcel #: 31-43-24-C1-02158.0290 | Tax Year: 2018 R.E. Taxes: \$ 449.09 Special Assessments: \$ 0 | | | | | |
| 쁘 | Market Area Name: Cape Coral Unit 32 | Map Reference: 15980 Census Tract: 0102.03 | | | | | |
| SUBJECT | Current Owner of Record: Morales, Jose A + Berenice | Borrower (if applicable): N/A | | | | | |
| <u>s</u> | Project Type (if applicable): PUD De Minimis PUD | Other (describe) HOA: \$ N/A per year per month | | | | | |
| | | Yes If Yes, indicate current occupancy: Owner Tenant Vacant Not habitable | | | | | |
| | If Yes, give a brief description: The subject is a vacant site v | $\cdot \cdot = \cdot \cdot = \cdot \cdot = \cdot \cdot$ | | | | | |
| | in res, give a bilei description. The subject is a vacant site v | viti no improvements. | | | | | |
| | | | | | | | |
| | | | | | | | |
| | The purpose of this appraisal is to develop an opinion of: Market | Value (as defined), or Other type of value (describe) | | | | | |
| | This report reflects the following value (if not Current, see comments): | | | | | | |
| ⊨ | | | | | | | |
| | | | | | | | |
| ASSIGNMENT | Intended Use: The Intended Use is to evaluate the property | that is the subject of this appraisal for land acquisition. | | | | | |
| ıχ | | | | | | | |
| S | Intended User(s) (by name or type): City of Cape Coral | | | | | | |
| ŝ | <u> </u> | | | | | | |
| ⋖ | Oliveta Oliveta Oliveta | Address B.O.B. (2000) O. J. El COOLE | | | | | |
| | Client: City of Cape Coral | Address: P.O. Box 150027, Cape Coral, FL 33915 | | | | | |
| | Appraiser: Rhonda Elaine Rechkemmer | Address: 1913 SW 54th Street, Cape Coral, FL 33914-6888 | | | | | |
| | Characteristics | Predominant One-Unit Housing Present Land Use Change in Land Use | | | | | |
| | Location: Urban Suburban Rural | Occupancy PRICE AGE One-Unit 45 % Not Likely | | | | | |
| | Built up: ☐ Over 75% ☐ 25-75% ☐ Under 25% | Sowner \$(000) (yrs) 2-4 Unit 5 % Likely * In Process * | | | | | |
| | .] | | | | | | |
| | Growth rate: Rapid Stable Slow | Tenant 85 Low 0 Multi-Unit 5 % * To: | | | | | |
| | Property values: Increasing Stable Declining | | | | | | |
| | Demand/supply: Shortage In Balance Over Supply | ☐ Vacant (>5%) 190 Pred 13 Vacant Land 35 % | | | | | |
| | Marketing time: Under 3 Mos. 3-6 Mos. Over 6 Mos. | <u> </u> | | | | | |
| | | Factors Affecting Marketability | | | | | |
| AREA DESCRIPTION | | | | | | | |
| ΙĔ | <u>Item</u> Good Av <u>erage Fair</u> | <u>Poor N/A</u> <u>Item</u> <u>Goo</u> d Av <u>erage Fair Poor N/A</u> | | | | | |
| | Employment Stability | Adequacy of Utilities | | | | | |
| 胀 | Convenience to Employment | Property Compatibility | | | | | |
| က္က | Convenience to Shopping | Protection from Detrimental Conditions | | | | | |
| 置 | Convenience to Schools | Police and Fire Protection | | | | | |
| ⋖ | Adequacy of Public Transportation | General Appearance of Properties | | | | | |
| 뿞 | | | | | | | |
| | Recreational Facilities \square | Appeal to Market | | | | | |
| IRKET | Market Area Comments: The subject's market is bordered | d by Jacaranda Parkway to the north, Pine Island Road (SR 78) to the south, Santa | | | | | |
| 몿 | Barbara Boulevard to the west and NE 24th Avenue to the | e east. Supporting services are within three miles including shopping, restaurants, | | | | | |
| | | ct is a residential site located in an area set aside for a future park and public boat | | | | | |
| Ž | | d Lake Meade. Financing includes conventional mortgages, private mortgages, | | | | | |
| | | | | | | | |
| | | has fluctuated, but is considered relatively stable for the past 12 months. The housing | | | | | |
| | supply in this market is currently in balance with adequate | By priced nomes selling within three to six months. | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | Dimensions: 80' x 125' | Site Area: 10,000 Sq.Ft. | | | | | |
| | Zoning Classification: R-1B | Description: Single Family | | | | | |
| | | | | | | | |
| | Do proce | ent improvements comply with existing zoning requirements? | | | | | |
| | | | | | | | |
| | Uses allowed under current zoning: Allows a single family hor | <u>ne.</u> | | | | | |
| | | | | | | | |
| | | | | | | | |
| | Are CC&Rs applicable? ☐ Yes ☐ No ☐ Unknown Have the | e documents been reviewed? Yes No Ground Rent (if applicable) \$ | | | | | |
| | Comments: | | | | | | |
| | Highest & Best Use as improved: Present use, or Other us | e (explain) To improve with a single family home. | | | | | |
| | Thighlost & bost ood as improved. | 10 improve with a single family nome. | | | | | |
| | A L 111 (FW P B L 24 (F B C 24 (F B C))))))))))))))))))))))))))))))))))) | | | | | | |
| | Actual Use as of Effective Date: Vacant Residential Site | Use as appraised in this report: Vacant Residential Site | | | | | |
| | Summary of Highest & Best Use: Considering the physically a | and legally possible as well as the financially feasible tests of highest and best use, it is | | | | | |
| | the appraiser's opinion that the highest and best use of the | ne subject's site is a single family residence. | | | | | |
| ΙĔ | | | | | | | |
| ٩ | | | | | | | |
| 18 | I Militia . Dublic Other Drovider/Decernation Off site Inc. | vocamente Timo Dublio Driveto Frantese COL | | | | | |
| က္က | Utilities Public Other Provider/Description Off-site Impl | | | | | | |
| 12 | | Asphalt paved Topography Mostly level with swale | | | | | |
| ш | Gas <u>None</u> Width | 50' (per plat) Size Typical for the area | | | | | |
| SITE DESCRIPTION | Water | Asphalt Shape Rectangular | | | | | |
| 0, | Sanitary Sewer Septic required Curb/Gutter | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | Telephone CenturyLink Street Lights | | | | | | |
| | Multimedia | None | | | | | |
| | Other site elements: | Underground Utilities Other (describe) | | | | | |
| | FEMA Spec'l Flood Hazard Area | X FEMA Map # 12071C0255F FEMA Map Date 08/28/2008 | | | | | |
| | | s were noted. Site dimensions taken from the plat. A survey was not provided for | | | | | |
| | | sumed to be accurate. The subject's future land use is PK (Parks and Recreation). | | | | | |
| | | | | | | | |
| | vven and septic are common for this market as public util | ities are not currently available. No external obsolescence is indicated. | | | | | |
| | | | | | | | |
| | | | | | | | |
| | - | | | | | | |
| | | | | | | | |



LAND APPRAISAL REPORT

| <u>L</u> | <u>AND APP</u> | <u>'RAISAL I</u> | REPORT | | | F | ile No.: 20100507 | |
|------------------|----------------------------------|---|-------------------------------|----------------------|----------------------------|--|--------------------------------|------------------|
| | | did not reveal any prior | | | r the three years prior to | | | |
| 7 | | County Property Appr | | | | | | |
| 0 | 1st Prior Subject S | | lysis of sale/transfer histor | | - | | ect had no prior listin | |
| TRANSFER HISTORY | Date: 11/01/1986 | | | | | | aisal. The subject ha | |
| ᇎ | Price: \$8,500 | | | orevious 36 m | onths. The compa | rable sales belov | / had no prior transac | ctions in the |
| Ш. | Source(s): Lee County | | vious 12 months. | | | | | |
| S. | 2nd Prior Subject | | | | | | | |
| ፳. | Date: 05/01/1986 | <u> </u> | | | | | | |
| F. | Price: \$1,500 | | | | | | | |
| | Source(s): Lee County | | OOMBABABI | E NO. 4 | OOMBADA | DIE NO O | COMPADADI | NO 0 |
| | FEATURE Address 4405 NE 00 | SUBJECT PROPERTY | COMPARABLI | E NU. 1 | COMPARA | BLE NO. 2 | COMPARABLE | : NU. 3 |
| | Address 1105 NE 22r | | 1703 NE 6th Ave | | 3010 NE 7th PI | 2000 | 1413 NE 14th St | 200 |
| | Cape Coral, Proximity to Subject | FL 33909 | Cape Coral, FL 339 | 109 | Cape Coral, FL 3 | 3909 | Cape Coral, FL 339 | 909 |
| | Sale Price | \$ N/A | 0.92 miles SW \$ | 11 000 | 1.11 miles NW | \$ 10.400 | 1.14 miles SE | 11 000 |
| | Price/ Sq.Ft. | \$ IN/A | \$ 1.10 | 11,000 | \$ 1.04 | <u>\$ 10,400</u> | \$ 1.10 | 11,000 |
| | Data Source(s) | Inspection | SWFLMLS#218045 | 5091/400DOM | - | 149130/00DOM | SWFLMLS#216014 | 1393/054DOM |
| | Verification Source(s) | LeePA | LeePA/Inst#201900 | | LeePA/Inst#2018 | | LeePA/Inst#201800 | |
| | VALUE ADJUSTMENT | DESCRIPTION | DESCRIPTION | +(-) \$ Adjust | DESCRIPTION | +(-) \$ Adjust | DESCRIPTION | +(-) \$ Adjust |
| | Sales or Financing | N/A | Cash | + (-) ψ Aujust | Cash | + (-) ψ Aujust | Cash | + (-) ψ Aujust |
| I | Concessions | N/A | None | | None | | None | |
| APPROACH | Date of Sale/Time | N/A | s12/18; c12/18 | | s11/18; c10/18 | 0 | s10/18; c10/18 | 0 |
| Š. | Rights Appraised | Fee Simple | Fee Simple | <u> </u> | Fee Simple | | Fee Simple | Ĭ |
| dc | Location | U32/Residential | U36Pt1/Residential | | U36/Residential | 0 | U31/Residential | 0 |
| | Site Area (in Sq.Ft.) | 10,000 | 10,000 | | 10,000 | | 10,000 | 0 |
| NO. | Utilities | Well/Septic area | Well/Septic area | | Well/Septic area | | Well/Septic area | |
| SALES COMPARISON | View | Residential | Residential | | Residential | | Residential | |
| AF | Prior Transaction Date | 11/01/1986 | 12/31/2015 | | 08/13/2002 | | 12/23/2013 | |
| ME | Prior Transaction Price | \$8,500 | \$13,750 | | \$2,200 | | \$10 | |
| 2 | | | | | | | | |
| ES | Net Adjustment (Total, in | \$) | _ + \$ | | | \$ | _ + \$ | |
| ۷F | | | Net % | | Net % | | Net % | |
| S | Adjusted Sale Price (in \$) | | Gross % \$ | | Gross % | | | 11,000 |
| | Summary of Sales Comp | | | | | | are required due to s | |
| | | 2 and #3 are located | | | | | | are |
| | indicated for these | similar sales. Slightly | greater emphasis is | given to Sale | #1 which is the clo | sest and most re | ecent sale provided. | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | N FOR PUDs (if applicab | ole) The Subject | t is part of a Plant | ned Unit Development. | | | |
| DOD | Legal Name of Project: | uko and vasusalismal fasilitis | | | | | | |
| 7 | Describe common eleme | nts and recreational facilitie | | | | | | |
| | | | | | | | | |
| | Indicated Value by: Cal | les Comparison Approac | h¢ 44.000 | | | | | |
| | | | | | | | the area wheat are all to real | U. al. a. a |
| z | | e Sales Comparison | | | | | the market and is rei | lied on |
| RECONCILIATION | | e estimate. The Cost ''as is'', or subj | | | | | Conditions | |
| ₹ | THIS appraisal is made [| △ as is , ui | ect to the following contait | .iuiis. <u>See 8</u> | attached Assumpti | ons and Limiting | Conditions. | |
| 딍 | | | | | | | | |
| Ž | This report is also s | subject to other Hypotheti | cal Conditions and/or Ex | traordinary Assuu | mntions as specified in | the attached adde | nda | |
| ပ္က | | ction of the subject pro | | | | | | e Cortifications |
| 2 | my (our) Opinion of | the Market Value (or | other specified value | tvpe), as defi | ned herein, of the | real property that | is the subject of th | is report is: |
| | \$ `` 11.0 | 000 | as of: | 02/14/2 | 2019 | which i | s the effective date of | this appraisal. |
| | | s Opinion of Value is su | | | | | | |
| Ĭ. | | opy of this report contai | | | | | | - |
| ATTACH. | | nout reference to the info | | | | - | | |
| Ę | _ | tifications 🔀 Narrative | | Location Map(| | lood Addendum | Additional Sa | ales |
| _ | Photo Addenda | | ap | Hypothetical C | | xtraordinary Assumpt | ions | |
| | Client Contact: Doug | | | Client No | | | ~ | |
| | E-Mail: dsayers@ca | pecoral.net | | | O. Box 150027, Ca | | | |
| | APPRAISER | | | | UPERVISORY AP | | luired) | |
| | | | | or | CO-APPRAISER | (if applicable) | | |
| | 01 1 | | | | | | | |
| S | Shonda (| Elaine Rechh | emmer | Su | pervisory or | | | |
| RE | Appraiser Name: Rho | onda Elaine Rechkem | mer_ | Co | -Appraiser Name: | | | |
| 1 | | mer Appraisal Servic | | Co | mpany: | | | |
| SIGNATURES | Phone: (239) 542-41 | | (239) 542-2591 | PN | one: | | Fax: | |
| 5 | E-Mail: R.Rechkemm | | | E-I | Mail: | | | |
| S | Date of Report (Signature |): <u>02/14/2019</u> | | Da | te of Report (Signature) | : | | |
| | | Cert.Res.RD2869 | 9 State | e: <u>FL</u> Lic | ense or Certification # | | | State: |
| | Designation: | | | | signation: | | | |
| | Expiration Date of License | | 30/2020 | | piration Date of License | | | |
| | Inspection of Subject: | □ Did Inspect □ □ | Did Not Inspect (Deskto | | spection of Subject: | Did Inspect | Did Not Inspect | <u> </u> |
| | Date of Inspection O | | . , | | te of Inspection: | * | • | |



Supplemental Addendum

| | | | 1 110 | No. 20 100307 | |
|------------------|--------------------|------------|----------|----------------|--|
| Client | City of Cape Coral | | | | |
| Property Address | 1105 NE 22nd Ter | | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33909 | |
| Borrower | N/A | | | | |

File No. 20100507

Intended User and Use Clarification

The Intended User of this appraisal report is the Client, the City of Cape Coral. The Intended Use is to evaluate the property that is the subject of this appraisal for land acquisition. No additional Intended Users are identified by the appraiser. This report is not intended for lending nor insurance purposes.

Scope of the Work

The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report including the attached definition of market value, statement of assumptions and limiting conditions and certifications. The appraiser has performed a visual inspection of the subject site, inspected and analyzed the neighborhood, inspected the comparable sales from the street, researched, verified and analyzed data from reliable public and/or private sources and reported my analysis, opinions and conclusions in this appraisal report.

Highest and Best Use as Vacant

Considering the physically and legally possible as well as the financially feasible tests of highest and best use, it is the appraiser's opinion that the highest and best use of the subject site is for development of a single family residence.

Additional Comments

I have no current or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.

I have performed prior services, as an appraiser for the same client, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

The opinion of market value as defined in this report is in terms of cash or of financing terms equivalent to cash.

Exposure time as defined in USPAP is the estimated length of time that a property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal. Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market.

Comments on Future Assessments

It should be noted that the City of Cape Coral intends to expand utilities (water, sewer and irrigation water) to the subject's market in the future at which time connection will be mandatory and there will be assessments and CIAC fees which will be determined based on the cost of the project. Owners have the option of paying all of the assessments/fees up front or financing over 20 years and are included on the owner's annual tax bill until paid in full.

Comments on the City of Cape Coral

The subject is located in Cape Coral, an incorporated city on the southwest portion of Florida in Lee County. The city of Cape Coral has an indicated land area of 120 square miles and is known for its extensive fresh water and Gulf access canals and lakes. The estimated population of Cape Coral in 2013 was 165,831 persons, per the US Census Bureau. The Cape Coral market had substantial growth with extensive new construction during 2000-2006. This market was affected by the recession starting in 2006-2007 with new construction ending and extensive foreclosures throughout the area for several years. This market has since recovered with housing inventory decreasing and new construction starts noted throughout the area.

| Client | City of Cape Coral | | File | No. 20100507 |
|-------------------------------|---|---|---|------------------------------------|
| Property Address | 1105 NE 22nd Ter | Occupto 1 | Chata El | 7:- 0-d- 0000 |
| City Borrower | Cape Coral N/A | County L | ee State FL | Zip Code 33909 |
| | | RT IDENTIFICATION | | |
| This Report | t is <u>one</u> of the following | g types: | | |
| | al Report (A written rep | oort prepared under Standards Rule | 2-2(a) , pursuant to the Scope of Work, as disclos | ed elsewhere in this report.) |
| Restrict Appraisa | | oort prepared under Standards Rule he stated intended use by the specified | 2-2(b) , pursuant to the Scope of Work, as disclo client or intended user.) | sed elsewhere in this report, |
| Commen | nts on Standard | ls Rule 2-3 | | |
| — The statemer | he best of my knowledge and its of fact contained in this re | port are true and correct. | | |
| analyses, opinior | ns, and conclusions. | | umptions and limiting conditions and are my personal, im | |
| — I have perforr | ned prior services, as an appr | | ort and no personal interest with respect to the parties invo oject of this report for the same client within the three-year | |
| | s with respect to the property | that is the subject of this report or the parties | | |
| — My compens | ation for completing this assig | | ment or reporting of a predetermined value or direction in | |
| | | | rence of a subsequent event directly related to the intende epared, in conformity with the Uniform Standards of Profes | |
| in effect at the ti | me this report was prepared. | | , | |
| | | roperty that is the subject of this report. | this certification (if there are exceptions, the name of each | h individual providing significant |
| | raisal assistance is stated else | | this continuation (in there are exceptions, the marile of each | Tillulvidual providing Significant |
| | | | | |
| Reasona | ble Exposure T | ime (USPAP defines Exposu | re Time as the estimated length of time that the pro | perty interest being |
| | | | nsummation of a sale at market value on the effecti | , |
| | ot Reasonable Exposur s indicated by similar sa | | It the market value stated in this report is: | 71-105 days on |
| ano mantot a | o maioatou by ominar oc | | | |
| | | | | |
| | | I and Report Identific s requiring disclosure and a | eation ny State mandated requirements: | |
| | | | rty that is the subject of this report for the same | e client within the |
| three-year pe | eriod immediately prece | eding acceptance of this assignme | nt. | |
| | | | | |
| APPRAISER | : | | SUPERVISORY or CO-APPRAISER (i | f applicable): |
| Cianatum | Thomas El. | re Rechkemmer | Cianatura | |
| Signature: | da Elaine Rechkemmer | | Signature: Name: | |
| | |) | State Certification #: | |
| or State License State: FL | | n or License: 11/30/2020 | or State License #: State: Expiration Date of Certification or L | icense: |
| Date of Signature | e and Report: <u>02/14/2019</u> |) | Date of Signature: | |
| | Appraisal: 02/14/2019 biect: None Int | terior and Exterior Exterior-Only | Inspection of Subject: None Interior | and Exterior Exterior-Only |
| | on (if applicable): 02/14/20 | | Date of Inspection (if applicable): | |

Assumptions, Limiting Conditions & Scope of Work

File No.: 20100507 1105 NE 22nd Ter Property Address: State: FI Zip Code: 33909 City of Cape Coral Address: P.O. Box 150027, Cape Coral, FL 33915 Rhonda Elaine Rechkemmer Address: 1913 SW 54th Street, Cape Coral, FL 33914-6888

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

- The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
- The appraiser may have provided a plat and/or parcel map in the appraisal report to assist the reader in visualizing the lot size, shape, and/or orientation. The appraiser has not made a survey of the subject property.
- If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
- The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
- The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
- The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
- The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.
- An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.
- The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database. Possession of this report or any copy thereof does not carry with it the right of publication.
- Forecasts of effective demand for the highest and best use or the best fitting and most appropriate use were based on the best available data concerning the market and are subject to conditions of economic uncertainty about the future.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

| Certifications & Definitions | | File No.: | 20100507 |
|---|--|-----------------------|---------------------------|
| Property Address: 1105 NE 22nd Ter | City: Cape Coral | State: FL | Zip Code: 33909 |
| Client: City of Cape Coral | Address: P.O. Box 150027, Cape Coral | l, FL 33915 | |
| Appraiser: Rhonda Elaine Rechkemmer | Address: 1913 SW 54th Street, Cape C | oral, FL 33914-688 | 38 |
| APPRAISER'S CERTIFICATION I certify that, to the best of my knowledge and belief: — The statements of fact contained in this report are t | | | |
| The credibility of this report, for the stated use by the reported assumptions and limiting conditions, and a limiting conditions, and a limiting conditions. I have no present or prospective interest in the properties. | are my personal, impartial, and unbiased profe | essional analyses, or | pinions, and conclusions. |

- I have performed prior services, as an appraiser for the same client, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

DEFINITION OF MARKET VALUE *:

Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions

- 1. Buyer and seller are typically motivated;
- 2. Both parties are well informed or well advised and acting in what they consider their own best interests;
- 3. A reasonable time is allowed for exposure in the open market;
- 4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
- This definition is from regulations published by federal regulatory agencies pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 between July 5, 1990, and August 24, 1990, by the Federal Reserve System (FRS), National Credit Union Administration (NCUA), Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the Office of Comptroller of the Currency (OCC). This definition is also referenced in regulations jointly published by the OCC, OTS, FRS, and FDIC on June 7, 1994, and in the Interagency Appraisal and Evaluation Guidelines, dated October 27, 1994.

| | Client Contact: Doug Sayers Clie | nt Name: City of Cape Coral | | |
|--------|---|---|--|--|
| | E-Mail: dsayers@capecoral.net Address: | P.O. Box 150027, Cape Coral, FL 33915 | | |
| | APPRAISER | SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable) | | |
| AIURES | Appraiser Name: Rhonda Elaine Rechkemmer Company: Rechkemmer Appraisal Services, Inc. | Supervisory or Co-Appraiser Name: Company: | | |
| 5 | Phone: (239) 542-4152 Fax: (239) 542-2591 | Phone: Fax: | | |
| | E-Mail: R.Rechkemmer@att.net | E-Mail: | | |
| | Date Report Signed: 02/14/2019 | Date Report Signed: | | |
| | License or Certification #: Cert.Res.RD2869 State: FL | License or Certification #: State: | | |
| | Designation: | Designation: | | |
| | Expiration Date of License or Certification: <u>11/30/2020</u> | Expiration Date of License or Certification: | | |
| | Inspection of Subject: Did Inspect Did Not Inspect (Desktop) | Inspection of Subject: Did Inspect Did Not Inspect | | |
| | Date of Inspection: 02/14/2019 | Date of Inspection: | | |

Subject Photo Page

| Client | City of Cape Coral | | | | | |
|------------------|--------------------|------------|----------|----------|-------|--|
| Property Address | 1105 NE 22nd Ter | | | | | |
| City | Cape Coral | County Lee | State FL | Zip Code | 33909 | |
| Borrower | NI/A | | | | | |



Subject Front 1105 NE 22nd Ter



Subject Street

Comparable Photo Page

| Client | City of Cape Coral | | |
|------------------|--------------------|------------------------------|-------|
| Property Address | 1105 NE 22nd Ter | | |
| City | Cape Coral | County Lee State FL Zip Code | 33909 |
| Borrower | N/A | | |



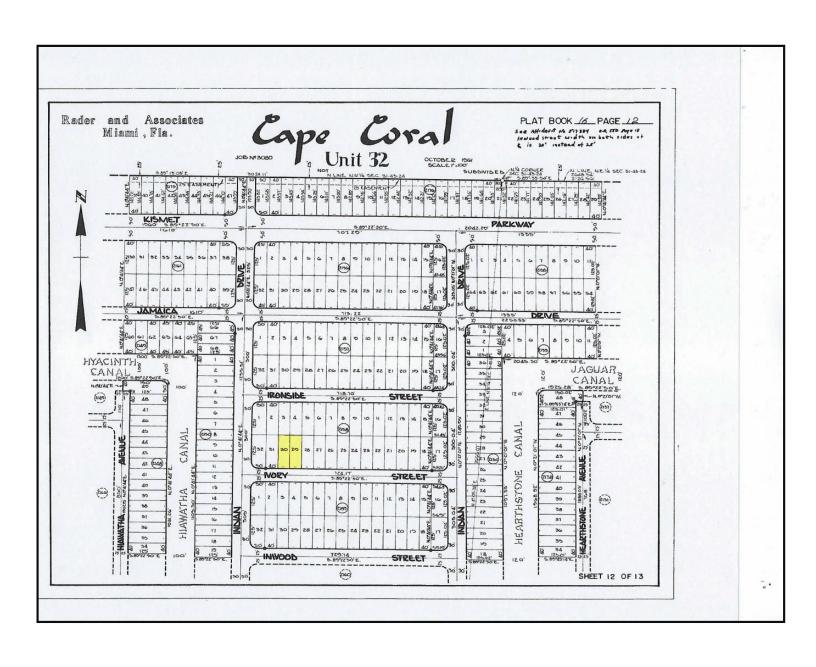
Comparable 1 1703 NE 6th Ave



Comparable 2 3010 NE 7th PI



Comparable 3 1413 NE 14th St



Aerial



Location Map

| Client | City of Cape Coral | | | |
|------------------|--------------------|------------|----------|----------------|
| Property Address | 1105 NE 22nd Ter | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33909 |
| Rorrower | N/A | | | |



Item Number: B.(6)

Meeting Date: 5/13/2019

Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 99-19 Approval of Contract for Purchase of Lots 31 and 32, Block 3013, Unit 43, Cape Coral Subdivision, 1130 NW 25th Terrace, Cape Coral, for the Festival Park project for the purchase price of \$11,000 plus closing costs not to exceed \$1,500; Department: Financial Services / Real Estate Division; Dollar Value: \$12,500; (Parks Capital Project/GO Bond Fund) Note: Trade offer rejected by Seller.

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 F: ENHANCE THE QUALITY OF LIFE THROUGH ARTS AND CULTURE TO CREATE AND PROMOTE A VIBRANT, CULTURALLY DIVERSE COMMUNITY.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- 1. In 2003 at a Strategic Planning Session City Council directed staff to begin purchasing property in Cape Coral Subdivision Unit 43 for a future park site, now known as Festival Park. Over the years, Staff had been working with various owners in the park area to purchase additional properties on a voluntary basis based on current independent state-certified appraisals.
- 2. Currently, the City owns 444 of the 517 parcels required for Festival Park, with three additional property contracts currently pending. The subject contract is for a two-lot off-water parcel located within the designated Festival Park area.
- 3. With the recent Go Bond approval, City Staff has notified property owners within the Festival Park area of the City's desire to complete its acquisitions within the park. Staff submitted an offer to purchase the site based on an appraisal of a similar two-lot site by an independent state-certified appraiser, which has been accepted by the Seller. The contract requires the City to pay the closing costs incurred by the title company.
- 4. Staff recommends approval of the purchase contract to purchase Lots 31 and 32, Block 3013, Unit 43, Cape Coral Subdivision, for the purchase price of \$11,000 plus closing costs not to

LEGAL REVIEW:

EXHIBITS:

Resolution 99-19 Property Appraiser Printout Location Map Appraisal

PREPARED BY:

Dawn Y. Andrews, Property
Broker

DivisionReal
Estate

DepartmentFinancial
Services

SOURCE OF ADDITIONAL INFORMATION:

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

Joan Estinval, Property Acquisition Agent Financial Services / Real Estate Division 239-573-3072

ATTACHMENTS:

| | Description | Туре |
|---|---------------------------------------|-----------------|
| D | Resolution 99-19 | Resolution |
| D | PA Sheet - Lots 31-32, Block 3013 | Backup Material |
| D | Location Map - Lots 31-32, Block 3013 | Backup Material |
| D | Appraisal - 2-Lot off water - FP | Backup Material |

RESOLUTION 99 - 19

A RESOLUTION OF THE CITY OF CAPE CORAL AUTHORIZING THE CITY MANAGER TO ENTER INTO A "CONTRACT FOR SALE AND PURCHASE" BETWEEN WEST COAST LAND VENTURES, LLC, AND THE CITY OF CAPE CORAL FOR THE PURCHASE OF LOTS 31-32, BLOCK 3013, UNIT 43, CAPE CORAL SUBDIVISION, FOR THE FESTIVAL PARK PROJECT; PROPERTY LOCATED AT 1130 NW 25TH TERRACE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 2003, City Council directed staff to begin purchasing property in Unit 43, Cape Coral Subdivision, for the purpose of creating and developing Festival Park; and

WHEREAS, City staff has been working with various owners in the park area to purchase additional properties on a voluntary basis based on current independent state-certified appraisals; and

WHEREAS, the City has obtained a recent appraisal of a similar off-water property 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 and the City Clerk to execute a "Contract for Sale and Purchase" between West Coast Land Ventures, LLC, and the City of Cape Coral for the purchase of Lots 31-32, Block 3013, Unit 43, Cape Coral Subdivision, as more fully described in the Contract, in the amount of \$11,000, plus closing costs not to exceed \$1,500. The property is located at 1130 NW 25th Terrace. 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 O COUNCIL SESSION THIS DAY | | |
|--|--|-------------------|
| | JOE CO | VIELLO, MAYOR |
| VOTE OF MAYOR AND COUNCILMEN | MBERS: | |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN | |
| ATTESTED TO AND FILED IN MY C 2019. | OFFICE THIS | DAY OF, |
| | KIMBER CITY CI | RLY BRUNS LERK |

APPROVED AS TO FORM:

DOLORES D. MENENDEZ

CITY ATTORNEY

Res/Purchase Real Property Festival Park L31-32 B3013

CONTRACT FOR SALE AND PURCHASE

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

PARTIES: West Coast Land Ventures, LLC, a Florida limited liability company, 20900 NE 30th Avenue Suite 514, Miami, Florida 33180-2164 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 (hereinafter referred to as "PROPERTY") described property upon the following terms and conditions:

LEGAL DESCRIPTION of real estate located in Lee County, Florida:
 Lots 31 and 32, Block 3013, Unit 43, Cape Coral Subdivision, as recorded in Plat
 Book 17, Pages 48-57, inclusive of the Public Records of Lee County, Florida.

2. **PURCHASE PRICE**

\$11,000.00

3. CONDITIONAL CONTRACT. This contract for sale and purchase is a binding contract once it is executed by the SELLER and by the City Manager on behalf of the BUYER. However, this contract is expressly subject to approval by the Cape Coral City Council. If the Cape Coral City Council fails or refuses to approve the purchase within 45 calendar days of the date when the City Manager has signed this contract, then this contract shall be null and void. 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.

Page 6 of 6

- 4. **EFFECTIVE DATE & CLOSING DATE.** The Effective Date of this contract shall be the date of Council authorization. This contract shall be closed and the deed shall be delivered within 30 business days after Council authorization 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.

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.** Documentary stamps, title insurance, title search, title exam, and settlement fees 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 office 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. 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**.

CITY OF CAPE CORAL, FLORIDA

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

BY: A. John Szerlag Witness to A. John Szerlag Date City Manager BY: Kimberly Bruns Witness to Kimberly Bruns Date Interim City Clerk West Coast Land Ventures, a Florida limited liability company Print Name: Print Name: Print Name: L APPROVED AS TO FORM:

Dolores D. Menendez, City Attorney

EXHIBIT "A"

The following is a list of every person with a beneficial interest in the real property described as <u>Lots</u> <u>31 and 32, Block 3013, Unit 43, Cape Coral Subdivision</u>:

| NAME | NAME — |
|---------|---------|
| ADDRESS | ADDRESS |
| ADDRESS | ADDRESS |
| NAME | NAME |
| ADDRESS | ADDRESS |
| ADDRESS | ADDRESS |
| NAME | NAME |
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| NAME | NAME |
| ADDRESS | ADDRESS |
| ADDRESS | ADDRESS |
| NAME | NAME |
| ADDRESS | |
| ADDRESS | ADDRESS |

DISCLOSURE AFFIDAVIT

| Project Name: Festival Park | Parcel ID #: 27432 | 23C4030130310 | Project Parcel ID: FP 131 |
|---|---------------------------------------|---|--------------------------------------|
| STATE OF Floring | | COUNTY OF_ | Loe |
| BEFORE ME, the undersigned au | | | |
| 1. THAT he /she is: | | | |
| () a. President (or Vice F Corporation or LLC incorporated of | resident) of or organized under th | ne laws of the State o | f; |
| or () b. A Partner (or limite composed of doing business under the name of | d Partner) of the firm | n of | |
| or (v) c. Managing Member , doing busing (state) | of a limited liability ness asWe | company organized est Coast Land Ventu (Company Name) | under the laws of ares LLC . |
| 2. THAT the names and addresse hereof are the name and address of Lots 31 and 32, Block 3013, Unit 4 | f every person having | g a beneficial interes | st in the real property described as |
| 3. THIS Affidavit is provided to co | omply with the provi | isions of Section 286 | 5.23, Florida Statutes. |
| Under penalties of perjury, I do h correct. | | | |
| | Pri | (Signatuint Name: | ary |
| | Tit | tle: $MQNQ$ | ger |
| | | | |
| Sworn to and subscribed before me | e this da | y April of | 2019, by |
| as(title and name of | of corporation or company) | | no is personally known by me or |
| has produced(describe identif | | | as identification. |
| (describe identif | ication) | | |

QUESTIONNAIRE

Project Parcel: 131

Parcel Strap: 274323C4030130310

Project: Festival Park

Please complete the following questions that pertain to you and return to this office in the envelope provided. 1. Are you the owner of the property identified above? No 2. Is this property listed with a realtor? Yes No If yes, Agents Name: _____ Real Estate Company's Name: Telephone No.: ____ 3. Have you sold or are you in the process of selling the property? No Yes If ves. to whom -Name: _____ Address: _____ Closing Date _____ 4. Other than my spouse, I share ownership of this property with: Address: _____ Telephone No.: 6. Please list the appropriate contact, person for this property: Name and Title: __ Address: 1433 Telephone No.: 339-6 7. Is there an ongoing business on this site? Yes If yes, who owns the business? Name: _____ Address: Telephone No.: _____ 8. Additional Comments: ____ Property Owner's Signature Date Printed Name & Title Telephone Number Street Address Facsimile Number City Email address

QUESTIONNAIRE

Project: Festival Park Parcel Strap: 274323C4030130310 Project Parcel: 131

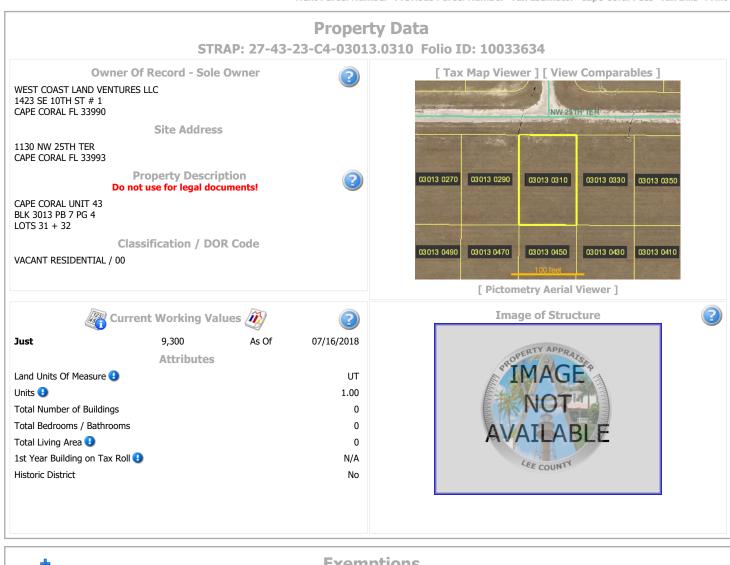
Please complete the following questions that pertain to you and return to this office in the envelope provided.

| Thease complete the following questions that pertain to yo | |
|--|--|
| 1. Are you the owner of the property identified above? | Yes No |
| 2. Is this property listed with a realtor? If yes, Agents Name: | Yes No No |
| Real Estate Company's Name: | |
| Telephone No.: | |
| Have you sold or are you in the process of selling the If yes, to whom – Name: | |
| Address: | |
| Closing Date | |
| 4. Other than my spouse, I share ownership of this prop | erty with: |
| Name: | |
| Address: | |
| Telephone No.: | |
| 6. Please list the appropriate contact person for this pro | perty: |
| Name and Title: | |
| Address: | |
| Telephone No.: | |
| 7. Is there an ongoing business on this site? Yes If yes, who owns the business? | No |
| Name: | |
| Address: | and a state of the |
| Telephone No.: | |
| 8. Additional Comments: | |
| | |
| Property/wher's Signature Date | |
| DUAN LIEDEM | |
| Printed Name & Title | Telephone Number |
| Street Address | Facsimile Number |
| City State Zip | Email address |

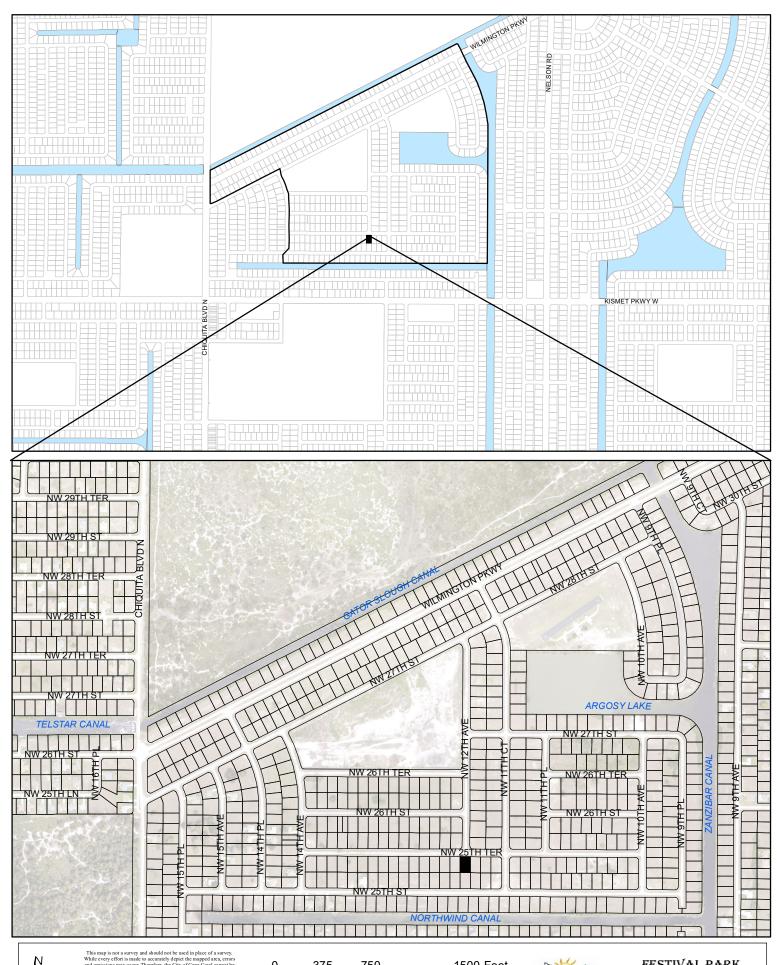


Tax Year 2018

Next Parcel Number Previous Parcel Number Tax Estimator Cape Coral Fees Tax Bills Print

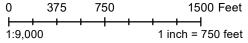


| | * |
|---|--|
| + | Exemptions |
| + | Values (2018 Tax Roll) |
| + | Taxing Authorities |
| + | Sales / Transactions |
| + | Parcel Numbering History Output Description: |
| + | Location Information |
| + | Solid Waste (Garbage) Roll Data |
| + | Flood and Storm Information |
| + | Appraisal Details (2018 Tax Roll) |





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, repared by: The City of CAPE CORAL Real Estate Division-Gregory L. Spivey





FESTIVAL PARK
Parcel 131
Block 3013 Lots 31 and 32

LAND APPRAISAL REPORT

| L | <u>AND APPRAISAL</u> | | File No.: 20100503 | | | |
|-----------------------------------|--|--|---|--|--|--|
| | Property Address: 1206 NW 25th Ter | City: Cape Coral | State: FL Zip Code: 33993 | | | |
| | County: Lee | Legal Description: Lots 27+28, Blk. 3013, Cape | Coral Unit 43. PB 17 PG 50 | | | |
| | • | | , | | | |
| | - | | | | | |
| | | | | | | |
| 5 | Assessor's Parcel #: 27-43-23-C4-03013 | 3.0270 Tax Year: 2018 R.E. Ta | xes: \$ 396.94 Special Assessments: \$ 0 | | | |
| SUBJECT | Market Area Name: Cape Coral Unit 43 | Map Reference: 1598 | O Census Tract: 0101.02 | | | |
| ம் | Current Owner of Record: Torres, Joel & | Valle, Leticia Borrower (if applicable): | N/A | | | |
| Ŋ | | De Minimis PUD Other (describe) | HOA: \$ O per year per month | | | |
| | | | | | | |
| | Are there any existing improvements to the prope | • — — • • • • | ☐ Owner ☐ Tenant ☐ Vacant ☐ Not habitable | | | |
| | If Yes, give a brief description: The subje | ct is a vacant site with no improvements. | | | | |
| | | | | | | |
| | | | | | | |
| | The number of this envision is to devalor or oni | sion of Madret Value (so defined) or ather time of val | ue (deseribe) | | | |
| ١, | The purpose of this appraisal is to develop an opi | | | | | |
| l | This report reflects the following value (if not Cur | rent, see comments): 🔀 Current (the Inspection Date is the Eff | ective Date) Retrospective Prospective | | | |
| 닐 | Property Rights Appraised: | Leasehold Leased Fee Other (describe) | | | | |
| 回 | | aluate the property that is the subject of this appraisal for | or land acquisition | | | |
| 2 | THE INCHES COCIO IS TO CVC | nate the property that is the subject of this appraisant | or land doquiomon. | | | |
| ত_ | | | | | | |
| S | Intended User(s) (by name or type): City of (| Cape Coral | | | | |
| ASSIGNMENT | | | | | | |
| | Client: City of Cape Coral | Address: PO Box 150027, Cape Co | oral El 33015-0027 | | | |
| | , | | | | | |
| | Appraiser: Rhonda Elaine Rechkemm | | | | | |
| | Characteristics | Predominant One-Unit Housin | | | | |
| | Location: Urban 🖂 Suburb | an Rural Occupancy Price AG | GE One-Unit 50 % Not Likely | | | |
| | Built up: | 6 | | | | |
| | Growth rate: Rapid Stable | | | | | |
| | | | | | | |
| | Property values: Increasing Stable | | 5 Comm'l 3 % | | | |
| | Demand/supply: 🔲 Shortage 🛮 🔀 In Balar | nce 🗌 Over Supply 🔲 Vacant (>5%) 207 Pred (| O Vacant Land 45 % | | | |
| | Marketing time: Under 3 Mos. X 3-6 Mo | | % | | | |
| | manoung and chack a mac a a ma | | λ, | | | |
| Z | | Factors Affecting Marketability | | | | |
| ĭ | <u>Item</u> G <u>oo</u> | | <u>Goo</u> d Av <u>erag</u> e <u>Fair</u> <u>Poo</u> r <u>N/</u> A | | | |
| Ы | Employment Stability | | | | | |
| 뽔 | Convenience to Employment | | | | | |
| S | Convenience to Shopping | Protection from Detriment | | | | |
| 뭐 | Convenience to Schools | | | | | |
| 4 | _ | | | | | |
| Ę, | Adequacy of Public Transportation | General Appearance of Pro | | | | |
| A | Recreational Facilities | Appeal to Market | | | | |
| \vdash | Market Area Comments: The subject's | | | | | |
| ш | Market Area Comments: The subject's market is bordered by Jacaranda Pkwy/Wilmington Parkway to the north, Diplomat Parkway to the | | | | | |
| $\overline{\mathbf{z}}$ | | | | | | |
| RK | south, Santa Barbara Boulevard to the | east and Burnt Store Road to the west. All supporting | services are located within five miles including | | | |
| AARKI | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf | east and Burnt Store Road to the west. All supporting course, park, boat ramp and other essential services. | services are located within five miles including The subject is a typical vacant residential. | | | |
| MARK | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf | east and Burnt Store Road to the west. All supporting | services are located within five miles including The subject is a typical vacant residential. | | | |
| MARK | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf Financing includes conventional, private | east and Burnt Store Road to the west. All supporting course, park, boat ramp and other essential services. e mortgages, FHA/VA and cash transactions. The med | services are located within five miles including The subject is a typical vacant residential. dian sales price has fluctuated, but is considered | | | |
| MARK | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf Financing includes conventional, privat mostly stable for the past 12 months. | east and Burnt Store Road to the west. All supporting course, park, boat ramp and other essential services. e mortgages, FHA/VA and cash transactions. The med the housing supply in this market is currently in balance | services are located within five miles including The subject is a typical vacant residential. dian sales price has fluctuated, but is considered e with adequately priced properties selling within | | | |
| MARK | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf Financing includes conventional, privat mostly stable for the past 12 months. | east and Burnt Store Road to the west. All supporting course, park, boat ramp and other essential services. e mortgages, FHA/VA and cash transactions. The med | services are located within five miles including The subject is a typical vacant residential. dian sales price has fluctuated, but is considered e with adequately priced properties selling within | | | |
| MARK | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf Financing includes conventional, privat mostly stable for the past 12 months. | east and Burnt Store Road to the west. All supporting course, park, boat ramp and other essential services. e mortgages, FHA/VA and cash transactions. The med the housing supply in this market is currently in balance | services are located within five miles including The subject is a typical vacant residential. dian sales price has fluctuated, but is considered e with adequately priced properties selling within | | | |
| MARK | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf Financing includes conventional, privat mostly stable for the past 12 months. | east and Burnt Store Road to the west. All supporting course, park, boat ramp and other essential services. e mortgages, FHA/VA and cash transactions. The med the housing supply in this market is currently in balance | services are located within five miles including The subject is a typical vacant residential. dian sales price has fluctuated, but is considered e with adequately priced properties selling within | | | |
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| MA | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf Financing includes conventional, private mostly stable for the past 12 months. 3-6 months. New construction starts were considered as a simple of the past 12 months. Dimensions: 80' x 125' Zoning Classification: R-1B Uses allowed under current zoning: Allows Are CC&Rs applicable? Yes No Comments: Highest & Best Use as improved: Present Actual Use as of Effective Date: Vacant Site Summary of Highest & Best Use: Consider the appraiser's opinion that the highest the appraiser's opinion that the highest the appraiser's opinion that the highest Septic required Sanitary Sewer None Septic required Sanitary Sewer Septic required Sanitary Sewer None Century Link Multimedia Various provice Other site elements: Inside Lot Comments: No adverse easements | Description: Description: Sin | Services are located within five miles including The subject is a typical vacant residential. dian sales price has fluctuated, but is considered e with adequately priced properties selling within additional comments. Site Area: 10,000 Sq.Ft. gle Family requirements? Yes No No Improvements No Ground Rent (if applicable) \$ | | | |
| MA | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf Financing includes conventional, private mostly stable for the past 12 months. 3-6 months. New construction starts were considered as a point of the past 12 months. Dimensions: 80' x 125' Zoning Classification: R-1B Uses allowed under current zoning: Allows comments: Highest & Best Use as improved: Present comments: Highest & Best Use as improved: Vacant Site Summary of Highest & Best Use: Consider the appraiser's opinion that the highest the appraiser's opinion that the highest considered sanitary Sewer Considered Sanitary Sewer Considered Sanitary Sewer Considered Septic required Septic require | Description: Do present improvements comply with existing zoning a single family home. Unknown Have the documents been reviewed? Use as appraised in this ring the physically and legally possible as well as the fination and best use of the subject's site is a single family reserved. Off-site Improvements Type Width Street Asphalt paved Width Surface Asphalt paved Width Surface Asphalt paved Curty/Gutter Wone Sidewalk None Street Lights Street Lights Street Lights Street Lights Street Lights Street Lights None Street Lights FEMA Ripod Zone X FEMA Ripod Zone Asurvey was not prove accurate. Flood zone data taken from InterFlood and is securate. | Site Area: 10,000 Sq.Ft. In subject is a typical vacant residential. Idian sales price has fluctuated, but is considered to with adequately priced properties selling within additional comments. Site Area: 10,000 Sq.Ft. Ingle Family In requirements? Yes No No Improvements In No Ground Rent (if applicable) \$ | | | |
| MA | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf Financing includes conventional, private mostly stable for the past 12 months. 3-6 months. New construction starts were considered as a point of the past 12 months. Dimensions: 80' x 125' Zoning Classification: R-1B Uses allowed under current zoning: Allows comments: Highest & Best Use as improved: Present comments: Highest & Best Use as improved: Present considered the appraiser's opinion that the highest considered the appraiser's opinion that the highest considered the appraiser's opinion that the highest considered consider | Description: Sin Do present improvements comply with existing zoning a single family home. Unknown Have the documents been reviewed? Yes Use, or Other use (explain) To improve with a single family resident physically and legally possible as well as the finite and best use of the subject's site is a single family resident pole Off-site Improvements Type Public Family and best use of the subject's site is a single family resident pole Width 60' Per Plat Surface Asphalt paved Width 60' Per Plat Surface Asphalt paved Curb/Gutter None Sidewalk None Sidewalk None Sidewalk None Street Lights Pole Lers Alley None Lers Alley None Lers Alley None Best Curb Cane Cane Common for this market as public of the market as public or encroachments were noted. A survey was not prove accurate. Flood zone data taken from InterFlood and is a well and septic are common for this market as public or encroachments were noted. A survey was not prove accurate. Flood zone data taken from InterFlood and is a well and septic are common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as | Site Area: 10,000 Sq.Ft. In subject is a typical vacant residential. Idian sales price has fluctuated, but is considered to with adequately priced properties selling within additional comments. Site Area: 10,000 Sq.Ft. Ingle Family In requirements? Yes No No Improvements In No Ground Rent (if applicable) \$ | | | |
| MA | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf Financing includes conventional, private mostly stable for the past 12 months. 3-6 months. New construction starts were considered as a point of the past 12 months. Dimensions: 80' x 125' Zoning Classification: R-1B Uses allowed under current zoning: Allows comments: Highest & Best Use as improved: Present comments: Highest & Best Use as improved: Present considered the appraiser's opinion that the highest considered the appraiser's opinion that the highest considered the appraiser's opinion that the highest considered consider | Description: Do present improvements comply with existing zoning a single family home. Unknown Have the documents been reviewed? Use as appraised in this ring the physically and legally possible as well as the fination and best use of the subject's site is a single family reserved. Off-site Improvements Type Width Street Asphalt paved Width Surface Asphalt paved Width Surface Asphalt paved Curty/Gutter Wone Sidewalk None Street Lights Street Lights Street Lights Street Lights Street Lights Street Lights None Street Lights FEMA Ripod Zone X FEMA Ripod Zone Asurvey was not prove accurate. Flood zone data taken from InterFlood and is securate. | Site Area: 10,000 Sq.Ft. In subject is a typical vacant residential. Idian sales price has fluctuated, but is considered to with adequately priced properties selling within additional comments. Site Area: 10,000 Sq.Ft. Ingle Family In requirements? Yes No No Improvements In No Ground Rent (if applicable) \$ | | | |
| MA | south, Santa Barbara Boulevard to the shopping, restaurants, schools, a golf Financing includes conventional, private mostly stable for the past 12 months. 3-6 months. New construction starts were considered as a point of the past 12 months. Dimensions: 80' x 125' Zoning Classification: R-1B Uses allowed under current zoning: Allows comments: Highest & Best Use as improved: Present comments: Highest & Best Use as improved: Present considered the appraiser's opinion that the highest considered the appraiser's opinion that the highest considered the appraiser's opinion that the highest considered consider | Description: Sin Do present improvements comply with existing zoning a single family home. Unknown Have the documents been reviewed? Yes Use, or Other use (explain) To improve with a single family resident physically and legally possible as well as the finite and best use of the subject's site is a single family resident pole Off-site Improvements Type Public Family and best use of the subject's site is a single family resident pole Width 60' Per Plat Surface Asphalt paved Width 60' Per Plat Surface Asphalt paved Curb/Gutter None Sidewalk None Sidewalk None Sidewalk None Street Lights Pole Lers Alley None Lers Alley None Lers Alley None Best Curb Cane Cane Common for this market as public of the market as public or encroachments were noted. A survey was not prove accurate. Flood zone data taken from InterFlood and is a well and septic are common for this market as public or encroachments were noted. A survey was not prove accurate. Flood zone data taken from InterFlood and is a well and septic are common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as public or encroachments were common for this market as | Site Area: 10,000 Sq.Ft. In subject is a typical vacant residential. Idian sales price has fluctuated, but is considered to with adequately priced properties selling within additional comments. Site Area: 10,000 Sq.Ft. Ingle Family In requirements? Yes No No Improvements In No Ground Rent (if applicable) \$ | | | |



LAND APPRAISAL REPORT

| L | AND APP | 'KAISAL I | REPORT | | | F | ile No.: 20100503 | |
|---------------------------|--------------------------------|-------------------------------|--------------------------------|----------------------|---|----------------------|-------------------------|---|
| | My research did | did not reveal any prior | sales or transfers of the si | ubject property for | the three years prior to t | he effective date of | this appraisal. | |
| ≿ | Data Source(s): Lee (| County Property App | raiser's web site | | | | | |
| Q. | 1st Prior Subject S | | alysis of sale/transfer histor | ry and/or any curr | ent agreement of sale/list | ting: The subj | ect has no listings fo | und in the |
| ST | Date: 07/20/2000 | | VFL MLS within the p | | | | | |
| 三 | | | ective date of this ap | | | | | |
| EN. | Source(s): Lee County | | months. | | | | | |
| TRANSFER HISTORY | 2nd Prior Subject | | | | | | | |
| Ž | Date: 05/15/2000 | | urces: Lee County P | ronerty Annra | iser's web site: SW | FL MLS | | |
| F | |) Multiple Parcel | drocs. Lee County I | roperty Appra | isci s web site, ovv | I L IVILO | | - |
| - | Source(s): Lee County | | | | | | | |
| | FEATURE | SUBJECT PROPERTY | COMPARABL | FNO 1 | COMPARAB | IENO 2 | COMPARABLE | NO 3 |
| | Address 1206 NW 25 | | 1204 NW 24th Ter | L 110. 1 | 621 NW 26th Ter | LL NO. Z | 619 NW 29th Ter | . 110. 0 |
| | Cape Coral, | | Cape Coral, FL 339 | 003 | Cape Coral, FL 33 | 3003 | Cape Coral, FL 339 | 03 |
| | Proximity to Subject | 1 2 33333 | 0.14 miles S | 990 | 0.69 miles E | 1333 | 0.97 miles NE | 30 |
| | Sale Price | \$ N/A | | 10,500 | | 11,000 | | 11,000 |
| | Price/ Sq.Ft. | ¢ 14/74 | \$ 1.05 | 10,500 | \$ 1.03 | 11,000 | \$ 1.04 | 11,000 |
| | Data Source(s) | Inspection | SWFLMLS#218045 | 5640/0E DOM | | 72006/04 DOM | SWFLML#2150526 | 24/4000DOM |
| | Verification Source(s) | LeePA/Public Rec. | LeePA/Inst#201800 | | LeePA/Inst#20180 | | LeePA/Inst#201900 | |
| | VALUE ADJUSTMENT | DESCRIPTION | DESCRIPTION | | DESCRIPTION | | DESCRIPTION | |
| | Sales or Financing | N/A | | + (-) \$ Adjust | | + (-) \$ Adjust | Cash | + (-) \$ Adjust |
| _ | - | | Cash | | Cash | | | |
| ij | Concessions Date of Solo/Time | N/A | 0 | + | 0 | + | 0 | _ |
| O | Date of Sale/Time | N/A | s10/18; c10/18 | + c | s12/18; c12/18 | + 0 | s01/19; c09/18 | 0 |
| 8 | Rights Appraised | Fee Simple | Fee Simple | 1 | Fee Simple | 1 | Fee Simple | |
| API | Location | U43/Residential | U43/Residential | - | U40/Residential | | U40/Residential | 0 |
| Z | Site Area (in Sq.Ft.) | 10,000 | 10,000 | 1 | 10,638 | 0 | 10,625 | 0 |
| SO | View | Residential | Residential | - | Residential | + | Residential | |
| SALES COMPARISON APPROACH | Utilities | Well/Septic area | Well/Septic area | - | Well/Septic area | + | Well/Septic area | |
| PA | Prior Transaction Date | 07/20/2000 | 01/22/2004 | | 02/13/2003 | | 09/23/2008 | |
| MC | Prior Transaction Price | \$13,000 | \$29,500 | | \$4,900 | | \$9,000 | |
| ၓ | | <u> </u> | | | | | | |
| ES | Net Adjustment (Total, in | \$) | | | | | _ + \$ | |
| A | | | Net % | | Net % | | Net % | |
| လ | Adjusted Sale Price (in \$) | | Gross % \$ | | Gross % \$ | | | 11,000 |
| | Summary of Sales Compa | | three sales are local | | | | n three months prior | to the |
| | effective date of this | s appraisal. No adjus | tments are required. | Similar emph | asis is given to all th | nree sales. | | |
| | | | | | | | | |
| | s=settlement/closed | d date; c=contract/pe | ending date; DOM=da | ays on the ma | rket | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | PROJECT INFORMATIO | N FOR PUDs (if applicat | ole) The Subjec | t is part of a Planr | ed Unit Development. | | | |
| | Legal Name of Project: | | | | | | | |
| PUD | Describe common elemen | nts and recreational faciliti | es: | | | | | |
| ш | | | | | | | | |
| | | | | | | | | |
| | Indicated Value by: Sal | es Comparison Approac | ch\$ 11.000 | | | | | |
| | | e Sales Comparison | , | esents the acti | ons of typical buyer | s and sellers in | the market and is rel | lied on |
| Ž | | e estimate. The Cost | | | | | and market and le res | |
| ĭ | | ⊠ "as is", or □ sub | | | | | Conditions | |
| ĭ | appraisa. 10aac 2 | | ,001 10 1 10 1 1 1 1 1 | <u> </u> | ittaorioa / tooarriptio | no and Emmang | Corrainorio. | |
| RECONCILIATION | | | | | | | | |
| NO | This report is also s | subject to other Hypothet | ical Conditions and/or Fx | draordinary Assur | notions as specified in | the attached adde | nda. | |
| S E | | ction of the subject pro | | | | | | s Certifications |
| R | my (our) Opinion of | the Market Value (or | other specified value | type), as defi | ned herein. of the r | eal property that | is the subject of the | is report is: |
| | \$ 11,0 | | as of: | 01/23/2 | 2019 | , which i | s the effective date of | this appraisal. |
| | | s Opinion of Value is su | | | | | | |
| Ĭ. | | opy of this report contai | | | | | | |
| ATTACH. | | nout reference to the info | | | | • | | |
| F | | ifications 🔀 Narrative | | Location Map(s | · | ood Addendum | Additional Sa | ales |
| 1 | Photo Addenda | Parcel M | Tap | Hypothetical Co | | traordinary Assumpt | ions 🔲 | |
| | Client Contact: Doug | | | Client Na | . <u> </u> | | | |
| | E-Mail: dsayers@cap | pecoral.net | | | Box 150027, Cape | | | |
| | APPRAISER | | | | JPERVISORY APP | | juired) | |
| | | | | or | CO-APPRAISER | (if applicable) | | |
| | \bigcap | | | | | | | |
| (0 | Shonda & | Elaine Recht | lemmer | c | pervisory or | | | |
| Ä | Appraiser Name: Pho | nda Elaine Rechkem | nmer | l Cu | pervisory or -Appraiser Name: | | | |
| Ę | | mer Appraisal Servi | | | | | | |
| M | Phone: (239) 542-41: | | (239) 542-2591 | Dh | mpany: | | Fax: | |
| SIGNATURES | E-Mail: R.Rechkemm | | . <u>1200) 072-2031</u> | ¡.'' | Mail: | | Fax: | |
| S | Date of Report (Signature | | | | | | | |
| | | : Cert.Res.RD286 | Q C+n+ | e: FL Lic | te of Report (Signature): ense or Certification #: | | | State: |
| | | | | | ense of Certification #. | | | J. G. |
| | Expiration Date of License | emmer Appraisal Se | | | signation: piration Date of License o | or Cartification: | | |
| | • | | /30/2020 | | | | Did Not Income | |
| | Date of Inspection: | | _ יום ואסו וווצףפכנ (Deskto | nh) luz | pection of Subject: te of Inspection: | Did Inspect | Did Not Inspect | |



Supplemental Addendum

| | | | 1110 | 110. 20 100303 | |
|------------------|--------------------|------------|----------|----------------|--|
| Client | City of Cape Coral | | | | |
| Property Address | 1206 NW 25th Ter | | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993 | |
| Borrower | N/A | | | | |

File No. 20100502

Intended User and Use Clarification

The Intended User of this appraisal report is the Client, the City of Cape Coral. The Intended Use is to evaluate the property that is the subject of this appraisal for land acquisition. No additional Intended Users are identified by the appraiser. This report is not intended for lending nor insurance purposes.

Scope of the Work

The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report including the attached definition of market value, statement of assumptions and limiting conditions and certifications. The appraiser has performed a visual inspection of the subject site, inspected and analyzed the neighborhood, inspected the comparable sales from the street, researched, verified and analyzed data from reliable public and/or private sources and reported my analysis, opinions and conclusions in this appraisal report.

Highest and Best Use as Vacant

Considering the physically and legally possible as well as the financially feasible tests of highest and best use, it is the appraiser's opinion that the highest and best use of the subject site is for development of a single family residence.

Additional Comments

I have no current or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.

I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

The opinion of market value as defined in this report is in terms of cash or of financing terms equivalent to cash.

Exposure time as defined in USPAP is the estimated length of time that a property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal. Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market.

Comments on Future Assessments

It should be noted that the City of Cape Coral intends to expand utilities (water, sewer and irrigation water) to the subject's market in the future at which time connection will be mandatory and there will be assessments and CIAC fees which will be determined based on the cost of the project. Owners have the option of paying all of the assessments/fees up front or financing over 20 years and are then included on the owner's annual tax bill until paid in full.

Comments on the City of Cape Coral

The subject is located in Cape Coral, an incorporated city on the southwest portion of Florida in Lee County. The city of Cape Coral has an indicated land area of 120 square miles and is known for its extensive fresh water and Gulf access canals and lakes. The estimated population of Cape Coral in 2013 was 165,831 persons, per the US Census Bureau. The Cape Coral market had substantial growth with extensive new construction during 2000-2006. This market was affected by the recession starting in 2006-2007 with new construction ending and extensive foreclosures throughout the area for several years. This market has since recovered with housing inventory decreasing and new construction starts noted throughout the area.

Comments on the Proposed Festival Park

The subject site is located in the northwest portion of Cape Coral in an area that will be developed as Festival Park by the City of Cape Coral. Festival Park will consist of approximately 215 acres which currently includes platted lots, existing streets, a fresh water lake and the current Seahawk Park when completed. The platted lots in this area are being acquired by the City of Cape Coral in four phases for this project.

| Client | City of Cape Coral | | | File | e No. 20100503 |
|--|---|---|--|---|---|
| Property Address | 1206 NW 25th Ter | | | | |
| City Borrower | Cape Coral N/A | County I | Lee | State FL | Zip Code 33993 |
| APPRAI | SAL AND REPORT IDE | ENTIFICATION | | | |
| | rt is <u>one</u> of the following types: | | | | |
| 🔀 Apprais | al Report (A written report prepar | ed under Standards Rule | 2-2(a) , pursuant to th | e Scope of Work, as disclo | sed elsewhere in this report.) |
| Restric Apprais | | ed under Standards Rule ntended use by the specified | | | osed elsewhere in this report, |
| I certify that, to The stateme The reported analyses, opinion | nts on Standards Rule the best of my knowledge and belief: nts of fact contained in this report are true l analyses, opinions, and conclusions are ons, and conclusions. | e and correct. limited only by the reported as: | _ | | |
| — I have performance of to the second | esent or prospective interest in the propert med no services, as an appraiser or in an his assignment. as with respect to the property that is the s | y other capacity, regarding the subject of this report or the par | property that is the subject | of this report within the three- | |
| My compen client, the amouMy analyses in effect at the tI have madeNo one prov | nent in this assignment was not continger sation for completing this assignment is n unt of the value opinion, the attainment of , opinions, and conclusions were develop ime this report was prepared. a personal inspection of the property that ided significant real property appraisal ass praisal assistance is stated elsewhere in the | ot contingent upon the develop a stipulated result, or the occu ed, and this report has been po- is the subject of this report. istance to the person(s) signin | pment or reporting of a pred irrence of a subsequent eve repared, in conformity with | nt directly related to the intend the Uniform Standards of Profe | led use of this appraisal. essional Appraisal Practice that were |
| appraised wo My Opinion | able Exposure Time uld have been offered on the market of Reasonable Exposure Time for dicated by similar vacant site sal | prior to the hypothetical co or the subject property | onsummation of a sale a | | |
| | nts on Appraisal and JSPAP related issues requir | | | d requirements: | |
| | | | | | |
| APPRAISEI | R: | | SUPERVISORY | or CO-APPRAISER (| if applicable): |
| Signature: | Zhonda Elaine Rec | Lhemmer | Signatura | | |
| | da Elaine Rechkemmer | | Name: | | |
| Rech | kemmer Appraisal Services, Inc. | | | | |
| or State License | on #: <u>Cert.Res.RD2869</u> | | or State License #: | • | |
| State: FL_ | Expiration Date of Certification or License | | State: Ex | piration Date of Certification or | License: |
| Date of Signatu | re and Report: <u>01/23/2019</u> | | | | |
| | f Appraisal: 01/23/2019 ubject: None None Interior and Expression in the state of | derior Eutorior Only | Inconnation of Cubic | nt: Nono Interior | r and Exterior Cale |
| | on (if applicable): <u>01/23/2019</u> | TOTAL EXICUOL-UTILY | | if applicable): | r and Exterior Exterior-Only |

Assumptions, Limiting Conditions & Scope of Work

File No.: 20100503 1206 NW 25th Ter Property Address: State: FI Zip Code: 33993 City of Cape Coral Address: PO Box 150027, Cape Coral, FL 33915-0027 Rhonda Elaine Rechkemmer Address: 1913 SW 54th Street, Cape Coral, FL 33914-6888

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

- The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
- The appraiser may have provided a plat and/or parcel map in the appraisal report to assist the reader in visualizing the lot size, shape, and/or orientation. The appraiser has not made a survey of the subject property.
- If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
- The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
- The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
- The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
- The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.
- An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.
- The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database. Possession of this report or any copy thereof does not carry with it the right of publication.
- Forecasts of effective demand for the highest and best use or the best fitting and most appropriate use were based on the best available data concerning the market and are subject to conditions of economic uncertainty about the future.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Certifications & Definitions

| refullications & Defillitions | | | File No.: 20 | 0100503 |
|---|----------|-------------------------------------|--------------|-----------------|
| Property Address: 1206 NW 25th Ter | | City: Cape Coral | State: FL | Zip Code: 33993 |
| Client: City of Cape Coral | Address: | PO Box 150027, Cape Coral, FL 33915 | 5-0027 | |
| Appraiser: Rhonda Elaine Rechkemmer | Address: | 1913 SW 54th Street, Cape Coral, FL | 33914-6888 | |
| APPRAISER'S CERTIFICATION | | | | |
| Logitify that to the heat of my knowledge and helief: | | | | |

- I certify that, to the best of my knowledge and belief:

 The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- Unless otherwise indicated, I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

DEFINITION OF MARKET VALUE *:

Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1. Buyer and seller are typically motivated;
- 2. Both parties are well informed or well advised and acting in what they consider their own best interests;
- 3. A reasonable time is allowed for exposure in the open market;
- 4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
- * This definition is from regulations published by federal regulatory agencies pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 between July 5, 1990, and August 24, 1990, by the Federal Reserve System (FRS), National Credit Union Administration (NCUA), Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the Office of Comptroller of the Currency (OCC). This definition is also referenced in regulations jointly published by the OCC, OTS, FRS, and FDIC on June 7, 1994, and in the Interagency Appraisal and Evaluation Guidelines, dated October 27, 1994.

| | Client Contact: Doug Sayers C | lient Name: City of Cape Coral |
|-------|--|--|
| | E-Mail: dsayers@capecoral.net Address: | PO Box 150027, Cape Coral, FL 33915-0027 |
| | APPRAISER | SUPERVISORY APPRAISER (if required) |
| | | or CO-APPRAISER (if applicable) |
| | | , |
| | | |
| ഗ | O1 1 51 0 | |
| TURES | Shonda Elaine Rechhemmer | Supervisory or |
| ᢓ | Appraiser Name: Rhonda Elaine Rechkemmer | Co-Appraiser Name: |
| ₹ | Company: Rechkemmer Appraisal Services, Inc. | Company: |
| | Phone: (239) 542-4152 Fax: (239) 542-2591 | Phone: Fax: |
| ဟ | E-Mail: R.Rechkemmer@att.net | E-Mail: |
| | Date Report Signed: 01/23/2019 | Date Report Signed: |
| | License or Certification #: Cert.Res.RD2869 State: FL | License or Certification #: State: |
| | Designation: Rechkemmer Appraisal Services, Inc. | Designation: |
| | Expiration Date of License or Certification: 11/30/2020 | Expiration Date of License or Certification: |
| | Inspection of Subject: Did Inspect Did Not Inspect (Desktop) | Inspection of Subject: Did Inspect Did Not Inspect |
| | Date of Inspection: 01/23/2019 | Date of Inspection: |

Subject Land Photo Page

| Client | City of Cape Coral | | | | | | |
|------------------|--------------------|------------|---------|----|----------|-------|---|
| Property Address | 1206 NW 25th Ter | | | | | | |
| City | Cape Coral | County Lee | State F | :L | Zip Code | 33993 | |
| Borrower | N/A | | | • | | | • |



Subject Front

1206 NW 25th Ter Sales Price N/A

Date of Sale N/A

Location U43/Residential

Site/View

View Residential
Utilities Well/Septic area
Prior Transaction Date 07/20/2000
Prior Transaction Price\$13,000



Subject Street



Subject Street

Comparable Land Photo Page

| Client | City of Cape Coral | | | | | | |
|------------------|--------------------|------------|---------|----|----------|-------|---|
| Property Address | 1206 NW 25th Ter | | | | | | |
| City | Cape Coral | County Lee | State F | :L | Zip Code | 33993 | |
| Borrower | N/A | | | • | | | • |



Comparable 1

1204 NW 24th Ter

 Prox. to Subj.
 0.14 miles S

 Sales Price
 10,500

 Date of Sale
 \$10/18; \$c\$10/18

 Location
 U43/Residential

 Site
 10,000sf

 View
 Residential

 Utilities
 Well/Septic area

Prior Transaction Date Prior Transaction Price



Comparable 2

621 NW 26th Ter

Prox. to Subj. 0.69 miles E
Sales Price 11,000
Date of Sale s12/18; c12/18
Location U40/Residential
Site 10,638sf
View Residential
Utilities Well/Septic area

Prior Transaction Date Prior Transaction Price

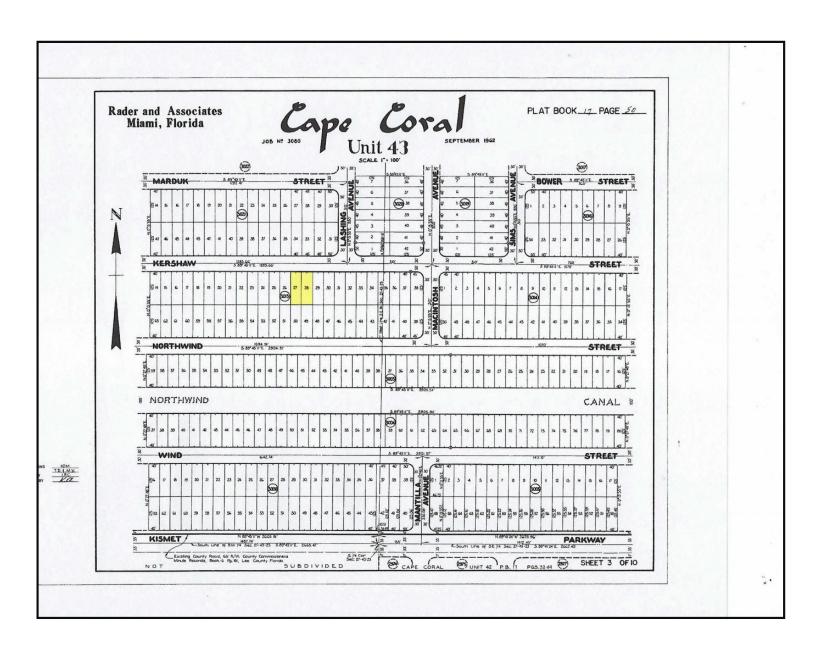


Comparable 3

619 NW 29th Ter

Prox. to Subj. 0.97 miles NE
Sales Price 11,000
Date of Sale s01/19; c09/18
Location U40/Residential
Site 10,625sf
View Residential
Utilities Well/Septic area

Prior Transaction Date Prior Transaction Price

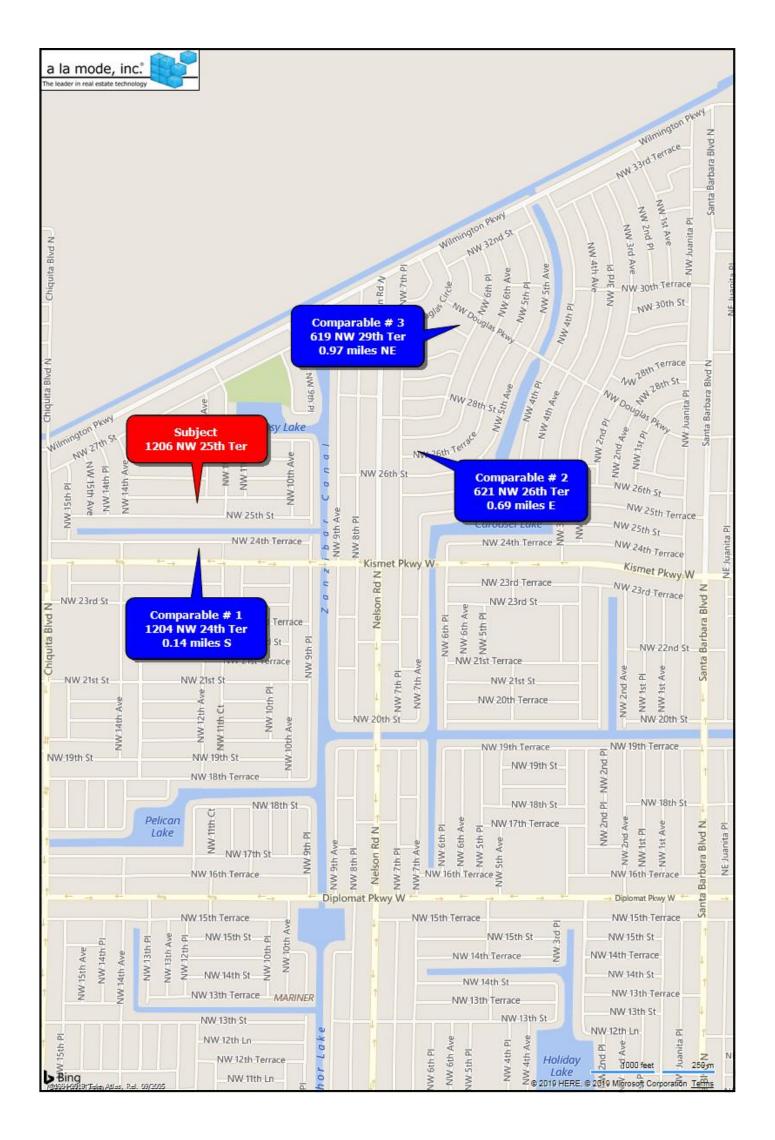


Aerial



Location Map

| Client | City of Cape Coral | | | |
|------------------|--------------------|------------|----------|----------------|
| Property Address | 1206 NW 25th Ter | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993 |
| Rorrower | N/A | | | |



Item Number: B.(7)

Meeting Date: 5/13/2019

Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 100-19 Approval of Contract for Purchase of 1239 NW 25th Street, Cape Coral, an improved property located on Lots 65 and 66, Block 3013, Unit 43, Cape Coral Subdivision, for the Festival Park project for the purchase price of \$150,000 plus closing costs not to exceed \$2,700; Department: Financial Services / Real Estate Division; Dollar Value: \$152,700; (Parks Capital Project/GO Bond Fund) Note: Trade offer rejected by Seller.

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 F: ENHANCE THE QUALITY OF LIFE THROUGH ARTS AND CULTURE TO CREATE AND PROMOTE A VIBRANT, CULTURALLY DIVERSE COMMUNITY.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- 1. In 2003 at a Strategic Planning Session City Council directed staff to begin purchasing property in Cape Coral Subdivision Unit 43 for a future park site, now known as Festival Park. Over the years, Staff had been working with various owners in the park area to purchase additional properties on a voluntary basis based on current independent state-certified appraisals.
- 2. Currently, the City owns 444 of the 517 parcels required for Festival Park, with three additional property contracts currently pending. Included in the remaining properties to purchase is one (1) improved property located on the Northwind Canal. The subject contract is for a single-family residence located on a two-lot off-water site within the designated Festival Park area.
- 3. City Staff had been working with the previous property owner prior to their passing. Subsequently the property went into foreclosure and Staff has worked with the Bank's Trust Company to acquire the property. Staff submitted an offer to purchase the property based on an independent state-certified appraisal of the subject property, which was accepted by Bank. The contract requires the City to pay the closing costs incurred by the title company.
- 4. Staff recommends approval of the purchase contract to purchase the improved residence

located at 1239 NW 25th Street, for the purchase price of \$150,000 plus closing costs not to exceed \$2,700.

LEGAL REVIEW:

EXHIBITS:

Resolution 100-19 **Property Appraiser Sheet Location Map Appraisal**

PREPARED BY:

Division- Real Estate Division Dawn Y. Andrews, Property Department-Financial Services Broker

SOURCE OF ADDITIONAL INFORMATION:

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

Joan Estinval, Property Acquisition Agent Financial Services / Real Estate Division 239-573-3072

ATTACHMENTS:

| | Description | Туре |
|---|------------------------------------|-----------------|
| D | Resolution 100-19 | Resolution |
| D | PA Sheet - 1239 NW 25th Street | Backup Material |
| D | Location Map - 1239 NW 25th Street | Backup Material |
| D | Appraisal - 1239 NW 25th Street | Backup Material |

RESOLUTION 100 - 19

A RESOLUTION OF THE CITY OF CAPE CORAL AUTHORIZING THE CITY MANAGER TO ENTER INTO A "CONTRACT FOR SALE AND PURCHASE" BETWEEN US BANK TRUST NA AS TRUSTEE FOR LSF 10 MASTER PARTICIPATION TRUST AND THE CITY OF CAPE CORAL FOR THE PURCHASE OF LOTS 65-66, BLOCK 3013, UNIT 43, CAPE CORAL SUBDIVISION, FOR THE FESTIVAL PARK PROJECT; PROPERTY LOCATED AT 1239 NW 25TH STREET; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 2003, City Council directed staff to begin purchasing property in Unit 43, Cape Coral Subdivision, for the purpose of creating and developing Festival Park; and

WHEREAS, City staff has been working with various owners in the park area to purchase additional properties on a voluntary basis based on current independent state-certified appraisals; and

WHEREAS, the subject contract is for an off-water site improved with a single-family residence; and

WHEREAS, staff submitted an offer to purchase the property based on a recent independent statecertified 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 and City Clerk to execute a "Contract for Sale and Purchase" between US Bank Trust NA as Trustee for LSF 10 Master Participation Trust and the City of Cape Coral for the purchase of Lots 65-66, Block 3013, Unit 43, Cape Coral Subdivision, as more fully described in the Contract, in the amount of \$150,000, plus closing costs not to exceed \$2,700. The property is located at 1239 NW 25th Street. 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 CO COUNCIL SESSION THIS | | APE CORAL AT ITS REGULAR , 2019. |
|--|-------------------------------|-------------------------------------|
| | IOF COV | IELLO, MAYOR |
| VOTE OF MAYOR AND COU | Ž | illiano, marron |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN | |
| ATTESTED TO AND FILED 2019. | IN MY OFFICE THIS | DAY OF, |
| | KIMBERI CITY CLE | LY BRUNS ERK |

APPROVED AS TO FORM:

DOLORES D. MENENDEZ CITY ATTORNEY

Res/Purchase Real Property Festival Park L65-66 B3013

CONTRACT FOR SALE AND PURCHASE

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

PARTIES: US Bank Trust NA as Trustee for LSF 10 Master Participation Trust, 16745 W.

Bernardo Drive, San Diego, CA 92127 "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 (hereinafter referred to as "PROPERTY") described property upon the following terms and conditions:

- LEGAL DESCRIPTION of real estate located in Lee County, Florida:
 Lots 65 + 66, Block 3013, Unit 43, Cape Coral Subdivision, as recorded in Plat
 Book 17, Pages 48-57, inclusive of the Public Records of Lee County, Florida.
- 2. PURCHASE PRICE

\$150,000.00

3. CONDITIONAL CONTRACT. This contract for sale and purchase is a binding contract once it is executed by the SELLER and by the City Manager on behalf of the BUYER. However, this contract is expressly subject to approval by the Cape Coral City Council. If the Cape Coral City Council fails or refuses to approve the purchase within 30 calendar days of the date when the City Manager has signed this contract, then this contract shall be null and void. 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.

Page 1 of 6

Exhibit A

- 4. EFFECTIVE DATE & CLOSING DATE. The Effective Date of this contract shall be the date of Council authorization. This contract shall be closed and the deed shall be delivered within 30 business days after Council authorization 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.
- 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;
 - 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.

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.
- 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. Documentary stamps, title insurance, title search, title exam and settlement fees 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 office 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 RENEFICIAL 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. 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.

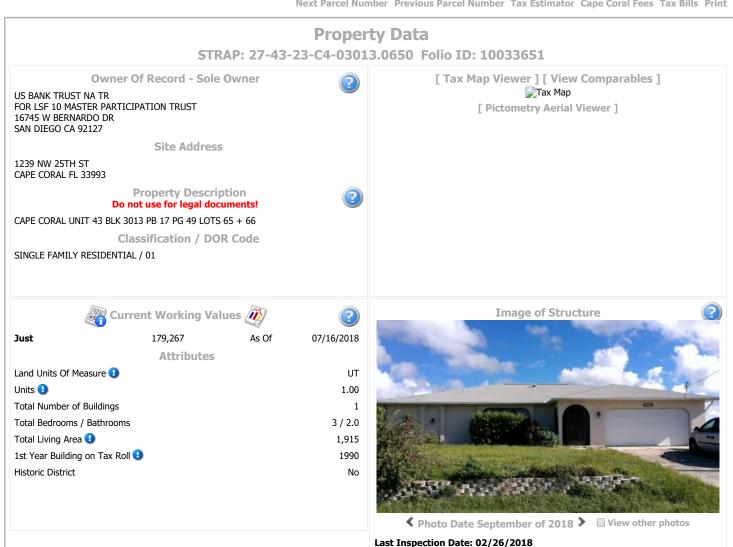
IN WITNESS THEREOF, BUYER and SELLER have signed this contract on the date set forth below.

| | CITY OF CAPE CORAL, FLORIDA |
|---|---|
| Witness to A. John Szerlag | BY: A. John Szerlag City Manager Date |
| Witness to Kimberly Bruns | BY: Kimberly Bruns Date Interim City Clerk |
| Witness Print Name: Laura J. C. Nenevert Witness Print Name: Scott prioseley | US Bank Trust NA TR For LSF 10 Master Participation Trust BY: John UK/ (Signature) Date Print Name: John Cohner Title: Atherrai Ressa |
| APPROVED AS TO FORM: | |
| Dolores D. Menendez, City Attorney | |



Tax Year 2018

Next Parcel Number Previous Parcel Number Tax Estimator Cape Coral Fees Tax Bills Print



| + | Exemptions |
|---|--|
| + | Values (2018 Tax Roll) |
| + | Taxing Authorities |
| + | Sales / Transactions Output Description: |
| + | Building/Construction Permit Data |
| + | Parcel Numbering History • |
| + | Location Information |
| + | Solid Waste (Garbage) Roll Data |
| + | Flood and Storm Information |



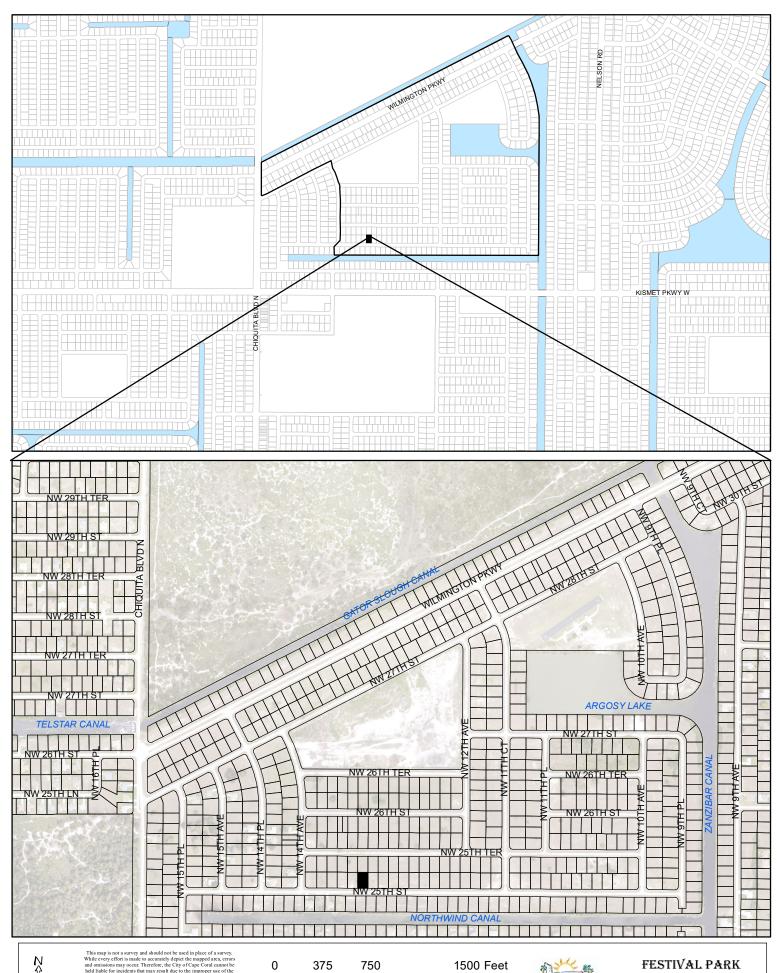
Appraisal Details (2018 Tax Roll)



Appraisal Details (Current Working Values)

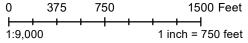
Previous Parcel Number Next
Parcel Number New Query
Search Results Home

TRIM (proposed tax) Notices are available for the following tax years [$\underline{2007}$ $\underline{2008}$ $\underline{2009}$ $\underline{2010}$ $\underline{2011}$ $\underline{2012}$ $\underline{2013}$ $\underline{2014}$ $\underline{2015}$ $\underline{2016}$ $\underline{2017}$ $\underline{2018}$]





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, repared by: The City of CAPE CORAL Real Estate Division-Gregory L. Spivey





Parcel 148
Block 3013 Lots 65 and 66

| Borrower | N/A | | | File No. | 1902021 | 9 |
|------------------|--------------------|------------|-------|----------|----------|------------|
| Property Address | 1239 NW 25th St | | | | | |
| City | Cape Coral | County Lee | State | FL | Zip Code | 33993-8566 |
| Lender/Client | City of Cane Coral | | | | | |

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| | ESIDENTIAL A | <u>PPRAIJAL</u> | | | | 19020219 |
|---------------------------------|--|--|--|--|---|--|
| | Property Address: 1239 NW 25th St | | | Cape Coral | State: FL | Zip Code: 33993-8566 |
| L | County: Lee | Legal Des | cription: Lots 65 and | 66, Block 3013, Unit 43 | , Cape Coral Plat Boo | k 17 Page 49 |
| SUBJECT | | | | Assessor's Parcel #: | 27-43-23-C4-03013 | 3.0650 |
| | Tax Year: 2018 R.E. Taxes: \$ 3,8 | 347.47 Special Asses | sments: \$ N/A | Borrower (if applicable): | N/A | |
| | | aster Participation Trust | Occi | upant: Owner | Tenant X Vacant | Manufactured Housing |
| S | | minium Cooperative | Other (describe) | | HOA: \$ N/A | per year per month |
| | | Oooperative | | an Doforonoo: 45000 | | |
| | Market Area Name: Cape Coral | a animina of Moul | | ap Reference: 15980 | | us Tract: 0101.02 |
| | The purpose of this appraisal is to develop a | | tet Value (as defined), or | other type of value (de | | |
| | This report reflects the following value (if not | | | pection Date is the Effective D | | |
| Z | Approaches developed for this appraisal: | Sales Comparison Appr | roach Cost Appro | ach Income Approach | n (See Reconciliation Co | omments and Scope of Work) |
| 빌 | Property Rights Appraised: | nple Leasehold [| Leased Fee Ot | ther (describe) | | |
| ASSIGNMENT | Intended Use: The intended use of this | s appraisal is to form an | opinion of the current | market value of the pro | perty for potential acq | uisition purposes. |
| SIC | | | | · | | • |
| 4S | Intended User(s) (by name or type): Cit | ty of Cape Coral | | | | |
| | Client: City of Cape Coral | y or oupo corui | Address: P.O. Box | x 150027, Cape Coral, F | 1 33015 | |
| | Appraiser: Scott H. Simmons | | | Vorld Plaza Lane, Suite | | 7 |
| Н | 11 | Suburban Rural | Predominant | One-Unit Housing | Present Land Use | Change in Land Use |
| | | 25-75% Under 25% | Occupancy | PRICE AGE | | Not Likely |
| | | | | | | 1 |
| S | | Stable Slow | Owner - | \$(000) (yrs) | 2-4 Unit 3 % | |
| Ē | Property values: Increasing | | Tenant | 110 Low 0 | Multi-Unit 2 % | |
| 띪 | | n Balance Over Supply | 1= ' ' | 600+ High 40+ | Comm'l 5 % | |
| SCI | Marketing time: | 3-6 Mos. Over 6 Mos. | Vacant (>5%) | 225 Pred 15 | Vacant 55 % | |
| Ä | Market Area Boundaries, Description, and Ma | arket Conditions (including sup | port for the above charac | teristics and trends): | The subject's | neighborhood boundaries |
| A | are the Lee/Charlotte County Line to | the north, Burnt Store R | toad to the west, Pine | Island Road to the sout | th, and Del Prado Bou | levard to the east. The |
| RE | neighborhood is composed primarily | | | | | |
| ۲ | of the one-unit housing price range. | | | | • | |
| | Road, Santa Barbara Boulevard, Ch | | | | | |
| MARKET AREA DESCRIPTION | Property values increased at a rapid | • | | | • | |
| ¥ | began to come online from new cons | | | | | |
| | relatively low and interest rates conti | | | | | |
| | relatively low and interest rates conti | nue to remain at near nis | storically low levels. L | Exposure Time is similar | to Marketing Time at | less than 5 months. |
| Н | Dimensions: 80' x 125' per Lee Cour | -t. CIC | | Site Area: 10 | 000 of | |
| | 7 1 01 15 11 | ity GIS | | | ,000 sf | !! |
| | Zoning Classification: R-1B | 7, | ning Compliance: | | Residential Single-Far | |
| | Ara CC 9 Da applicable 2 Vac N | | | | nforming (grandfathered) | |
| | Are CC&Rs applicable? Yes No | | he documents been review | ved? Yes No | Ground Rent (if applicat | ole) \$ <u>N/A/</u> |
| | Highest & Best Use as improved: | resent use, or Other u | use (explain) | | | |
| | l | | | | | |
| | | e-Family Residential | | se as appraised in this report: | | |
| z | Summary of Highest & Best Use: The | site is subject to R-1B: | zoning. This zoning a | allows for single-family | uses. The financial fe | asibility of development is |
| <u>o</u> | evidenced by several similar uses i | n the market area. Sing | le-family developmer | nt is considered the high | nest and best use as | vacant, based on the |
| PI | legally permissible, physically poss | ible, and financially feas | sible uses of the site. | | | |
| SITE DESCRIPTION | Utilities Public Other Provider | /Description Off-site Imp | provements Type | Public Private | Topography Gene | erally Level |
| ES | Electricity \(\sum \) | Street | Paved (Asphalt) | $lue{}$ | Size Avera | age |
| □ | Gas | Curb/Gutter | | | Shape Recta | angular |
| ᄩ | Water Well/Priva | ate Sidewalk | | | Drainage Appe | ears Adequate |
| S | Sanitary Sewer Septic/Pri | vate Street Lights | Arched | $lue{}$ | View Resid | dential |
| | Storm Sewer | Alley | | | | |
| | Other site elements: X Inside Lot | Corner Lot Cul de Sa | ac Underground Uti | lities Other (describe) | <u> </u> | |
| | FEMA Spec'l Flood Hazard Area Yes | No FEMA Flood Zone | X FEN | MA Map # 12071C0235F | FEM | A Map Date 08/28/2008 |
| | Site Comments: No survey was prov | vided and therefore eas | ements, encroachme | ents or other adverse co | onditions could not be | determined. Furthermore, |
| | no environmental reports were prov | | | | | |
| | environmental conditions associate | | | | | |
| | concrete walkways/driveway. | | | | | |
| | General Description | Exterior Description | Foundat | ion B | asement X None | Heating |
| | # of Units 1 Acc.Unit | Foundation Conc | rete Slab | Concrete A | rea Sq. Ft. O | Type Central System |
| | | | | | | - · · |
| | # of Stories 1 | | o I Crawi Si | Dace None I% | Finished | Fuel Electricity |
| | · · | Exterior Walls Stuce | | . — | | Electricity |
| | Type 🔀 Det. 🗌 Att. 🗌 | Exterior Walls Roof Surface Shing | jle Basemei | nt None C | eiling | |
| | Type X Det. Att. Design (Style) Ranch | Exterior Walls Roof Surface Gutters & Dwnspts. Stucc Shing Alumi | gle Basemer inum Sump Po | nt None Co | eiling alls | Cooling |
| 9 | Type X Det. Att. Design (Style) Ranch Vindament Industries Und.Cons. | Exterior Walls Stucco Roof Surface Shing Gutters & Dwnspts. Alumi Window Type Single | le Basemei inum Sump Pi e-Hung Dampne | nt None Coump W | eiling alls oor | Cooling Central Central System |
| ITS | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 | Exterior Walls Stucco Roof Surface Shing Gutters & Dwnspts. Alumi Window Type Single | Basemer Sump Prescription Sump Prescription Dampne Settleme Settl | nt None Cump Wwsss None Apparent Out | eiling alls oor | Cooling |
| ENTS | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 | Exterior Walls Stucc Roof Surface Shing Gutters & Dwnspts. Alumi Window Type Single Storm/Screens Vinyl | gle Basemei inum Sump Pi e-Hung Dampne Mesh Settleme Infestatio | nt None Cump Wwsss Filent None Apparent O | eiling alls oor | Cooling Central Central System Other |
| EMENTS | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description | Exterior Walls Stucco Roof Surface Shing Gutters & Dwnspts. Alumi Window Type Single Storm/Screens Vinyl Appliances Attic | gle Basemer inum Sump Pr e-Hung Dampne Mesh Settleme Infestatio | nt None Cump Wsss None Apparent None Apparent None Apparent | eiling alls oor utside Entry | Cooling Central Central System Other Car Storage None |
| OVEMENTS | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile | Exterior Walls Stucco Roof Surface Shing Gutters & Dwnspts. Alumi Window Type Single Storm/Screens Vinyl Appliances Attic Refrigerator Stair | gle Basemer sump Pr e-Hung Dampne Mesh Settleme Infestatic S None Amenities S Fireplace(s) 7 | nt None Cump Wsss None Apparent None Apparent None Apparent | eiling alls oor | Cooling Central Central System Other Car Storage None Garage # of cars (Tot.) |
| PROVEMENTS | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. | Exterior Walls Stucce Roof Surface Shing Gutters & Dwnspts. Alumi Window Type Single Storm/Screens Vinyl Appliances Refrigerator Stair Range/Oven Drop | gle Basemer sump Pr e-Hung Dampne Mesh Settleme Infestatic S None Settleme S Fireplace(s) 7 Patio | nt None Cump Wsss None Apparent None Apparent None Apparent | eiling alls oor utside Entry | Cooling Central Central System Other Car Storage None Garage # of cars (Tot.) Attach. 2 |
| IMPROVEMENTS | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. | Exterior Walls Roof Surface Gutters & Dwnspts. Window Type Storm/Screens Appliances Refrigerator Range/Oven Disposal Stucco Stingle Styring Single Vinyl Attic Stair Range/Oven Drop Disposal Scut | Jle Basemer John Sump Pt Sump Pt SetHung Dampne Mesh Settleme Infestatio S None Amenities S Fireplace(s) 7 Patio Deck | nt None Company Woods | eiling alls oor utside Entry | Central Central System Other Car Storage None Garage # of cars (Tot.) Attach. 2 Detach. |
| HE IMPROVEMENTS | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. Bath Floor Tile | Exterior Walls Roof Surface Gutters & Dwnspts. Window Type Storm/Screens Appliances Refrigerator Range/Oven Disposal Dishwasher Stucco Shing Sching Sching Sching Stair Stair Range/Oven Door | Basemer Sump Property | nt None Cump Wess File None Apparent None Apparent Woods | eiling alls oor utside Entry | Cooling Central System Other |
| THE IMPROVEMENTS | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. Bath Wainscot Tile Bath Wainscot Tile | Exterior Walls Roof Surface Gutters & Dwnspts. Window Type Storm/Screens Appliances Refrigerator Range/Oven Disposal Dishwasher Door Fan/Hood Roof Surface Shing Schuck Shing Single Vinyl Vinyl Storm/Screens Stair Ratic Door Drop Drop Drop Disposal Door Fan/Hood Floor | Basemer Sump Property | nt None Cump Wess None Apparent None Apparent Woods: | eiling alls oor utside Entry | Cooling Central System Other |
| | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. Bath Floor Tile | Exterior Walls Roof Surface Gutters & Dwnspts. Window Type Storm/Screens Appliances Refrigerator Range/Oven Disposal Dishwasher Door Fan/Hood Microwave Stucc Shing Schucc Shing Single Vinyl Vinyl Stur Dishwasher Door Fan/Hood Heat | Basemer Sump Property | nt None Cump Wess File None Apparent None Apparent Woods | eiling alls oor utside Entry | Cooling Central System Other Central System None |
| | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. Bath Floor Tile Bath Wainscot Tile Doors Wood | Exterior Walls Roof Surface Shing Gutters & Dwnspts. Window Type Storm/Screens Alumi Window Type Storm/Screens Attic Refrigerator Range/Oven Disposal Dishwasher Door Fan/Hood Microwave Washer/Dryer Finis | Basemer Sump Property | nt None Ciump | eiling alls oor utside Entry | Cooling Central System Other None |
| | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. Bath Floor Tile Bath Wainscot Tile Doors Wood Finished area above grade contains: | Exterior Walls Roof Surface Gutters & Dwnspts. Window Type Storm/Screens Appliances Refrigerator Range/Oven Disposal Dishwasher Door Fan/Hood Microwave Washer/Dryer T Rooms Rooms Stucc Stair Rooms | Basemer Sump Properties | nt None Cump West None Apparent On None Apparent Woods West Woods Woods Woods Overed Communium Plow-Ground 2.0 Bath(s) | eiling alls oor utside Entry tove(s) # 1,915 Square Feet o | Cooling Central System Other Central System None |
| | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. Bath Floor Tile Bath Wainscot Tile Doors Wood Finished area above grade contains: | Exterior Walls Roof Surface Shing Gutters & Dwnspts. Window Type Storm/Screens Alumi Window Type Storm/Screens Attic Refrigerator Range/Oven Disposal Dishwasher Door Fan/Hood Microwave Washer/Dryer Finis | Basemer Sump Properties | nt None Cump West None Apparent On None Apparent Woods West Woods Woods Woods Overed Communium Plow-Ground 2.0 Bath(s) | eiling alls oor utside Entry tove(s) # 1,915 Square Feet o | Cooling Central System Other None |
| | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. Bath Floor Tile Bath Wainscot Tile Doors Wood Finished area above grade contains: Additional features: The subject fea | Exterior Walls Roof Surface Gutters & Dwnspts. Window Type Storm/Screens Appliances Refrigerator Range/Oven Disposal Dishwasher Door Fan/Hood Microwave Washer/Dryer T Rooms Tures tile flooring, ceiling | Basemer Sump Procedure Sump Procedure Sump Procedure Settleme Infestation Settleme Infestation Settleme Infestation Settleme Infestation Settleme Infestation Settleme Infestation Settleme Pation Settleme Pation Settleme Pool Settleme Pool Settleme Settleme Settleme Pool Settleme S | nt None Cump Woods SS None Apparent None Apparent Woods Woods Woods Devered Cuminum Selow-Ground Cons Bath(s) h, and a below-ground points of the cons of the constant of the | alls poor utside Entry tove(s) # 1,915 Square Feet o | Cooling Central Central System Other Car Storage None Garage # of cars (Tot.) Attach. 2 Detach. BltIn Carport Driveway 2 Surface Concrete f Gross Living Area Above Grade |
| | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. Bath Floor Tile Bath Wainscot Tile Doors Wood Finished area above grade contains: Additional features: The subject fea | Exterior Walls Roof Surface Gutters & Dwnspts. Window Type Storm/Screens Attic Refrigerator Range/Oven Disposal Dishwasher Door Fan/Hood Microwave Washer/Dryer T Rooms Stures tile flooring, ceiling | Basemer Sump Procedure Sump Procedure Sump Procedure Sump Procedure Settleme Infestation Settleme Infestation Settleme Infestation Settleme Infestation Settleme Infestation Settleme Pation Deck Porch Company Porch Company Porch Company Settleme Pool Best Best Best Best Deck Pool Best | nt None Cump Woods ss None Apparent None Apparent None Apparent Woods Woods Evered Cuminum Elow-Ground 2.0 Bath(s) h, and a below-ground pumping the subject is in below-gr | eiling alls poor utside Entry tove(s) # 1,915 Square Feet o | Cooling Central Central System Other Car Storage None Garage # of cars (Tot.) Attach. 2 Detach. BltIn Carport Driveway 2 Surface Concrete f Gross Living Area Above Grade |
| DESCRIPTION OF THE IMPROVEMENTS | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. Bath Floor Tile Bath Wainscot Tile Doors Wood Finished area above grade contains: Additional features: The subject featoric property (including the property (including the property to be a contains to be a contains.) | Exterior Walls Roof Surface Gutters & Dwnspts. Window Type Storm/Screens Attic Refrigerator Range/Oven Disposal Dishwasher Door Fan/Hood Microwave Washer/Dryer T Rooms Stures tile flooring, ceiling ding physical, functional and experiments | Basemer Sump Procedure Sump Proced | nt None Cump Wess Figure None Apparent None Apparent None Apparent Woods Woods Woods Overed Cuminum Clow-Ground Plow-Ground Plow-Ground The subject is in but (see Photograph Adder | eiling alls poor utside Entry tove(s) # 1,915 Square Feet or pool. elow average condition dum) and appears to | Cooling Central Central System Other None Garage # of cars (Tot.) Attach. 2 Detach. BltIn Carport Driveway 2 Surface Concrete f Gross Living Area Above Grade on for its age and have been last replaced in |
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| | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. Bath Floor Tile Bath Wainscot Tile Doors Wood Finished area above grade contains: Additional features: The subject featoric property (including the property (including the property to be a contains to be a contains.) | Exterior Walls Roof Surface Gutters & Dwnspts. Window Type Storm/Screens Vinyl Appliances Refrigerator Range/Oven Disposal Dishwasher Door Fan/Hood Microwave Washer/Dryer Finis 7 Rooms tures tile flooring, ceiling ding physical, functional and expendent of its of the county of the | Basemer Sump Property | nt None Int None Imp | alls poor utside Entry 1,915 Square Feet of pool. elow average condition and appears to pool or condition. The pool | Cooling Central Central System Other Car Storage None Garage # of cars (Tot.) Attach. 2 Detach. BltIn Carport Driveway 2 Surface Concrete f Gross Living Area Above Grade on for its age and have been last replaced in has not been maintained |
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| | Type Det. Att. Design (Style) Ranch Existing Proposed Und.Cons. Actual Age (Yrs.) 29 Effective Age (Yrs.) 30 Interior Description Floors Tile Walls Drywall-Paint. Trim/Finish Wood-Paint. Bath Floor Tile Bath Wainscot Tile Doors Wood Finished area above grade contains: Additional features: The subject fea Describe the condition of the property (including permit information and was in poor condition at the times | Exterior Walls Roof Surface Shing Gutters & Dwnspts. Window Type Storm/Screens Vinyl Appliances Refrigerator Range/Oven Disposal Dishwasher Door Fan/Hood Microwave Washer/Dryer Finis 7 Rooms tures tile flooring, ceiling ding physical, functional and expenses to the kitchen lacked course of inspection (see Photeion. The exterior door to | Basemer Sump Problem P | None Cump | elling alls por utside Entry tove(s) # 1,915 Square Feet of pool. elow average condition adum) and appears to or condition. The pool and bathroom materia The kitchen cabinetry, | Cooling Central Central System Other Car Storage None Garage # of cars (Tot.) Attach. 2 Detach. BltIn Carport Driveway 2 Surface Concrete f Gross Living Area Above Grade on for its age and have been last replaced in has not been maintained als have been replaced countertops, backsplash, |

| - | My research X did | | | | | | thron w | ooro prior to | the offe | | le No.: | | 20219 | |
|---------------------------|--|--------------------|----------------|--------------------------|------------------|---------------------|----------------|------------------|----------------|----------------------|-------------|------------------|------------------|-----------------|
| | Data Source(s): Public | | JIIUI Sa | ies di lialisteis | or the Subje | ct property for the | инее у | rears prior to | uie eiie | clive date of this a | ppraisa | | | |
| TRANSFER HISTORY | 1st Prior Subject Sa | | Analy | sis of sale/trans | sfer history : | and/or any current | agreem | nent of sale/lis | stina. | The subject | ot's pr | ior tra | nefor was | a Certificate |
| 띮 | Date: 8/28/2018 | aloj Transioi | - | | • | ect is not curre | • | | • | | | | | |
| l≌ | | | | | | | illy lis | steu ioi sait | טוווט כ | ign the local wil | LS and | ıııeıe | ale no kn | OWII |
| 쏦 | Price: \$55,100 agreements for Source(s): IN#2018000207749 | | | ements for s | ale or iisti | ng. | | | | | | | | |
| SFE | 2nd Prior Subject Sa | | _ | | | | | | | | | | | |
| A | Date: | alo, Transion | - | | | | | | | | | - | | |
| 띪 | Price: | | | | | | | | | | | | | |
| ľ | Source(s): Public Record | ٠ | | | | | | | | | | | | |
| Н | SALES COMPARISON APP | | (if de | reloped) | The | Sales Comparisor | Appro | ach was not | develor | ned for this apprais | al. | | | |
| | FEATURE | SUBJECT | (4.0 | | PARABLE S | | | COMPARA | | | | COM | PARABLE SA | ALE # 3 |
| | Address 1239 NW 25th | St | | 2306 NE 17 | th St | | 2602 | NE 17th A | ve | | 2008 | NW 7 | | |
| | Cape Coral, Fl | | | Cape Coral, | | 9-5464 | | Coral, FL | | 9-4533 | | | , FL 33993 | 3-7128 |
| | Proximity to Subject | | | 4.72 miles E | | | | miles E | | | | miles S | | - |
| | Sale Price | \$ | | | \$ | 165,000 | | | \$ | 131,000 | | | \$ | 132,000 |
| | Sale Price/GLA | \$ | /sq.ft. | \$ 86.1 | 6 /sq.ft. | | \$ | 110.46 /s | q.ft. | | \$ | 83.7 | 76 /sq.ft. | |
| | Data Source(s) | Inspection | | ML#218023 | 682 | | ML#2 | 218030972 | | | ML#2 | 217066 | 3838 | |
| | Verification Source(s) | Public Record | | IN#2018000 | 114755 | | IN#2 | 018000127 | 7999 | | IN#20 |)1800 | 0079797 | |
| | VALUE ADJUSTMENTS | DESCRIPTION | l | DESCRIP | TION | +(-) \$ Adjust. | | DESCRIPTION | ١ | +(-) \$ Adjust. | 0 | DESCRIF | PTION | +(-) \$ Adjust. |
| | Sales or Financing | N/A | | Conventiona | al | | Cash | ı (REO) | | | Cash | | | |
| | Concessions | N/A | | None Know | า | | None | Known | | | None | Know | /n | |
| | Date of Sale/Time | N/A | | 5/7/2018 | | | 5/15/ | 2018 | | | 3/30/2 | 2018 | | |
| | Rights Appraised | Fee Simple | | Fee Simple | | | Fee : | Simple | | | Fee S | Simple |) | |
| | Location | Cape Coral | | Cape Coral | | | | e Coral | | | | Coral | | |
| | Site | 10,000 Sq.Ft. | | 10,625 Sq.F | t. | | | 37 Sq.Ft. | | | | 54 Sq.F | Ft. | |
| | View | Residential | | Residential | | | | scaped | | | | dential | | |
| | Design (Style) | Ranch | | Ranch | | | Ranc | | | | Ranc | | | |
| | Quality of Construction | Average | | Average | | | Aver | age | | | Avera | age | | |
| | Age Condition | 29 | 20 | 28 | | 00.000 | 22 | A /E | 20 | | 27 | | F(f, 00 | |
| | Above Grade | Below Avg/Eff: 3 | | Fair/Eff: 25 Total Bdrms | Baths | -20,000 | Belov Total | w Avg/Eff: 3 | | | | v Avg/l Bdrms | Eff: 30 | |
| | Room Count | | aths | | 2 | | | | aths 2 | | | 3 | Baths 2 | |
| | Gross Living Area | 1,915 | 2.0 : en ft | | ∠ ,915 sq.ft. | | 6 | 1,186 | | +21,870 | 6 | _ | ,576 sq.ft. | +10,170 |
| | Basement & Finished | N/A | o oq.ii. | N/A | ,915 oq.ii. | | N/A | 1,100 |) oq.ii. | 721,070 | N/A | | 1,576 34.11. | +10,170 |
| | Rooms Below Grade | IN/A | | IN/A | | | IN/A | | | | IN/A | | | |
| | Functional Utility | Average | | Average | | | Aver | ane | | | Avera | | | |
| | Heating/Cooling | Central/Central | | Central/Cen | ıtral | | | ral/Central | | | | ral/Cer | ntral | |
| | Energy Efficient Items | Typical | | Typical | itiai | | Typic | | | | Туріс | | iiuui | |
| 딩 | Garage/Carport | 2 Car Garage | | 2 Car Garag | ie | | | r Garage | | | | Garag | ae | |
| SALES COMPARISON APPROACH | Porch/Patio/Deck | Porch | | Porch | | | Porcl | | | | Porch | | 3- | |
| M | Pool/Spa/Etc. | Pool | | None | | +20,000 | Pool | | | | None | | | +20,000 |
| A | Additional Features | Fence | | Fence | | | Fenc | e | | | Fence | е | | · |
| NO | Deferred Maintenance | See Page 1 | | None | | -15,000 | Simil | ar | | | None | | | -15,000 |
| SIS | | | | | | | | | | | | | | |
| Ž | | | | | | | | | | | | | | |
| ĮΣ | Net Adjustment (Total) | | | + | X - \$ | -15,000 | 2 | (+ | - \$ | 21,870 | > | < + < | \$ | 15,170 |
| ပ | Adjusted Sale Price | | | Net | 9.1 % | | No | | .7 % | | Ne | | 11.5 % | |
| | of Comparables | A | | Gross | 33.3 %\$ | 150,000 | | | .7 % \$ | 152,870 | | | 34.2 %\$ | 147,170 |
| M M | Summary of Sales Comparis | | | | • | nt the most cred | | | | | | | | |
| | percentage of vacant la | | | | | | | _ | | | | | _ | |
| | North Cape Coral mark maintenance, size, and | | | | | - | | | | | | | | |
| | market value in the sub | | • | | | • | | | | | | | | |
| | the same potential buy | | | | | _ JJJIJCOITE WIL | | , pic | | | u V | | | |
| | | | - J- | | | | | | | | | | | |
| | Adjustments for deferre | ed maintenance i | nclud | es specific ite | ems neces | ssary for livabili | y. As | noted on F | Page 1 | , the subject's l | kitcher | ı was | not functio | nal as of |
| | the date of inspection a | and will require s | gnific | ant renovatio | n to functi | ion sufficiently f | or a re | esidence. T | his ac | djustment is sep | oarate | from t | he condition | on of other |
| | materials which include | e cosmetic items | pool, | roof, HVAC, | etc The | se items have b | een c | considered | within | effective ages. | Adjus | tment | s for effect | tive ages |
| | have been applied at a | rate of \$3,500 p | er effe | ective year di | fference in | n accordance w | ith the | e Age/Life I | Metho | d for calculating | depre | eciatio | n. An adju | stment for |
| | site area was warrante | d for Comparable | e 6 ar | d has been a | applied co | nsistent with the | e typic | cal return o | n surp | lus land. Adjus | tments | s for ba | athroom co | ount, gross |
| | living area, and other a | menities were al | so ne | cessary withi | n the sale | s grid. | | | | | | | | |
| | | | | | | | | | | | | | | |
| | After consideration for | • | perty | characteristi | cs, the sa | les utilized indi | cate a | range of \$ | 145,0 | 00 to \$152,870 | with th | ne sub | ject comm | nanding a |
| | value within this range. | | | | | | | | | | | | | |
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| DDITIONAL FEATURE | SUBJECT | COMPARABLE SALI | | COM | PARABLE S | | le No.: 19 | 9020219 COMPARABLE SA | IE# C |
|--|---------------------------------------|--|-----------------|----------------------------|------------------|-----------------|--------------|--------------------------|-----------------|
| | | | ALE # 4 | | | ALE # 5 | † | | ALE # b |
| Address 1239 NW 25th | | 304 NE 7th Ter Cape Coral, FL 33909 | 1024 | 412 NE 18th Cape Coral, | | 2 2747 | 1 | E 22nd Ave | 1740 |
| Cape Coral, F Proximity to Subject | L 33993-6000 | 3.08 miles SE | | 4.83 miles S | | 3-2111 | 4.68 mile | oral, FL 33909 | 9-1710 |
| Sale Price | \$ | 5.00 Tilles SE | 125,000 | 4.03 1111165 | \$ | 130,000 | | \$ | 158,000 |
| Sale Price/GLA | \$ /sq.ft. | | 123,000 | \$ 67.2 | 22 /sq.ft. | 130,000 | | 89.57 /sq.ft. | 130,000 |
| Data Source(s) | · · · · · · | ML#218055729 | | ML#218080 | | | ML#217 | | |
| Verification Source(s) | Public Record | IN#2018000259167 | | IN#2019000 | | | † | 3000136170 | |
| VALUE ADJUSTMENTS | DESCRIPTION | DESCRIPTION | +(-) \$ Adjust. | DESCRIF | | +(-) \$ Adjust. | | CRIPTION | +(-) \$ Adjust. |
| Sales or Financing | N/A | Cash | (), | Cash | | (): | Cash | | () 1 2 3 2 2 2 |
| Concessions | | None Known | | None Know | n | | None Kn | nown | |
| Date of Sale/Time | N/A | 10/19/2018 | | 12/28/2018 | | | 6/4/2018 | | |
| Rights Appraised | Fee Simple | Fee Simple | | Fee Simple | | | Fee Sim | | |
| Location | Cape Coral | Cape Coral | | Cape Coral | | | Cape Co | | |
| Site | 10,000 Sq.Ft. | 10,498 Sq.Ft. | | 11,095 Sq.F | | | 15,500 S | | -1,800 |
| View | · · · · · · · · · · · · · · · · · · · | Residential | | Residential | | | Residen | | 1,000 |
| Design (Style) | | Ranch | | Ranch | | | Ranch | | |
| Quality of Construction | Average | Average | | Average | | | Average |) | |
| Age | | 37 | | 29 | | | 24 | | |
| Condition | Below Avg/Eff: 30 | Below Avg/Eff: 35 | +20,000 | Below Avg/E | Eff: 30 | | Below A | vg/Eff: 30 | |
| Above Grade | Total Bdrms Baths | Total Bdrms Baths | , i | Total Bdrms | Baths | | | rms Baths | |
| Room Count | 7 3 2.0 | 7 4 2/1 | -2,500 | 7 3 | 2 | | 7 3 | 3 2 | |
| Gross Living Area | 1,915 Sq.ft. | 1,701 sq.ft. | +6,420 | 1 | ,934 sq.ft. | | | 1,764 sq.ft. | +4,530 |
| Basement & Finished | | N/A | | N/A | | | N/A | | |
| Rooms Below Grade | | | | | | | | | |
| Functional Utility | Average | Average | | Average | | | Average | • | |
| Heating/Cooling | Central/Central | Central/Central | | Central/Cer | ntral | | Central/ | Central | |
| Energy Efficient Items | Typical | Typical | | Typical | | | Typical | | |
| Garage/Carport | 2 Car Garage | 2 Car Garage | | 2 Car Garaç | ge | | 2 Car Ga | arage | |
| Porch/Patio/Deck | Porch | Porch | | Porch | | | Porch | | |
| Pool/Spa/Etc. | Pool | Pool | | Pool | | | Pool | | |
| Additional Features | Fence | None | +1,000 | Fence | | | None | | +1,000 |
| Deferred Maintenance | See Page 1 | Similar | | Inferior | | +15,000 | None | | -15,000 |
| | | | | | | | | | |
| | | | | | | | | | |
| Net Adjustment (Total) | | X + □ - \$ | | $\mathbf{\nabla}$ | | | | . 🔽 🐧 | -11,270 |
| | | | 24,920 | X + | \$ | 15,000 | + | + 🔀 - 💲 | ,= |
| | | | 24,920 | | 11.5 % | 15,000 | Net | | , |
| Adjusted Sale Price of Comparables | son Approach <u>See</u> | | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % 14.1 %\$ | |
| Adjusted Sale Price of Comparables | son Approach <u>See</u> | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | 146,730 |
| Adjusted Sale Price of Comparables | son Approach <u>See</u> | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach <u>See</u> | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach <u>See</u> | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach <u>See</u> | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach <u>See</u> | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach <u>See</u> | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach <u>See</u> | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach <u>See</u> | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | Son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | Son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | Son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |
| Adjusted Sale Price of Comparables Summary of Sales Comparis | son Approach See | Net 19.9 % Gross 23.9 %\$ | 149,920 | Net Gross | 11.5 % 11.5 % | 145,000 | Net Gross | 7.1 % | |

| R | ESIDENTIAL APPRAISAL REPORT | File No.: 19020219 |
|-----------------|---|---|
| Ë | COST APPROACH TO VALUE (if developed) The Cost Approach was not develo | |
| | Provide adequate information for replication of the following cost figures and calculations. | pool of the application |
| | Support for the opinion of site value (summary of comparable land sales or other methods for esti | imating site value): |
| | Toupport for the opinion of site value (summary of comparable land sales of other methods for esti- | infatting site value). |
| | | |
| | | |
| | | |
| | | |
| | FOTIMATED. TO DEDDODUOTION OD TO DEDI ACEMENT COOT NEW | ODINION OF OUT VALUE |
| lΞ | ESTIMATED REPRODUCTION OR REPLACEMENT COST NEW | OPINION OF SITE VALUE =\$ |
| APPROACH | Source of cost data: Quality rating from cost service: Effective date of cost data: | DWELLING Sq.Ft. @ \$ =\$ |
| 18 | | 0 Sq.Ft. @ \$ =\$ |
| 딦 | Comments on Cost Approach (gross living area calculations, depreciation, etc.): | \$q.Ft. @ \$ =\$ |
| | The Cost Approach has not been developed as the credibility of this approach | Sq.Ft. @ \$ =\$ |
| COST | is greatly diminished due to the subject's actual age and the condition of the | Sq.Ft. @ \$ =\$ |
| ဗြ | improvements. | =\$ |
| | | Garage/Carport Sq.Ft. @ \$ =\$ |
| | | Total Estimate of Cost-New =\$ |
| | | Less Physical Functional External |
| | | Depreciation =\$() |
| | | Depreciated Cost of Improvements ==\$ |
| | | "As-is" Value of Site Improvements =\$ |
| | | =\$ |
| | | =\$ |
| | | INDICATED VALUE BY COST APPROACH = \$ |
| ᆬ | INCOME APPROACH TO VALUE (if developed) The Income Approach was not developed. | eloped for this appraisal. |
| M | Estimated Monthly Market Rent \$ X Gross Rent Multiplier | = \$ Indicated Value by Income Approach |
| INCOME APPROACH | Summary of Income Approach (including support for market rent and GRM): <u>The Incor</u> | me Approach has not been developed as the subject would not typically be |
| ᆸ | utilized for income-producing purposes. | |
| EA | | |
| M | | |
| ပြွ | | |
| = | | |
| | PROJECT INFORMATION FOR PUDs (if applicable) The Subject is part of a Plan | ned Unit Development. |
| | Legal Name of Project: | |
| ٦ | Describe common elements and recreational facilities: | |
| PUD | | |
| - | | |
| | | |
| | | |
| | Indicated Value by: Sales Comparison Approach \$150,000\$ Cost Approach (if | developed) \$ Income Approach (if developed) \$ N/A |
| | Final Reconciliation Primary emphasis is placed on the Sales Comparison Approa | ach as it best represents the interactions of buyers and sellers in the |
| | subject's marketplace. The Cost Approach has not been developed as the credi | bility of this approach is greatly diminished due to the subject's actual age |
| | and the condition of the improvements. The Income Approach is not a typical ap | proach to value for this property as it would not typically be utilized for |
| | income-producing purposes. | |
| ΙĒ | | |
| RECONCILIATION | This appraisal is made 🔀 "as is", 🗌 subject to completion per plans and specific | |
| 믕 | completed, subject to the following repairs or alterations on the basis of a Hypot | |
| Ιž | the following required inspection based on the Extraordinary Assumption that the conditi | on or deficiency does not require alteration or repair: |
| ပ္ကြ | | |
| 2 | | |
| | This report is also subject to other Hypothetical Conditions and/or Extraordinary Ass | · |
| | Based on the degree of inspection of the subject property, as indicated below | |
| | and Appraiser's Certifications, my (our) Opinion of the Market Value (or other sport his report is: \$ 150,000 , as of: | 2/27/2019 , which is the effective date of this appraisal. |
| | If indicated above, this Opinion of Value is subject to Hypothetical Conditions and | d/or Extraordinary Assumptions included in this report. See attached addenda. |
| S | | |
| ľ | properly understood without reference to the information contained in the complete rep | |
| 阊 | Attached Exhibits: | ort. |
| 둧 | Scope of Work Limiting Cond./Certifications Narrative Add | dendum 🔀 Photograph Addenda 🔀 Sketch Addendum |
| ĮΫ | ✓ Scope of Work ✓ Limiting Cond./Certifications ✓ Narrative Add ✓ Map Addenda ✓ Additional Sales ✓ Cost Addend | _ * |
| ATTACHMENT | ✓ Map Addenda ✓ Additional Sales ✓ Cost Addend ✓ Hypothetical Conditions ✓ Extraordinary Assumptions ✓ Location Maj | |
| ř | | |
| | | <u></u> |
| | | P.O. Box 150027, Cape Coral, FL 33915 |
| | | SUPERVISORY APPRAISER (if required) |
| | | or CO-APPRAISER (if applicable) |
| | | Mit Simules |
| | 0 | Man Bunae |
| ES | \ # \ \· | |
| IR I | Doc Devenous | Supervisory or |
| AT | | Co-Appraiser Name: Matthew S. Simmons |
| SIGNATURES | | Company: Maxwell, Hendry & Simmons, LLC |
| S | | Phone: (239) 337-0555 Fax: (239) 337-3747 |
| | | E-Mail: matts@MHSappraisal.com |
| | | Date of Report (Signature): 3/6/2019 |
| | | License or Certification #: Cert Res RD5762 State: FL |
| | | Designation: |
| | | Expiration Date of License or Certification: 11/30/2020 |
| | Inspection of Subject: Interior & Exterior Exterior Only None | Inspection of Subject: Interior & Exterior Exterior Only None |

2/27/2019

Assumptions, Limiting Conditions & Scope of W(File No.: 19020219

| Property A | ddress: 1239 NW 25th St | (| ity: Cape Coral | State: FL | Zip Code: 33993-8566 |
|------------|-------------------------|--------------|------------------------------------|-----------------|----------------------|
| Client: | City of Cape Coral | Address: P.C | . Box 150027, Cape Coral, FL 3391 | 15 | |
| Appraiser: | Scott H. Simmons | Address: 126 | 00 World Plaza Lane, Suite 1, Fort | Myers, FL 33907 | 7 |

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

- The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
- If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
- The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
- The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
- The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
- The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.
- If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.
- An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.
- The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.
- An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

Scope of Work

- 1. A complete inspection of the subject property.
- 2. Obtain dimensions for the property under appraisal.
- 3. Analyze the site pertaining to the subject property.
- 4. Obtain available comparable sales and listings data to compare with the subject.
- 5. Analyze the data that has been collected and apply the results appropriately to the valuation of the subject property.
- 6. Analyze the cost data applicable to the subject's improvements.
- 7. Using the data collected and the analyses performed to complete the appropriate approaches to value.
- 8. Explain the reasons why any approaches to value were not completed.
- 9. Analyze each of the approaches to value that have been completed to arrive at a value for each valuation analysis.
- 10. Reconcile the approaches to value to arrive at a final estimate of value.
- 11. Relay the data collected and analyzed to the client in summary format throughout the final appraisal report.

Hypothetical Conditions

None

Extraordinary Assumptions

None

Certifications

| ertifications | | File No.: 19 | 9020219 |
|-----------------------------------|--|--------------|----------------------|
| Property Address: 1239 NW 25th St | City: Cape Coral | State: FL | Zip Code: 33993-8566 |
| Client: City of Cape Coral | Address: P.O. Box 150027, Cape Coral, F | L 33915 | |
| Appraiser: Scott H. Simmons | Address: 12600 World Plaza Lane, Suite 1 | | |

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Scott H. Simmons (Cert Res RD6203) made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person(s) signing this certification.

DEFINITION OF MARKET VALUE *:

The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

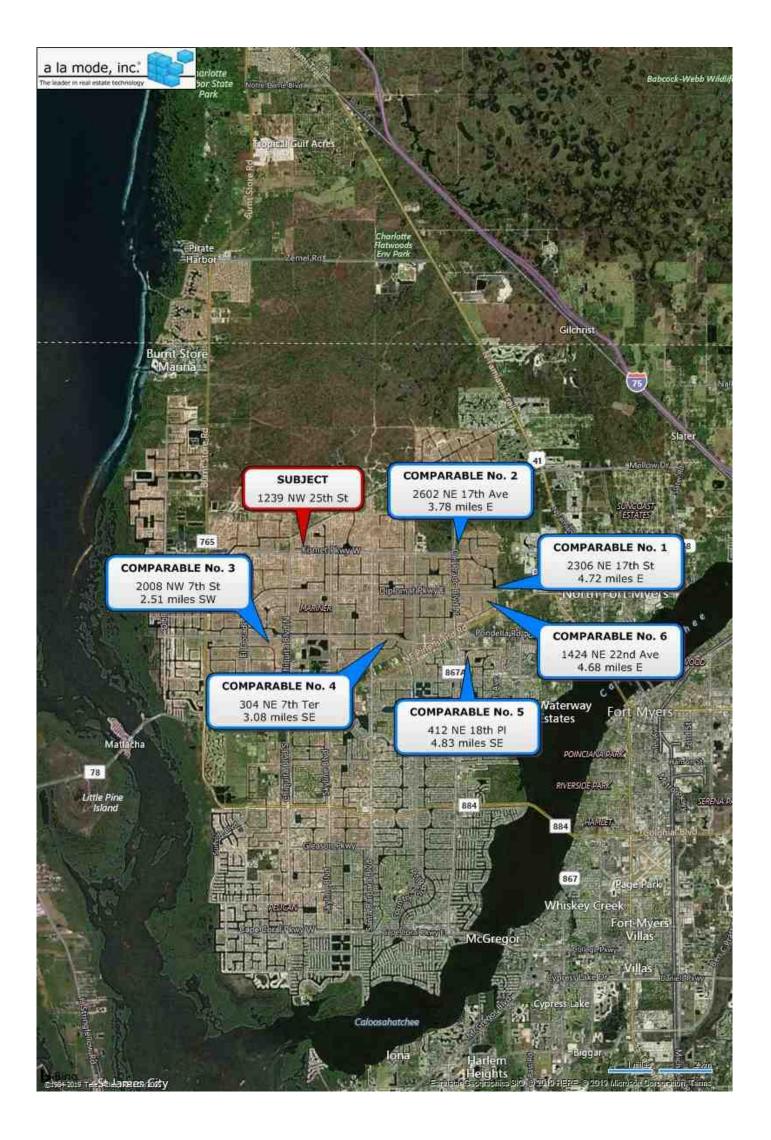
Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. Buyer and seller are typically motivated.
- b. Both parties are well informed or well advised, and acting in what they consider their best interests.
- c. A reasonable time is allowed for exposure in the open market.
- d. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto: and
- e. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
- *12 CFR Ch. V (1-1-11 Edition) Part 564.2 (g) Office of Thrift Supervision, Department of the Treasury

| | Client Contact: Joan Estinval Clier | nt Name: City of Cape Coral |
|------------|---|--|
| | E-Mail: jestinval@capecoral.net Address: | P.O. Box 150027, Cape Coral, FL 33915 |
| | APPRAISER | SUPERVISORY APPRAISER (if required) |
| | | or CO-APPRAISER (if applicable) |
| SIGNATURES | Lot Simons | Supervisory or |
| ΑT | Appraiser Name: Scott H. Simmons | Co-Appraiser Name: Matthew S. Simmons |
| S | Company: Maxwell, Hendry & Simmons, LLC | Company: Maxwell, Hendry & Simmons, LLC |
| Š | Phone: (239) 337-0555 Fax: (239) 337-3747 | Phone: (239) 337-0555 Fax: (239) 337-3747 |
| | E-Mail: info@MHSappraisal.com | E-Mail: matts@MHSappraisal.com |
| | Date Report Signed: 3/6/2019 | Date Report Signed: 3/6/2019 |
| | License or Certification #: Cert Res RD6203 State: FL | License or Certification #: Cert Res RD5762 State: FL |
| | Designation: | Designation: |
| | Expiration Date of License or Certification: <u>11/30/2020</u> | Expiration Date of License or Certification: <u>11/30/2020</u> |
| | Inspection of Subject: 🔀 Interior & Exterior 🗌 Exterior Only 🔲 None | Inspection of Subject: Interior & Exterior Exterior Only None |
| | Date of Inspection: 2/27/2019 | Date of Inspection: |

Location Map

| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cane Coral | | | |



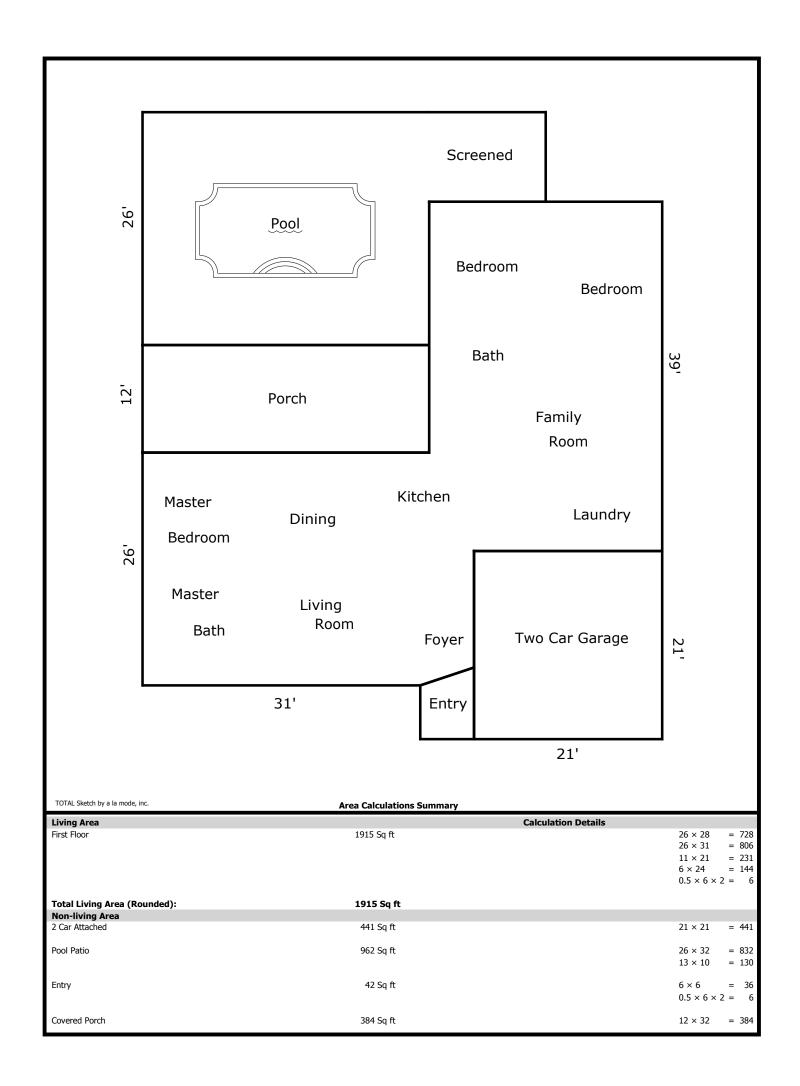
Aerial Map

| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cape Coral | | | |



Building Sketch

| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cane Coral | | | |



Subject Photo Page

| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cane Coral | | | |



Subject Front

1239 NW 25th St

Sales Price

Gross Living Area 1,915
Total Rooms 7
Total Bedrooms 3
Total Bathrooms 2.0

Location Cape Coral
View Residential
Site 10,000 Sq.Ft.
Quality Average
Age 29



Subject Rear



Subject Street

| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cane Coral | | | |













| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cane Coral | | | |













| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cape Coral | | | |













| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cane Coral | | | |













| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cane Coral | | | |













Comparable Photo Page

| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cane Coral | | | |



Comparable 1

2306 NE 17th St

 Prox. to Subject
 4.72 miles E

 Sales Price
 165,000

 Client
 1,915

 Lender
 7

 Total Bedrooms
 3

 Total Bathrooms
 2

Location Cape Coral
View Residential
Site 10,625 Sq.Ft.
Quality Average
Age 28



Comparable 2

2602 NE 17th Ave

Prox. to Subject 3.78 miles E
Sales Price 131,000
Gross Living Area 1,186
Total Rooms 6
Total Bedrooms 3
Total Bathrooms 2

Location Cape Coral
View Landscaped
Site 12,637 Sq.Ft.
Quality Average
Age 22



Comparable 3

2008 NW 7th St

 Prox. to Subject
 2.51 miles SW

 Sales Price
 132,000

 Gross Living Area
 1,576

 Total Rooms
 6

 Total Bedrooms
 3

 Total Bathrooms
 2

Location Cape Coral
View Residential
Site 10,254 Sq.Ft.
Quality Average
Age 27

Comparable Photo Page

| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cape Coral | | | |



Comparable 4

304 NE 7th Ter

 Prox. to Subject
 3.08 miles SE

 Sales Price
 125,000

 Client
 1,701

 Lender
 7

 Total Bedrooms
 4

 Total Bathrooms
 2/1

Location Cape Coral
View Residential
Site 10,498 Sq.Ft.
Quality Average
Age 37



Comparable 5

412 NE 18th PI

Prox. to Subject 4.83 miles SE
Sales Price 130,000
Gross Living Area 7,
Total Bedrooms 3
Total Bathrooms 2

LocationCape CoralViewResidentialSite11,095 Sq.Ft.QualityAverageAge29



Comparable 6

1424 NE 22nd Ave

Prox. to Subject 4.68 miles E
Sales Price 158,000
Gross Living Area 1,764
Total Rooms 7
Total Bedrooms 3
Total Bathrooms 2

Location Cape Coral
View Residential
Site 15,500 Sq.Ft.
Quality Average
Age 24

Oualifications

| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cape Coral | | | |

QUALIFICATIONS: SCOTT H. SIMMONS

Educational Background and Training

Appraisal Board Course 1 (ABI), Academy of Real Estate, 2003, Fort Myers, Florida.

Sales Comparison Approach, St. Petersburg Junior College Corporate Training Center, Steve Vehmeier, 2004, St. Petersburg, Florida.

The Professional's Guide to the URAR, South Fort Myers/Clarion Hotel & Suites, Kathy Coon, 2005

Various Courses, McKissock, Inc. 2009, Fort Myers, Florida.

Appraisal Board Course II (ABII), Academy of Real Estate, 2006, Fort Myers, Florida

15 - Hour National USPAP Course, Gold Coast Real Estate Schools, 2006, Miami, Florida.

7 - Hour National USPAP Update Course, McKissock, Inc. 2010, Miami, FL

Various Courses, McKissock, Inc. 2010, Miami, FL

Experience

Gulf Coast Appraisal and Consulting Services, Inc., Cape Coral, FL

Gulf Coast Appraisal and Associates, Inc., Cape Coral, Florida

Maxwell & Hendry Valuation Services, Inc., Fort Myers, Florida

Maxwell, Hendry & Simmons, LLC, Fort Myers, Florida

Professional Affiliations

State-Certified Residential Real Estate Appraiser, RD 6203

State-Licensed Real Estate Sales Associate, SL 3293556

HUD FHA Approved Appraiser

Re-certification

As of the date of this report, I, Scott H. Simmons, have completed the requirements under the continuing education program for the State of Florida.



Oualifications

| Borrower | N/A | | | |
|------------------|--------------------|------------|----------|---------------------|
| Property Address | 1239 NW 25th St | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993-8566 |
| Lender/Client | City of Cape Coral | | | |

QUALIFICATIONS: MATTHEW S. SIMMONS

Educational Background and Training

Bachelor of Science in Business Management, 2008, Florida Gulf Coast University, Fort Myers, Florida.

Appraisal Board Course 1 (ABI), Steve Williamson's Real Estate Education Specialists, 2003, Orlando, Florida.

Real Estate Transactions, Florida Gulf Coast University, 2003, Fort Myers, Florida.

Various Appraisal Institute Courses

Appraisal Board Course II (ABII), Academy of Real Estate, 2005, Fort Myers, Florida.

63 - hour Sales Associate Pre-License Course, Career Web School, 2008

Experience

Gulf Coast Appraisal and Consulting Services, Inc., Cape Coral, Florida - Associate (October 2003)

Gulf Coast Appraisal and Associates, Inc., Cape Coral, Florida - Associate (2003 - 2005)

Maxwell & Hendry Valuation Services, Inc., Fort Myers, Florida - Residential Division: Manager (2005 - 2013)

Maxwell, Hendry & Simmons, LLC, Fort Myers, Florida - Partner (2013 - Present)

Professional Affiliations

State-Certified Residential Real Estate Appraiser, RD5762

State-Licensed Real Estate Broker, BK3214690

Qualified as an expert witness in the Florida District Court: 7th Judicial Circuit, 20th Judicial Circuit

Qualified as an expert witness in U.S. District Court: Middle District of Florida

Qualified as an expert witness in St. Croix County, Wisconsin

Realtor Association of Greater Fort Myers and the Beach, Inc. - Member 2009 - Present

National Association of Realtors - Member 2009 - Present

Real Estate Investment Society (REIS) - President - 2015

Sanibel-Captiva Chamber of Commerce - Member 2006 - Present

Southwest Florida Museum of History Foundation - Board Member 2014 - 2016

HUD FHA Approved Appraiser

Associate Member of the Appraisal Institute - 2011 - Present

Florida Real Estate Appraisal Board (FREAB) - Gubernatorial Appointed Board Member - 2012 - 2016

Florida Real Estate Appraisal Board (FREAB) - Past Chairman 2014

Since 2016, Board of Directors for IMAG - History & Science Center

Since 2017, President of L.E.A.D. Foundation of SWFL

Re-certification

As of the date of this report, I, Matthew S. Simmons, have completed the requirements under the continuing education program for the State of Florida.



Item Number: B.(8)

Meeting Date: 5/13/2019

Item Type: CONSENT AGENDA

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 101-19 Approval of Seller's counter offer to purchase Lots 9 and 10, Block 3021, Unit 43, Cape Coral Subdivision, 1240 NW 26th Street, Cape Coral, for the Festival Park project for the purchase price of \$13,000 plus closing costs not to exceed \$1,500; Department: Financial Services / Real Estate Division; Dollar Value: \$14,500; (Parks Capital Project/GO Bond Fund) Note: Trade offer rejected by Seller.

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 F: ENHANCE THE QUALITY OF LIFE THROUGH ARTS AND CULTURE TO CREATE AND PROMOTE A VIBRANT, CULTURALLY DIVERSE COMMUNITY.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- 1. In 2003 at a Strategic Planning Session City Council directed staff to begin purchasing property in Cape Coral Subdivision Unit 43 for a future park site, now known as Festival Park. Over the years, Staff had been working with various owners in the park area to purchase additional properties on a voluntary basis based on current independent state-certified appraisals.
- 2. Currently, the City owns 444 of the 517 parcels required for Festival Park, with three additional property contracts currently pending. The subject contract is for a two-lot off-water parcel located within the designated Festival Park area.
- 3. With the recent Go Bond approval, City Staff has notified property owners within the Festival Park area of the City's desire to complete its acquisitions within the park. Staff submitted an offer to purchase the site based on an appraisal of a similar two-lot site by an independent state-certified appraiser of \$11,000. The property owner countered the City with an offer of \$13,000, which has been deemed reasonable. The contract requires the City to pay the closing costs incurred by the title company.
- 4. Staff recommends approval of the Seller's counter offer to purchase Lots 9 and 10, Block

3021, Unit 43, Cape Coral Subdivision, for the purchase price of \$13,000 plus closing costs not to exceed \$1,500.

LEGAL REVIEW:

EXHIBITS:

Resolution 101-19 Property Appraiser Sheet **Location Map Appraisal**

PREPARED BY:

Division- Real Dawn Y. Andrews, Property Department-Financial Services Estate **Broker**

SOURCE OF ADDITIONAL INFORMATION:

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

Doug Sayers, Property Acquisition Agent Financial Services / Real Estate Division 239-574-0714

ATTACHMENTS:

| | Description | Туре |
|---|--------------------------------------|-----------------|
| D | Resolution 101-19 | Resolution |
| D | PA Sheet - Lots 9-10, Block 3021 | Backup Material |
| D | Location Map - Lots 9-10, Block 3021 | Backup Material |
| ם | Appraisal - 2-Lot off water - FP | Backup Material |

RESOLUTION 101 - 19

A RESOLUTION OF THE CITY OF CAPE CORAL AUTHORIZING THE ACCEPTANCE OF SELLER'S COUNTER-OFFER AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A "CONTRACT FOR SALE AND PURCHASE" BETWEEN THE CITY OF CAPE CORAL AND ANTHONY SPINA FOR THE PURCHASE OF LOTS 9-10, BLOCK 3021, UNIT 43, CAPE CORAL SUBDIVISION, FOR THE FESTIVAL PARK PROJECT; PROPERTY LOCATED AT 1240 NW 26TH STREET; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 2003, City Council directed staff to begin purchasing property in Unit 43, Cape Coral Subdivision, for the purpose of creating and developing Festival Park; and

WHEREAS, City staff has been working with various owners in the park area to purchase additional properties on a voluntary basis based on current independent state-certified appraisals; and

WHEREAS, staff submitted an offer of \$11,000 to purchase the subject property based on a recent appraisal of a similar off-water property pursuant to Section 2-152 of the City of Cape Coral Code of Ordinances; and

WHEREAS, the seller responded with a counter-offer of \$13,000; and

WHEREAS, City staff recommends acceptance of the seller's counter-offer of \$13,000, plus closing fees not to exceed \$1,500, to purchase Lots 9 and 10, Block 3021, Unit 43, Cape Coral Subdivision, for the Festival Park project.

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

Section 1. The City Council hereby authorizes acceptance of seller's counter-offer of \$13,000, plus closing fees not to exceed \$1,500, to purchase Lots 9 and 10, Block 3021, Unit 43, Cape Coral Subdivision, for the Festival Park project. The property is located at 1240 NW 26th Street.

Section 2. The City Council hereby authorizes the City Manager and the City Clerk to execute a "Contract for Sale and Purchase" between the City of Cape Coral and Anthony Spina for the purchase of Lots 9 and 10, Block 3021, Unit 43, Cape Coral Subdivision, as more fully described in the Contract, in the amount of \$13,000, plus closing costs not to exceed \$1,500. A copy of the "Contract for Sale and Purchase" is attached hereto as Exhibit 1.

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

| ADOPTED BY THE CITY COUNCE COUNCIL SESSION THIS | | | GULAR |
|---|--|-----------------|-------|
| | JOE COV | TIELLO, MAYOR | |
| VOTE OF MAYOR AND COUNCIL | MEMBERS: | | ¥ |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN | | |
| ATTESTED TO AND FILED IN M 2019. | MY OFFICE THIS | DAY OF | , |
| | KIMBER CITY CL | LY BRUNS ERK | |

APPROVED AS TO FORM:

DOLORES D. MENENDEZ

CITY ATTORNEY

res/Purchase Real Property-Festival Park L9-10 B3021 CounterOffer

CONTRACT FOR SALE AND PURCHASE

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

PARTIES: Anthony Spina, 1770 Highbrook Street, Yorktown Heights, New York 10598 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 (hereinafter referred to as "PROPERTY") described property upon the following terms and conditions:

- LEGAL DESCRIPTION of real estate located in Lee County, Florida:
 Lots 9 and 10, Block 3021, Unit 43, Cape Coral Subdivision, as recorded in Plat
 Book 17, Pages 48-57, inclusive of the Public Records of Lee County, Florida.
- 2. PURCHASE PRICE

\$11,000.00 13,000

3. CONDITIONAL CONTRACT. This contract for sale and purchase is a binding contract once it is executed by the SELLER and by the City Manager on behalf of the BUYER. However, this contract is expressly subject to approval by the Cape Coral City Council. If the Cape Coral City Council fails or refuses to approve the purchase within 45 calendar days of the date when the City Manager has signed this contract, then this contract shall be null and void. 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 of Council authorization. This contract shall be closed and the deed shall be delivered within 30 business days after Council authorization 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.

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.** Documentary stamps, title insurance, title search, title exam, and settlement fees 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 office 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. 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.

CITY OF CAPE CORAL, FLORIDA

| | BY: | |
|------------------------------------|--------------------------------------|----------|
| Witness to A. John Szerlag | A. John Szerlag City Manager | Date |
| | BY: | |
| Witness to Kimberly Bruns | Kimberly Bruns Interim City Clerk | Date |
| | BY | - 4/3/20 |
| Witness Print Name: | Anthony M. Spina | Date |
| Witness Print Name: | | |
| APPROVED AS TO FORM: | | |
| Dolores D. Menendez, City Attorney | | |



Next Parcel Number Previous Parcel Number Tax Estimator Cape Coral Fees Tax Bills Print

Tax Year

Property Data

STRAP: 27-43-23-C4-03021.0090 Folio ID: 10033801



1240 NW 26TH ST CAPE CORAL FL 33993

> **Property Description** Do not use for legal documents!

CAPE CORAL UNIT 43 BLK 3021 PB 17 PG 49 LOTS 9 + 10

Classification / DOR Code

VACANT RESIDENTIAL / 00



[Pictometry Aerial Viewer]

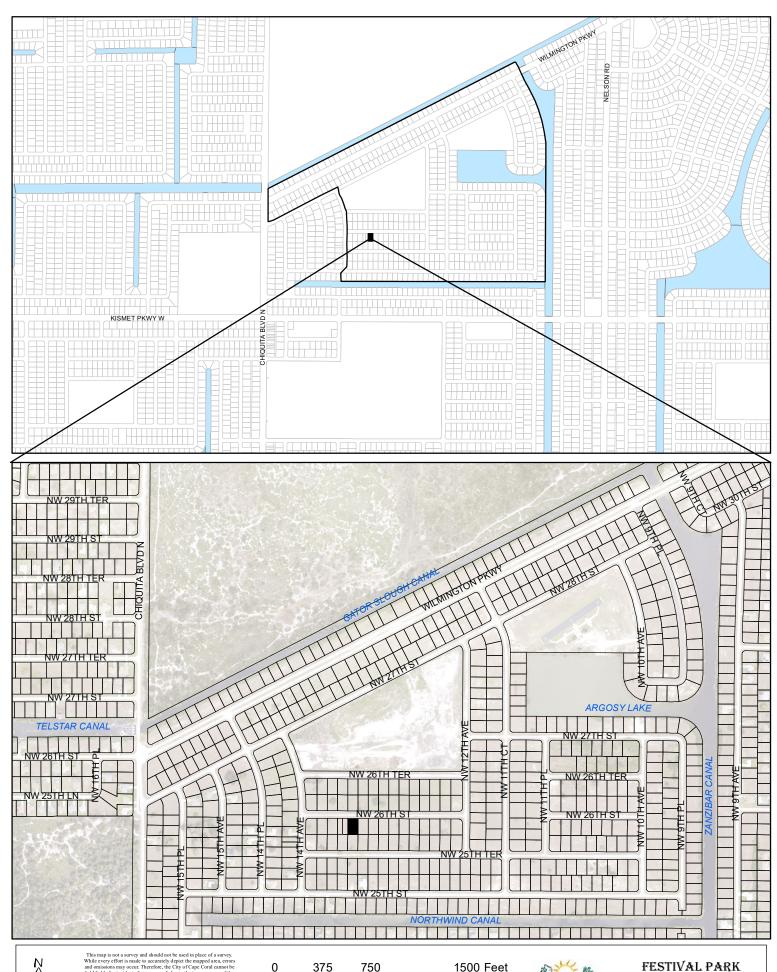




| + | Exemptions |
|---|-----------------------------------|
| + | Values (2018 Tax Roll) |
| + | Taxing Authorities |
| + | Sales / Transactions 9 |
| + | Parcel Numbering History 9 |
| + | Location Information |
| + | Solid Waste (Garbage) Roll Data |
| + | Flood and Storm Information |
| + | Appraisal Details (2018 Tax Roll) |

Appraisal Details (Current Working Values)

TRIM (proposed tax) Notices are available for the following tax years [2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018]





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, repared by: The City of CAPE CORAL Real Estate Division-Gregory L. Spivey

0 375 750 1500 Feet 1:9,000 1 inch = 750 feet



Parcel 298
Block 3021 Lots 9 and 10

File No.: 20100503

LAND APPRAISAL REPORT

| - | Property Address: 1206 NW 25th Ter City: Cape Coral State: FL Zip Code: 33993 County: Lee Legal Description: Lots 27+28, Blk. 3013, Cape Coral Unit 43, PB 17 PG 50 | | | | | | |
|------------------|---|--|--|--|--|--|--|
| JBJEC | Assessor's Parcel #: 27-43-23-C4-03013.0270 Tax Year: 2018 R.E. Taxes: \$ 396.94 Special Assessments: \$ 0 Market Area Name: Cape Coral Unit 43 Map Reference: 15980 Census Tract: 0101.02 Current Owner of Record: Torres, Joel & Valle, Leticia Borrower (if applicable): N/A | | | | | | |
| - | Project Type (if applicable): PUD De Minimis PUD Other (describe) HOA: \$ 0 per year per month Are there any existing improvements to the property? No Yes If Yes, indicate current occupancy: Owner Tenant Vacant Not habitable If Yes, give a brief description: The subject is a vacant site with no improvements. | | | | | | |
| GNMENT | The purpose of this appraisal is to develop an opinion of: Market Value (as defined), or other type of value (describe) This report reflects the following value (if not Current, see comments): Current (the Inspection Date is the Effective Date) Retrospective Prospective Property Rights Appraised: Fee Simple Leasehold Leased Fee Other (describe) Intended Use: The Intended Use is to evaluate the property that is the subject of this appraisal for land acquisition. Intended User(s) (by name or type): City of Cape Coral | | | | | | |
| | | | | | | | |
| | Client: City of Cape Coral Address: PO Box 150027, Cape Coral, FL 33915-0027 Appraiser: Rhonda Elaine Rechkemmer Address: 1913 SW 54th Street, Cape Coral, FL 33914-6888 | | | | | | |
| | Characteristics Location: □ Urban □ Suburban □ Rural Built up: □ Over 75% □ Stable □ Declining Predominant Occupancy PRICE AGE One-Unit Tousing Present Land Use One-Unit 50 % □ Not Likely PRICE AGE One-Unit 50 % □ Likely * □ In Process * Over 75% □ Stable □ Slow □ Tenant 125 Low 0 Multi-Unit 0 % * To: | | | | | | |
| | Marketing time: Under 3 Mos. 3-6 Mos. Over 6 Mos. Factors Affecting Marketability | | | | | | |
| RKET AREA DESCR | Item | | | | | | |
| 2 | shopping, restaurants, schools, a golf course, park, boat ramp and other essential services. The subject is a typical vacant residential. Financing includes conventional, private mortgages, FHA/VA and cash transactions. The median sales price has fluctuated, but is considered mostly stable for the past 12 months. The housing supply in this market is currently in balance with adequately priced properties selling within 3-6 months. New construction starts were noted throughout this market. See Addendum for additional comments. | | | | | | |
| | | | | | | | |
| | Dimensions: 80' v 125' Site Area: 10 000 Sn Ft | | | | | | |
| - | Dimensions: 80' x 125' Site Area: 10,000 Sq.Ft. Zoning Classification: R-1B Description: Single Family | | | | | | |
| | | | | | | | |
| - | Zoning Classification: R-1B Description: Single Family Do present improvements comply with existing zoning requirements? ☐ Yes ☐ No ☒ No Improvements | | | | | | |
| | Zoning Classification: R-1B | | | | | | |
| SITE DESCRIPTION | Do present improvements comply with existing zoning requirements? Yes No No Improvements Uses allowed under current zoning: Allows a single family home. Allows a single family home Yes No Ground Rent (if applicable) \$ / | | | | | | |
| SITE DESCRIPTION | Description: Single Family | | | | | | |
| SITE DESCRIPTION | Description: Single Family | | | | | | |



LAND APPRAISAL REPORT

| L | AND APP | 'KAISAL I | REPORT | | | F | ile No.: 20100503 | | |
|---------------------------|--------------------------------|-------------------------------|--------------------------------|----------------------|---|----------------------|-------------------------|---|--|
| | My research did | did not reveal any prior | sales or transfers of the si | ubject property for | the three years prior to t | he effective date of | this appraisal. | | |
| ≿ | Data Source(s): Lee (| County Property App | raiser's web site | | | | | | |
| Q. | 1st Prior Subject S | | alysis of sale/transfer histor | ry and/or any curr | ent agreement of sale/list | ting: The subj | ect has no listings fo | und in the | |
| ST | Date: 07/20/2000 | | VFL MLS within the p | | | | | | |
| 三 | | | ective date of this ap | | | | | | |
| EN. | Source(s): Lee County | | months. | | | | | | |
| TRANSFER HISTORY | 2nd Prior Subject | | | | | | | | |
| Ž | Date: 05/15/2000 | | urces: Lee County P | ronerty Annra | iser's web site: SW | FL MLS | | | |
| F | |) Multiple Parcel | drocs. Lee County I | roperty Appra | isci s web site, ovv | I L IVILO | | - | |
| - | Source(s): Lee County | | | | | | | | |
| | FEATURE | SUBJECT PROPERTY | COMPARABL | FNO 1 | COMPARAB | IENO 2 | COMPARABLE | NO 3 | |
| | Address 1206 NW 25 | | 1204 NW 24th Ter | L 110. 1 | 621 NW 26th Ter | LL NO. Z | 619 NW 29th Ter | . 110. 0 | |
| | Cape Coral, | | Cape Coral, FL 339 | 003 | Cape Coral, FL 33 | 3003 | Cape Coral, FL 339 | 03 | |
| | Proximity to Subject | 1 2 33333 | 0.14 miles S | 990 | 0.69 miles E | 1333 | 0.97 miles NE | 30 | |
| | Sale Price | \$ N/A | | 10,500 | | 11,000 | | 11,000 | |
| | Price/ Sq.Ft. | ¢ 14/74 | \$ 1.05 | 10,500 | \$ 1.03 | 11,000 | \$ 1.04 | 11,000 | |
| | Data Source(s) | Inspection | SWFLMLS#218045 | 5640/0E DOM | | 72006/04 DOM | SWFLML#2150526 | 24/4000DOM | |
| | Verification Source(s) | LeePA/Public Rec. | LeePA/Inst#201800 | | LeePA/Inst#20180 | | LeePA/Inst#201900 | | |
| | VALUE ADJUSTMENT | DESCRIPTION | DESCRIPTION | | DESCRIPTION | | DESCRIPTION | | |
| | Sales or Financing | N/A | | + (-) \$ Adjust | | + (-) \$ Adjust | Cash | + (-) \$ Adjust | |
| _ | - | | Cash | | Cash | | | | |
| ij | Concessions Date of Solo/Time | N/A | 0 | + | 0 | + | 0 | _ | |
| O | Date of Sale/Time | N/A | s10/18; c10/18 | + c | s12/18; c12/18 | + 0 | s01/19; c09/18 | 0 | |
| 8 | Rights Appraised | Fee Simple | Fee Simple | 1 | Fee Simple | 1 | Fee Simple | | |
| API | Location | U43/Residential | U43/Residential | - | U40/Residential | | U40/Residential | 0 | |
| Z | Site Area (in Sq.Ft.) | 10,000 | 10,000 | 1 | 10,638 | 0 | 10,625 | 0 | |
| SO | View | Residential | Residential | - | Residential | + | Residential | | |
| SALES COMPARISON APPROACH | Utilities | Well/Septic area | Well/Septic area | - | Well/Septic area | + | Well/Septic area | | |
| PA | Prior Transaction Date | 07/20/2000 | 01/22/2004 | | 02/13/2003 | | 09/23/2008 | | |
| MC | Prior Transaction Price | \$13,000 | \$29,500 | | \$4,900 | | \$9,000 | | |
| ၓ | | <u> </u> | | | | | | | |
| ES | Net Adjustment (Total, in | \$) | | | | | _ + \$ | | |
| A | | | Net % | | Net % | | Net % | | |
| လ | Adjusted Sale Price (in \$) | | Gross % \$ | | Gross % \$ | | | 11,000 | |
| | Summary of Sales Compa | | three sales are local | | | | n three months prior | to the | |
| | effective date of this | s appraisal. No adjus | tments are required. | Similar emph | asis is given to all th | nree sales. | | | |
| | | | | | | | | | |
| | s=settlement/closed | d date; c=contract/pe | ending date; DOM=da | ays on the ma | rket | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | PROJECT INFORMATIO | N FOR PUDs (if applicat | ole) The Subjec | t is part of a Planr | ed Unit Development. | | | | |
| | Legal Name of Project: | | | | | | | | |
| PUD | Describe common eleme | nts and recreational faciliti | es: | | | | | | |
| ш | | | | | | | | | |
| | | | | | | | | | |
| | Indicated Value by: Sal | es Comparison Approac | ch\$ 11.000 | | | | | | |
| | | e Sales Comparison | , | esents the acti | ons of typical buyer | s and sellers in | the market and is rel | lied on | |
| Ž | | e estimate. The Cost | | | | | and market and le res | | |
| Ħ | | ⊠ "as is", or □ sub | | | | | Conditions | | |
| ĭ | appraisa. 10aac 2 | | ,001 10 1 10 1 1 1 1 1 | <u> </u> | ittaorioa / tooarriptio | no and Emmang | Corrainorio. | | |
| RECONCILIATION | | | | | | | | | |
| NO | This report is also s | subject to other Hypothet | ical Conditions and/or Fx | draordinary Assur | notions as specified in | the attached adde | nda. | | |
| S E | | ction of the subject pro | | | | | | s Certifications | |
| R | my (our) Opinion of | the Market Value (or | other specified value | type), as defi | ned herein. of the r | eal property that | is the subject of the | is report is: | |
| | \$ 11,0 | | as of: | 01/23/2 | 2019 | , which i | s the effective date of | this appraisal. | |
| | | s Opinion of Value is su | | | | | | | |
| Ĭ. | | opy of this report contai | | | | | | | |
| ATTACH. | | nout reference to the info | | | | • | | | |
| F | | ifications 🔀 Narrative | | Location Map(s | · | ood Addendum | Additional Sa | ales | |
| 1 | Photo Addenda | Parcel M | Tap | Hypothetical Co | | traordinary Assumpt | ions 🔲 | | |
| | Client Contact: Doug | | | Client Na | . <u> </u> | | | | |
| | E-Mail: dsayers@cap | pecoral.net | | | Box 150027, Cape | | | | |
| | APPRAISER | | | | JPERVISORY APP | | juired) | | |
| | | | | or | CO-APPRAISER | (if applicable) | | | |
| | \bigcap | | | | | | | | |
| (0 | Shonda & | Elaine Recht | lemmer | c | pervisory or | | | | |
| Ä | Appraiser Name: Pho | nda Elaine Rechkem | nmer | l Cu | pervisory or -Appraiser Name: | | | | |
| Ę | | mer Appraisal Servi | | | | | | | |
| Z | Phone: (239) 542-41: | | : (239) 542-2591 | Dh | mpany: | | Fax: | | |
| SIGNATURES | E-Mail: R.Rechkemm | | . <u>1200) 072-2031</u> | ¡.'' | Mail: | | Fax: | | |
| S | Date of Report (Signature | | | | | | | | |
| | | : Cert.Res.RD286 | Q C+n+ | e: FL Lic | te of Report (Signature): ense or Certification #: | | | State: | |
| | | | | | ense of Certification #. | | | J. G. | |
| | Expiration Date of License | emmer Appraisal Se | | | signation: piration Date of License o | or Cartification: | | | |
| | • | | /30/2020 | | | | Did Not Income | | |
| | Date of Inspection: | | _ יום ואסו וווצףפכנ (Deskto | nh) luz | pection of Subject: te of Inspection: | Did Inspect | Did Not Inspect | | |



Supplemental Addendum

| | | | 1110 | 110. 20 100303 | |
|------------------|--------------------|------------|----------|----------------|--|
| Client | City of Cape Coral | | | | |
| Property Address | 1206 NW 25th Ter | | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993 | |
| Borrower | N/A | | | | |

File No. 20100502

Intended User and Use Clarification

The Intended User of this appraisal report is the Client, the City of Cape Coral. The Intended Use is to evaluate the property that is the subject of this appraisal for land acquisition. No additional Intended Users are identified by the appraiser. This report is not intended for lending nor insurance purposes.

Scope of the Work

The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report including the attached definition of market value, statement of assumptions and limiting conditions and certifications. The appraiser has performed a visual inspection of the subject site, inspected and analyzed the neighborhood, inspected the comparable sales from the street, researched, verified and analyzed data from reliable public and/or private sources and reported my analysis, opinions and conclusions in this appraisal report.

Highest and Best Use as Vacant

Considering the physically and legally possible as well as the financially feasible tests of highest and best use, it is the appraiser's opinion that the highest and best use of the subject site is for development of a single family residence.

Additional Comments

I have no current or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.

I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

The opinion of market value as defined in this report is in terms of cash or of financing terms equivalent to cash.

Exposure time as defined in USPAP is the estimated length of time that a property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal. Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market.

Comments on Future Assessments

It should be noted that the City of Cape Coral intends to expand utilities (water, sewer and irrigation water) to the subject's market in the future at which time connection will be mandatory and there will be assessments and CIAC fees which will be determined based on the cost of the project. Owners have the option of paying all of the assessments/fees up front or financing over 20 years and are then included on the owner's annual tax bill until paid in full.

Comments on the City of Cape Coral

The subject is located in Cape Coral, an incorporated city on the southwest portion of Florida in Lee County. The city of Cape Coral has an indicated land area of 120 square miles and is known for its extensive fresh water and Gulf access canals and lakes. The estimated population of Cape Coral in 2013 was 165,831 persons, per the US Census Bureau. The Cape Coral market had substantial growth with extensive new construction during 2000-2006. This market was affected by the recession starting in 2006-2007 with new construction ending and extensive foreclosures throughout the area for several years. This market has since recovered with housing inventory decreasing and new construction starts noted throughout the area.

Comments on the Proposed Festival Park

The subject site is located in the northwest portion of Cape Coral in an area that will be developed as Festival Park by the City of Cape Coral. Festival Park will consist of approximately 215 acres which currently includes platted lots, existing streets, a fresh water lake and the current Seahawk Park when completed. The platted lots in this area are being acquired by the City of Cape Coral in four phases for this project.

| Client | City of Cape Coral | | | File | e No. 20100503 |
|--|---|---|--|---|---|
| Property Address | 1206 NW 25th Ter | | | | |
| City Borrower | Cape Coral N/A | County I | Lee | State FL | Zip Code 33993 |
| APPRAI | SAL AND REPORT IDE | ENTIFICATION | | | |
| | rt is <u>one</u> of the following types: | | | | |
| 🔀 Apprais | al Report (A written report prepar | ed under Standards Rule | 2-2(a) , pursuant to th | e Scope of Work, as disclo | sed elsewhere in this report.) |
| Restric Apprais | | ed under Standards Rule ntended use by the specified | | | osed elsewhere in this report, |
| I certify that, to The stateme The reported analyses, opinion | nts on Standards Rule the best of my knowledge and belief: nts of fact contained in this report are true l analyses, opinions, and conclusions are ons, and conclusions. | e and correct. limited only by the reported as: | _ | | |
| — I have performance of to the second | esent or prospective interest in the propert med no services, as an appraiser or in an his assignment. as with respect to the property that is the s | y other capacity, regarding the subject of this report or the par | property that is the subject | of this report within the three- | |
| My compen client, the amouMy analyses in effect at the tI have madeNo one prov | nent in this assignment was not continger sation for completing this assignment is n unt of the value opinion, the attainment of , opinions, and conclusions were develop ime this report was prepared. a personal inspection of the property that ided significant real property appraisal ass praisal assistance is stated elsewhere in the | ot contingent upon the develop a stipulated result, or the occu ed, and this report has been po- is the subject of this report. istance to the person(s) signin | pment or reporting of a pred irrence of a subsequent eve repared, in conformity with | nt directly related to the intend the Uniform Standards of Profe | led use of this appraisal. essional Appraisal Practice that were |
| appraised wo My Opinion | able Exposure Time uld have been offered on the market of Reasonable Exposure Time for dicated by similar vacant site sal | prior to the hypothetical co or the subject property | onsummation of a sale a | | |
| | nts on Appraisal and JSPAP related issues requir | | | d requirements: | |
| | | | | | |
| APPRAISEI | R: | | SUPERVISORY | or CO-APPRAISER (| if applicable): |
| Signature: | Zhonda Elaine Rec | Lhemmer | Signatura | | |
| | da Elaine Rechkemmer | | Name: | | |
| Rech | kemmer Appraisal Services, Inc. | | | | |
| or State License | on #: <u>Cert.Res.RD2869</u> | | or State License #: | • | |
| State: FL_ | Expiration Date of Certification or License | | State: Ex | piration Date of Certification or | License: |
| Date of Signatu | re and Report: <u>01/23/2019</u> | | | | |
| | f Appraisal: 01/23/2019 ubject: None None Interior and Expression in the state of | derior Eutorior Only | Inconnation of Cubic | nt: Nono Interior | r and Exterior Cale |
| | on (if applicable): <u>01/23/2019</u> | TOTAL EXICUOL-OHIS | | if applicable): | r and Exterior Exterior-Only |

Assumptions, Limiting Conditions & Scope of Work

File No.: 20100503 1206 NW 25th Ter Property Address: State: FI Zip Code: 33993 City of Cape Coral Address: PO Box 150027, Cape Coral, FL 33915-0027 Rhonda Elaine Rechkemmer Address: 1913 SW 54th Street, Cape Coral, FL 33914-6888

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

- The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
- The appraiser may have provided a plat and/or parcel map in the appraisal report to assist the reader in visualizing the lot size, shape, and/or orientation. The appraiser has not made a survey of the subject property.
- If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
- The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
- The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
- The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
- The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.
- An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.
- The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database. Possession of this report or any copy thereof does not carry with it the right of publication.
- Forecasts of effective demand for the highest and best use or the best fitting and most appropriate use were based on the best available data concerning the market and are subject to conditions of economic uncertainty about the future.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Certifications & Definitions

| refullications & Defillitions | | | File No.: 20 | 0100503 |
|---|----------|-------------------------------------|--------------|-----------------|
| Property Address: 1206 NW 25th Ter | | City: Cape Coral | State: FL | Zip Code: 33993 |
| Client: City of Cape Coral | Address: | PO Box 150027, Cape Coral, FL 33915 | 5-0027 | |
| Appraiser: Rhonda Elaine Rechkemmer | Address: | 1913 SW 54th Street, Cape Coral, FL | 33914-6888 | |
| APPRAISER'S CERTIFICATION | | | | |
| Loortify that to the heat of my knowledge and helief: | | | | |

- I certify that, to the best of my knowledge and belief:

 The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- Unless otherwise indicated, I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

DEFINITION OF MARKET VALUE *:

Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1. Buyer and seller are typically motivated;
- 2. Both parties are well informed or well advised and acting in what they consider their own best interests;
- 3. A reasonable time is allowed for exposure in the open market;
- 4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
- * This definition is from regulations published by federal regulatory agencies pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 between July 5, 1990, and August 24, 1990, by the Federal Reserve System (FRS), National Credit Union Administration (NCUA), Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the Office of Comptroller of the Currency (OCC). This definition is also referenced in regulations jointly published by the OCC, OTS, FRS, and FDIC on June 7, 1994, and in the Interagency Appraisal and Evaluation Guidelines, dated October 27, 1994.

| | Client Contact: Doug Sayers C | lient Name: City of Cape Coral |
|-------|--|--|
| | E-Mail: dsayers@capecoral.net Address: | PO Box 150027, Cape Coral, FL 33915-0027 |
| | APPRAISER | SUPERVISORY APPRAISER (if required) |
| | | or CO-APPRAISER (if applicable) |
| | | , |
| | | |
| ഗ | O1 1 51 0 | |
| TURES | Shonda Elaine Rechhemmer | Supervisory or |
| ᢓ | Appraiser Name: Rhonda Elaine Rechkemmer | Co-Appraiser Name: |
| ₹ | Company: Rechkemmer Appraisal Services, Inc. | Company: |
| | Phone: (239) 542-4152 Fax: (239) 542-2591 | Phone: Fax: |
| ဟ | E-Mail: R.Rechkemmer@att.net | E-Mail: |
| | Date Report Signed: 01/23/2019 | Date Report Signed: |
| | License or Certification #: Cert.Res.RD2869 State: FL | License or Certification #: State: |
| | Designation: Rechkemmer Appraisal Services, Inc. | Designation: |
| | Expiration Date of License or Certification: 11/30/2020 | Expiration Date of License or Certification: |
| | Inspection of Subject: Did Inspect Did Not Inspect (Desktop) | Inspection of Subject: Did Inspect Did Not Inspect |
| | Date of Inspection: 01/23/2019 | Date of Inspection: |

Subject Land Photo Page

| Client | City of Cape Coral | | | |
|------------------|--------------------|------------|----------|----------------|
| Property Address | 1206 NW 25th Ter | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993 |
| Borrower | N/A | | | |



Subject Front

1206 NW 25th Ter Sales Price N/A

Date of Sale N/A U43/Residential

Location Site/View

View Residential Utilities Well/Septic area Prior Transaction Date 07/20/2000

Prior Transaction Price\$13,000



Subject Street



Subject Street

Comparable Land Photo Page

| Client | City of Cape Coral | | | | | | |
|------------------|--------------------|------------|---------|----|----------|-------|---|
| Property Address | 1206 NW 25th Ter | | | | | | |
| City | Cape Coral | County Lee | State F | :L | Zip Code | 33993 | |
| Borrower | N/A | | | • | | | • |



Comparable 1

1204 NW 24th Ter

 Prox. to Subj.
 0.14 miles S

 Sales Price
 10,500

 Date of Sale
 \$10/18; \$c\$10/18

 Location
 U43/Residential

 Site
 10,000sf

 View
 Residential

 Utilities
 Well/Septic area

Prior Transaction Date Prior Transaction Price



Comparable 2

621 NW 26th Ter

Prox. to Subj. 0.69 miles E
Sales Price 11,000
Date of Sale s12/18; c12/18
Location U40/Residential
Site 10,638sf
View Residential
Utilities Well/Septic area

Prior Transaction Date Prior Transaction Price

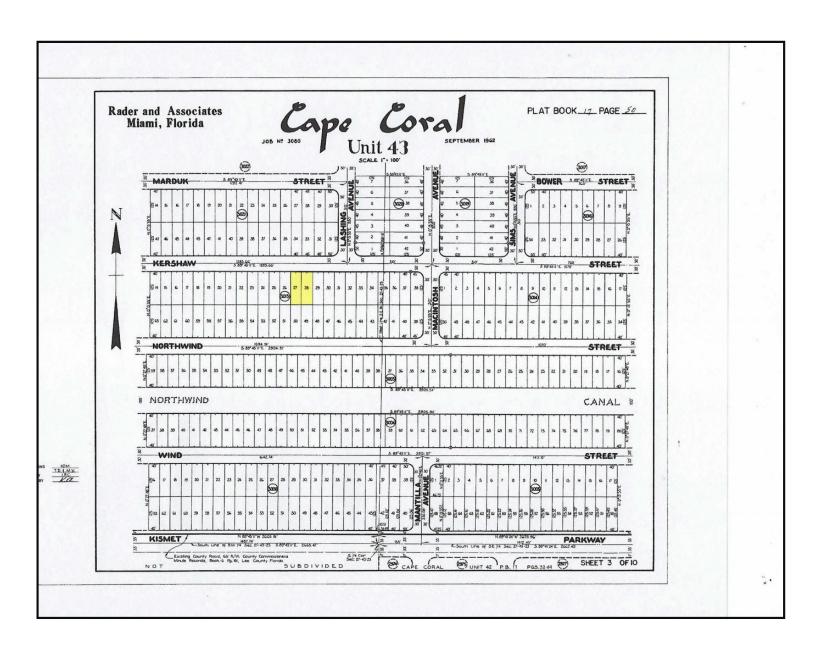


Comparable 3

619 NW 29th Ter

Prox. to Subj. 0.97 miles NE
Sales Price 11,000
Date of Sale s01/19; c09/18
Location U40/Residential
Site 10,625sf
View Residential
Utilities Well/Septic area

Prior Transaction Date Prior Transaction Price

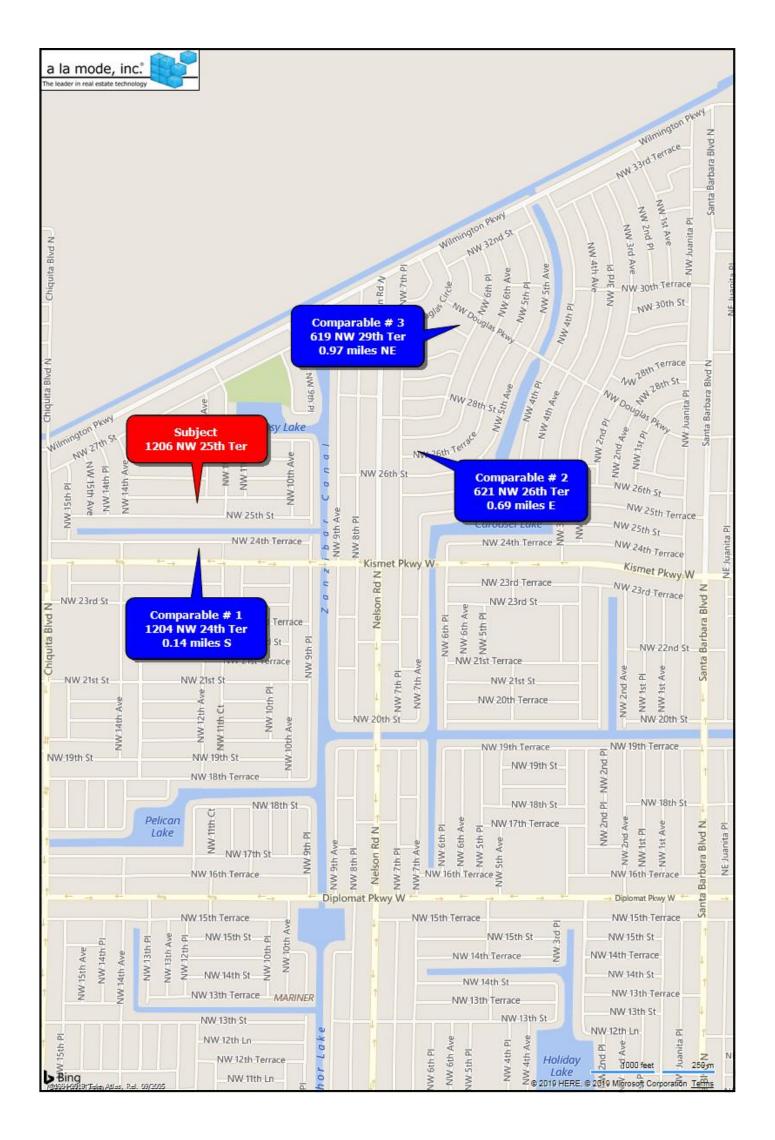


Aerial



Location Map

| Client | City of Cape Coral | | | |
|------------------|--------------------|------------|----------|----------------|
| Property Address | 1206 NW 25th Ter | | | |
| City | Cape Coral | County Lee | State FL | Zip Code 33993 |
| Rorrower | N/A | · | | |



Item Number: B.(9)

Meeting Date: 5/13/2019

CONSENT AGENDA Item Type:

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 102-19 Shared-Use Non-motorized (SUN) Trail Network Agreement between the State of Florida Department of Transportation (FDOT) and the City of Cape Coral; SUN Trail Construction Phase 1 (Burnt Store Road to Nelson Road); Department: Public Works; Dollar Value: N/A; FDOT Grant: \$5,297,641; (Fund; N/A)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No

2. Is this a Strategic Decision?

Yes

If Yes, Priority Goals Supported are

listed below.

If No, will it harm the intent or success of

the Strategic Plan?

ELEMENT 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

ELEMENT D: IMPROVE THE CITY'S IMAGE WITH THE PURPOSE OF BUILDING LASTING RELATIONSHIPS WITH OUR RESIDENTS AND VALUABLE PARTNERSHIPS WITH OTHER ORGANIZATIONS, AND CONTINUALLY PROVIDE A WELL-BALANCED AND POSITIVE WORKPLACE FOR OUR INTERNAL STAKEHOLDERS.

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

ELEMENT F: ENHANCE THE QUALITY OF LIFE THROUGH ARTS AND CULTURE TO CREATE AND PROMOTE A VIBRANT, CULTURALLY DIVERSE COMMUNITY.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

The attached agreement is to award the City \$5.297.641 to construct Phase 1 of the SUN Trail Project from Burnt Store Road to Nelson Road. Based on the consultant's construction cost estimate, this grant amount will cover 100% of the SUN Trail construction cost.

The purpose of the FDOT SUN Trail grant program is to provide funding to design and construct non-motorized trails that connect a larger network of SUN Trails throughout the state of Florida.

In 2017 the City received \$1.8 million of FDOT SUN Trail grant to design a 12-foot wide multi-

use trail on the north side of Van Buren Parkway from Burnt Store Road to El Dorado Boulevard, on the east side of El Dorado Boulevard from Van Buren Parkway to Kismet Parkway and on the north side of Kismet Parkway from El Dorado Boulevard to Del Prado Boulevard.

The total trail length is approximately 6.5 miles. For construction purposes, the project is divided into two phases. Phase 1 is from Burnt Store Road to Nelson Road (3.5 miles). Phase 2 is from Nelson Road to Del Prado Boulevard (3 miles). The project also includes three new pedestrian bridges over existing canals (one bridge in Phase 1 and two bridges in Phase 2). The attached agreement provides funding for SUN Trail Construction Phase 1.

The City engaged the services of VHB to design and permit the trail. Final design was approved by FDOT in April 2019 and is in the final stages of permitting.

Construction is expected to start by Spring 2020 and complete by Summer 2021.

SUN Trail design has been coordinated with the Utilities Extension Project, Utilities Department and Transportation Capital Projects.

Staff will come back to Council as construction and inspection contracts are awarded.

This non-motorized trail will provide a signature destination for recreational activity in the North Cape.

The design consultant will make a presentation at the Committee of the Whole scheduled for May 20th.

LEGAL REVIEW:

Yes

EXHIBITS:

Revised Memo Resolution 102-19

PREPARED BY:

Persides Zambrano Division- Planning and Permitting Department- Public Works

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description Type

Revised MemoResolution 102-19Backup MaterialResolution

MEMORANDUM

CITY OF CAPE CORAL PUBLIC WORKS DEPARTMENT

TO:

John Szerlag, City Manager

FROM:

Paul Clinghan, PW Director PRC

Persides Zambrano, PW Planning and Permitting Manager

Pimolmas Tan, PW Principal Engineer ? ...

DATE:

May 7, 2019

SUBJECT: City and FDOT Phase 1 SUN Trail Agreement

BACKGROUND: In 2017, the City received a grant of \$1.8 million for the design of the FDOT SUN Trail. The trail consists of a 12-foot wide multi-use path on the north side of Van Buren Parkway from Burnt Store Road to El Dorado Boulevard, on the east side of El Dorado Boulevard from Van Buren Parkway to Kismet Parkway and on the north side of Kismet Parkway from El Dorado Boulevard to Del Prado Boulevard.

The total trail length is approximately 6.5 miles and includes the construction of three new pedestrian bridges over existing canals. For construction purposes, the trail is divided into two phases (Exhibit A). Phase 1 is from Burnt Store Road to Nelson Road (3.5 miles long with one new pedestrian bridge). Phase 2 is from Nelson Road to Del Prado Boulevard (3 miles long and two new pedestrian bridges).

During the design phase, staff coordinated with future anticipated Utilities, UEP and Transportation capital projects. Construction of Phase 1 includes the following City's projects:

- Widening of Kismet Parkway (from Chiquita Boulevard to NW 18th Avenue) to a 4-lane road to match the existing cross-sections to the east and the west of this segment.
- Addition of water and irrigation sleeves, as well as sanitary service laterals, under the trail for future utility connections.

Funding for these two capital projects is included in the FY 2020 budgets for Public Works and Utilities.

The City engaged the services of Vanasse Hangen Brustlin, Inc (VHB) to design and permit the trail improvements, roadway and utility improvements. FDOT approved the final design in April 2019 and permitting is in the final stages.

John Szerlag- City Manager- City and FDOT Phase I SUN Trail Agreement May 7, 2019
Page 2 of 2

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

RECOMMENDATION: The attached agreement between the City of Cape Coral and FDOT (Exhibit B).provides \$5,297,641 in funding for Phase 1 SUN Trail construction from Burnt Store Road to Nelson Road. Based on the consultant's construction cost estimate, this grant amount provides 100% of the Phase 1 SUN Trail construction cost. Staff recommends approval of the agreement.

A presentation by the design consultant is scheduled for the May 20, 2019 Committee of the Whole.

Upon receipt of construction bids, staff will request approval from Council for construction and inspection contracts. Construction is expected to begin in Spring 2020 and be complete by Winter 2022.

FUND AVAILABILITY: This grant provides 100% of the Phase I SUN Trail construction costs of \$5,297,641.

PC/PZ/PT:sk

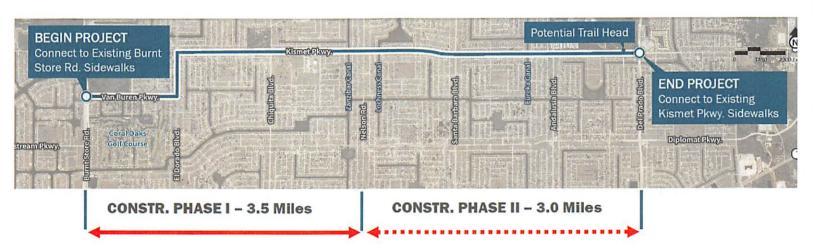
Enclosures: Exhibit A: Project Location and Typical Section.

Exhibit B: FDOT/City Agreement.



FLORIDA SHARED-USE NON-MOTORIZED (SUN) TRAIL







Proposed Typical Section

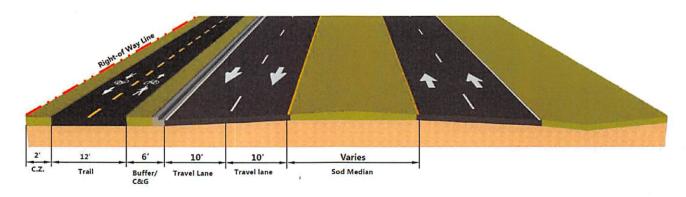


Exhibit B: FDOT/City Agreement

| Financial Project No:440236-1-54-01 | Contract No. | Vendor No.: F591312996008 | CSFA No. and Title: 55.038 | | |
|--|--------------|---------------------------|---|--|--|
| | | | Florida Shared-Use Nonmotorized (SUN) Trail Network Program | | |

| | THIS FLORID | A SHARED- | -USE NONMOTORI | ZED TRAIL GRA | NT AGREEMI | ENT ("Agreeme | ent") is |
|----------|------------------|---------------|------------------------|---------------------|-----------------------------|-----------------|----------|
| entered | into this | _day of | _20, by and betwe | en the State of Fl | orida Departm | ent of Transpor | tation, |
| ("Depart | ment"), and the | City of Cap | e Coral, ("Recipient" |). The Department | t and the Reci _l | pient are somet | imes |
| referred | to in this Agree | ement as a "F | Party" and collectivel | y as the "Parties". | | | |

RECITALS

- A. The Department is authorized under Section 339.81, Florida Statutes, to enter into this Agreement.
- B. The Florida Shared-Use Nonmotorized Trail Network is included in the Department's work program for the purposes of funding and maintaining projects within the network.
- C. The purpose of this Agreement is to provide for the Department's participation in the construction of a 12-foot wide multi-use trail as further described in Exhibit "A", Scope of Services ("Project"), state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed. The Project is or shall be a component of the Florida Shared-Use Nonmotorized Trail Network and it would be more practical, expeditious, and economical for the Recipient to perform the Project.
- D. The Recipient by Resolution No. ____adopted on ____, 20___, a copy of which is attached hereto and made a part hereof as Exhibit "E", Recipient Resolution, authorizes the proper officials to enter into this Agreement.

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

- 1. Incorporation of Recitals: The recitals set forth above are true and correct and are incorporated into this Agreement.
- 2. Term of Agreement: This Agreement shall commence upon full execution by both Parties ("Effective Date") and continue through December 31, 2022. If the Recipient does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Recipient and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed prior to the Effective Date or after the expiration date of this Agreement will not be reimbursed by the Department. Unless terminated earlier, work on the Project shall commence no later than the 1st day of July 2019 or within (not applicable) days of the issuance of the Notice to Proceed for the construction phase of the Project

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

(if the Project involves construction), whichever date is earlier. The Department shall have the option to immediately terminate this Agreement should the Agency fail to meet the above-required dates.

- 3. Amendments, Extensions and Assignment: This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred or otherwise encumbered by the Recipient under any circumstances without the prior written consent of the Department.
- 4. Termination or Suspension of Project: The Department may, by written notice to the Recipient, suspend any or all of the Recipient's obligations under this Agreement for the Recipient's failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected. The Department may also terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.
 - a. If the Department terminates the Agreement, the Department shall notify the Recipient of such termination in writing within thirty (30) days of the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
 - b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.
 - c. If the Agreement is terminated before performance is completed, the Recipient shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Recipient.
 - d. In the event the Recipient fails to perform or honor the requirements and provisions of this Agreement, the Recipient shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.

5. Project Cost:

1.

- a. The estimated total cost of the Project is \$5,297,641 (Five Million Two Hundred and Ninety-Seven Thousand Six Hundred and Forty-One). This amount is based upon the schedule of funding in Exhibit "B", Method of Compensation. The schedule of funding may be modified by mutual agreement of the Parties.
- b. The Department agrees to participate in the Project cost up to the maximum amount of \$5,297,641 (Five Million Two Hundred and Ninety-Seven Thousand Six Hundred and Forty-One) and as more fully described in Exhibit "B", Method of Compensation. The Parties agree that the Department's participation may be reduced if the actual bid amounts of the Project is less than \$5,297,641 by the execution of a supplemental agreement. The Recipient agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits involved.

6. Compensation and Payment:

a. The Department shall reimburse the Recipient for costs incurred to perform services described in the Scope of Services in Exhibit "A", and as set forth in the Method of Compensation in Exhibit "B".

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- b. The Recipient shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project, identified as Financial Project Number 440236-1-54-01, and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A", Scope of Services. Any changes to the deliverables shall require written approval in advance by the Department.
- c. Invoices shall be submitted no more often than monthly by the Recipient in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable and verifiable deliverables as established in Exhibit "A". Deliverables must be received and accepted in writing by the Department's Project Manager prior to reimbursements. The Department will identify the Department's Project Manager to the Recipient in writing.
- d. Supporting documentation must establish that the deliverables were received and accepted in writing by the Recipient and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit "A" has been met.
- e. Travel expenses are not compensable under this Agreement.
- f. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters
 - payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the Department's Comptroller under s. 334.044 (29), Florida Statutes. If the Department determines that the performance of the Recipient is unsatisfactory, the Department shall notify the Recipient of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Recipient shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Recipient will address all issues of contract nonperformance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Recipient shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Recipient resolves the deficiency. If the deficiency is subsequently resolved, the Recipient may bill the Department for the retained amount during the next billing period. If the Recipient is unable to resolve the deficiency, the funds retained must be forfeited at the end of the Agreement's term.
- g. Recipients providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

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

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

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- h. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Recipient's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- i. Upon request, the Recipient agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.
 - If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Recipient owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- k. The Recipient must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- I. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Recipient. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Recipient, in writing, when funds are available.
- m. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

n. Any Project funds made available by the Department pursuant to this Agreement which are determined by the Department to have been expended by the Recipient in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Recipient files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

o. In determining the amount of the payment, the Department will exclude all Project costs incurred by the Recipient prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in Exhibit "B" for the Project, costs agreed to be borne by the Recipient or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

7. General Requirements:

The Recipient shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.

- a. In the event the Recipient proceeds with any phase of the Project utilizing its own forces, the Recipient will only be reimbursed for direct costs (this excludes general overhead).
- b. The Recipient shall certify to Department that the Recipient's design consultant and/or construction contractor has secured the necessary permits. If the Recipient fails to provide such certification to Department by December 31, 2022 the Department may, at its discretion, terminate this Agreement.
- c. The Recipient shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained.
- d. In the event the cost of the Project is greater than \$250,000.00 and the Project involves construction on the Department's right-of-way, the Recipient shall provide the Department with written notification of either its intent to:
 - i. Award the construction of the Project to a Department prequalified contractor which is the lowest and best bidder in accordance with applicable state and federal statutes, rules, and regulations. The Recipient shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or
 - ii. Construct the Project utilizing existing Recipient employees, if the Recipient can complete said Project within the time frame set forth in this Agreement.
- e. The Recipient shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards.
- f. The Recipient shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Recipient will make best efforts to obtain the Department's input in its decisions.
- 9. \square If this box is selected, then the following provision is incorporated into this Agreement:

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

8. Contracts of the Recipient

a. Except as otherwise authorized in writing by the Department, the Recipient shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds,

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.

- b. It is understood and agreed by the parties to this Agreement that participation by the Department in a project with the Recipient, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Recipient's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Recipient shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act
- **9. Design and Construction Standards and Required Approvals:** In the event the Project includes construction the following provisions are incorporated into this Agreement:
 - a. The Recipient shall hire a qualified contractor using the Recipient's normal bid procedures to perform the construction work for the Project. The Recipient must certify that the installation of the Project is completed by a Contractor prequalified by the Department as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2016), as amended, unless otherwise approved by the Department in writing or exhibit past project experience in the last five years that are comparable in scale, composition, and overall quality of the site identified within the scope of services of this Project.
 - b. Construction Engineering Inspection (CEI) services will be provided by the Recipient by hiring a Department prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the Department in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by the Department. The Department shall approve all CEI personnel. The CEI firm shall not be the same firm as that of the Engineer of Record for the Project. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project.
 - c. The Recipient understands that it is responsible for the preparation of all design plans for the Project. The Recipient shall hire a qualified consultant for the design phase of the Project using the Recipient's normal procurement procedures to perform the design services for the Project.
 - d. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Recipient for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Recipient shall not begin the construction phase of the Project until the Department issues a Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Recipient shall request a Notice to Proceed from the Department's Project Manager, Simon Shackelford, at (239) 225-1958 or Simon.Shackelford@dot.state.fl.us or from an appointed designee. Any work performed prior to the execution of this Agreement is not subject to reimbursement.
 - e. The Recipient will provide one (1) copy of the final design plans and specifications and final bid documents to the Department's Construction Project Manager prior to commencing construction of the Project.
 - f. The Recipient shall require the Recipient's contractor to post a payment and performance bond in accordance with Section 337.18(1), Florida Statutes.

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- g. The Recipient shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable Recipient and Department standards.
- h. Upon completion of the work authorized by this Agreement, the Recipient shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached hereto and incorporated herein as Exhibit "C", Engineers Certification of Completion. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.
- **10. Maintenance Obligations:** In the event the Project includes construction then the following provisions are incorporated into this Agreement:
 - a. The Recipient has agreed by resolution to execute a Maintenance Memorandum of Agreement ("MMOA") in which Recipient agrees to maintain the entire Project as depicted in the construction plans and specifications for the useful life of the Project, and such resolution is attached and incorporated into this Agreement as Exhibit "E". The Recipient shall execute the MMOA concurrently with execution of this Agreement. The MMOA is attached and incorporated into this Agreement as Exhibit "G". The terms of the MMOA, Exhibit "G", shall survive the termination of this Agreement. The Parties acknowledge and agree that the design plans for the Project may not yet be finalized and are subject to review by the Department. Upon completion of the Project, the Parties shall amend the MMOA to attach the latest version of the construction plans for the Project to the MMOA in order to show the extent of the Project to be maintained.
- 11. State Single Audit: The administration of resources awarded through the Department to the Recipient by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state agency inspector general, the Auditor General, or any other state official. The Recipient shall comply with all audit and audit reporting requirements as specified below.
 - a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Recipient's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS) or the Auditor General.
 - b. The Recipient, a nonstate entity as defined by Section 215.97(2)(n), Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement is subject to the following requirements:
 - i. In the event the Recipient meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Recipient must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and

Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit "D" to this Agreement indicates state financial assistance awarded through the Department by this Agreement needed by the Recipient to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, other state agencies and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

- In connection with the audit requirements, the Recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- iii. In the event the Recipient does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Recipient is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Recipient must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Recipient's audit period for each applicable audit year. In the event the Recipient does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Recipient's resources (i.e., the cost of such an audit must be paid from the Recipient's resources obtained from other than State entities).
- iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation Office of Comptroller, MS 24 605 Suwannee Street Tallahassee, FL 32399-0405

Email: FDOTSingleAuditdot.state.fl.us

And

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

- v. Any copies of financial reporting packages, reports or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- vi. The Recipient, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

indicate the date the reporting package was delivered to the Recipient in correspondence accompanying the reporting package.

- vii. Upon receipt, and within six months, the Department will review the Recipient's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Recipient fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.
- viii. As a condition of receiving state financial assistance, the Recipient shall permit the Department, or its designee, DFS or the Auditor General access to the Recipient's records including financial statements, the independent auditor's working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.
- c. The Recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, DFS or the Auditor General access to such records upon request. The Recipient shall ensure that the audit working papers are made available to the Department, or its designee, DFS or the Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department.

12. Notices and Approvals:

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

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

SIMON SHACKELFORD 801 NORTH BROADWAY AVENUE, MS 1-18 BARTOW, FL 33830 PHONE (239) 225-1958 EMAIL: SIMON.SHACKELFORD@DOT.STATE.FLUS

RECIPIENT:

CITY OF CAPE CORAL PIMOLMAS TAN P.O. BOX 150027 CAPE CORAL, FL 33915 PHONE: (239) 574-0891 EMAIL: PTAN@CAPECORAL.NET

- b. All approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.
- 13. Restrictions, Prohibitions, Controls and Labor Provisions:

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- a. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- b. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.
- c. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Recipient.
- d. No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.
- e. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. The Recipient shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.

14. Indemnification and Insurance:

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

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

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

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

- b. The Recipient shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultants have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
- c. If the Recipient is a state agency or subdivision of the State of Florida and elects to selfperform the Project, then the Recipient may self-insure. If the Recipient is not a state agency or subdivision of the State of Florida or if the Recipient is a state agency or subdivision of the State of Florida that elects to hire a contractor or consultant to perform the Project, then the Recipient shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Cause the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible. Pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Recipient is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.
- d. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, you shall, in addition to the insurance coverage required pursuant to 713.2 above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

the Department as an Additional Insured on the policy/ies procured pursuant to paragraph 15.0 above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have. The Railroad Protective Liability Coverage described above is not required if the Recipient is a government entity that elects to self-perform the Project and utilizes self-insurance.

e. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the policy/ies procured pursuant to paragraph 11.c above. This provision does not apply if the Recipient is a government entity that elects to self-perform the Project and utilizes self-insurance.

15. Miscellaneous:

- a. The Recipient will be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Recipient will be responsible for securing any applicable permits. The Recipient shall include in all contracts and subcontracts for amounts in excess of \$150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- b. The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.
- c. In no event shall the making by the Department of any payment to the Recipient constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Recipient and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- d. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- e. The Recipient and the Department agree that the Recipient, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- f. By execution of the Agreement, the Recipient represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- g. Nothing in the Agreement shall require the Recipient to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Recipient will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Recipient to the end that the Recipient may proceed as soon as possible with the Project.

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- h. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- i. If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Recipient must comply with the requirements of Section 255.0991, Florida Statutes.

j. The Recipient shall:

- Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Recipient during the term of the contract; and
- ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- k. The Department reserves the right to unilaterally cancel this Agreement for failure by the Recipient to comply with the provisions of Chapter 119, Florida Statutes.
- I. The Recipient agrees to comply with Section 20.055(5), F.S., and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), F.S.
- m. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Recipient agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

16. Exhibits.

- a. Exhibits A, B, C, D E, and G are attached to and incorporated into this Agreement.
- b. \square A portion or all of the Project will utilize the Department's right-of-way and therefore Exhibit F, Terms and Conditions of Construction, is attached and incorporated into this Agreement.

c. Exhibit List

Exhibit A: Scope of Services

Exhibit B: Method of Compensation

Exhibit C: Engineer's Certification of Compliance

Exhibit D: State Financial Assistance (Florida Single Audi Act)

Exhibit E: Recipient Resolution

*Exhibit F: Terms and Conditions of Construction Exhibit G: Maintenance Memorandum of Agreement

*Indicates that the Exhibit is only attached and incorporated if applicable box is selected.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above. RECIPIENT — CITY OF CAPE CORAL STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION Ву: _ Ву:_ die 3/18/19 Name: Name: Title: Title: Title: VED AS TO FORM: Legal Review: BY: City Attorney's Office

EXHIBIT A SCOPE OF SERVICES

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

Project Description: Van Buren/El Dorado/Kismet Parkway from Burnt Store Road to Nelson Road

The following special requirements and conditions shall apply: The purpose of this Exhibit is to describe the scope of work and the responsibilities of the City of Cape Coral relating to the construction of a 12-foot wide multi-use trail on the north side of Van Buren Parkway from Burnt Store Road to El Dorado Boulevard; on the east side of El Dorado Boulevard from Van Buren Parkway to Kismet Parkway; and on the north side of Kismet Parkway from El Dorado Boulevard to Nelson Road; approximately 3.5 miles. A pedestrian bridge structure will be required to cross a canal location. Drainage improvements and environmental mitigation will be provided, as required.

The general objective is for the City of Cape Coral to provide contract administration, management services, construction engineering and inspection services and quality acceptance reviews of all work associated with the construction of the associated improvements. The services performed shall be in accordance with the Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction and FDOT Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

Specifically, and non-inclusive

- Construct a new 12-foot wide multi-use trail (approx. 3.50 miles) and appropriate drainage improvements.
- Provide Construction Engineering and Inspection (CEI) and Quality Assurance Engineering to document construction as per specifications. Maintain existing traffic during the entire construction period
- Provide signing and pavement markings, as required, to meet the latest MUTCD standards.
- Construct or reconstruct, as appropriate, side road and driveway turnouts.
- Coordination with utility owners during construction will be required to determine and avoid potential impacts. Where unavoidable, disposition of the utility conflicts should be coordinated.
- Acquisition of all applicable storm water and environmental permits in accordance with Chapter 62-25, Regulation of Storm Water Discharge, Florida Administrative Code; Chapter 373 and 403, Florida Statutes; Chapters 40 and 62, Florida Administrative Code; Rivers and Harbors Act of 1899; Section 404 of the Clean Water Act; and parts 114 and 115, Title 33, Code of Federal Regulations. In addition, permitting required by local agencies shall be prepared in accordance with their specific regulations. Acquisition includes all associated permit fees.
- Coordinate construction activities with other infrastructure projects that are impacted by or impact this project. This includes projects under the jurisdiction of local governments or other regional and state agencies.
- Provide, upon completion of construction, Final As-built Construction Plans, signed and sealed by a Professional Engineer, registered in the State of Florida.

SPECIAL CONSIDERATIONS BY AGENCY:

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the

Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where

applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and

the funding action from any other source with respect to the project.

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in

accordance with the following schedule:

- a) Construction contract to be let by April 30, 2020
- b) Construction to be completed by December 31, 2022

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

EXHIBIT B

Method of Compensation

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

| State Program Number | Funding Source | State Fiscal Year | CSFA Number | CSFA Title or Funding Source Description | Funding Amount | State Appropriation Category |
|-------------------------|-------------------|-------------------------|----------------|--|----------------|------------------------------|
| 140236-1-54-01 | TLWR | 2018/2019 | 55.038 | Florida Shared-Use Nonmotorized (SUN) Trail Program — Wheels on Road Fund | \$3,632,934 | 5 |
| 140236-1-54-01 | DS | 2018/2019 | 55.039 | State Primary Highways and Public Transportation Office | \$1,664,707 | |

Total Award

\$5,297,641

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

EXHIBIT C

ENGINEER'S CERTIFICATION OF COMPLIANCE

NOTICE OF COMPLETION

FLORIDA SHARED-USE NONMOTORIZED (SUN) TRAIL PROGRAM
GRANT AGREEMENT
Between
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and the CITY OF CAPE CORAL

| PROJECT DESCRIPTION: VA | IN BUREN/EL DORADO/KISMET PKWY FROM B | URNT STORE RD TO NELSON RD |
|--|--|--|
| FINANCIAL MANAGEMENT II | D#440236-1-54-01 | |
| in accordance with the Terms | s and Conditions of the Shared-Use Nonmotorize | ed (SUN) Trail Program Grant Agreement, the |
| undersigned provides notificati | ion that the work authorized by this Agreement is c | omplete as of <u>.20</u> . |
| Ву | | |
| Name: | | |
| Title: | | |
| undersigned certifies that all compliance with the Project co- list of all deviations, along v | ENGINEER'S CERTIFICATION OF COMES and Conditions of the Shared-Use Nonmotorial work which originally required certification by a construction plans and specifications. If any deviation with an explanation that justifies the reason to dittal of this certification, the Agency shall furnish | zed (SUN) Trail Program Grant Agreement, the Professional Engineer has been completed in ons have been made from the approved plans, a accept each deviation, will be attached to this |
| | Ву: | <u>, P.E.</u> |
| SEAL: | Name: | |
| | Date: | |

EXHIBIT D

STATE FINANCIAL ASSISTANCE (FLORIDA SINGLE AUDIT ACT)

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

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Awarding

Florida Department of Transportation

Agency:

State Project

FLORIDA SHARED-USE NONMOTORIZED (SUN) TRAIL NETWORK PROGRAM

Title:

CSFA Number: 55.038

*Award Amount: \$5,297,641

*The award amount may change with supplemental agreements.

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

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

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

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

EXHIBIT E

AGENCY RESOLUTION

PLEASE SEE ATTACHED

EXHIBIT G

MAINTENANCE MEMORANDUM OF AGREEMENT

The LOCAL GOVERNMENT acknowledges that the DEPARTMENT will require the LOCAL GOVERNMENT to maintain the entire Multi-Use Trail Project, as depicted in the Construction Plans and Specifications of F.P.I.D. #440236-1-54-01, in perpetuity, according to the DEPARTMENT standards, which include, but are not limited to, the Americans with Disabilities Act, Design Standards, and the Standard Specifications, and as amended from time to time.

- 2. Maintenance items to be maintained by the LOCAL GOVERNMENT shall include, but not be limited to: vegetation management, ornamental landscaping, repair of slopes/erosion, removal of graffiti, boardwalks, gravity walls, retaining walls, pedestrian bridge structures, traffic barriers, railings, guardrail, signing, pavement markings, pedestrian/bicycle signals, lighting, benches, litter receptacles, and aesthetic features. The LOCAL GOVERNMENT shall maintain pavement surfaces free from residue accumulation, algae, vegetation, and other slip or trip hazards. The LOCAL GOVERNMENT shall trim landscaping, mow (if a higher standard than the DEPARTMENT standard is desired), sweep, edge and provide weed control along the Multi-Use Trail Project corridor from VAN BUREN/EL DORADO/KISMET PKWY FROM BURNT STORE RD TO NELSON RD. The LOCAL GOVERNMENT shall ensure the safety of the Public by repairing slope erosion and maintaining signs, sign poles, striping, pavement symbols, traffic markings, detectable warning surfaces, pavers, crosswalks, bollards, delineators, walls, railings, barriers, guardrail, lighting, pedestrian/bicycle signals, pedestrian bridge structures and any other safety features within the Multi-Use Trail Project corridor in accordance with DEPARTMENT standards. The LOCAL GOVERNMENT shall maintain paint on railings, sign poles, structures, etc. within the Multi-Use Trail Project corridor. Repairs to any Multi-Use Trail Project structural or safety feature shall be in kind and to DEPARTMENT standards. The LOCAL GOVERNMENT shall maintain all landscaping to DEPARTMENT standards and all irrigation systems in good operational condition. The LOCAL GOVERNMENT shall maintain and repair the Multi-Use Trail Project at its sole cost and expense, in a good and workmanlike manner, and with reasonable care.
- 3. The LOCAL GOVERNMENT shall pay utility bills for lighting, signals, and irrigation associated with the Multi-Use Trail Project.
- 4. The LOCAL GOVERNMENT shall conduct an annual inspection of the Multi-Use Trail to ensure that any and all safety deficiencies are addressed.
- 5. When the Multi-Use Trail Project is at the end of its useful life, the LOCAL GOVERNMENT shall prioritize the Replacement or Reconstruction of the Multi-Use Trail Project as if it was a new Project.
- 6. Should the LOCAL GOVERNMENT desire to add future amenities to the Multi-Use Trail Project, the LOCAL GOVERNMENT shall contact the DEPARTMENT for prior approval.

- 7. If at any time the LOCAL GOVERNMENT has not performed the maintenance responsibility on the portion of the Multi Use Trail that is within the DEPARTMENT right of way, the DEPARTMENT shall have the option of (a) notifying the LOCAL GOVERNMENT of the deficiency with a requirement that it be corrected within a specified time; or (b) the DEPARTMENT may perform the necessary maintenance at the LOCAL GOVERNMENT'S sole cost and expense, and send an invoice to the LOCAL GOVERNMENT, equal to the cost incurred by the DEPARTMENT for such maintenance. Any action taken by the DEPARTMENT does not relieve any obligation of the LOCAL GOVERNMENT under the terms and conditions of this Agreement. Failure to perform maintenance of the Multi-Use Trail Project in accordance with this Agreement may impact DEPARTMENT funding participation in future LOCAL GOVERNMENT projects.
- 8. The DEPARTMENT may require the LOCAL GOVERNMENT to remove the Multi-Use Trail Project in whole or in part and restore the property to the condition that existed immediately prior to the effective date of this Agreement if the DEPARTMENT determines: (a) the Multi-Use Trail Project or project feature is not or maintained in accordance with Section 1. of this Agreement; or (b) the LOCAL GOVERNMENT breaches a material provision (as determined by the DEPARTMENT) of this Agreement. Removal and restoration shall be completed by the LOCAL GOVERNMENT within 365 days of the DEPARTMENT'S written notice, or such time as the DEPARTMENT and the LOCAL GOVERNMENT mutually agree in writing. Removal and restoration shall be completed by the LOCAL GOVERNMENT in accordance with DEPARTMENT standards. Should the LOCAL GOVERNMENT fail to complete the removal and restoration work, the DEPARTMENT may complete the removal and restoration at the LOCAL GOVERNMENT'S sole cost and expense and send an invoice to the LOCAL GOVERNMENT, equal to the cost incurred by the DEPARTMENT for such removal and restoration.
- 9. The DEPARTMENT may remove, relocate, or adjust the Multi-Use Trail Project in whole or in part at any time in the future as determined to be necessary by the DEPARTMENT in order that the adjacent State Road be widened, altered, or otherwise changed. The DEPARTMENT shall give the LOCAL GOVERNMENT notice regarding such removal, relocation, or adjustment.
- 10. This Agreement may be terminated under either of the following conditions: (a) by the DEPARTMENT, if the LOCAL GOVERNMENT fails to perform its duties under this Agreement, following ten (10) days written notice; or (b) by the DEPARTMENT, for refusal by the LOCAL GOVERNMENT to allow public access to public records subject to the provisions of Chapter 119, Florida Statutes.

MAINTENANCE MEMORANDUM OF AGREEMENT

The LOCAL GOVERNMENT acknowledges that the DEPARTMENT will require the LOCAL GOVERNMENT to maintain the entire Multi-Use Trail Project, as depicted in the Construction Plans and Specifications of F.P.I.D. #440236-1-54-01, in perpetuity, according to the DEPARTMENT standards, which include, but are not limited to, the Americans with Disabilities Act, Design Standards, and the Standard Specifications, and as amended from time to time.

- 2. Maintenance items to be maintained by the LOCAL GOVERNMENT shall include, but not be limited to: vegetation management, ornamental landscaping, repair of slopes/erosion, removal of graffiti, boardwalks, gravity walls, retaining walls, pedestrian bridge structures, traffic barriers, railings, guardrail, signing, pavement markings, pedestrian/bicycle signals, lighting, benches, litter receptacles, and aesthetic features. The LOCAL GOVERNMENT shall maintain pavement surfaces free from residue accumulation, algae, vegetation, and other slip or trip hazards. The LOCAL GOVERNMENT shall trim landscaping, mow (if a higher standard than the DEPARTMENT standard is desired), sweep, edge and provide weed control along the Multi-Use Trail Project corridor from VAN BUREN/EL DORADO/KISMET PKWY FROM BURNT STORE RD TO NELSON RD. The LOCAL GOVERNMENT shall ensure the safety of the Public by repairing slope erosion and maintaining signs, sign poles, striping, pavement symbols, traffic markings, detectable warning surfaces, pavers, crosswalks, bollards, delineators, walls, railings, barriers, guardrail, lighting, pedestrian/bicycle signals, pedestrian bridge structures and any other safety features within the Multi-Use Trail Project corridor in accordance with DEPARTMENT standards. The LOCAL GOVERNMENT shall maintain paint on railings, sign poles, structures, etc. within the Multi-Use Trail Project corridor. Repairs to any Multi-Use Trail Project structural or safety feature shall be in kind and to DEPARTMENT standards. The LOCAL GOVERNMENT shall maintain all landscaping to DEPARTMENT standards and all irrigation systems in good operational condition. The LOCAL GOVERNMENT shall maintain and repair the Multi-Use Trail Project at its sole cost and expense, in a good and workmanlike manner, and with reasonable care.
- 3. The LOCAL GOVERNMENT shall pay utility bills for lighting, signals, and irrigation associated with the Multi-Use Trail Project.
- 4. The LOCAL GOVERNMENT shall conduct an annual inspection of the Multi-Use Trail to ensure that any and all safety deficiencies are addressed.
- 5. When the Multi-Use Trail Project is at the end of its useful life, the LOCAL GOVERNMENT shall prioritize the Replacement or Reconstruction of the Multi-Use Trail Project as if it was a new Project.
- 6. Should the LOCAL GOVERNMENT desire to add future amenities to the Multi-Use Trail Project, the LOCAL GOVERNMENT shall contact the DEPARTMENT for prior approval.

- 7. If at any time the LOCAL GOVERNMENT has not performed the maintenance responsibility on the portion of the Multi Use Trail that is within the DEPARTMENT right of way, the DEPARTMENT shall have the option of (a) notifying the LOCAL GOVERNMENT of the deficiency with a requirement that it be corrected within a specified time; or (b) the DEPARTMENT may perform the necessary maintenance at the LOCAL GOVERNMENT'S sole cost and expense, and send an invoice to the LOCAL GOVERNMENT, equal to the cost incurred by the DEPARTMENT for such maintenance. Any action taken by the DEPARTMENT does not relieve any obligation of the LOCAL GOVERNMENT under the terms and conditions of this Agreement. Failure to perform maintenance of the Multi-Use Trail Project in accordance with this Agreement may impact DEPARTMENT funding participation in future LOCAL GOVERNMENT projects.
- 8. The DEPARTMENT may require the LOCAL GOVERNMENT to remove the Multi-Use Trail Project in whole or in part and restore the property to the condition that existed immediately prior to the effective date of this Agreement if the DEPARTMENT determines: (a) the Multi-Use Trail Project or project feature is not or maintained in accordance with Section 1. of this Agreement; or (b) the LOCAL GOVERNMENT breaches a material provision (as determined by the DEPARTMENT) of this Agreement. Removal and restoration shall be completed by the LOCAL GOVERNMENT within 365 days of the DEPARTMENT'S written notice, or such time as the DEPARTMENT and the LOCAL GOVERNMENT mutually agree in writing. Removal and restoration shall be completed by the LOCAL GOVERNMENT in accordance with DEPARTMENT standards. Should the LOCAL GOVERNMENT fail to complete the removal and restoration work, the DEPARTMENT may complete the removal and restoration at the LOCAL GOVERNMENT'S sole cost and expense and send an invoice to the LOCAL GOVERNMENT, equal to the cost incurred by the DEPARTMENT for such removal and restoration.
- 9. The DEPARTMENT may remove, relocate, or adjust the Multi-Use Trail Project in whole or in part at any time in the future as determined to be necessary by the DEPARTMENT in order that the adjacent State Road be widened, altered, or otherwise changed. The DEPARTMENT shall give the LOCAL GOVERNMENT notice regarding such removal, relocation, or adjustment.
- 10. This Agreement may be terminated under either of the following conditions: (a) by the DEPARTMENT, if the LOCAL GOVERNMENT fails to perform its duties under this Agreement, following ten (10) days written notice; or (b) by the DEPARTMENT, for refusal by the LOCAL GOVERNMENT to allow public access to public records subject to the provisions of Chapter 119, Florida Statutes.

MAINTENANCE MEMORANDUM OF AGREEMENT

| IN WITNESS WHEREOF, the City of Cape Coral has caused this Maintenance Memorandum of Agreement to be executed on this day of, 2019. |
|---|
| RECIPIENT — LOCAL GOVERNMENT, CITY OF CAPE CORAL |
| Ву: |
| Name: |
| Title: |
| CITY OF CAPE CORAL LEGAL REVIEW: By: |

RESOLUTION 102 - 19

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

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

WHEREAS, on February 6, 2017, City Council adopted Resolution 16-17, approving the Florida Shared-Use Nonmotorized Trail Network Agreement with the State of Florida Department of Transportation (FDOT) to provide for FDOT's participation in the design of the Van Buren/El Dorado/Kismet Parkway Multi-Use Trail; and

WHEREAS, FDOT has approved the final design of the multi-use trail; and

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

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

Section 1. That the Florida Shared-Use Nonmotorized Trail Network Agreement (Financial Project No. 440236-1-54-01) is hereby approved.

Section 2. That the Mayor is hereby authorized to execute the Florida Shared-Use Nonmotorized Trail Network Agreement with the State of Florida Department of Transportation, the Maintenance Memorandum of Agreement (attached and incorporated into the Florida Shared-Use Nonmotorized Trail Network Agreement as Exhibit "E"), and any other applicable documents pertaining to the Agreement. A copy of the Florida Shared-Use Nonmotorized Trail Network Agreement and the Maintenance Memorandum of Agreement are attached hereto and incorporated herein by reference.

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

| ADOPTED BY THE COU SESSION THIS DA | | | REGULAR |
|---------------------------------------|-------------------------------|----------------|---------|
| | JOE C | OVIELLO, MAYOR | |
| VOTE OF MAYOR AND CO | DUNCILMEMBERS: | | |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN | | |

| ATTESTED 2019. | TO AND | FILED IN MY | OFFICE | THIS | _ DAY OF _ | , |
|----------------|--------|-------------|--------|-----------------------|------------|---|
| | | | | KIMBERLY CITY CLER | 200 | |

APPROVED AS TO FORM:

CITY ATTORNEY
res/FDOT Shared Use Nonmotorized Trail Agreement

| Financial Project No:440236-1-54-01 | Contract No. | Vendor No.: F591312996008 | CSFA No. and Title: 55.038 | | |
|--|--------------|---------------------------|---|--|--|
| | | | Florida Shared-Use Nonmotorized (SUN) Trail Network Program | | |

| THI | S FLORIC | A SHARED | O-USE NO | NMOTORIZED | TRAIL GRA | NT AGRE | EMENT (" | 'Agreemen | t") is |
|----------------|---------------|---------------------------|--------------|-----------------|----------------|-------------|-------------|------------|--------|
| entered into | this | _day of | 20, by | and between t | he State of Fl | orida Depa | artment of | Transporta | tion, |
| ("Departmer | nt"), and the | e City of Ca _l | pe Coral, (" | Recipient"). Th | ne Departmen | t and the F | Recipient a | re sometim | es |
| referred to in | this Agre | ement as a ' | 'Party" and | collectively as | the "Parties". | | | | |

RECITALS

- A. The Department is authorized under Section 339.81, Florida Statutes, to enter into this Agreement.
- B. The Florida Shared-Use Nonmotorized Trail Network is included in the Department's work program for the purposes of funding and maintaining projects within the network.
- C. The purpose of this Agreement is to provide for the Department's participation in the construction of a 12-foot wide multi-use trail as further described in Exhibit "A", Scope of Services ("Project"), state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed. The Project is or shall be a component of the Florida Shared-Use Nonmotorized Trail Network and it would be more practical, expeditious, and economical for the Recipient to perform the Project.
- D. The Recipient by Resolution No. ____adopted on ____, 20___, a copy of which is attached hereto and made a part hereof as **Exhibit "E", Recipient Resolution,** authorizes the proper officials to enter into this Agreement.

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

- 1. **Incorporation of Recitals:** The recitals set forth above are true and correct and are incorporated into this Agreement.
- 2. Term of Agreement: This Agreement shall commence upon full execution by both Parties ("Effective Date") and continue through December 31, 2022. If the Recipient does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Recipient and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed prior to the Effective Date or after the expiration date of this Agreement will not be reimbursed by the Department. Unless terminated earlier, work on the Project shall commence no later than the 1st day of July 2019 or within (not applicable) days of the issuance of the Notice to Proceed for the construction phase of the Project

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

(if the Project involves construction), whichever date is earlier. The Department shall have the option to immediately terminate this Agreement should the Agency fail to meet the above-required dates.

- 3. Amendments, Extensions and Assignment: This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred or otherwise encumbered by the Recipient under any circumstances without the prior written consent of the Department.
- 4. Termination or Suspension of Project: The Department may, by written notice to the Recipient, suspend any or all of the Recipient's obligations under this Agreement for the Recipient's failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected. The Department may also terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.
 - a. If the Department terminates the Agreement, the Department shall notify the Recipient of such termination in writing within thirty (30) days of the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
 - b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.
 - c. If the Agreement is terminated before performance is completed, the Recipient shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Recipient.
 - d. In the event the Recipient fails to perform or honor the requirements and provisions of this Agreement, the Recipient shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.

5. Project Cost:

- a. The estimated total cost of the Project is \$5,297,641 (Five Million Two Hundred and Ninety-Seven Thousand Six Hundred and Forty-One). This amount is based upon the schedule of funding in Exhibit "B", Method of Compensation. The schedule of funding may be modified by mutual agreement of the Parties.
- b. The Department agrees to participate in the Project cost up to the maximum amount of \$5,297,641 (Five Million Two Hundred and Ninety-Seven Thousand Six Hundred and Forty-One) and as more fully described in Exhibit "B", Method of Compensation. The Parties agree that the Department's participation may be reduced if the actual bid amounts of the Project is less than \$5,297,641 by the execution of a supplemental agreement. The Recipient agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits involved.

6. Compensation and Payment:

a. The Department shall reimburse the Recipient for costs incurred to perform services described in the Scope of Services in Exhibit "A", and as set forth in the Method of Compensation in Exhibit "B".

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- b. The Recipient shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project, identified as Financial Project Number 440236-1-54-01, and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A", Scope of Services. Any changes to the deliverables shall require written approval in advance by the Department.
- c. Invoices shall be submitted no more often than monthly by the Recipient in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable and verifiable deliverables as established in Exhibit "A". Deliverables must be received and accepted in writing by the Department's Project Manager prior to reimbursements. The Department will identify the Department's Project Manager to the Recipient in writing.
- d. Supporting documentation must establish that the deliverables were received and accepted in writing by the Recipient and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit "A" has been met.
- e. Travel expenses are not compensable under this Agreement.
- f. Payment shall be made only after receipt and approval of goods and services unless advance
 - payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the Department's Comptroller under s. 334.044 (29), Florida Statutes. If the Department determines that the performance of the Recipient is unsatisfactory, the Department shall notify the Recipient of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Recipient shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Recipient will address all issues of contract nonperformance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Recipient shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Recipient resolves the deficiency. If the deficiency is subsequently resolved, the Recipient may bill the Department for the retained amount during the next billing period. If the Recipient is unable to resolve the deficiency, the funds retained must be forfeited at the end of the Agreement's term.
- g. Recipients providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

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

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

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- h. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Recipient's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- i. Upon request, the Recipient agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.
 - If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Recipient owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- **k.** The Recipient must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- I. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department's project manager must be received prior to costs being incurred by the Recipient. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Recipient, in writing, when funds are available.
- m. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

n. Any Project funds made available by the Department pursuant to this Agreement which are determined by the Department to have been expended by the Recipient in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Recipient files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

o. In determining the amount of the payment, the Department will exclude all Project costs incurred by the Recipient prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in Exhibit "B" for the Project, costs agreed to be borne by the Recipient or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

7. General Requirements:

The Recipient shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.

- a. In the event the Recipient proceeds with any phase of the Project utilizing its own forces, the Recipient will only be reimbursed for direct costs (this excludes general overhead).
- b. The Recipient shall certify to Department that the Recipient's design consultant and/or construction contractor has secured the necessary permits. If the Recipient fails to provide such certification to Department by December 31, 2022 the Department may, at its discretion, terminate this Agreement.
- c. The Recipient shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained.
- d. In the event the cost of the Project is greater than \$250,000.00 and the Project involves construction on the Department's right-of-way, the Recipient shall provide the Department with written notification of either its intent to:
 - i. Award the construction of the Project to a Department prequalified contractor which is the lowest and best bidder in accordance with applicable state and federal statutes, rules, and regulations. The Recipient shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or
 - ii. Construct the Project utilizing existing Recipient employees, if the Recipient can complete said Project within the time frame set forth in this Agreement.
- **e.** The Recipient shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards.
- f. The Recipient shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Recipient will make best efforts to obtain the Department's input in its decisions.
- 9. \square If this box is selected, then the following provision is incorporated into this Agreement:

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

8. Contracts of the Recipient

a. Except as otherwise authorized in writing by the Department, the Recipient shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds,

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.

- b. It is understood and agreed by the parties to this Agreement that participation by the Department in a project with the Recipient, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Recipient's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Recipient shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act
- **9. Design and Construction Standards and Required Approvals:** In the event the Project includes construction the following provisions are incorporated into this Agreement:
 - a. The Recipient shall hire a qualified contractor using the Recipient's normal bid procedures to perform the construction work for the Project. The Recipient must certify that the installation of the Project is completed by a Contractor prequalified by the Department as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2016), as amended, unless otherwise approved by the Department in writing or exhibit past project experience in the last five years that are comparable in scale, composition, and overall quality of the site identified within the scope of services of this Project.
 - b. Construction Engineering Inspection (CEI) services will be provided by the Recipient by hiring a Department prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the Department in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by the Department. The Department shall approve all CEI personnel. The CEI firm shall not be the same firm as that of the Engineer of Record for the Project. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project.
 - c. The Recipient understands that it is responsible for the preparation of all design plans for the Project. The Recipient shall hire a qualified consultant for the design phase of the Project using the Recipient's normal procurement procedures to perform the design services for the Project.
 - d. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Recipient for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Recipient shall not begin the construction phase of the Project until the Department issues a Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Recipient shall request a Notice to Proceed from the Department's Project Manager, Simon Shackelford, at (239) 225-1958 or Simon.Shackelford@dot.state.fl.us or from an appointed designee. Any work performed prior to the execution of this Agreement is not subject to reimbursement.
 - e. The Recipient will provide one (1) copy of the final design plans and specifications and final bid documents to the Department's Construction Project Manager prior to commencing construction of the Project.
 - f. The Recipient shall require the Recipient's contractor to post a payment and performance bond in accordance with Section 337.18(1), Florida Statutes.

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- g. The Recipient shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that it will meet all applicable Recipient and Department standards.
- h. Upon completion of the work authorized by this Agreement, the Recipient shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached hereto and incorporated herein as Exhibit "C", Engineers Certification of Completion. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.
- **10. Maintenance Obligations:** In the event the Project includes construction then the following provisions are incorporated into this Agreement:
 - a. The Recipient has agreed by resolution to execute a Maintenance Memorandum of Agreement ("MMOA") in which Recipient agrees to maintain the entire Project as depicted in the construction plans and specifications for the useful life of the Project, and such resolution is attached and incorporated into this Agreement as Exhibit "E". The Recipient shall execute the MMOA concurrently with execution of this Agreement. The MMOA is attached and incorporated into this Agreement as Exhibit "G". The terms of the MMOA, Exhibit "G", shall survive the termination of this Agreement. The Parties acknowledge and agree that the design plans for the Project may not yet be finalized and are subject to review by the Department. Upon completion of the Project, the Parties shall amend the MMOA to attach the latest version of the construction plans for the Project to the MMOA in order to show the extent of the Project to be maintained.
- 11. State Single Audit: The administration of resources awarded through the Department to the Recipient by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state agency inspector general, the Auditor General, or any other state official. The Recipient shall comply with all audit and audit reporting requirements as specified below.
 - a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Recipient's use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS) or the Auditor General.
 - b. The Recipient, a nonstate entity as defined by Section 215.97(2)(n), Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement is subject to the following requirements:
 - i. In the event the Recipient meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Recipient must have a State single or projectspecific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Exhibit "D"** to this Agreement indicates state financial assistance awarded through the Department by this Agreement needed by the Recipient to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, other state agencies and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

- ii. In connection with the audit requirements, the Recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- iii. In the event the Recipient does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Recipient is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Recipient must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Recipient's audit period for each applicable audit year. In the event the Recipient does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Recipient's resources (i.e., the cost of such an audit must be paid from the Recipient's resources obtained from other than State entities).
- iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

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

TO TO TO TO TO

And

State of Florida Auditor General Local Government Audits/342 111 West Madison Street, Room 401 Tallahassee, FL 32399-1450

Email: flaudclen localgovt@aud.state.fl.us

- v. Any copies of financial reporting packages, reports or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- vi. The Recipient, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

indicate the date the reporting package was delivered to the Recipient in correspondence accompanying the reporting package.

- vii. Upon receipt, and within six months, the Department will review the Recipient's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Recipient fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.
- viii. As a condition of receiving state financial assistance, the Recipient shall permit the Department, or its designee, DFS or the Auditor General access to the Recipient's records including financial statements, the independent auditor's working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.
- c. The Recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, DFS or the Auditor General access to such records upon request. The Recipient shall ensure that the audit working papers are made available to the Department, or its designee, DFS or the Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department.

12. Notices and Approvals:

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

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

SIMON SHACKELFORD
801 NORTH BROADWAY AVENUE, MS 1-18
BARTOW, FL 33830
PHONE (239) 225-1958
EMAIL: SIMON SHACKEL FORD@DOT STATE

EMAIL: SIMON.SHACKELFORD@DOT.STATE.FLUS

RECIPIENT:

CITY OF CAPE CORAL PIMOLMAS TAN P.O. BOX 150027 CAPE CORAL, FL 33915 PHONE: (239) 574-0891

EMAIL: PTAN@CAPECORAL.NET

- b. All approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.
- 13. Restrictions, Prohibitions, Controls and Labor Provisions:

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- a. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- b. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.
- c. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Recipient.
- d. No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.
- e. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- f. The Recipient shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.

14. Indemnification and Insurance:

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

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

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

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

- b. The Recipient shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultants have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
- c. If the Recipient is a state agency or subdivision of the State of Florida and elects to selfperform the Project, then the Recipient may self-insure. If the Recipient is not a state agency or subdivision of the State of Florida or if the Recipient is a state agency or subdivision of the State of Florida that elects to hire a contractor or consultant to perform the Project, then the Recipient shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Cause the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible. Pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Recipient is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.
- d. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, you shall, in addition to the insurance coverage required pursuant to 713.2 above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

the Department as an Additional Insured on the policy/ies procured pursuant to paragraph 15.0 above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have. The Railroad Protective Liability Coverage described above is not required if the Recipient is a government entity that elects to self-perform the Project and utilizes self-insurance.

e. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the policy/ies procured pursuant to paragraph 11.c above. This provision does not apply if the Recipient is a government entity that elects to self-perform the Project and utilizes self-insurance.

15. Miscellaneous:

- a. The Recipient will be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Recipient will be responsible for securing any applicable permits. The Recipient shall include in all contracts and subcontracts for amounts in excess of \$150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- b. The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.
- c. In no event shall the making by the Department of any payment to the Recipient constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Recipient and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- d. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- e. The Recipient and the Department agree that the Recipient, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- f. By execution of the Agreement, the Recipient represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- g. Nothing in the Agreement shall require the Recipient to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Recipient will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Recipient to the end that the Recipient may proceed as soon as possible with the Project.

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- h. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- i. If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Recipient must comply with the requirements of Section 255.0991, Florida Statutes.

i. The Recipient shall:

- Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Recipient during the term of the contract; and
- ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- **k.** The Department reserves the right to unilaterally cancel this Agreement for failure by the Recipient to comply with the provisions of Chapter 119, Florida Statutes.
- I. The Recipient agrees to comply with Section 20.055(5), F.S., and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), F.S.
- m. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Recipient agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

16. Exhibits.

- a. Exhibits A, B, C, D E, and G are attached to and incorporated into this Agreement.
- b.

 A portion or all of the Project will utilize the Department's right-of-way and therefore Exhibit

 F, Terms and Conditions of Construction, is attached and incorporated into this Agreement.

c. Exhibit List

Exhibit A: Scope of Services

Exhibit B: Method of Compensation

Exhibit C: Engineer's Certification of Compliance

Exhibit D: State Financial Assistance (Florida Single Audi Act)

Exhibit E: Recipient Resolution

*Exhibit F: Terms and Conditions of Construction Exhibit G: Maintenance Memorandum of Agreement

*Indicates that the Exhibit is only attached and incorporated if applicable box is selected.

The remainder of this page intentionally left blank.

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

RECIPIENT — CITY OF CAPE CORAL

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION

By:
Name:
Title:

Title:

Title:

Legal Review:

City Attorney's Office

EXHIBIT A SCOPE OF SERVICES

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

Project Description: Van Buren/El Dorado/Kismet Parkway from Burnt Store Road to Nelson Road

The following special requirements and conditions shall apply: The purpose of this Exhibit is to describe the scope of work and the responsibilities of the City of Cape Coral relating to the construction of a 12-foot wide multi-use trail on the north side of Van Buren Parkway from Burnt Store Road to El Dorado Boulevard; on the east side of El Dorado Boulevard from Van Buren Parkway to Kismet Parkway; and on the north side of Kismet Parkway from El Dorado Boulevard to Nelson Road; approximately 3.5 miles. A pedestrian bridge structure will be required to cross a canal location. Drainage improvements and environmental mitigation will be provided, as required.

The general objective is for the City of Cape Coral to provide contract administration, management services, construction engineering and inspection services and quality acceptance reviews of all work associated with the construction of the associated improvements. The services performed shall be in accordance with the Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction and FDOT Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

Specifically, and non-inclusive

- Construct a new 12-foot wide multi-use trail (approx. 3.50 miles) and appropriate drainage improvements.
- Provide Construction Engineering and Inspection (CEI) and Quality Assurance Engineering to document construction as per specifications. Maintain existing traffic during the entire construction period
- Provide signing and pavement markings, as required, to meet the latest MUTCD standards.
- Construct or reconstruct, as appropriate, side road and driveway turnouts.
- Coordination with utility owners during construction will be required to determine and avoid potential impacts. Where unavoidable, disposition of the utility conflicts should be coordinated.
- Acquisition of all applicable storm water and environmental permits in accordance with Chapter 62-25, Regulation of Storm Water Discharge, Florida Administrative Code; Chapter 373 and 403, Florida Statutes; Chapters 40 and 62, Florida Administrative Code; Rivers and Harbors Act of 1899; Section 404 of the Clean Water Act; and parts 114 and 115, Title 33, Code of Federal Regulations. In addition, permitting required by local agencies shall be prepared in accordance with their specific regulations. Acquisition includes all associated permit fees.
- Coordinate construction activities with other infrastructure projects that are impacted by or impact this project. This includes projects under the jurisdiction of local governments or other regional and state agencies.
- Provide, upon completion of construction, Final As-built Construction Plans, signed and sealed by a Professional Engineer, registered in the State of Florida.

SPECIAL CONSIDERATIONS BY AGENCY:

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the

Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where

applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and

the funding action from any other source with respect to the project.

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in

accordance with the following schedule:

- a) Construction contract to be let by April 30, 2020
- b) Construction to be completed by December 31, 2022

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

EXHIBIT B

Method of Compensation

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

| State Resor | urces Award | ed to the Rec | ipient Pursu | ant to this Agreement Cons | ist of the Following | Resources: |
|----------------|-------------|---------------|--------------|----------------------------|----------------------|---------------|
| | | | | CSFA Title | | |
| | | State | | or | | State |
| State Program | Funding | Fiscal | CSFA | Funding Source | | Appropriation |
| Number | Source | Year | Number | Description | Funding Amount | Category |
| | | | | Florida Shared-Use | | |
| | ļ | | | Nonmotorized (SUN) | | |
| | | | | Trail Program — Wheels | | 1 |
| 440236-1-54-01 | TLWR | 2018/2019 | 55.038 | on Road Fund | \$3,632,934 | 5 |
| 440236-1-54-01 | DS | 2018/2019 | 55.039 | State Primary Highways | \$1,664,707 | |
| | | | | and Public | | |
| | I | | | Transportation Office | | |
| | | | | | | |

Total Award \$5,297,641

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

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

EXHIBIT C

ENGINEER'S CERTIFICATION OF COMPLIANCE

NOTICE OF COMPLETION

FLORIDA SHARED-USE NONMOTORIZED (SUN) TRAIL PROGRAM
GRANT AGREEMENT
Between
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and the CITY OF CAPE CORAL

| PROJECT DESCRIPTION: VA | IN BUREN/EL DORADO/KISMET PKWY FROM BU | URNT STORE RD TO NELSON RD_ | |
|---|--|--|--|
| FINANCIAL MANAGEMENT I | D#440236-1-54-01 | | |
| In accordance with the Terms | s and Conditions of the Shared-Use Nonmotorize | d (SUN) Trail Program Grant Agreen | ent, the |
| undersigned provides notificati | on that the work authorized by this Agreement is co | omplete as of | <u>. 20</u> . |
| Ву: | | | |
| Name: | | | |
| Title: | | | |
| undersigned certifies that all compliance with the Project co list of all deviations, along w | ENGINEER'S CERTIFICATION OF COMES and Conditions of the Shared-Use Nonmotorize work which originally required certification by a construction plans and specifications. If any deviation with an explanation that justifies the reason to a cittal of this certification, the Agency shall furnish | zed (SUN) Trail Program Grant Agre Professional Engineer has been co ons have been made from the approve accept each deviation, will be attach | mpleted in ed plans, a ned to this |
| | Ву: | <u>, P.E.</u> | |
| SEAL: | Name: | | |
| | Date: | | |

EXHIBIT D

STATE FINANCIAL ASSISTANCE (FLORIDA SINGLE AUDIT ACT)

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

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Awarding Agency:

Florida Department of Transportation

State Project

FLORIDA SHARED-USE NONMOTORIZED (SUN) TRAIL NETWORK PROGRAM

Title:

CSFA Number: 55.038

*Award Amount: \$5,297,641

*The award amount may change with supplemental agreements.

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

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

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

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

EXHIBIT E

AGENCY RESOLUTION

PLEASE SEE ATTACHED

EXHIBIT G

MAINTENANCE MEMORANDUM OF AGREEMENT

The LOCAL GOVERNMENT acknowledges that the DEPARTMENT will require the LOCAL GOVERNMENT to maintain the entire Multi-Use Trail Project, as depicted in the Construction Plans and Specifications of F.P.I.D. #440236-1-54-01, in perpetuity, according to the DEPARTMENT standards, which include, but are not limited to, the Americans with Disabilities Act, Design Standards, and the Standard Specifications, and as amended from time to time.

- 2. Maintenance items to be maintained by the LOCAL GOVERNMENT shall include, but not be limited to: vegetation management, ornamental landscaping, repair of slopes/erosion, removal of graffiti, boardwalks, gravity walls, retaining walls, pedestrian bridge structures, traffic barriers, railings, guardrail, signing, pavement markings, pedestrian/bicycle signals, lighting, benches, litter receptacles, and aesthetic features. The LOCAL GOVERNMENT shall maintain pavement surfaces free from residue accumulation, algae, vegetation, and other slip or trip hazards. The LOCAL GOVERNMENT shall trim landscaping, mow (if a higher standard than the DEPARTMENT standard is desired), sweep, edge and provide weed control along the Multi-Use Trail Project corridor from VAN BUREN/EL DORADO/KISMET PKWY FROM BURNT STORE RD TO NELSON RD. The LOCAL GOVERNMENT shall ensure the safety of the Public by repairing slope erosion and maintaining signs, sign poles, striping, pavement symbols, traffic markings, detectable warning surfaces, pavers, crosswalks, bollards, delineators, walls, railings, barriers, guardrail, lighting, pedestrian/bicycle signals, pedestrian bridge structures and any other safety features within the Multi-Use Trail Project corridor in accordance with DEPARTMENT standards. The LOCAL GOVERNMENT shall maintain paint on railings, sign poles, structures, etc. within the Multi-Use Trail Project corridor. Repairs to any Multi-Use Trail Project structural or safety feature shall be in kind and to DEPARTMENT standards. The LOCAL GOVERNMENT shall maintain all landscaping to DEPARTMENT standards and all irrigation systems in good operational condition. The LOCAL GOVERNMENT shall maintain and repair the Multi-Use Trail Project at its sole cost and expense, in a good and workmanlike manner, and with reasonable care.
- 3. The LOCAL GOVERNMENT shall pay utility bills for lighting, signals, and irrigation associated with the Multi-Use Trail Project.
- 4. The LOCAL GOVERNMENT shall conduct an annual inspection of the Multi-Use Trail to ensure that any and all safety deficiencies are addressed.
- 5. When the Multi-Use Trail Project is at the end of its useful life, the LOCAL GOVERNMENT shall prioritize the Replacement or Reconstruction of the Multi-Use Trail Project as if it was a new Project.
- 6. Should the LOCAL GOVERNMENT desire to add future amenities to the Multi-Use Trail Project, the LOCAL GOVERNMENT shall contact the DEPARTMENT for prior approval.

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- 7. If at any time the LOCAL GOVERNMENT has not performed the maintenance responsibility on the portion of the Multi Use Trail that is within the DEPARTMENT right of way, the DEPARTMENT shall have the option of (a) notifying the LOCAL GOVERNMENT of the deficiency with a requirement that it be corrected within a specified time; or (b) the DEPARTMENT may perform the necessary maintenance at the LOCAL GOVERNMENT'S sole cost and expense, and send an invoice to the LOCAL GOVERNMENT, equal to the cost incurred by the DEPARTMENT for such maintenance. Any action taken by the DEPARTMENT does not relieve any obligation of the LOCAL GOVERNMENT under the terms and conditions of this Agreement. Failure to perform maintenance of the Multi-Use Trail Project in accordance with this Agreement may impact DEPARTMENT funding participation in future LOCAL GOVERNMENT projects.
- 8. The DEPARTMENT may require the LOCAL GOVERNMENT to remove the Multi-Use Trail Project in whole or in part and restore the property to the condition that existed immediately prior to the effective date of this Agreement if the DEPARTMENT determines: (a) the Multi-Use Trail Project or project feature is not or maintained in accordance with Section 1. of this Agreement; or (b) the LOCAL GOVERNMENT breaches a material provision (as determined by the DEPARTMENT) of this Agreement. Removal and restoration shall be completed by the LOCAL GOVERNMENT within 365 days of the DEPARTMENT'S written notice, or such time as the DEPARTMENT and the LOCAL GOVERNMENT mutually agree in writing. Removal and restoration shall be completed by the LOCAL GOVERNMENT in accordance with DEPARTMENT standards. Should the LOCAL GOVERNMENT fail to complete the removal and restoration work, the DEPARTMENT may complete the removal and restoration at the LOCAL GOVERNMENT'S sole cost and expense and send an invoice to the LOCAL GOVERNMENT, equal to the cost incurred by the DEPARTMENT for such removal and restoration.
- 9. The DEPARTMENT may remove, relocate, or adjust the Multi-Use Trail Project in whole or in part at any time in the future as determined to be necessary by the DEPARTMENT in order that the adjacent State Road be widened, altered, or otherwise changed. The DEPARTMENT shall give the LOCAL GOVERNMENT notice regarding such removal, relocation, or adjustment.
- 10. This Agreement may be terminated under either of the following conditions: (a) by the DEPARTMENT, if the LOCAL GOVERNMENT fails to perform its duties under this Agreement, following ten (10) days written notice; or (b) by the DEPARTMENT, for refusal by the LOCAL GOVERNMENT to allow public access to public records subject to the provisions of Chapter 119, Florida Statutes.

MAINTENANCE MEMORANDUM OF AGREEMENT

The LOCAL GOVERNMENT acknowledges that the DEPARTMENT will require the LOCAL GOVERNMENT to maintain the entire Multi-Use Trail Project, as depicted in the Construction Plans and Specifications of F.P.I.D. #440236-1-54-01, in perpetuity, according to the DEPARTMENT standards, which include, but are not limited to, the Americans with Disabilities Act, Design Standards, and the Standard Specifications, and as amended from time to time.

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- 3. The LOCAL GOVERNMENT shall pay utility bills for lighting, signals, and irrigation associated with the Multi-Use Trail Project.
- 4. The LOCAL GOVERNMENT shall conduct an annual inspection of the Multi-Use Trail to ensure that any and all safety deficiencies are addressed.
- 5. When the Multi-Use Trail Project is at the end of its useful life, the LOCAL GOVERNMENT shall prioritize the Replacement or Reconstruction of the Multi-Use Trail Project as if it was a new Project.
- 6. Should the LOCAL GOVERNMENT desire to add future amenities to the Multi-Use Trail Project, the LOCAL GOVERNMENT shall contact the DEPARTMENT for prior approval.

FLORIDA SHARED-USE NONMOTORIZED TRAIL NETWORK AGREEMENT

- 7. If at any time the LOCAL GOVERNMENT has not performed the maintenance responsibility on the portion of the Multi Use Trail that is within the DEPARTMENT right of way, the DEPARTMENT shall have the option of (a) notifying the LOCAL GOVERNMENT of the deficiency with a requirement that it be corrected within a specified time; or (b) the DEPARTMENT may perform the necessary maintenance at the LOCAL GOVERNMENT'S sole cost and expense, and send an invoice to the LOCAL GOVERNMENT, equal to the cost incurred by the DEPARTMENT for such maintenance. Any action taken by the DEPARTMENT does not relieve any obligation of the LOCAL GOVERNMENT under the terms and conditions of this Agreement. Failure to perform maintenance of the Multi-Use Trail Project in accordance with this Agreement may impact DEPARTMENT funding participation in future LOCAL GOVERNMENT projects.
- 8. The DEPARTMENT may require the LOCAL GOVERNMENT to remove the Multi-Use Trail Project in whole or in part and restore the property to the condition that existed immediately prior to the effective date of this Agreement if the DEPARTMENT determines: (a) the Multi-Use Trail Project or project feature is not or maintained in accordance with Section 1. of this Agreement; or (b) the LOCAL GOVERNMENT breaches a material provision (as determined by the DEPARTMENT) of this Agreement. Removal and restoration shall be completed by the LOCAL GOVERNMENT within 365 days of the DEPARTMENT'S written notice, or such time as the DEPARTMENT and the LOCAL GOVERNMENT mutually agree in writing. Removal and restoration shall be completed by the LOCAL GOVERNMENT in accordance with DEPARTMENT standards. Should the LOCAL GOVERNMENT fail to complete the removal and restoration work, the DEPARTMENT may complete the removal and restoration at the LOCAL GOVERNMENT'S sole cost and expense and send an invoice to the LOCAL GOVERNMENT, equal to the cost incurred by the DEPARTMENT for such removal and restoration.
- 9. The DEPARTMENT may remove, relocate, or adjust the Multi-Use Trail Project in whole or in part at any time in the future as determined to be necessary by the DEPARTMENT in order that the adjacent State Road be widened, altered, or otherwise changed. The DEPARTMENT shall give the LOCAL GOVERNMENT notice regarding such removal, relocation, or adjustment.
- 10. This Agreement may be terminated under either of the following conditions: (a) by the DEPARTMENT, if the LOCAL GOVERNMENT fails to perform its duties under this Agreement, following ten (10) days written notice; or (b) by the DEPARTMENT, for refusal by the LOCAL GOVERNMENT to allow public access to public records subject to the provisions of Chapter 119, Florida Statutes.

MAINTENANCE MEMORANDUM OF AGREEMENT

| IN WITNESS WHEREOF, the City of Cape Coral has caused this Maintenance Memorandum of Agreement to be executed on this day of, 2019. |
|---|
| RECIPIENT — LOCAL GOVERNMENT, CITY OF CAPE CORAL |
| Ву: |
| Name: |
| Title: |
| |
| |
| CITY OF CAPE CORAL LEGAL REVIEW: By: |

Item

D.(1)

Number:

Meeting

5/13/2019

Date:

PERSONNEL

Item Type: ACTIONS

AGENDA REQUEST **FORM** CITY OF CAPE CORAL



TITLE:

Resolution 95-19 Approve and Ratify Collective Bargaining Agreement with Firefighters Local 2424, Supervisory and Rank and File Bargaining Units

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:

Memo - Recommendation Memo - IAFF Collective Bargaining Agreements **Summary of Tentative Agreement** Resolution 95-19 with agreement Redlined text - Agreement Copy pages 1 - 100 Redlined text - Agreement Copy pages 101 - 170

PREPARED BY:

Division-Department-Attorney

SOURCE OF ADDITIONAL INFORMATION:

Lisa Sonego, Human Resources Director

ATTACHMENTS:

| | Description | Туре |
|---|--|-----------------|
| D | Memo - Recommendation | Backup Material |
| D | Memo - IAFF Collective Bargaining Agreements | Backup Material |
| D | Summary of Tentative Agreement | Backup Material |
| D | Resolution 95-19 with agreement | Backup Material |
| D | Redlined agreement copy - Pages 1 - 100 | Backup Material |
| D | Redlined agreement copy - Pages 101 - 170 | Backup Material |

MEMORANDUM

CITY OF CAPE CORAL CITY MANAGER'S OFFICE

TO:

Mayor Coviello and Council Members

FROM:

John Szerlag, City Manager

DATE:

May 10, 2019

SUBJECT:

Ratification of International Association of Fire Fighters (IAFF) Local 2424

Collective Bargaining Agreement (CBA)

On May 9, 2019 bargaining unit members of IAFF Local 2424 voted in favor of ratifying the attached Collective Bargaining Agreement (CBA), which is effective October 1, 2018 through September 30, 2021. The economic centerpiece of this agreement is wages and payroll will not exceed my authorized limit of 3% per year or an accumulated three-year total of 9.27%.

I also recommend Mayor and Council ratify this agreement. It is important to note that the bargaining teams utilized the interest-based bargaining approach to achieve a good CBA. To this end, I wish to express my sincere appreciation to the entire city management team and the IAFF Local 2424 executive board.

JS/rm Attachments

C. Ryan Lamb, Fire Chief
Eric Chudzik, President IAFF Local 2424
Connie Barron, Assistant City Manager
Victoria Bateman, Financial Services Director
Lisa Sonego, Human Resources Director
Chris Phillips, Mgt/Budget Administrator

MEMORANDUM

CITY OF CAPE CORAL CITY MANAGER'S OFFICE

TO:

John Szerlag, City Manage

FROM:

Victoria Bateman, Financial Services Director

Chris Phillips, Management/Budget Administrator M

DATE:

March 13, 2019

SUBJECT: IAFF Collective Bargaining Agreements

The following information outlines the parameters costed by the Financial Services Department in the IAFF Bargaining Agreement related to pay. The 3 year payroll cost will not exceed 9.27% over the contract as budgeted.

- CITY and IAFF have agreed to the following: 3% of base payroll increase for each of the three fiscal years has been proposed to IAFF as available to negotiate for pay changes for the 9-30-18 expired contract. This equates to 9.27% compounding over the life of a 3-year contract. With Final pay changes to not exceed a 9.27% ongoing impact to the budget once the contract expires.
 - o 9.27% equates to an increase in pay of \$1,301,191 over the life of the 3-year contract.
 - Financial Services has calculated the proposed pay plan and has concluded that the final cost is 9.23% or \$1,294,874 which falls within the maximum dollar cost and percentage increase.
- The pay ranges remain the same and are at 75th percentile in an acceptable position to market.
- Previous contract was fiscal years 2016-2018 and were 5%, 3% and 3% utilizing the cash and impact philosophy and were negotiated successfully within those parameters.
- The pay model recognizes the difference in base pay from these retiring DROP employees and those positions replacing them using the below:
- The difference is being costed using the "most expensive" promotion scenario in order to calculate a maximum payroll exposure. This is quantifiable in the IAFF structure.

FIRE TA RECAP:

Annual

| Current Article # | New Article # | Tentative Agreement (Changes to Existing Contract) | Financial Impact |
|---------------------------------------|------------------|---|------------------|
| 7 Leave Time Contribution | 6 | Section 2 - Union Business time code utilized in the calculation of Overtime - Low usage | N/A |
| 8 Grievance Procedure | 7 | Section 2 clarification – Step 1 grievance submitted to Union VP and Deputy Fire Chief for proper routing. – Process change | N/A |
| 9 Seniority | 8 | Section 2 – Clarification of Classification (Rank) seniority Section 5 – Accrual use regarding probationary employees Section 10 – moved to Article 31, no changes | N/A N/A |
| New Article – Staffing | 9 | 3-4-5-6-11 – moved to new Article 9 - Staffing Section 1 – Minimum staffing defined. (pulled from Art. 11) | N/A |
| • • • • • • • • • • • • • • • • • • • | | Section 2 – Rank Minimums (Shift) defined. (pulled from Art. 11) Language clarification, no change in practice | N/A N/A |
| | | Section 3 – Staffing multiplier used to determine vacancies above minimum staffing. (plus a portion pulled from Article 8) Section 4,5,6 – Timelines and procedure established for Station selection, Kelly Day selection, and Scheduled Leave requests (pulled from Art. 8) – operational clarification | N/A |
| 11 Overtime | | Section 1.1 – Clarification on OT rate for Shift Battalion Chiefs working a non-shift schedule. – reflects past arbitration results and current practice. (continued) | |

FIRE TA RECAP:

Annual

| Current Article # | New Article # | Tentative Agreement (Changes to Existing Contract) | Financial Impact |
|-------------------------|--|---|------------------|
| 11 Overtime | | Section 2 – Clarification on operational procedures for assigning OT due to unscheduled leave. | N/A |
| | | Section 3 - Clarification on operational procedures for assigning OT regarding Special Detail Services. | N/A |
| | | Section 3 – Emergency deployments – employees receive 1.5 times their base rate for actual time deployed. – state and FEMA eligible for reimbursement | N/A |
| | | Section 5 – Weekly on-call pay increased from 12 to 12.5 hours. | \$800 |
| | | Section 6 – OT solicitation clarified | NA |
| 12 Exchange of Duty | | Section 1 - Clarification on operational procedures for requests and approval of exchange of duty. | N/A |
| | | Shift employees are limited to four (4) late shift or emergency exchanges per fiscal year. | |
| 14 Health & Safety | 13 | Section 2 – Components of the Basic Physical Exam will be mutually agreed to by the Fire Chief and Union President annually. Refer details to 69A – 62.OU3 FL Admin code | N/A |
| 15 Labor Mgt. Committee | 14 | Section 2 – Labor/Management meetings increased to twice monthly. | N/A |
| 19 Health Insurance | 18 | City contribution to fire for medical plan – the formula for City contribution reconfigured to reflect current options offered. | N/A |
| 26 Station Facilities | 25 Section 1 – Eliminate Bedspreads – add Propane Grills per station | | N/A |

FIRE TA RECAP:

Annual

| Current Article # | New Article # | Tentative Agreement (Changes to Existing Contract) | Financial Impact |
|--|------------------|---|---|
| 27 Uniforms | 26 | Article re-formatted – includes addition of small uniform items to increase professionalism | \$6,000 |
| 28 Temporary Upgrade | 27 | Section 2 - Clarification on operational procedure for temporary upgrade assignments. Section 3 - Clarification on operational procedure for voluntary relinquishment of temporary upgrade privileges. | N/A |
| 29 Pension | New 28 | Clarification of Section 175 – monies- no change, per board and Foster and Foster | N/A |
| 31 Hiring, Promotion Demotion & Vacancy | 30 | Section 4 – Promo criteria clarified Section 6 - Clarification on operational procedure for voluntary demotion while on probation. | N/A |
| 32 CAPE System Pay | 31 | Step each year – first full pay period of fiscal years At max = 0 increase 3- year CBA total: \$1,143,221 8.79% increase 9.15% ongoing impact | 10-1-18/9-30-19 \$420,974.64 2.53% to payroll 10-1-19/10-1-20 \$433,603.88 3.80% to payroll 10-1-20/10-1-21 \$446,612.00 2.32% to payroll |

FIRE TA RECAP:

Annual

| Current Article # New Article # | | Tentative Agreement (Changes to Existing Contract) | Financial Impact | |
|---|----|---|------------------|--|
| 36 | 34 | Language clarification | N/A | |
| 37 Rescue Services | 35 | Section 3 – Clarification on paramedic school selection process. Increase in the number of employees selected for paramedic school from three (3) to six (6). \$3 spread amongst 6. Section 4 – Clarification on Paramedic advancement testing qualifications and process. | N/A | |
| | | Section 8 – Elimination of unlimited E2 positions available | | |
| 38 Educational Incentives, Incentive Buy-out & Committee Compensation | 36 | Section 5 - Assignment Incentive, added language "at the discretion of the Fire Chief" | NA | |
| 39 Teams & Specialty Groups | 37 | Article reformatted. Swap in number of slots per specialty, results in de minimis change. Hazmat team and Rescue Diver Technicians slots being increased from forty-eight (48) to sixty (60) effective 10/1/19. Public Boat Safety Operator slots being reduced from unlimited (current est. 100) to sixty (60) effective 10/1/19. Section 9 – Other potential specialty teams shall be compensated in accordance with article 11 Overtime. | NA | |
| 40 Duration | 38 | Effective through Sept 30, 2021 | N/A | |

Status Quo Articles: 1,2,3,4,5,6,18,19,20,21,22,32,33

Language Clean-up Only: 10,23,24,25,29,34

Discontinued Articles: 5,13,33

RESOLUTION 95 - 19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING AND RATIFYING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF CAPE CORAL AND THE CAPE CORAL PROFESSIONAL FIRE FIGHTERS, LOCAL 2424 OF THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, REPRESENTING THE SUPERVISORY AND RANK AND FILE BARGAINING UNITS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Supervisory and Rank & File bargaining units of the Cape Coral Professional Fire Fighters Local 2424 have been operating under their current contract for the term from October 1, 2015 through September 30, 2018, as approved and ratified by City Council on September 26, 2016; and

WHEREAS, on August 21, 2017, a re-opener of certain articles was approved and ratified by City Council; and

WHEREAS, after entering into negotiations with the Firefighters union for a contract term of October 1, 2018 through September 30, 2021, and the Firefighters ratifying the contract on May 9, 2019, the City Manager recommends adoption of the attached contract.

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

Section 1. The Collective Bargaining Agreement between the City of Cape Coral and the Cape Coral Professional Fire Fighters, Local 2424 of the International Association of Fire Fighters, representing the Supervisory and Rank and File, for the contract term of October 1, 2018 through September 30, 2021, is hereby approved and ratified. A copy of the Collective Bargaining Agreement is attached hereto as Exhibit A.

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

| ADOPTED BY THE COUNCIL SESSION T | | | | ORAL AT ITS REGULAR 019. |
|----------------------------------|-------------|-------------|---------------------------------------|-----------------------------|
| | | | | |
| | | Je | OE COVIELLO | O, MAYOR |
| VOTE OF MAYOR AN | ND COUNCILM | MEMBERS: | | |
| COVIELLO GUNTER CARIOSCIA STOUT | | S | NELSON TOKES VILLIAMS COSDEN | |
| ATTESTED TO AND 2019. | FILED IN MY | OFFICE THIS | SDA | Y OF, |
| | | | CIMBERLY BR | UNS |

APPROVED AS TO FORM:

DOLORES D. MENENDEZ CITY ATTORNEY

res\ Collective Bargaining Agreement-Fire

EXHIBIT A

AGREEMENT BETWEEN

THE CITY OF CAPE CORAL

AND

THE CAPE CORAL PROFESSIONAL FIRE FIGHTERS

LOCAL 2424

OF

THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

REPRESENTING THE

SUPERVISORY AND RANK & FILE

BARGAINING UNITS

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Article 1 Preamble

This Agreement is made and entered into by the Cape Coral Professional Fire Fighters, Local 2424 of the International Association of Fire Fighters, hereinafter referred to as "Union", and the City of Cape Coral (Florida), hereinafter referred to as "City".

Section 1 - Purpose

The purpose of this Agreement is to increase the general efficiency in the Cape Coral Fire Department (CCFD), to maintain the existing harmonious relationship between the CCFD and its employees, and to promote the morale, rights and well-being of CCFD employees.

Section 2 - Public Employees

Employees of the CCFD are to regard themselves as public employees and they, as well as the CCFD itself, are to be governed by the highest ideals of honor and integrity in all of their public and personal conduct in order that they may merit the respect and confidence of the general public.

Article 2 Recognition

Section 1 - Recognition

Pursuant to, and in accordance with, the provisions of Florida Statutes, Chapter 447, or as such Chapter may be amended, City recognizes Union as the exclusive representative of employees in the bargaining unit(s) for the purpose of collective bargaining with City regarding wages, hours and other terms and conditions of employment.

Section 2 - Bargaining Unit(s)

Section 2.1 - Rank & File

The bargaining unit for which this recognition is afforded shall include all regular and probationary employees occupying any positions in the following classifications:

- Fire Fighter
- Fire Engineer/Driver
- Fire Lieutenant
- Fire Inspector

Section 2.2 – Supervisory

The bargaining unit for which this recognition is afforded shall include all regular and probationary employees occupying any positions in the following classifications:

- Fire Battalion Chief
- Fire Marshal

Section 3 – Employees and Members

The terms "employee" and "employees" as used in this Agreement shall refer to the incumbents of the classifications included in the bargaining unit(s) regardless of membership in Union.

The terms "member" and "members" as used in this Agreement shall refer to employees who establish or maintain an affiliation with Union according to Union's Constitution and By-Laws.

Section 4 - Fiscal Year

The term "fiscal year" as used in this Agreement shall refer to the period October 1st through September 30th, inclusive.

Article 3 Management Rights

Section 1 - Management Rights

Except as specifically abridged or modified by a provision of this Agreement, City will continue to have, whether exercised or not, all of the rights, powers and authority heretofore existing, including, but not limited to, the following: to determine the standards of service to be offered by the Fire Department; to determine the standards of selection for employment; to determine the work appropriate to a classification; to hire, transfer, promote and demote employees; to direct employees; to take disciplinary action up to, and including, discharge for cause; to relieve employees from duty because of lack of work or for other legitimate reasons; to issue rules and regulations; to determine the methods, means and personnel by which City's operations are to be conducted; to establish policies, programs and procedures to meet changing conditions and to better serve the needs of the public; to exercise complete control and discretion over its organization and the technology of performing its work; and to fulfill all of its statutory and Charter responsibilities.

Section 2 - Non-waiver

The City's failure to exercise any right hereby reserved to it or its exercising any right in a particular way shall not be deemed a waiver of its right to exercise such right nor preclude the City from exercising the same right in some other way not in conflict with the expressed provisions of this Agreement.

Section 3 – Non-waiver of Right to Bargain

Nothing contained in this Article shall be interpreted as a waiver of Union's right to bargain over any impact the exercise of any of the foregoing management rights has upon wages, hours, or other terms and conditions of employment.

Section 4 - Application of Rules and Regulations

If work rules and regulations are not uniformly applied, Union may file a grievance in accordance with the grievance procedure contained in this Agreement.

Article 4 Employee/Union Rights

Section 1 - Employee Rights

Employees of the CCFD shall have the right to form, join, and participate in the Union. Employees shall have the right to negotiate collectively with the City in the determination of the terms and conditions of their employment. Employees shall have the right to be represented in the determination of grievances on all terms and conditions of their employment. Employees shall have the right to engage in concerted activities not prohibited by law, for the purpose of collective bargaining or other mutual aid or protection. Employees shall have the right to express or communicate to management any view, grievance, complaint or opinion related to any term or condition of employment, all free from interference, restraint, coercion, discrimination or retaliation. Employees engaged in such activity shall use the chain of command.

Section 2 - Non-Discrimination

Employees of the CCFD shall have the right to join the Union and there shall be no discrimination against or intimidation of any employee because of that employee's membership or lack of membership in the Union, or because of an employee holding office or not holding office in the Union.

<u>Section 3 – Subcontracting/Privatization Notice</u>

Should the City commence consideration or investigation into the subcontracting or privatization of work presently performed by bargaining unit employees, the City shall immediately provide written notice to the Union. The City shall provide to the Union all materials, regardless of form, relating to said subcontracting or privatization, immediately upon the materials becoming public record.

All rights, privileges, fringe benefits and working conditions enjoyed by employees at the present time which are not specifically referred to or abridged in this Agreement shall remain in full force, unchanged and unaffected in any manner, unless changed by mutual consent.

Article 5 **Dues Deduction**

Section 1 – Dues Deduction

Employees may authorize payroll deductions for the purpose of paying Union dues. No authorization shall be allowed for payment of initiation fees, assessments or fines.

Section 2 - Determination of Dues

Union will notify City of the amount of dues. Such notification will be made in writing over the signature of Union's President. Changes in Union dues will be similarly reported to City, with notification at least one (1) month in advance of the anticipated effective date of any such changes.

<u>Section 3 – Deduction Methodology</u>

Dues shall be deducted bi-weekly. The deducted monies shall be remitted to Union no later than fifteen (15) calendar days after the end of the bi-weekly payroll from which they were deducted. Union will indemnify, defend and hold City harmless against any claims made, and against any suits instituted, against City on account of the deduction of Union dues.

Section 4 – Payroll Deduction Authorization

Upon receipt of a signed payroll deduction authorization (as shown in Appendix A of this Agreement), City shall deduct those Union dues certified in writing by an authorized Union officer.

<u>Section 5 – Revocation of Payroll Deduction Authorization</u>

A payroll deduction authorization may be revoked by a member upon written notice to Union and City. Any such revocation shall be on the form (as shown in the Appendix of this Agreement).

Section 6 - Payroll Deduction of FIREPAC

Employees shall have the ability to make voluntary contributions to the IAFF FIREPAC program through authorized payroll deductions, provided that the employee has signed and submitted the form to the City (as shown in Appendix).

Article 6 Union Business

Section 1 – Leave Time Contribution

The City and the Union agree to sustain Leave Time Contributions annually at the commencement of each fiscal year (October 1st). All dues paying members agree to contribute a specific number of leave hours specified in writing by the Union President. The hours contributed shall be deducted from their annual earned leave hours. The City shall deduct those annual leave hours after each member has accrued their hours in January for example: A member earns twenty-six point five (26.5) hours in January He/she then has eighteen (18) hours deducted for leave time contribution, leaving the member with a monthly earned net of eight point five (8.5) hours. This total will be added to the member's cumulative earned leave hours. Each Union member's hourly contribution will then be converted to dollars by multiplying that hourly contribution times their current hourly rate. After every Union member's hourly contribution are converted to dollars, those dollars will be totaled and the total dollar amount, along with written documentation of the total dollar amount, will be forwarded to the Union's Treasurer no later than February 15th of that same calendar year.

Section 2 - Union Business

Any member who is off on Union Business shall arrange for their replacement and schedule the Union Business consistent with the parameters of Article 16 – Leave, Section 4(1). The member who agrees to work shall be paid at a predetermined rate by the Union and in compliance with applicable laws. The working member shall meet all qualifications of the rank he/she is replacing. Time off for Union business shall not be counted against members in accordance with Article 12 - Exchange of Duty. The approved time off will be considered work hours for the purpose of overtime calculation, for Rank and File members.

Union members who are elected at large to a Principal Officer position, who cannot arrange for another member to work in their absence, shall be afforded time off for Union business when staffing exceeds the minimum needed per tour. This time will be deducted from the Principal Officer's leave time and will be made whole by the Union.

Section 3 - Meetings

The City will allow Union members, who are appointed by the Union to committees, to attend all joint Departmental committee meetings between both parties while on duty, providing members remain in a response ready available mode. The Union shall certify a list of appointed committee members to the Fire Chief's office to serve on such committees. Elected Officers of the Union shall be allowed to attend any and all meetings relating to employee issues while both on and off duty.

Section 4 – Union Member Hardship

Time off for employee hardship under this Article shall be utilized by any Union member after exhausting any other approved time off (e.g., Leave Sharing, Employee Hardship) provided by the City. The Union shall inform the Fire Chief, via electronic mail, of the Union Member Hardship. The employee who agrees to work shall be paid by the Union at a predetermined rate, as determined by the Union. The working employee shall meet all qualifications of the rank he/she is replacing. Requests for an employee to work outside of the qualifications of the Hardship employee are subject to Fire Chief approval.

Article 7 Grievance Procedure

Section 1 - Definitions

For purposes of this Agreement, a "grievance" is a difference or dispute regarding the meaning, interpretation or application of the terms of this Agreement. A "class action grievance" is a grievance that affects an entire class of employees.

Section 2 - Grievance Procedure

Prior to an employee filing a grievance, the employee should discuss the grievance with a Union Representative, to assist them with the grievance process.

Grievances shall be processed as follows:

Step 1

The employee shall submit the grievance in writing on the "Grievance Form" to the Fire Deputy Chief and Union Vice President within ten (10) calendar days of the event causing the grievance or within ten (10) calendar days of when the employee becomes aware of such event. The Fire Deputy Chief or designee shall attempt to adjust the matter and shall respond to the employee on the "Grievance Form" within ten (10) calendar days from the date of submission of the grievance.

Step 2

If the grievance is not satisfactorily resolved at Step 1, the employee shall present the grievance on the "Grievance Form" to the Union's Grievance Committee within ten (10) calendar days of the decision rendered at Step 1. The Union's Grievance Committee shall determine whether the grievance is valid and has merit. If the Union's Grievance Committee finds the grievance invalid or is without merit, no further action shall be taken by the Union. If the Union's Grievance Committee determines that the grievance is valid and has merit, the Union shall present the grievance on the "Grievance Form" to the Fire Chief within ten (10) calendar days of the date the grievance is presented to the Union's Grievance Committee. The Fire Chief or designee shall render a decision on the "Grievance Form" within ten (10) calendar days from the date the grievance was presented.

"Class Action Grievances"

"Class action grievances," approved by the Union's Grievance Committee, shall be filed on the "Grievance Form" directly with the Fire Chief within ten (10) calendar days of the event causing the grievance or within ten (10) calendar days of when the Union becomes aware of such event. The Fire Chief or designee shall render a decision on the "Grievance Form" within ten (10) calendar days from the date the grievance was presented.

Step 3

If the grievance is not satisfactorily resolved at Step 2, the grievance shall be presented to the City Manager on the "Grievance Form" within ten (10) calendar days of the decision rendered at Step 2. The City Manager or designee shall render a decision on the "Grievance Form" within ten (10) calendar days from the date the grievance was presented.

Mediation

By mutual agreement, the parties may submit the grievance to mediation, to be conducted by the Federal Mediation and Conciliation Service (FMCS), prior to invoking arbitration. If the parties agree to mediate, the time limits for giving notice of intent to arbitrate shall be extended until such time as mediation is concluded.

Arbitration

If the grievance is not satisfactorily resolved at Step 3, the Union shall give notice of intent to arbitrate on the "Grievance Form" within ten (10) calendar days of the decision rendered at Step 3. The notice must be served upon the City's Human Resources Department and concurrently mailed to the Federal Mediation and Conciliation Service requesting a panel of seven (7) qualified arbitrators.

An arbitrator shall be selected from the panel by the alternate striking of names with the Union making the first (1st) strike. Any party shall have the opportunity to reject one (1) panel of arbitrators in its entirety. The arbitrator shall have no power to add to, subtract from, modify, or alter the terms of this Agreement, but shall determine only whether or not there has been a violation of this Agreement as alleged in the grievance.

The decision of the arbitrator shall be based upon the evidence and arguments presented. The arbitrator shall render a decision not later than thirty (30) calendar days after the conclusion of the final hearing. The arbitrator's decision shall be in writing and shall set forth the arbitrator's opinions and conclusions on the issues submitted. Findings of the arbitrator made in accordance with the jurisdictional authority of this Article shall be final and binding on both parties.

In the event any party claims a dispute is non-arbitrable, the Arbitrator shall rule on that issue prior to considering the merits of the grievance.

This Agreement constitutes a contract between the parties that shall be interpreted and applied in the same manner as any other contract under the laws of the State of Florida. The function and purpose of the Arbitrator is to determine disputed interpretations of terms actually found in the Agreement or to determine disputed facts upon which the Agreement's application will depend. The Arbitrator shall not have the authority to decide any issue not submitted by the parties, nor to interpret or apply the Agreement as to change what can fairly be said to have been the intent of the parties as determined by generally accepted rules of contract construction.

The compensation and expenses associated with any arbitration hearing, including attorney fees, shall be borne by the losing party as determined by the Arbitrator. In the event of a compromise award (neither party prevails on all issues), the costs of the services of the Arbitrator shall be borne equally by the parties, however, each party shall bear its own expenses, including attorney's fees.

Section 3 - General Provisions

(a) The parties to this Agreement shall make a good faith effort to schedule and hold arbitration hearings in a reasonable and timely manner. If the arbitrator chosen by the parties is not available until after ninety (90) days from the date of arbitration request, then the parties agree to choose another arbitrator so long as the newly selected arbitrator is available within this ninety (90) day time period.

- (b) Time limits in this Article may be lengthened or shortened pursuant to a written agreement between the parties.
- (c) Step(s) of the grievance procedure may be waived in order to expedite arbitration pursuant to a written agreement between the parties.
- (d) A probationary employee (new hire) shall have the rights of the grievance procedure for disciplinary actions through Step 2.
- (e) The Union shall not be obligated to represent employees who are not members of the Union in the processing of grievances.
- (f) Only the Union shall have the power to process and advance a grievance to arbitration, except where the Union has declined to represent an employee because he/she is not a member of the Union.

Article 8 Seniority

Section 1 – City Seniority

Each employee shall have City seniority based on the employee's total length of service with the City, dating back to the employee's first (1st) date of continuous employment with the City, in a full-time position.

City seniority shall be used for computing annual leave accrual, pension/retirement and longevity.

Leave without pay which is approved by the Fire Chief and the City shall not constitute a break in service.

Section 2 - Departmental Seniority

Each employee shall have Departmental Seniority based on the employee's total length of service with the Fire Department dating back to the employee's first (1st) date of continuous employment with the Fire Department. Departmental Seniority shall be used in determining reduction of personnel due to layoff, recall from layoff and demotion.

For purposes of layoffs and recall, but not for any other purpose, departmental seniority shall be augmented by one (1) month of credited service for each year of qualified military service in accordance with Section 295.07, Florida Statutes, as amended, for preference in employment retention. It shall be the employee's responsibility to request veteran's preference in writing, in a timely manner, and to verify entitlement to the veteran's preference. After application of both departmental seniority and veteran's preference, if two or more individuals are equal in terms of seniority, then the veteran shall be given preference. After application of both departmental seniority and veteran's preference, if two or more individuals are equal in terms of seniority, then the veteran with greater qualifying military time served shall be given preference.

Section 3 - Classification (Rank) Seniority

The Department shall utilize the employee's promotional date to establish seniority within their Classification (Rank).

In the event that seniority within a specific Classification (Rank) is equal between or among employees, the employee's most recent official hiring or promotional final eligibility list, shall be used in breaking the

Each employee shall have Classification (Rank) Seniority based on the employee's total length of service in that Classification (Rank), which may include service in a higher rank if the employee is not retained in the higher classification and returns before completing the promotional probationary period (voluntarily or involuntarily).

Section 4 - Loss of Seniority

The Seniority rights of an employee shall terminate upon:

- Voluntary termination
- Retirement (excluding DROP participants)
- Termination for just cause

- Layoff exceeding twenty-four (24) months
- Failure to return from any authorized leave of absence (including FMLA) within three (3) calendar days of the scheduled leave date.
- Failure to report for work within fourteen (14) calendar days from the receipt of a letter of recall from layoff or failure to notify the City of intent to return to work within five (5) calendar days of the date of receipt of a letter of recall from layoff.

Section 5 - Probation of Newly Hired Employees

New employees shall be on initial probation for a period of one (1) year, during which time the City will have the right to retain the employee or dismiss the employee. The City shall have the right to extend initial probation no longer than two (2) consecutive periods, up to three (3) months each, after the initial one (1) year period before deciding to retain the employee in the designated class they currently hold.

An employee may only utilize accrued leave during the initial six (6) month probationary period in the case of illness or approval of the Fire Chief.

An employee who is terminated during the first six (6) months of the initial probationary period shall not receive payment for any unused leave. After the completion of the first six (6) months of the initial probation, employees shall be entitled to payment for any unused leave.

Section 6 - Probation of Newly Promoted Employees

Promoted employees shall be considered on probation for a period of six (6) months, during which time the City will have the right to retain the employee in the designated class or demote the employee to the Classification (Rank) previously held by the employee for just cause. The City shall have the right to extend promotion probation no longer than two (2) consecutive periods, up to three (3) months each, after the initial six (6) month period before deciding to either demote the employee to the Classification or Rank previously held, or retain the employee in the designated class they currently hold.

Article 9 Staffing

In the event of additional Fire Stations being placed in service, manpower upgrades, or layoffs, during the term of this Agreement, Article 9 – Staffing, may be modified by mutual, written agreement between the Fire Chief and Union President.

Section 1 – Minimum Staffing (Shift)

Shift minimum staffing shall be defined as; forty-eight (48) rank & file positions and two (2) supervisory (Fire Battalion Chief) positions.

Section 2 - Rank Minimums (Shift)

There shall be a minimum of fourteen (14) Fire Engineer/Driver positions, as part of daily minimum staffing. Seven (7) of these positions must be filled by the rank of Fire Engineer /Driver or higher. Seven (7) may be filled by a Temporarily Upgraded Fire Engineer/Driver.

There shall be a minimum of eleven (11) Fire Lieutenant positions as part of daily minimum staffing. Six (6) of these positions must be filled by the rank of Fire Lieutenant or higher. Five (5) may be filled by a temporary upgraded Fire Lieutenant.

There shall be a minimum of two (2) Fire Battalion Chief positions as part of daily minimum staffing. One (1) of these positions must be filled by the rank of Fire Battalion Chief. One (1) may be filled by a temporary upgraded Fire Battalion Chief.

Section 3 – Selection Parameters

Except as otherwise provided for in this Agreement, Classification (Rank) Seniority shall be used for determining annual selection of Station Assignment, Kelly Day, and Scheduled Leave preferences in order of Classification (Rank) as follows:

Shift: Fire Battalion Chiefs, Fire Lieutenants, Fire Engineer/Drivers, Firefighters.

Non-Shift: Fire Battalion Chiefs and Fire Lieutenants

Non-Shift (Life Safety): Fire Marshal and Fire Inspectors.

There shall be a minimum number of slots available for Kelly Days and Scheduled Leave each day based on the current staffing multiplier of 3.92. The multiplier is used to determine the number of available vacancies above minimum staffing. Based on the current shift minimum staffing number and staffing multiplier, fifteen (15) personnel may be off per shift between Kelly Days and Scheduled Leave.

Between May 1st and May 15th of each year, the Fire Chief and Union President or their designees shall meet and mutually agree on the staffing parameters. Once the criteria is approved, it shall be provided to the membership by May 21st of each year.

Section 4 - Station Assignments (Shift)

By June 1st all Shift Fire Lieutenants shall submit station assignment preferences, in numerical order, for every existing station. Shift Fire Battalion Chiefs shall post to their respective shifts, via email, the Shift Fire Lieutenants station assignments by June 8th.

By June 16th all Shift Fire Engineer/Drivers shall submit station assignment preferences, in numerical order, for every existing station. Shift Fire Battalion Chiefs shall post to their respective shifts, via email, the Shift Fire Engineer/Drivers station assignments by June 22nd.

By June 30th all Shift Fire Firefighters shall submit station assignment preferences, in numerical order, for every existing station.

All station assignments are at the discretion of the Fire Chief or designee. Factors to be considered, but not limited to, are as follows:

- 1) Specialty response(s) for a particular station
- 2) Staffing
- 3) Classification (Rank) seniority

The Fire Chief or designee shall finalize station assignments, and notify the respective shift employees via email, no later than July 15th.

Section 5 -- Kelly Day Selection (Shift)

By August 1st of each year, all shift employees shall submit Kelly Day selections, in numerical order, to their respective Fire Battalion Chief. These will be reviewed by the respective shift Fire Battalion Chiefs and approved by the Fire Chief or designee. The Kelly Day selection shall be awarded by Rank Seniority, based on the agreed-upon Kelly Day Parameters. Changes in the Kelly Days shall not increase overtime.

Kelly Day selections shall take effect on the first day of the first work cycle beginning on or after October 1 of each fiscal year and shall remain in effect until the first day of the first work cycle beginning on or after October 1 of the following fiscal year except in the event that the employee is promoted or placed on an alternate shift.

In the event of promotion, demotion or placement on an alternate shift, the employee promoted, demoted or placed on an alternate shift shall select a new Kelly Day from among the available Kelly Day slots in the new rank or on the alternate shift.

The Fire Chief or designee shall finalize Kelly Day selections, and notify the respective shift employees via email, no later than August 15th.

Section 6 – Scheduled Leave Selection (Shift)

By September 1st of each year, all shift employees shall submit their initial choice(s) for scheduled leave and any requests for exchange of duty ("trade-downs") to their respective Fire Battalion Chief, via the electronic scheduling system, to be distributed based on Rank Seniority (with scheduled leave requests having priority over exchange of duty "trade downs"). These will be reviewed by the respective Fire Battalion Chiefs (Shift) and approved by the Fire Chief or designee.

Employees shall be afforded the opportunity to select all or part of their earned annual leave time based on Rank Seniority. The Fire Chief or designee shall finalize Scheduled Leave selections, as well as any approved exchange of duty ("trade-downs"), and notify the respective shift employees via email, no later than September 15th.

For a given fiscal year, after finalized Scheduled Leave selections and approved exchange of duty ("trade-downs") have been approved in the electronic scheduling system, requests for exchange of duty ("trade-downs") and scheduled leave requests will be approved on a first come, first served basis.

Article 10 Work Schedules/Hours of Duty

Section 1 -Shift Work Period & Non-Shift Work Week

In compliance with the Fair Labor Standards Act (FLSA), the City uses a twenty-one (21) day work period for shift employees. The City has identified the twenty-one (21) day work period to start on Sunday at 00:00:00 hours and end twenty-one (21) days later on Sunday at 00:00:00 hours.

The City uses a seven (7) day work week for all non-shift employees.

Section 2 - Shift Employees' and Non-Shift Employees' Work Schedules & Hours of Duty

Shift employees shall be normally assigned the following schedules:

- Rank & File (Shift) Employees: 0800 hours to 0800 hours
- Supervisory (Shift) Employees: 0700 hours to 0700 hours

Shift employees normal work schedule shall consist of twenty-four (24) hours on duty and forty-eight (48) hours off duty, with one (1) twenty-four (24) hour shift being scheduled as a Kelly Day during the twenty-one (21) day work period identified in Section 1. Shift employees will be regularly scheduled to work one hundred forty-four (144) hours (total 2496 hours) annually. Shift employees shall not be allowed to work more than forty-eight (48) hours in any sixty (60) hour time period.

Non-Shift employees will be scheduled on a forty (40) hour work week, which may consist of a five (5) day, eight (8) hours per day, schedule or four (4) day, ten (10) hours per day, schedule. The schedule shall be determined by the Fire Chief or designee. During the work week, non-shift employees will be regularly scheduled (40) hours (total 2080) annually.

<u>Section 3 – Non-Shift Employee Holiday Work Schedule</u>

For a Non-Shift employee working a four (4) day, ten (10) hours per day, schedule, said employee shall adjust their normal day off to a different day off for that week only in the event a holiday (in accordance with Article 16 - Leave, Section 6) falls on the employees' normal day off.

Section 4 – Non-Shift Employee Flex Time

Employees working a forty (40) hour week who wish to "flex" their time may do so by mutual agreement with their Supervisor and the concurrence of the Fire Chief. The "flex" time off must be taken and paid back during the same work week to ensure the time compensated during the work week equals forty (40) hours.

Section 5 - Shift Fire Lieutenant or Fire Battalion Chief Orientation Work Schedule

The Fire Chief may assign a promotional probationary shift Fire Lieutenant or Fire Battalion Chief (Fire Lieutenant or Fire Battalion Chief who works an average of forty-eight [48] hours per week) to a forty (40) hour week position for the purpose of orientation.

The parties agree that during this temporary assignment, the promotional probationary shift Fire Lieutenant or Fire Battalion Chief (Fire Lieutenant or Fire Battalion Chief who works forty-eight [48] hours per week) will work forty (40) hours a week but will continue to be paid and accumulate all benefits as a Shift employee.

| The Fire Chief may hold the promotional probationary shift Fire Lieutenant or Fire Battalion Chief on orientation up to six (6) weeks, (excluding scheduled leave) at which time the employee will be assigned his/her permanent shift schedule. | | | | | | | |
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Article 11 Overtime

Section 1 - Overtime

During the shift twenty-one (21) day work period defined in Article 10 - Work Schedules/Hours of Duty, of this Collective Bargaining Agreement, shift employees will be paid overtime at the rate of one and one half (1-1/2) their regular rate for any hours actually worked, in excess of their regularly scheduled one hundred forty four (144) hours, rounded up to the nearest quarter (1/4) hour.

During the non-shift work week defined in Article 10 - Work Schedules/Hours of Duty, of this Collective Bargaining Agreement, non-shift employees will be paid overtime at the rate of one and one half (1-1/2) their regular rate for any hours actually worked, in excess of their regularly scheduled forty (40) hours, rounded up to the nearest quarter (1/4) hour.

Section 1.1 – Supervisory Overtime Restrictions

The Parties agree that Supervisory bargaining unit members are exempt employees and not subject to the overtime provisions of the Fair Labor Standards Act.

Notwithstanding the aforementioned, in the event that there is a need for supervisory employee overtime in the CCFD, the amount of overtime worked shall be paid at the rate of one and one-half (1-1/2) times based on the employees forty-eight (48) hour rate of pay. Employees assigned to a forty (40) hour schedule will be assigned a forty-eight (48) hour rate of pay, for the purposes of overtime, based on their forty (40) hour step equivalent. Overtime shall be paid for hours assigned and worked in a work week exceeding forty-eight (48) hours for Shift Fire Battalion Chiefs and exceeding forty (40) hours for Non-Shift Fire Battalion Chiefs, unless otherwise stated in this Article. Only hours assigned and worked will count toward the calculation of overtime. For example, holiday and vacation hours shall not count toward the calculation of overtime.

In order to be compensable under this Section all overtime work will require prior written approval of the Fire Chief or designee, which will include approval received via electronic mail before the employee engages in any overtime work. Failure to receive prior written approval before beginning any overtime may result in disciplinary action up to and including termination. Nothing in this Article shall require the Fire Chief or designee, to assign overtime or to fill a vacancy. Nothing in this Article shall prevent the Fire Chief or designee, from assigning overtime to a specific Fire Battalion Chief based upon the operational needs of the Department.

Section 2 – Overtime Due to Unscheduled Leave

(a) Overtime recall caused by unscheduled leave (shift staffing drops below minimum staffing in accordance with Article 9 - Staffing), the following process shall be applied:

Overtime recall will be offered to the assigned position utilizing unscheduled leave. If no one voluntarily accepts the overtime, the assigned position utilizing the unscheduled leave shall be mandated in accordance with the Article 9 - Staffing. (e.g. Fire Engineer/Driver Acting as Fire Lieutenant utilizes UL, call in Fire Lieutenant Overtime, if no one accepts voluntarily then mandate a Fire Lieutenant).

In the event that the vacancy requires a specialty (e.g. PSDT Lt, HMT Lt. or Paramedic), an employee on shift may be reassigned to fill the vacancy caused by unscheduled leave. Said employee shall be reassigned to fill the vacancy, unless the overtime employee can fill the vacancy that requires a specialty.

If no other employee, with the same specialty, is available to fill the vacancy, an employee with said specialty shall be recalled.

- (b) When Unscheduled Leave is granted after the tour of duty has begun, the Fire Battalion Chief (Shift) shall replace the employee off on Unscheduled Leave as follows:
 - 1. In accordance with Article 11 Overtime Section 2 (a) (the mandatory recall shall not apply in this scenario).
 - 2. Offer the overtime to additional ranks and downgrade or upgrade acting positions as needed (utilizing members in their rank whenever possible); or
 - 3. Operate at reduced staffing strength during the balance of that tour.

<u>Section 3 – Other Overtime Situations</u>

- (a) Working beyond Shift: Employees required to work beyond their shift shall be paid in accordance with Article 11 Overtime, Section 1.
- (b) Recall to Duty: All employees recalled to duty will be paid a minimum of two (2) hours of pay at the rate of time and one-half (1-1/2). Beyond that, employees recalled to duty for two (2) hours or more, shall be paid in accordance with Article 11 Overtime, Section 1.
- (c) Special Detail Services: Any individual or organization compensating the Fire Department through the Special Event permit process, for which Fire Department services are requested, the Fire Department shall utilize off duty employees.
 - Special Detail Services staffing may be filled via the city's electronic mail system in advance of a special detail service (e.g. Oktoberfest), the Fire Chief or designee shall determine the necessary resources required to meet the needs of the special detail. Once the personnel needs have been determined, the Fire Chief or designee may send an email soliciting interest of the required ranks and staff as necessary. If the necessary personnel have not voluntarily signed up for the special detail the Fire Chief or designee shall mandate the necessary employees in accordance with Article 11 Overtime. Upon notification that an employee is working a special detail the Fire Chief or designee shall update the city's electronic time keeping system (TeleStaff) and the call back list if necessary.
- (d) Meetings and Training: Employees who are required, by the Fire Chief or designee, to attend meetings or training while off duty, shall be compensated for the actual time in attendance rounded off forward to the nearest one-quarter (1/4) hour at the rate of time and one-half (1-1/2). This Article shall not apply to off-duty Bargaining Unit members attending Collective Bargaining sessions by the City.
- (e) City Emergencies: In case of extreme or pending emergencies, the Fire Chief may waive the established procedures referenced in Article 11 Overtime. If employees, whether on emergency stand-by or not, are called in to work during an emergency declared by City Council or City Manager, they shall receive two (2) times their base rate of pay for the actual amount of time on duty during the duration of said emergency, rounded off forward to the nearest one-quarter (1/4) hour.

- (f) Deployments: The Fire Chief or designee may deploy personnel and resources in response to an emergency declared by the State of Florida or Federal Government, which receive a State Emergency Response Plan (SERP) mission number. Selection of deployments shall be in accordance with Article 11 Overtime and CCFD's governing documents. The employees shall receive one and one-half (1-1/2) times their regular rate of pay for the actual amount of time deployed (e.g. portal to portal) during said emergency, rounded off forward to the nearest one-quarter (1/4) hour.
- (g) Emergency Stand-By: If employees are called and put on emergency stand-by, they will receive one and one-half (1-1/2) times their regular rate of pay, for the actual amount of time they were on emergency stand-by, rounded off forward to the nearest one-quarter (1/4) hour. In order to be compensated under this Section all emergency standby must receive prior written approval of the Fire Chief or designee.

"Emergency Stand-By" as used in Article 11 - Overtime, shall be defined as: Any employee who is notified by the Fire Chief or Designee to stand-by at a communication contact point to facilitate recall to duty.

Section 4 – Compensatory Time

Compensatory time at the rate of one and one half (1-1/2) times, may be given in lieu of overtime pay at the request of the employee and mutual consent of the Fire Chief or designee. All other terms of compensatory time (in lieu of overtime) shall be in accordance with the City of Cape Coral Administrative Regulation governing compensatory time.

Section 5 - On-Call Pay

Any shift or non-shift employee working in the capacity of an exempt employee is not eligible for "on-call" pay.

- (a) Shift Employees: Shift Employees who are required to be "on-call" shall receive hours of pay at their regular rate for each work day they are assigned to be "on-call" as follows:
 - Employees who are on on-call Monday, Tuesday, Wednesday or Thursday shall be paid one and one-quarter (1 1/4) hours for each day they are on on-call status.
 - Employees who are on on-call Friday, Saturday or Sunday shall be paid two and a half (2 ½) hours for each day they are on on-call status.

This payment shall be in addition to any compensation they receive if they are actually called in to work.

- (b) Non-Shift Employees: Non-Shift Employees who are required to be "on_call" shall receive hours of pay at their regular rate for each workweek they are assigned to be "on-call" as follows:
 - Employees who are on on-call Monday, Tuesday, Wednesday or Thursday shall be paid one (1) hour for each day they are on on-call status.
 - Employees who are on on-call Friday, Saturday or Sunday shall be paid two (2) hours for each day they are on on-call status.

This payment shall be in addition to any compensation they receive if they are actually called in to work.

Section 6 - Overtime Scheduling/Records

(a) Scheduling:

Overtime must be authorized by a Fire Battalion Chief or higher rank. When overtime has been authorized, the appropriate supervisor or designee shall initiate a page to the rank/classification that is needed for the purpose of overtime. Employees will then have a fifteen (15) minute window of opportunity to call back and document their request for the assignment.

Overtime will be scheduled by rank/classification seniority lists. The highest rank/classification senior employee with the least amount of overtime hours will be chosen before anyone else in his/her rank is called for said overtime hours.

(b) Records:

Employees shall have access to a "view only" screen on the Fire Department's computer system, which will also keep a running list (Picklist) of each employee's total overtime hours. It will be the responsibility of the Fire Battalion Chiefs' to update and maintain the view only screen to ensure the screen is kept current when overtime is awarded.

The running list (Picklist) of overtime hours worked shall reset at the conclusion of September 30th of each fiscal year.

Section 7 – Mandatory Overtime

The City and Union have agreed to a Mandatory Overtime Policy. Any violation of that policy shall be subject to a grievance procedure set forth in this Agreement. The Union reserves the right to bargain over the impact created by a change or modification to the current mandatory overtime policy.

Article 12 Exchange of Duty

Section 1 - Exchange of Duty

All employees, including probationary employees, may exchange their duty with another employee, subject to the following:

(a) Any exchange of duty, which is not rank for rank must comply with the requirements of Article 27, Temporary Upgrading and Article 9 -Staffing, Section 2 Rank Minimums.

Any exchange of duty that is not rank for rank, the employees shall work in the higher rank of the exchanging employees. Employees temporarily upgraded to fulfill the non-rank for rank exchange shall not be compensated for the temporary upgrade.

Employees who are temporarily upgraded when working an exchange of duty, not to fulfill a non-rank for rank exchange, shall be compensated in accordance with Article 27 – Temporary Upgrade.

- (b) Shift exchanges of duty must be requested via the City's electronic scheduling software (TeleStaff) no later than 1800 hours of the employee's regularly-scheduled shift immediately preceding the exchange of duty shift. It is the employee's responsibility to have said request approved by the on-duty Fire Battalion Chief (shift) through the chain-of-command prior to the employee's requested exchange of duty shift.
- (c) Late shift exchanges of duty must be entered into the City's electronic scheduling software (TeleStaff) no later than twelve (12) hours prior to the start of the employees shift. It is the employee's responsibility to have said request approved by the on-duty Fire Battalion Chief (shift) prior to the employee's requested exchange of duty shift. Late shift exchanges of duty must be rank for rank and must be of no impact to the schedule (e.g. the employee working must meet the staffing assignment requirements of the person whom they are working for at the time the late shift exchange is entered including additional assigned duties (e.g. Scheduled FTO duties).
- (d) Emergency shift exchanges of duty may be requested after the late shift exchange of duty deadline or during a tour of duty. Emergency shift exchanges of duty must be rank for rank and must be of no impact to the schedule (e.g. the employee working must meet the staffing assignment requirements of the person whom they are working for and must be approved by the on-duty Fire Battalion Chief (Shift). Emergency shift exchanges are handled on a case by case basis at the discretion of the on-duty Fire Battalion Chief (Shift).
 - Shift employees are limited to a maximum of four (4) late and/or emergency exchanges of duty, per fiscal year. Any requests above four (4) must be approved by the Fire Chief or designee.
- (e) All non-shift duty exchanges must be requested via the City's electronic scheduling software (TeleStaff) no later than 1200 hours of the employee's regularly-scheduled work day immediately preceding the exchange of duty day. It is the employee's responsibility to have said request approved by his/her respective supervisor through the chain-of-command prior to the employee's requested exchange of duty day. This request must be made via the department's electronic email system.

- (f) Requests submitted after the above-noted timelines will be considered on a case by case basis. These will be reviewed and approved/denied by the Fire Chief or designee.
- (g) Shift employees are limited to a maximum of four hundred eighty (480) hours of exchange of duty per fiscal year.
- (h) Non-shift employees are limited to a maximum of twenty (20) exchanges of duty per fiscal year and a maximum of four (4) exchanges of duty in a rolling thirty (30) day period.
- (i) All non-shift exchanges of duty shall only be allowed with other non-shift employees.
- (j) When requesting a non-shift exchange of duty, non-shift employees must take off the entire work day (i.e., all eight (8) hours (if assigned to a five (5) day work week) or all ten (10) hours (if assigned to a four (4) day work week).
- (k) All exchanges of duty may be subject to approval by the Fire Chief or designee.

Section 2 - Rules & Compliance

- (a) Shift and non-shift exchanges of duty constitute an even exchange and neither party becomes eligible for additional pay (e.g. overtime) as a result of working an exchange of duty, with the exception of temporary upgrade pay.
- (b) If employment ends while an employee owes or is owed an exchange of duty, repayment rights are lost.

Section 3 - Hardship

The Fire Chief may modify the exchange of duty requirements and extend the number of exchange of duty hours, due to an employee hardship.

Article 13 Health and Safety

Section 1 - Health and Safety Committee

Three (3) employees representing the Union and three (3) representatives of the City shall comprise a Health and Safety Committee. The Committee will meet as required, or when requested by any party to discuss health and safety conditions of the CCFD. This Committee will be guided, but not limited to the Florida Administrative Code 69A-62.043 - Duties and Functions of the Safety Committee and Workplace Safety Coordinator, as amended. In additional the committee will also be responsible for the following:

- a) CCFD employees shall have access to qualified medical personnel and facilities for the prevention, diagnosis and treatment of service related injuries and illnesses.
- Health, potential hazardous contacts and exposure records shall be maintained for every CCFD employee to provide for future access to essential information. The confidentiality of individual records shall be strictly adhered to.
- c) The City and Union agree to develop a health and safety program with specific implementation dates dealing with NFPA 1500, 1581, 1582, 1583, and 1584 requirements. (e.g., I.A.F.F. & I.A.F.C. Fire Service Joint Labor/Management Wellness Fitness Initiative.)
- d) All CCFD employees shall be involved in programs to maintain levels of physical fitness that are necessary to safely perform their duties. Such programs shall be based on realistic performance standards, with an emphasis on improvement and rehabilitation for those members who have difficulty reaching or maintaining those standards.
- e) A comprehensive approach to fire service and health includes components to deal with stress, substance abuse, tobacco/nicotine cessation, nutrition and related factors that contribute to overall individual wellness.
- f) The City and the Union agree to recognize the National Fire Protection Association (NFPA) Standards 1500, 1581, 1582, 1583, and 1584 as a basic approach for a health and safety program for its fire fighters.
- g) The City and the Union recognize the need for Critical Incident Stress Management (CISM), and hereby agree that the City will provide this type of counseling on an "as needed basis." This counseling method shall be in accordance with national recommended guidelines.
- h) Any recommendations by the committee shall be presented to the Fire Chief, or designee, in writing, and the Fire Chief, or designee, shall notify the committee, in writing, as to the action taken on the recommendation within (28) calendar days. Any recommendation the Fire Chief approves shall become a matter of Department policy.

Section 2 - Physical Exam

The Union and City agree that all employees shall be given a complete basic physical at least biennially. The cost of this biennial physical shall be borne by the City. All medical exams shall be performed and evaluated by a vendor(s) designated by the Cape Coral Fire Department (CCFD).

The components of the complete basic physical exam shall be mutually agreed upon, annually, by the Fire Chief and Union President. Components may include but are not limited to:

(a) Medical History: The City shall obtain a complete and thorough medical history from the employee. Upon the completion of the employee's medical history, each employee shall be afforded a post physical exam consultation with the appointed vendor.

The results of each employee's physical shall comply with all confidentiality laws.

- (b) Comprehensive Medical Exam:
 - Consultation with review of results and a personalized health plan
 - Vital Signs
 - Occupational Vision and Hearing
 - Hemoccult Test
 - Skin Cancer screening

Ultrasound Imaging

- Echocardiogram (Heart with function)
- Carotid Arteries
- Aorta and Aortic Valve
- Liver, Pancreas, Gall Bladder, Kidneys, and Spleen (Internal Organs)
- Ovaries and Uterus (Women)
- Testicular and Prostate (Men)
- Bladder
- Thyroid

Cardio Pulmonary:

- Cardiac Treadmill Stress Test with EKG
- Electrocardiogram
- Pulmonary Function Test (Spirometry)

Laboratory Analysis:

- Comprehensive Metabolic Panel (24 panel including kidney, liver, & met functions)
- Complete Blood Count
- Total Lipid Panel (cholesterol panel)
- Thyroid Panel (TSH with reflex to T4)
- Hemoglobin A1C and Glucose
- Immunizations and infectious Disease Screening
- Tuberculosis Testing
- Urinalysis
- Men: PSA Prostate Cancer Marker
- Men: Testosterone Metabolic Marker
- Women: CA-125 Ovarian Cancer Marker

Fitness Analysis:

- Metabolic Analysis with Body Fat
- Strength, Endurance, and Flexibility tests

- Diet and Nutritional Recommendations
- Personal Exercise Prescription
- (c) Influenza Inoculation: Employees shall have the option to be inoculated against influenza at the City's expense. Said influenza inoculations shall be administered annually during the month of October to all employees unless requested otherwise by the employee.
 - In cases where the vaccine is not available from any medical entity, the influenza inoculation may begin later but shall be administered as soon as physically possible.
- (d) An annual physical evaluation consisting of up to: blood, urine, audiometric, pulmonary and visual acuity may be recommended by the Health and Safety Committee for employees assigned to specialized response teams, based on NFPA standards and exposure(s). The Health and Safety Committee shall specify by departmental memorandum the specialized teams, which they recommend receive an annual physical evaluation and the associated components.

<u>Section 3 – Drug Free Workplace Program</u>

The City and Union are committed to protecting citizens, visitors and fellow employees from potential property damage, significant injury and loss of life due to an employee's use or abuse of alcohol and drugs.

The program is intended to prevent the hiring of drug users, to detect users and remove abusers of drugs and alcohol from the workplace, to prevent the use and/or presence of these substances in the workplace and to assist employees who volunteer they have an alcohol and/or drug problem provided the employee has not previously tested positive for alcohol and/or drug use (while employed by the City).

Alcohol Prohibition:

Employee consumption of alcohol on City property (while on duty), in City vehicles, or at any work assignment location, is prohibited.

- (a) Employees' reporting to work or working under the influence of alcohol is prohibited.
- (b) Any Employee arrested for a DUI shall notify his or her immediate supervisor of the arrest within twenty-four (24) hours of its occurrence.
- (c) Failure to comply with these prohibitions and requirements will result in disciplinary action up to and including termination.

Drug Prohibition:

- (a) The use, sale, purchase, possession, manufacture, distribution, or dispensation of illegal drugs or their metabolites, or the non-prescribed use of prescription drugs on City property, in City vehicles, or at any work assignment location, is prohibited.
- (b) Employees' reporting to work or working under the influence of illegal drugs is prohibited.
- (c) Any employee arrested for any illegal drug-related incident shall notify his or her immediate supervisor of the arrest within twenty-four (24) hours of its occurrence.

(d) Failure to comply with these prohibitions and requirements will result in disciplinary action up to and including termination.

NOTE: During any investigation of an alleged violation of this Drug Free Workplace Program, an employee may be placed on leave with pay, if applicable, or removed from any safety sensitive position.

Reasonable Suspicion:

"Reasonable Suspicion" means observable signs that indicate to a reasonable person that an individual is using or under the influence of illegal controlled substances or alcohol. For the purpose of reasonable suspicion "drug/alcohol" testing the following applies, but is not limited to:

- (a) Observable phenomenon while at work such as direct observation of illegal drug use or the physical symptoms or manifestations of being under the influence of an illegal drug, controlled substance or alcohol;
- (b) Abnormal conduct or erratic behaviors while at work or a significant deterioration in work performance.
- (c) A report of illegal drug use provided by a reliable and credible source.
- (d) Evidence that an individual has tampered with a drug test during his/her employment with the current employer.
- -(e) Information that an employee has caused a vehicle accident, involving a member of the general public, while at work will be cause for reasonable suspicion drug testing.
- (f) Information that an employee has contributed to, or been involved in a vehicle accident, involving a member of the general public, while at work may be cause for reasonable suspicion drug testing.
- (g) Evidence that an employee has, during his/her employment, violated the provisions of the prohibitions identified above.

Random Testing:

- (a) Employees in safety sensitive positions will be required to submit to drug testing on a random basis. Safety sensitive positions as defined by the City and Union in compliance with Federal and State Statutes shall include all classifications recognized in Article 2 Recognition, of this Agreement.
- (b) Employees randomly selected for testing shall be identified by City Employee Number and will be selected through the use of a computerized random number generator or other neutral selection process. Said selection lists shall be copied to the Union on each occasion, immediately after they have been processed by the City.
- (c) Random testing shall occur on an annual basis (running concurrent with the City's fiscal year). No more than twenty-five percent (25%) to fifty percent (50%) of the annual average number of employees occupying classifications as listed in 14.16.4.0 (A) for the prior fiscal year shall be subject to random testing during any given fiscal year.

- (d) Employees who refuse to submit to a random test, or make efforts to tamper with a drug test, will be subjected to disciplinary action up to and including termination.
- (e) An employee in a safety sensitive position may be discharged by the City for the first (1st) positive confirmed test result if the drug confirmed is an illicit drug under Section 893.03, Florida Statute, and the employee has had a documented history of habitual discipline problems or the employee has had a previous drug problem (has voluntarily come forward or has tested positive during a random test). In instances where an employee's random drug test is positive for the first (1st) time and does not meet the conditions identified in the preceding sentence, the City shall mitigate the employee's discipline to a suspension without pay for up to one hundred and sixty-eight (168) hours of work, continuous, on the condition the employee enters into a Last Chance Agreement.

NOTE: The City will utilize independent laboratories that have been certified to conduct drug testing, and the City and the independent laboratories shall conduct said testing, in compliance with Florida Administrative Code, Chapter 59A-24, "Drug Free Workplace Standards."

Voluntarily Coming Forward:

Employees are encouraged to come forward at any time prior to being selected for testing and identify that they have an alcohol/substance abuse problem. If an employee volunteers that he/she has an alcohol/substance abuse problem to his/her immediate supervisor, the Fire Chief/Designee or the Human Resources Director, he/she will be provided rehabilitation under the terms of the City's Major Medical Plan/Employee Assistance Plan.

Rehabilitation Program:

The rehabilitation program will be approved by the Employee Assistance Plan (or other agency if the Employee Assistance Plan is no longer available). The employee may request that a specific rehabilitation program be used provided the program meets those same standards, but additional cost, if any, shall be paid by the employee.

Employees who fail to meet the requirements of the rehabilitation program (i.e. refusing to take drug tests in accordance with the program outline and/or missing repeated meetings), shall be subject to termination.

Time Off for Rehabilitation

(a) If Voluntary: If approved by the program administrator, the City shall make every effort to place an employee in a non-safety sensitive (or light duty) position while the employee participates and completes the alcohol/substance abuse program. If a non-safety sensitive (or light duty) position is unavailable, or if the program administrator requires in-patient treatment of the employee, the employee shall be placed on leave status. At that point, the employee may use all accumulated leave hours, as well as any other means of duty replacement (i.e. accumulated trade days) that are available to the employee, until said resources are exhausted. Once all accumulated leave hours and duty replacement has been exhausted, and if the employee is entitled to the Family Medical Leave Act (FMLA), the employee will be placed in that status for up to a twelve (12) week period. Once the FMLA entitlement period expires, the City will place the employee on administrative leave status without pay for the balance of the rehabilitation period in accordance with Article 13 – Health and Safety.

(b) If Randomly Tested Positive: If the employee qualifies for FMLA leave, the employee will begin to exhaust the twelve (12) week period at the beginning of his/her rehabilitation start date. If the employee is not actually taking advantage of FMLA, and if approved by the program administrator, the City shall make every effort to place the employee in a non-safety sensitive (or light duty) position, after completion of any suspension without pay, while the employee participates and completes the alcohol/substance abuse program. If a non-safety sensitive (or light duty) position is unavailable, or if the program administrator requires in-patient treatment of the employee, the employee shall be placed on leave status. At that point, the employee may use all accumulated leave hours, as well as any other means of duty replacement (i.e. accumulated trade days) that are available to the employee, until said resources are exhausted. Once all accumulated leave hours and duty replacement has been exhausted, the City will place the employee on the balance of his/her FMLA leave (if he/she has not exhausted the duration of time available under the law up to that point) or on administrative leave status without pay (if the employee has exhausted his/her total amount of FMLA leave under the law). After the employee has been on non-FMLA leave without pay for more than fifteen (15) workdays, the City shall not provide for any employee benefits, including but not limited to medical or other insurance, and pension. The employee may at his/her option, maintain such benefits at the employee's sole expense.

The rehabilitation program administrator will determine when an employee has successfully completed rehabilitation, but at no time will the total rehabilitation process last longer than six (6) months from the time the employee enters the program.

Once the employee has been released by the program administrator to return to work, the employee will be returned to work at the bargaining unit classification he/she held prior. However, the employee will be subject to follow-up testing in order to ensure that the employee has been successfully rehabilitated. As part of the follow-up testing process, the City may require the employee to submit to unannounced drug tests (for illegal drugs) for a one (1) year period, with no more than four (4) unannounced drug tests (for illegal drugs) for that one (1) year period and no more than one (1) unannounced drug test (for illegal drugs) per quarter. If during this time, the employee tests positive, he/she will be subject to dismissal.

The program administrator will inform the Human Resources Director/Designee (i.e. Risk Manager), of the employee's progress and test results, but all records, correspondence, etc. shall remain confidential and shall be maintained outside the employee's personnel file.

An employee who has previously completed an alcohol/substance abuse rehabilitation program (while employed by the City) *WILL NOT* be eligible for a second (2nd) rehabilitation program.

Employees who voluntarily enter alcohol/substance abuse rehabilitation shall complete the Voluntary Rehabilitation Agreement Form as found in Appendix-D of this Agreement:

Employees who test positive during a random test or reasonable suspicion test may elect to enter in to a last chance agreement by signing the Last Chance Agreement Form as found in Appendix E of this Agreement:

Section 4 - Tobacco Prohibition

All employees shall adhere to Florida Statute 633.412(f) and Florida Administrative Code 69A-62.024 as amended.

Due to the documented effects of tobacco/nicotine use and the special hazards and exposures associated with the occupation of Firefighting, the City and Union agreed to the following:

- Individuals hired into the CCFD after October 1, 2002 are prohibited from using tobacco products.
- The union agrees that this policy itself will not be grieved.
- The City agrees to provide courses to stop the use of tobacco/nicotine for those employees wishing to quit tobacco/nicotine use.

Article 14 Labor Management Committee

The parties agree that there shall be a joint Labor Management Committee consisting of three (3) members appointed by Union and three (3) Fire Department personnel appointed by the Fire Chief.

Section 1 - Membership

Meetings of the Labor Management Committee may be held for such purposes as dissemination of information; the submission of suggestions for improving efficiency, economy of operations, working conditions and employee services; proposing revisions to existing regulations, policies and procedures; resolution of problems encountered by any group(s) of employees; to avoid future grievances; or to further promote harmonious relations between the City and Union.

Section 2 - Meetings

The Labor Management Committee shall meet two (2) times each month, bi-weekly, unless the parties mutually agree not to meet for a particular meeting. The parties shall be under no obligation to reach agreement on any issue brought before the Committee. Any agreement reached by the Committee may become a matter of policy, subject to the approval of the Fire Chief's Office. Recommendations of the Committee shall be presented to the Fire Chief. The Fire Chief or designee shall notify the Committee, in writing, of the action taken on the recommendation within twenty-eight (28) calendar days after receipt of the recommendation.

Section 3 - Meeting Requests

Request for meetings or conferences may be initiated by either the Fire Chief or Union. Requests may be made in writing. The person requesting or arranging the meeting shall select a mutually agreeable date, time and location for the meeting and shall describe the nature of the subject(s) to be discussed. Meetings shall be held during working hours, except in unusual circumstances.

Article 15 Place of Residence

Section 1 - Place of Residence

| The City and the | Union mutually | agree that | there shall | be no residency | requirements | affecting |
|------------------|----------------|------------|-------------|-----------------|--------------|-----------|
| employees. | | | | | | |

Article 16 Leave

Section 1 – Qualifying for Buy Back

In order for employees to qualify for any buy back of any unused annual leave hours, the employee must have accrued the following hours in their leave time bank:

- ➤ Shift Employees: Four hundred and seventy-seven (477) hours
- Non-Shift Employees: Three hundred and sixty (360) hours

Section 2 – Accumulation of Hours

- (a) Shift Employees:
 - One (1) to Five (5) Years (month 1 to month 60):
 Shall be credited with a minimum of two hundred forty hours (240) hours of annual leave.
 This leave will be accrued by each employee at a rate of twenty (20) hours per month.
 - 2. Six (6) to Ten (10) Years (month 61 to month 120):

 Shall be credited with a minimum of two hundred eighty-eight hours (288) hours of annual leave. This leave will be accrued by each employee at the rate of twenty-four (24) hours per month.
- (b) Non-Shift Employees:
 - One (1) to Five (5) Years (month 1 to month 60):
 Shall be credited with two hundred (200) hours of annual leave. This leave will be accrued by each employee at a rate of sixteen point sixty-seven (16.67) hours per month.
 - 2. Six (6) to Ten (10) Years (month 61 to month 120):
 Shall be credited with a minimum of two hundred forty hours (240) hours of annual leave.
 This leave will be accrued by each employee at the rate of twenty (20) hours per month.
- (c) Both Shift & Non-Shift Employees:
 - Eleven (11) Years (month 121 to month 132):
 Employees will accrue twenty-four point eighty-six (24.86) hours per month for Shift employees and twenty point seventy-two (20.72) hours per month for Non-Shift employees.
 - Twelve (12) Years (month 133 to month 144):
 Employees will accrue twenty-five point sixty-three (25.63) hours per month for Shift employees, and twenty-one point thirty- six (21.36) hours per month for Non-Shift employees.
 - Thirteen (13) Years (month 145 to month 156):
 Employees will accrue twenty-six point four zero (26.40) hours per month for Shift employees, and twenty-two (22) hours per month for Non-Shift employees.

- 4. Fourteen (14) Years (month 157 to month 168):
 Employees will accrue twenty-seven point two six (27.26) hours per month for Shift employees, and twenty-two point seventy-two (22.72) hours per month for Non-Shift employees.
- Fifteen (15) Years (month 169 and greater):
 Employees will accrue twenty-eight point zero three (28.03) hours per month for Shift
 employees and twenty-three point thirty-six (23.36) hours per month for Non-Shift
 employees.

Section 3 - Buy Back

Provided the employee has four hundred seventy-seven (477) hours in the employee's bank for shift employees, or three hundred sixty (360) for non-shift employees, any remaining unused hours above these minimums, as of the last payroll period of each fiscal year, will be paid to the employee at the employee's rate of pay as of the last payroll period of each fiscal year. This unused buy back check shall be issued by the City, to the employee by the first two (2) weeks of December of each year. This provision will automatically sunset and cease on October 1, 2021 and will revert to the most recent previously agreed upon Buy Back parameters, unless mutually agreed by the parties.

Section 4 - Use of Leave

- 1) Use of Scheduled Leave:
 - a. Shift Employee: A Shift employee must request scheduled leave no later than 1800 hours of the employee's regularly-scheduled shift immediately preceding the shift the employee is requesting (partially or in full). Employees are required to request scheduled leave in a minimum duration of four (4) consecutive hours. In cases where the requested scheduled leave starts at or after 00:00:00 hours, the employee is required to request scheduled leave for the entire duration of 00:00:00 hours to 08:00:00 hours, If an employee's scheduled leave request runs in to the time window of 00:00:00 hours to 08:00:00 hours, the employee is required to request scheduled leave for the entire duration of 00:00:00 hours to 08:00:00 hours in addition to the hours of scheduled leave requested prior to 00:00:00 hours. Scheduled Leave requests will be requested and approved/denied via the City's electronic scheduling software.
 - b. Non-Shift Employee: A Non-Shift employee must request scheduled leave no later than 1200 hours of the employee's regularly-scheduled day immediately preceding the day the employee is requesting (partially or in full). Scheduled Leave requests will be requested and approved/denied via the City's electronic scheduling software.
- 2) Cancellation of Scheduled Leave:
 - a. Shift Employee: A Shift employee may cancel scheduled leave no later than 1800 hours of the employee's regularly-scheduled shift immediately preceding the shift the employee is requesting (partially or in full).
 - b. Non-Shift Employee: A Non-Shift employee may cancel scheduled leave no later than 1200 hours of the employee's regularly-scheduled day the employee has requested off (partially or in full). Cancellation of scheduled leave will only be approved if there is no

additional effect to the schedule (e.g. an employee has to forfeit overtime due to the cancellation).

3) Use of Unscheduled Leave:

- a. Prior to scheduled work period:
 - 1. Shift Employee: A Shift employee must notify the on-duty Fire Battalion Chief (Shift) no later than sixty (60) minutes prior to the beginning of the scheduled tour of duty.
 - 2. Non-Shift Employee: A Non-Shift employee must notify the employee's supervisor (scheduled for that day) no later than sixty (60) minutes prior to the beginning of the scheduled workday.
- b. After the scheduled work period has begun:
 - 1. Shift Employee: A Shift employee must have approval from an on-duty Fire Battalion Chief (Shift).
 - 2. Non-Shift Employee: A Non-Shift employee must have approval from his/her supervisor (scheduled for that day).

Note: The use of unscheduled leave after the work period has begun is limited to emergency situations only, as determined by the on-duty Fire Battalion Chief.

Note: The management and parameters of unscheduled leave shall be defined in CCFD Governing Documents.

3) Use of Funeral Leave

a. Employees shall be granted leave with pay for two (2) consecutive twenty-four (24) hour shifts, (Shift employees) or forty (40) consecutive hours (Non-Shift employees) for a death in the immediate family. Such leave shall not be deducted from the employee's accrued annual leave.

The term "immediate family" as used in this section shall refer to an employee's spouse or registered domestic partner and to the children (including step children), parents (including step parents), legal guardians, siblings (including step siblings), grandparents (including step and/or great grandparents), and grandchildren (including step and/or great grandchildren) of both the employee and his/her spouse, or registered domestic partner.

Upon the City's request, an employee requesting bereavement leave may be required to furnish proof of death, date of burial and relationship.

4) Use of Military Leave

a. The City will comply with all applicable federal, state and City ordinances, laws, rules, regulations and standard operating procedures relating to military and/or National Guard related leave, including but not limited to leave for training or active service.

5) Use of School Leave

a. The Fire Battalion Chiefs shall exercise a first (1st) come, first (1st) served basis, in allowing Employees to attend fire/degree related classes on duty, providing necessary staffing is available.

Section 5 - Separation of Employment

When an employee discontinues employment with the City, the employee's remaining hours in the employee's leave bank shall be credited to the employee's final year earnings at the employee's current rate of pay. Unless DROP participants are otherwise addressed in the Pension Plan Ordinance regarding leave bank hours, they shall adhere to the above. Accrued annual leave paid for the last month worked will be prorated based on the number of days worked in that month.

Section 6 - Holidays

The following holidays shall be observed:

New Year's Day
Martin Luther King Day
President's Day
Memorial Day
Labor Day
Columbus Day
Veterans' Day
Thanksgiving Day

Independence Day Friday After Thanksgiving

Christmas Day

Any additional holidays by which City Hall observes, shall be part of this Article and paid according to Article 16 - Leave.

All Shift employees shall be paid eleven point two (11.2) hours at straight time for each holiday. All Non-Shift employees shall be paid eight (8) hours at straight time for each holiday, which is observed by the City. This holiday pay for Non-Shift employees shall be in addition to the employee's regular pay for that day.

Employees, who by virtue of their duties, work a forty (40) hour week, will observe said holiday by not being required to report for duty in accordance with the remainder of the City employees, and be paid their normal rate of pay for each holiday. In the event an employee who normally works four (4) ten (10) hour days per week, ten (10) hours shall be used to compute holiday pay and time off per holiday.

Article 17 Injury/Illness Compensation

Section 1 - On Duty Injury/Illness

An employee injured or who incurs a work-related illness while acting within the scope of his/her employment with the City shall be entitled to supplemental pay equal to the employee's full pay until the employee returns to work or receives pension benefits for a period not to exceed one (1) year. However, an employee who is granted Workers' Compensation, social security or other benefits will be paid the difference between the employee's full pay and those benefits paid by Workers' Compensation, social security or other sources for a period not to exceed one (1) year. After one (1) year, an employee may be required to utilize leave up to but not exceeding one (1) additional year. After exhaustion of leave, the employee may be terminated subject to applicable law. In no circumstances shall employment continue for a period exceeding a consecutive twenty-four (24) month period from the effective date of the employee's workers compensation.

The City shall make a good faith effort to assign an injured/ill employee to work in the fire department A light duty assignment to other work for the period of the temporary injury/illness shall be considered only a temporary reassignment with full retention of rights and benefits under this Agreement, and shall not be considered a reclassification for purposes of pension accrual. An employee given a light duty assignment as a result of a temporary injury/illness shall be paid at the employee's regular rate of pay.

When a physician approved by the City determines that an employee is medically fit to perform work or accept another position offered by the City, the employee shall return to work or lose the benefits of this article. In the case of a disagreement between the City approved physician and the employee's principal treating physician, a third (3rd) physician shall be selected with the approval of the other two (2) physicians. The decision of the third (3rd) physician shall be binding on the issue presented.

Section 2 - Off Duty Injury/Illness

For off the job injuries or illnesses, the City shall make a good faith effort to assign an injured/ill employee to work in the fire department. A light duty assignment to other work for the period of the temporary injury/illness shall be considered only a temporary reassignment with full retention of rights and benefits under this Agreement, and shall not be considered a reclassification for purposes of pension accrual. An employee given a light duty assignment as a result of a temporary injury/illness shall be paid at the employee's regular rate of pay.

After one (1) year, an employee shall be required to utilize leave up to but not exceeding one (1) additional year. After exhaustion of leave, the employee may be terminated subject to applicable law. In no circumstances shall employment continue for a period exceeding a consecutive twenty-four (24) month period from the date of the employee's injury/illness.

Article 18 Health Insurance

Section 1 – Health & Welfare Benefits for Active Employees

The City shall bear the cost of health, life, accidental death and dismemberment (AD&D) benefits for each current employee.

The employee shall be responsible for paying 100% of the health insurance premium for any dependent coverage elected.

- (a) Health Insurance Trust The Union has established the "Cape Coral Professional Fire Fighters Health Insurance Trust". The Health Insurance Trust shall establish a plan of benefits to provide health and welfare insurance or other benefits allowable under section 501(c)9 of the Internal Revenue Code on behalf of their bargaining unit employees who are active employees or retirees of the City.
- (b) Funding Effective June 3, 2019, the City agrees to provide the Health Insurance Trust with a monthly amount of \$767.08 per active and retired bargaining unit members covered by the health insurance trust and not enrolled in the City sponsored "Health Insurance Opt-out" program or Medicare (Advantage) Plan, i.e. all active bargaining unit members and those retirees covered by Section 2 (a)(i) herein, toward the cost of their health insurance. Employees who are in the DROP shall be considered active employees for the purposes of this Section 1 until such time as they separate from employment with the City. Effective January 1st of each year, the City Contribution shall be equal to the average cost of Employee-Only coverage for the City's sponsored group and Medicare health insurance programs for enrolled active and retired employees.
- (c) The amount provided to members participating in the City's "Health Insurance Opt-out" program shall be the same as provided to all other employees of the City with the cost borne by the City. The Health Insurance Trust shall not receive payment for any member participating in the "Health Insurance Opt-out" program.
- (d) Dependent Premiums Upon ratification of this agreement, the City agrees to provide pre-tax payroll deductions for employees of the bargaining unit that have spouse or dependent family members on their health insurance plans. The Health Insurance Trust shall provide proof of such deductions and the appropriate amount of such deduction for the employee with an authorized payroll deduction form. The funds from the payroll deductions made pursuant to this paragraph shall be made to the Health Insurance Trust on a semi-monthly basis. To receive the pre-tax contributions, employees of the bargaining unit must comply with all provisions of the City's section 125 plan and must comply with the rules and regulations concerning Internal Revenue Service Code Section 125 deductions and any and all federal, state and local regulations concerning the administration of the health benefits programs and the pre-tax deductions made pursuant to it.

Such program shall begin no sooner than thirty (30) days following the ratification of this Agreement and no later than sixty (60) days.

(e) Loss of Coverage – In the event that the Health Insurance Trust is dissolved due to insolvency, those members being provided health insurance coverage shall have an opportunity to join the

City sponsored Health Insurance plan within thirty (30) days of loss of coverage. Elective termination of the Trust requires a ninety day (90) advance notice and the Trust would be responsible for any additional cost incurred by the City, unless mutually agreed to otherwise. (i.e. penalties by the health care provider for returning and/or increase to individual premiums as a result of returning to the City-sponsored health care plan).

Section 2 - Health & Welfare Benefits for Retired Employees

Provisions in Section 1 above that refer and apply to retirees are hereby incorporated by reference in this section.

(a) Eligibility

- i. Employees, whose date of employment is before October 1, 2003, shall be entitled to group health and life benefits upon retirement from the City, only if they have been continuously employed by the City for more than five (5) years. In order to participate in the City's group health benefits program, retirees and employees, who retire pursuant to this section, must sign up for coverage under Medicare Parts A and B as soon as they become eligible. In addition to paying the cost of retiree group health and life benefits, the City shall provide a monthly Medicare subsidy to retirees covered under this section equal to the cost of Medicare Part B coverage.
 Employees, who become eligible to retire pursuant to this section, shall also be entitled to group life benefits equal to twice the amount of their annual base salary at the time of retirement from the City.
- ii. Employees, whose date of employment is after October 1, 2003 shall be entitled to receive a health benefit subsidy from the City toward payment of the cost of group health benefits upon retirement from employment with the City, only if they have been continuously employed by the City for more than ten (10) years. The amount of the subsidy shall be determined by multiplying the employee's years of service times five dollars (\$5.00). The minimum monthly subsidy provided to retirees shall be fifty dollars (\$50.00) and the maximum monthly subsidy shall be one hundred and fifty dollars (\$150.00). This subsidy shall continue to be paid even if employees retiring under this section are enrolled in Medicare Parts A and B and/or are participants in another group health benefits program. In order to participate in the City's group health benefits program, employees who retire pursuant to this section must sign up for coverage under Medicare Parts A and B, as soon as they become eligible. Failure to enroll in Medicare parts A and B, upon eligibility, will result in the City discontinuing coverage in the group health plan.
- iii. The City's health benefit coverage for all retirees of the City shall be secondary to Medicare and/or any other health benefits program in which the retiree is a participant in, including, but not limited to, a health benefit program sponsored by the present employer of the retiree or the employer of the spouse of the retiree. Any retiree who fails to notify the City that the retiree is a participant in another health benefit program shall be required to pay the entire cost of retiree health benefits offered by the City and shall not be entitled to receive any monthly group health benefit subsidy from the City.

- iv. Employees that retire and are eligible for group life and health benefits pursuant to Section 2(a)(i) shall not be eligible for any additional benefit(s) identified under Section 2(a)(ii).
- v. Retired employees identified in Section 2 who are eligible to enroll into Medicare parts A and B may choose to enroll in the City sponsored Medicare (Advantage) Plan in lieu of the group health plan offered by the Health Insurance Trust. The City shall bear the cost of the Medicare (Advantage) Plan and reimburse the cost of Medicare Part B for the retired employees identified in Section 2(a)(i), and provide the subsidy identified in Section 2(a)(ii) for retirees covered under that section. The Health Insurance Trust shall not receive payment for any member participating in the Medicare (Advantage) Plan.

Section 3 - Retiree Health Insurance Fund

The Union shall take whatever steps necessary to create a retiree health insurance fund ("Fund") for the purposes of providing a supplemental benefit to retired firefighters in order to reduce the costs of health insurance in retirement for those who do not otherwise have their health insurance premiums paid pursuant to the terms of this Agreement. The Fund shall be established pursuant to Section 501(c)(9) of the Internal Revenue Code. The composition of the Board of Trustees, the plan of benefits, and all other matters relating to the establishment and operation of the Fund shall be at the sole discretion of the Union and then, after its establishment, the Board of Trustees of the Fund. The City shall have no responsibility or liability for the establishment or operation of the Fund and shall have no obligation to provide funding for the Fund or the benefits provided by the Fund except as expressly provided in this Agreement.

Section 4 – Indemnification & Hold Harmless

The Union agrees to indemnify, defend, and hold harmless the City, its elected officials, its employees, agents and legal counsel from any and all claims, including liabilities, losses, damages, fines, costs, fees, and expenses, including, but not limited to, attorney's fees and costs arising out of or in any way related to the implementation, administration, or maintenance of the Health Insurance Trust or Retiree Health Insurance Fund or failure to comply with the City's Section 125 Plan.

Article 19 Liability Insurance

Section 1 – Liability Insurance

The City will provide liability insurance to defend every member of the bargaining unit who is acting within the scope of his/her duties, in any suit alleging liability as a result of the City's operations. If the City purchases additional liability coverage for City departments, the same coverage will be afforded the Fire Department.

Article 20 Rules & Regulations

Section 1 - Rules and Regulations

The provisions of the "Personnel Rules and Regulations" (Chapter 2, Article 3, of the City of Cape Coral Code of Ordinances) as such Ordinance may be amended from time to time, shall be incorporated in this Agreement as if those provisions were fully set forth herein, and shall be applicable to all employees.

<u>Section 2 – Administrative Regulations</u>

The provisions of the City's "Administrative Regulations", as such Administrative Regulations may be amended from time to time, shall be incorporated in this Agreement as if those provisions were fully set forth herein, and shall be applicable to all employees.

Section 3 - Conflict

In the event of a conflict between "Personnel Rules and Regulations (Chapter 2, Article 3, of the City of Cape Coral Code of Ordinances)" as may be amended from time to time, or between the Administrative Regulations, as may be amended from time to time, and this Agreement, the express provisions of this Agreement shall govern.

Section 4 – Amendments or Modifications

The parties agree to meet and bargain over amendments or modifications to "Personnel Rules and Regulations (Chapter 2, Article 3, of the City of Cape Coral Code of Ordinances)" as may be amended or City's Administrative Regulations, as may be amended in accordance with Chapter 447, Florida Statutes.

Article 21 Strikes

Section 1 - Definition of Strike

The definition of "strike" is that contained in Florida Statutes, Chapter 447, Section 447.203 (6), or as such Section may be amended.

Section 2 - Prohibition of Strikes

Union agrees that there shall be no strikes as defined in this Article. In the event of any breach of this Article, Union agrees that City shall have all statutory rights of recourse as contained in the provisions of Florida Statutes, Chapter 447, or as such Chapter shall be amended.

Section 3 - Prohibition of Lockouts

City agrees that nothing in this Article shall prohibit otherwise lawful informational picketing. City further agrees that it shall not lock out employees for the duration of this Agreement.

Article 22 Jury and Court Related Duty

Section 1 – Jury Duty

Employees who are called for jury duty during their scheduled work time shall not lose any pay or benefits as the result of said jury service. In addition, employees shall be entitled to retain any monies paid to them by the court for jury service.

Employees chosen for jury duty shall be excused from duty a minimum of two (2) hours prior to the time the employee is scheduled to report for jury duty. Employees who are not excused from jury duty until 5:00 p.m. or later shall be excused from duty for the remainder of their shift.

Section 2 - Subpoena and/or Stand by for Trial or Deposition

Overtime shall be paid to the employee in accordance with Article 11 - Overtime for the purpose of this section regarding being subpoenaed, put on stand-by or deposed for business relating to the CCFD.

"Stand by for Trial or Deposition" shall be defined as: Any employee who is notified by the Fire Chief or designee, or by a court-appointed official, to stand-by at a communication contact point to facilitate a response to a trial or deposition.

Article 23 Educational Reimbursement

Section 1 - Education/Training

To be eligible for educational reimbursement, employees must have regular status and have completed their initial probationary period prior to starting the class. Reimbursement applies to college-level degree seeking programs through an accredited college or university that yields academic credit. Accreditation is determined by the U.S. Department of Education. Degree programs may be traditional on-site, satellite, distance, and/or web based.

Degree programs must be designed to enhance the knowledge, skills, and abilities relating to the official duties that the employee performs, or for a promotional position. There are no positions within the Fire Department that require a Doctorate degree. Therefore, the City will not reimburse employees for any courses that are taken as part of a Doctoral degree program.

A maximum of \$3,500 for books and tuition expenses will be authorized per employee per fiscal year, if funds are available. Only costs for tuition (including required fees) and books (including shipping and online books) are eligible for educational reimbursement. All reimbursements will be based upon the employee's final grade according to the following scale:

- 100% for a grade of "A"
- 75% for a grade of "B"
- 50% for a grade of "C"
- 0% for a grade of "D," incomplete or withdrawal

Non-graded courses or courses that utilize a pass/fail criteria will be reimbursed at a rate of 70% upon satisfactory completion of the course and the receipt of a passing grade.

Prior to taking any courses all employees shall submit the "Educational Reimbursement Request Form" as provided for in City of Cape Coral Administrative Regulations along with a copy of the course description to the Fire Chief or designee. Employees must receive prior written approval of the Fire Chief or designee, and the Human Resources Director or designee prior to taking any courses in order to be entitled to education reimbursement as provided in this section.

Employees approved for attendance in an educational program must pay for tuition and books directly and must be accepted for enrollment by the institution offering the program. The employee shall submit the original transcript of their grades, an original itemized receipt for books, and an itemized receipt showing payment for classes to the City's Human Resources Department within thirty (30) calendar days of course completion to be eligible for reimbursement. No course work may be performed during work hours unless prior approval is obtained from the Fire Chief or designee.

Initial approval of courses does not obligate the City to future/continued approval of courses in the degree program. Approvals are only valid for the course and semester requested. Miscellaneous expenses such as supplies, taxes, late fees, and voluntary dues and fees are not reimbursable.

Reimbursement under this policy will be reduced by any other financial aid that does not have to be repaid such as grants, scholarships, GI Bill, Florida Pre-Paid Program, or tuition discounts. There may be tax consequences or imputed income to employees participating in this program.

If an employee voluntarily terminates employment within one (1) year of receiving an education reimbursement, the employee shall immediately refund the reimbursement to the City. If the employee fails to do so in a reasonable period of time, the City may deduct the amount of the reimbursement from any monies that may be due the employee upon termination.

Section 2 - Non-Degree Education/Training

A minimum of \$5,000 (\$300 maximum per employee) will be authorized per fiscal year, if funds are available. Only costs for tuition (including required fees) and books (including shipping and online books) are eligible for educational reimbursement. Authorization will be by the Fire Chief or designee, on a first come first served basis.

Reimbursement applies to non-degree education/training related to fire, special operations or emergency medical service (EMS) classes at non-accredited institutions.

Non-degree education/training may be traditional on-site, satellite, distance, and/or web based.

Non-degree education/training must be designed to enhance the knowledge, skills, and abilities relating to the official duties that the employee performs or for a promotional position.

Prior to taking any courses, all employees shall submit the CCFD Non-Degree Education/Training form, along with a copy of the course description, to the Fire Chief or designee. Employees must receive prior written approval of the Fire Chief or designee prior to taking any courses in order to be entitled to reimbursement as provided in this section.

Employees approved for attendance in a non-degree education/training program must pay for tuition, books, uniforms, lab fees, and other required costs directly and must be accepted for enrollment by the institution offering the program. Approvals are only valid for the course and semester requested. The employee shall submit the original transcript of their grades, an itemized receipt showing payment for the class(es), and an original itemized receipt for the reimbursable costs as identified above, to the Fire Chief or designee, within 30 calendar days of course completion to be eligible for reimbursement.

Article 24 Bulletin Boards

Section 1 - Bulletin Board

The City shall furnish one (1) bulletin board at each fire station or fire department work site, to post Union information. The furnished board shall be a minimum size of 36"H X 48"W. Posted information shall be subject to review by the Fire Chief.

Article 25 Station Facilities

Section 1 - Station Facilities

The City shall provide and maintain the following fixtures, equipment and supplies at each fire station:

- ✓ Beds
- ✓ Mattress covers
- ✓ Lockers: one (1) per employee (H72" x W18" x D20")
- ✓ Stove with conventional oven
- ← Propane Grill
- ✓ Microwave oven
- ✓ Washing machine
- ✓ Dryer
- ≺ Refrigerator and freezer
- ✓ Non-aluminum pots and pans
- ✓ Dishwasher
- ← Coffee maker
- Air conditioning and heating units for living, kitchen, bunk, day, bathrooms and watch quarters
- ≺ Table, chairs and proper seating arrangements in kitchen and living areas
- ✓ Janitorial and cleaning supplies
- ← Housewares, including plates, cups, glasses, utensils, bake ware and microwave dishes
- Exercise equipment as established by the Health & Safety Committee process and approval
 of the Fire Chief
- Television for in the main living area and other audio-visual training aids as approved by the Fire Chief or designee

The City shall not be responsible for providing food or linens.

Employees shall be responsible for maintaining all station facilities, provided that station personnel shall not be required to perform any maintenance or repair which would require a building permit, or which is currently being performed by Facilities Management.

Section 2 - New Fire Stations

Any new fire stations opened during the duration of this Agreement shall contain the foregoing fixtures, equipment and supplies.

Article 26 Uniforms and Personal Protective Equipment

Section 1 - Uniform Allowance

On October 1st, of each fiscal year, the City shall credit each employee of the bargaining units with a Uniform Allowance to be used towards the purchase of Department Uniforms. The Uniform Allowance credited to each employee shall be as follows:

- > Shift Employees (rank of Firefighter, Fire Engineer/Driver, or Fire Lieutenant): five-hundred dollars (\$500.00).
- Non-Shift Employees (rank of Fire Lieutenant or Fire Inspector or Fire Marshal): six-hundred-twenty dollars (\$620.00).
- ➤ The rank of Fire Battalion Chief: six-hundred-twenty dollars (\$620.00).

Each employee's Uniform Allowance balance shall expire and be reduced to zero dollars (\$0.00) prior to receiving their new fiscal year credit amount. The expiration and reduction shall occur at midnight (00:00:00 hours), June 16th of each year.

New Hire Proration:

New hires shall have the above-referenced amount prorated as follows: The total Uniform Allowance shall be divided by three-hundred-sixty-five (365). Then, that remaining amount shall be multiplied times the amount of days between the employee's hire date and the following September 30th. All computations will be rounded to the nearest hundredth's place.

Section 2 -Shoes and Boots

Athletic shoes and duty shoes/boots must be approved by the Fire Chief or designee. Duty shoes/boots must meet American Section of the International Association for Testing Materials (ASTM) standards.

Employees are authorized to purchase a total of three pairs of athletic shoes and/or duty shoes/boots per fiscal year utilizing their Uniform Allowance.

Athletic shoes and duty shoes/boots are reimbursable as follows:

- 1. The City shall not reimburse any portion of the purchase amount that exceeds the employee's current Uniform Allowance balance.
- 2. Reimbursement shall be made to the employee, by the City, within thirty (30) calendar days following the submission of the request for reimbursement.

Section 3 - Uniform Catalog

The Department shall publish an updated Uniform Catalog which shall include all uniform items available for ordering. The Uniform Catalog shall be updated within ten (10) business days following the previous uniform order submission deadlines. The Uniform Catalog shall include, but not be limited to, the following:

- Color picture of each uniform item (front and rear of apparel)
- Available size/sizing information
- Manufacturer, style name/number
- Component specifications
- Uniform order form with uniform item cost to employee

Uniform items approved by the Labor/Management committee will be added or removed to the Uniform Catalog. Pricing of all uniform items will be based on the actual cost of the item including shipping and handling.

Section 4 - Uniform Ordering System

Employees can order uniforms utilizing the ordering system any time between October 1st and June 15th.

Employees can submit for reimbursement for athletic shoes, duty shoes/boots any time between October 1st and June 15th. The employee must complete and submit a request for reimbursement with a valid receipt prior to the submission deadline.

Section 5 - Uniform Distribution

A. Initial hire as a Firefighter:

Upon initial hire as a Firefighter, and within thirty (30) calendar days of hire date, the City agrees to furnish employees with the following: (timelines shall be strictly enforced except in cases involving external factors beyond the control of the City):

- One (1) of all of the current Class A uniform item(s)
- One (1) Class B uniform shirt
- ➤ Ten (10) Class C uniform shirts (employee preference/combination of short and/or long sleeve)
- > Six (6) Class C uniform pants
- > One (1) Department Class C ball cap
- One (1) Department Class C long-sleeved job shirt
- One (1) Department Class C winter jacket
- > One (1) Department pair of athletic shorts

B. Promotion:

Upon promotion and within thirty (30) calendar days, the City agrees to furnish the promoted employee with the following:

- (a) To Fire Engineer/Driver
- One (1) badge with new rank
- > One (1) nameplate with new rank (if applicable)
- One (1) set of new rank collar brass

- (b) To Fire Lieutenant
- One (1) Department Class A white long-sleeved dress shirt
- One (1) Department Class B white short-sleeved dress shirt
- One (1) Class A hat and hat badge with new rank
- One (1) nameplate with new rank (if applicable)
- Update of new rank insignia on the cuffs of the employee's class A jacket
- One (1) set of new rank collar brass
- Ten (10) new rank Class C uniform shirts (employee preference/combination of short and/or long sleeve)
- > One (1) new rank Class A Belt with buckle
- Non-Shift Fire Lieutenant promotion only: Six (6) Department Class C collared work shirts
- (c) To Fire Battalion Chief
- One (1) nameplate with new rank (if applicable)
- > One (1) badge with new rank
- One (1) new rank Class A hat badge
- Update of new rank insignia on the cuffs of the employee's Class A jacket
- One (1) set of new rank collar brass
- Five (5) new rank Department Class C work shirts (employee preference/combination of short and/or long sleeve)
- > Six (6) updated with new rank. Department Class C collared work shirts
- (d) To Fire Marshal
- One (1) nameplate with new rank (if applicable)
- One (1) badge with new rank
- > One (1) new rank Class A hat badge
- Update of new rank insignia on the cuffs of the employee's Class A jacket
- One (1) set of new rank collar brass
- > Two (2) Class A white long-sleeved dress shirt
- (e) To Fire Inspector
- > One (1) nameplate with new rank (if applicable)
- One (1) badge with new rank
- > One (1) new rank Class A hat badge
- One (1) set of new rank collar brass
- > Two (2) Class A long-sleeved dress shirt
- > Two (2) Class B short-sleeved dress shirt
- ➤ Eight (8) updated with new position, Department Class C collared work shirts (employee preference/combination of short and/or long sleeve)

Section 6 - Temporary Uniforms

a) Fire Lieutenant who is eligible to temporarily upgrade to the position of Shift Fire Battalion Chief shall be eligible to purchase (with their uniform credit) from the uniform catalog the white, Class-

- C, collared work shirt with their name/position embroidered on it. This uniform shirt shall only be worn when temporarily upgraded to Fire Battalion Chief, and only during the appropriate time(s) or day(s) approved by the Fire Chief or designee.
- b) Field Training Officers shall be eligible to purchase (with their uniform credit) from the Uniform Catalog the rank appropriate colored, Class C, collared work shirt with their name/position embroidered on it. This uniform shirt shall only be worn when temporarily authorized during the appropriate time(s) or day(s) approved by the Fire Chief or designee.

Section 7 - Personal Protective Equipment

Personal Protective Equipment (PPE) shall be in accordance with National Fire Protection Association (NFPA) Standards and the Health and Safety Committee recommendations. Such equipment shall consist of, but not be limited to, the following:

- > One (1) personal helmet
- > Two (2) personal protective hoods
- One (1) personal safety glasses
- > Two (2) personal bunker coats
- Two (2) sets of personal gloves (structural)
- > Two (2) personal suspenders
- > Two (2) personal bunker pants
- > Two (2) pair personal leather bunker boots
- One (1) personal self-contained breathing apparatus (SCBA) mask
- One (1) protective bag for personal SCBA mask
- One (1) wildland fire mask
- One (1) pair of extrication gloves
- > One (1) personal raincoat
- One (1) personal safety line with bag
- > Three (3) personal passport tags
- > Two (2) gear bags
- > One (1) non-pressurized respiratory protective mask (Bureau of Life Safety personnel only)

Newly hired personnel may only receive one (1) set of PPE until completion of probation. Employees shall be furnished the PPE by the City within ninety (90) calendar days (except in cases involving external factors beyond the control of the City)

If a promotion requires a change in PPE, employees shall be furnished the PPE by the City within ninety (90) calendar days (except in cases involving external factors beyond the control of the City)

Section 8 - Maternity Uniform

The Department shall make every effort to provide maternity uniforms as similar as possible to the uniforms defined in this article. The maternity uniforms will be furnished to the employee and will not be deducted from the employee's uniform allowance. The City agrees to furnish pregnant employees with the following:

- Four (4) Class C uniform shirts (employee preference/combination of short and/or long sleeve)
- > Four (4) Class C uniform pants

Section 9 - Honor Guard Uniform

The Department shall form and maintain an Honor Guard. Honor Guard members will be furnished an Honor Guard uniform, that will not be deducted from the employee's uniform allowance.

Section 10 – Uniform Alteration

Employees may use the available balance of their Uniform Allowance to tailor their Class A and Class B uniforms. Tailoring of shirts shall be in accordance with generally accepted guidelines for semi-form fitting apparel.

Uniform Alterations are reimbursable as follows:

- 1. The City shall not reimburse any portion of the alteration amount that exceeds the employee's current Uniform Allowance balance at the time the submission of the request for reimbursement is received by the Department.
- 2. Reimbursement shall be made to the employee, by the City, within thirty (30) calendar days following the submission of the request for reimbursement.

Employees can submit for reimbursement for uniform alterations any time between October 1st and June 15th. The employee must complete and submit a request for reimbursement with a valid receipt prior to the submission deadline.

Section 11 - Damaged Uniform Items

If any items as outlined in this Article are damaged during work hours, during normal use in performance of duties, and upon completing the proper paper work (CCFD "Uniform/Uniform Accessory Order Form"), the City will provide replacements (at no cost to the employee's annual credit) within thirty (30) calendar days (except in cases involving external factors beyond the control of the City).

Section 12 – Retention of Items

Upon retirement, an employee shall retain the following Uniform items:

- Most recently issued Class A uniform (as defined in Uniform Catalog)
- Most recently issued helmet
- One (1) Retiree Badge

An employee who dies prior to retirement, shall have the following Uniform items presented to his/her spouse or immediate family member:

- Most recently issued Class A uniform (as defined in Uniform Catalog)
- Most recently issued helmet

Article 27 Temporary Upgrade

Section 1 – Temporary Upgrade Pay

Employees, who are temporarily assigned to a position higher than their normal rank or classification, will receive remuneration in the amount of ten percent (10%) additional for time worked above their present rank or classification.

Section 2 - Temporary Upgrade Assignment Preferences

By October 1st all Shift Acting Fire Engineer/Drivers and Acting Fire Lieutenants shall submit one acting out-of-title assignment preferences to their Fire Battalion Chief (Shift). Acting out-of-title assignment preferences shall be limited to the following:

- Act anywhere at any time for any duration
- Act only at their assigned station

These preferences shall be maintained and utilized by the Shift Fire Battalion Chief to determine daily acting out-of-title assignments for the fiscal year and may not be changed by the employee until the next preference process. If the classification selection process is fully exhausted the least senior employee meeting the required criteria shall be selected for temporary upgrade assignments. Any employee who earns acting out-of-title privileges after October 1st shall submit their acting out-of-title assignment preferences upon earning the privilege.

Section 3 -Suspension and/or Revocation of Temporary Upgrade Privileges

Suspension of Temporary Upgrade Privileges can be authorized by an employee's immediate supervisor. The employee's immediate supervisor shall provide just cause in writing to the employee and the Fire Chief or designee, within ten (10) calendar days of the suspension. The Fire Chief or designee shall initiate an inquiry within ten (10) calendar days of said suspension.

Revocation of Temporary Upgrade Privileges can only be authorized by the Fire Chief or designee. The Fire Chief or designee shall provide just cause in writing to the employee within ten (10) calendar days of the revocation. An employee who has had their Temporary Upgrade Privileges revoked must go back through the Proficiency Process to re-acquire his/her Temporary Upgrade Privileges.

Any employee who voluntarily relinquishes their temporary upgrade privileges shall be required to reapply if they choose to regain their temporary upgrade privileges.

Section 4 – Temporary Upgrading Criteria

Employees must successfully meet the following criteria to be eligible for a temporary upgrade assignment (to "act out-of-title"): In the event of insufficient available personnel meeting these criteria at any given time, the Fire Chief or designee shall exercise discretion and either call in overtime or temporarily (less than twenty-four [24] hours) utilize the most senior person who the Fire Chief or designee reasonably believes is qualified to temporarily fill the vacancy.

Note: Upon ratification of this collective bargaining agreement, anyone currently qualified to temporarily upgrade shall remain qualified.

- (a) Fire Fighter Temporarily Upgrading to Fire Engineer/Driver:
 - > Twenty-four (24) months of continuous employment as a Fire Fighter with the CCFD State of Florida Pump Operator Certification
 - > CCFD Fire Fighter Acting as Fire Engineer/Driver Proficiency Certification.
- (b) Fire Engineer/Driver Temporarily Upgrading to Fire Lieutenant
 - Twenty-four (24) months of continuous employment as a Fire Engineer/Driver with the CCFD
 - State of Florida Fire Officer I Certification
 - > CCFD-Fire Engineer/Driver Acting as Fire Lieutenant Proficiency Certification.
- (c) Fire Lieutenant Temporarily Upgrading to Fire Battalion Chief
 - Twelve (12) months of continuous employment as a Fire Lieutenant with the CCFD
 - > State of Florida Fire Officer I certification
 - CCFD-Fire Lieutenant Acting as Fire Battalion Chief Proficiency Certification.
- (d) Fire Inspector Temporarily Upgrading to Fire Marshal of Life Safety
 - > Twenty-four (24) months of continuous employment as a Fire Inspector with the CCFD. The Fire Chief/Emergency Management Director may lower that time constraint depending on the employee's previous performance, knowledge, and experience.
 - Completion of the State of Florida Fire Officer I certification
 - > CCFD-Fire Inspector Acting as Fire Marshal Proficiency Certification.

Section 5 - Distribution of Temporary Upgrade Hours

(a) Shift:

For any vacancy employees meeting the temporary upgrading criteria at that particular station shall exercise a fair distribution of temporary upgrading hours. If all of the qualified employees are off duty at Station requiring an upgrade, said vacancy shall be by classification (rank) seniority on that shift from employees meeting the temporary upgrading criteria and Temporary Upgrade Assignment Preferences.

For any scheduled vacancy of five (5) consecutive tour days or more, that has required a reassignment (e.g. Light Duty, Special Project, Vacant FTE position, etc.) the filling of that vacancy shall be based on classification (rank) seniority on that shift from members meeting the temporary upgrading criteria and Temporary Upgrade Assignment Preferences

(b) Non-Shift:

For any scheduled vacancy of four (4) business days or more, the employee with the most classification/rank seniority assigned to that specific division from which the vacancy occurred shall temporarily upgrade to that vacancy, provided he/she meets the temporary upgrading criteria.

For any vacancy of three (3) business days or less, the Fire Chief or designee shall exercise a fair distribution of temporary upgrading hours to those employees which meet the temporary upgrade criteria within the specific division of said vacancy.

Section 6 - Temporary Upgrading Assignment for Shift to Non-Shift

In the event that there are no employees in a Non-Shift work schedule who meet the temporary upgrade criteria for a specific vacancy, employees in a Shift work schedule who meet the temporary upgrade criteria may fill said vacancy.

The parties agree during the temporary assignment, that the shift employee will work a Non-Shift work schedule (in accordance with Article 10 - Work Schedules/Hours of Duty) but will continue to be paid and accumulate all benefits as a Shift employee.

Employees who are on a Temporary Upgrading Assignment from Shift to Non-Shift shall receive ten percent (10%) remuneration (in accordance with Section 1), which shall include any overtime hours worked in connection with the Temporary Upgrading Assignment. Any overtime not associated with the Temporary Upgrading Assignment shall be paid in accordance with Article 11 - Overtime.

Section 7 - Temporary Upgrading Assignment for Special Project

It is agreed between the City and the Union to assign a qualified Shift employee to a Non-Shift position for any special project. This specific temporary assignment will be on a voluntary basis and encompass working on a designated special project within the CCFD.

This position will be filled on an as needed basis, as mutually determined and agreed upon by the Fire Chief and the Union President on the "Temporary Assignment for Special Project Form." The Union President and the Fire Chief or designee shall mutually agree upon the duration of this temporary assigned special project on the "Temporary Assignment for Special Project Form."

The criteria and the selection process for this position shall be mutually agreed upon by the Fire Chief or designee and the Union President prior to the position being filled on the "Temporary Assignment for Special Project Form." The temporary assignment will continue for the agreed upon duration as set forth above unless the employee assigned to this temporary position chooses to return to his/her original position or if the temporary assignment is no longer needed due to the designated special project having been completed.

The parties agree during the temporary assignment, that the shift employee will work forty (40) hours a week (in accordance with Article 10 - Work Schedules/Hours of Duty) but will continue to be paid and accumulate all benefits as a Shift employee.

Employees who are on a Special Project shall receive ten percent (10%) remuneration (in accordance with Section 1), which shall include any overtime hours worked in connection with the Special Project. Any overtime not associated with the Special Project shall be paid in accordance with Article 11 - Overtime.

The "Temporary Assignment for Special Project Form" can be found in the Appendix of this Agreement.

Article 28 Pension

The Union and the City agree that the pension plan known as the "City of Cape Coral Municipal Fire Fighters' Pension Trust Fund" (hereinafter referred to as the Retirement Plan) has been discussed and it is agreed that any changes in the plan shall be ratified by the Union and the City. Both parties also agree that the Pension Board of Trustees shall administer the pension plan.

The parties further agree that prior notification of all Pension Board meetings, nominations, election notices, as well as copies of meeting agendas, minutes, and all other pertinent information be furnished by the Pension Plan Administrator/Pension Board to the individual Fire Station's Bulletin Boards. The Pension Plan Administrator/Pension Board further agrees to furnish the Union with the above-mentioned pertinent information, including any additional data relating to both Investment Performance and Actuarial statements.

Section - 1 Pension & Retirement Benefits

The City will maintain pension benefits for its currently retired employees and for its current employees in accordance with the Retirement Plan which may be modified or changed from time to time pursuant to negotiations with the Union.

The City and Union agree that the bargaining unit employee's contribution to the Retirement Plan shall be ten percent (10%) of pensionable wages and 10% of overtime wages for the first 300 hours of overtime accrued in a calendar year. (Any concomitant requisite benefit adjustment to be addressed upon mutual agreement.)

- A. Upon ratification of this Agreement by both parties and the subsequent enactment of any necessary amended City Ordinance, the following changes to the Retirement Plan shall be effective for all current and future members of the Retirement Plan:
 - (1) The maximum annual benefit cap when initially calculated in its normal form shall be the actuarial equivalent of \$95,950.00 (as of October 1, 2018), except as provided for in subsection (2) below. The cap on annual benefits shall not apply after retirement, e.g., a member's annual benefit may exceed the cap as a result of a cost of living adjustment.
 - (2) For each year the Retirement Plan is at least eighty percent (80%) funded in accordance with the annual actuarial report, the benefit cap shall be increased by a one percent (1%) index.
 - (3) Vesting in the Retirement Plan shall occur upon the completion of 10 years of credited service. Current employees with less than 10 years of credited service shall have their current vesting percentage frozen and increased to one hundred percent (100%) upon the completion of 10 years credited service.
 - (4) A Member's Deferred Retirement Option Plan (DROP) account balance shall be completely disbursed by the Retirement Plan, at the request of the member, within 120 months of the member's separation from service.
 - (5) Participants in the Retirement Plan are allowed to pay the cost of purchasing prior service credits over the course of up to sixty (60) months from the date of approval of a request to purchase prior

service credit so long as the cost is paid prior to the participant's date of retirement, including entry into the DROP.

- (6) A supplemental benefit plan exists, commonly known as a share plan, for the provision of special benefits as required by Chapter 175.351(6), Florida Statutes. At this time the parties acknowledge that such supplemental/share plan will not be funded because the parties mutually consent to continue to utilize monies received pursuant to Chapter 175, Florida Statutes, in the same manner as such monies were utilized at the time of implementation of this agreement. The terms of participation in the supplemental/share plan shall be bargained by the parties at the time, if ever, that the supplemental/share plan is to be funded.
- B. Upon ratification of this Agreement by both parties and the subsequent enactment of any necessary amended City Ordinance, the following changes to the Retirement Plan shall be effective for all members of the Retirement Plan hired on or after April 1, 2014:
 - (1) The normal retirement age shall be the earlier of age 52 and 10 years of credited service or 25 years of credited service regardless of age.
 - (2) Cost of living adjustments shall commence on October 1st following three (3) completed years of retirement income payments. The cost of living increase shall equal three percent (3%) and the first payment shall be prorated according to the number of months the member retired prior to October after being retired for three (3) years.
- C. Chapter 175 monies in excess of \$1,314,942.15 will be split 50/50, allocating fifty percent (50%) to defray the City's annual required pension costs and the remaining fifty percent (50%) reserved for additional membership benefits. For purposes of this agreement, the funded ratio is defined on each valuation date by dividing the Actuarial Value of Assets by the Total Entry Age Normal Actuarial Accrued Liability, both values as reported in the Plan's actuarial valuation report.

Section 2 – Future Benefit Improvements

The City and the Union agree to pursue a common ground in regard to additional pension improvements, as finances become available.

Section 3 – Board of Pension Trustees

The makeup of the Pension Board shall consist of the following five (5) total members:

- > Two residents appointed by the City
- Two Fire Fighters elected by a majority vote of the pension plan members.
- The fifth (5th) person shall be appointed by the above noted four (4) Board Members. The name(s) for the fifth (5th) appointed Board Members shall be submitted by the Fire Pension Plan members.

Section 4 - Nominations and Elections to the Pension Board

The Pension Plan Administrator in compliance with the Fire Fighters Pension Board shall send out a notice of nominations to the Pension Board form to all members, each August. Persons nominated for Trustee(s) positions shall be notified of such by the Pension Plan Administrator. Upon the member being notified of being nominated by the Pension Plan Administrator, the member shall confirm their intention to

run for said position by submitting a (signed/dated) letter of interest to the Pension Plan Administrator no later than two (2) weeks prior to the elections. Members failing to submit a letter of interest within the proper time period shall not be qualified to be placed on the election ballot by the Pension Plan Administrator. The names of the qualified nominees shall be verified and sent out by the Pension Plan Administrator to be posted in all fire stations, the Fire Chief's Office and faxed to the Union Office one (1) week prior to the election, along with the date, time, and location of elections. The terms of the Trustees shall be for no more than four (4) years, with nominations being in August, and elections being in September. There shall be no limit to consecutive terms. Both Firefighters shall have alternate term years and both citizens shall have alternate term years. The fifth (5th) appointed position of the Pension Board shall be filled on the odd numbered years at the Pension Board Meeting following the September election, unless a vacancy occurs. If a vacancy occurs for any of the Pension Board positions, members shall be notified by the Pension Plan Administrator no later than five (5) working days (Monday-Friday) after the Pension Plan Administrator has been notified of such vacancy. The City and the Union agree to fill such vacant position(s) at the earliest convenience. Vacancies shall be filled in accordance with Article 28.

Article 29 Longevity Buy-out

Section 1 - Longevity Buy-Out

A longevity premium was discontinued and in consideration of that discontinuation of the longevity premium, employees in the Bargaining Unit shall continue to receive a longevity buy-out.

Employees in the Bargaining Unit shall have their regular rate of pay, under the Career Advancement & Performance Enhancement (C.A.P.E.) System, increased on each employee's pay check as a separate line item (add-pay) by an amount based on a percentage of his or her regular rate of pay as of September 30, 1997, as follows:

Between October 1, 1989 and September 30, 1990......2.25%

All increases took effect by the first (1st) bi-weekly payroll period beginning after October 1, 1998 and will continue until each employee severs his employment with the City of Cape Coral.

Article 30 Hiring, Promotions, Demotions, and Vacancy Procedures

All terms and conditions related to hiring, promotions, demotion, and vacancy procedures, not specifically referenced within this Agreement, shall fall under the City of Cape Coral Administrative Regulations and Personnel Ordinance.

Section 1 - Notice/Freezing of Vacancy

Upon the Fire Chief or designee becoming aware of an actual or anticipated vacancy, new promotions or positions occurring within the bargaining unit at any time, the Fire Chief or designee shall notify all employees

The parties agree that the Fire Chief or designee may elect to freeze the filling of a vacancy. If the filling of a vacancy is frozen, the eligibility list(s) duration defined in Section 5 of this article shall also be frozen/extended automatically and concurrently equal to the duration of the frozen position. Such extension of the list shall be in addition to the parameters outlined in Section 5(a) (i.e., Fire Chief or designee freezes the filing of a position for one year then the eligibility list(s) duration is also frozen/extended for one year).

Section 2 - Fire Lieutenant or Fire Battalion Chief Vacancy

The following conditions and timelines apply:

- In the case of submitting a change in work schedule request from Shift to Non-Shift (or conversely) to fill a Fire Battalion Chief vacancy, the respective Fire Battalion Chief must have held the position of Fire Lieutenant (assigned to Shift) for the Cape Coral Fire Department.
- Selection shall be by Rank Seniority of those Fire Lieutenant(s) or Fire Battalion Chief(s) that submit a change in work schedule request. The individual Fire Lieutenant or Fire Battalion Chief must have successfully completed six (6) months as a Fire Lieutenant or Fire Battalion Chief, whichever is applicable, prior to submitting a change in work schedule request. The Fire Chief may waive the six (6) month timeline.

(a) Non-Shift:

Upon the Fire Chief or designee becoming aware of either an actual or anticipated vacancy to any Non-Shift Fire Lieutenant or Fire Battalion Chief position, the Fire Chief or designee shall first (1st) offer this vacant position to all current Fire Lieutenants or Fire Battalion Chief's based on rank seniority with the most senior Fire Lieutenant or Fire Battalion Chief being given the first (1st) opportunity to fill the Non-Shift Fire Lieutenant's position.

The Shift Lieutenant or Fire Battalion Chief shall have seven (7) calendar days following the actual vacancy in which to respond, in writing to the Fire Chief or designee his/her intent to accept the Non-Shift Lieutenant's or Fire Battalion Chief's position. If all current Shift Fire Lieutenants or Fire Battalion Chief's decline to accept the position as set forth above, then the Fire Chief! or designee shall fill the vacant position from the most current Fire Lieutenant's or Fire Battalion Chief's Promotional Eligibility List.

(b) Shift:

Upon the Fire Chief or designee becoming aware of either an actual or anticipated vacancy to any Shift Fire Lieutenant or Fire Battalion Chief position the Fire Chief or designee shall first (1st) offer this vacant position to all current Non-Shift Fire Lieutenants or Fire Battalion Chief's based on rank seniority with the most senior Non-Shift Fire Lieutenant or Fire Battalion Chief being given the first (1st) opportunity to fill the Shift Fire Lieutenant's or Fire Battalion Chief's position. The Non-Shift Lieutenant or Fire Battalion Chief shall have seven (7) calendar days following the actual vacancy in which to respond, in writing to the Fire Chief or designee his/her intent to accept the Shift Lieutenant's or Fire Battalion Chief's position. If all current Non-Shift Fire Lieutenants or Fire Battalion Chief's decline to accept the position as set forth above, then the Fire Chief or designee shall fill the vacant position from the most current Fire Lieutenant's or Fire Battalion Chief's Promotional Eligibility List.

The respective bargaining unit member rated the highest on the Fire Lieutenant's or Fire Battalion Chief's promotional eligibility list will then be given the opportunity to accept or decline the position. If declined by the highest rated employee on the Fire Lieutenant's or Fire Battalion Chief's promotional eligibility list, the Fire Chief or designee will then continue to offer the vacant position(s) to bargaining unit members on the current Fire Lieutenant's or Fire Battalion Chief's promotional eligibility list for the Fire Lieutenant or Fire Battalion Chief position in descending chronological order (i.e., from the highest rated employee on the Fire Lieutenant's or Fire Battalion Chief's eligibility list, downward) until the position is eventually filled.

<u>Section 3 – Vacancy Notification/Filling of or Testing for Vacancy</u>

The Fire Chief or designee shall make notification not later than fourteen (14) calendar days after an actual vacant position exists in accordance with Section 1. In addition, the Fire Chief or designee shall fill promotional vacancies no later fourteen (14) calendar days after an actual promotional vacancy exists, provided an eligibility list exists for that classification. If an eligibility list does not exist for the classification, the Fire Chief or designee shall begin testing for the promotional vacancy no later than sixty (60) calendar days after the actual promotional vacancy position exists.

Section 4 - Examination Procedures

Whenever a position within the Fire Department becomes available as per Section 1, the Fire Chief or designee, shall prepare selective criteria for the position(s). All examinations will be designed to fairly and impartially assess the merit, experience and other qualifications of an applicant to perform the duties of the classification.

Examinations shall consist of the following weighted criteria:

| Fire Engineer/Driver | Weight |
|-----------------------|--------|
| Practical Examination | 60% |
| Written Examination | 30% |
| Education | 5% |
| Time in Grade | 5% |

| Fire Lieutenant | Weight |
|---------------------|--------|
| Tactical Scenario | 35% |
| Written Examination | 20% |
| Assessment Center | 20% |
| Education | 10% |
| Oral board | 10% |
| Time in Grade | 5% |

| Fire Battalion Chief | Weight | | |
|----------------------|--------|--|--|
| Tactical Scenario | 35% | | |
| Assessment Center | 25% | | |
| Oral board | 25% | | |
| Education | 10% | | |
| Time in Grade | 5% | | |

An employee shall suffer no loss of pay for participation in the promotional examination process.

Sound measurement techniques and procedures shall be used in the scoring of examinations and determining the relative ranking of candidates.

Section 5 - Eligibility List(s)

There shall be an established list by which all available positions shall be filled in accordance with this Article.

- (a) An examinee's name shall remain on the eligibility list for a period of one (1) year, except as otherwise expressed in Section 1 of this Article, from the date that the Human Resources Director or his/her designee certifies the list (said list certification shall not be more than thirty (30) calendar days from the date the testing is completed, unless a grievance is filed, and then said certification date shall start at the final conclusion of said grievance). The Fire Chief or designee may, in writing, extend the entire list one (1) time for a specific rank beyond that date. In no event, except as otherwise expressed in Section 1 of this Article, will an eligibility list be in effect for more than two (2) years from the original certification date of said list.
- (b) Whenever a position becomes available for whatever reason, the Human Resources Director or his/her designee shall certify to the Fire Chief or designee the name of the person(s) to fill such positions, in descending order in accordance with Article 30. The Fire Department shall fill available position(s) with the top name certified in accordance with Article 30. In the event an employee refuses the promotion, that employee's name shall remain on the eligibility list, in its current position, until offered a promotion a second time. In the event an employee refuses a promotion a second time, that employee's name shall be removed from the eligibility list.

Section 6 – Demotions

Employees shall be permitted to displace employees in bargaining unit positions covered under this Agreement. A demoted employee shall be entitled to displace other Fire Department employees provided the demoted employee has previously worked in the classification of the employee to be displaced. The classification of the employee to be displaced must be a bargaining unit position and the demoted employee must have more total continuous years of service in the CCFD than the person being displaced.

An employee, who is demoted, due to the demotion of another employee, shall be offered the next immediate position of the classification from which they were demoted.

- (a) Voluntary (While on Probation): Said employee will be placed back to the rank and step they promoted from, including any step, wage increase(s), and seniority the employee would have been entitled to, provided they never left.
- (b) Voluntary (After Completion of Probation): Said employee shall be placed back to the rank and step they promoted from, including any step and wage increase(s) the employee would have been entitled to, provided they never left. Said employee shall resume rank seniority accrual from where they left off in said rank.
- (c) Involuntary (While on Probation): Said employee will be placed back to the rank and step they promoted from, including any step, wage increase(s), and seniority the employee would have been entitled to, provided they never left.
- (d) Involuntary (After Completion of Probation): Said employee shall be placed back in to a rank at the discretion of the Fire Chief. The employee shall be placed back in the last step they held in said rank, including any step increase(s) and wage increase(s) the employee would have been entitled to, provided they never left. Said employee shall resume rank seniority accrual from where they left off in said rank.

An employee who has promoted outside the Supervisory bargaining unit will be permitted to return to the Supervisory bargaining unit provided they request the return prior to the expiration of their initial promotional probationary period, the Fire Chief approves, and one of the following scenarios exists:

- 1. A qualified bargaining unit member is willing to promote to the position.
- 2. A vacancy exists in the bargaining unit and no eligibility list exists.
- 3. The employee is willing to fill a vacant Firefighter position, which would not result in a member being displaced.

The employee shall be placed back in the last step they held in said rank, including any step increase(s) and wage increase(s) the employee would have been entitled to, provided they never left. Said employee shall resume rank seniority accrual from where they left off in said rank.

Article 31 Career Advancement & Performance Enhancement (CAPE) System

Annually, effective for the first (1st) full pay period of every October, all Bargaining Unit members shall be enrolled in a jointly sponsored Career Advancement & Performance Enhancement (CAPE) system between the CCFD and the Union.

In the CAPE system, each member shall be placed into a specific level within the classification/rank the bargaining unit member holds as of the first (1st) full pay period of the fiscal year (October).

A bargaining unit employee who commenced employment on January 6, 2003, May 9,2005 or July 18, 2005 and was promoted to Lieutenant between November 12, 2011 and December 3, 2016 shall receive an additional one-time step advance in the CAPE system effective with the first full pay period beginning on or after October 1, 2018.

Section 1: FY 2019-21

- (a) Advancement in the CAPE system:
 - 1. A bargaining unit employee shall advance one step in the CAPE system effective with the first full pay period beginning on or after October 1, 2018.
 - 2. A bargaining unit employee shall advance one step in the CAPE system effective with the first full pay period beginning on or after October 1, 2019.
 - 3. A bargaining unit employee shall advance one step in the CAPE system effective with the first full pay period beginning on or after October 1, 2020.
- (b) Employees who have achieved the highest step in their classification (rank), shall not receive a step increase.
- (c) Advancement from one step to the next in the CAPE system, per Section 1 (a), shall be contingent upon receipt of an overall satisfactory or better performance evaluation. Performance evaluations shall be completed on or before June 1 of each fiscal year.

A bargaining unit employee who receives a performance evaluation indicating an overall unsatisfactory performance shall, on or before June 15 of the year in which the evaluation is issued, be provided with a Performance Improvement Plan (PIP) to be completed within 60 days of implementation. If the employee has not successfully completed the PIP, a one-time extension of 30 days will be granted. An employee shall not advance in the CAPE system until his or her performance is deemed satisfactory or better. If a performance rating of satisfactory or better is received at the conclusion of the PIP, the employee will advance in the CAPE system as provided in the preceding paragraph.

If the employee still has not received a performance rating of satisfactory or better, the employee shall not advance in the CAPE system during that fiscal year and the employee's employment shall be evaluated by the City in order to determine what, if any, steps should be taken to remediate the employee's performance.

(d) Any further step increases past FY 2021 must be negotiated by the parties.

Section 2 - New Hire

All newly hired Bargaining Unit employees into the rank of Fire Fighter shall automatically be placed in Fire Fighter STEP 1.

Section 3 – Promotions

Any Bargaining Unit employee who is promoted shall be placed in a step in the higher classification (rank), which will result in the employee receiving a minimum of a five percent (5%) increase in pay.

Section 4 - Fiscal Years 2019 - 2021

The following CAPE system hourly pay levels will be effective the first full pay period after October 1, 2018 through September 30, 2021

FORTY-EIGHT (48) HOUR WORK WEEK SHIFT EMPLOYEES

| Fire F | ighter | | ire er/Driver | Fire Lieutenant | | Fire Battalion Chief | |
|---------|---------|--------|------------------|-----------------|---------|----------------------|---------|
| | | | | | | STEP 10 | \$47.23 |
| | | | | | | STEP 9 | \$45.85 |
| | | | | | | STEP 8 | \$44.47 |
| | | | | | | STEP 7 | \$43.50 |
| | | | | | | STEP 6 | \$41.71 |
| | | | | | | STEP 5 | \$40.32 |
| | | | | STEP 8 | \$40.72 | STEP 4 | \$38.94 |
| | | | | STEP 7 | \$38.82 | STEP 3 | \$37.56 |
| | | | | STEP 6 | \$36.93 | STEP 2 | \$36.18 |
| STEP 11 | \$32.12 | STEP 8 | \$34.04 | STEP 5 | \$35.03 | STEP 1 | \$34.79 |
| STEP 10 | \$30.92 | STEP 7 | \$32.39 | STEP 4 | \$33.13 | | |
| STEP 9 | \$29.72 | STEP 6 | \$30.74 | STEP 3 | \$31.23 | | |
| STEP 8 | \$28.52 | STEP 5 | \$29.10 | STEP 2 | \$29.33 | | |
| STEP 7 | \$27.33 | STEP 4 | \$27.45 | STEP 1 | \$27.43 | | |
| STEP 6 | \$26.13 | STEP 3 | \$25.81 | | | | |
| STEP 5 | \$24.93 | STEP 2 | \$24.16 | | | | |
| STEP 4 | \$23.73 | STEP 1 | \$22.52 | | | | |
| STEP 3 | \$22.54 | | | | | | |
| STEP 2 | \$21.34 | | | | | | |
| STEP 1 | \$20.14 | | | | | | |

FORTY (40) HOUR WORK WEEK NON-SHIFT EMPLOYEES

| Fire In | spector | Fire Lie | eutenant | Fire Batta | lion Chief |
|---------|---------|----------|----------|------------|------------|
| | | | | STEP 10 | \$56.68 |
| | | | | STEP 9 | \$55.12 |
| | | | | STEP 8 | \$53.37 |
| | | | | STEP 7 | \$52.20 |
| | | | | STEP 6 | \$50.06 |
| | | | | STEP 5 | \$48.40 |
| STEP 8 | \$38.79 | STEP 8 | \$48.87 | STEP 4 | \$46.75 |
| STEP 7 | \$37.19 | STEP 7 | \$46.59 | STEP 3 | \$45.09 |
| STEP 6 | \$35.58 | STEP 6 | \$44.31 | STEP 2 | \$43.44 |
| STEP 5 | \$33.98 | STEP 5 | \$42.04 | STEP 1 | \$41.78 |
| STEP 4 | \$32.37 | STEP 4 | \$39.76 | | |
| STEP 3 | \$30.76 | STEP 3 | \$37.48 | | |
| STEP 2 | \$29.16 | STEP 2 | \$35.20 | | |
| STEP 1 | \$27.55 | STEP 1 | \$32.92 | | |

<u>Section 5 – Establishment of a Comparison Group:</u>

During the last year of this Agreement, the parties shall meet and jointly determine a comparison group of cities in which to compare the City of Cape Coral to when determining competitive wages and benefits for the State of Florida fire service market.

Article 32 Personnel Records

Section 1 - Personnel Records

Personnel Records:

City shall maintain an official personnel file for each employee. Such files shall be centrally maintained in the City's Human Resources Department.

Requests for Inspection of Personnel Records:

Requests to inspect City Personnel records will be handled as provided in the provisions of Florida Statutes, Chapter 119, or as such Chapter may be amended. An employee shall be notified by the City's Human Resources Department at the earliest practical time following a personnel records request by a private citizen.

Annual Evaluation:

Only those records pertaining to the rating period may be used in preparing an employee's annual evaluation.

Discipline:

Discipline as defined in Article 35 – Discipline, shall be part of the official personnel file for each employee.

Article 33 Reduction of Force

Section 1 - Order of Layoff

Layoff shall be made in inverse order of Departmental-Seniority.

Section 2 - Bumping (Layoff) Rights

Employees covered under this agreement shall be permitted to displace employees in lower ranking Bargaining Unit positions. A laid-off bargaining unit employee shall be entitled to displace other Fire Department employees provided the laid-off employee has previously worked in the classification of the employee to be displaced. The Classification of the employee to be displaced must be a Bargaining Unit position and the laid-off employee must have more total continuous years of service in the CCFD than the person to be displaced.

Any employee exercising bumping rights must be qualified to perform the work available.

A laid off employee displacing another employee shall have their rate of pay decreased to the rate of pay closest to their current base rate in the lower classification not to exceed the maximum of the range

An employee, who is demoted due to the layoff of another employee, shall be offered the next immediate position of the classification from which they were demoted.

Section 3 - Recall from Layoff

Recall shall be in reverse order of layoff.

No new employees shall be hired within the rank or classification until all qualified employees on layoff have been offered an opportunity to return to work.

Article 34 Discipline

Section 1 - Oral Counseling

An employee counseling record shall not be considered discipline and shall be maintained in the Fire Department for one (1) year after final action (i.e., the oral counseling was signed/dated by the employee being counseled or refused/dated by the witness).

An employee counseling record used as a basis for subsequent progressive discipline within one (1) year of the date of counseling shall become part of the employee's official personnel file.

Section 2 - Discipline

Discipline:

Discipline shall be based upon just cause and shall be subject to the grievance procedure. The "Firefighters' Bill of Rights" as contained in Florida Statutes, Chapter 112, Part VIII, or as such Part may be amended, shall herein be incorporated as if those rights were fully set forth in this Agreement, and shall be applicable to all employees.

Forms of Discipline:

Discipline shall be limited to: written reprimand; suspension without pay; demotion; and discharge from employment. Discipline shall be part of the employee's official personnel file.

Progressive Discipline:

Generally, the City shall follow a policy of progressive discipline by which less severe forms of discipline are imposed prior to resorting to the imposition of more severe sanctions for the same or similar conduct by the employee. The City, however, reserves the right to impose even the most severe discipline as an initial measure when circumstances warrant.

Member Rights to Representation

Where an investigation is initiated by the City against a member covered by this Agreement which could lead to disciplinary charges and where a statement is elicited from the accused employee, the investigation and interrogation shall be conducted under the "Firefighter Bill of Rights" as contained in Florida Statutes, Chapter 112, part VIII, or as such Part may be amended.

Article 35 Rescue Services

Section 1 - Rescue Status and Pay

Paramedic 1 (P1):

Once an employee is qualified as P1, as outlined in this Agreement, he/she shall be classified as P1 and shall have his/her Rescue Pay, as described in this Article, established at fifty-five dollars (\$55.00) biweekly.

Paramedic 2 (P2):

Once an employee passes advancement testing for P2 as outlined in this Agreement he/she shall be classified as a P2 and shall have his/her Rescue Pay, as described in this Article established or increased, to three hundred and seventy-five dollars (\$375.00) bi-weekly.

Paramedic Field Training Officers (P3):

P3s shall perform in accordance with and meet the qualifications of P2. All P3s will be responsible for training, handling of supplies, quality assurance reports, patient care reports, and compliance with the CCFD's Infectious Control Plan.

P3s shall have their Rescue Pay, as described in this Article, increased to four hundred and seventy-five dollars (\$475.00) bi-weekly. An employee who relinquishes or loses the P3 assignment for just cause shall have their Rescue Pay reduced back to the P2 amount (or P1 if applicable). Successful P3 candidates shall be required to obtain and maintain the following certifications within one (1) year of advancement as the training opportunities become available:

- ← American Heart Association (AHA) Advanced Cardiac Life Support (ACLS) Instructor
- ← American Heart Association (AHA) Basic Life Support (BLS) Instructor

Section 2 – Training, Licensure, & Certification

(a) Training:

The City shall provide in-service training for all State of Florida Emergency Medical Technicians (EMTs) and State of Florida Paramedics (PMDs) while on duty according to requirements as set forth by Florida Statute, the CCFD, and City's Medical Director on re-certification. For those employees unable to attend the in-service training, where possible a recording will be made available for them to review on duty, along with any other incorporated proficiency testing associated with said training, under the supervision of a P3.

The City shall provide on duty American Heart Association Basic Life Support Provider (BLS) and Advanced Cardiac Life Support Provider (ACLS) at no cost to the employees. Employees shall be afforded make-up classes.

Upon successful completion of the objectives and requirements for a given course or in-service program, the employee shall be awarded Continuing Education Units (CEU)'s applicable toward re-certification as described below under Licensure and Certification. The City's Medical Director(s) shall determine the amount of CEU's awarded for each course or in-service.

The City shall maintain records of all educational programs completed by each employee in the employee's training and certification file.

(b) Licensure & Certification:

Employees in the bargaining unit are required to maintain currency in all certifications and licenses required by federal or state statute, rule or regulation and all necessary or special requirements, established by the City's Medical Director of the rescue status in which they are compensated for. The employee shall submit a copy of their EMT or PMD license to the Division of Professional Standards no later than the close of business (1700 hrs.) of the first business day in January. Exceptions must be approved by the Fire Chief or designee.

The City shall process the renewal applications for EMT and PMD licenses as set forth by the State of Florida Department of Health Bureau of Emergency Medical Services with all required renewal fees in a timely manner. Each employee, at the employee's choice, shall only be entitled to one license renewal per cycle.

The City shall supply employees with documents certified by the Medical Director(s) showing proof of CEU's obtained by the employee at in-service and training programs provided by the City. Documentation shall be supplied to the State of Florida Department of Health Bureau of Emergency Medical Services, according to State requirements.

Section 3 – Paramedic School

(a) Financial Reimbursement:

CCFD employees who have been selected to attend paramedic school, shall be reimbursed one hundred percent (100%) of tuition, books, uniforms, lab fees, and other required costs of the program per semester, provided the employee completes each semester with a passing score.

(b) Selection:

The Paramedic School selection process shall be based on Department seniority from those Rank and File bargaining unit members assigned to shift. Employees assigned to a non-shift position including the Bureau of Life Safety and Supervisory bargaining unit members are excluded from Paramedic School selection. The selection process shall begin on October 1st of every year or the first business day thereafter, prior to the beginning of the next academic year. CCFD's Fire Battalion Chief – Emergency Medical Services (EMS), in conjunction with the Division of Professional Standards, shall send out a memorandum requesting all applicants to forward, in writing, their application to be selected for paramedic school. Fourteen (14) calendar days after said memorandum is sent out, the application process shall end.

The Fire Chief or designee shall make a determination of applicants within five (5) calendar days of said application deadline. An employee who was selected the prior year, and elected to withdraw from the program prior to completion, will be eligible to submit an application. Said employee will be considered but will be placed on the bottom of the list. Based on those selected, shift reassignments may be made to minimize the impact on minimum staffing requirements.

If the deadline has passed and less than six (6) employees have submitted their applications to attend paramedic class, employees shall then be accepted on a first (1st) come first (1st) serve basis. The application date shall be verified by way of their dated application being submitted to the City. The application process will end as of the deadline for paramedic class sign-up for the academic year.

A list shall be established and maintained until the next application process occurs on the following October 1st. In the event that an employee is unable, or not required, to attend the entire program for any

reason, the list shall be utilized to allow the next eligible employee on the list to attend the program as one of the selected six (6) employees for the applicable time frame.

(c) Attendance:

CCFD shall assist six (6) employees to attend a paramedic school as follows:

Paramedic School Time: At the commencement of each paramedic school program, each of the six (6) slots available under the program shall be allotted a bank of Paramedic School Time equivalent to four hundred and fifteen (415) hours, to be used at the discretion of the employee occupying that slot for attendance at classes, tests, required meetings, rotations, or ride times. In the event an employee vacates a slot prior to completing the paramedic program, any remaining hours from the initial allocation shall be available to the employee that subsequently fills that slot. The bank for any individual slot shall be pro-rated (reduced) in the event the employee occupying that slot is not scheduled to attend the complete course. The pro-rated amount shall be determined by breaking the four hundred and fifteen (415) total hours into equal parts based on the number of semester/sessions required to complete the course and crediting hours for only those semesters/sessions that remain to be completed. In no event shall any individual employee be granted more than four hundred and fifteen (415) hours to attend paramedic school, even if accepted to participate in this program on multiple occasions.

Each employee shall provide their chain of command a schedule of their required program dates and times via the City's electronic scheduling system no later than 1800 hrs. of the employee's regularly-scheduled shift immediately preceding the requested time off. Upon the conclusion of the day's required activity, the employee(s) shall immediately and directly report back to work.

Section 4 – Paramedic Advancement Testing Qualifications and Process

Employees shall advance based on the following:

(a) Advancement Qualifications

To P1: The employee must hold a current State of Florida Paramedic license.

To P2: The employee must hold a current State of Florida Paramedic license and complete the P2 Credentialing Process.

To P3: The employee must have functioned as a P2 for a minimum of one (1) year in the CCFD.

(b) Advancement Testing process (in the following order):

To P2:

- 1. Written examination approved by the Medical Director with a minimum passing score of eighty percent (80%)
- 2. A practical examination approved by the Medical Director.
- An oral interview as conducted by the Medical Director.
 The initial P2 Credentialing Process shall be offered within thirty (30) calendar days of when an employee notifies the Fire Chief or designee, in writing, through the chain-of-command of their intent to test.

To P3:

a. A teaching evaluation as approved by the Medical Director

b. An oral Interview as conducted by the Medical Director

The P3 advancement testing evaluators will consist of the Department's Medical Director, the Fire Battalion Chief - EMS and one (1) current P3. Candidates must achieve a minimum passing score of seventy percent (70%) to be placed on the eligibility list, which shall be maintained for one (1) year.

Section 5 - Rescue Status Advancement Testing Failure Policy

If an employee fails his/her initial advancement test, he/she may not re-test sooner than thirty (30) calendar days after the date of his/her initial advancement testing date. If an employee fails his/her second (2nd) attempt at the advancement test, he/she may not re-test sooner than six (6) calendar months after the date of his/her second (2nd) attempt.

Employees who are re-testing after the temporary loss or suspension of P2 or P3 privileges may re-test following the conclusion date of their temporary loss or suspension. If the employee fails the re-test, he/she may not re-test sooner than six (6) calendar months after the date of his/her re-test.

If an employee fails one (1) component of the advancement testing, then the employee will be afforded a re-test on the item failed.

If the employee fails to obtain a passing score on the re-test, the employee will be required to retake the advancement testing in its entirety.

An employee who fails two (2) or more components of the advancement testing will be required to retake the advancement testing in its entirety.

Section 6 - System Performance Measuring

The City may use any of the following methods to measure the system's performance and the assessment of an individual's performance, both of which shall be based on standards established, outlined, or selected by the City Medical Director(s).

Skills Proficiency Testing:

This skills proficiency testing may be conducted in conformity to the following guidelines:

- Skills proficiency testing shall be performed by all employees once every twenty-four (24) months, but employees shall not be required to participate in skills proficiency testing more than once every twenty-four (24) months. This shall not include skills proficiency testing ordered as part of a remedial action by the Medical Director(s) as part of a quality assurance (QA) incident.
- ➤ EMTs and PMDs shall be tested on Medical Guidelines or information approved by the Medical Director(s).
- ➤ The skills proficiency testing shall be comprised of written and/or oral examinations and shall be based on information contained in the Medical Guidelines or information approved by the Medical Director(s). Skills proficiency testing may also include role-playing scenarios.
- > The minimum grade (either pass/fail or eighty percent [80%]) in each required category, shall be communicated prior to the skills proficiency testing being started.
- Skills proficiency testing shall be conducted during an employee's on-duty hours. Employees shall be given a minimum of thirty (30) days' notice prior to their skills proficiency testing.

NOTE: All employees must successfully complete this process to maintain their Rescue Status and Pay for the next twenty-four (24) month period.

NOTE: Employees who are absent from work on the date of their scheduled skills proficiency testing shall be permitted to make up the testing upon their return.

Section 7 - Medical Quality Assurance, Quality Assurance Forms & Medical Quality Issues

The Union and City agree that Medical Quality Assurance is of paramount importance in assuring the citizens of Cape Coral with the best possible level of Emergency Medical Pre-Hospital Care. The Union and City also agree that the responsibility for assuring quality medical care rests jointly with the City Medical Director, Lee County Medical Director, Lee County E.M.S. Administration, CCFD Administration, and its employees.

(a) Feedback:

Feedback received by CCFD employees shall be investigated by Supervisors, training staff and administration as necessary and may also be utilized to pass along positive feedback and/or commendations in reference to Lee County E.M.S. performance. Any/all feedback shall be conducted in writing through the chain of command.

(b) Medical Quality Issues:

A Medical Quality Issue (MQI) is defined as any deviation from local Medical Guidelines, accepted state standard of care, or reasonably expected practical performance which may potentially, or may have, in fact, already unfavorably influenced patient care. A MQI may arise as the result of a specific incident or cumulative feedback from routine continuous quality improvement processes. All reports of a potential MQI shall be reduced to writing. Complaints or other reports of potential MQIs not placed into writing shall be dismissed without further investigation.

However, when operational and quality assurance issues arise out of the same incident or event, the operational and MQI investigations may occur at the same time.

The Medical Director should be advised immediately by the Fire Chief or designee, upon the reporting or discovery of a potential MQI. All parties involved should be notified of the investigation and the nature of the alleged problem. The employee in question should be provided a copy of the written documentation as outlined in this Article. This notification must also include any immediate decisions on limitation or suspension of the involved personnel's clinical duties to take place during the investigation phase. Once notified the Fire Chief or designee, shall begin the investigation by accumulating the appropriate report forms and written documentation of all conversations or contacts made to acquire further information. During this phase the employee in question shall not suffer any loss or reduction in Rescue Pay.

Based on the information collected during the investigation, the Medical Director shall make a decision whether to dismiss the potential MQI or to proceed to the corrective action/remediation phase. The results of the Medical Director's decision shall be reduced to writing and supplied to all parties involved. The Medical Director's decision shall also include his/her order for remediation (e.g. assignment to a P3 for a period of time, hospital rotation for intubations or I.V. skills, written testing and/or advancement testing). The remediation order should also include a statement of everything the employee will be required to complete to return to the previous status. Once the remediation order is established, the Medical Director shall also rule as to whether the employee is to be reduced in status during the remediation phase.

The Medical Director may decide, based on the findings of the investigation, to demote the employee to a lower level of function. In such cases, the employee's Rescue Status and Pay shall also be lowered to that lower level. If remedial actions and/or rulings are disciplinary in nature, they shall be subject to the grievance and arbitration procedure. However, if the Medical Director's decision to suspend or demote is grieved successfully by an employee, he/she shall still have their EMS service level reduced per the Medical Director but shall continue to receive the rescue pay he/she was receiving prior to being suspended/demoted by the Medical Director.

<u>Section 8 – Rescue Service Positions Available</u>

Rank and File employees shall be eligible to receive one (1) of the following Rescue Pays subject to the caps identified below:

Rescue Services Positions:

P1: Thirty (30) P2: Unlimited P3: Nine (9)

Supervisory employees shall be eligible to receive one (1) of the above-identified Rescue Pays irrespective of the caps identified therein.

Article 36 Incentives and Committee Compensation

Section 1 – Educational Incentives

The City shall pay thirty-five dollars (\$35.00) bi-weekly to any employee holding any two (2) of the below five (5) certifications/courses of study:

- State of Florida Fire Officer I, II, III, or IV (only one (1) of the four (4) can be utilized)
- > State of Florida Fire Instructor I, II, or III (only one (1) of the three (3) can be utilized)
- > State of Florida Live Fire Instructor I or II (only one (1) of the two (2) can be utilized)
- > National Fire Academy Incident Safety Officer Certificate or equivalent approved by the Fire Chief
- State of Florida Smoke Diver or State of Florida Rapid Intervention and Survival or equivalent approved by the Fire Chief

Section 2 - Higher Education

The City shall advance the respective compensation from the State of Florida 175 monies to employees holding degrees (or as designated by Florida Statute) at the end of each month as follows (only one (1) of the below two (2) can be utilized):

- > Two (2) Year Associate \$ 50.00
- Four (4) Year Bachelor \$110.00

Section 3 - Incentive Buy-Out

Any employee who, as of January 1, 2001, has the incentives they are currently being compensated for (not counting State of Florida Emergency Medical Technician or State of Florida Paramedic) reduced by two (2) or more, shall receive three percent (3%) of their regular rate of pay, under the Career Advancement & Performance Enhancement (C.A.P.E.) System (hourly rate as represented on each paycheck multiplied times the amount of hours credited for that pay period) as a separate line item (add-pay) on each paycheck.

The above-noted add-pay shall continue until each employee severs his/her employment with the City of Cape Coral or is promoted to the rank of Fire Battalion Chief.

Section 4 – Departmental (Ad Hoc) Committees

Employees who are certified in writing, by the Fire Chief, to be on a departmental committee shall be paid in accordance with Article 11 - Overtime.

Section 5 – Assignment Incentives

Employees selected for duties by the Fire Chief which require special knowledge, skills or abilities beyond the required duties of a position shall receive an assignment incentive of thirty-five dollars (\$35.00) biweekly.

Article 37 Teams and Specialty Groups

All attributes for the CCFD's teams and specialty groups shall be outlined within CCFD's Governing Documents.

Section 1 - Hazardous Materials Team

1. Minimum Qualification:

- a. Employee must be employed for one (1) year with CCFD.
- b. Have and maintain a current State of Florida Hazardous Materials Technician (HMT) Certification.
 - i. Hazardous Materials Team members prior to October 2017 must have and maintain a certification from a Special Operations Committee approved organization.
- c. Completion of the CCFD HMT Proficiency Process.

2. Quantity:

- a. Effective October 1, 2018 September 30, 2020: The City agrees to a minimum of forty-eight (48) Rank and File shift employees and Fire Lieutenants assigned to non-shift. Any additional employees, above the minimum of forty-eight (48), shall be at the discretion of the Fire Chief.
- b. Effective October 1, 2020: The City agrees to a minimum of sixty (60) Rank and File shift employees and Fire Lieutenants assigned to non-shift. Any additional employees, above the minimum of sixty (60), shall be at the discretion of the Fire Chief.

3. Compensation:

- a. The City agrees to pay seventy-five dollars (\$75.00) bi-weekly to employees who are chosen by the Fire Chief or designee to be members of the Hazardous Materials Team.
- b. All Supervisory employees shall be eligible and shall not be counted against the number of available positions.
- c. Employees who are mandated to attend off duty training that is specifically designed for Hazardous Material Team members to maintain or improve the level of response of said team shall be paid in accordance with Article 11 Overtime.

Section 3 – Marine Team

Section 3.1 - Public Safety Diver Technician (PSDT)

- 1. Minimum Qualifications:
 - a. Employee must be employed for one (1) year with CCFD.
 - b. Have and maintain Rescue Diver Certification.
 - c. Completion of the CCFD PSDT Proficiency Process.

2. Quantity:

- a. Effective October 1, 2018 September 30, 2020: The City agrees to a minimum of forty-eight (48) Rank and File shift employees and Fire Lieutenants assigned to non-shift. Any additional employees, above the minimum of forty-eight (48), shall be at the discretion of the Fire Chief.
- b. Effective October 1, 2020: The City agrees to a minimum of sixty (60) Rank and File shift employees and Fire Lieutenants assigned to non-shift. Any additional employees, above the minimum of sixty (60), shall be at the discretion of the Fire Chief.

3. Compensation:

- a. The City agrees to pay seventy-five dollars (\$75.00) bi-weekly to employees who are chosen by the Fire Chief or designee to be members of the Marine Team PSDT.
- b. All Supervisory employees shall be eligible and shall not be counted against the number of available positions.
- c. Employees who are mandated to attend off duty training that is specifically designed for Marine Team members to maintain or improve the level of response of said team shall be paid in accordance with Article 11 - Overtime.

Section 3.2 - Public Safety Boat Operator (PSBO)

- 1. Minimum Qualifications:
 - a. Employee must be employed for one (1) year with CCFD.
 - b. Employee must have completed a Labor Management approved boating course.
 - c. Completion of the CCFD PSBO Proficiency Process.

2. Quantity:

- a. Effective October 1, 2018 September 30, 2020: The City agrees to a minimum of sixty (60) Rank and File shift employees and Fire Lieutenants assigned to non-shift. Upon ratification, all employees currently receiving this incentive, above the minimum of sixty (60), shall be permitted to retain this incentive, provided they maintain the required minimum qualifications and training. Any additional employees, above the minimum of sixty (60), shall be at the discretion of the Fire Chief.
- b. Effective October 1, 2020: The City agrees to a minimum of sixty (60) Rank and File shift employees and Fire Lieutenants assigned to non-shift.

Employees who are currently receiving the PSBO incentive and apply for another specialty team or incentive, on or before this date, will be given preference (within their rank) in the selection process, in accordance with operational need. Preference is contingent upon the employee dropping their PSBO incentive, if selected to participate on a different specialty team or receiving a different incentive.

The number of PSBO will be reduced to sixty (60) employees on this date. The employees who most recently began to receive the incentive will be chronologically removed to reach sixty (60) employees with the PSBO incentive. Any additional employees, above the minimum of sixty (60), shall be at the discretion of the Fire Chief.

3. Compensation:

- a. The City agrees to pay fifty dollars (\$50.00) bi-weekly to employees who are chosen by the Fire Chief or designee to be members of the Marine Team PSBO.
- b. All Supervisory employees shall be eligible.
- c. Employees who are mandated to attend off duty training that is specifically designed for Marine Team members to maintain or improve the level of response of said team shall be paid in accordance with Article 11 Overtime.

Section 4 - SCBA/SCUBA Team

The City agrees to pay seventy-five dollars (\$75.00) bi-weekly to a total of six (6) employees (three (3) on the SCBA and three (3) on the SCUBA), who are chosen by the Fire Chief or designee to be members of the SCBA/SCUBA Team. Members of this team may be responsible for, but not limited to: repair, maintenance, and inventory of equipment.

Section 5 - Field Training Officer

Bargaining unit members who are certified as Field Training Officers by the Fire Chief or designee shall receive seventy-five dollars (\$75.00) bi-weekly while serving in that capacity. There shall be a minimum of two (2) Field Training Officers for Fire Operations, one (1) for PSBO, one (1) for PSDT, and one (1) for Hazardous Materials per shift and a minimum of one (1) for the Bureau of Life Safety (Non-Shift).

Section 6 – Honor Guard

Bargaining unit members who are certified as members of the Honor Guard by the Fire Chief or designee shall be compensated in accordance with Article 11 - Overtime, if off-duty while performing their honor guard duties. The City, regarding any performance or performance-related actions, shall cover members as if they are on-duty. All costs associated with the Honor Guard and the performance of its duties shall be borne by the City.

Section 7 - Other Specialty Teams and Group

Bargaining unit members who are certified by the Fire Chief to participate as a member of other specialty teams shall be compensated in accordance with Article 11 – Overtime, if off-duty while preforming such approved duties. The City, regarding any performance or performance-related actions, shall cover members as if they are on-duty. All costs associated with the said specialty teams and the performance of such duties shall be borne by the City.

Article 38 Duration

Upon ratification by the Union and the City of Cape Coral Council, this Agreement shall continue in full force and effect through September 30, 2021.

Section 1 - Duration of Agreement

This Agreement shall automatically be renewed from year to year thereafter unless any party shall have notified the other party, in writing, at least one hundred and twenty (120) days prior to the expiration of the contract on articles that it wishes to modify or add to the agreement.

Prior to fiscal year 2020, the parties agree to meet and discuss retiree health insurance.

Section 2 – Savings Clause

If any article, section or provision of this agreement is held invalid by a court of competent jurisdiction or is rendered invalid by subsequent State or Federal legislation as applied by a court of competent jurisdiction, the remainder of this Agreement shall not be affected. If such action occurs, the parties will meet and attempt to negotiate a replacement for the invalid item.

In Witness Whereof

| The parties hereto have caused their officers or representatives this | names to be subscribed hereto by their duly authorized day of, 2019. |
|---|--|
| Cape Coral Professional Fire Fighters, Local 2424 of the I.A.F.F. representing Supervisory and Rank & File | City of Cape Coral (Florida) |
| Eric Chudzik President, IAFF Local 2424 | Joe Coviello Mayor |
| Joe Glaser Vice President, IAFF Local 2424 | A. John Szerlag City Manager |
| Mark Muerth Vice President, IAFF Local 2424 | Lisa Sonego Human Resources Director Attest: |
| | Kimberly Bruns City Clerk Legal Review: |
| | Gail Prosser Assistant City Attorney |
| | Page |

Appendix A



AUTHORIZATION FOR DEDUCTION OF UNION DUES

Cape Coral Professional Fire Fighters Local 2424

I hereby instruct the Union to forward this form to the City so that the City will begin deducting bi-weekly Union dues from my wages. The Union shall forward this form to the City no later than seven (7) calendar days after the Union receives is from me. The City shall have until the first (1st) pay period ending after the receipt of this form to have begun deducting said dues. The City shall transmit this amount monthly to the Treasurer of the Union.

| Print Name (Last, First, Middle Initial) | Last four of Social Security Number |
|--|-------------------------------------|
| | |
| | |
| Employee Signature | Date |
| | |
| | |
| | |
| | |
| | |
| Date Received By Union | Date Mailed/Delivered By Union |

Appendix B



AUTHORIZATION FOR THE CEASING OF DEDUCTION OF UNION DUES

Cape Coral Professional Fire Fighters Local 2424

I hereby instruct the Union to forward this form to the City so that the City will cease deducting bi-weekly Union dues from my wages. The Union shall forward this form to the City no later than seven (7) calendar days after the Union receives is from me. The City shall have until the first (1st) pay period ending after the receipt of this form to have ceased the dues deduction.

| Print Name (Last, First, Middle Initial) | Last four of Social Security Number |
|--|-------------------------------------|
| | • |
| | |
| Employee Signature | Date |
| | |
| | |
| | |
| | |
| | |
| Date Received By Union | Date Mailed/Delivered By Union |

Appendix C



WRITTEN GRIEVANCE FORM: STEP I

| Grievant (Employee): | Date: |
|---|---|
| procedure with my immediate supervisor on (Date) | discussing this matter at Step I of the grievance (Name of Immediate Supervisor) sing rise to the grievance or within ten [10] calendar days ware of such event.) |
| The immediate supervisor's response/decision | on was not satisfactory. |
| (Within ten [10] calendar days of the date supervisor.) | the grievance was first discussed with the immediate |
| Article(s) of Collective Bargaining Agreement V | iolated: |
| Nature of Grievance: | |
| | |
| | |
| | |
| | |
| | |
| Settlement/Remedy Desired: | |
| · | |
| | |
| | |

WRITTEN GRIEVANCE FORM: STEP II



Presented to Union Grievance Committee.

| (Within ten [10] calendar days of the de | ecision rendered a | t Step I, except for Cla | ass Action Grievances.) |
|---|---------------------|--------------------------|-------------------------|
| Grievant (Employee): | | Date: | |
| | (Signature) | | |
| Received by Union Representative: | | Date: | |
| | (Signatu | ure) | |
| Decision of Grievance Committee: | Accepted (Cir | Rejected cle One) | |
| Union Representative: | | Date: | |
| | (Signature) | | |
| Presented by Union Grievance Com | mittee to Fire Chi | ef. | |
| (Within ten [10] calendar days of the daif an individual grievance or within the event in the case of a Class Action grie | n [10] calendar da | | |
| Union Representative: | | Date: | |
| | (Signature) | | |
| Fire Chief or designee's disposition of | grievance: | | |
| | | | |
| (Within ten [10] calendar days from the | e date the grievanc | e is presented to Fire | Chief.) |
| Fire Chief and/or designee: | | Date: | |
| | (Signature) | | |

Revised: 9/5/15

CAPE CORAL LOCAL # 2424 PROFESSIONAL

WRITTEN GRIEVANCE FORM: STEP III

Presented by Union Grievance Committee to City Manager.

| (Within ten [10] calendar days of the decision rend | ered by the Fire Chief/designee at Step II.) |
|--|--|
| Union Representative: | Date: |
| (Signate | ure) |
| City Manager or designee's disposition of grievance | e: |
| | |
| | |
| | |
| (Within ten [10] calendar days from the date the gr | ievance is presented to the City Manager.) |
| City Manager and/or designee: | Date: |
| (Sig | nature) |
| FINA | L STEP |
| Notice of Intent to Arbitrate to Human Resource | es Department. |
| (Within ten [10] calendar days of the decision rende | ered at Step III by the City Manager and/or designee.) |
| Union Representative | Date: |

Revised: 9/5/15

APPENDIX D



VOLUNTARY REHABILITATION AGREEMENT

VOLUNTARY REHABILITATION AGREEMENT

| This Agreement, made and entered into this | | day of | | |
|---|--------------|-------------|-------------------------|----------|
| - | (Day) | | (Month) | (Year) |
| Between (Employee Name) and the CITY OF CAPE CORAL, FLORIDA. | | oho ho alla | (hereinafter "EMPLO" | |
| WHEREAS, EMPLOYEE has voluntarily requeste an inpatient basis for alcohol/substance depende | | sne be allo | owed to enter and be tr | eated on |
| WHEREAS, EMPLOYEE agrees to the terms of t | his article. | | | |
| | | | | |
| Employee Signature | | | Date | |

APPENDIX E



LAST CHANCE AGREEMENT

LAST CHANCE AGREEMENT

| WHER | EAS _ | | has been employed with |
|--------------------------|---|--|---|
| the City | y of Cape Coral | since (Employee Name) (Date Employment Began) | ; and |
| WHER | EAS _ | | was required to submit to |
| a rando | om drug test in a | (Employee Name) accordance with this article; and | |
| WHER | EAS | | drug test was positive for the |
| presen | ce of _ | (Employee Name) (Type of Drug/Alcohol) | ; and |
| WHER | FAS the CITV i | instituted disciplinary action against | |
| | | ive drug test; and | (Employee Name) |
| CITY h employ NOW, | as decided to m vee has entered THEREFORE, i | es where an employee's random drug test is positinitigate the employee's discipline to a suspension of into this Last Chance Agreement. In consideration of this mutual covenants and prome (hereinafter "City") and | on the condition that the |
| • | | | (Employee Name) |
| 1. | illegal substan | thout pay, provided EMPLOYEE agrees to and ab | hour(s) of work, continuous, |
| 2. | | nderstands and agrees that any violations of the p I automatically result in termination of EMPLOYEE | |
| 3. | by the CITY's rehabilitation p Abuse Profess City's Major Mat the EMPLO's negative for ille | ption of normal duties, EMPLOYEE understands the Substance Abuse Professional and must enter and orogram recommended by the Substance Abuse Professional orders further rehabilitation, such rehabilitation, edical Plan, with any costs not covered under the CYEE's expense. Prior to resumption of regular duting drugs and be otherwise cleared to return to resional. Any refusal to submit to evaluation and/or to | I successfully complete a rofessional. If the Substance on shall be covered under the City's Major Medical Plan to be ies, EMPLOYEE must test gular duties by the Substance |

Last Chance Agreement and shall result in termination of EMPLOYEE. EMPLOYEE understands and agrees that in order to be compensated for any time off to complete a rehabilitation program, EMPLOYEE must be off in accordance with 14.16.5.3(A) or (B) of the Rank & File Collective Bargaining Agreement.

The rehabilitation program will not last longer than six (6) months from the time EMPLOYEE enters the program. EMPLOYEE will sign a medical release upon the entering and completion of the rehabilitation program. The Substance Abuse Professional will inform the Human Resources Director/Risk Manager of EMPLOYEE's progress and the test results, but all records, correspondence, etc. shall remain confidential and shall be maintained outside EMPLOYEE's personnel file.

- 4. EMPLOYEE understands that, if he/she is authorized to return to duty by the CITY's Substance Abuse Professional, he/she will be subject to no more than four (4) unannounced drug tests (for illegal drugs) for a one (1) year period, beginning after the employee signs the release mentioned above, with no more than one (1) unannounced drug test (for illegal drugs) per quarter. While drug testing will be on a random basis in accordance with this article, requests for and the scheduling of such tests will be during EMPLOYEE's regular work hours. Any failure or refusal to submit to any required drug test, after rehabilitation in accordance with this article, shall result in termination of EMPLOYEE.
- 5. Upon completion of the twelve (12) month period, EMPLOYEE understands that he/she will still be subject to the terms of this article, with respect to the normal random testing process, and any subsequent positive drug or alcohol test will result in termination of EMPLOYEE.
- 6. EMPLOYEE hereby waives his/her right to grieve, appeal, or otherwise contest the disciplinary action taken as a result of EMPLOYEE's positive drug test and any subsequent disciplinary action taken by CITY if EMPLOYEE violates any of the terms of this Agreement or subsequently tests positive for drugs, provided that the City follows the procedures as outlines in this Last Chance Agreement.
- EMPLOYEE consents to and authorizes CITY, or its designee, to have access to all records
 maintained by the Substance Abuse Professional to obtain information regarding EMPLOYEE's
 progress and successful completion of the prescribed treatment.
- 8. It is understood and agreed by all parties hereto that this Last Chance Agreement is being entered into based upon the particular circumstances of this case and does not establish a precedent for the resolution of any other disciplinary matter.
- EMPLOYEE has received and reviewed this Last Chance Agreement prior to executing it and has been afforded the opportunity to consult with their Union representatives and their own legal counsel if desired, and EMPLOYEE agrees to be bound by all terms and conditions herein.
- 10. This Last Chance Agreement constitutes the entire understanding of the parties hereto and can only be modified, amended, or revoked by the express written consent of both parties.

Revised: 9/5/15

| Dated this | day of | |
|--------------------------|---------|------------------------|
| (Day) | (Month) | (Year) |
| WITNESSES | | by: EMPLOYEE |
| Printed Name of Witness | | Employee Signature |
| Timed Name of William | | Limpleyee eignature |
| Witness Signature | | |
| | | by: CITY OF CAPE CORAL |
| | | |
| Printed Name of Witness | | Fire Chief |
| | | |
| Witness Signature | _ | |
| | | |
| Printed Name of Witness | | City attorney's office |
| Printed Name of Witness | | only anomoly comes |
| | | |
| Witness Signature | | |
| | | |
| | | |
| Printed Name of Witness | | |
| | | |
| LID Discrete #/Designers | | |
| HR Director/Designee | | |
| | | |
| Witness Signature | | |

Appendix F



TEMPORARY ASSIGNMENT FOR SPECIAL PROJECT FORM



| Temporary Assignment: | | | |
|-----------------------------------|--------|-------------------|--|
| | | | |
| | | | |
| | | | |
| Duration of Temporary Assignment: | : | | |
| | | | |
| | | | |
| | | | |
| Criteria for Selection Process: | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| MUTUALLY AGREED TO BY: | | | |
| | | | |
| (Fire Chief) | (Date) | (Union President) | |

AGREEMENT BETWEEN THE CITY OF CAPE CORAL

AND

THE CAPE CORAL PROFESSIONAL FIRE FIGHTERS

LOCAL 2424

OF

THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

REPRESENTING THE

SUPERVISORY AND RANK & FILE

BARGAINING UNITS

223-22-19

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Article 1 Preamble

This Agreement is made and entered into by the Cape Coral Professional Fire Fighters, Local 2424 of the International Association of Fire Fighters, hereinafter referred to as "Union", and the City of Cape Coral (Florida), hereinafter referred to as "City".

Section 1 - Purpose

The purpose of this Agreement is to increase the general efficiency in the Cape Coral Fire Department (CCFD), to maintain the existing harmonious relationship between the CCFD and its employees, and to promote the morale, rights and well-being of CCFD employees.

Section 2 - Public Employees

Employees of the CCFD are to regard themselves as public employees and they, as well as the CCFD itself, are to be governed by the highest ideals of honor and integrity in all of their public and personal conduct in order that they may merit the respect and confidence of the general public.

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Article 2 Recognition

Section 1 - Recognition

Pursuant to, and in accordance with, the provisions of Florida Statutes, Chapter 447, or as such Chapter may be amended, City recognizes Union as the exclusive representative of employees in the bargaining unit(s) for the purpose of collective bargaining with City regarding wages, hours and other terms and conditions of employment.

Section 2 – Bargaining Unit(s)

Section 2.1 - Rank & File

The bargaining unit for which this recognition is afforded shall include all regular and probationary employees occupying any positions in the following classifications:

· Fire Fighter

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- Fire Engineer/Driver
- Fire Lieutenant
- Fire Inspector

Section 2.2 - Supervisory

The bargaining unit for which this recognition is afforded shall include all regular and probationary employees occupying any positions in the following classifications:

- Fire Battalion Chief
- Fire Marshal

Section 3 – Employees and Members

The terms "employee" and "employees" as used in this Agreement shall refer to the incumbents of the classifications included in the bargaining unit(s) regardless of membership in Union.

The terms "member" and "members" as used in this Agreement shall refer to employees who establish or maintain an affiliation with Union according to Union's Constitution and By-Laws.

Section 4 - Fiscal Year

The term "fiscal year" as used in this Agreement shall refer to the period October 1st through September 30th, inclusive.

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UNION: EC

Article 3 Management Rights

Section 1 - Management Rights

Except as specifically abridged or modified by a provision of this Agreement, City will continue to have, whether exercised or not, all of the rights, powers and authority heretofore existing, including, but not limited to, the following: to determine the standards of service to be offered by the Fire Department; to determine the standards of selection for employment; to determine the work appropriate to a classification; to hire, transfer, promote and demote employees; to direct employees; to take disciplinary action up to, and including, discharge for cause; to relieve employees from duty because of lack of work or for other legitimate reasons; to issue rules and regulations; to determine the methods, means and personnel by which City's operations are to be conducted; to establish policies, programs and procedures to meet changing conditions and to better serve the needs of the public; to exercise complete control and discretion over its organization and the technology of performing its work; and to fulfill all of its statutory and Charter responsibilities.

Section 2 - Non-waiver

The City's failure to exercise any right hereby reserved to it or its exercising any right in a particular way shall not be deemed a waiver of its right to exercise such right nor preclude the City from exercising the same right in some other way not in conflict with the expressed provisions of this Agreement.

Section 3 – Non-waiver of Right to Bargain

Nothing contained in this Article shall be interpreted as a waiver of Union's right to bargain over any impact the exercise of any of the foregoing management rights has upon wages, hours, or other terms and conditions of employment.

Section 4 – Application of Rules and Regulations

If work rules and regulations are not uniformly applied, Union may file a grievance in accordance with the grievance procedure contained in this Agreement.

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Article 4 Employee/Union Rights

Section 1 - Employee Rights

Employees of the CCFD shall have the right to form, join, and participate in the Union. Employees shall have the right to negotiate collectively with the City in the determination of the terms and conditions of their employment. Employees shall have the right to be represented in the determination of grievances on all terms and conditions of their employment. Employees shall have the right to engage in concerted activities not prohibited by law, for the purpose of collective bargaining or other mutual aid or protection. Employees shall have the right to express or communicate to management any view, grievance, complaint or opinion related to any term or condition of employment, all free from interference, restraint, coercion, discrimination or retaliation. Employees engaged in such activity shall use the chain of command.

Section 2 – Non-Discrimination

Employees of the CCFD shall have the right to join the Union and there shall be no discrimination against or intimidation of any employee because of that employee's membership or lack of membership in the Union, or because of an employee holding office or not holding office in the Union.

Section 3 – Subcontracting/Privatization Notice

Should the City commence consideration or investigation into the subcontracting or privatization of work presently performed by bargaining unit employees, the City shall immediately provide written notice to the Union. The City shall provide to the Union all materials, regardless of form, relating to said subcontracting or privatization, immediately upon the materials becoming public record.

All rights, privileges, fringe benefits and working conditions enjoyed by employees at the present time which are not specifically referred to or abridged in this Agreement shall remain in full force, unchanged and unaffected in any manner, unless changed by mutual consent.

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Article 5 - Discontinued

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Article <u>5</u>6 Dues Deduction

Section 1 - Dues Deduction

Employees may authorize payroll deductions for the purpose of paying Union dues. No authorization shall be allowed for payment of initiation fees, assessments or fines.

Section 2 - Determination of Dues

Union will notify City of the amount of dues. Such notification will be made in writing over the signature of Union's President. Changes in Union dues will be similarly reported to City, with notification at least one (1) month in advance of the anticipated effective date of any such changes.

Section 3 – Deduction Methodology

Dues shall be deducted bi-weekly. The deducted monies shall be remitted to Union no later than fifteen (15) calendar days after the end of the bi-weekly payroll from which they were deducted. Union will indemnify, defend and hold City harmless against any claims made, and against any suits instituted, against City on account of the deduction of Union dues.

Section 4 - Payroll Deduction Authorization

Upon receipt of a signed payroll deduction authorization (as shown in Appendix A of this Agreement), City shall deduct those Union dues certified in writing by an authorized Union officer.

<u>Section 5 – Revocation of Payroll Deduction Authorization</u>

A payroll deduction authorization may be revoked by a member upon written notice to Union and City. Any such revocation shall be on the form (as shown in the Appendix B of this Agreement).

Section 6 - Payroll Deduction of FIREPAC

Employees shall have the ability to make voluntary contributions to the IAFF FIREPAC program through authorized payroll deductions, provided that the employee has signed and submitted the form to the City (as shown in Appendix A-1).

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CITY: 7472919

Article <u>6</u>7 Leave Time ContributionUnion Business

Section 1 – Leave Time Contribution

The City and the Union agree to sustain Leave Time Contributions annually at the commencement of each fiscal year (October 1st). All dues paying members agree to contribute a specific number of leave hours specified in writing by the Union President. The hours contributed shall be deducted from their annual earned leave hours. The City shall deduct those annual leave hours after each member has accrued their hours in January For example: A member earns twenty-six point five (26.5) hours in January He/she then has eighteen (18) twenty four (24) hours deducted for leave time contribution, leaving the member with a monthly earned net of two point five (2.5) eight point five (8.5) ours. This total will be added to the member's cumulative earned leave hours. Each Union member's hourly contribution will then be converted to dollars by multiplying that hourly contribution times their current hourly rate. After every Union member's hourly contribution are converted to dollars, those dollars will be totaled and the total dollar amount, along with written documentation of the total dollar amount, will be forwarded to the Union's Treasurer no later than February 15th of that same calendar year.

Section 2 - Union Business

Any member who is off on Union Business shall arrange for their replacement and schedule the Union Business consistent inform the appropriate Supervisor within the parameters of Article 16 – Leave, Section 4(1), designating that the member is off on Union business. The member who agrees to work shall be paid by the Union at a predetermined rate as determined by the Union and in compliance with applicable laws. The working member shall meet all qualifications of the rank he/she is replacing. Time off for Union business shall not be counted against members in accordance with Article 122, – Exchange of Duty The approved time off will be considered work hours for the purpose of overtime calculation, for Rank and File members.

Union members who are elected at large to a Principal Officer position, who cannot arrange for another member to work in their absence, shall be afforded time off for Union business when staffing exceeds the minimum needed per tour. This time will be deducted from the Principal Officer's leave time, and time and will be made whole by the Union.

Section 3 - Meetings

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UNION: EC

CITY: 44 32419

The City will allow Union members, who are appointed by the Union to committees, to attend all joint Departmental committee meetings between both parties while on duty, providing members remain in a response ready available mode. The Union shall certify a list of appointed committee members to the Fire Chief's office to serve on such committees. Elected Officers of the Union shall be allowed to attend any and all meetings relating to employee issues while both on and off duty.

Section 4 - Employee Union Member Hardship

Time off for employee hardship under this Article shall be utilized by any Union member after exhausting any other approved time off (e.g., Leave Sharing, Employee Hardship) provided by the City. The Union shall inform the Fire Chief, via electronic mail, of the Union Member Hardship. Any employee who is off on employee hardship shall arrange for their replacement and inform the appropriate Supervisor forward the appropriate form, designating that the member is off on employee hardship. The employee who agrees to work shall be paid by the Union at a predetermined rate, as determined by the Union. The working employee shall meet all qualifications of the rank he/she is replacing. Requests for an employee to work outside of the qualifications of the Hardship employee are subject to Fire Chief approval.

CITY: 22 72949

Time off for employee hardships shall not be counted against employees in accordance with Article 12, Exchange of Duty

Article <u>7</u>8 Grievance Procedure

Section 1 - Definitions

For purposes of this Agreement, a "grievance" is a difference or dispute regarding the meaning, interpretation or application of the terms of this Agreement. A "class action grievance" is a grievance that affects an entire class of employees.

Section 2 - Grievance Procedure

<u>Prior to an employee filingling a grievance, the employee should discuss the grievance with a Union</u> Representative, to assist-with them with the grievance process.

Grievances shall be processed as follows:

Step 1

The grieving-employee shall <u>submit</u>present the grievance in writing on the "Written-Grievance Form" (as found in Appendix C of this Agreement) to the <u>Fire Deputy Chief and Union Vice President employee</u>'s immediate supervisor within ten (10) calendar days of the event causing the grievance or within ten (10) calendar days of when the aggrieved employee becomes aware of such event. The immediate supervisor may seek the assistance of any other individual who may offer assistance or information, which will aid the supervisor to reach a decision. The <u>Fire Deputy Chief or designeeimmediate supervisor shall attempt to adjust the matter and shall respond to the employee, in writing, on the "Written-Grievance Form" (as found in Appendix C of this Agreement) within ten (10) calendar days <u>from the date of submission</u> of the date the supervisor first (1st) discussed the grievance with the employee.</u>

Step 2

If the grievance is not satisfactorily resolved at Step 1, the aggrieved-employee shall present the grievance in writing on the "Written-Grievance Form" (as found in Appendix C of this Agreement) to the Union's Grievance Committee within ten (10) calendar days of the decision rendered at Step 1. The Union's Grievance Committee shall determine whether the grievance is valid and has merit. If the Union's Grievance Committee finds the grievance invalid or is without merit, no further action shall be taken by the Union. If the Union's Grievance Committee determines that the grievance is valid and has merit, the Union shall present the grievance in writing on the "Written-Grievance Form" (as found in Appendix C of this Agreement) to the Fire Chief/Emergency Services Director within ten (10) calendar days of the date the grievance is presented to the Union's Grievance Committee. The Fire Chief or designee shall render a decision on the "Grievance Form" within ten (10) calendar days from the date the grievance was presented.

"Class Action Grievances" Grievances "

"Class action grievances," approved by the Union's Grievance Committee, shall be filed on the "Written Grievance Form" (as found in Appendix C of this Agreement) directly with the Fire Chief/Emergency

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Services Director within ten (10) calendar days of the event causing the grievance or within ten (10) calendar days of when the Union becomes aware of such event. The Fire Chief or/Emergency Services Director or the Fire Chief/ Emergency Services Director's designee shall render a decision in writing on the Written Grievance Form (as found in Appendix C of this Agreement) within ten (10) calendar days from the date the grievance was presented.

Step 3

If the grievance is not satisfactorily resolved at Step 2, the grievance in writing shall be presented to the City Manager on the "Written-Grievance Form" (as found in Appendix C of this Agreement) within ten (10) calendar days of the decision rendered at Step 2. The City Manager or the City Manager's designee shall render a decision on the "Written-Grievance Form" (as found in Appendix C of this Agreement) in writing within ten (10) calendar days from the date the grievance was presented.

Mediation

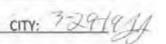
By mutual agreement, the parties may submit the grievance to mediation, to be conducted by the Federal Mediation and Conciliation Service (FMCS), prior to invoking arbitration. If the parties agree to mediate, the time limits for giving notice of intent to arbitrate shall be extended until such time as mediation is concluded.

Arbitration

If the grievance is not satisfactorily resolved at Step 3, the Union shall give notice of intent to arbitrate on the "Written Grievance Form" (as found in Appendix C of this Agreement) within ten (10) calendar days of the decision rendered at Step 3. The notice must be served upon the City's Human Resources Department and concurrently mailed to the Federal Mediation and Conciliation Service requesting a panel of seven (7) qualified arbitrators.

An arbitrator shall be selected from the panel by the alternate striking of names with the Union making the first (1st) strike. Any party shall have the opportunity to reject one (1) panel of arbitrators in its entirety. The arbitrator shall have no power to add to, subtract from, modify, or alter the terms of this Agreement, but shall determine only whether or not there has been a violation of this Agreement as alleged in the grievance.

The decision of the arbitrator shall be based upon the evidence and arguments presented. The arbitrator shall render a decision not later than thirty (30) calendar days after the conclusion of the final hearing. The arbitrator's decision shall be in writing, and shall set forth the arbitrator's opinions and conclusions on the issues submitted. Findings of the arbitrator made in accordance with the jurisdictional authority of this Article shall be final and binding on both parties.



In the event any party claims a dispute is non-arbitrable, the Arbitrator shall rule on that issue prior to considering the merits of the grievance.

This Agreement constitutes a contract between the parties that shall be interpreted and applied in the same manner as any other contract under the laws of the State of Florida. The function and purpose of the Arbitrator is to determine disputed interpretations of terms actually found in the Agreement or to determine disputed facts upon which the Agreement's application will depend. The Arbitrator shall not have the authority to decide any issue not submitted by the parties, nor to interpret or apply the Agreement as to change what can fairly be said to have been the intent of the parties as determined by generally accepted rules of contract construction.

The compensation and expenses associated with any arbitration hearing, including attorney fees, shall be borne by the losing party as determined by the Arbitrator. In the event of a compromise award (neither party prevails on all issues), the costs of the services of the Arbitrator shall be borne equally by the parties, however, each party shall bear its own expenses, including attorney's fees.

Section 3 – General Provisions

- (a) The parties to this Agreement shall make a good faith effort to schedule and hold arbitration hearings in a reasonable and timely manner. If the arbitrator chosen by the parties is not available until after ninety (90) days from the date of arbitration request, then the parties agree to choose another arbitrator so long as the newly selected arbitrator is available within this ninety (90) day time period.
- (b) Time limits in this Article may be lengthened or shortened pursuant to a written agreement between the parties.
- (c) Step(s) of the grievance procedure may be waived in order to expedite arbitration pursuant to a written agreement between the parties.
- (d) A probationary employee (new hire) shall have the rights of the grievance procedure for disciplinary actions through Step 2.
- (e) The Union shall not be obligated to represent employees who are not members of the Union in the processing of grievances.
- (f) Only the Union shall have the power to process and advance a grievance to arbitration, except where the Union has declined to represent an employee because he/she is not a member of the Union.

CITY: 24 3291

Article 89 Seniority

Section 1 – City Seniority

Each employee shall have City seniority based on the employee's total length of service with the City, dating back to the employee's first (1st) date of continuous employment with the City, in a full-time position.

City seniority shall be used for computing annual leave accrual, pension/retirement and longevity.

Leave without pay which is approved by the Fire Chief/Emergency Services Director and the City shall not constitute a break in service.

Section 2 – Departmental Seniority

Each employee shall have Departmental Seniority based on the employee's total length of service with the Fire Department dating back to the employee's first (1st) date of continuous employment with the Fire Department. Departmental Seniority shall be used in determining reduction of personnel due to layoff, recall from layoff and demotion.

For purposes of layoffs and recall, but not for any other purpose, departmental seniority shall be augmented by one (1) month of credited service for each year of qualified military service in accordance with Section 295.07, Florida Statutes, as amended, for preference in employment retention. It shall be the employee's responsibility to request veteran's preference in writing, in a timely manner, and to verify

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entitlement to the veteran's preference. After application of both departmental seniority and veteran's preference, if two or more individuals are equal in terms of seniority, then the veteran shall be given preference. After application of both departmental seniority and veteran's preference, if two or more individuals are equal in terms of seniority, then the veteran with greater qualifying military time served shall be given preference.

Section 3 - Classification (Rank) Seniority

Employees who have been The Department -promoted shall utilize their employee's promotional date_to establish seniority within -Classification their Classification (Rank)-Seniority.

In the event that Classification or Rank Sseniority within a specific Classification or (Rank) is equal between or among employees, the employee's most recent official hiring or promotional ranking final eligibility list, assigned Department personnel number shall be used in breaking the tie.

Each employee shall have Classification (Rank) Seniority based on the employee's total length of service in that Classification (Rank), which may include service in a higher rank if the employee is not retained in the higher classification and returns before completing the promotional probationary period (voluntarily or involuntarily). Except as otherwise provided for in this Agreement, Classification (Rank) Seniority shall be used for determining annual selection of Kelly Days and Scheduled Leave preference in order of Classification (Rank) as follows:

Shift: Fire Battalion Chiefs, Fire Lieutenants, Fire Engineer/Drivers, Firefighters.

Non Shift: Fire Battalion Chiefs and Fire Lieutenants

Non Shift (Life Safety): Fire Marshal and Fire Inspectors.

In the event that Classification or Rank Seniority in a specific Classification or Rank is equal between or among employees, the employee's assigned Department personnel number shall be used in breaking the tie.

Section 4 Station Assignments (Shift)

Between June 15th and July 1st of each year, all shift employees shall submit station assignment preferences, in numerical order, for every existing station. These will be reviewed by the respective Fire Battalien Chiefs, with final approval by the Fire Chief/Emergency Management Director or his/her designee.

All station assignments are at the discretion of the Fire Chief/Emergency Management-Director or his/her designee. Factors to be considered, but not limited to, are as follows:

- 1) Specialty response(s) for a particular station
- 2)1)Staffing
- 3)1)Rank/Seniority

The Fire Chief/Emergency Management Director or his/her designee shall finalize station assignments, and notify the respective shift employees via email, no later than July 15th.

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Between July 1st and July 15th of each year, the Fire Chief/Emergency Management Director or his/her designee and Union President and/or their designees shall meet and mutually agree on the staffing requirements each year prior to the Kelly Day selection process. Once the criteria is approved ("Kelly Day Parameters") by the Fire Chief/Emergency Management Director and finalized, it shall be provided to the membership by July 15th of each year. Changes in the Kelly Days shall not increase evertime.

Between July 15th and August 1st of each year, all shift employees shall submit Kelly Day selections, in numerical order, to their respective Fire Battalien Chief. These will be reviewed by the respective shift Fire Battalien Chiefs and approved by the Fire Chief/Emergency Management Director or his/her designee. The Kelly Day selection shall be awarded by Rank Seniority, based on the agreed upon Kelly Day Parameters.

Kelly Day selections shall take effect on the first day of the first work cycle beginning on or after October 1 of each fiscal year and shall remain in effect until the first day of the first work cycle beginning on or after October 1 of the following fiscal year except in the event that the employee is premoted or placed on an alternate shift.

In the event of promotion, demotion or placement on an alternate shift, the employee promoted, demoted or placed on an alternate shift shall select a new Kelly Day from among the available Kelly Day slots in the new rank or on the alternate shift.

In the event that Rank Seniority in a specific Rank is equal among several employees, the employee's assigned personnel number shall be used in breaking the tie.

The Fire Chief/Emergency Management Director or his/her designee shall finalize Kelly Day selections, and notify the respective shift employees via email, no later than August 15th,

Section 6 Vacation Selection (Shift)

Between August 15th and September 1st of each year, all shift employees shall submit their initial choice(s) for vacation and any requests for exchange of duty ("trade downs") to their respective Fire Battalien Chief, via the electronic scheduling system, to be distributed based on Rank Seniority (with scheduled leave requests having priority over exchange of duty "trade downs"). These will be reviewed by the respective Fire Battalien Chiefs (Shift) and approved by the Fire Chief/Emergency Management Director or his/her designee.

Employees shall be afforded the opportunity to select all or part of their earned annual leave (vacation) time based on Rank Seniority. The Fire Chief/Emergency Management Director or his/her designee shall finalize vacation selections, as well as any approved exchange of duty ("trade downs"), and notify the respective shift employees via email, no later than September 15th.

For a given fiscal year, after finalized vacation selections and approved exchange of duty ("trade downs") have been approved in the electronic scheduling system, requests for exchange of duty ("trade downs") and non-annual vacation selection scheduled leave requests will be approved on a first some, first served basis.

Section 74 – Loss of Seniority

The Seniority rights of an employee shall terminate upon:

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- Voluntary termination
- Retirement (excluding DROP participants)
- · Termination for just cause
- Layoff exceeding twenty-four (24) months
- Failure to return from any authorized leave of absence (including FMLA) within three (3) calendar days of the scheduled leave date.
- Failure to report for work within fourteen (14) calendar days from the receipt of a letter of recall from layoff or failure to notify the City of intent to return to work within five (5) calendar days of the date of receipt of a letter of recall from layoff.

Section Section 58 - Probation of Newly Hired Employees

New employees shall be on initial probation for a period of one (1) year, during which time the City will have the right to retain the employee or dismiss the employee. The City shall have the right to extend initial probation no longer than two (2) consecutive <u>periods</u> up to three (3) months ach periods after the initial one (1) year period before deciding to retain the employee in the designated class they currently hold.

An employee shall not be entitled to use accrued leave during the first six (6) menths of the initial probationary period, previded, however that in the case of illness, an employee may use accrued leave. An employee may only utilize accrued leave during the initial six (6) month probationary period in the case of illness or approval of the Fire Chief.

-An employee who is terminated during the first six (6) months of the initial probationary period shall not receive payment for any unused leave. After the completion of the first six (6) months of the initial probation, employees shall be entitled to payment for any unused leave.

Section 69 - Probation of Newly Promoted Employees

Promoted employees shall be considered on probation for a period of six (6) months, during which time the City will have the right to retain the employee in the designated class or demote the employee to the Classification (or Rank) previously held by the employee for just cause. The City shall have the right to extend promotion probation no longer than two (2) consecutive periods, up to three (3) month periods after the initial six (5) month period before deciding to either denote the employee to the Classification or Rank previously held, or retain the employee in the designated class they currently hold.

Section 10 - Non-Retention of Newly Promoted Employees

A newly-promoted employee, while still on probation, can request to not be retained (not demoted) in his/her new rank if the following provisions apply:

- The Fire Chief / Emergency Management Director approves.
- A vacancy exists in the rank the employee promoted from, or
- A current promotional list exists, whereby an employee on said list is agreeable to promote, thereby creating that vacancy.

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Page 43 Said employee will be placed back to the rank and step they promoted from, including any step, wage increase(s), and seniority that the employee would have been entitled to, provided they never left.

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Article 9 Staffing

In the event of additional Fire Stations being placed in service, manpower upgrades, or layoffs, during the terms of this Agreement, Agreement, Article 9 – Staffing, , may be modified by mutual, written agreement between the Fire Chief and Union President. shall be renegotiated to reflect that change.

Section 13 - Minimum Staffing (Shift)

Shift Mminimum staffing shall be defined as; follows:

forty-eight (48) rank & file positions and two (2) supervisory (Fire Battalion Chief) positions.

From 0800-1800 Hours: Forty five (45) rank & file shift members on duty at all times. There shall also be two (2) Fire Battalion Chiefs (Shift). This shall not preclude the Fire Chief/Emergency Management Director from staffing with one (1) current Fire Battalion Chief (Shift) and one (1) Temporarily Upgraded Fire Battalion Chief (Shift).

From 1800-0800 Hours: Forty-four (44) rank & file shift members on duty at all times. There shall also be two (2) Fire Battalion Chiefs (Shift). This shall not preclude the Fire Chief/Emergency Management Director from staffing with one (1) current Fire Battalion Chief (Shift) and one (1) Temporarily Upgraded Fire Battalion Chief (Shift).

Section 24 - Shift Rank Minimums (Shift)

There shall be a minimum of fourteen (14) Fire Engineer/Driver positions, as part of daily minimum staffing. Seven (7) of these positions must be filled by the rank of Fire Engineer/Driver or higher. Seven (7) may be filled by a Temporarily Upgraded Fire Engineer/Driver.

There shall be a minimum of eleven (11) Fire Lieutenant positions as part of daily minimum staffing. Six (6) of these positions must be filled by the rank of Fire Lieutenant or higher. Five (5) may be filled by a temporary upgraded Fire Lieutenant.

There shall be a minimum of two (2) Fire Battalion Chief positions as part of daily minimum staffing. One (1) of these positions must be filled by the rank of Fire Battalion Chief. One (1) may be filled by a temporary upgraded Fire Battalion Chief.

Shift staffing on any given tour of duty shall include the following:

Fifty percent (50%) of the total number of Fire Lieutenants assigned to shift shall be clarified as fifty percent (50%) of thetotal number of budgeted Fire Lieutenant full time equivalents (FTEs) per shift (i.e., A-Shift, B-Shift, C-Shift), whether assigned to a station or not. This shall not include Fire Lieutenants assigned to Non-Shift. The resulting fifty percent (50%) figure shall be rounded up to the nearest whole number.

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Fifty percent (50%) of the total number of Fire Engineer/Drivers assigned to shift shall be clarified as fifty percent (50%) of the total number of budgeted Fire Engineer/Driver full time equivalents (FTEs) per shift (i.e., A-Shift, B-Shift, C-Shift), whether assigned to a station or not. This shall not include Fire Engineer/Drivers assigned to Non-Shift). The resulting fifty percent (50%) figure shall be rounded up to the nearest whole number.

In the event of additional Fire Stations being placed in service, manpower upgrades, or layoffs, during the terms of this Agreement, Article 11, Section 3 & 4 shall be renegotiated to reflect that change.

Section 3 - Determining-Selection Parameters

Except as otherwise provided for in this Agreement, Classification (Rank) Seniority shall be used for determining annual selection of Station Assignment, Kelly Day, and Scheduled Leave preferences in order of Classification (Rank) as follows:

Shift: Fire Battalion Chiefs, Fire Lieutenants, Fire Engineer/Drivers, Firefighters.

Non-Shift: Fire Battalion Chiefs and Fire Lieutenants

Non-Shift (Life Safety): Fire Marshal and Fire Inspectors.

There shall be a minimum number of slots available for Kelly Days and Scheduled Leave each day yearbased on the current staffing multiplier. The number of available slots is derived from an established staffing multiplier of 3.92. The multiplier is used to determine the number of available vacancies above minimum staffing. Based on the current shift minimum staffing number and staffing multiplier, fifteen (15) personnel may be off per shift between Kelly Days and Scheduled Leave. times the number of minimum staffing (48).

Between May 1st and May 15th of each year, the Fire Chief and Union President or their designees shall meet and mutually agree on the staffing parameters. Once the criteria is approved, it shall be provided to the membership by May 21st of each year.

Station Selection, Kelly Day Selection, and Vacation Selection

Except as otherwise provided for in this Agreement, Classification (Rank) Seniority shall be used for determining annual selection of Kelly Days and Scheduled Leave preference in order of Classification (Rank) as follows:

Shift: Fire Battalion Chiefs, Fire Lieutenants, Fire Engineer/Drivers, Firefighters,

Non-Shift: Fire Battalion Chiefs and Fire Lieutenants

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Non-Shift (Life Safety): Fire Marshal and Fire Inspectors.

Section 4 - Station Assignments (Shift)

By June 1st all Shift Fire Lieutenants shall submit station assignment preferences, in numerical order, for every existing station. Shift Fire Battalion Chiefs shall post to their respective shifts, via email, the Shift Fire Lieutenants station assignments by June 8th.

By June 16th all Shift Fire Engineer/Drivers shall submit station assignment preferences, in numerical order, for every existing station. Shift Fire Battalion Chiefs shall post to their respective shifts, via email, the Shift Fire Engineer/Drivers station assignments by June 22nd.

By June 30th all Shift Fire Firefighters shall submit station assignment preferences, in numerical order, for every existing station.

All station assignments are at the discretion of the Fire Chief or designee. Factors to be considered, but not limited to, are as follows:

- 1) Specialty response(s) for a particular station
- 2) Staffing
- 3) Classification (Rank) seniority

The Fire Chief or designee shall finalize station assignments, and notify the respective shift employees via email, no later than July 15th.

Section 5 - Kelly Day Selection (Shift)

By August 1st of each year, all shift employees shall submit Kelly Day selections, in numerical order, to their respective Fire Battalion Chief. These will be reviewed by the respective shift Fire Battalion Chiefs and approved by the Fire Chief or designee. The Kelly Day selection shall be awarded by Rank Seniority, based on the agreed-upon Kelly Day Parameters. Changes in the Kelly Days shall not increase overtime.

Between June 15th and July 1st of each year, all shift employees shall submit station assignment preferences, in numerical order, for every existing station. These will be reviewed by the respective Fire Battalion Chiefs, with final approval by the Fire Chief/Emergency Management Director or his/her designee.

All station assignments are at the discretion of the Fire Chief/Emergency Management Director or his/her designee. Factors to be considered, but not limited to, are as follows:

| Specialty response(s) for a particular station |
|--|
| Staffing |
| Rank/Seniority |

The Fire Chief/Emergency Management Director or his/her designee shall finalize station assignments, and notify the respective shift employees via email, no later than July 15th.

Section 5 Kelly Day Selection (Shift)

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Between July 1st and July 15th of each year, the Fire Chief/Emergency Management Director or his/her designee and Union President and/or their designees shall meet and mutually agree on the staffing requirements each year prior to the Kelly Day selection process. Once the criteria is approved ("Kelly Day Parameters") by the Fire Chief/Emergency Management Director and finalized, it shall be provided to the membership by July 15th of each year. Changes in the Kelly Days shall not increase overtime.

Between July 15th and August 1st of each year, all shift employees shall submit Kelly Day selections, in numerical order, to their respective Fire Battalion Chief. These will be reviewed by the respective shift Fire Battalion Chiefs and approved by the Fire Chief/Emergency Management Director or his/her designee. The Kelly Day selection shall be awarded by Rank Seniority, based on the agreed upon Kelly Day Parameters.

Kelly Day selections shall take effect on the first day of the first work cycle beginning on or after October 1 of each fiscal year and shall remain in effect until the first day of the first work cycle beginning on or after October 1 of the following fiscal year except in the event that the employee is promoted or placed on an alternate shift.

In the event of promotion, demotion or placement on an alternate shift, the employee promoted, demoted or placed on an alternate shift shall select a new Kelly Day from among the available Kelly Day slots in the new rank or on the alternate shift.

In the event that Rank Seniority in a specific Rank is equal among several employees, the employee's assigned personnel number shall be used in breaking the tie.

The Fire Chief/Emergency Management Director or his/her designee shall finalize Kelly Day selections, and notify the respective shift employees via email, no later than August 15th.

Section 6 - Scheduled Leave Vacation Selection (Shift)

Between August 15th and By September 1st of each year, all shift employees shall submit their initial choice(s) for scheduled leaveyacation and any requests for exchange of duty ("trade-downs") to their respective Fire Battalion Chief, via the electronic scheduling system, to be distributed based on Rank Seniority (with scheduled leave requests having priority over exchange of duty "trade downs"). These will be reviewed by the respective Fire Battalion Chiefs (Shift) and approved by the Fire Chief /Emergency Management Director or his/her designee.

Employees shall be afforded the opportunity to select all or part of their earned annual leave (vacation) time based on Rank Seniority. The Fire Chief/Emergency Management Director or his/her designee shall finalize Scheduled Leavevacation selections, as well as any approved exchange of duty ("trade-downs"), and notify the respective shift employees via email, no later than September 15th.

For a given fiscal year, after finalized vacationScheduled Leave selections and approved exchange of duty ("trade-downs") have been approved in the electronic scheduling system, requests for exchange of duty ("trade-downs") and non-annual vacation selection-scheduled leave requests will be approved on a first come, first served basis.

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Article 10 Work Schedules/Hours of Duty

Section 1 -Shift Work Period & Non-Shift Work Week

In compliance with the Fair Labor Standards Act (FLSA), the City uses a twenty-one (21) day work period for shift employees. The City has identified the twenty-one (21) day work period to start on Sunday at 00:00:00 hours and end twenty-one (21) days later on Sunday at 00:00:00 hours (e.g., Start on Sunday, 10/19/14, 00:00:00 hours to Sunday, 11/9/14, 00:00:00 hours).

The City uses a seven (7) day work week for all non-shift employees.

Section 2 - Shift Employees' and Non-Shift Employees' Work Schedules & Hours of Duty

Shift employees shall be normally assigned the following schedules:

- Rank & File (Shift) Employees: 0800 hours to 0800 hours
- > Supervisory (Shift) Employees: 0700 hours to 0700 hours

Shift employees normal work schedule shall consist of twenty-four (24) hours on duty and forty-eight (48) hours off duty, with one (1) twenty-four (24) hour shift being scheduled as a Kelly Day during the twenty-one (21) day work period identified in Section 1. Shift employees will be regularly scheduled to work one hundred forty-four (144) hours (total 2496 hours) annually. Shift employees shall not be allowed to work more than forty-eight (48) hours in any sixty (60) hour time period.

Non-Shift employees will be scheduled on a forty (40) hour work week, which may consist of a five (5) day, eight (8) hours per day, schedule or four (4) day, ten (10) hours per day, schedule. The schedule shall be determined by the Fire Chief or designee/Emergency Management Director. During the work week, non-shift employees will be regularly scheduled (40) hours (total 2080) annually.

Section 3 - Non-Shift Employee Holiday Work Schedule

For a Non-Shift employee working a four (4) day, ten (10) hours per day, schedule, said employee shall adjust their normal day off to a different day off for that week only in the event a holiday (in accordance with Article 16 - Leave7, Section 6) falls on the employees' normal day off.

Section 4 - Non-Shift Employee Flex Time

Employees working a forty (40) hour week who wish to "flex" their time may do so by mutual agreement with their Supervisor and the concurrence of the Fire Chief/Emergency Management Director. The "flex" time off must be taken and paid back during the same work week to ensure the time compensated during the work week equals forty (40) hours.

Section 5 - Shift Fire Lieutenant or Fire Battalion Chief Orientation Work Schedule

The Fire Chief/Emergency Management Director may assign a promotional probationary shift Fire Lieutenant or Fire Battalion Chief (Fire Lieutenant or Fire Battalion Chief who works an average of forty-eight [48] hours per week) to a forty (40) hour week position for the purpose of orientation.

The parties agree that during this temporary assignment, the promotional probationary shift Fire Lieutenant or Fire Battalion Chief (Fire Lieutenant or Fire Battalion Chief who works forty-eight [48] hours

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per week) will work forty (40) hours a week, butweek but will continue to be paid and accumulate all benefits as a Shift employee.

The Fire Chief/Emergency Management Director may hold the promotional probationary shift Fire Lieutenant or Fire Battalion Chief on orientation up to six (6) weeks, (excluding scheduled leave) at which time the employee will be assigned his/her permanent shift schedule.

Article 11 Overtime

Section 1 – Overtime

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During the shift twenty-one (21) day work period defined in Article 10 - Work Schedules/Hours of Duty, of this Collective Bargaining Agreement, shift employees will be paid overtime at the rate of one and one half (1-1/2) their regular rate for any hours actually worked, in excess of their regularly scheduled one hundred forty four (144) hours, rounded up to the nearest quarter (1/4) hour.

During the non-shift work week defined in Article 10 - Work Schedules/Hours of Duty, of this Collective Bargaining Agreement, non-shift employees will be paid overtime at the rate of one and one half (1-1/2) their regular rate for any hours actually worked, in excess of their regularly scheduled forty (40) hours, rounded up to the nearest quarter (1/4) hour.

Section 1.1 - Supervisory Overtime Restrictions

The Parties agree that <u>Supervisory</u> bargaining unit members are exempt employees and not subject to the overtime provisions of the Fair Labor Standards Act.

Notwithstanding the aforementioned, in the event that there is a need for <u>supervisory employee</u> overtime in the CCFD, the amount of overtime worked shall be paid at the rate of one and one-half (1-1/2) times the regular hourly rate of pay of the employee involved based on the employees forty-eight (48) hour rate of pay. Employees assigned to a forty (40) hour schedule will be assigned a forty-eight (48) rate of pay. for the purposes of overtime, based on their forty (40) hour step equivalent. an employee is specificallyworking their assigned. Ithese s. Overtime shall be paid for hours assigned and worked in a work week exceeding forty-eight (48) hours for Sehift Fire Battalion Chiefs and exceeding forty (40) hours for Non-Shift Fire Battalion Chiefs, unless otherwise stated in this Article.

The regular hourly rate of pay for overtime purposes shall be calculated by dividing the total number of hours that an employee is scheduled to work for a fiscal year (2496 hours for shift employees and 2080 hours for Non-Shift employees) into the employee's base salary. Only hours assigned and worked will count toward the calculation of overtime. For example, holiday and vacation hours shall not count toward the calculation of overtime.

In order to be compensable under this Section all overtime work will require prior written approval of the Fire Chief/Emergency Management Director or his/her designee, which will include approval received via electronic mail before the employee engages in any overtime work. Failure to receive prior written approval before beginning any overtime may result in disciplinary action up to and including termination. Nothing in this Article shall require the Fire Chief/Emergency Management Director, or his/her-designee, to assign overtime or to fill a vacancy. Nothing in this Article shall prevent the Fire Chieff/Emergency Management Director, or his/her-designee, from assigning overtime to a specific Fire Battalion Chief based upon the operational needs of the Department.

Section 2 - Overtime Due to Unscheduled Leave

| <u>(a)</u> | Unscheduled Leave (by Employee who is working in the capacity of their own rank): For |
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| | purposes of o vertime recall caused by unscheduled leave (shift staffing drops below |
| | minimum staffing in accordance with this Article 9 - Staffing), the following process shall be |
| | applied: |
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(a)

Overtime recall will be offered to the assigned position utilizing unscheduled leave. If no one voluntarily accepts the overtime, the assigned position utilizing the unscheduled leave shall be mandated in accordance with the Article 9 - Staffing. (e.g. Fire Engineer/Driver Acting as Fire Lieutenant utilizes UL, call in Fire Lieutenant Overtime, if no one accepts voluntarily then mandate a Fire Lieutenant).

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- 1. The rank which that person holds who used unscheduled leave shall be the first (1st) rank used for overtime recall.
- 2. If no employee in that rank accepts the overtime, then the department shall recall as follows:
 - One rank below the rank that used unscheduled leave (provided that the
 employees are qualified in accordance with Article 28 and the minimum staffing
 of Article 11, Section 3 has not been violated).
 - II. Mandate an employee of the same rank that used unscheduled leave (in accordance with Article 11).
- (b) Unscheduled Leave (by Employee who is Temporarily Upgrading to the next higher rank For purposes of overtime recall caused by unscheduled leave used by an employee who is temporarily upgrading to the next higher rank (shift staffing drops below minimum in accordance with this Article), the following process shall be applied:

The regularly scheduled employees on shift that day shall be offered the temporary upgrade assignment and pay ("out-of-title pay"), by classification-rank seniority

- I. If a regularly scheduled employee(s) is temporarily upgraded, said Employee shall be backfilled by an overtime Employee of the same rank.
 - (a) If no employee in that rank accepts the overtime, then the department shall recall as follows:
 - Mandate an employee of the same rank that used unscheduled leave (in accordance with Article 11) (e.g., an Acting Fire Lieutenant that uses unscheduled leave is replaced by a Fire Engineer/Driver).
- II. If no regularly scheduled employees on shift that day are qualified in accordance with Article 28, the rank that the Employee was temporarily upgrading to shall be the same rank used for recall and mandate.

In the event that the vacancy requires a specialty (e.g. PSDT Lt, HMT Lt. or Paramedic), another employee on shift can-may be reassigned to fulfill the vacancy caused by unscheduled leave (e.g. RDT Lt/HMT Lt). sSaid employee shall be reassigned moved to fill the vacancy, unless the overtime employee can fill the vacancy that requires a specialty, and their vacancy then recall in accordance with Article 11. Section 2 (a) or (b) (whichever scenario applies) of this article.

If no other employee, with the same specialty, is available to fill the vacancy, an employee with said specialty should shall be recalled to replace per Article 11 Section 2 (a) or (b) (whichever scenario applies) of this article.

- (c)(b) When Unscheduled Leave is granted after the tour of duty has begun, the Fire Battalion Chief (Shift) shall replace the employee off on Unscheduled Leave as follows:
 - 1. In accordance with Article 11 Overtime Section 2 (a) or (b) (the mandatory recall shall not apply in this scenario only).); or then
 - 2. Offer the overtime to additional ranks and downgrade or upgrade acting positions as needed (utilizing members in their rank whenever possible); or

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3. Operate at reduced staffing strength during the balance of that tour.

Section 3 – Other Overtime Situations

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- (ad) -Working beyond Shift: Employees required to work beyond their shift shall be paid in accordance with Article 11 Overtime, Section 1.
- (eb) Recall to Duty: All employees recalled to duty will be paid a minimum of two (2) hours of pay at the rate of time and one-half (1-1/2). Beyond that, employees recalled to duty for two (2) hours or more, shall be paid in accordance with Article 11 Overtime, Section 1.
- (fc) Special Detail Services: Any individual or organization contracting compensating with the City Fire Department through the Special Event permit-assignment process, for which by which any Cape Coral Fire Department services are requested is called for in said permit, the City/Fire Department shall utilize off duty employees in conjunction with this Article.

Special Detail Services staffing may be filled via the city's electronic mail system in advance of a special detail service (e.g. Oktoberfest), the Fire Chief or designee shall determine the necessary resources required to meet the needs of the special detail. Once the personnel needs have been determined, the Fire Chief or designee may send an email soliciting interest of the required ranks and staff as necessary. If the necessary personnel have not voluntarily signed up for the special detail the Fire Chief or designee shall mandate the necessary employees in accordance with Article 11 - Overtime. Upon notification that an employee is working a special detail the Fire Chief or designee shall update the city's electronic time keeping system (i.e.-TeleStaff) and the call back list if necessary.

- (dg) Meetings and Training: Employees, who are required, (by the Fire Chieff/Emergency Management Director or designee,) to attend meetings or training while off duty, shall be compensated for the actual time in attendance rounded off forward to the nearest one-quarter(1/4) hour at the rate of time and one-half (1-1/2). This Article shall not apply to off-duty Bargaining Unit members attending Collective Bargaining sessions by the City.
- (he) City Emergencies: In case of extreme or pending emergencies; such as hurricane, flood, riot, or other similar situation, the Fire Chief/Emergency Management Director may waive the established procedures referenced in Article 11 Overtime. If employees, whether on emergency stand-by or not, are called in to work during an emergency declared by City Council or City Manager, they shall receive two (2) times their basebase rate of pay for the actual amount of time worked on duty during the duration of said emergency, rounded off forward to the nearest one-quarter (1/4) hour. This provision shall only come into effect when the City offices are shut down by City Council.
- (f) Deployments: The Fire Chief or designee may deploy personnel and resources in response to an emergency declared by the State of Florida or Federal Government, which receive a State Emergency Response Plan (SERP) mission number. Selection of deployments shall be in accordance with Article 11 Overtime and CCFD's governing documents. The employees shall receive one and one-half (1-1/2) two (2) times their regular

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- rate of pay for the actual amount of time deployed (e.g. portal to portal) during said emergency, rounded off forward to the nearest one-quarter (1/4) hour.
- (gi) Emergency Stand-By: If employees are called and put on emergency stand-by, they will receive one and one-half (1-1/2) times their regular rate of pay, for the actual amount of time they were on emergency stand-by, rounded off forward to the nearest one-quarter (1/4) hour. In order to be compensated under this Section all emergency standby must receive prior written approval of the Fire Chief or designee.

"Emergency Stand-By" as used in Article 11 - Overtime, shall be defined as: Any employee who is notified by the Fire Chief/Emergency Management Director or his/her-Designee to stand-by at a communication contact point to facilitate recall to duty.

Section 3 Minimum Staffing

Minimum staffing shall be defined as follows:

From 0800-1800 Hours: Forty five (45) rank & file shift members on duty at all times. There shall also be two (2) Fire Battalion Chiefs (Shift). This shall not preclude the Fire Chief/Emergency Management Director from staffing with one (1) current Fire Battalion Chief (Shift) and one (1) Temperarily Upgraded Fire Battalion Chief (Shift).

From 1800-0800 Hours: Forty four (44) rank & file shift members on duty at all times. There shall also be two (2) Fire Battalion Chiefs (Shift). This shall not preclude the Fire Chief/Emergency Management Director from staffing with one (1) current Fire Battalion Chief (Shift) and one (1) Temperarily Upgraded Fire Battalion Chief (Shift).

Section 4 - Shift Rank Minimums

Shift staffing on any given tour of duty shall include the following:

Fifty percent (50%) of the total number of Fire Lieutenants assigned to shift shall be clarified as fifty percent (50%) of the total number of budgeted Fire Lieutenant full time equivalents (FTEs) per shift (i.e., A-Shift, B-Shift, C-Shift), whether assigned to a station or not. This shall not include Fire Lieutenants assigned to Non-Shift. The resulting fifty percent (50%) figure shall be rounded up to the nearest whole number.

Fifty percent (50%) of the total number of Fire Engineer/Drivers assigned to shift shall be clarified as fifty percent (50%) of the total number of budgeted Fire Engineer/Driver full time equivalents (FTEs) per shift (i.e., A Shift, B Shift, C Shift), whether assigned to a station or not. This shall not include Fire Engineer/Drivers assigned to Non-Shift). The resulting fifty percent (50%) figure shall be rounded up to the nearest whole number.

In the event of additional Fire Stations being placed in service, manpower upgrades, or layoffs, during the terms of this Agreement, Article 11, Section 3 & 4 shall be renegotiated to reflect that change.

Section 45 - Compensatory Time

Compensatory time at the rate of one and one half (1-1/2) times, may be given in lieu of overtime pay at the request of the employee and mutual consent of the Fire Chief or designee/Emergency Management Director. All other terms of compensatory time (in lieu of overtime) shall be in accordance with the City of Cape Coral Administrative Regulation governing compensatory time.

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Section 56 - On-Call Pay

Any shift or non-shift employee working in the capacity of an exempt employee is not eligible for "on-call" pay.

- (a) Shift Employees: Shift Employees who are required to be "on-call" shall receive hours of pay at their regular rate for each work day they are assigned to be "on-call" as follows:
 - Employees who are on on-call Monday, Tuesday, Wednesday or Thursday shall be paid one and one-quarter (1 1/4) hours for each day they are on on-call status.
 - Employees who are on on-call Friday, Saturday or Sunday shall be paid two and a half (2 ½) hours for each day they are on on-call status.

This payment shall be in addition to any compensation they receive if they are actually called in to work.

- _(a) Shift Employees: Shift Employees who are required to be "on-call" shall receive twelve (12) hours of pay at their regular rate for each workweek they are assigned to be "on-call." This payment shall be in addition to any compensation they receive if they are actually called in to work.
- (b) Non-Shift Employees: Non-Shift Employees who are required to be "on_call" shall receive hours of pay at their regular rate for each workweek they are assigned to be "on-call" as follows:
 - Employees who are on on-call Monday, Tuesday, Wednesday or Thursday shall be paid one (1) hour for each day they are on on-call status.
 - Employees who are on on-call Friday, Saturday or Sunday shall be paid two (2) hours for each day they are on on-call status.

This payment shall be in addition to any compensation they receive if they are actually called in to work.

Section 67 - Overtime Scheduling/Records

(a) Scheduling:

As soon as the Battalion Chief (Shift) is notified that o Overtime is needed, the appropriate must be authorized by a Fire Battalion Chief or higher rank. When overtime has been authorized, the appropriate supervisor or designee (Shift) shall initiate a page to the rank/classification that is needed for the purpose of overtime. Employees will then have a fifteenten (195) minute window of opportunity to call back and document their request for the assignment.

Overtime will be scheduled by rank/classification seniority lists. The highest rank/classification senior employee with the least amount of overtime hours will be chosen before anyone else in his/her rank is called for said overtime hours.

(b) Records:

Employees shall have access to a "view only" screen on the Fire Department's computer system, which will also keep a running list (<u>Picklist</u>) of each employee's total <u>overtime</u> hours. It will be the <u>responsibility</u> of the Fire Battalion Chiefs' (Shift) or Acting Fire Battalion Chiefs' (Shift) responsibility to update and maintain the view only screen to ensure the screen is kept current when overtime is <u>utilizedawarded</u>.

The running list (Picklist) of Oovertime hours used-worked shall expirereset at the conclusion of en September 30th of each fiscal year.

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Section 87 - Mandatory Overtime

The City and Union have agreed to a Mandatory Overtime Policy. Any violation of that policy shall be subject to a grievance procedure set forth in this Agreement. The Union reserves the right to bargain over the impact created by a change or modification to the current mandatory overtime policy.

Page

Article 12 **Exchange of Duty**

Article 12 **Exchange of Duty**

Section 1 – Exchange of Duty

All employees, including probationary employees, may exchange their duty with another employee,

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subject to the following:

(a) Any exchange of duty, which is not rank for rank must comply with the requirements of Article 278, Temporary Upgrading and Article 911 -, Staffing Overtime, Section 2 Rank Minimums.

(a) Section 4, Shift Rank Minimums.

Any exchange of duty that is not rank for rank, the employees shall work in the higher rank of the exchanging employees. Employees temporarily upgraded to fulfill the non-rank for rank exchange shall not be compensated for the temporary upgrade.

Employees who are temporarily upgraded when working an exchange of duty, not to fulfill a non-rank for rank exchange, shall be compensated in accordance with Article 278 – Temporary Upgrade who holds the higher rank (in the exchange of duty) shall be utilized in his/her actual rank (unless utilized in a temporary upgrade assignment) when they work the exchange of duty.

- (b) All-sShift exchanges of duty must be requested via the City's electronic scheduling software (e.g., TeleStaff) no later than 1800 hours of the employee's regularly-scheduled shift immediately preceding the exchange of duty shift. It is the employee's responsibility to have said request approved by his/her-respectivethe on-duty Fire Battalion Chief (shift) through the chain-of-command prior to the employee's requested exchange of duty shift.
- (c) Late shift exchanges of duty must be entered into the City's electronic scheduling software (TeleStaff) no later than twelve (12) hours prior to the start of the employees shift. It is the employee's responsibility to have said request approved by the on-duty Fire Battalion Chief (shift) prior to the employee's requested exchange of duty shift. Late shift exchanges of duty must be rank for rank and must be of no impact to the schedule (e.g. the employee working must meet the staffing assignment requirements of the person whom they are working for at the time the late shift exchange is entered including additional assigned duties (e.g. Scheduled FTO duties).
- (d) Emergency shift exchanges of duty—are may be requested after the Llate shift exchange of duty—deadline or and may occur during a tour of duty. Emergency shift exchanges of duty, must be rank for rank and must be of no impact to the schedule (e.g. the employee working must meet the staffing assignment requirements of the person whom they are working for and must be approved by the on-duty Fire Battalion Chief (Shift). Emergency shift exchanges are handled on a case by case basis at the discretion of the on-duty Fire Battalion Chief (Shift).

Shift employees are limited to a maximum of four (4) late and/or emergency exchanges of duty, per fiscal year. Any requests above four (4) must be approved by the Fire Chief or designee.

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- (d)(e) All non-shift duty exchanges must be requested via the City's electronic scheduling software (e.g., TeleStaff) no later than 1200 hours of the employee's regularly-scheduled work day immediately preceding the exchange of duty day. It is the employee's responsibility to have said request approved by his/her respective supervisor through the chain-of-command prior to the employee's requested exchange of duty day. This request must be made via the department's electronic email system.
- (f) Requests submitted after the above-noted timelines will be considered on a case by case basis. These will be reviewed and approved/denied by the Fire Chief/Emergency Management Director or his/her-designee.

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| (f)(g) Shift employees are limited to a maximum of four hundred eighty (480) hours of exchange of duty per fiscal year. |
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| (g)(h) Non-shift employees are limited to a maximum of twenty (20) exchanges of duty per fiscal year and a maximum of four (4) exchanges of duty in a rolling thirty (30) day period. |
| (h)(i)All non-shift exchanges of duty shall only be allowed with other non-shift employees. |
| (i) When requesting a non-shift exchange of duty, non-shift employees must take off the entire work day (i.e., all eight (8) hours (if assigned to a five (5) day work week) or all ten (10) hours (if assigned to a four (4) day work week). |
| (k) All exchanges of duty may be subject to approval by the Fire Chief/Emergency Management Director or his/her-designee. |
| (j) |
| Section 2 – Rules & Compliance |
| (a) Shift and non-shift exchanges of duty constitute an even exchange and neither party becomes eligible for additional pay (e.g. overtime) as a result of working an exchange of duty, with the exception of temporary upgrade pay. |
| (b) If employment ends while an employee owes or is owed an exchange of duty, repayment rights are lost. |
| Section 3 – Hardship |
| The Fire Chief may modified modify the exchange of duty requirements and extend the number of exchange of duty hours, due to an employee hardship. |
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| with approval of the Fire Ch | nief/Emergency Management Director | a managing on the employee; |
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Article 134 Health and Safety

All medical exams shall be performed and evaluated by a vendor(s) designated by the Cape Coral Fire Department (CCFD).

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Section 1 - Health and Safety Committee

Three (3) employees representing the Union and three (3) representatives of the City shall comprise a Health and Safety Committee. The Committee will meet as required, or when requested by any party to discuss health and safety conditions of the CCFD. This Committee will be guided, but not limited to the Florida Administrative Code 69A-62.043 - Duties and Functions of the Safety Committee and Workplace Safety Coordinator, as amended. In additional the committee will also be responsible for the following:

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- a) Make immediate and detailed investigation of each accident, death or injury to determine the fundamental cause.
- Develop data to indicate accident sources and injury rates. Develop uniform reporting procedures.
- c) Inspect CCFD facilities and apparatus to detect hazardous physical conditions or unsafe work methods, including training procedures.
- d) Recommend changes or additions to protective equipment, protective apparel or devices for the elimination of hazards of firefighting.
- e) The City and the Union shall have an ongoing program to identify health and safety risks and to provide its members with proven optimum protection from those risks.
- f) Emergency operations should be conducted with an ultimate concern for the health and safety of those involved.
- ga) CCFD employees shall have access to qualified medical personnel and facilities for the prevention, diagnosis and treatment of service related injuries and illnesses.
- <u>b</u>h) Health, potential hazardous contacts and exposure records shall be maintained for every CCFD employee to provide for future access to essential information. The confidentiality of individual records shall be strictly adhered to.
- <u>Ci)</u> The City and Union agree to develop a health and safety program with specific implementation dates dealing with NFPA 1500, 1581, 1582, 1583, and 1584 requirements. (e.g., I.A.F.F. & I.A.F.C. Fire Service Joint Labor/Management Wellness Fitness Initiative.)
- All CCFD employees shall be involved in programs to maintain levels of physical fitness that are necessary to safely perform their duties. Such programs shall be based on realistic performance standards, with an emphasis on improvement and rehabilitation for those members who have difficulty reaching or maintaining those standards.
- e)j)
 A comprehensive approach to fire service and health includes components to deal with stress, substance abuse, tobacco/nicotine cessation, nutrition and related factors that contribute to overall individual wellness.
- <u>fk</u>) Pre-fire planning, training, code enforcement and first aid-should be recognized as essential contributors to fire service health and safety.

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- 1) The City and the Union agree to recognize the National Fire Protection Association (NFPA) Standards 1500, 1581, 1582, 1583, and 1584 as a basic approach for a health and safety program for its fire fighters as recommended by the Health and Safety Committee.
- m) The City and Union agree to develop a health and safety program guideline booklet with specific implementation dates dealing with NFPA 1500, 1581, 1582, 1583, and 1584 requirements. (e.g., I.A.F.F. & I.A.F.C. Fire Service Joint Labor/Management Wellness Fitness Initiative.)
- n) Nothing herein is intended to restrict the CCFD from exceeding these minimum requirements.
- ge) The City and the Union recognize the need for Critical Incident Stress Management (CISM), and hereby agree that the City will provide this type of counseling on an "as needed basis." This counseling method shall be in accordance with national recommended guidelines.
- Any recommendations by the committee shall be presented to the Fire Chief/Emergency

 Management Director, or his/her-designee, in writing, and the Fire Chief/Emergency Management

 Director, or his/her-designee, shall notify the committee, in writing, as to the action taken on the recommendation within (28) calendar days. Any recommendation the Fire Chief/Emergency

 Management Director, or his/her designee, approves shall become a matter of Department policy.
- q) In the interest of maintaining the health and well-being of the Fire Fighters covered by this Agreement and in accordance with the adopted National Fire Protection Association's 1500 and 1582 Guidelines, the City agrees that all employees of the CCFD complete a full and comprehensive biennial physical exam, as outlined in Article 14 of this Agreement. The cost of this biennial physical shall be borne by the City.
- The City further agrees to provide annually, a physical evaluation consisting of blood, urine, audiometric, pulmonary and visual acuity for employees assigned to specialized response teams as determined by the Health and Safety Committee. The Health and Safety Committee shall specify by departmental memorandum the specialized teams, which shall comply with annual physical evaluations. Employees assigned to such teams shall comply with the annually required physical evaluations and the related scheduling time frames.
- s) The Union and the City agree that physicals shall be given every fiscal year starting on May 1st and ending during the month of September of that same year. Approximately 50% of the department will conduct physicals every year.
- t) The City, Health and Safety Committee and vendor shall schedule each employee for their complete physical in the shortest timeframe possible.
- u) The Health and Safety Committee shall meet with the vendor a minimum of ninety (90) calendar days prior to the physical start date regarding protocol compliance with provisions of NFPA 1500 and 1582 and the physical outlined below:

Section 2 - Complete Basic Physical Exam for Fire Fighters

The Union and the City agree that all employees bargaining unit members (Rank & File and Supervisory) physical exam shall be given every a complete basic physical at least biennially. fiscal year, to approximately 50% of the department. The cost of this biennial physical shall be borne by the City, All

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medical exams shall be performed and evaluated by a vendor(s) designated by the Cape Coral Fire Department (CCFD).

The components of the complete basic physical exam shall be mutually agreed upon, annually, by the Fire Chief and Union President. Components may include but are not limited to:

(a) Medical History: The City shall obtain a complete and thorough medical history from the employee. Upon the completion of the employee's medical history, each employee shall be afforded a post physical exam critique consultation with the appointed vendor.

The results of each employee's physical shall comply with all remain confidencential litys laws, tial between the designated CCFD vendor and the employee.

The Health and Safety Committee shall assist the Fire Chief/Emergency Management Director, or his/her designee, in regards to all examination processes.

- (b) Comprehensive Medical Exam Compliant with NFPA 1582:
 - Consultation with review of results and a personalized health plan
 - Vital Signs
 - Occupational Vision and Hearing
 - Hemoccult Test
 - Skin Cancer screening

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Ultrasound Imaging

- Echocardiogram (Heart with function)
- Carotid Arteries
- Aorta and Aortic Valve
- Liver, Pancreas, Gall Bladder, Kidneys, and Spleen (Internal Organs)
- Ovaries and Uterus (Women)
- Testicular and Prostate (Men)
- Bladder
- Thyroid

Cardio Pulmonary:

- Cardiac Treadmill Stress Test with EKG
- Electrocardiogram
- Pulmonary Function Test (Spirometry)

Laboratory Analysis:

- Comprehensive Metabolic Panel (24 panel including kidney, liver, & met functions)
- Complete Blood Count
- Total Lipid Panel (cholesterol panel)
- Thyroid Panel (TSH with reflex to T4)
- Hemoglobin A1C and Glucose
- Immunizations and infectious Disease Screening
- Tuberculosis Testing

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- Urinalysis
- Men: PSA Prostate Cancer Marker
- Men: Testosterone Metabolic Marker
- Women: CA-125 Ovarian Cancer Marker

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Fitness Analysis:

- Metabolic Analysis with Body Fat
- · Strength, EnduranceStrength, Endurance and Flexibility tests
- Diet and Nutritional Recommendations
- Personal Exercise Prescription
- at the City's expense. Said influenza inoculations shall be administered annually during the month of October to all employees unless requested otherwise by the employee.

In cases where the vaccine is not available from any medical entity, the influenza inoculation may begin later but shall be administered as soon as physically possible.

(d) An annual physical evaluation consisting of up to blood, urine, audiometric, pulmonary and visual aculty may be recommended by the Health and Safety Committee for employees assigned to specialized response teams, based on NFPA standards and exposure(s). The Health and Safety Committee shall specify by departmental memorandum the specialized teams, which they recommend receive an annual physical evaluation and the associated components.

Section 3 - Drug Free Workplace Program

The City and Union are committed to protecting citizens, visitors and fellow employees from potential property damage, significant injury and loss of life due to an employee's use or abuse of alcohol and drugs.

The program is intended to prevent the hiring of drug users, to detect users and remove abusers of drugs and alcohol from the workplace, to prevent the use and/or presence of these substances in the workplace and to assist employees who volunteer they have an alcohol and/or drug problem provided the employee has not previously tested positive for alcohol and/or drug use (while employed by the City).

Alcohol Prohibition:

Employee consumption of alcohol on City property (while on duty), in City vehicles, or at any work assignment location, is prohibited.

- (a) Employees' reporting to work or working under the influence of alcohol is prohibited.
- (b) Any Employee arrested for a DUI shall notify his or her immediate supervisor of the arrest within twenty-four (24) hours of its occurrence.
- (c) Failure to comply with these prohibitions and requirements will result in disciplinary action up to and including termination.

Drug Prohibition:

- (a) The use, sale, purchase, possession, manufacture, distribution, or dispensation of illegal drugs or their metabolites, or the non-prescribed use of prescription drugs on City property, in City vehicles, or at any work assignment location, is prohibited.
- (b) Employees' reporting to work or working under the influence of illegal drugs is prohibited.
- (c) Any employee arrested for any illegal drug-related incident shall notify his or her immediate supervisor of the arrest within twenty-four (24) hours of its occurrence.
- (d) Failure to comply with these prohibitions and requirements will result in disciplinary action up to and including termination.

NOTE: During any investigation of an alleged violation of this Drug Free Workplace Program, an employee may be placed on leave with pay, if applicable, or removed from any safety sensitive position.

Reasonable Suspicion:

"Reasonable Suspicion" means observable signs that indicate to a reasonable person that an individual is using or under the influence of illegal controlled substances or alcohol. For the purpose of reasonable suspicion "drug/alcohol" testing the following applies, but is not limited to:

- (a) Observable phenomenon while at work such as direct observation of illegal drug use or the physical symptoms or manifestations of being under the influence of an illegal drug, controlled substance or alcohol;
- (b) Abnormal conduct or erratic behaviors while at work or a significant deterioration in work performance.
- (c) A report of illegal drug use provided by a reliable and credible source.
- (d) Evidence that an individual has tampered with a drug test during his/her employment with the current employer.
- -(e) Information that an employee has caused a vehicle accident, involving a member of the general public, while at work will be cause for reasonable suspicion drug testing.
- (f) Information that an employee has contributed to, or been involved in a vehicle accident, involving a member of the general public, while at work may be cause for reasonable suspicion drug testing.
- (g) Evidence that an employee has, during his/her employment, violated the provisions of the prohibitions identified above.

Random Testing:

- (a) Employees in safety sensitive positions will be required to submit to drug testing on a random basis. Safety sensitive positions as defined by the City and Union in compliance with Federal and State Statutes shall include all classifications recognized in Article 2 Recognition, of this Agreement.
- (b) Employees randomly selected for testing shall be identified by City Employee Number and will be selected through the use of a computerized random number generator or other neutral selection process. Said selection lists shall be copied to the Union on each occasion, immediately after they have been processed by the City.
- (c) Random testing shall occur on an annual basis (running concurrent with the City's fiscal year). No more than twenty-five percent (25%) to fifty percent (50%) of the annual average number of employees occupying classifications as listed in 14.16.4.0 (A) for the prior fiscal year shall be subject to random testing during any given fiscal year.
- (d) Employees who refuse to submit to a random test, or make efforts to tamper with a drug test will be subjected to disciplinary action up to and including termination.
- (e) An employee in a safety sensitive position may be discharged by the City for the first (1st) positive confirmed test result if the drug confirmed is an illicit drug under Section 893.03, Florida Statute, and the employee has had a documented history of habitual discipline problems or the employee has had a previous drug problem (has voluntarily come forward or has tested positive during a random test). In instances where an employee's random drug test is positive for the first (1st) time, and does not meet the conditions identified in the preceding sentence, the City shall mitigate the employee's discipline to a suspension without pay for up to one hundred and sixty-eight (168) hours of work, continuous, on the condition the employee enters into a Last Chance Agreement.

NOTE: The City will utilize independent laboratories that have been certified to conduct drug testing, and the City and the independent laboratories shall conduct said testing, in compliance with Florida Administrative Code, Chapter 59A-24, "Drug Free Workplace Standards."

Voluntarily Coming Forward:

Employees are encouraged to come forward at any time prior to being selected for testing and identify that they have an alcohol/substance abuse problem. If an employee volunteers that he/she has an alcohol/substance abuse problem to his/her immediate supervisor, the Fire Chief/Designee or the Human Resources Director, he/she will be provided rehabilitation under the terms of the City's Major Medical Plan/Employee Assistance Plan.

Rehabilitation Program:

The rehabilitation program will be approved by the Employee Assistance Plan (or other agency if the Employee Assistance Plan is no longer available). The employee may request that a specific rehabilitation program be used provided the program meets those same standards, but additional cost, if any, shall be paid by the employee.

Employees who fail to meet the requirements of the rehabilitation program (i.e. refusing to take drug tests in accordance with the program outline and/or missing repeated meetings), shall be subject to termination.

Time Off Ffcr Rehabilitation

- (a) If Voluntary: If approved by the program administrator, the City shall make every effort to place an employee in a non-safety sensitive (or light duty) position while the employee participates and completes the alcohol/substance abuse program. If a non-safety sensitive (or light duty) position is unavailable, or if the program administrator requires in-patient treatment of the employee, the employee shall be placed on leave status. At that point, the employee may use all accumulated leave hours, as well as any other means of duty replacement (i.e. accumulated trade days) that are available to the employee, until said resources are exhausted. Once all accumulated leave hours and duty replacement has been exhausted, and if the employee is entitled to the Family Medical Leave Act (FMLA), the employee will be placed in that status for up to a twelve (12) week period. Once the FMLA entitlement period expires, the City will place the employee on administrative leave status without pay for the balance of the rehabilitation period in accordance with Article 13 - Health and Safety4.
- If Randomly Tested Positive: If the employee qualifies for FMLA leave, the employee will begin to exhaust the twelve (12) week period at the beginning of his/her rehabilitation start date. If the employee is not actually taking advantage of FMLA, and if approved by the program administrator, the City shall make every effort to place the employee in a non-safety sensitive (or light duty) position, after completion of any suspension without pay, while the employee participates and completes the alcohol/substance abuse program. If a non-safety sensitive (or light duty) position is unavailable, or if the program administrator requires in-patient treatment of the employee, the employee shall be placed on leave status. At that point, the employee may use all accumulated leave hours, as well as any other means of duty replacement (i.e. accumulated trade days) that are available to the employee, until said resources are exhausted. Once all accumulated leave hours and duty replacement has been exhausted, the City will place the employee on the balance of his/her FMLA leave (if he/she has not exhausted the duration of time available under the law up to that point) or on administrative leave status without pay (if the employee has exhausted his/her total amount of FMLA leave under the law). After the employee has been on non-FMLA leave without pay for more than fifteen (15) workdays, the City shall not provide for any employee benefits, including but not limited to medical or other insurance, and pension. The employee may at his/her option, maintain such benefits at the employee's sole expense.

The rehabilitation program administrator will determine when an employee has successfully completed rehabilitation, but at no time will the total rehabilitation process last longer than six (6) months from the time the employee enters the program.

Once the employee has been released by the program administrator to return to work, the employee will be returned to work at the bargaining unit classification he/she held prior. However, the employee will be subject to follow-up testing in order to ensure that the employee has been successfully rehabilitated. As part of the follow-up testing process, the City may require the employee to submit to unannounced drug tests (for illegal drugs) for a one (1) year period, with no more than four (4) unannounced drug tests (for illegal drugs) for that one (1) year period and no more than one (1) unannounced drug test (for illegal drugs) per quarter. If during this time, the employee tests positive, he/she will be subject to dismissal.

The program administrator will inform the Human Resources Director/Designee (i.e. Risk Manager), of the employee's progress and test results, but all records, correspondence, etc. shall remain confidential and shall be maintained outside the employee's personnel file.

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An employee who has previously completed an alcohol/substance abuse rehabilitation program (while employed by the City) WILL NOT be eligible for a second (2nd) rehabilitation program.

Employees who voluntarily enter alcohol/substance abuse rehabilitation shall complete the Voluntary Rehabilitation Agreement Form as found in Appendix-D of this Agreement:

Employees who test positive during a random test or reasonable suspicion test may elect to enter in to a last chance agreement by signing the Last Chance Agreement Form as found in Appendix E of this Agreement:

Section 4 - Tobacco Prohibition

All employees shall adhere to Florida Statute 633.412(f) and Florida Administrative Code 69A-62.024 as amended.

Due to the documented effects of tobacco/nicotine use and the special hazards and exposures associated with the occupation of Firefighting, the City and Union agreed to the following:

- Individuals hired into the CCFD after October 1, 2002 are prohibited from using tobacco products.
- The union agrees that this policy itself will not be grieved.
- The City agrees to provide courses to stop the use of tobacco/nicotine for those employees wishing to guit tobacco/nicotine use.

Article 154 Labor Management Committee

The parties agree that there shall be a joint Labor Management Committee consisting of three (3) members appointed by Union and three (3) Fire Department personnel appointed by the Fire Chief./Emergency Management Director.

Section 1 - Membership

Meetings of the Labor Management Committee may be held for such purposes as dissemination of information; the submission of suggestions for improving efficiency, economy of operations, working conditions and employee services; proposing revisions to existing regulations, policies and procedures; resolution of problems encountered by any group(s) of employees; to avoid future grievances; or to further promote harmonious relations between the City and Union.

Section 2 - Meetings

The Labor Management Committee shall meet one (1) two (2) times each month, bi-weekly, ranless the parties mutually agree not to meet for a particular meeting in a particular month. The parties shall be under no obligation to reach agreement on any issue brought before the Committee. Any agreement reached by the Committee may become a matter of policy, subject to the approval of the Fire Chief s/Emergency Management Director is Office. Recommendations of the Committee shall be presented to the Fire Chief/Emergency Management Director. The Fire Chief or designed/Emergency Management Director shall notify the Committee In writing, of the action taken on the recommendation within twenty-eight (28) calendar days after receipt of the recommendation.

Section 3 - Meeting Requests

Request for meetings or conferences may be initiated by either Fire Chief or /Emergency Management Director or Union. Requests may be made in writing. The person requesting or arranging the meeting shall select a mutually agreeable date, time and location for the meeting and shall describe the nature of the subject(s) to be discussed. Meetings shall be held during working hours, except in unusual circumstances.

Article 156 Place of Residence

Section 1 - Place of Residence

The City and the Union mutually agree that there shall be no residency requirements affecting employees.

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Article 167 Leave

Section 1 - Qualifying for Buy Back

In order for employees to qualify for any buy back of any unused annual leave hours, the employee must have accrued the following hours in their leave time bank:

- > Shift Employees: Four hundred and seventy-seven (477) hours
- > Non-Shift Employees: Three hundred and sixty (360) hours

Section 2 - Accumulation of Hours

- (a) Shift Employees:
 - One (1) to Five (5) Years (month 1 to month 60): Shall be credited with a minimum of two hundred forty hours (240) hours of annual leave. This leave will be accrued by each employee at a rate of twenty (20) hours per month.
 - 2. Six (6) to Ten (10) Years (month 61 to month 120): Shall be credited with a minimum of two hundred eighty—Eight hours (288) hours of annual leave. This leave will be accrued by each employee at the rate of twenty fourtwenty-four (24) hours per month.
- Non-Shift Employees: (b)
 - One (1) to Five (5) Years (month 1 to month 60). 1. Shall be credited with two nundred (200) hours of annual leave. This leave will be accrued by each employee at a rate of sixteen point sixty-seven (16.67) hours per month.
 - 2. Six (6) to Ten (10) Years (month 61 to month 120): Shall be credited with a minimum of two hundred forty hours (240) hours of annual leave. This leave will be accrued by each employee at the rate of twenty (20) hours per month.
- Both Shift & Non-Shift Employees: (c)
 - 1. Eleven (11) Years (month 121 to month 132): Employees will accrue twenty-four point eighty-six (24.86) hours per month for Shift employeesShift employees and twenty point seventy-two (20.72) hours per month for Non-Snift employees.
 - 2. Twelve (12) Years (month 133 to month 144):-Employees will accrue twenty-five point sixty-three (25.63) hours per month for Shift employees, and twenty enetwenty-one point thirty- six (21.36) hours per month for Non-Shift employees.
 - 3. Thirteen (13) Years (month 145 to month 156): Employees will acrue twenty sixtwenty-six point four zero (26.40) hours per month for Shift employees, and twenty-two twenty-two (22" hours per month for Non-Shift employees.

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- 4. Fourteen (14) Years (month 157 to month 168):

 Employees will accrue twenty seventwenty-seven point two six (27.26) hours per month for Shift employees, and twenty—two point seventy-two (22.72) hours per month for Non-Shift employees.
- Fifteen (15) Years (month 169 and greater):to month 180)::
 Employees will accrue twenty-eight point zero three (28.03) hours per month for Shift employees and twenty-three point thirty sixthirty-six (23.36) hours per month for Non-Shift employees.

Section 3 - Buy Back

Provided the employee has four hundred seventy-seven (477) hours in the employee's bank for shift employees, or three hundred sixty (360) for non-shift employees, any remaining unused hours above these minimums, as of the last payroll period of each fiscal year, will be paid to the employee at the employee's rate of pay as of the last payroll period of each fiscal year. This unused buy back check shall be issued by the City, to the employee by the first two (2) weeks of December of each year. This provision will automatically sunset and cease enon October 1, 2021 and will revert to the most recent previously agreed upon Buy Back parameters, September 30, 2021 unless mutually agreed by the parties.

Any remaining unused hours as of the last payroll period of each fiscal year will be paid to the employee at the employee's rate of pay as of the last payroll period of each fiscal year provided the employee has four hundred seventy-seven (477) hours in the employee's bank for shift employees, or three hundred sixty (360) for non-shift employees. This unused buy back check shall be issued by the City, to the employee by the first two (2) weeks of December of each year.

(a) Shift Employees

Employees with five (5) years or less of continuous service who have accrued four hundred and seventy seven (477) hours of annual leave time at the beginning of the fiscal year or during the fiscal year must use all accrued annual leave exceeding four hundred and seventy seven (477) hours as of September 30th of every fiscal year. Such employees who fail to use all accrued leave exceeding four hundred and seventy seven (477) hours as of September 30th of every fiscal year shall forfeit those hours as of September 30th of the every fiscal year.

Employees with six (6) through ten (10) years of continuous service who have accrued four hundred and seventy seven (477) hours of annual leave time at the start of the fiscal year must use a minimum of two hundred and twelve (212) hours of annual leave per fiscal year. Such employees who have accrued less than four hundred and seventy seven (477) hours of annual leave at the beginning of the year, but who reach four hundred and seventy seven (477) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

Employees with eleven (11) through fifteen (15) years of continuous service who have accrued four hundred and seventy seven (477) hours of annual leave time at the start of the fiscal year must use a minimum of one hundred and ninety one (191) hours of annual leave per fiscal year. Such employees who have accrued less than four hundred and seventy seven (477) hours of

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Such employees who have accrued less than four hundred and seventy seven (477) hours of annual leave at the beginning of the year, but who reach four hundred and seventy seven (477) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

Employees with sixteen (16) or more years of continuous service who have accrued four hundred and seventy seven (477) hours of annual leave time at the start of the fiscal year must use a minimum of one hundred and fifty six (156) hours of annual leave per fiscal year. Such employees who have accrued less than four hundred and seventy seven (477) hours of annual leave at the beginning of the year, but who reach four hundred and seventy seven (477) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

Effective October 1, 2016 - September 30, 2017:

Effective October 1, 2016, the parties have agreed to implement a modified Buy Back system that partially eliminates the current "use or lose" system with regard to leave accrued in accordance with this Article. During the term of this Agreement the parties shall conduct a study to determine the long-term fiscal impact of eliminating the "use or lose" system. This study may be conducted jointly or by either party. As part of the bargaining for a successor agreement proceeding this Agreement, the parties shall analyze the results of such study and determine whether or not the "use or lose" system in place prior to this Agreement can be completely or partially eliminated and, if so, determine how accrued leave shall be treated in the future.

Employees with ten (10) years or less of continuous service who have accrued four hundred seventy seven (477) hours of annual leave time at the start of the fiscal year must use a minimum of one hundred six (106) hours of annual leave per fiscal year. Such employees who have accrued less than four hundred seventy seven (477) hours of annual leave at the beginning of the year, but who reach four hundred seventy seven (477) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

Employees with eleven (11) through fifteen (15) years of continuous service who have accrued four hundred seventy seven (477) hours of annual leave time at the start of the fiscal year must use a minimum of ninety-six (96) hours of annual leave per fiscal year. Such employees who have accrued less than four hundred seventy seven (477) hours of annual leave at the beginning of the year, but who reach four hundred seventy seven (477) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

Employees with sixteen (16) or more years of continuous service who have accrued four hundred seventy seven (477) hours of annual leave time at the start of the fiscal year must use a minimum of seventy-eight (78) hours of annual leave per fiscal year. Such employees who have accrued less than four hundred seventy seven (477) hours of annual leave at the beginning of the year, but

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who reach four hundred seventy seven (477) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

(b) Non-Shift Employees

Employees with five (5) years or less of continuous service who have accrued three hundred and sixty (360) hours of annual leave time at the beginning of the fiscal year or during the fiscal year must use all accrued annual leave exceeding three hundred and sixty (360) hours as of September 30th of every fiscal year. Such employees who fail to use all accrued leave exceeding three hundred and sixty (360) hours as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

Employees with six (6) through ten (10) years of continuous service who have accrued three hundred and sixty (360) hours of annual leave time at the start of the fiscal year must use a minimum of one hundred and sixty (160) hours of annual leave per fiscal year. Such employees who have accrued less than three hundred and sixty (360) hours of annual leave at the beginning of the year, but who reach three hundred and sixty (360) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

Employees with eleven (11) through fifteen (15) years of continuous service who have accrued three hundred and sixty (360) hours of annual leave time at the start of the fiscal year must use a minimum of one hundred and forty four (144) hours of annual leave per fiscal year. Such employees who have accrued less than three hundred and sixty (360) hours of annual leave at the beginning of the year, but who reach three hundred and sixty (360) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

Employees with sixteen (16) or more years of continuous service who have accrued three hundred and sixty (360) hours of annual leave time at the start of the fiscal year must use a minimum of one hundred and twenty (120) hours of annual leave per fiscal year. Such employees who have accrued less than three hundred and sixty (360) hours of annual leave at the beginning of the year, but who reach three hundred and sixty (360) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

Effective October 1, 2016 - September 30, 2017:

Employees with ten (10) years or less of continuous service who have accrued three hundred sixty (360) hours of annual leave time at the start of the fiscal year must use a minimum of eighty (80) hours of annual leave per fiscal year. Such employees who have accrued less than three hundred sixty (360) hours of annual leave at the beginning of the year, but who reach three hundred sixty (360) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year.

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Employees with eleven (11) through fifteen (15) years of continuous service who have accrued three hundred sixty (360) hours of annual leave time at the start of the fiscal year must use a minimum of seventy-two (72) hours of annual leave per fiscal year. Such employees who have accrued less than three hundred sixty (360) hours of annual leave at the beginning of the year, but who reach three hundred sixty (360) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

Employees with sixteen (16) or more years of continuous service who have accrued three hundred sixty (360) hours of annual leave time at the start of the fiscal year must use a minimum of sixty (60) hours of annual leave per fiscal year. Such employees who have accrued less than three hundred sixty (360) hours of annual leave at the beginning of the year, but who reach three hundred sixty (360) hours during the fiscal year must use a prorated minimum number of hours in that fiscal year. Such employees who fail to use the minimum annual leave as of September 30th of every fiscal year shall forfeit those hours as of September 30th of every fiscal year.

(c) Any remaining unused hours as of September 30th of each fiscal year will be paid to the employee at the employee's rate of pay as of September 30th of each fiscal year provided the employee has used and/or forfeited their minimum number of annual leave time for the fiscal year and has four hundred and seventy-seven (477) hours in the employee's bank for Shift employees, or three hundred and sixty (360) hours in the employee's bank for Non-Shift employees. This unused buy back check shall be issued by the City, to the employee, by the first (1st) two (2) weeks of December of each year.

Section 4 – Use of Leave

1) Use of Scheduled Leave:

The requested H a. Shift Employee: A Shift employee must request scheduled leave no later than 1800 hours of the employee's regularly-scheduled shift immediately preceding the shift the employee is requesting (partially or in full). Employees are required to request scheduled leave in a minimum duration of four (4) consecutive hours. In cases where a scheduled leave request starts at or after 00:00:00 hours, the employee is required to request scheduled leave for the entire duration of 00:00:00 hours to 08:00:00 hours, If an employee's scheduled leave request runs in to the time window of 00:00:00 hours to 08:00:00 hours, the employee is required to request scheduled leave for the entire duration of 00:00:00 hours to 08:00:00 hours in addition to the hours of scheduled leave requested prior to 00:00:00 hours. Scheduled Leave requests will be requested and approved/denied via the City's electronic scheduling software.

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b. Non-Shift Employee: A Non-Shift employee must request scheduled leave no later than 1200 hours of the employee's regularly-scheduled day immediately preceding the day the employee is requesting (partially or in full). Scheduled Leave requests will be requested and approved/denied via the City's electronic scheduling software.

2) Cancellation of Scheduled Leave:

- a. Shift Employee: A Shift employee may cancel scheduled leave no later than 1800 hours of the employee's regularly-scheduled shift immediately preceding the shift the employee is requesting (partially or in full).
- b. Non-Shift Employee: A Non-Shift employee may cancel scheduled leave no later than 1200 hours of the employee's regularly-scheduled day the employee has requested off (partially or in full). Cancellation of scheduled leave will only be approved if there is no additional effect to the schedule (e.g. an employee has to forfeit overtime due to the cancellation).

b.

2)3)Use of Unscheduled Leave:

- a. Due to IllnessPrior to scheduled work period:
 - 1. Shift Employee: A Shift employee must notify the off-going Fire Lieutenant (or Acting Fire Lieutenant) at the station the employee was scheduled to report and the off-going- on-duty Fire Battalion Chief (Shift) no later than sixty (60) minutes prior to the beginning of the scheduled tour of duty.
 - 2. Non-Shift Employee: A Non-Shift employee must notify the employee's supervisor (scheduled for that day) no later than sixty (60) minutes prior to the beginning of the scheduled workday.
- b. Due to Emergencies After the scheduled work period had begun: 12
 - 1. Shift Employee: A Shift employee must have approval from an on-duty Fire Battalion Chief (Shift).
 - 2. Non-Shift Employee: A Non-Shift employee must have approval from his/her supervisor (scheduled for that day).

Note: The use of unscheduled leave after the work period has begun is limited to emergency situations only, as determined by the on-duty Fire Battalion Chief.

Note: The management and parameters of unscheduled leave shall be defined in CCFD Governing Documents.

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| 3) | Use | of | Funeral | Leave |

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a. Employees shall be granted leave with pay for two (2) consecutive twenty-four (24) hour shifts, (Shift employees) or forty (40) consecutive hours (Non-Shift employees) for a death in the immediate family. Such leave shall not be deducted from the employee's accrued annual leave.

The term "immediate family" as used in this section shall refer to an employee's spouse or registered domestic partner and to the children (including step children), parents (including step parents), legal guardians, siblings (including step siblings), grandparents (including step and/or great grandparents), and grandchildren (including step and/or great grandchildren) of both the employee and his/her spouse; or registered domestic partner.

Upon the City's request, an employee requesting bereavement leave may be required to furnish proof of death, date of burial and relationship.

4) Use of Military Leave

a. The City will comply with all applicable federal, state and City ordinances, laws, rules, regulations and standard operating procedures relating to military and/or National Guard related leave, including but not limited to leave for training or active service.



- 5) Use of School Leave
 - a. The Fire Battalion Chiefs shall exercise a first (1st) come, first (1st) served basis, in allowing Employees to attend fire/degree related classes on duty, providing necessary staffing is available.

Section 5 - Separation of Employment

When an employee discontinues employment with the City, the employee's remaining hours in the employee's leave bank shall be credited to the employee's final year earnings at the employee's current rate of pay. Unless DROP participants are otherwise addressed in the Pension Plan Ordinance regarding leave bank hours, they shall adhere to the above. Accrued annual leave paid for the last month worked will be prorated based on the number of days worked in that month.

Section 6 - Holidays

The following holidays shall be observed:

New Year's Day Labor Day

Martin Luther King Day
President's Day

Veterans' Day

Veterans' Day

Veterans' Day

Thanksgiving Day

Memorial Day Thanksgiving Day Friday After Thanksgiving

Independence Day Friday After Thanksgiving

Christmas Day Christmas Eve Day

Labor Day

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Christmas Day

Any additional holidays by which City Hall observes, shall be part of this Article and paid according to Article 16 - Leave7.

All Shift employees shall be paid eleven point two (11.2) hours at straight time for each holiday. All Non-Shift employees shall be paid eight (8) hours at straight time for each holiday, which is observed by the City. This holiday pay for Non-Shift employees shall be in addition to the employee's regular pay for that day.

Employees, who by virtue of their duties, work a forty (40) hour week, will observe said holiday by not being required to report for duty in accordance with the remainder of the City employees, and be paid their normal rate of pay for each holiday. In the event an employee who normally works four (4) ten (10) hour days per week, ten (10) hours shall be used to compute holiday pay and time off per holiday.

Article 17 8 Injury/Illness Compensation

Section 1 - On Duty Injury/Illness

An employee injured or who incurs a work related work-related illness while acting within the scope of his/her employment with the City shall be entitled to supplemental pay equal to the employee's full pay until the employee returns to work or receives pension benefits for a period not to exceed one (1) year. However, an employee who is granted Workers' Compensation, social security or other benefits will be paid the difference between the employee's full pay and those benefits paid by Workers' Compensation, social security or other sources for a period not to exceed one (1) year. After one (1) year, an employee may be required to utilize leave up to but not exceeding one (1) additional year. After exhaustion of leave, the employee may be terminated subject to applicable law. In no circumstances shall employment continue for a period exceeding a consecutive twenty-four (24) month period from the effective date of the employee's workers compensation.

The City shall make a good faith effort to assign an injured/ill employee to work in the fire department A light duty assignment to other work for the period of the temporary injury/illness shall be considered only a temporary reassignment with full retention of rights and benefits under this Agreement, and shall not be considered a reclassification for purposes of pension accrual. An employee given a light duty assignment as a result of a temporary injury/illness shall be paid at the employee's regular rate of pay.

When a physician approved by the City determines that an employee is medically fit to perform work or accept another position offered by the City, the employee shall return to work or lose the benefits of this article. In the case of a disagreement between the City approved physician and the employee's principal treating physician, a third (3rd) physician shall be selected with the approval of the other two (2) physicians. The decision of the third (3rd) physician shall be binding on the issue presented.

Section 2 – Off Duty Injury/Illness

For off the job injuries or illnesses, the City shall make a good faith effort to assign an injured/ill employee to work in the fire department. A light duty assignment to other work for the period of the temporary injury/illness shall be considered only a temporary reassignment with full retention of rights and benefits under this Agreement, and shall not be considered a reclassification for purposes of pension accrual. An employee given a light duty assignment as a result of a temporary injury/illness shall be paid at the employee's regular rate of pay.

After one (1) year, an employee shall be required to utilize leave up to but not exceeding one (1) additional year. After exhaustion of leave, the employee may be terminated subject to applicable law. In no circumstances shall employment continue for a period exceeding a consecutive twenty-four (24) month period from the date of the employee's injury/illness.

Article 189 Health Insurance

Section 1 - Health & Welfare Benefits for Active Employees

The City shall bear the cost of health, life, accidental death and dismemberment (AD&D) benefits for each current employee.

The employee shall be responsible for paying 100% of the health insurance premium for any dependent coverage elected.

- (a) Health Insurance Trust Local 2424 The Union has established the "Cape Coral Professional Fire Fighters Health Insurance Trust". The Health Insurance Trust, shall establish a plan of benefits to provide health and welfare insurance or other benefits allowable under section 501(c)9 of the Internal Revenue Code on behalf of their bargaining unit employees who are active employees or retirees of the City.
- (b) Funding Effective June 3, 2019anuary 1, 2012, the City agrees to provide the Health Insurance Trust with a monthly amount of \$767.08645.04 per active and retired bargaining unit members covered by the health insurance trust and not enrolled in the City sponsored "Health Insurance Opt-out" program or Medicare (Advantage) Plan, i.e. all active bargaining unit members and those retirees covered by Section 2 (a)(i) herein, toward the cost of their health insurance. Employees who are in the DROP shall be considered active employees for the purposes of this Section 1 until such time as they separate from employment with the City. Effective January 1st 2013 of each year, the City Contribution shall be equal to the average cost of Employee-Only coverage for the City's sponsored group and Medicare health insurance programs for enrolled active and retired employees
- (c) The amount provided to members participating in the City's "Health Insurance Opt-out" program shall be the same as provided to all other employees of the City with the cost borne by the City. The Health Insurance Trust shall not receive payment for any member participating in the "Health insurance Opt-out" program.
- (de)Dependent Premiums Upon ratification of this agreement, the City agrees to provide pre-tax payroll deductions for employees of the bargaining unit that have spouse or dependent family members on their health insurance plans. The Health Insurance Trust shall provide proof of such deductions and the appropriate amount of such deduction for the employee with an authorized payroll deduction form. The funds from the payroll deductions made pursuant to this paragraph shall be made to the Health Insurance Trust on a semi-monthly basis. To receive the pre-tax contributions, employees of the bargaining unit must comply with all provisions of the City's section 125 plan and must comply with the rules and regulations concerning Internal Revenue Service Code Section 125 deductions and any and all federal, state and local regulations

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concerning the administration of the health benefits programs and the pre-tax deductions made pursuant to it.

Such program shall begin no sooner than thirty (30) days following the ratification of this Agreement and no later than sixty (60) days.

Loss of Coverage – In the event that the Health Insurance Trust is dissolved due to insolvency, those members being provided health insurance coverage shall have an opportunity to join the City sponsored Health Insurance plan within thirty (30) days of loss of coverage. Elective termination of the Trust requires a ninety day (90) advance notice and the Trust would be responsible for any additional cost incurred by the City, unless mutually agreed to otherwise. (i.e. penalties by the health care provider for returning and/or increase to individual premiums as a result of returning to the City-sponsored health care plan).

Section 2 - Health & Welfare Benefits for Retired Employees

Provisions in Section 1 above that refer and apply to retirees are hereby incorporated by reference in this section.

(a) Eligibility

- i. Employees, whose date of employment is before October 1, 2003, shall be entitled to group health and life benefits upon retirement from the City, only if they have been continuously employed by the City for more than five (5) years. In order to participate in the City's group health benefits program, retirees and employees, who retire pursuant to this section, must sign up for coverage under Medicare Parts A and B as soon as they become eligible. In addition to paying the cost of retiree group health and life benefits, the City shall provide a monthly Medicare subsidy to retirees covered under this section equal to the cost of Medicare Part B coverage.

 Employees, who become eligible to retire pursuant to this section, shall also be entitled to group life benefits equal to twice the amount of their annual base salary at the time of retirement from the City.
- ii. Employees, whose date of employment is after October 1, 2003 shall be entitled to receive a health benefit subsidy from the City toward payment of the cost of group health benefits upon retirement from employment with the City, only if they have been continuously employed by the City for more than ten (10) years. The amount of the subsidy shall be determined by multiplying the employee's years of service times five dollars (\$5.00). The minimum monthly subsidy provided to retirees shall be fifty dollars (\$50.00) and the maximum monthly subsidy shall be one hundred and fifty dollars (\$150.00). This subsidy shall continue to be paid even if employees retiring under this section are enrolled in Medicare Parts A and B and/or are participants in another group

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health benefits program. In order to participate in the City's group health benefits program, employees who retire pursuant to this section must sign up for coverage under Medicare Parts A and B, as soon as they become eligible. Failure to enroll in Medicare parts A and B, upon eligibility, will result in the City discontinuing paying the cost of group health benefits and the monthly Medicare Part B subsidy for the retiree coverage in the group health plan.

- iii. The City's health benefit coverage for all retirees of the City shall be secondary to Medicare and/or any other health benefits program in which the retiree is a participant in, including, but not limited to, a health benefit program sponsored by the present employer of the retiree or the employer of the spouse of the retiree. Any retiree who fails to notify the City that the retiree is a participant in another health benefit program shall be required to pay the entire cost of retiree health benefits offered by the City and shall not be entitled to receive any monthly group health benefit subsidy from the City.
- <u>iv.</u> Employees that retire and are eligible for group life and health benefits pursuant to Section 2(a)(i) shall not be eligible for any additional benefit(s) identified under Section 2(a)(ii).
- Retired employees identified in Section 2 who are eligible to enroll into Medicare parts A and B may choose to enroll in the City sponsored Medicare (Advantage) Plan in lieu of the group health plan offered by the Health Insurance Trust. The City shall bear the cost of the Medicare (Advantage) Plan and reimburse the cost of Medicare Part B for the retired employees identified in Section 2(a)(i), and provide the subsidy identified in Section 2(a)(ii) for retirees covered under that section. The Health Insurance Trust shall not receive payment for any member participating in the Medicare (Advantage) Plan.

Section 3 – Retiree Health Insurance Fund

Local 2424The Union shall take whatever steps necessary to create a retiree health insurance fund ("Fund") for the purposes of providing a supplemental benefit to retired firefighters in order to reduce the costs of health insurance in retirement for those who do not otherwise have their health insurance premiums paid pursuant to the terms of this Agreement. The Fund shall be established pursuant to Section 501(c)(9) of the Internal Revenue Code. The composition of the Board of Trustees, the plan of benefits, and all other matters relating to the establishment and operation of the Fund shall be at the sole discretion of Local 2424the Union and then, after its establishment, the Board of Trustees of the Fund. The City shall have no responsibility or liability for the establishment or operation of the Fund, and shall have no obligation to provide funding for the Fund or the benefits provided by the Fund except as expressly provided in this Agreement.

Once Local 2424 has created the Fund and received a determination letter from the IRS, the City will make a one time, lump sum contribution to the Fund in the amount of \$196,531.00. Such amount shall be paid to the Fund within fourteen (14) days of the date Local 2424 provides a copy of the IRS' determination letter to the City but no later than September 30, 2017. If such determination letter has not been received by September 15, 2017, the contribution shall be paid to the Health Insurance Trust no

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later than September 30, 2017, and must still be utilized for purposes of providing retiree health insurance.

Section- 4 - Indemnification & Hold Harmless

Local 2424 The Union agrees to indemnify, defend, and hold harmless the City, its elected officials, its employees, agents and legal counsel from any and all claims, including liabilities, losses, damages, fines, costs, fees, and expenses, including, but not limited to, attorney's fees and costs arising out of or in any way related to the implementation, administration, or maintenance of the Health Insurance Trust or Retiree Health Insurance Fund or failure to comply with the City's Section 125 Plan.

Article 1920 Liability Insurance

Section 1 - Liability Insurance

The City will provide liability insurance to defend every member of the bargaining unit who is acting within the scope of his/her duties, in any suit alleging liability as a result of the City's operations. If the City purchases additional liability coverage for City departments, the same coverage will be afforded the Fire Department.

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Article 204 Rules & Regulations

Section 1 - Rules and Regulations

The provisions of the "Personnel Rules and Regulations" -(Chapter 2, Article 3, of the City of Cape Coral Code of Ordinances) as such Ordinance may be amended from time to time, shall be incorporated in this Agreement as if those provisions were fully set forth herein, and shall be applicable to all employees.

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Section 2 - Administrative Regulations

The provisions of the City's "Administrative Regulations", as such Administrative Regulations may be amended from time to time, shall be incorporated in this Agreement as if those provisions were fully set forth herein, and shall be applicable to all employees.

Section 3 - Conflict

In the event of a conflict between "Personnel Rules and Regulations (Chapter 2, Article 3, of the City of Cape Coral Code of Ordinances)" as may be amended from time to time, or between the Administrative Regulations, as may be amended from time to time, and this Agreement, the express provisions of this Agreement shall govern.

Section 4 - Amendments or Modifications

The parties agree to meet and bargain over amendments or modifications to "Personnel Rules and Regulations (Chapter 2, Article 3, of the City of Cape Coral Code of Ordinances)" as may be amended or City's Administrative Regulations, as may be amended in accordance with Chapter 447, Florida Statutes.

Article 212 Strikes

Section 1 - Definition of Strike

The definition of "strike" is that contained in Florida Statutes, Chapter 447, Section 447.203 (6), or as such Section may be amended.

Section 2 – Prohibition of Strikes

Union agrees that there shall be no strikes as defined in this Article. In the event of any breach of this Article, Union agrees that City shall have all statutory rights of recourse as contained in the provisions of Florida Statutes, Chapter 447, or as such Chapter shall be amended.

Section 3 - Prohibition of Lockouts

City agrees that nothing in this Article shall prohibit otherwise lawful informational picketing. City further agrees that it shall not lock out employees for the duration of this Agreement.

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Article 223 Jury and Court Related Duty

Section 1 - Jury Duty

Employees who are called for jury duty during their scheduled work time shall not lose any pay or benefits as the result of said jury service. In addition, employees shall be entitled to retain any monies paid to them by the court for jury service.

Employees chosen for jury duty shall be excused from duty a minimum of two (2) hours prior to the time the employee is scheduled to report for jury duty. Employees who are not excused from jury duty until 5:00 p.m. or later shall be excused from duty for the remainder of their shift.

Section 2 - Subpoena and/or Stand by for Trial or Deposition

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Overtime shall be paid to the employee in accordance with Article 11 - Overtime for the purpose of this section regarding being subpoenaed, put on stand-by or deposed for business relating to the CCFD.

"Stand by for Trial or Deposition" shall be defined as: Any employee who is notified by the Fire Chief/Emergency Management Director, or his/her Ddesignee, or by a court-appointed official, to stand-by at a communication contact point to facilitate a response to a trial or deposition.

Article 23 4 Educational Reimbursement

Section 1 - Education/Training

To be eligible for educational reimbursement, employees must have regular status and have completed their initial probationary period prior to starting the class. Reimbursement applies to college-level degree seeking programs through an accredited college or university that yields academic credit. Accreditation is determined by the U.S. Department of Education. Degree programs may be traditional on-site, satellite, distance, and/or web based.

Degree programs must be designed to enhance the knowledge, skills, and abilities relating to the official duties that the employee performs, or for a promotional position. There are no positions within the Fire Department that require a Doctorate degree. Therefore Therefore, the City will not reimburse employees for any courses that are taken as part of a Doctoral degree program.

A maximum of \$3,500 for books and tuition expenses will be authorized per employee per fiscal year, if funds are available. Only costs for tuition (including required fees) and books (including shipping and

online books) are eligible for educational reimbursement. All reimbursements will be based upon the employee's final grade according to the following scale:

- 100% for a grade of "A"
- 75% for a grade of "B"
- 50% for a grade of "C"
- 0% for a grade of "D," incomplete or withdrawal

Non-graded courses or courses that utilize a pass/fail criteria will be reimbursed at a rate of 70% upon satisfactory completion of the course and the receipt of a passing grade.

Prior to taking any courses all employees shall submit the "Educational Reimbursement Request Form" as provided for in City of Cape Coral Administrative Regulations along with a copy of the course description to the Fire Chief/Emergency Management Director, or his/her-designee. Employees must receive prior written approval of the Fire Chief/Emergency Management Director, or his/her-designee, and the Human Resources Director or designee prior to taking any courses in order to be entitled to education reimbursement as provided in this section.

Employees approved for attendance in an educational program must pay for tuition and books directly, and must be accepted for enrollment by the institution offering the program. The employee shall submit the original transcript of their grades, an original itemized receipt for books, and an itemized receipt showing payment for classes to the City's Human Resources Department within thirty (30) calendar days of course completion to be eligible for reimbursement. No course work may be performed during work hours unless prior approval is obtained from the Fire Chief/Emergency Management Director, or his/her designee.

Initial approval of courses does not obligate the City to future/continued approval of courses in the degree program. Approvals are only valid for the course and semester requested. Miscellaneous expenses such as supplies, taxes, late fees, and voluntary dues and fees are not reimbursable.

Reimbursement under this policy will be reduced by any other financial aid that does not have to be repaid such as grants, scholarships, GI Bill, Florida Pre-Paid Program, or tuition discounts. There may be tax consequences or imputed income to employees participating in this program.

If an employee voluntarily terminates employment within one (1) year of receiving an education reimbursement, the employee shall immediately refund the reimbursement to the City. If the employee fails to do so in a reasonable period of time, the City may deduct the amount of the reimbursement from any monies that may be due the employee upon termination.

Section 2 - Non-Degree Education/Training book in JA

A minimum of \$5,000 (\$300 maximum per employee) will be authorized per employee per fiscal year, if funds are available. Only costs for tuition (including required fees) and books (including shipping and online books) are eligible for educational reimbursement. Authorization will be by the Fire Chief/Emergency Management Director or his/her designee, on a first come first served basis.

Reimbursement applies to non-degree education/training <u>related to fire, special operations</u> or emergency medical service (EMS) classes at non-accredited institutions.





Non-degree education/training may be traditional on-site, satellite, distance, and/or web based.

Non-degree education/training must be designed to enhance the knowledge, skills, and abilities relating to the official duties that the employee performs or for a promotional position.

Prior to taking any courses, all employees shall submit the CCFD Non-Degree Education/Training form, along with a copy of the course description, to the Fire Chief/Emergency Management Director or his/her designee. Employees must receive prior written approval of the Fire Chief/Emergency Management Director or his/her designee prior to taking any courses in order to be entitled to reimbursement as provided in this section.

Employees approved for attendance in a non-degree education/training program must pay for tuition, books, uniforms, lab fees, and other required costs directly and must be accepted for enrollment by the institution offering the program. Approvals are only valid for the course and semester requested. The employee shall submit the original transcript of their grades, an itemized receipt showing payment for the class(es), and an original itemized receipt for the reimbursable costs as identified above, to the Fire Chief/Emergency Management Director or his/her designee, within 30 calendar days of course completion to be eligible for reimbursement.

Article 25 4 Bulletin Boards

Section 1 - Bulletin Board

The Union and the City agree that the Union mayshall furnish and utilize one (1) bulletin board at each fire station or fire department work site, to post the Union Charter and additional Union information. The furnished board shall be a minimum size of 36"H X 48"W. Posted information shall be subject to review by the Fire Chief's office. In the mutual effort of better communication, both parties agree that the Fire Administration shall copy Union of any new or revised department memoranda. Use of the City E-mail system and other City electronic communication shall be in compliance with City Administrative Regulations.

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Article 256 Station Facilities

Section 1 - Station Facilities

The City shall provide and maintain the following fixtures, equipment and supplies at each fire station:

- ∢ Beds
- Bedspreads and mMettress covers
- Lockers one (1) per employee; (H72" x W18" x D20")
 Stove with conventional oven

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- Propane Grill
- ← Microwave oven
- ✓ Washing machine
- ← Dryer
- Refrigerator with and freezer
- Non-aluminum pots and pans
- ∢ Dishwasher
- ← Coffee maker
- Air conditioning and heating units for living, kitchen, bunk, day, bathrooms and watch quarters
- ← Table, chairs and proper seating arrangements in kitchen and living areas.
- √ Janitorial and cleaning supplies
- ← Housewares, including plates, cups, glasses, utensils, bake ware and microwave dishes
- Exercise equipment as established by the Health & Safety Committee process and approval of the Fire Chief
- Television for in the main living area and other audio-visual training aids as approved by the Fire Chief or designee/Emergency Management Director.

The City shall not be responsible for providing food or linens.

Employees shall be responsible for maintaining all station facilities, provided that station personnel shall not be required to perform any maintenance or repair which would require a building permitpermit, or which is currently being performed by Facilities Management.

Section 2 - New Fire Stations

Any new fire stations opened during the duration of this Agreement shall contain the foregoing fixtures, equipment and supplies.

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Article 27

Uniforms and Personal Protective Equipment

Section 1 - Uniform Allowance

On October 1st, of each fiscal year, the City shall credit each employee of the bargaining units with a Uniform Allowance to be used towards the purchase of Department Uniforms. The Uniform Allowance credited to each employee shall be as follows:

- ➤ Shift Employees (rank of Firefighter, Fire Engineer/Driver, or Fire Lieutenant): five-hundred dollars (\$500.00).
- Non-Shift Employees (rank of Fire Lieutenant or Fire Inspector or Fire Marshal): six-hundred-twenty dollars (\$620.00).
- The rank of Fire Battalion Chief: six-hundred-twenty dollars (\$620.00).

Each employee's Uniform Allowance balance shall expire and be reduced to zero dollars (\$0.00) prior to receiving their new fiscal year credit amount. The expiration and reduction shall occur at midnight (00:00:00 hours), June 16th of each year.

New Hire Proration:

New hires shall have the above-referenced amount prorated as follows: The total Uniform Allowance shall be divided by three-hundred-sixty-five (365). Then, that remaining amount shall be multiplied times the amount of days between the employee's hire date and the following September 30th. All computations will be rounded to the nearest hundredth's place.

Section 2 - Shoes and Boots

Athletic shoes and duty shoes/boots must be approved by the Fire Chief or designee. Duty shoes/boots must meet American Section of the International Association for Testing Materials (ASTM) standards.

Employees are authorized to purchase a total of three pairs of athletic shoes and/or duty shoes/boots per fiscal year utilizing their Uniform Allowance.

Athletic shoes and duty shoes/boots are reimbursable as follows:

| 1. | The City shall not reimburse any portion of the purchase amount that exceeds the employee's |
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| | current Uniform Allowance balance. |
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2. Reimbursement shall be made to the employee, by the City, within thirty (30) calendar days following the submission of the request for reimbursement.

Section 3 - Uniform Catalog

The Department shall publish an updated Uniform Catalog which shall include all uniform items available for ordering. The Uniform Catalog shall be updated within ten (10) business days following the previous uniform order submission deadlines. The Uniform Catalog shall include, but not be limited to, the following:

- Color picture of each uniform item (front and rear of apparel)
- > Available size/sizing information
- Manufacturer, style name/number
- Component specifications
- > Uniform order form with uniform item cost to employee

<u>Uniform items approved by the Labor/Management committee will be added or removed to the Uniform Catalog. Pricing of all uniform items will be based on the actual cost of the item including shipping and handling.</u>

Section 4 - Uniform Ordering System

Employees can order uniforms utilizing the ordering system any time between October 1st and June 15th.

Employees can submit for reimbursement for athletic shoes, duty shoes/boots any time between October 1st and June 15th. The employee must complete and submit a request for reimbursement with a valid receipt prior to the submission deadline.

Section 5 - Uniform Distribution

A. Initial hire as a Firefighter:

Upon initial hire as a Firefighter, and within thirty (30) calendar days of hire date, the City agrees to furnish employees with the following: (timelines shall be strictly enforced except in cases involving external factors beyond the control of the City):

- One (1) of all of the current Class A uniform item(s)
- One (1) Class B uniform shirt
- Ten (10) Class C uniform shirts (employee preference/combination of short and/or long sleeve)
- Six (6) Class C uniform pants
- > One (1) Department Class C ball cap
- > One (1) Department Class C long-sleeved job shirt
- > One (1) Department Class C winter jacket
- > One (1) Department pair of athletic shorts

B. Promotion:

Upon promotion and within thirty (30) calendar days, the City agrees to furnish the promoted employee with the following:

(a) To Fire Engineer/Driver

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- One (1) badge with new rank
- One (1) nameplate with new rank (if applicable)
- One (1) set of new rank collar brass

(b) To Fire Lieutenant

- One (1) Department Class A white long-sleeved dress shirt
- One (1) Department Class B white short-sleeved dress shirt
- One (1) Class A hat and hat badge with new rank
- One (1) nameplate with new rank (if applicable)
- > Update of new rank insignia on the cuffs of the employee's class A jacket
- > One (1) set of new rank collar brass
- Ten (10) new rank Class C uniform shirts (employee preference/combination of short and/or long sleeve)
- One (1) new rank Class A Belt with buckle
- > Non-Shift Fire Lieutenant promotion only: Six (6) Department Class C collared work shirts

(c) To Fire Battalion Chief

- One (1) nameplate with new rank (if applicable)
- One (1) badge with new rank
- One (1) new rank Class A hat badge
- Update of new rank insignia on the cuffs of the employee's Class A jacket
- One (1) set of new rank collar brass
- Five (5) new rank Department Class C work shirts (employee preference/combination of short and/or long sleeve)
- Six (6) updated with new rank. Department Class C collared work shirts

(d) To Fire Marshal

- One (1) nameplate with new rank (if applicable)
- One (1) badge with new rank
- One (1) new rank Class A hat badge
- Update of new rank insignia on the cuffs of the employee's Class A jacket
- One (1) set of new rank collar brass
- > Two (2) Class A white long-sleeved dress shirt

(e) To Fire Inspector

- > One (1) nameplate with new rank (if applicable)
- > One (1) badge with new rank
- > One (1) new rank Class A hat badge
- One (1) set of new rank collar brass
- Two (2) Class A long-sleeved dress shirt
- > Two (2) Class B short-sleeved dress shirt
- Eight (8) updated with new position, Department Class C collared work shirts (employee preference/combination of short and/or long sleeve)

Section 6 -Temporary Uniforms

a) Fire Lieutenant who is eligible to temporarily upgrade to the position of Shift Fire Battalion Chief shall be eligible to purchase (with their uniform credit) from the uniform catalog the white, Class-C, collared work shirt with their name/position embroidered on it. This uniform shirt shall only be

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worn when temporarily upgraded to Fire Battalion Chief, and only during the appropriate time(s) or day(s) approved by the Fire Chief or designee.

b) Field Training Officers shall be eligible to purchase (with their uniform credit) from the Uniform Catalog the rank appropriate colored. Class C, collared work shirt with their name/position embroidered on it. This uniform shirt shall only be worn when temporarily authorized during the appropriate time(s) or day(s) approved by the Fire Chief or designee.

Section 7 - Personal Protective Equipment

Personal Protective Equipment (PPE) shall be in accordance with National Fire Protection Association (NFPA) Standards and the Health and Safety Committee recommendations. Such equipment shall consist of, but not be limited to, the following:

- One (1) personal helmet
- Two (2) personal protective hoods
- One (1) personal safety glasses
- Two (2) personal bunker coats
- > Two (2) sets of personal gloves (structural)
- Two (2) personal suspenders
- Two (2) personal bunker pants
- Two (2) pair personal leather bunker boots
- > One (1) personal self-contained breathing apparatus (SCBA) mask
- One (1) protective bag for personal SCBA mask
- > One (1) wildland fire mask
- One (1) pair of extrication gloves
- One (1) personal raincoat
- One (1) personal safety line with bag
- Three (3) personal passport tags
- > Two (2) gear bags
- One (1) non-pressurized respiratory protective mask (Bureau of Life Safety personnel only)

Newly hired personnel may only receive one (1) set of PPE until completion of probation. Employees shall be furnished the PPE by the City within ninety (90) calendar days (except in cases involving external factors beyond the control of the City)

If a promotion requires a change in PPE, employees shall be furnished the PPE by the City within ninety (90) calendar days (except in cases involving external factors beyond the control of the City)

Section 8 - Maternity Uniform

The Department shall make every effort to provide maternity uniforms as similar as possible to the uniforms defined in this article. The maternity uniforms will be furnished to the employee and will not be deducted from the employee's uniform allowance. The City agrees to furnish pregnant employees with the following:

- Four (4) Class C uniform shirts (employee preference/combination of short and/or long sleeve)
- Four (4) Class C uniform pants

Section 9 - Honor Guard Uniform

The Department shall form and maintain an Honor Guard. Honor Guard members will be furnished an Honor Guard uniform, that will not be deducted from the employee's uniform allowance.

| <u>lonor Guard uniform, that will not be deduc</u> | ted from the employee's uniform allowance. | |
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Section 10 - Uniform Alteration

Employees may use the available balance of their Uniform Allowance to tailor their Class A and Class B uniforms. Tailoring of shirts shall be in accordance with generally accepted guidelines for semi-form fitting apparel.

Uniform Alterations are reimbursable as follows:

- The City shall not reimburse any portion of the alteration amount that exceeds the employee's
 current Uniform Allowance balance at the time the submission of the request for reimbursement
 is received by the Department.
- 2. Reimbursement shall be made to the employee, by the City, within thirty (30) calendar days following the submission of the request for reimbursement.

Employees can submit for reimbursement for uniform alterations any time between October 1st and June 15th. The employee must complete and submit a request for reimbursement with a valid receipt prior to the submission deadline.

Section 11 - Damaged Uniform Items

If any items as outlined in this Article are damaged during work hours, during normal use in performance of duties, and upon completing the proper paper work (CCFD "Uniform/Uniform Accessory Order Form"), the City will provide replacements (at no cost to the employee's annual credit) within thirty (30) calendar days (except in cases involving external factors beyond the control of the City).

Section 12 - Retention of Items

Upon retirement, an employee shall retain the following Uniform items:

- Most recently issued Class A uniform (as defined in Uniform Catalog)
- Most recently issued helmet
- One (1) Retiree Badge

An employee who dies prior to retirement, shall have the following Uniform items presented to his/her spouse or immediate family member:

- Most recently issued Class A uniform (as defined in Uniform Catalog)
- Most recently issued helmet

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Article 27 Uniforms

Section 1 - "Department" Uniforms Defined

"Department" as used within this Article shall imply Department-approved. Department-approved shall be any uniform or uniform accessory, which has been approved through the Labor/Management process and the Health & Safety process. Any items to be added or taken away from the standing list of Department-approved uniforms/accessories shall be done only through the Labor/Management process.

Section 2 - "Maternity Style" Uniform

If an employee becomes pregnant, the City shall make every effort (except in cases involving external factors beyond the control of the City) to provide "maternity style" uniforms exactly or very similar as the uniforms defined in this article and that of the uniform/uniform accessory catalog. This clothing, as well as that for plus-sized employees, shall not cost the employee any additional charge over that of the normal sized employee.

Section 3 - Honor Guard Uniform

CCFD, through the Labor /Management Committee process, shall form and maintain an Honor Guard which will be defined in department policy. Said Honor Guard will be provided an Honor Guard Uniform at no expense to the employee's uniform allowance.

Section 4 - Shoes/Boots

Employees will only be allowed to purchase duty shoes/boots and athletic shoes that have been approved by the Fire Chief/Emergency Management Director's Office or his/her designee. Duty shoes/boots must be of safety toe design, either steel or composite. (ASTM F2413 compliant or as amended) The costs associated with having a duty boot resoled (which must be in accordance with ASTM F2413 or as amended) will be the responsibility of the employee.

The above noted costs are reimbursable as follows:

The employee must provide a valid receipt, prior to August 1st of that fiscal year, in which the request for reimbursement is made.

The City shall not reimburse any portion of the purchase amount that exceeds the employee's current Uniform Credit balance at the time the submission of the request for reimbursement is received by the CCFD.

Reimbursement shall be made to the employee, by the City, within thirty (30) calendar days following the submission of the request for reimbursement.

Section 5 - Uniform/Uniform Accessory Catalog

CCFD shall annually (by September 30th) publish an updated "Uniform/Uniform Accessory Catalog." which shall include all of the "Department" uniforms and/or uniform accessories available for order by employees. The catalog shall include, but not be limited to, the following:

> Color picture, from front and rear, of each uniform Color picture of each uniform accessory All available size/sizing information Manufacturer style name/number Component specifications

Uniform/Uniform Accessory Order Form-with uniform item cost to employee

Section 6 - Uniform Credit Amount and Ordering System

Date of Issue and Amount: On October 1st, of each fiscal year, the City shall credit each employee of the bargaining units with an amount of credit to be used towards the purchase of "Department" uniforms. The amount to be credited to each employee shall be as follows:

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Shift & Non-Shift Employees: Five-hundred (\$500.00) dollars.

Each employee's credit amount shall expire and be reduced to zero (\$0.00) dollars prior to receiving their new fiscal year credit amount. The aforementioned shall occur at midnight (00:00:00 hours), August 1st.

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New hires shall have the above referenced amount pro-rated for the fiscal year following their hire date as follows: The total credit amount shall be divided by three hundred and sixty-five (365) and rounded to the one hundred's place. Then, that remaining number shall be multiplied times the amount of days between the employee's hire date and the following August 1st.

Ordering System: Employees may place their orders any time between October 1st and March 31st of each fiscal year. On December 1st of each fiscal year, the CCFD shall place and process all orders submitted by employees from October 1st through 16:30 hours, November 30th of each fiscal year. Any and all employee's uniform orders that are received after the deadline of 16:30 hours on November 30th, will be processed on the CCFD's following order. On April 1st of each fiscal year, the CCFD shall place and process all orders submitted by the employees from December 1st through 16:30 hours, March 31st of each fiscal year. Any employee uniform order that is submitted outside the ordering period of October 1st through 16:30 hours, March 31st (of each fiscal year) shall not be accepted.

Section 7 - Uniform Distribution

Initial Hire as a Fire Fighter:

Upon initial hire as a Fire Fighter, and within thirty (30) calendar days of said hire date the City agrees to furnish employees with the following:

One (1) of all of the current Class A uniform item(s) as defined in the Department Uniform/Accessory

Catalog.

One (1) Class B uniform shirt as defined in the Department Uniform/Accessory Catalog. Five (5) Class C uniform items as defined in the Department Uniform/Accessory Catalog.

One (1) each of the following uniform items as defined in the Department Uniform/Accessory Catalog.

One (1) Department Class C ball cap

One (1) Department Class C long-sleeved work shirt
One (1) Department Class C winter jacket
One (1) Department pair of Athletic Shorts

Promotion and/or Reassignment

(a) To Non-Shift Fire Battalion Chief, Fire Marshal, Fire Lieutenant, Fire Inspector
Upon promotion and/or reassignment to, Non-Shift Fire Battalion Chief, Fire Marshal, Fire Lieutenant or
Fire Inspector and within thirty (30) calendar days of said promotion and/or reassignment date the City
agrees to furnish employees with the following:

One (1) Department Class A white long-sleeved dress shirt

Four (4) Department Class B white short-sleeved dress shirts

Four (4), updated with new rank, Department Class C short-sleeved work shirts One (1), updated with new rank/position, Department uniform and hat badge

One (1), updated with new rank, Department Class A Hat

One (1), updated with new rank/position, Department nameplate

Update of new rank insignia on the cuffs of the employee's Class A Jacket

One (1) set of Department Fire Lieutenant's insignia (i.e. bugles, etc.) for Fire Lieutenants

One (1), updated Class A Belt with Buckle

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| NOTE: If employee has a squad suit, they will receive and be (1), updated with new rank/position, Depa | |
|---|--------------------------------------|
| (b) To Fire Engineer/D | river |
| Upon promotion to Fire Engineer/Driver, and with | n thirty (30) calendar days of said |
| promotion date the City agrees to furnish e | mployees with the following: |
| One (1), updated with new rank, Dep | artment badge |
| One (1), updated with new rank, Departs | ment nameplate |
| One (1) Set of Updated Collar | Brass |
| NOTE: If employee has a squad suit, they will receive and h | ave sewn on to their squad suit, one |
| (1), updated with new rank/position, Depa | · |
| ` ' | |
| Upon promotion to Fire Lieutenant, and within thirty (| |
| date the City agrees to furnish employees | |
| One (1) Department Class A white long-si | |
| One (1) Department Class B white short-s | |
| One (1), updated with new rank, Department Cl | |
| One (1), updated with new rank, Depart | • |
| Update of new rank insignia on the cuffs of the e | |
| One (1) set of Department Fire Lieutenant's in | |
| Six (6), updated with new rank, Department Class | |
| Two (2), updated with new rank, Department Class One (1) Updated Class A Belt wi | |
| NOTE: If employee has a squad suit, they will receive and ha updated with new rank/position, Departm | ent name patch. |
| (d) To Shift Fire Batta | |
| promotion date, the City agrees to furnish empl | oyees with the following: |
| One (1), updated with new rank, Departe | |
| Update of new rank insignia on the cuffs of the en | |
| One (1) set of Department Fire Battalion Chief's | |
| Six (6) updated with new rank, Department Class (| |
| Two (2) updated with new rank, Department Class | C long-sleeved work shirts |
| NOTE: If employee has a squad suit, they will receive and h | |
| (1), updated with new rank/position, Depart | • |
| (e) Any Fire Lieutenant who is eligible to temporarily upgrade to | · · · |
| shall be eligible to purchase (with their Uniform Credit) from the | |
| white, polo / golf style shirt with their name embroidered on it . The | • |
| temporarily upgraded to Fire Battalion Chief, and only during the | |
| by the Fire Chief/Emergency Management | |
| Section 8 - Personal Protection Equipmen | |
| Each employee, upon completing probation and when | |
| replacement), shall within ninety (90) calendar days of said | |
| uniform replacement request date (timelines shall be strictle external factors beyond the control of the City), be furnis | |
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A. Personal protective gear in accordance with N.F.P.A. Standards and the Health and Safety Committee. Such equipment shall consist of, but not be limited to, the following:

Personal helmet

Two (2) Personal Protective hoods

Personal safety glasses

Personal bunker coat

Two (2) Sets of Personal gloves (structural)

Personal suspenders

Personal bunker pants

Personal leather, bunker boots

Personal S.C.B.A. mask

Self-contained breathing apparatus with P.A.S.S. alarm (one [1] for every employee assigned to every emergency response vehicle)

B. Personal protection accessories in accordance with applicable N.F.P.A. or other standards and the Health and Safety Committee. Such equipment shall consist of, but not be limited to, the following:

> (1) Pair of Extrication Gloves Personal raincoat Personal safety line

Three (3) personal passport tags Personal protective bag for personal S.C.B.A. mask

Section 9 - Uniform Care

Employees will be responsible for the care and cleaning of all uniforms. Those items listed in this Article. which by virtue of the manufacturer's cleaning instructions require treatment other than normal washing, shall be cared for at the expense of the City. If any items as outlined in this Article are damaged during work hours, and upon completing the proper paper work (CCFD "Uniform/Uniform Accessory Order Form"), the City will provide replacements (at no cost to the employee's annual credit) within thirty (30) calendar days (timelines are strictly enforced except in cases involving external factors beyond the control of the City).

Section 10 - Retention of Items upon Retirement

Upon retirement, an employee shall retain the Class A uniform and helmet most recently issued to them. An employee, who dies prior to retirement, shall have his/her Class A uniform and helmet given to his/her spouse/immediate family at the spouse/immediate family's request.

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Article 2<u>7</u>8 <u>Temporary Upgrade</u>

Section 1 - Temporary Upgrade Pay

Employees, who are temporarily assigned to a position higher than their normal rank or classification, will receive remuneration in the amount of ten percent (10%) additional for time worked above their present rank or classification.

Section 2 - Decline of Temporary Upgrade Assignment

Section 2 - Temporary Upgrade Assignment Preferences

By October 1st all Shift Acting Fire Engineer/Drivers and Acting Fire Lieutenants shall submit one acting out-of-title assignment preferences to their Fire Battalion Chief (Shift). Acting out-of-title assignment preferences shall be limited to the following:

- ----Act anywhere at any time for any duration
- Act anywhere for 24-hour vacancy
- Act only at their assigned station

These preferences shall be maintained and utilized by the Shift Fire Battalion Chief to determine daily acting out-of-title assignments for the fiscal year and may not be changed by the employee until the next preference process. If the classification selection process is fully exhausted the least senior employee meeting the required criteria shall be selected for temporary upgrade assignments. Any employee who earns acting out-of-title privileges after October 1st shall submit their acting out-of-title assignment preferences upon earning the privilege.

A qualified employee may decline a temporary upgrade assignment, whereby a descending shift rank classification selection process shall be exercised. If the classification selection process is fully exhausted the least senior employee meeting the required criteria shall be selected.

Section 3 -Suspension and/or Revocation of Temporary Upgrade Privileges

Suspension of Temporary Upgrade Privileges can be authorized by an employee's immediate supervisor. The employee's immediate supervisor shall provide just cause in writing to the employee and the Fire Chief/Emergency Management Director, or his/her-designee, within ten (10) calendar days of the suspension. The Fire Chief/Emergency Management Director, or his/her designee, shall initiate an inquiry within ten (10) calendar days of said suspension.

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Revocation of Temporary Upgrade Privileges can only be authorized by the Fire Chief/Emergency Management Director or his/her designee. The Fire Chief /Emergency Management Director, or his/her designee, shall provide just cause in writing to the employee within ten (10) calendar days of the revocation. An employee who has had their Temporary Upgrade Privileges revoked must go back through the Proficiency Process to re-acquire his/her Temporary Upgrade Privileges.

Any employee who voluntarily relinquishes their temporary upgrade privileges shall be required to reapply if they choose to regain their temporary upgrade privileges.

Section 4 - Temporary Upgrading Criteria

Employees must successfully meet the following criteria to be eligible for a temporary upgrade assignment (to "act out-of-title"): In the event of insufficient available personnel meeting these criteria at any given time, the Fire Chief /Emergency Management Director or designee shall exercise discretion and either call in overtime or temporarily (less than twenty-four [24] hours) utilize the most senior person who the Fire Chief/Emergency Management Director or his/her designee reasonably believes is qualified to temporarily fill the vacancy.

Note: Upon ratification of this collective bargaining agreement, anyone currently qualified to temporarily upgrade shall remain qualified.

- (a) Fire Fighter Temporarily Upgrading to Fire Engineer/Driver:
 - > Twenty-four (24) months of continuous employment as a Fire Fighter with the CCFD State of Florida Pump Operator Certification
 - CCFD Fire Fighter Acting as Fire Engineer/Driver Proficiency Certification.
- (b) Fire Engineer/Driver Temporarily Upgrading to Fire Lieutenant
 - Twenty-four (-24) months of continuous employment as a Fire Engineer/Driver with the CCFD Completion of two (2) classes towards the State of Florida Fire Officer I Certification

 - CCFD Fire Engineer/Driver Acting as Fire Lieutenant Proficiency Certification.
- (c) Fire Lieutenant Temporarily Upgrading to Fire Battalion Chief
 - Twelve Eighteen (128) months of continuous employment as a Fire Lieutenant with the CCFD
 - -State of Florida Fire Officer I certification
 - CCFD-Fire Lieutenant Acting as Fire Battalion Chief Proficiency Certification.
- (d) Fire Inspector Temporarily Upgrading to Fire Marshal of Life Safety
 - Twenty-four (24) months of continuous employment as a Fire Inspector with the CCFD. The Fire Chief/Emergency Management Director may lower that time constraint depending on the employee's previous performance, knowledge, and experience.
 - Completion of the State of Florida Fire Officer I certification

CCFD-Fire Inspector Acting as Fire Marshal Proficiency Certification.

Section 5 - Distribution of Temporary Upgrade Hours

(a) Shift:

For any vacancy of <u>four two (42)</u> consecutive tour days or less, employees meeting the temporary upgrading criteria at that particular station shall exercise a fair distribution of temporary upgrading hours. If all of the qualified employees are off duty at Station requiring an upgrade, said vacancy shall be by classification (rank) seniority on that shift from employees meeting the temporary upgrading criteria and Temporary Upgrade Assignment Preferences.

For any scheduled vacancy of five three (53) consecutive tour days or more, that has required a reassignment (e.g. Light Duty. Special Project. Vacant FTE position, etc.) the filling of that vacancy shall be based on classification (rank) seniority on that shift from members meeting the temporary upgrading criteria and Temporary Upgrade Assignment Preferences.

(b) Non-Shift:

For any scheduled vacancy of four (4) business days or more, the employee with the most classification/rank seniority assigned to that specific division from which the vacancy occurred shall temporarily upgrade to that vacancy, provided he/she meets the temporary upgrading criteria.

For any vacancy of three (3) business days or less, the Fire Chief /Emergency Management Director's office-or designee shall exercise a fair distribution of temporary upgrading nours to mose employees which meet the temporary upgrade criteria within the specific division of said vacancy.

(c) Shift to Non-Shift:

In the event that there are no employees in a Non-Shift work schedule who meet the temporary upgrade criteria for a specific vacancy, employees in a Shift work schedule who meet the temporary upgrade criteria may fill said vacancy.

Section 6 - Temporary Upgrading Assignment for Shift to Non-Shift

In the event that there are no employees in a Non-Shift work schedule who meet the temporary upgrade criteria for a specific vacancy, employees in a Shift work schedule who meet the temporary upgrade criteria may fill said vacancy.

The parties agree during the temporary assignment, that the shift employee will work a Non-Shift work schedule (in accordance with Article 10 - Work Schedules/Hours of Duty)—but) but will continue to be paid and accumulate all benefits as a Shift employee.

Employees who are on a Temporary Upgrading Assignment from Shift to Non-Shift shall receive ten percent (10%) remuneration (in accordance with Section 1), which shall include any overtime hours

worked in connection with the Temporary Upgrading Assignment. Any overtime not associated with the Temporary Upgrading Assignment shall be paid in accordance with Article 11 - Overtime.

Section 7 - Temporary Upgrading Assignment for Special Project

It is agreed between the City and the Union to assign a qualified Shift employee to a Non-Shift position for any special project. This specific temporary assignment will be on a voluntary basis and encompass working on a designated special project within the CCFD.

This position will be filled on an as needed basis, as mutually determined and agreed upon by the Fire Chief and the Union President on the "Temporary Assignment for Special Project Form." The Union President and the Fire Chief or designee/Emergency Management Director shall mutually agree upon the duration of this temporary assigned special project on the "Temporary Assignment for Special Project Form."

The criteria and the selection process for this position shall be mutually agreed upon by the Fire Chief or designee/Emergency Management Director and the Union President prior to the position being filled on the "Temporary Assignment for Special Project Form." The temporary assignment will continue for the agreed upon duration as set forth above unless the employee assigned to this temporary position chooses to return to his/her original position or if the temporary assignment is no longer needed due to the designated special project having been completed.

The parties agree during the temporary assignment, that the shift employee will work forty (40) hours a week (in accordance with Article 10 - Work Schedules/Hours of Duty), but) but will continue to be paid and accumulate all benefits as a Shift employee.

Employees who are on a Special Project shall receive ten percent (10%) remuneration (in accordance with Section 1), which shall include any overtime hours worked in connection with the Special Project. Any overtime not associated with the Special Project shall be paid in accordance with Article 11 -Overtime.

The "Temporary Assignment for Special Project Form" can be found in the Appendix of this Agreement.

Article[RL50] 289 Pension

Article 29 Pension

The Union and the City agree that the pension plan known as the "City of Cape Coral Municipal Fire Fighters' Pension Trust Fund" (hereinafter referred to as the Retirement Plan) has been discussed and it is agreed that any changes in the plan shall be ratified by the Union and the City. Both parties also agree that the Pension Board of Trustees shall administer the pension plan.

The parties further agree that prior notification of all Pension Board meetings, nominations, election notices, as well as copies of meeting agendas, minutes, and all other pertinent information be furnished by the Pension Plan Administrator/Pension Board to the individual Fire Station's Bulletin Boards. The Pension Plan Administrator/Pension Board further agrees to furnish the Union with the above-mentioned pertinent information, including any additional data relating to both Investment Performance and Actuarial statements.

<u>Section – 1 Pension & Retirement Benefits</u>

The City will maintain pension benefits for its currently retired employees and for its current employees in accordance with the Retirement Plan which may be modified or changed from time to time pursuant to negotiations with the Union.

The City and Union agree that the bargaining unit employee's contribution to the Retirement Plan shall be ten percent (10%) of regular pensionable wages and 10% of overtime wages for the first 300 hours of overtime accrued in a calendar year. (Any concomitant requisite benefit adjustment to be addressed upon mutual agreement.)

- A. Upon ratification of this Agreement by both parties and the subsequent enactment of any necessary amended City Ordinance, the following changes to the Retirement Plan shall be effective for all current and future members of the Retirement Plan:
 - (1) The maximum annual benefit cap when initially calculated in its normal form shall be the actuarial equivalent of \$95,95000.00 (as of October 1, 2018), except as provided for in subsection (2) below. The cap on annual benefits shall not apply after retirement, e.g., a member's annual benefit may exceed the cap as a result of a cost of living adjustment.

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- (2) For each year the Retirement Plan is at least eighty percent (80%) funded in accordance with the annual actuarial report, the benefit cap shall be increased by a one percent (1%) index.
- (3) Vesting in the Retirement Plan shall occur upon the completion of 10 years of credited service. Current employees with less than 10 years of credited service shall have their current vesting percentage frozen and increased to one hundred percent (100%) upon the completion of 10 years credited service.
- (4) A Member's Deferred Retirement Option Plan (DROP) account balance shall be completely disbursed by the Retirement Plan, at the request of the member, within 120 months of the member's separation from service.
- (5) Participants in the Retirement Plan are allowed to pay the cost of purchasing prior service credits over the course of up to sixty (60) months from the date of approval of a request to purchase prior service credit so long as the cost is paid prior to the participant's date of retirement, including entry into the DROP.
- (6) A supplemental benefit plan exists, commonly known as a share plan, for the provision of special benefits as required by Chapter 175.351(6), Florida Statutes. At this time the parties acknowledge that such supplemental/share plan will not be funded because the parties mutually consent to continue to utilize monies received pursuant to Chapter 175, Florida Statutes, in the same manner as such monies were utilized at the time of implementation of this agreement. The terms of participation in the supplemental/share plan shall be bargained by the parties at the time, if ever, that the supplemental/share plan is to be funded.
- B. Upon ratification of this Agreement by both parties and the subsequent enactment of any necessary amended City Ordinance, the following changes to the Retirement Plan shall be effective for all members of the Retirement Plan hired on or after April 1, 2014:
 - (1) The normal retirement age shall be the earlier of age 52 and 10 years of credited service or 25 years of credited service regardless of age.
 - (2) Cost of living adjustments shall commence on October 1st following three (3) completed years of retirement income payments. The cost of living increase shall equal three percent (3%) and the first payment shall be prorated according to the number of months the member retired prior to October after being retired for three (3) years.
- C. Chapter 175 monies in excess of \$1,314,942.15 will be split 50/50, allocating fifty percent (50%) to defray the City's annual required pension costs and the remaining fifty percent (50%) reserved for additional membership benefits. For purposes of this agreement, the funded ratio is defined on each valuation date by dividing the Actuarial Value of Assets by the Total Entry Age Normal Actuarial Accrued Liability, both values as reported in the Plan's actuarial valuation report.
- C. The City will utilize the current balance of the Chapter 175 funds (approximately 1.8 million dollars) to defray its portion of pension costs for Fiscal Year 2014. Until such time that the Retirement Plan reaches eighty percent (80%) funded as determined by the Retirement Plan's actuary, all future excess future 175 monies will be split 50/50, allocating fifty percent (50 %) to defray the City's annual

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- required pension costs and the remaining lifty percent (50%) towards accelerating the pay down of the unfunded accrued actuarial liability (UAAL), if any, to the pension plan.
- D. No negotiations to change the provisions of this Article shall occur within the period October 1, 2013 to September 30, 2016, unless the pension falls below sixty two (62%), as determined by the Retirement Plan's actuary.
- E Within 30 days of the ratification by both parties of this contract, members of the Retirement Plan shall receive a one-time payment of five percent (5%) of their gross 2013 W-2 wages.
- F. In the event the Union does not ratify this Agreement within 21 calendar days from the date of the parties' tentative agreement, an impasse hearing shall be rescheduled within 30 days of the failed ratification vote or the expiration of such 21 day period, whichever is sooner.

Section 2 - Future Benefit Improvements

The City and the Union agree to pursue a common ground in regard to additional pension improvements, as finances become available.

<u>Section 3 – Board of Pension Trustees</u>

The makeup of the Pension Board shall consist of the following five (5) total members:

| >-7 | wo residents appointed by the City |
|-----|--|
| 2 | |
| -1 | wo Fire Fighters elected by a majority vote of the pension plan members. |
| 4 | |
| > 1 | The fifth (5th) person shall be appointed by the above noted four (4) Board Members. |
| 1 | The name(s) for the fifth (5th) appointed Board Members shall be submitted by the Fire |
| F | Pension Plan members. |

Section 4 - Nominations and Elections to the Pension Board

The Pension Plan Administrator in compliance with the Fire Fighters Pension Board shall send out a notice of nominations to the Pension Board form to all members, each August. Persons nominated for Trustee(s) positions shall be notified of such by the Pension Plan Administrator. Upon the member being notified of being nominated by the Pension Plan Administrator, the member shall confirm their intention to run for said position by submitting a (signed/dated) letter of interest to the Pension Plan Administrator no later than two (2) weeks prior to the elections. Members failing to submit a letter of interest within the proper time period shall not be qualified to be placed on the election ballot by the Pension Plan Administrator. The names of the qualified nominees shall be verified and sent out by the Pension Plan Administrator to be posted in all fire stations, the Fire Chief's Office and faxed to the Union Office one (1) week prior to the election, along with the date, time, and location of elections. The terms of the Trustees shall be for no more than four (4) years, with nominations being in August, and elections being in September. There shall be no limit to consecutive terms. Both Firefighters shall have alternate term years and both citizens shall have alternate term years. The fifth (5th) appointed position of the Pension Board shall be filled on the odd numbered years at the Pension Board Meeting following the September election, unless a vacancy occurs. If a vacancy occurs for any of the Pension Board positions, members shall be notified by the Pension Plan Administrator no later than five (5) working days (Monday-Friday) after the



Pension Plan Administrator has been notified of such vacancy. The City and the Union agree to fill such vacant position(s) at the earliest convenience. Vacancies shall be filled in accordance with Article 289.

Section 5: 2017 Amendments to Pension & Retirement Benefits

The parties agree that the ordinance establishing the Retirement Plan and the plan of benefits offered by the same shall be amended as follows:

1. The ordinance shall be amended in a manner agreed upon by the City and the Union as presented by the Board of Trustees of the Retirement Plan to modify the cap on pension benefits as established pursuant to Section 1 above so that the cap applies to a firefighter's initially calculated pension benefit in its normal form and so that the benefit may then be adjusted in a manner actuarially equivalent to the initially calculated benefit in its normal form, even if the adjusted benefit exceeds the cap so long as it is actuarially equivalent to a benefit which, in its normal form, is below the cap.

2. The ordinance shall be amended in a manner agreed upon by the City and the Union as presented by the Board of Trustees of the Retirement Plan to allow a participant in the Retirement Plan to pay the cost of purchasing prior service credits over the course of up to sixty (60) months from the date of approval of a request to purchase prior service credit so long as the cost is paid prior to the participant's date of retirement, including entry into the DROP.

The ordinance shall be amended in a manner agreed upon by the City and the Union as presented by the Board of Trustees of the Retirement Plan so as to create a supplemental benefit plan, commonly known as a share plan, for the provision of special benefits as required by Chapter 175, Florida Statutes. At this time the parties acknowledge that such supplemental/share plan will not be funded because the parties mutually consent to continue to utilize monies received pursuant to Chapter 175, Florida Statutes, in the same manner as such monies were utilized at the time of implementation of this agreement. The terms of participation in the supplemental/share plan shall be bargained by the parties at the time, if ever, that the supplemental/share plan is to be funded.

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Article 2930 Longevity Buy-out

Section 1 - Longevity Buy-Out

A longevity premium was discontinued and in consideration of that discontinuation of the longevity premium, employees in the Bargaining Unit shall continue to receive a longevity buy-out.

Employees in the Bargaining Unit shall have their regular rate of pay, under the Career Advancement & Performance Enhancement (C.A.P.E.) System, increased on each employee's pay check as a separate line item (add-pay) by an amount based on a percentage of his or her regular rate of pay as of September 30, 1997, as follows:

DATE OF HIRE WITH THE CITY: PERCENTAGE:

| After October 1, 1995 | 0.00% |
|--|-------|
| Between October 1, 1994 and September 30, 19951.0 | 00% |
| Between October 1, 1993 and September 30, 19941.2 | 25% |
| Between October 1, 1992 and September 30, 19931.5 | 50% |
| Between October 1, 1991 and September 30, 19921.7 | '5% |
| Between October 1, 1990 and September 30, 19912.0 | 00% |
| Between October 1, 1989 and September 30, 19902.2 | 25% |
| Between October 1, 1988 and September 30, 19892.5 | 0% |
| Between October 1, 1987 and September 30, 19882.7 | 5% |
| Between October 1, 1982 and September 30, 1987 3.0 | 10% |
| Between October 1, 1977 and September 30, 1982 | 10% |
| Prior to October 1, 1977 7.0 | 0% |

All increases took effect by the first (1st) bi-weekly payroll period beginning after October 1, 1998 and will continue until each employee severs his employment with the City of Cape Coral.

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Article 30 Hiring, Promotions, Demotions, and Vacancy Procedures Article 31

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Hiring, Promotion, Demotion and Vacancy Procedures

All terms and conditions related to hiring, promotions, demotion, and vacancy procedures, not specifically referenced within this Agreement, shall fall under the City of Cape Coral Administrative Regulations and Personnel Ordinance.

Section 1 - Notice/Freezing of Vacancy

Upon the Fire Chief/Emergency Management Director or his/her designee becoming aware of an actual or anticipated vacancy, new promotions or positions occurring within the bargaining unit at any time, the Fire Chief/Emergency Management Director or his/her designee shall notify all employees

The parties agree that the Fire Chief/Emergency Management Director or his/her-designee may elect to freeze the filling of a vacancy. If the filling of a vacancy is frozen, the eligibility list(s) duration defined in Section 5 of this article shall also be frozen/extended automatically and concurrently equal to the duration of the frozen position. Such extension of the list shall be in addition to the parameters outlined in Section 5(a) (i.e., Fire Chief/Emergency Management Director or his/her designee freezes the filing of a position for one year then the eligibility list(s) duration is also frozen/extended for one year).

Section 2 - Fire Lieutenant or Fire Battalion Chief Vacancy

The following conditions and timelines apply:

- In the case of submitting a change in work schedule request from Shift to Non-Shift (or conversely) to fill a Fire Battalion Chief vacancy, the respective Fire Battalion Chief must have held the position of Fire Lieutenant (assigned to Shift) for the Cape Coral Fire <u>Department</u>, Rescue & Emergency Management Services.
- Selection shall be by Rank Seniority of those Fire Lieutenant(s) or Fire Battalion Chief(s) that
 submit a change in work schedule request. The individual Fire Lieutenant or Fire Battalion Chief
 must have successfully completed six (6) months as a Fire Lieutenant or Fire Battalion Chief,
 whichever is applicable, prior to submitting a change in work schedule request. The Fire Chief
 may waive the six (6) monthis timeline.

(a) Non-Shift:

Upon the Fire Chief_/Emergency Management Director or his/her designee becoming aware of either an actual or anticipated vacancy to any Non_Shift Fire Lieutenant or Fire Battalion Chief position, the Fire Chief/-Emergency Management Director or his/her designee shall first (1st) offer this vacant position to all current Fire Lieutenants or Fire Battalion Chief's based on rank seniority with the most senior Fire Lieutenant or Fire Battalion Chief being given the first (1st) opportunity to fill the Non-Shift Fire Lieutenant's position.

The Shift Lieutenant or Fire Battalion Chief shall have seven (7) calendar days following the actual vacancy in which to respond, in writing to the Fire Chief/ Emergency Management Director or his/her designee his/her intent to accept the Non-Shift Lieutenant's or Fire Battalion Chief's position. If all current

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Shift Fire Lieutenants or Fire Battalion Chief's decline to accept the position as set forth above, then the Fire Chief/ Emergency Management Director or his/her designee shall fill the vacant position from the most current Fire Lieutenant's or Fire Battalion Chief's Promotional Eligibility List.

(b) Shift:

Upon the Fire Chief # Emergency Management Director or his/her designee becoming aware of either an actual or anticipated vacancy to any Shift Fire Lieutenant or Fire Battalion Chief position the Fire Chief# Emergency Management Director or his/her_designee shall first (1st) offer this vacant position to all current Non-Shift Fire Lieutenants or Fire Battalion Chief's based on rank seniority with the most senior Non-Shift Fire Lieutenant or Fire Battalion Chief being given the first (1st) opportunity to fill the Shift Fire Lieutenant's or Fire Battalion Chief's position. The Non-Shift Lieutenant or Fire Battalion Chief shall have seven (7) calendar days following the actual vacancy in which to respond, in writing to the Fire Chief# Emergency Management Director or his/her designee his/her intent to accept the Shift Lieutenant's or Fire Battalion Chief's position. If all current Non-Shift Fire Lieutenants or Fire Battalion Chief's decline to accept the position as set forth above, then the Fire Chief_/Emergency Management Director or his/her designee shall fill the vacant position from the most current Fire Lieutenant's or Fire Battalion Chief's Promotional Eligibility List.

The respective bargaining unit member rated the highest on the Fire Lieutenant's or Fire Battalion Chief's promotional eligibility list will then be given the opportunity to accept or decline the position. If declined by the highest rated employee on the Fire Lieutenant's or Fire Battalion Chief's promotional eligibility list, the Fire Chief/ Emergency Management Director or his/her designee will then continue to offer the vacant position(s) to bargaining unit members on the current Fire Lieutenant's or Fire Battalion Chief's promotional eligibility list for the Fire Lieutenant or Fire Battalion Chief position in descending chronological order (i.e., from the highest rated employee on the Fire Lieutenant's or Fire Battalion Chief's eligibility list, downward) until the position is eventually filled.

Section 3 - Vacancy Notification/Filling of or Testing for Vacancy

The Fire Chief/ Emergency Management Director or his/her designee shall make notification not later than fourteen (14) calendar days after an actual vacant position exists in accordance with Section 1. In addition, the Fire Chief/ Emergency Management Director or his/her designee shall fill promotional vacancies no later fourteen (14) calendar days after an actual promotional vacancy exists, provided an eligibility list exists for that classification. If an eligibility list does not exist for the classification, the Fire Chief_/ Emergency Management Director or his/her designee shall begin testing for the promotional vacancy no later than sixty (60) calendar days after the actual promotional vacancy position exists.

Section 4 - Examination Procedures

Whenever a position within the Fire Department becomes available as per Section 1, the Fire Chief/Emergency Management Director or his/her designee, shall prepare selective criteria for the position(s). All examinations will be designed to fairly and impartially assess the merit, experience and other qualifications of an applicant to perform the duties of the classification.

| Examinations shall consist of th | e following weighted criteria: | |
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the eligibility list, in its current position, until offered a promotion a second time. In the event an employee refuses a promotion a second time, that employee's name shall be removed from the eligibility list.

Section 6 - Demotions

Employees shall be permitted to displace employees in bargaining unit positions covered under this Agreement. A demoted employee shall be entitled to displace other Fire Department employees provided the demoted employee has previously worked in the classification of the employee to be displaced. The classification of the employee to be displaced must be a bargaining unit position and the demoted employee must have more total continuous years of service in the CCFD than the person being displaced.

An employee, who is demoted, due to the demotion of another employee, shall be offered the next immediate position of the classification from which they were demoted.

- (a) Voluntary (While on Probation): Said employee will be placed back to the rank and step they promoted from, including any step, wage increase(s), and seniority that the employee would have been entitled to, provided they never left.
- (b) Voluntary (After Completion of Probation): Said employee shall be placed back to the rank and step they promoted from, including any step and wage increase(s) that the employee would have been entitled to, provided they never left. Said employee shall resume rank seniority accrual from where they left off in said rank.
- (c) Involuntary (While on Probation): Said employee will be placed back to the rank and step they promoted from, including any step, wage increase(s), and seniority that the employee would have been entitled to, provided they never left.
- (d) Involuntary (After Completion of Probation): Said employee shall be placed back in to a rank at the discretion of the Fire Chief/Emergency Management Director. The employee shall be placed back in the last step they held in said rank, including any step increase(s) and wage increase(s) that the employee would have been entitled to, provided they never left. Said employee shall resume rank seniority accrual from where they left off in said rank.

An employee who has promoted outside the Supervisory bargaining unit will be permitted to return to the Supervisory bargaining unit provided that they request the return prior to the expiration of their initial promotional probationary period, the Fire Chief approves, and one of the following scenarios exists:

- 1. A qualified bargaining unit member is willing to promote to the position.
- 2. A vacancy exists in the bargaining unit and no eligibility list exists.
- The employee is willing to fill a vacant Firefighter position-at the Fire Fighter, which would not result in a member being displaced.

The employee shall be placed back in the last step they held in said rank, including any step increase(s) and wage increase(s) the employee would have been entitled to, provided they never left. Said employee shall resume rank seniority accrual from where they left off in said rank.

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Article 312[RL53] Career Advancement & Performance Enhancement (CAPE) System

(CAPE System)

Annually, effective for the first (1st) full pay period of every October, all Bargaining Unit members shall be enrolled in a jointly sponsored Career Advancement & Performance Enhancement (CAPE) system between the CCFD and the Union.

<u>In t</u>The CAPE system, is a career advancement and performance enhancement system, where each member shall be placed into a specific level within the classification/rank the bargaining unit member holds as of the first (1st) full pay period of the fiscal year (October).

A bargaining unit employee who commenced employment on January 6, 2003, May 9,2005 or July 18, 2005 and was promoted to Lieutenant between November 12, 2011 and December 3, 2016 shall receive an additional one-time step advance in the CAPE system effective with the first full pay period beginning on or after October 1, 2018.

Section 1: FY 2016

Effective the first full pay period after October 1, 2015, all bargaining unit employees shall have their annual salary adjusted upward by 5%, not to exceed the agreed-upon maximum of the May, 2015 Total Compensation Survey pay ranges for their classification. Payment(s) associated with this adjustment shall be issued as soon as possible, but no later than 60 days after ratification of this Agreement by both parties.

Section 2: FY 2017

Effective the first full pay period after October 1, 2016, pay ranges move toward the 75th percentile to market to the agreed upon comparable market pay ranges as established in Section 6.2.

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The Rank & File Bargaining Unit employees shall be slotted in the new CAPE system at their current step and then immediately advanced one step unless already at the maximum pay for their classification.

Employees in the Supervisory Bargaining Unit shall be slotted into a step as follows:

Shift:

Old Step 9 to New Step 5

Old Step 11 to New Step 6

Old Step 14 to New Step 7

Non-Shift:

Old Step 1 to New Step 1

Old Step 3 to New Step 2

Old Step 4 to New Step 2

Old Step 6 to New Step 3

Old Step 9 to New Step 5

Old Step 11 to New Step 6

Once slotted, Supervisory Bargaining Unit employees will then immediately advance one step unless already at the maximum pay for their classification.

Section 31: FY 20189-21

(a) Advancement in the CAPE system:

(a)

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- A bargaining unit employee who receives a performance evaluation indicating an overall satisfactory or better performance-shall advance one step in the CAPE system effective with the first full pay period beginning on or after October 1, 20187.
- A bargaining unit employee shall advance one step in the CAPE system effective with the first full pay period beginning on or after October 1, 2019.
- A bargaining unit employee shall advance one step in the CAPE system effective with the first full pay period beginning on or after October 1, 2020.
- (b) Employees who have achieved the highest step in their classification (rank), shall not receive a step increase.
 - Any further step increases past FY 2018 must be negotiated by the parties.
- (c) Effective October 2, 2016, aAdvancement from one step to the next in the CAPE system, per Section 1 (a), shall be contingent upon receipt of an overall satisfactory or better performance evaluation. Performance evaluations shall be completed on or before June 1 of each fiscal year.

A bargaining unit employee who receives a performance evaluation indicating an overall unsatisfactory performance shall, on or before June 15 of the year in which the evaluation is issued, be provided with a Performance Improvement Plan (PIP) to be completed within 60 days of implementation. If the employee has not successfully completed the PIP, a one-time extension of 30 days will be granted. An employee shall not advance in the CAPE system until his or her performance is deemed satisfactory or better. If a performance rating of satisfactory or better is received at the conclusion of the PIP, the employee will advance in the CAPE system as provided in the preceding paragraph.

If the employee still has not received a performance rating of satisfactory or better, the employee shall not advance in the CAPE system during that fiscal year and the employee's employment shall be evaluated by the City in order to determine what, if any, steps should be taken to remediate the employee's performance.

(d) Any further step increases past FY 2021 must be negotiated by the parties

Section 42 - New Hire

All newly hired Bargaining Unit employees into the rank of Fire Fighter shall automatically be placed in Fire Fighter STEP 1.

Section 53 -- Promotions

Page

Any Bargaining Unit employee who is promoted shall be placed in a step in the higher classification (rank), which will result in the employee receiving a minimum of a five percent (5%) increase in pay.

Employees promoted on or after April 1, but before October 1 shall be eligible for a step increase in the CAPE system upon completion of their probation period.

Employees promoted on or after October 1, but before April 1, shall, after completion of their probationary period, be eligible for a step increase in the CAPE system upon the first (1st) pay period beginning in October of the subsequent year.

Section 6 - Fiscal Year 2016

The following CAPE system hourly pay levels will be effective the first full pay period after October 1, 2015 through September 30, 2016

FORTY-EIGHT (48) HOUR WORK WEEK SHIFT EMPLOYEES

| Fire Fighter | Fire Engineer/Driver | Fire Lieutenant | Fire Battalion Chief | |
|--------------|-------------------------|-----------------|-------------------------|--|
| | 44 45 | | STEP -\$ 18 40.58 | |
| | | - | STEP -\$ 17 40.12 | |
| . , | ite on | | STEP -\$ 16 39.65 | |
| | | - | STEP -\$ 15 39.19 | |
| - | | | STEP -\$ 14 38.72 | |
| | | - | STEP -\$ 13 38.26 | |
| - | - | - | STEP \$ 37.80 | |

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FORTY (40) HOUR WORK WEEK NON-SHIFT EMPLOYEES

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Section 4 6.2 - Fiscal Yearss 20197 and - 20218

The following CAPE system hourly pay levels will be effective the first full pay period after October 1, 20186 through September 30, 20218

FORTY-EIGHT (48) HOUR WORK WEEK SHIFT EMPLOYEES

| Fire F | Fire Fighter | | ire er/Driver | Fire Lieutenant | | Fire Batta | lion Chief |
|----------|--------------|--------|--|-----------------|---------|------------|------------|
| <u>~</u> | | 94 | enter de la companya | w ; | AW | STEP 10 | \$47.23 |
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| • | | 440 | A06- | STEP 6 | \$36.93 | STEP 2 | \$36.18 |
| STEP 11 | \$32.12 | STEP 8 | \$34.04 | STEP 5 | \$35.03 | STEP 1 | \$34.79 |
| STEP 10 | \$30.92 | STEP 7 | \$32,39 | STEP 4 | \$33.13 | | |
| STEP 9 | \$29.72 | STEP 6 | \$30.74 | STEP 3 | \$31.23 | da | |
| STEP 8 | \$28.52 | STEP 5 | \$29.10 | STEP 2 | \$29.33 | _ | |
| STEP 7 | \$27.33 | STEP 4 | \$27.45 | STEP 1 | \$27.43 | 444 | |
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FORTY (40) HOUR WORK WEEK NON-SHIFT EMPLOYEES

| Fire Inspector | | Fire Li | Fire Lieutenant | | lion Chief |
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| - | - | | •• | STEP 5 | \$48.40 |
| STEP 8 | \$38.79 | STEP 8 | \$48.87 | STEP 4 | \$46.75 |
| STEP 7 | \$37.19 | STEP 7 | \$46.59 | STEP 3 | \$45.09 |
| STEP 6 | \$35.58 | STEP 6 | \$44.31 | STEP 2 | \$43.44 |
| STEP 5 | \$33.98 | STEP 5 | \$42.04 | STEP 1 | \$41.78 |
| STEP 4 | \$32.37 | STEP 4 | \$39.76 | _ | |
| STEP 3 | \$30.76 | STEP 3 | \$37.48 | - | _ |
| STEP 2 | \$29.16 | STEP 2 | \$35.20 | | |
| STEP 1 | \$27.55 | STEP 1 | \$32.92 | 100 | |

FORTY-EIGHT (48) HOUR WORK WEEK SHIFT EMPLOYEES

| Fire Fighter | Fire Engineer/Driver | Fire Lieutenant | Fire Battalion Chief |
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FORTY (40) HOUR WORK WEEK NON-SHIFT EMPLOYEES

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Section 75 - Establishment of a Comparison Group:

During the last year of this Agreement, the parties shall meet and jointly determine a comparison group of cities in which to compare the City of Cape Coral to when determining competitive wages and benefits for the State of Florida fire service market.

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Article 33 - Discontinued

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Article 3234 Personnel Records

<u>Section 1 – Personnel Records</u>

Personnel Records:

City shall maintain an official personnel file for each employee. Such files shall be centrally maintained in the City's Human Resources Department.

Requests for Inspection of Personnel Records:

Requests to inspect City Personnel records will be handled as provided in the provisions of Florida Statutes, Chapter 119, or as such Chapter may be amended. An employee shall be notified by the City's Human Resources Department at the earliest practical time following a personnel records request by a private citizen.

Annual Evaluation:

Only those records pertaining to the rating period may be used in preparing an employee's annual evaluation.

Discipline:

Discipline as defined in Article 35 - Discipline, 6-shall be part of the official personnel file for each employee.

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Article 3345 Reduction of Force

Section 1 - Order of Layoff

Layoff shall be made in inverse order of Departmental-Seniority.

Section 2 - Bumping (Layoff) Rights

Employees covered under this agreement shall be permitted to displace employees in lower ranking Bargaining Unit positions. A laid-off bargaining unit employee shall be entitled to displace other Fire Department employees provided the laid-off employee has previously worked in the classification of the employee to be displaced. The Classification of the employee to be displaced must be a Bargaining Unit position and the laid-off employee must have more total continuous years of service in the CCFD than the person to be displaced.

Any employee exercising bumping rights must be qualified to perform the work available.

A laid off employee displacing another employee shall have their rate of pay decreased to the rate of pay closest to their current base rate in the lower classification not to exceed the maximum of the range

An employee, who is demoted due to the layoff of another employee, shall be offered the next immediate position of the classification from which they were demoted.

Section 3 – Recall from Layoff

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Recall shall be in reverse order of layoff.

No new employees shall be hired within the rank or classification until all qualified employees on layoff have been offered an opportunity to return to work.

Article 3456 Discipline

Section 1 - Oral Counseling mru

An documented oral employee counseling record shall not be considered discipline and shall be maintained in the Fire Department for one (1) year after final action (i.e., the oral counseling was signed/dated by the employee being counseled or refused/dated by the witness).

An documented oral employee counseling record used as a basis for subsequent progressive discipline within one (1) year of the date of counseling shall become part of the employee's official personnel file.

Section 2 - Discipline

Discipline:

Discipline shall be based upon just cause and shall be subject to the grievance procedure. The "Firefighters' Bill of Rights" as contained in Florida Statutes, Chapter 112, Part VIII, or as such Part may be amended, shall herein be incorporated as if those rights were fully set forth in this Agreement, and shall be applicable to all employees.

Forms of Discipline:

Discipline shall be limited to: written reprimand; suspension without pay; demotion; and discharge from employment. Discipline shall be part of the employee's official personnel file.

Progressive Discipline:

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Generally, the City shall follow a policy of progressive discipline by which less severe forms of discipline are imposed prior to resorting to the imposition of more severe sanctions for the same or similar conduct by the employee. The City, however, reserves the right to impose even the most severe discipline as an initial measure when circumstances warrant.

Member Rights to Representation

Where an investigation is initiated by the City against a member covered by this Agreement which could lead to disciplinary charges and where a statement is elicited from the accused employee, the investigation and interrogation shall be conducted under the "Firefighter Bill of Rights" as contained in Florida Statutes, Chapter 112, part VIII, or as such Part may be amended.

Article 3<u>56</u>7 Rescue Services

Effective up to the first full pay period beginning in October 2017, employees in the Supervisory Unit shall not be counted toward the number of available positions and not entitled to any additional Rescue Pay not already expressed in Article 38 of this Agreement.

Section 1 - Rescue Status and Pay

This section of Article 37 shall be used for the purpose of defining rescue status and pay.

New Hires:

The newly hired employee shall be trained while on orientation and may test for advancement to E2 once he or she successfully completes their probationary period.

EMT 2 (E2): Once an employee passes advancement testing for an E2 as outlined in this Agreement and has received working BLS Privileges with the City's Medical Director(s) he/she shall be classified as an E2. The E2 shall have his/her annual Rescue Pay established at thirty five dollars (\$35.00) bi-weekly. (Effective first full pay period of October 2017, EMT 2 (E2) and related pay will be eliminated)

Paramedic 1 (P1):

Any bargaining unit employee who obtains and maintains a Florida State Certification as a Paramedic Once an employee is qualified as P1, as outlined in this Agreement, he/she shall be classified as P1 and shall have his/her Rescue Pay, as described in this Article, established at/increased to fifty-five dollars (\$55.00) bi-weekly.

Paramedic 2 (P2):

Once an employee P1 passes advancement testing for Paramedics P2 as outlined in this Agreement and has received working ALS Privileges with the City's Medical Director(s), the employeehe/she shall be classified as a P2 and. He/she shall have his/her Rescue Pay, as described in this Article, established or increased, to three hundred and seventy-five dollars (\$375.00) bi-weekly. An employee who loses his/her privileges with the City's Medical Director(s) shall have their Rescue Pay reduced back to the P1 amount until such time the employee regains his/her P2 status.

Paramedic 3 (P3) Emergency Medical Services (EMS) Field Training Officers (FTO'SP3): P3s shall perform in accordance with and meet the qualifications of Paramedic 2. All P3s will be responsible for training, handling of supplies, quality assurance reports, patient care reports, and compliance with the CCFD's Infectious Control Plan, and any assigned training duties.

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P3s shall have their Rescue Pay, as described in this Article, increased to four hundred and seventy-five dollars (\$475.00) bi-weekly. An employee who relinquishes or loses the P3 assignment for just cause shall have their Rescue Pay reduced back to the P2 amount (or P1 if applicable) and shall be replaced (according to the advancement process in this article). Successful P3 candidates shall be required to obtain and maintain the following certifications within one (1) year of advancement as the training opportunities become available:

- ← American Heart Association (AHA) Advanced Cardiac Life Support (ACLS) Instructor
- ← American Heart Association (AHA) Basic Life Support (BLS) Instructor

Section 2 – Training, Licensure, & Certification

(a) Training:

The City shall provide in-service training for all State of Florida Emergency Medical Technicians (EMTs) and State of Florida Paramedics (PARMDs) while on duty according to requirements as set forth by Florida Statute, the CCFD, and City's Medical Director on re-certification. For those employees unable to attend the in-service training, where possible a video copyrecording will be made available for them to review on duty, along with any other incorporated proficiency testing associated with said training, under the supervision of a P3.

The City shall provide on duty American Heart Association Basic Life Support <u>Provider</u> (BLS) and Advanced Cardiace Life Support <u>Provider</u> (ACLS) at no cost to the employees. Employees shall be afforded make-up classes.

If an employee elects not to take the city sponsored class(es), It is the responsibility of the employee to comply with all state statutes, rules and regulations for certification and licensure as an EMT or PAR., including maintaining CPR and ACLS certifications. The employee may submit for reimbursement in accordance with Article 24.

Upon successful completion of the objectives and requirements for a given course or in-service program, the employee shall be awarded Continuing Education Units (CEU)'s applicable toward re-certification as described below under Licensure and Certification. The City's Medical Director(s) shall determine the amount of CEU's awarded for each course or in-service.

The City shall maintain records of all educational programs completed by each employee in the employee's training and certification file.

(b) Licensure & Certification:

Employees in the bargaining unit are required to maintain currency in all certifications and licenses required by federal or state statute, rule or regulation and all necessary or special requirements, established by the City's Medical Director of the rescue status in which they are compensated for. The employee shall deliver submit a copy of their certification or EMT or PMD I cense to the Chief's office Division of Professional Standards during normal business hours no later than the close of business (1700 hrs.) of the first business day in January March 1th eExceptions must be approved by the Fire Chief/Emergency Management Director or his/her designee.

The City shall process the renewal applications for Emergency Medical Technician (EMT) and Paramedic (PAR)PMD licenses as set forth by the State of Florida Department of Health Bureau of Emergency

Medical Services with all required renewal fees in a timely manner. Each employee, at the employee's choice, shall only be entitled to one license renewal per cycle.

The City shall supply employees with documents certified by the Medical Director(s) showing proof of CEU's obtained by the employee at in-service and training programs provided by the City. Documentation shall be supplied to the State of Florida Department of Health Bureau of Emergency Medical Services, according to State requirements.

Section 3 - Financial Reimbursement, Selection, and Attendance Requirements for Paramedic School

(a) Financial Reimbursement:

CCFD employees who have been selected to -attend paramedic school, shall be reimbursed one hundred percent (100%) of tuition, books, uniforms, lab fees, and other required costs of the program per semester, provided the employee completes each semester with a passing score.

(b) Selection:

The <u>Paramedic School</u> selection process by which these employees shall be selected shall be based on Department seniority from those employees <u>Rank</u> and <u>File bargaining unit members assigned to shift not assigned to Employees assigned to a non-shift position including</u> the Bureau of Life Safety and <u>Supervisory bargaining unit members are excluded from Paramedic School selection</u>. The selection process shall begin on October 1st of every year or the first business day thereafter, excluding a holiday, prior to the beginning of the next academic year. CCFD's Fire Battalion Chief – Emergency Medical Services (EMS), in conjunction with the Division of Professional Standards, shall send out a memorandum requesting all applicants to forward, in writing, their intent to attendapplication to be selected the <u>for paramedic programschool</u>. Fourteen (14) calendar days after said memorandum is sent out, the application process shall end.

The Fire Chief or designee/Emergency Management Director's office shall make a determination of applicants within five (5) calendar days of said application deadline. An employee who was selected the prior year, and elected to withdraw from the program prior to completion, will be eligible to submit an application. Said employee will be considered, but considered but will be placed on the bottom of the list. Based on those selected, shift reassignments may be made to minimize the impact on minimum staffing requirements.

If the deadline has passed and less than three <u>six (63)</u> employees have submitted their applications to attend paramedic class, employees shall then be accepted on a first (1st) come first (1st) serve basis. The application date shall be verified by way of their dated application being submitted to the <u>City</u>through, the <u>Department's computer system currently used for e-mail (or other system if applicable).</u> The application process will end as of the deadline for paramedic class sign-up for the academic year.

In the event that more than one (1) employee on any given shift (including forty (40) hour positions) would choose to exercise their option to attend the paramedic program, shift reassignments could be made to minimize the impact on minimum staffing requirements.

A list shall be established and maintained until the next application process occurs on the following October 1st. In the event that an employee is unable, or not required, to attend the entire program for any

reason, the list shall be utilized to allow the next eligible employee on the list to attend the program as one of the selected <u>sixthree</u> (36) employees for the applicable time frame.

(c) (c) Attendance:

CCFD shall allow assist threesix (63) employees to attend the a paramedic program-school as follows:

Paramedic School Time: At the commencement of each paramedic school program, each of the six (6) slots available under the program shall be allotted a bank of Paramedic School Time equivalent to four hundred and fifteen (415) hours, to be used at the discretion of the employee occupying that slot for attendance at classes, tests, required meetings, rotations, or ride times. In the event an employee vacates a slot prior to completing the paramedic program, any remaining hours from the initial allocation shall be available to the employee that subsequently fills that slot. The bank for any individual slot shall be pro-rated (reduced) in the event the employee occupying that slot is not scheduled to attend the complete course. The pro-rated amount shall be determined by breaking the stour hundred and fifteen (415) total hours into equal parts based on the number of semester/sessions required to complete the course and crediting hours for only those semesters/sessions that remain to be completed. In no event shall any individual employee be granted more than so four hundred and fifteen (415) hours to attend paramedic school, even if accepted to participate in this program on multiple occasions including all required ride times, clinical rotations, classes, test and/or meetings required for the program (limited to the boundaries of Lee County), per academic year, while on duty. Exceptions to the aforementioned must be approved by the Fire Chief/Emergency Management Director.

Each The employees shall be permitted to attend all required ride times, clinical rotations, classes, test and/or meetings required for the paramedic program while on duty and shall not be required to carry a radio or respond to calls during this time. Said employees shall provide to their supervisors chain of command a schedule of their required program dates and times via the City's electronic scheduling equipment-system no later than 1800 hrs. of the employee's regularly-scheduled shift immediately preceding the requested time off. Upon the conclusion of the day's class_required activity, the employee(s) shall immediately and directly report back to work.

<u>Section 4 – Emergency Medical Technician and</u> Paramedic Advancement Testing Qualifications and Process

Employees shall advance from E2, P1 to P2, and P2 to P3 based on the following qualifications, criteria and total Advancement Testing score as hereinafter set forth:

(a) Advancement Qualifications

(To P1E2): The employee must have been employed for a minimum of six (6) months in the CCFR & EMSD. hold a current State of Florida Paramedic license.

(P1 to To P2): The employee must hold a current State of Florida Paramedic license and

Complete ion of the P2 Credentialing Process.

(P2 to To P3): The employee must have functioned as a P2 for a minimum of one (1) year in the CCFD.

(b) Advancement Ttesting process (in the following order):

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The initial P2 Credentialing Process shall be offered within thirty (30) calendar days of when an employee notifies the Fire Chief/Emergency Management Director, or his/her designee, in writing, through the chain-of-command of their intent to test. To P2:

- 1. (To E2 & P1 to P2) Written examination approved by the Medical Director with a minimum passing score of eighty percent (80%)
- 2. (P1 to P2) A practical examination approved by the Medical Director(s).
- 2,
- 3. (P1 to P2) An oral interview as conducted by the Medical Director(s).
 The initial P2 Credentialing Process shall be offered within thirty (30) calendar days of when an employee notifies the Fire Chief or designee, in writing, through the chain-of-command of their intent to test.

To(P2 to P3):

- a. A teaching evaluation as approved by the Medical Director
- b. An oral Interview as conducted by the Medical Director

Advancement Testing. The P3 Aadvancement Testing evaluators will consist of the Department's Medical Director(s), the Fire Battalion Chief - EMS and one (1) current P3. Candidates must achieve a minimum passing score of seventy percent (70%) to be placed on the eligibility list, which shall be maintained for one (1) year.

Elements of the Advancement Testing shall consist of:

- 1. The ability to communicate and teach an assigned topic. Said topic will be given to the Employees fifteen (15) days prior to the Advancement Testing.
- Their knowledge of administrative related issues and procedures as they pertain to the Department's Advanced Life Support Program
- 3. Knowledge, skills and abilities

Section 5 - Rescue Status Advancement Testing Failure Policy

If an employee fails his/her initial Aadvancement <u>t</u>Test, he/she may not re-test sooner than thirty (30) calendar days after the date of his/her initial advancement testing date. If an employee fails his/her second (2nd) attempt at the Aadvancement <u>t</u>Test, he/she may not re-test sooner than six (6) calendar months after the date of his/her second (2nd) attempt.

Employees who are re-testing after the temporary loss or suspension of P2 or P3 privileges may re-test following the conclusion date of their temporary loss or suspension. If the employee fails the re-test, he/she may not re-test sooner than six (6) calendar months after the date of his/her re-test.

If an <u>e</u>Employee fails one (1) component of the <u>a</u>Advancement ∓<u>testing</u>, then the employee will be afforded a re-test on the item failed.

If the employee fails to obtain a passing score on the re-test, the employee will be required to retake the next total E2 or P2, whichever applicable, Aadvancement Ttesting in its entirety.

An <u>e</u>Employee who fails two (2) or more components of the <u>Aa</u>dvancement <u>t</u>Testing will be required to retake the <u>next total E2 or P2</u>, <u>whichever applicable</u>, <u>Aa</u>dvancement <u>T</u>testing in its entirety.

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Section 6 - System Performance Measuring

The City may use any of the following methods to measure the system's performance and the assessment of an individual's performance, both of which shall be based on standards established, outlined, or selected by the City Medical Director(s).

Skills Proficiency Testing:

This skills proficiency testing may be conducted in conformity to the following guidelines:

- Skills proficiency testing shall be performed byen all employees once every twenty-four (24) months, but employees shall not be required to participate in skills proficiency testing more than once every twenty-four (24) months. This shall not include skills proficiency testing ordered as part of a remedial Aaction by the Medical Director(s) as part of a quality assurance (QA) incident.
- ➤ EMT2s and PMDs , P1s, and P2s shall be tested on Medical Guidelines instituted by theor information approved by the Medical Director(s).
- The skills proficiency testing shall be compremised of written and/or oral examinations and shall be based on information contained in the Medical Guidelines or information approved by the Medical Director(s). Skills proficiency testing may also include role-playing scenarios.
- > The minimum grade (either pass/fail or eighty percent [80%]) in each required category, shall be posted in all stationscommunicated prior to the skills proficiency testing being started.
- > Skills proficiency testing shall be conducted during an employee's on-duty hours. Employees shall be given a minimum of thirty (30) days' notice prior to their skills proficiency testing.

NOTE: All <u>e</u>Employees must successfully complete this process to maintain their Rescue <u>Status and</u> Pay-and privileges for the next twenty-four (24) month period.

NOTE: Employees who are <u>absent from worken approved leave</u> on the date of their scheduled skills proficiency testing shall be permitted to make up the testing upon their return._-to-work.

Section 7 – Medical Quality Assurance, Quality Assurance Forms & Medical Quality Issues

The Union and City agree that Medical Quality Assurance is of paramount importance in assuring the citizens of Cape Coral with the best possible level of Emergency Medical Pre-Hospital Care. The Union and City also agree that the responsibility for assuring quality medical care rests jointly with the City Medical Director, Lee County Medical Director, Lee County E.M.S. Administration, CCFD Administration, and its employees.

(a) Feedback:

Feedback received by CCFD employees shall be investigated by Supervisors, training staff and administration as necessary and may also be utilized to pass along positive feedback and/or commendations in reference to Lee County E.M.S. performance. Any/all feedback shall be conducted in writing through the chain of command.

(b) Medical Quality Issues:

A Medical Quality Issue (MQI) is defined as any deviation from local Medical Guidelinesprotocol, accepted state standard of care, or reasonably expected practical performance which may potentially, or may have, in fact, already unfavorably influenced patient care. A MQI may arise as the result of a specific incident or cumulative feedback from routine continuous quality improvement processes.—The circumstances relating to a specific incident and/or the cumulative feedback should always be



documented in written form. All reports of a potential MQI shall be reduced to writing. Complaints or other reports of potential MQIs not placed into writing shall be dismissed without further investigation.

However, when operational and quality assurance issues arise out of the same incident or event, the operational and MQI investigations may occur at the same time.

The Medical Director should be advised immediately by the Fire Chief/Emergency Management Director, or his/her designee, upon the reporting or discovery of a potential MQI. All parties involved should be notified of the investigation and the nature of the alleged problem. The employee in question should be provided a copy of the written documentation as outlined in this Article. This notification must also include any immediate decisions on limitation or suspension of the involved personnel's clinical duties to take place during the investigation phase. Once notified, the by the Fire Chief/Emergency Management Director, or his/her designee, shall begin the investigation by accumulating the appropriate report forms and written documentation of all conversations or contacts made to acquire further information. During this phase the employee in question shall not suffer any loss or reduction in Rescue Pay-or status.

Based on the information collected during the investigation, the Medical Director shall make a decision whether to dismiss the potential MQI or to proceed to the corrective action/remediation phase. The results of the Medical Director's decision shall be reduced to writing and supplied to all parties involved. The Medical Director's decision shall also include his/her order for remediation (e.g., e.g., assignment to a P3 for a period of time, hospital rotation for intubations or I.V. skills, written testing and/or A acvancement Ttesting). The remediation order should also include a statement of everything the employee will be required to complete to return to the previous status. Once the remediation order is established, the Medical Director shall also rule as to whether the employee is to be reduced in status during the remediation phase.

If the employee is demoted during this period of time, the employee shall have his/her rescue pay lowered to the next lower amount, until such time as they are able to return to the original Rescue Pay position, Remedial actions, if disciplinary in nature, shall be subject to the grievance and arbitration procedure,—unless the decision is grieved successfully. Then, said employee shall continue to be paid at his/her previous amount. Remedial actions, if disciplinary in nature, shall be subject to the grievance and arbitration procedure.

In severe cases, The Medical Director may decide, based on the findings of the investigation, to demote the employee to a lower level of function. In such cases, the employee's Rescue Status and pPay shall also be lowered to that lower level at the conclusion of the Medical Director's Investigation. If remedial actions and/or rulings are disciplinary in nature, they shall be subject to the grievance and arbitration procedure. However, if the Medical Director's decision to suspend or demote is grieved successfully by an employee, he/-or-she shall still have their EMS service level reduced per the Medical Director, but Director but shall continue to receive the rescue pay he/she was receiving prior to being suspended/demoted by the Medical Director.

Section 8 – Rescue Service Positions Available

Rank and File employees shall be eligible to receive one (1) of the following Rescue Pays subject to the caps identified below:

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Rescue Services Positions:

E2: Unlimited

-P1: Thirty (30)

P2: Unlimited

P3: Nine (9)

Supervisory employees shall be eligible to receive one (1) of the above-identified Rescue Pays irrespective of the caps identified therein.

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CITY: 24 329-9

Article 368

Educational Incentives, Incentive Buy-Out, and Committee Compensation

EFFECTIVE UP TO THE FIRST FULL PAY PERIOD BEGINNING AFTER OCTOBER 1, 2017:

Section 1 - Educational Incentives

Section 1.1 - Rank & File

The City shall pay thirty-five dollars (\$35.00) bi-weekly to any employee holding any three (3) of the below eight (8) certifications/courses of study:

- State of Florida Fire Officer 1
- State of Florida Fire Inspector
- ← State of Florida Basic Instructor or
- State of Florida Fire Officer 1 Instructor or
- State of Florida Firesafety Inspector Instructor
- State of Florida/CCFR & EMSD Pump Operator
- State of Florida Smoke Diver or State of Florida Rapid Intervention and Survival
- State of Florida Fire ground Accountability Management and Endurance

Section 1.2 - Supervisory

Employees shall receive bi-weekly incentive pay for holding a current, State of Florida Certification in any six (6) of the following eight (8) areas:

| 1. Credentialed Emergency Medical Technician (EMT2) or | \$ 35 |
|--|------------------|
| a. Paramedic II or | \$ 375 |
| b. Paramedic III | \$ 475 |
| 2 State Fire Instructor | \$ 35 |
| 3 State Fire Inspector. | \$ 35 |
| 4 Live Fire Instructor | \$ 35 |
| 5 Arson Investigator | \$ 35 |
| 6 Technical Rescue Team (TRT) or | |
| a. Public Safety Rescue Diver Technician (PSRDT) | |
| 7 State of Florida Fireground Accountability Management | • |
| and Endurance | \$ 35 |
| 8.National Fire Academy Incident Safety Officer Certificate or | |
| equivalent approved by the Fire Chief. | \$ 35 |
| equivalent approved by the Fire Chief | \$ 35 |

Section 1.3 - Higher Education

The City shall advance the respective compensation from State of Florida 175 monies to employees holding degrees (or as designated by Florida Statute) at the end of each month as follows:

One (1) of the below two (2):

Two (2) Year Associate \$ 50.00

Four (4) Year Bachelor \$110.00

Section 2 - Incentive Buy-out

Any employee who, as of January 1, 2001, has the incentives they are currently being compensated for (not counting State of Florida Emergency Medical Technician or State of Florida Paramedic) reduced by

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two (2) or more, shall receive three percent (3%) of their regular rate of pay, under the Career Advancement & Performance Enhancement (C.A.P.E.) System (hourly rate as represented on each paycheck multiplied times the amount of hours credited for that pay period) as a separate line item (add-pay) on each paycheck.

The above-noted add-pay shall continue until each employee severs his/her employment with the City of Cape Coral or is promoted to the rank of Battalion Chief.

Section 3 - Committee Compensation

Bargaining unit members who are certified, in writing by the Union, to be on a contractual Committee shall be compensated bi-weekly according to the following schedule:

| Health & Safety Committee | \$35.00 |
|--|---------|
| Labor/Management Committee | \$35.00 |
| Career Advancement & Performance Enhancement Committee | \$35.00 |
| Special Operations Committee | \$35.00 |
| Marine Operations Committee | \$35.00 |

Battalion Chiefs who are certified, in writing by the Fire Chief, to be on a Department Committee shall be paid thirty five dollars (\$35.00) biweekly for the duration of the time the employee serves on the committee and is an active participant thereof.

Committee Meetings shall be limited to one (1) meeting per month of up to a maximum of three (3) hours, unless mutually agreed to by both parties to have additional meetings or to meet for longer period of time.

Section 4 - Departmental (Ad Hoc) Committees

Employees who are certified, in writing by the Fire Chief, to be on a departmental committee shall be paid thirty-five dollars (\$35.00) bi-weekly for the duration of time the employee serves on the committee and is an active participant thereof.

EFFECTIVE THE FIRST FULL PAY PERIOD AFTER OCTOBER 1, 2017:

Section 15 - Educational Incentives

Section 5.1 - Rank & File & Supervisory

The City shall pay thirty-five dollars (\$35.00) bi-weekly to any employee holding any two (2) of the below five (5) certifications/courses of study:

- > State of Florida Fire Officer I, II, III, or IV (Qonly one (1) of the four (4) can be utilized)
- > State of Florida Fire -Instructor I,III, II, or III (oQnly one (1) of the three (3) can be utilized)
- State of Florida Live Fire Instructor I or II (only one (1) of the two (2) can be utilized)
- National Fire Academy Incident Safety Officer Certificate or equivalent approved by the Fire Chief/Emergency Management Director
- State of Florida Smoke Diver or State of Florida Rapid Intervention and Survival or equivalent approved by the Fire Chief

Section 5.2 - Higher Education

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The City shall advance the respective compensation from the State of Florida 175 monies to employees holding degrees (or as designated by Florida Statute) at the end of each month as follows (

only One (1) one (1) of the below two (2) can be utilized):

- > Two (2) Year Associate \$ 50.00
- > Four (4) Year Bachelor \$ 110.00

Section 36 -- Incentive Buy-Oout

Any employee who, as of January 1, 2001, has the incentives they are currently being compensated for (not counting State of Florida Emergency Medical Technician or State of Florida Paramedic) reduced by two (2) or more, shall receive three percent (3%) of their regular rate of pay, under the Career Advancement & Performance Enhancement (C.A.P.E.) System (hourly rate as represented on each paycheck multiplied times the amount of hours credited for that pay period) as a separate line item (addpay) on each paycheck.

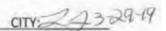
The above-noted add-pay shall continue until each employee severs his/her employment with the City of Cape Coral or is promoted to the rank of Fire Battalion Chief.

Section 47 - Departmental (Ad Hoc) Committees

Employees who are certified in writing, by the Fire Chief/Emergency Management Director, to b ∋ on a departmental committee shall be paid in accordance with Article 11 - OvertimeSection 1 or 1.1.

Section 5 - Assignment Incentives

Employees selected for duties by the Fire Chief which require special knowledge, skills or abilities beyond the required duties of a position shall receive an assignment incentive of thirty-five dollars (\$35.00) biweekly



Article 3<u>7</u>9 Teams and Specialty Groups

All attributes for the CCFD's teams and specialty groups shall be outlined within CCFD's Governing Documents.

EFFECTIVE UP TO THE FIRST FULL PAY PERIOD BEGINNING AFTER OCTOBER 1, 2017:

Employees in the Supervisory Unit shall not be counted toward the number of available positions and not entitled to any additional Team or Specialty Pay not already expressed in Article 38 of this Agreement.

Section 1 - Special Operations

- (a) Classification/Qualifications:
 - (a) Hazardous Materials Technician (Haz-Mat-Tech):
 Have and maintain a Hazardous-Materials Technician Certification from a Special Operations
 Committee approved organization or current State of Florida Hazardous Materials Technician
 Certification.
 - (b) Technical Rescue Team Operations. (TRT-Ops.): Employee must have and maintain an Operations level in all State Mandated Light Technical Rescue Team Type II Criteria. Current classes include Rope Rescue Trench Rescue, Confined Space Rescue, Vehicle and Machinery Extrication and Building Collapse Rescue. Effective first full pay period of October 1, 2016, Technical Rescue Team Operations. (TRT-Ops.) and related pay will be eliminated.
- (c) Technical Rescue Team Technician (TRT-Tech): Employee must be off probation and employed for one (1) year with the CCFR & EMSD, have and maintain a Technician level in Rope Rescue and one (1) other State Mandated Light Technical Rescue Team Type II Criteria and an Operations level in all others. Effective first full pay period of October 1, 2016, Technical Rescue Team Technician (TRT-Tech) and related pay will be eliminated.

To qualify for team consideration an employee must meet the minimum state Haz-Mat criteria and work towards a Technician Level in Haz-Mat and obtain all Mandated Light Technical Rescue Team Type II Criteria.

(b) Compensation: The City agrees to pay members of Special Operations a bi-weekly incentive in the following classifications:

The City agrees to a maximum of forty-eight (48) shift employees, who are chosen by the Fire Chiefs office with input from the Battalion Chiefs, to be on Special Operations Team.

| | Haz-Mat Basic | \$50.00 |
|-----|--|---|
| | (Anything less than State one hun | ndred and sixty (160) Hr. Program |
| | Haz-Mat Tech | \$75.00 |
| | (State one hundred and sixty (16) | 0) Hr. Program with Certificate)\$50.00 |
| | TRT Tech | \$75.00 |
| TOT | Tank is not normitted to collect addit | ional incentive for TRT One |

TRT Tech is not permitted to collect additional incentive for TRT Ops.

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Employees that hold Committee approved Haz-Mat Certification shall receive fifty dollars (\$50.00) biweekly, but will not be considered for team membership.

In addition an employee who is mandated to attend off duty training that is specifically designed for Special Operations Team members to maintain or improve the level of response of said team shall be paid in accordance with Article 11, Section 1 and Article 11, Section 2 paragraph F.

(c) Committee: In addition, Special Operations Committee Members will be paid in accordance with Article 38, Section 3. The Special Operations Committee shall review and make recommendations for improvement to the Special Operations Team, by submitting CARSFs to the Labor/Management Committee.

Section 2 - Marine Operations

The City has established a Marine Team to mitigate Life and Property Hazard on or near large bodies of water, which include but are not limited to canals, lakes, ponds, rivers and estuaries.

| (a) | Classification/Qualifications: | |
|----------------|---------------------------------------|--|
| | 1. Public Safety Rescue Diver (| PSRD): |
| | Employee must be employed | for one (1) year with CCFR & EMSD, have and maintain |
| | Rescue Diver Certification from | om a Marine Committee approved organization and completed |
| | the Department PSRD Profic | iency. |
| | 2. Public Safety Rescue Diver T | echnician (PSRDT): |
| | Employee must be employed | for one (1) year with CCFR & EMSD, have and maintain |
| | Rescue Diver Certification from | om a Marine Committee approved organization and completed |
| | the Department PSRD and P | SRDT Proficiency |
| | 3. Public Safety Boat Operator | (PSBO): |
| | Employee must be employed | for one (1) year, have completed a Marine Committee approved |
| | boating course and Departme | ent PSBO Proficiency. |
| (b) | Compensation: The City agrees t | o a minimum of forty-eight (48) employees, who are chosen by |
| | the Fire Chief's office with input fr | om the Battalion Chiefs, to be PSRDTs in Marine Operations. |
| | There shall be no limit to the num | ber of PSRDs or PSBOs. The bi-weekly incentive for the |
| | following classifications: | |
| | PSRD | \$50.00 |
| | PSRDT | \$75.00 |
| | PSBO | \$50.00 |

PSRDTs are not permitted to collect additional incentive for PSRD.

In addition an employee who is mandated to attend off duty training that is specifically designed for Marine Operation members to maintain or improve their level of response shall be paid in accordance with Article 11, Section 1 and Article 11, Section 2 paragraph F.

The Department shall continue to reimburse the employees for education in accordance with Article 24, Section 2.

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(c) Committee: In addition, Marine Committee Members will be paid in accordance with Article 38, Section 3. The Marine Committee shall review and make recommendations for improvement to the Marine Team, by submitting CARSFs to the Labor/Management Committee.

Section 3 - Arson Investigation Team

The City has established an Arson Investigation Team for the purpose of responding to and investigating suspicious fires within the City's boundaries.

- (a) Classification/Qualifications: Employee must be employed for one (1) year with the CCFD currently serving in the Prevention Division of the Department, have and maintain Florida State Fire Inspector and Investigator Certifications. Employees will be required to be on call and shall be paid in accordance with Article 11.
- (b) Compensation: The City agrees to pay seventy dollars (\$70.00) bi-weekly to a minimum of four

 (4) employees, who have met the qualifications to be on the Arson Investigation Team.

Section 4 - SCBA/SCUBA Maintenance/Repair Team

The City agrees to pay seventy-five dollars (\$75.00) bi-weekly to a total of six (6) employees, who are chosen by the Fire Chief's office with input from the Battalion Chiefs, to be members of the SCBA/SCUBA Maintenance/Repair Team.

Section 5 - Field Training Officer

Bargaining unit members who are certified as Field Training Officers by the Battalion Chief of Training shall receive seventy-five dollars (\$75.00) bi-weekly while serving in that capacity. There shall be a minimum of two (2) Field Training Officers for Fire Operations, one (1) for PSBO, one (1) for PSRDT, two (2) for Special Operations per shift and a minimum of two (2) on non-shift.

Section 6 - Honor Guard

CCFD through the Labor/Management Committee process, shall form and maintain an honor guard which will be defined in department policy. Said Honor Guard Members shall be compensated in accordance with Article 11 Overtime, if off-duty, while performing their honor guard duties. The City, regarding any performance or performance-related actions, shall cover members as if they are on-duty. All costs associated with the Honor Guard and the performance of its duties shall be borne by the City.

EFFECTIVE THE FIRST FULL PAY PERIOD AFTER OCTOBER 1, 2017:

Section 17 – Hazardous Materials Operations Team

- 1. Minimum Qualification:
 - Employee must be employed for one (1) year with CCFD.
 - b. Have and maintain a current State of Florida Hazardous Materials Technician (HMT) Certification.
 - i. Hazardous Materials Team members prior to October 2017 must have and maintain a certification from a Special Operations Committee approved organization.
 - c. Completion of the CCFD HMT Proficiency Process.

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Section 1.1

Effective from October 1, 2018 - September 30, 2019

| 1. | –Quantity | :Classification | /Qualifications: |
|----|-----------|-----------------|------------------|
|----|-----------|-----------------|------------------|

- a) Effective October 1, 2018 September 30, 202019: Hazardous Materials Technician (Haz-Mat
 - Have and maintain a Hazardous-Materials Technician Certification from a Special Operations Committee approved organization. Upon the ratification of this Agreement, Employee must be employed for one (1) year with CCFD and have and maintain a current State of Florida Hazardous Materials Technician Certification and completed the Department HMT Proficiency, except that employees who were selected to serve as an HMT at the time of ratification shall be allowed to continue in such capacity with or without State of Florida Hazardous Materials Technician Certification.
 - a. The City agrees to a minimum of forty-eight (48) Rank and File shift employees and Fire Lieutenants assigned to non-shift. Any additional shift-employees, above the minimum of fortyeight (48), shall be at the discretion of the Fire Chief/Emergency Management Director.
 - b. Effective October 1, 202049: The City agrees to a minimum of sixty (60) Rank and File shift employees and Fire Lieutenants assigned to non-shift. Any additional employees, above the minimum of sixty (60), shall be at the discretion of the Fire Chief.

3. Compensation:

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- a. The City agrees to pay seventy-five dollars (\$75.00) bi-weekly to employees who are chosen by the Fire Chief or designee to be members of the Hazardous Materials Team.
- a.—All Supervisory employees shall be eligible and shall not be counted against the number of available positions.

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- Between July 1st and July 15th of each year, the Fire Chief/Emergency Management Director, or his/her designee, and Union President, or his/her designee, shall mutually agree on the staffing requirements each year prior to the HMT selection process on or after October 1st of each fiscal year. Once the criteria is approved HMT selection Process by the Fire Chief/Emergency Management Director and finalized, it shall be provided to the membership by July 15th of each
- Factors to be considered, but not limited to, are as follows:
- 1) Specialty response(s) for a particular station
- 2) Staffing
- 3) Rank/Seniority
- Section 8 Haz-Mat Tech Selection (Shift)
- Haz-Mat Tech \$75.00
- c. In additionaddition, an eEmployees who areis mandated to attend off duty training that is specifically designed for Special Operations Hazardous Material Team members to maintain or

| improve the level of resp | onse of said team shall be paid in accor | rdance with Article 11 - Overtime, |
|-------------------------------|--|------------------------------------|
| Section 1 and Article 11 | Section 2 paragraph F. | |
| Section 39 – Marine Operation | <u>sTeam</u> | |
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Section 3.1 - Public Safety-Rescue Diver Technician (PSRDTDT)

The City has established a Marine Team to mitigate Life and Property Hazard on or near large bodies of water, which include but are not limited to canals, lakes, ponds, rivers and estuaries.

- 1. 1. Classification/Qualifications: Minimum Qualifications:
 - a. Employee must be employed for one (1) year with CCFD.
 - b. Have and maintain Rescue Diver Certification.
 - c. Completion of the CCFD PSRDT Proficiency Process.

2. Quantity:

- a. Effective October 1, 2018 September 30, 202049: The City agrees to a minimum of forty-eight (48) Rank and File shift employees and Fire Lieutenants assigned to non-shift. Any additional employees, above the minimum of forty-eight (48), shall be at the discretion of the Fire Chief.
- b. Effective October 1, 202019: The City agrees to a minimum of sixty (60) Rank and File shift employees and Fire Lieutenants assigned to non-shift. Any additional employees, above the minimum of sixty (60), shall be at the discretion of the Fire Chief.

3. Compensation:

- a. The City agrees to pay seventy-five dollars (\$75.00) bi-weekly to employees who are chosen by the Fire Chief or designee to be members of the Marine Team PSRDT.
- b. All Supervisory employees shall be eligible and shall not be counted against the number of available positions.
- c. Employees who are mandated to attend off duty training that is specifically designed for Marine

 Team members to maintain or improve the level of response of said team shall be paid in

 accordance with Article 11 Overtime.

Section 3.2 - Public Safety Boat Operator (PSBO)

- 1. Minimum Qualifications:
 - a. Employee must be employed for one (1) year with CCFD.
 - b. Employee must have completed a Labor Management approved boating course.
 - c. Completion of the CCFD PSBO Proficiency Process.

2. Quantity:

- a. Effective October 1, 2018 September 30, 20209: The City agrees to a minimum of sixty (60)
 Rank and File shift employees and Fire Lieutenants assigned to non-shift. Upon ratification, Aall employees currently receiving this incentive, above the minimum of sixty (60), shall be permitted to retain this incentive, provided they maintain the required minimum qualifications and training. Any additional employees, above the minimum of sixty (60), shall be at the discretion of the Fire Chief.
- Effective October 1, 202049: The City agrees to a minimum of sixty (60) Rank and File shift employees and Fire Lieutenants assigned to non-shift.

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Employees who are currently receiving the PSBO incentive and apply for another specialty team or incentive, on or before this date, will be given preference (within their rank) in the selection process, in accordance with operational need, iPreference is contingent uponf the employee elects to drop-ping their PSBO incentive, if if-selected to participate on a different specialty team or receivinge a different incentive.

The number of PSBOs will be reduced to sixty (60) employees on this date. The employees who most recently began to receive the incentive will be chronologically removed to reach sixty (60) employees with the PSBO incentive. Any additional employees, above the minimum of sixty (60), shall be at the discretion of the Fire Chief.

3. Compensation:

- a. The City agrees to pay fifty dollars (\$50.00) bi-weekly to employees who are chosen by the Fire Chief or designee to be members of the Marine Team PSBO.
- b. All Supervisory employees shall be eligible.
- c. Employees who are mandated to attend off duty training that is specifically designed for Marine Team members to maintain or improve the level of response of said team shall be paid in accordance with Article 11 - Overtime.



- a) Public Safety Rescue Diver Technician (PSRDT): Employee must be employed for one (1) year with CCFD, have and maintain Rescue Diver Certification from a Labor Management approved organization and completed the Department PSRDT Proficiency.
- b) Public Safety Boat Operator (PSBO): Employee must be employed for one (1) year, have completed a Labor Management approved boating course and Department PSBO Proficiency.

The City agrees to a minimum of forty-eight (48) Rank and File shift employees. Any additional shift employees, above the minimum of forty-eight (48), shall be at the discretion of the Fire Chief/Emergency Management Director. There shall be no limit to the number of PSBOs. All Supervisory employees shall be eligible for PSRDT and PSBO.

The Public Safety Rescue Diver Technician (PSRDT) selection process is as follows:

Between July 1st and July 15th of each year, the Fire Chief/Emergency Management Director or his/her designee and Union President and/or their designees shall mutually agree on the staffing requirements each year prior to the PSRDT selection process to begin on or after October 1st of each fiscal year. Once the criteria is approved (PSRDT selection Process) by the Fire Chief/Emergency Management Director and finalized, it shall be provided to the membership by July 15th of each year.

Factors to be considered, but not limited to, are as follows:

- 1) Specialty response(s) for a particular station
- 2) Staffing
- 3) Rank/Seniority

| | Page | |
|-----------|------|-----------------|
| | 156 | 10 3 2 15 10 |
| UNION: EC | | CITY: LA Jay 17 |

| PSRDT | \$75.00 |
|-------|---------|
| | ψ10.00 |
| PSBO | \$50.00 |

In addition an employee who is mandated to attend off duty training that is specifically designed for Marine Operation members to maintain or improve their level of response shall be paid in accordance with Article 11.—Overtime, Section 1 and Article 11, Section 2 paragraph F.

The Department shall continue to reimburse the employees for education in accordance with Article 24, Section 2.

Section 410 - SCBA/SCUBA Maintenance/Repair Team

The City agrees to pay seventy-five dollars (\$75.00) bi-weekly to a total of six (6) employees (three (3) on the SCBA and three (3) on the SCUBA), who are chosen by the Fire Chief/Emergency Management

Director or his/her-designee to be members of the SCBA/SCUBA Maintenance/Repair-Team. Members

of this team may be responsible for, but not limited to: repair, maintenance, and inventory of equipment.

Section 511 - Field Training Officer

Bargaining unit members who are certified as Field Training Officers by the Fire Chief/Emergency

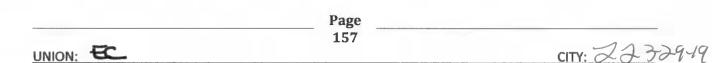
Management Director or his/her-designee shall receive seventy-five dollars (\$75.00) bi-weekly while serving in that capacity. There shall be a minimum of two (2) Field Training Officers for Fire Operations, one (1) for PSPSBO, one (1) for PSPSBOT, and one (1) for Hazardous Materials Operations per shift and a minimum of one (1) for the Bureau of Life Safety (Non-Shift).

Section 612 - Honor Guard

Bargaining unit members who are certified as members of the Honor Guard by the Fire Chief or designee CCFD through the Labor/Management Committee process, shall form and maintain an honor guard which will be defined in department policy. Said Honor Guard Members-shall be compensated in accordance with Article 11_-Overtime, if off-duty, while performing their honor guard duties. The City, regarding any performance or performance-related actions, shall cover members as if they are on-duty. All costs associated with the Honor Guard and the performance of its duties shall be borne by the City.

Section 7 – Other Specialty Teams and Group

Bargaining unit members who are certified by the Fire Chief to participate as a member of other specialty teams shall be compensated in accordance with Article 11 – Overtime, if off-duty while preforming such approved duties. The City, regarding any performance or performance-related actions, shall cover members as if they are on-duty. All costs associated with the said specialty teams and the performance of such duties shall be borne by the City.



Article 38
Duration
Article 38

40 Duration

Upon ratification by the Union and the City of Cape Coral Council, this Agreement shall continue in full force and effect through September 30, 202148.

Section 1 - Duration of Agreement

This Agreement shall automatically be renewed from year to year thereafter unless any party shall have notified the other party, in writing, at least one hundred and twenty (120) days prior to the expiration of the contract on articles that it wishes to modify or add to the agreement.

Prior to fiscal year 2020, The parties agree to meet and discuss retiree health insurance, prior to fiscal year 2020, that will not result in any additional cost for the City, outside of this agreement.

The parties agree to a limited re-opener for Fiscal Year 2017 as provided herein. The only provisions that shall be subject to a re-opener shall be:

Article 19 Health Insurance.

The parties agree to include an allocation of \$196,531 of budgeted funds that were not expended in this agreement, and intend to utilize said funds for the reenrollment into the City's sponsored health insurance and intend to create and establish a voluntary employee beneficiary association (VEBA).

Article 29 Pension

No other re-openers shall be permitted. Any party who desires to re-open any or all of these provisions, shall notify the other party in writing no earlier than October 1, 2016 and no later than November 1, 2016 that they are exercising their right to re-open. Thereafter, these provisions may only be re-opened by mutual agreement of the parties.

In the event that such notice is given, negotiations shall begin on the specific items not later than twenty (20) days after such notification, and only those articles listed in the notice(s) shall be subject to negotiation, unless mutually agreed to by both parties.

Section 2 - Savings Clause

If any article, section or provision of this agreement is held invalid by a court of competent jurisdiction, efjurisdiction or is rendered invalid by subsequent State or Federal legislation as applied by a court of competent jurisdiction, the remainder of this Agreement shall not be affected. If such action occurs, the parties will meet and attempt to negotiate a replacement for the invalid item.





In Witness Whereof

| officers or representatives this | day of | , 2019. | |
|---|--------------------|-----------------------------|---|
| | | | |
| Cape Coral Professional | City of | Cape Coral | |
| Fire Fighters, Local 2424 | (Florida | | |
| of the I.A.F.F. representing | | | |
| Supervisory and Rank & File | | | |
| Eric Chudzik | Joe Co | viello | |
| President, IAFF Local 2424 | Mayor | | |
| Joe Glaser | A. Johr | n Szerlag | |
| Vice President, IAFF Local 2424 | City Ma | | |
| Mark Muerth Vice President, IAFF Local 2424 | Lisa So Human | onego Resources Director | |
| | Attest: | | |
| | | ly Bruns City Clerk | |
| | | Review: | |
| | Call Da | | |
| | Gail Pr Assista | osser ant City Attorney | |
| | Page | | 2 |

Appendix A



AUTHORIZATION FOR DEDUCTION OF UNION DUES

Cape Coral Professional Fire Fighters Local 2424

I hereby instruct the Union to forward this form to the City so that the City will begin deducting bi-weekly Union dues from my wages. The Union shall forward this form to the City no later than seven (7) calendar days after the Union receives is from me. The City shall have until the first (1st) pay period ending after the receipt of this form to have begun deducting said dues. The City shall transmit this amount monthly to the Treasurer of the Union.

| Print Name (Last, First, Middle Initial) | Last four of Social Security Number |
|--|-------------------------------------|
| Employee Signature | Date |
| | |
| Date Received By Union | Date Mailed/Delivered By Union |

24 3-3-9-91 Revised: 9/5/15

Appendix B



AUTHORIZATION FOR THE CEASING OF DEDUCTION OF UNION DUES

Cape Coral Professional Fire Fighters Local 2424

I hereby instruct the Union to forward this form to the City so that the City will cease deducting bi-weekly Union dues from my wages. The Union shall forward this form to the City no later than seven (7) calendar days after the Union receives is from me. The City shall have until the first (1st) pay period ending after the receipt of this form to have ceased the dues deduction.

| Print Name (Last, First, Middle Initial) | Last four of Social Security Number |
|--|-------------------------------------|
| Employee Signature | Date |
| | |
| | |

Revised: 9/5/15





WRITTEN GRIEVANCE FORM: STEP I

| Grievant (Employee): | Date: |
|---|---|
| procedure with my immediate supervisor on (Date) | discussing this matter at Step I of the grievance (Name of Immediate Supervisor) sing rise to the grievance or within ten [10] calendar days ware of such event.) |
| The immediate supervisor's response/decision | |
| (Within ten [10] calendar days of the date t supervisor.) | (Date) he grievance was first discussed with the immediate |
| Article(s) of Collective Bargaining Agreement V | iolated: |
| Nature of Grievance: | |
| | |
| | |
| | |
| Settlement/Remedy Desired: | |
| | |
| | |



22 5-2-10

Revised: 9/5/15



WRITTEN GRIEVANCE FORM: STEP II

Presented to Union Grievance Committee.

| (Within ten [10] calendar days of the de | ecision rendered at Step I, except for Class Action Grievances.) |
|--|--|
| Grievant (Employee): | Date: |
| | (Signature) |
| Received by Union Representative: | Date: (Signature) |
| Decision of Grievance Committee: | Accepted Rejected (CirlceCircle One) |
| Union Representative: | Date: |
| | (Signature) |
| Presented by Union Grievance Com | mittee to Fire Chief. |
| | ate the grievance is presented to the Union Grievance Committee in [10] calendar days of when the Union becomes aware of such evance.) |
| Union Representative: | Date: |
| | (Signature) |
| Fire Chief or designee's disposition of | grievance: |
| | |
| (Within ten [10] calendar days from the | date the grievance is presented to Fire Chief.) |
| Fire Chief and/or designee: | Date: |
| | (Signature) |

A 3-29-19 Revised: 9/5/15





WRITTEN GRIEVANCE FORM: STEP III

Presented by Union Grievance Committee to City Manager.

| (Within ten [10] calendar days | of the decision rendered by the Fire Ch | nief/designee at Step II.) |
|---------------------------------|---|-----------------------------------|
| Union Representative: | (Signature) | Date: |
| City Manager or designee's dis | sposition of grievance: | |
| | | |
| | | |
| (Within ten [10] calendar days | from the date the grievance is presented | ed to the City Manager.) |
| City Manager and/or designee | : (Signature) | Date: |
| | FINAL STEP | |
| Notice of Intent to Arbitrate t | to Human Resources Department. | |
| (Within ten [10] calendar days | of the decision rendered at Step III by t | he City Manager and/or designee.) |
| Union Representative: | | Date: |

22 329-19 Revised: 9/5/15



APPENDIX D



VOLUNTARY REHABILITATION AGREEMENT

VOLUNTARY REHABILITATION AGREEMENT

| This Agreement, made and entered into this | | day of | | |
|---|--------------|------------|-----------------------|------------|
| | (Day) | | (Month) | (Year) |
| Between |) | | _ (hereinafter "EMPL0 | OYEE" |
| WHEREAS, EMPLOYEE has voluntarily requeste an inpatient basis for alcohol/substance depende | | she be all | owed to enter and be | treated on |
| WHEREAS, EMPLOYEE agrees to the terms of t | his article. | | | |
| | | | | |
| Employee Signature | | | Date | |

24 329-19 Revised: 9/5/15

EC

APPENDIX E



WHEREAS

LAST CHANCE AGREEMENT

(Employee Name)

LAST CHANCE AGREEMENT

| the Cit | y of Cape Coral since | | ; and |
|---------|--|--|---|
| | | (Date Employment Began) | |
| WHER | REAS | | was required to submit to |
| a rando | (Em _i om drug test in accordance with th | ployee Name) is article; and | • |
| WHER | REAS | | drug test was positive for the |
| presen | nce of | Employee Name) Dee of Drug/Alcohol) | ; and |
| | | | |
| WHER | REAS, the CITY instituted disciplina | ry action against | (Employee Name) |
| as a re | esult of the positive drug test; and | | (Employed Name) |
| CITY h | REAS, in instances where an emplo nas decided to mitigate the employ yee has entered into this Last Char | ee's discipline to a suspensior | |
| | THEREFORE, in consideration of y of Cape Coral (hereinafter "City") | | mises contained herein, |
| (herein | nafter "EMPLOYEE"), agree as folk | ows: | (Employee Name) |
| 1. | CITY agrees to mitigate EMPLOY illegal substances to Suspension without pay, provided | (| hour(s) of work, continuous, |
| | conditions set forth below. | Ŭ | • |
| 2. | EMPLOYEE understands and ag Agreement will automatically resu | ult in termination of EMPLOYE | Ē. |
| 3. | Prior to resumption of normal dut by the CiTY's Substance Abuse I rehabilitation program recommen Abuse Professional orders furthe City's Major Medical Plan, with an at the EMPLOYEE's expense. P negative for illegal drugs and be Abuse Professional. Any refusal Last Chance Agreement and sha | Professional and must enter anded by the Substance Abuse rehabilitation, such rehabilitation, such rehabilitation, such rehabilitation, such rehabilitation, such rehabilitation to resumption of regular distribution of regular distribution and/or to submit to evaluation and/or | nd successfully complete a Professional. If the Substance ition shall be covered under the city's Major Medical Plan to be uties, EMPLOYEE must test regular duties by the Substance treatment is a violation of this |

743-29-19

has been employed with

Revised: 9/5/15



understands and agrees that in order to be compensated for any time off to complete a rehabilitation program, EMPLOYEE must be off in accordance with 14.16.5.3(A) or (B) of the Rank & File Collective Bargaining Agreement.

The rehabilitation program will not last longer than six (6) months from the time EMPLOYEE enters the program. EMPLOYEE will sign a medical release upon the entering and completion of the rehabilitation program. The Substance Abuse Professional will inform the Human Resources Director/Risk Manager of EMPLOYEE's progress and the test results, but all records, correspondence, etc. shall remain confidential and shall be maintained outside EMPLOYEE's personnel file.

- 4. EMPLOYEE understands that, if he/she is authorized to return to duty by the CITY's Substance Abuse Professional, he/she will be subject to no more than four (4) unannounced drug tests (for illegal drugs) for a one (1) year period, beginning after the employee signs the release mentioned above, with no more than one (1) unannounced drug test (for illegal drugs) per quarter. While drug testing will be on a random basis in accordance with this article, requests for and the scheduling of such tests will be during EMPLOYEE's regular work hours. Any failure or refusal to submit to any required drug test, after rehabilitation in accordance with this article, shall result in termination of EMPLOYEE.
- 5. Upon completion of the twelve (12) month period, EMPLOYEE understands that he/she will still be subject to the terms of this article, with respect to the normal random testing process, and any subsequent positive drug or alcohol test will result in termination of EMPLOYEE.
- 6. EMPLOYEE hereby waives his/her right to grieve, appeal, or otherwise contest the disciplinary action taken as a result of EMPLOYEE's positive drug test and any subsequent disciplinary action taken by CITY if EMPLOYEE violates any of the terms of this Agreement or subsequently tests positive for drugs, provided that the City follows the procedures as outlines in this Last Chance Agreement.
- 7. EMPLOYEE consents to and authorizes CITY, or its designee, to have access to all records maintained by the Substance Abuse Professional to obtain information regarding EMPLOYEE's progress and successful completion of the prescribed treatment.
- 8. It is understood and agreed by all parties hereto that this Last Chance Agreement is being entered into based upon the particular circumstances of this case and does not establish a precedent for the resolution of any other disciplinary matter.
- 9. EMPLOYEE has received and reviewed this Last Chance Agreement prior to executing it and has been afforded the opportunity to consult with their Union representatives and their own legal counsel if desired, and EMPLOYEE agrees to be bound by all terms and conditions herein.

| 10. | This Last Chance Agreement constitutes the entire understanding of the parties hereto and car |
|-----|---|
| | only be modified, amended, or revoked by the express written consent of both parties. |

| Dated this | day of | |
|------------|--------|----------------|
| | (Day) | (Month) (Year) |
| WITNESSES | | by: EMPLOYEE |



223-29-19

| Printed Name of Witness | Employee Signature |
|-------------------------|------------------------|
| Witness Signature | by: CITY OF CAPE CORAL |
| Printed Name of Witness | Fire Chief |
| Witness Signature | |
| Printed Name of Witness | City attorney's office |
| Witness Signature | |
| Printed Name of Witness | |
| HR Director/Designee | |
| Witness Signature | |

22329-19

Appendix F



TEMPORARY ASSIGNMENT FOR SPECIAL PROJECT FORM



| Temporary Assignment: | | |
|--------------------------------------|--------|-------------------|
| Duration of Temporary Assignment: | 1 | |
| Criteria for Selection Process: | | |
| MUTUALLY AGREED TO BY: | | |
| (Fire Chief) | (Date) | (Union President) |

ec

Revised: 9/5/15 22 3-29-19 Item

D.(2)

Number:

Meeting

5/13/2019

Date:

PERSONNEL

Item Type: ACTIONS

AGENDA REQUEST **FORM** CITY OF CAPE CORAL



TITLE:

Resolution 97-19 Approve the Fire Department to Add Six Additional Full Time Equivalents (Firefighters); Dollar Amount: \$464,430; (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?

Yes

If Yes, Priority Goals Supported are

listed below.

If No, will it harm the intent or success of

the Strategic Plan?

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

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- City Management is requesting authorization to add six Firefighter positions in the current Fiscal Year 2019.
- The addition of six Firefighter FTEs would cost approximately \$464,430 annually, including benefits. However, the additional FTEs would reduce overtime by approximately \$553,921 annually, resulting in an approximate savings of \$34,982 in the initial year and \$70,788 annually thereafter. No budget amendment would be necessary, as the required funding would be reallocated within the budget.

LEGAL REVIEW:

EXHIBITS:

Memo

Resolution 97-19

PREPARED BY:

Linda A. Department-Fire Division- Administration

Kurzmann

SOURCE OF ADDITIONAL INFORMATION:

Ryan W. Lamb, Fire Chief

ATTACHMENTS:

Description Type

Backup Material Memo D Resolution 97-19 Resolution



CAPE CORAL FIRE DEPARTMENT OFFICE OF THE FIRE CHIEF

TO:

Mayor Coviello and Council Members

FROM:

John Szerlag, City Manage

Ryan W. Lamb, Fire Chief

Victoria Bateman, Finance Director

DATE:

April 26, 2019

SUBJECT: Addition of Six Firefighter Positions

Executive Summary

City Management is requesting authorization to add six Firefighter positions in the current Fiscal Year 2019. This action would reduce the Fire Department's overtime liability and result in a financial savings for the City.

Background

The Fire Department contracted with the consulting firm Fitch and Associates to develop a Standard of Cover report and a Strategic Plan. This consultant recommended an optimized staffing allocation of 189 Full-Time Equivalences (FTEs) assigned to fill minimum staffing needs. Currently there are 183 FTEs assigned to fill minimum staffing needs.

Over the last five Fiscal Years the Fire Department has averaged \$1,056,832 in overtime. Approximately 92% of the Fire Department overtime was due to minimum staffing. The addition of six Firefighter FTEs would cost approximately \$464,430 annually, including benefits. However, the additional FTEs would reduce overtime by approximately \$553,921 annually, resulting in an approximate savings of \$34,982 in the initial year and \$70,788 annually thereafter.

Recommendation

City Management recommends the addition of six Firefighter positions in the current Fiscal Year 2019. No budget amendment would be necessary, as the required funding would be reallocated within the budget. The Fire Department has a current eligibility list for Firefighters and upon authorization the positions would be filled within 60 days.

RWL:lak

RESOLUTION 97 - 19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AUTHORIZING THE ADDITION OF SIX REGULAR FULL-TIME POSITIONS IN THE FIRE DEPARTMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Fire Department performs the duties of fire prevention, fire suppression, fire rescue, emergency medical services, and emergency management in and around the City; and

WHEREAS, the Fire Department currently has 183 regular full-time firefighter positions; and

WHEREAS, the City hired a consultant to study the current staffing level and staffing needs and recommended that the optimal staffing level of 189 regular full-time firefighter positions; and

WHEREAS, the Fire Department has averaged \$1,056,832 in overtime over the last five fiscal years; and

WHEREAS, the City Manager finds it to be in the best interest of the City to provide six additional regular full-time Firefighter positions in order to reduce the amount of overtime expenditures within the Fire Department and to provide a level of service that meets the optimal recommendation; and

WHEREAS, Section 2-36.4 requires City Council to approve the addition of regular full-time positions within a classification, and to increase the number of regular full-time positions per department.

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

SECTION 1. The City Council hereby approves the addition of six (6) regular full-time Firefighter positions within the Fire Department pursuant to Section 2-36.4 of the Code of Ordinances. Funding for the positions will be from the General Fund.

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

| ADOPTED BY THE CITY CO | UNCIL OF THE CITY | OF CAPE CORAL AT ITS | REGULAR |
|------------------------|-------------------|----------------------|---------|
| COUNCIL SESSION THIS | DAY OF | , 2019. | |
| | | | |
| | | | |
| | IOE | COVIELLO, MAYOR | |
| | JOE | COVIELLO, MATOR | |

| COVIELLO | NELSON |
|----------------------------------|-------------------------|
| GUNTER | STOKES |
| CARIOSCIA | WILLIAMS |
| STOUT | COSDEN |
| | |
| ATTESTED TO AND FILED I 2019. | N MY OFFICE THIS DAY OF |
| | |
| | KIMBERLY BRUNS |
| | CITY CLERK |
| | |
| APPROVED AS TO FORM: | |
| | |
| Dobous D Mu | rendy |
| DOLORES D. MENENDEZ | 1 |
| DOTORED D. METALIANE | |

VOTE OF MAYOR AND COUNCILMEMBERS:

res/Positions-Additional Firefighters

Item

A.(1)

Number: Meeting

5/13/2019

Date:

3/13/2013

Item

ORDINANCES/RESOLUTIONS -

Type:

Public Hearings

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 80-19 (VP 19-0004*) Public Hearing

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No

2. Is this a Strategic Decision?

No

If Yes, Priority Goals Supported are

listed below.

If No, will it harm the intent or success of

the Strategic Plan?

No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

<u>Hearing Examiner Recommendation:</u> The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions as set forth in Recommendation 5-2019.

<u>Staff Recommendation:</u> Staff recommends approval subject to the conditions that appear in Resolution 80-19.

SUMMARY EXPLANATION AND BACKGROUND:

A resolution providing for the vacation of plat for a portion of Lafayette Canal and Malibu Basin rights-of-way and the underlying public utility and drainage easements located adjacent to Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision; providing for the vacation of plat for public utility and drainage easements associated with Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision; property is located at 5362 Malibu Court.

LEGAL REVIEW:

John E. Naclerio III, Assistant City Attorney

EXHIBITS:

Resolution 80-19 (VP 19-0004)
Hearing Examiner Recommendation Order
Back up materials from HEX hearing
Application
Staff Presentation

PREPARED BY:

Division- Department- City Attorney

SOURCE OF ADDITIONAL INFORMATION:

Mike Struve, Planning Team Coordinator

ATTACHMENTS:

| | Description | Туре |
|---|---------------------------------------|-----------------|
| D | Resolution 80-19 (VP 19-0004) | Backup Material |
| D | Hearing Examiner Recommendation Order | Backup Material |
| D | Back up material from HEX Hearing | Backup Material |
| D | Application | Backup Material |
| D | Staff Presentation | Backup Material |

RESOLUTION 80 - 19

A RESOLUTION PROVIDING FOR THE VACATION OF PLAT FOR A PORTION OF LAFAYETTE CANAL AND MALIBU BASIN RIGHTS-OF-WAY AND THE UNDERLYING PUBLIC UTILITY AND DRAINAGE EASEMENTS LOCATED ADJACENT TO LOTS 23-25, BLOCK 29, UNIT 1, PART 2, CAPE CORAL SUBDIVISION; PROVIDING FOR THE VACATION OF PLAT FOR PUBLIC UTILITY AND DRAINAGE EASEMENTS ASSOCIATED WITH LOTS 23-25, BLOCK 29, UNIT 1, PART 2, CAPE CORAL SUBDIVISION; PROPERTY LOCATED AT 5362 MALIBU COURT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Petition was filed by MICHAEL AND CAROLYN MITCH for the vacation of plat on property described herein; and

WHEREAS, the Petition meets the requirements of Land Use Development Regulations, Article VIII, Section 8.11, Vacation of Plats, Streets and Other Property of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that such Petition be granted.

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

Section 1. The Petition meets the requirements of Article VIII, Section 8.11, of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that such Petition be granted. The following-described canal right-of-way and the underlying public utility and drainage easements, as shown in Exhibit A, are hereby vacated by the City of Cape Coral, to wit:

A parcel of land being part of the Malibu Basin and Lafayette Canal rights-of-way adjoining Lots 23, 24 and the East half of Lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida, more particularly described as follows:

Beginning at the Southwest corner of the East half of said Lot 25; Thence run S 90°00'00"E along the platted Southerly lines of the above described lots for a distance of 77.50 feet to the point of curvature of a curve to the left having for its elements a Radius of 25 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of N 45°00'00"E, 35.36 feet; Thence along said curve for a distance of 39.27 feet; Thence run N 0°00'00"E along the easterly platted line of said Lot 23 for a distance of 165.00 feet to the Northeast corner of said Lot 23; Thence run

N 90°00'00"E along the Easterly Prolongation of the North line of Lot 23 for a distance of 1.41 feet to a point on the water-face of the existing concrete seawall; Thence run along the water-face of the existing seawall for the following three courses; S 0°12'06"E for 37.12 feet; S 0°26'28"W for 80.94 feet; and S 0°48'10"W for 55.51 feet to the point of curvature of a non-tangent curve to the right having for its elements a Radius of 19.52 feet, a Central Angle of 84°12'41" and a Chord Bearing and Distance of S 41°49'30"W, 26.18 feet; Thence run along said curve for a distance of 28.69 feet; Thence continue along said seawall S 89°20'54"W for a distance of 85.19 feet to a point on the southerly prolongation of the West line of the East Half of Lot 25; Thence run N 0°00'00"E, a distance of 4.04 feet along said southerly prolongation to the Southwest corner of the East Half of Lot 25 and the point of beginning. Parcel contains 596.8 sq. ft. +/-

Section 2. The Petition meets the requirements of Article VIII, Section 8.11, of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that such Petition be granted. The following-described public utility and drainage easements, as shown in Exhibit B, are hereby vacated by the City of Cape Coral, to wit:

A parcel of land being part of perimeter Public Utility and Drainage easement over and across Lots 23, 24 and the East half of Lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida, more particularly described as follows:

Commencing at the Southwest corner of the East half of said Lot 25; Thence run S 90°00'00"E along the platted Southerly line said Lot 25 for a distance of 6.00 feet to the Point Beginning;

thence run N 0°00'00"E for a distance of 6.0 feet; Thence S 90°00'00"E for a distance of 71.50 feet to the point of curvature of a curve to the left having for its elements a Radius of 19.00 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of N 45°00'00"E, 26.87 feet; Thence run along said curve to the left a distance of 29.85 feet; Thence run N 0°00'00"E for a distance of 159.00 feet; thence run N 90°00'00"E for 6.00 feet to the platted east line of said lot 23; Thence run along said east line S 0°00'00"W for a distance of 159.00 feet to the point of curvature of a curve to the right having for its elements a Radius of 25.00 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of S 45°00'00"W, 35.36 feet; Thence run along said curve to the right for a distance of 39.27 feet to the point of tangency; Thence run N 90°00'00W along the south lines of Lots 23, 24 and the East half of lot 25 for a distance of 71.50 feet to the Point of Beginning. Parcel Contains 1,590.3 sq. ft. +/-

Section 3. Applicant shall provide to the City a deed for a six (6) foot wide perpetual public utility and drainage easement, as shown in Exhibit C. The deed shall be approved by the City's Property Broker prior to execution. The property to be deeded to the City is as follows:

A 6' Public Utility and Drainage easement along the quit claimed portion of the Malibu Basin and Lafayette Canal adjoining Lot 23, 24 and the East Half of lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida being more particularly described as follows:

Commencing at the Southwest corner of the East Half of said Lot 25; Thence run N 0°00'00"E for a distance of 1.96 feet to the Point of Beginning; Thence run N 89°20'54"E for a distance of 84.81 feet to the point of Curvature of a non-tangent curve to the left having for its elements a Radius of 13.52 feet, a Central Angle of 83°20' 12" and a Chord Bearing and Distance of N 41°10'09"E, 17.98 feet; Thence along said curve a distance of 19.67 feet; Thence run N 0°48' 10"E for a distance of 55.56' to an angle point; Thence run N 0°26'28"E for 80.89 feet to an angle point; Thence N 0°12'06"W for a distance of 37.11 feet to a point on the North line of said lot 23; Thence run N 90°00'00"E along said north line and the easterly extension thereof for a distance of 6.00 feet to the water-face of the existing seawall along Malibu Basin; Thence run S 0°12'06"E along said water-face for a distance of 37.12 feet to an angle point; Thence run S 0°26'28"W for a distance of 80.94 feet to an angle point; Thence run S 0°48' 10"W for a distance of 55.51 feet to the point of curvature of a non-tangent curve to the right having for its elements a Radius of 19.52 feet, a Central Angle of 84°12'41" and a Chord Bearing and Distance of S 41°49'30"W, 26.18 feet; Thence run along said curve a distance of 28.69 feet; Thence continue along said seawall S 89°20'54"W for a distance of 85.19 feet to the southerly prolongation of the west line of the east half of said lot 25; Thence run N 0°00'00"E along said prolongation for a distance of 6.00 feet to the point of beginning. Parcel contains 1,696.4 sq. ft. +/-

Section 4. The applicant shall meet the following terms and conditions:

- 1. The vacation of the 596.8 square feet of canal right-of-way and underlying easements shall be consistent with that shown in the sketch and accompanying legal description prepared by Davis Surveying, Inc., dated February 13, 2019, entitled "Quit Claim Area," attached hereto as Exhibit A.
- 2. The vacation of the 1,590.3 square feet of public utility and drainage easement shall be consistent with that shown in the sketch and accompanying legal description prepared by Davis Surveying, Inc., dated December 17, 2018, entitled "Vacated 6' Public Utility and Drainage Easement," attached hereto as Exhibit B.
- 3. Within 60 days from the date of the adoption of this resolution, the owner shall provide to the City an easement deed for a six-foot wide easement consistent with that shown in the sketch and accompanying legal description prepared by Davis Surveying, Inc., December 17, 2018, entitled "New Perimeter Easement," attached hereto as Exhibit C. This deed shall be approved by the City Property Broker prior to execution.
- 4. This resolution shall be recorded with the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the applicant provides the City with an easement deed as described in Condition #3 above, and reimburses the Department of Community Development for all recording fees associated with this resolution and the easement deed.

| Clerk of Court by the City of Cape Coral. | ipon its recording with | un the Office of the Lee County |
|---|--|---------------------------------|
| ADOPTED BY THE CITY COUNCIL OF COUNCIL SESSION THIS DAY | | |
| | JOE COVIE | LLO, MAYOR |
| VOTE OF MAYOR AND COUNCILMEM | IBERS: | |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN | |
| ATTESTED TO AND FILED IN MY O. 2018. | FFICE THIS | DAY OF, |
| APPROVED AS TO FORM: JOHNE. NACLERIO III ASSISTANT CITY ATTORNEY | KIMBERLY INTERIM CI | |
| res/vp19-0004 | | |



4536 SE 16th Place Cape Coral, Florida 33904

December 18, 2018

Quit Claim Area

A parcel of land being part of the Malibu Basin and Lafayette Canal rights-of-way adjoining Lots 23, 24 and the East half of Lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida, more particularly described as follows:

Beginning at the Southwest corner of the East half of said Lot 25; Thence run S 90°00'00"E along the platted Southerly lines of the above described lots for a distance of 77.50 feet to the point of curvature of a curve to the left having for it's elements a Radius of 25 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of N 45°00'00"E, 35.36 feet; Thence along said curve for a distance of 39.27 feet; Thence run N 0°00'00"E along the easterly platted line of said Lot 23 for a distance of 165.00 feet to the Northeast corner of said Lot 23; Thence run N 90°00'00"E along the Easterly Prolongation of the North line of Lot 23 for a distance of 1.41 feet to a point on the water-face of the existing concrete seawall; Thence run along the water-face of the existing seawall for the following three courses; S 0°12'06"E for 37.12 feet; S 0°26'28"W for 80.94 feet; and S 0°48'10"W for 55.51 feet to the point of curvature of a non-tangent curve to the right having for it's elements a Radius of 19.52 feet, a Central Angle of 84°12'41" and a Chord Bearing and Distance of S 41°49'30"W, 26.18 feet; Thence run along said curve for a distance of 28.69 feet; Thence continue along said seawall S 89°20'54"W for a distance of 85.19 feet to a point on the southerly prolongation of the West line of the East Half of Lot 25; Thence run N 0°00'00"E along said southerly prolongation to the Southwest corner of the East Half of Lot 25 and the point of beginning. Parcel contains 596.8 sq. ft. +/-

SHEET 1 OF 2

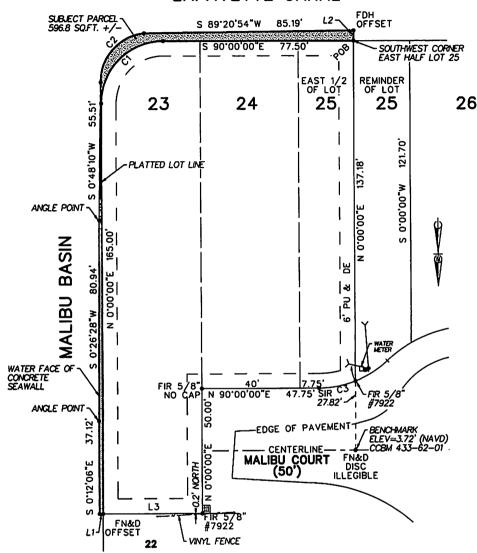
Prepared by Eric C. Davis FL PSM 5544

Phone: 239.549.6454 www.DAVISLANDSURVEYS.com Fax: 239.549.2548

| CURVE | Arc | Delta Angle | Chord | Ch Bearing | Radius | Tangent |
|-------|--------|-------------|--------|--------------|--------|---------|
| C1 | 39.27' | 90,00,00, | 35.36' | N 45'00'00"E | 25.00' | 25.00' |
| C2 | 28.69' | 84'12'41" | 26.18 | S 41'49'30"W | 19.52' | 17.64' |

| LINE | BEARING | DISTANCE |
|------|--------------|----------|
| L1 | N 90,00,00 E | 1.41' |
| L2 | N 0.00,00 E | 4.04 |
| L3 | S 90'00'00"W | 40.00' |

LAFAYETTE CANAL



SKETCH TO ACCOMPANY LEGAL DESCRIPTION - NOT A SURVEY





4536 SE 16th Place Cape Coral, Florida 33904

December 17, 2018

Phone: 239.549.6454

VACATED 6' PUBLIC UTILITY AND DRAINAGE EASEMENT

A parcel of land being part of perimeter Public Utility and Drainage easement over and across Lots 23, 24 and the East half of Lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida, more particularly described as follows:

Commencing at the Southwest corner of the East half of said Lot 25; Thence run S 90°00'00"E along the platted Southerly line said Lot 25 for a distance of 6.00 feet to the Point Beginning; thence run N 0°00'00"E for a distance of 6.0 feet; Thence S 90°00'00"E for a distance of 71.50 feet to the point of curvature of a curve to the left having for it's elements a Radius of 19.00 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of N 45°00'00"E, 26.87 feet; Thence run along said curve to the left a distance of 29.85 feet; Thence run N 0°00'00"E for a distance of 159.00 feet; thence run N 90°00'00"E for 6.00 feet to the platted east line of said lot 23; Thence run along said east line S 0°00'00"W for a distance of 159.00 feet to the point of curvature of a curve to the right having for it's elements a Radius of 25.00 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of S 45°00'00"W, 35.36 feet; Thence run along said curve to the right for a distance of 39.27 feet to the point of tangency; Thence run N 90°00'00W along the south lines of Lots 23, 24 and the East half of lot 25 for a distance of 71.50 feet to the Point of Beginning. Parcel Contains 1590.3 SQ.FT. +/-

SHEET 1 OF 2

FL PSM 5544

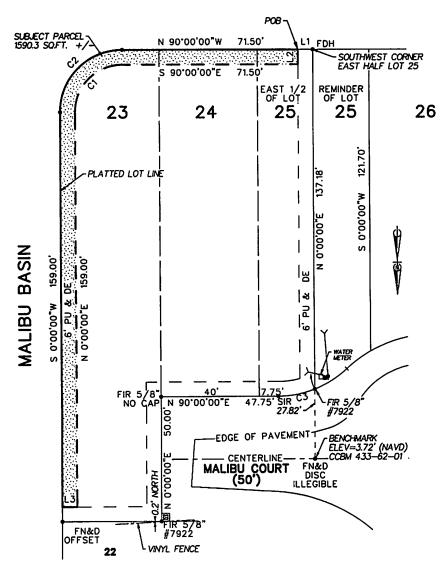
Fax: 239.549.2548

www.DAVISLANDSURVEYS.com

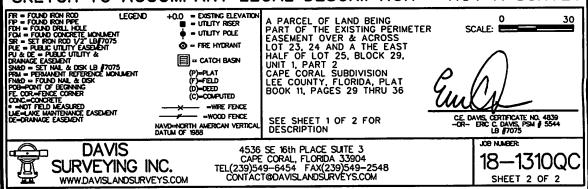
| CURVE | Arc | Delta Angle | Chord | Ch Bearing | Radius | Tangent |
|-------|-------|-------------|-------|--------------|--------|---------|
| C1 | 29.85 | 90,00,00 | 26.87 | N 45'00'00"E | 19.00' | 19.00' |
| C2 | 39.27 | 90.00,00 | 35.36 | S 45'00'00"W | 25.00' | 25.00' |

| LINE | BEARING | DISTANCE |
|------|--------------|----------|
| L1 | N 90'00'00"E | 6.00' |
| L2 | N 0.00,00 E | 6.00' |
| L3 | N 90'00'00"E | 6.00' |

LAFAYETTE CANAL



SKETCH TO ACCOMPANY LEGAL DESCRIPTION - NOT A SURVEY





4536 SE 16th Place Cape Coral, Florida 33904

December 17, 2018

NEW PERIMETER EASEMENT

A 6' Public Utility and Drainage easement along the quit claimed portion of the Malibu Basin and Lafayette Canal adjoining Lot 23, 24 and the East Half of lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida being more particularly described as follows:

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SHEET 1 OF 2

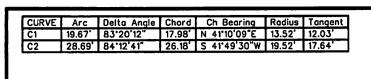
Phone: 239.549.6454

Prepared by Eric C. Davis FL PSM 5544

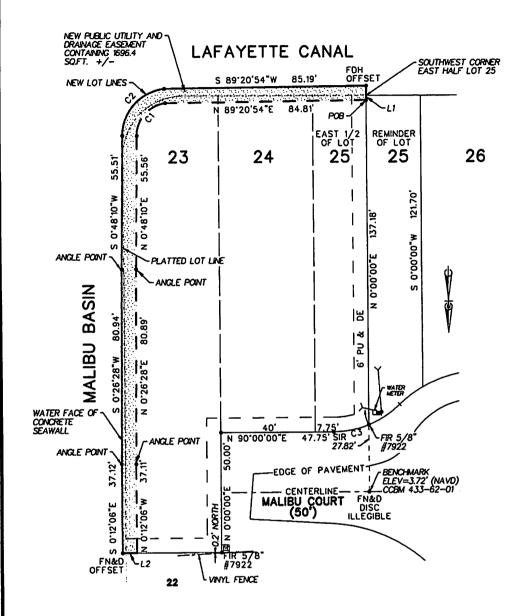
Fax: 239.549.2548

www.DAVISLANDSURVEYS.com

Exhibit C



| LINE | BEARING | DISTANCE |
|------|--------------|----------|
| L1 | N 0.00,00 E | 1.96' |
| L2 | N 90.00,00 E | 6.00 |



SKETCH TO ACCOMPANY LEGAL DESCRIPTION - NOT A SURVEY



OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL HEARING EXAMINER RECOMMENDATION

VP HEX Recommendation 5-2019 Rendered March 19, 2019

DCD CASE # VP 19-0004

APPLICATION FOR:

Vacation of canal right-of-way and underlying easements and

additional platted easements

NAME OF OWNERS/APPLICANTS: Michael and Carolyn Mitch

APPLICANT'S REPRESENTATIVE: Brian Haag, Windward Construction

LOCATION OF PROPERTY: 5362 Malibu Court, Cape Coral, FL 33904

Strap number: 18-45-24-C4-00029.0230 Legal description is on attached Exhibit "A"

ZONING DISTRICT: Single Family Residential (R-1B)

FUTURE LAND USE CLASSIFICATION: Single Family

URBAN SERVICE: Infill

HEARING DATE: March 19, 2019

SUMMARY OF REQUEST: Applicants requests to vacate:

- ±596.8 square feet of canal right-of-way (ROW) and all underlying easements for a portion of the Lafayette Canal and the Malibu Basin.
- ±1,590.3 square feet of platted easements associated with Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision.

SUMMARY OF HEARING EXAMINER RECOMMENDATION

The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions set forth below.

NOTICE OF HEARING I.

Based on the testimony of City Staff Michael Struve at the Hearing, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of Article VIII, §8.3, Public Hearings, of the City of Cape Coral Land Use and Development Regulations ("LUDRs").

PARTICIPANTS IN HEARING 11.

CITY STAFF: Michael Struve, AICP and LEED Green Associate 1

¹ Mr. Struve was recognized as an expert in land planning issues associated with this Application, based upon his prior appearances before the Hearing Examiner and his credentials which are on file with the City Clerk's Office.

CITY CLERK'S OFFICE: Patricia Sorrels

APPLICANTS' REPRESENTATIVE: Brian Haag, Windward Construction

MEMBERS OF PUBLIC: None.

CORRESPONDENCE/TELEPHONE CALLS FROM PUBLIC: None

III. EXHIBITS

APPLICANT'S AND CITY STAFF'S EXHIBITS: previously submitted.

IV. REVIEW OF LUDR REQUIREMENTS

<u>Authority.</u> The Hearing Examiner has the authority to recommend approval or denial of an application for a vacation of a plat and associated easements pursuant to LUDR §9.2.3 b.8.

Standard of Review of Evidence; Hearsay Evidence. The Hearing Examiner's recommendation is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LUDRs, upon review of the entirety of the record. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in court. In rendering this recommendation, the Hearing Examiner must consider all competent substantial evidence in the record as defined by LUDR § 8.3.1.C.3.b.

<u>LUDR Standards.</u> The Hearing Examiner reviewed the application in accordance with the standards set forth in LUDR § 8.11, *Vacation of plats, rights-of-way and other property*, in addition to the general standards set forth in the LUDRs and the City Comprehensive Plan.

V. <u>TESTIMONY AT HEARING</u>

Applicants' Incorporation of Staff Report and Staff Testimony

The Applicants' Representative incorporated the Staff Report and Staff Testimony ("Staff Input") into his presentation by reference. He requested the Hearing Examiner to recommend that City Council find the Staff Input as findings of fact, in addition to those separately presented by him.

Staff's Incorporation of Staff Report By Reference

Staff incorporated the staff report by reference into his presentation.

Hearing Examiner's Recommended Findings of Fact.

All documentary and oral testimony referenced below is accepted by the Hearing Examiner as recommended findings of fact, except as specifically noted otherwise. The Hearing Examiner recommends that the City Council accept such testimony as findings of fact to substantiate its decision regarding this Application.

VI. DISCUSSION

Site. Zoning Information and Surrounding Area

Staff testified that the Applicants own an $\pm 16,218$ square foot site in southeastern Cape Coral. A single-family dwelling, constructed in 1967, was demolished in 2018. Staff testified that construction of a new seawall on the site was completed in September 2018. A permit for a new single-family dwelling was issued by the City in late August of 2018. Construction is currently underway on a 5,198-square foot single-family residence.

Staff testified that all properties within 1,500 feet share the same future land use designation and zoning classification as the subject property and that the subject property has always had the Single Family Future Land Use Designation and R-1B zoning that it currently possesses.

Reason for Application

Staff testified that the sketch of the site shows a narrow, uneven strip of canal ROW between the southern and eastern property lines and the outer edge of the seawall. It is adjacent to the Lafayette Canal and the Malibu Basin, respectively.

For most platted waterfront sites in the City, staff testified that property lines with water frontage extend to the edge of the canal. The applicants request to vacate ±596.8 square feet of canal ROW and all underlying easements for a portion of the Lafayette Canal and Malibu Basin so as to extend the site to the edge of the seawall.

The Applicants also request to vacate ±1,590.3 square feet of platted easements in Lots 23-25.

Analysis of Request in Application

• Request No. 1: Vacate ±596.8 Square Feet ROW Adjacent to the Lafayette Canal and Malibu Basin

A portion of this Application is for the vacation of 596.8 square feet of canal ROW located between the east and south property lines of the site and the edge of the seawall. Staff testified that the ROW width is not uniform and appears to be between four to five feet at the widest point.

Staff testified that the ROW is too narrow to provide a benefit to the public. As a result, there is no apparent reason for the City to maintain this strip of land as ROW.

Staff further testified that the proposed vacation would enlarge the site by about 600 square feet, and thereby provide uninterrupted ownership of land between the east and south property lines and the edge of the seawall. Staff testified that this result was intended, based on the subdivision plat for Unit 1, Part 2.

Request No. 2: Vacate ±596.8 Square Feet of Easements Underlying the Subject ROW

The Application is for the vacation of 596.8 square feet of easements underlying the ROW described above in Request No. 1. According to the letters from the utility providers, none of them have facilities in these easements and therefore none of the providers objected to this request. The City also lacks facilities within this easement.

Staff recommends that an easement be deeded by the owners to the City for providing an uninterrupted six-foot wide perimeter easement around the expanded site, as set forth in the recommended conditions, below.

• Request No. 3: Vacate ±1,590.3 Square Feet of Easements in Lots 23-25, Block 29

This section of the Application is for the vacation of $\pm 1,590.3$ square feet of platted easements in Lots 23-25, adjacent to the east and south property lines of the site.

As with the prior request, all three utility providers lack facilities in these easements and do not object to this request.

Staff testified that the City lacks facilities within this easement.

Staff recommended a finding that this easement would no longer be necessary as the owners would be providing the City with a six-foot wide replacement easement around the expanded site.

Recommendation that City Council Find That Applicants Have Complied with All Requirements for the Requested Vacations, as Set Forth in LUDR §8.11

1. Applicants have color of title (LUDR §8.11.3b.1)

Staff testified that Applicants own the subject property and is, therefore, eligible to apply for the requested vacations. In addition,

Applicants submitted a deed dated April 6, 2016, conveying the property to them and thereby showing such ownership.

- 2. A copy of the plat **has** been provided, showing the portions for which vacation is sought (LUDR §8.11.3b.2)
- 3. and 4. Letters of Approval from LCEC and Letters of No Objection from Century Link and Comcast (LUDR §8.11.3b.3 and LUDR §8.11.3b.4-6) are not necessary.

LCEC, Century Link, Comcast and Cape Coral all lack facilities in the right of way and easements which form the subject matter of this request. Accordingly, neither a letter of approval nor a letter of no objection is required from each of these providers.

Staff testified that Applicants' provision of a six-foot wide replacement easement around the expanded site would suffice for the City's purposes.

5. A copy of a recent boundary survey or survey sketch of the property prepared and executed by a registered surveyor, has been provided, showing the area requested to be vacated; providing complete metes and bounds legal descriptions of said areas, and showing all pavement and all utility and drainage facilities in said area, including water, sewer and cable lines, utility poles, swales, ditches, manholes and catch basins. Separate drawings and metes and bounds legal descriptions will be required for each proposed vacation area when the right-of-way and easement configurations differ. (LUDR §8.11.3b.7.B)

All of the required documents have been provided.

6. No Reasonably Foreseeable Public Use of the Vacated Area. (LUDR, §8.11.3 d)

The above testimony and factual findings are incorporated into analysis of this standard by reference.

It is recommended that, for the above reasons, the City Council finds there is no reasonably foreseeable public use for the requested vacations.

7. City's Retention of Easements for Utilities and/or Drainage in and Upon the Vacated Area. (LUDR, §8.11.3 d)

It is recommended that the City Council retain a perimeter easement for utilities and/or drainage in and upon the vacated areas, as set forth

in the conditions below. The owners have agreed to this perimeter easement.

Consistency with the Comprehensive Plan (LUDR §8.11)

Staff testified that the City does not have specific Comprehensive Plan policies for vacations involving residentially zoned sites.

It is recommended that the City Council find that the vacation requests are consistent with Policy 1.15 of the Future Land Use Element of the City's Comprehensive Plan which states:

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

a. <u>Single Family Residential.</u> Sites of 10,000 square feet and greater, with densities not to exceed 4.4 units per acre.

Staff testified that this application is consistent with the above-cited Policy 1.15.a for the following reasons: the site would be $\pm 16,815.5$ square feet, were the ROW vacation to be granted by City Council; and the Applicants currently are constructing one single-family home on-site. Staff testified that this equates to a density of 2.6 dwelling units per acre, less than the maximum 4.4 dwelling units per acre allowed within this future land use classification.

Accordingly, it is recommended that City Council find that granting the requested vacations, as conditioned below, **is consistent** with the City Comprehensive Plan, Land Use Development Regulations, and all other applicable law.

VII. RECOMMENDED CONDITIONS OF APPROVAL

City staff testified regarding recommendations for conditions of approval, set forth below. Applicants' Representative testified that Applicants have no objection to these conditions.

The Hearing Examiner **recommends** that these conditions of approval be adopted as part of the City Council's approval of Applicants' request:

1. <u>Consistency with Exhibit.</u> The vacation of the 596.8 square feet of ROW and underlying easements shall be consistent with that shown in the sketch and

accompanying legal description prepared by Davis Surveying, Inc. dated February 13, 2019, and entitled "Quit Claim Area."

- 2. <u>Consistency with Exhibit.</u> The vacation of the 1,590.3 square feet of easements in Lot 23-25, Block 29 shall be consistent with that shown in the sketch and accompanying legal description prepared by Davis Surveying, Inc., dated December 17, 2018, entitled "Vacated 6' Public Utility and Drainage Fasement."
- 3. <u>Provision of Easement Deed.</u> Within 60 days from the date of adoption of this vacation, the owner shall provide to the City an easement deed for a six-foot wide easement that is consistent with that shown in the sketch and accompanying legal description prepared by Davis Surveying, Inc., dated December 17, 2018 and entitled "New Perimeter Easement." This deed shall be approved by the City Property Broker prior to execution.
- 4. <u>Recording of Resolution.</u> This resolution shall be recorded with the Office of the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the applicant provides the City with an easement deed as described in Condition #3 above, and reimburses the City for all recording fees associated with this resolution.
- Compliance with Zoning District Standards and Requirements and Inclusion of LUDRs, City Ordinances and Other Applicable Law. Applicants shall comply with all standards and requirements for the zoning district in which the property is located and all other requirements set forth in the LUDRs, City ordinances and all other applicable laws and regulations, which are incorporated herein by reference.

VIII. **EXHIBITS**

The following Exhibits are attached to this Recommendation and are hereby incorporated by reference:

- EXHIBIT "A": Legal description of 5362 Malibu Court, Cape Coral, FL
- EXHIBIT "B": Sketch and accompanying Legal Description entitled "Quit Claim Area", as prepared by Davis Surveying, Inc., dated February 13, 2019, (2 pages)
- Exhibit "C": Sketch and accompanying Legal Description entitled "Vacated 6' Public Utility and Drainage Easement" as prepared by Davis Surveying, Inc., dated December 17, 2018 (2 pages)
- Exhibit "D": Sketch and accompanying Legal Description entitled "New Perimeter Easement" as prepared by Davis Surveying, Inc., dated December 17, 2018 (2 pages)

The Hearing Examiner herewith **RECOMMENDS APPROVAL** of the request for the above-referenced Vacations filed by Applicant, **WITH THE CONDITIONS** set forth above.

This Recommendation takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA

ANNE DALTON, ESQUIRE

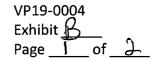
ATTEST:

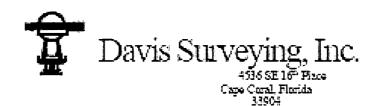
Mulle 5

| VP19-0Q04 | |
|-----------|----------|
| Exhibit | |
| Page\ of | <u> </u> |

LEGAL DESCRIPTION OF 5362 MALIBU COURT

Lots 23 and 24 and the east half of (E ½) of Lot 25, Block 29, Cape Coral Subdivision, Unit One, Part Two, according to the map or plat thereof, as recorded in Plat Book 11, Pages 29-36, inclusive, of the Public Records of Lee County, Florida.





February 13, 2019

Quir Claim Area

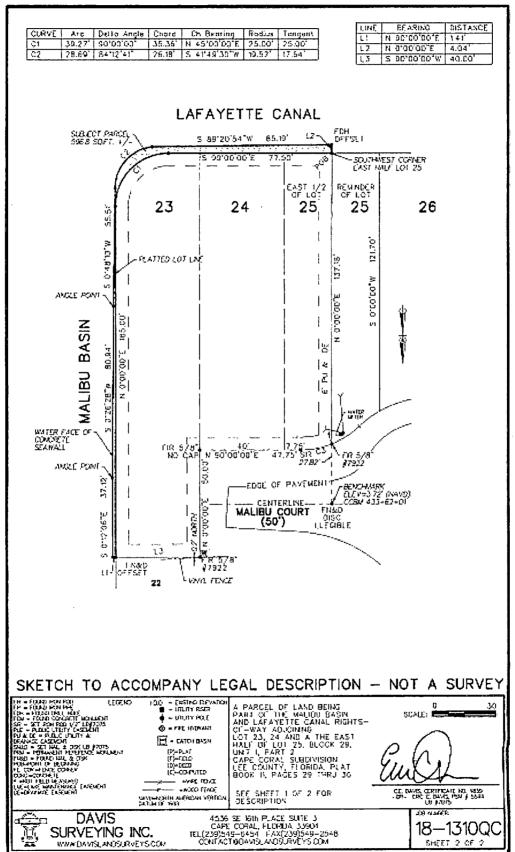
A percel of land being part of the Malibu Basin and Lafayette Canal rights-of-way adjoining Lots 23, 24 and the East half of Let 25, Block 29, Unit 1, Part 1, Cape Coral Subdivision, Plat Book 11, Pages 19 thru 36, Lee County, Florida, more particularly described as follows:

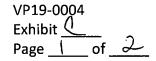
Beginning at the Southwest comer of the East half of said Lot 25; Thence run S 90°00'00'E along the planted Southerly lines of the above described lats for a distance of 77.50 feet to the point of curvature of a curve to the left having for it's elements a Radius of 25 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of N 45°00'00"E, 35.36 feet; Thence along said. curve for a distance of 39.27 feet, Thence run N 0*00'00'E along the easterly platted line of said Lot 23 for a distance of 165.00 feet to the Northeast corner of said Lot 23: Thence run N 90°C0'00'E along the Easterly Prelongation of the North line of Let 23 for a distance of 1.41 feet to a point on the water-face of the existing concrete seawall: Thence run along the water-face of the existing serwall for the following three courses; S 0*12*06*E for 37.12 feet; S 0*26*28*W for 80.94 feet; and S 0°48'10"W for 55.91 feet to the point of curvature of a non-tangent curve to the right having for it's elements a Radius of 19.52 feet, a Central Angle of \$4*12*41" and a Cherd-Bearing and Distance of S 41 49 30 W., 26.18 feet; Thence run along said curve for a distance of 28.69 feet; Thence continue along said seawall S 89°20' 54' W for a distance of 85.19 feet to a point on the southerly prolongation of the West line of the East Half of Lot 25; Thence run M 0°00′00′E, a distance of 4.04 feet along said southerly prolongation to the Southwest corner of the East Half of Let 25 and the point of beginning. Percel contains 596.8 sq. ft. \pm 1-

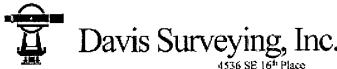
SHEET 1 OF 2

Prepared by Eric C. Davis FL PSM 5544

Phone: 239,549,6454 www.DAVISLANDSUEVEYS.com Fax: 239,549,2548







4536 SE 16th Place Cape Coral, Florida 33904

December 17, 2018

VACATED 6' PUBLIC UTILITY AND DRAINAGE EASEMENT

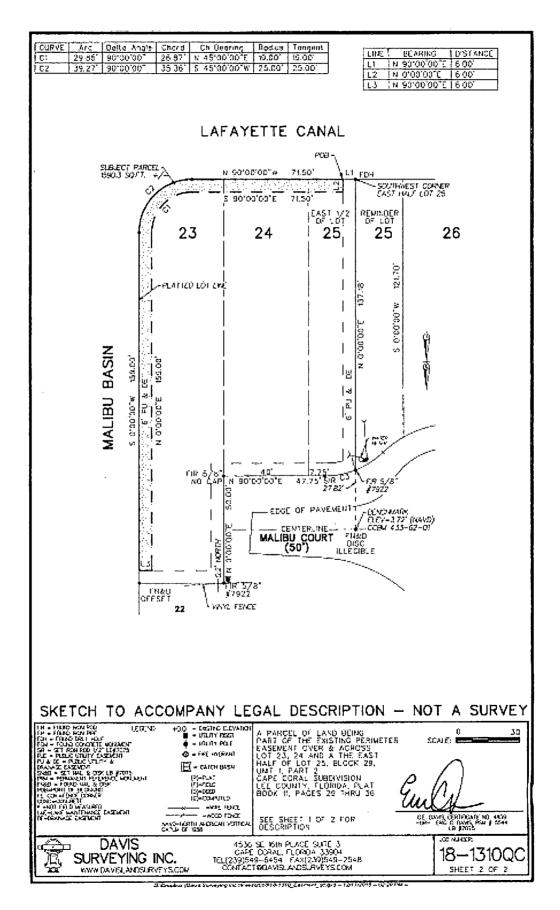
A parcel of land being part of perimeter Public Utility and Drainage easement over and across Lots 23, 24 and the East half of Let 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida, more particularly described as follows:

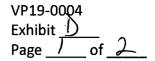
Commencing at the Southwest corner of the East half of said Lot 25; Thence run S 90°00'00"E along the platted Southerly line said Lot 25 for a distance of 6.00 feet to the Point Beginning; thence run N 0°00'00"E for a distance of 6.0 feet; Thence S 90°00'00"E for a distance of 71.50 feet to the point of curvature of a curve to the left having for it's elements a Radius of 19.00 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of N 45°00'00"E, 26.87 feet; Thence run along said curve to the left a distance of 29.85 feet; Thence run N 0°00'00"E for a distance of 159.00 feet; thence run N 90°00'00"E for 6.00 feet to the platted east line of said lot 23; Thence run along said east line S 0°00'00"W for a distance of 159.00 feet to the point of curvature of a curve to the right having for it's elements a Radius of 25.00 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of S 45°00'00"W, 35.36 feet; Thence run along said curve to the right for a distance of 39.27 feet to the point of tangency; Thence run N 90°00'00W along the south lines of Lots 23, 24 and the East half of lot 25 for a distance of 71.50 feet to the Point of Beginning, Parcel Contains 1590.3 SQ.FT. +/-

SHEET 1 OF 2

Prepared by Eric C. Davis FL PSM 5544

Phone: 239.549.6454 www.DAVISLANDSURVEYS.com - Fax: 239.549.2548







December 17, 2018

NEW PERIMETER EASEMENT

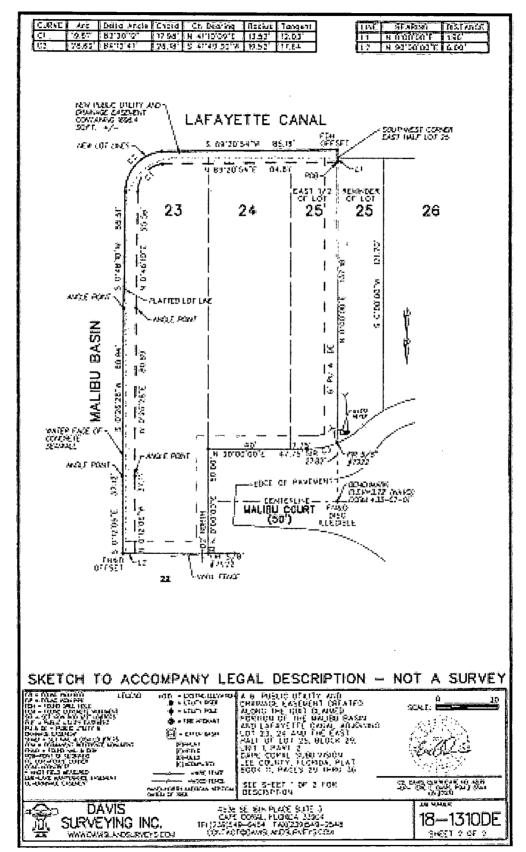
A 6' Public Utility and Drainage casement along the quit claimed portion of the Malibe Basin and Lafayette Canal adjoining Lot 23, 24 and the East Half of lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida being more particularly described as follows:

Commercing at the Southwest corner of the East Half of said Lot 25; Thence run N 0°00'00°E for a distance of 1.96 feet to the Point of Beginning: Thence run N \$9°20' 54" E for a distance of \$4.81 feet to the point of Curvature of a non-tangent curve to the left having for it's elements a Radius of 13.52 feet, a Central Angle of 83°20'12" and a Chord Bearing and Distance of N 41°10'09"E, 17.98 feet; Thence along said curve a distance of 19.67 feet; Thence run N 0°48'10"E for a distance of \$5.56' to an angle point; Thence sun N 0º26'28"E for \$0.89 feet to an angle point; Thence N 0°12'06"W for a distance of 37.41 feet to a point on the North line of said lot 23; Thence run N 90°00'00"E along said north line and the easterly extension thereof for a distance of 6.00 feet to the water-face of the existing scawall along Malibu Basin; Though run \$ 0°12'06°E along said water-face for a distance of 37.12 feet to an angle point; Thence run S 0°26'28"W for a distance of 80.94 feet to an angle point; Thence can S 0°48' 10"W for a distance of 55.51 feet to the point of curvature of a non-tangent curve to the right having for his elements a Radius of 19.52 feet, a Central Angle of \$4°12'41" and a Chord Bearing and Distance of S 41°49'30"W, 26.18 feet; Thence run along said curve a distance of 28.69 feet; Thence continue along said seawall S 89°20°54"W for a distance of 85, 19 feet to the southerly prolongation of the west line of the east half of said for 25; Thence run N 0°00'00"E along said prolongation for a distance of 6.00 feet to the point of beginning, Parcel contains 1696.4 sq. ft. +/-

SHEET 1 OF 2

Prepared by Eric C. Davis FL PSM 5544

Phone: 239.549.6454 www.DAVISLANDSURVEYS.com Fax: 239.549.2548





Case # VP19-0004

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

REQUEST TO PLANNING & ZONING COMMISION AND COUNCIL FOR A VACATION OF PLAT

FEE: \$843.00 – 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 must be paid prior to public hearing otherwise case will be pulled from public hearing.

Following the approval of your request, the applicant shall be responsible for reimbursing the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.

| Michael & CARolya Mitch | Address: <u>5362 MAlibu Ct</u> City: <u>Cape Corol</u> State: <u>F7</u> Zip <u>53704</u> Phone: <u>410-490-7263</u> |
|---|---|
| APPLICANT Michael & CARdya Mitch EMAIL MICHAEL . Insley Findical & gmanl.com | Address: 5362 MALIBY CH City: Ope Copal State: F1 Zip 33906 Phone: 410-490-7263 |
| AUTHORIZED REPRESENTATIVE BRIAN HAAG EMAIL BH4610 @ GMail COM | Address: 1309 OAPE Coul PKW4 E. City: Ape Coul State: XL Zip 33904 Phone: 239-229-1199 |
| Unit PART & Block 29 Lot(s) 23+24. Address of Property Current Zoning RESI LENTIAL | - Subdivision CAPE CORM - 5362 MALIBU CT, CAPE CRASH, FL Plat Book // , Page 32 Strap Number 18-45-24-64-00029-0230 |



Case # \\P\9-0004

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

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.

| Michael Mitch | (SIGNATURE MUST BE NOTARIZED) | |
|---|---|--|
| APPLICANT NAME (PLEASE TYPE OR P | RINT) APPLICANT'S | SIGNATURE |
| STATE OF Flonda COUNTY OF Sworn to (or affirmed) and subscribe Michael Mitch as identification. | ped before me this day of and who is personally known or produced | , |
| | Exp. Date:Commis | ssion Number: |
| | Signature of Notary Public: | Notary Public State of Florida Cindy Public State of Florida |
| | Printed name of Notary Public: | My Commission GG 157138 Expires 11/01/2021 |



Case # VP19-0004

VACATION OF PLAT APPLICATION Questions: 239-574-0776

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 Hearing Examiner, Planning & Zoning Commission/Local Planning Agency, and City 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.

| CORPORATION/COMPANY NAME | - N 5 M. f. |
|-----------------------------------|--|
| PROPERTY OWNER (PLEASE TYPE OR | PRINT) PROPERTY OWNER'S SIGNATURE |
| STATE OF Floreda, COUNTY | of Lee day of da |
| uchael luch as identification. | who is personally known of produces |
| | Exp. Date: Commission Number: |
| | Signature of Notary Public: Notary Public State or Florida Notary Public State or Florida |
| | Printed name of Notary Public: (SIGNATURE MUST BE NOTARIZED) |



VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0004

| AUTHORIZATION TO REPRESENT PROPERTY OWNER(s) |
|--|
| PLEASE BE ADVISED THAT BRIAN HAAG (Name of person giving presentation) |
| IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE PLANNING & ZONING COMMISSION/ LOCAL PLANNING AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS AND/OR CITY COUNCIL FOR VACATE OF property between Seawcold & property line |
| UNIT / PART 2 BLOCK 29 LOT(S) 23+24+ E SUBDIVISION CAPE COEM/ |
| OR LEGAL DESCRIPTION CAPE CORDI Unit 1 PARTA BUK 29 PB 11 PG 3 |
| LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA. |
| PROPERTY OWNER (Please Print) PROPERTY OWNER (Please Print) |
| Mg Math |
| PROPERTY OWNER (Signature & Title) PROPERTY OWNER (Signature & Title) |
| STATE OF Hurida, COUNTY OF Lu |
| Subscribed and sworn to (or affirmed) before me this |
| Exp. Date:Commission Number: |
| Signature of Notary Public: Notary Public State of Florida My Commission GG 157138 My Commission GG 157138 |
| Printed name of Notary Public: My Commission Go To The Expires 11/01/2021 |
| |

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation paper.



VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0004

DOCUMENTARY EVIDENCE (LUDR, Section 8.3.1.C.6.f)

A copy of all documentary evidence shall be made available to the decision-making body or the Hearing Examiner and to staff no later than two business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

I have read the above requirement and agree to comply with this provision.

| | MEMITA |
|--|---|
| OWNER/APPLICANT (PLEASE TYPE OR PRINT) | OWNER/APPLICANT SIGNATURE |
| | |
| (SIGNATURE | E MUST BE NOTARIZED) |
| STATE OF <u>Harda</u> COUNTY OF_ | Lee |
| Sworn to (or affirmed) and subscribed before me of 2019 by Munal Witch, who is p | on this day ofersonally known or who has produced |
| as identification. | C. D. 944 |
| Exp. Date Commission # | Signature of Notary Public |
| COMMISSION # | Notary Public State of Florida |
| | Print Name of Nataon Rushing G 157138 Expires 11/01/2021 |
| | 3 |

Linda Doggett, Lee County Clerk of Circuit Court, Deed Doc. D \$5600.00 Rec. Fee \$18.50 Deputy Clerk ERECORD

Prepared By and Return To: OmniOne Title Services, LLC 4707 SE 9th Place Cape Coral, FL 33904

File No. 0114-160

Property Appraiser's Parcel I.D. (folio) Number(s) 18-45-24-C4-00029.0230

WARRANTY DEED

THIS WARRANTY DEED dated April 6, 2016, by Colin A. Simmonds and Linda B. Simmonds, husband and wife hereinafter called the grantor, to Michael Mitch and Carolyn Mitch Husband and Wife, whose post office address is 231 Wineland Way, Stevensville, MD 21666, hereinafter called the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of \$10.00 and other valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto the grantee, all the certain land situated in Lee County, Florida, viz:

Lot (s) 23 and 24 and The East Half of (E 1/2) of Lot 25, Block 29, Cape Coral Subdivision, Unit One, Part Two, according to the map or plat thereof, as recorded in Plat Book 11, Page(s) 29 to 36, inclusive, of the Public Records of Lee County, Florida.

Subject to easements, restrictions, reservations and limitations of recorded, if any.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

TO HAVE AND TO HOLD the same in Fee Simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to: December 31, 2015

WARRANTY DEED

(Continued)

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

| Signed, sealed and delivered in the presence of: (Witness Signature) Aven Terrel | Coling Simmonds Linda B. Simmonds Linda B. Simmonds |
|--|---|
| (Witness Signature) | Beech Hill, Brightling Rd Robertsbridge |
| ancela Petrick | (Address) |
| | East Sussex, TN32 5EY England |
| | (Address) |
| STATE OF Florida | |
| COUNTY OF Lee | |
| I HEREBY CERTIFY that on this day, before me, a personally appeared Colin A. Simmonds and Lir personally known to me or have presented Flidentification. WITNESS my hand and seal in the state 2016. | ida B. Simmonds, husband and wife who are |
| My Commission Expires: | |
| | ANGELA PETRICK COMMISSION # EE 873406 PIRES: March 29, 2017 I Thru Notary Public Underwriters |



January 14, 2019

City of Cape Coral 815 Nicholas Pkwy Cape Coral 33990

Re: Vacate of Plat 5362 Malibu Ct

To Whom it May Concern:

We respectfully request the vacation of the above referenced plat. This is a common occurance in the Yacht Club area and was for many years via a simple quit claim deed. This will be used to reposition the pool in accordance with the neighboring homes.

Brian Haag Windward Construction



Attention:

Joanne Stevens joannewindward@gmail.com 5362 Malibu Ct Cape Coral FL 33904

Subject: - No Objection Request

Site Address: 5362 Malibu Ct Cape Coral FL 33904

Strap# 18-45-24-C4-00029.0230

Dear Joanne

Regarding the referenced property above CenturyLink has **No Objection** to the Vacation 3' of the 6' utility easement along the east side and rear portion of the property between the canal /sea wall and the property.

Sincerely

THANK YOU!

Justin Lane

Local Network Engineer

Justin Lane

CPCR, NCPC, NFMY, SCST, PNIS

2820 Cargo St

Fort Myers FL 33916

Office: (239)-984-7009

justin.lane@centurylink.com



26100 Westlinks Drive Suite 4 Fort Myers, FL 33913 Phone: 239-432-1805

January 7, 2019

Windward Construction

Re: 5362 Malibu Ct. Cape Coral, Fl.33904

Dear Joanne Stevens,

This letter will serve to inform you that Comcast has no objection to your proposed vacation of the address referenced above.

Should you require additional information or assistance, please feel free to contact me here at 432-1805.

Cordially,

Mark Cook

Project Coordinator

Miliha



Lee County Electric Cooperative, Inc.

Post Office Box 3455

North Fort Myers, FL 33918-3455 (239) 995-2121 = Fax (239) 995-7904

www.lcec.net

January 15, 2019

Ms. Joanne Stevens Windward Construction 4818 Coronado Parkway Cape Coral, FL 33904

Re:

Letter of No Objection to Vacation of Canal Interest; 5362 Malibu Court, Cape Coral, FL;

Owners: Michael Mitch and Carolyn Mitch, husband and wife; Strap: 18-45-24-C4-00029.0230.

Dear Ms. Stevens:

You have opened up negotiations on behalf of your customer, the Mitches.

We have reviewed the sketch, the request submitted, and our internal records. LCEC has no objection to the request. The sketch was most helpful. It produced by Eric Davis, PSM, of Davis Land Surveying, Inc.; having a job number of 18-1310QC.

However, LCEC requires a continuous perimeter easement surrounding your property in order to serve you. Therefore, in the after situation to the vacation, the petitioner will have provided to the appropriate local jurisdiction, and imposed six-foot wide easements along the seawall and the side easements so that there is a continuous perimeter easement located upon the parcel.

Should no definitive action, or no approval by local jurisdiction be received by the petitioner, this letter will terminate upon six months from the date listed above.

Should there be any questions please call me at 239-656-2112, or, if you prefer, I can be reached by email at russel.goodman@lcec.net.

Very truly yours,

Russ Goodman, Goodman, SR/WA SR/WA

Digitally signed by Russ

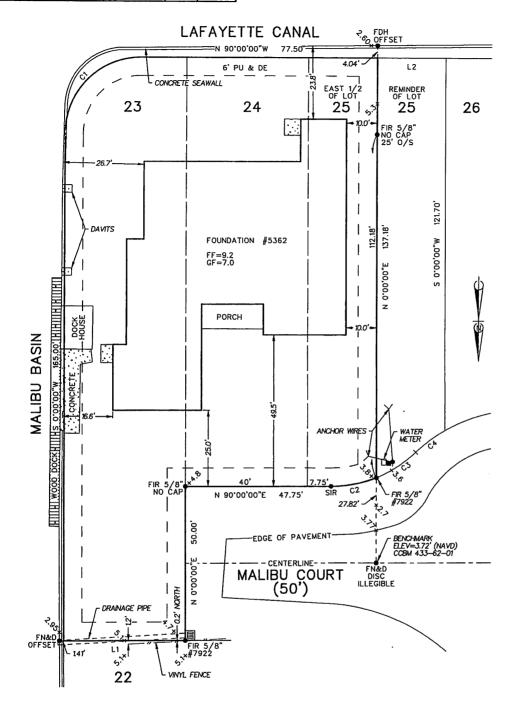
Date: 2019.01.15 11:30:29

-05'00'

Russel Goodman, SR/WA Senior Right of Way Agent - Land Rights

| CURVE | Arc | Delta Angle | Chord | Ch Bearing | Radius | Tangent |
|----------------------|-------|-------------|--------|--------------|--------|---------|
| C1 | 39.27 | 90'00'00" | 35.36 | S 45'00'00"W | 25.00' | 25.00' |
| C2 | 15.11 | 21'38'19" | 15.02 | N 79'10'51"E | 40.00' | 7.64' |
| C1 C2 C3 C4 | 15.44 | 22'07'23" | 15.35' | S 57'18'00"W | 40.00 | 7.82 |
| C4 | 12.01 | 13'45'45" | 11.98 | S 53*07'10"W | 50.00 | 6.03' |

| LINE | BEARING | DISTANCE |
|------|--------------|----------|
| L1 | N 90.00,00 E | 40.00' |
| L2 | N 90.00,00 E | 22.50' |



BOUNDARY SURVEY

LOTS 23-24, EAST 1/2 OF 25 BLOCK 29, UNIT 1 PART 2

CAPE CORAL SUBDIVISION
PLAT BOOK 11, PAGES 29-36

CERTIFIED TO THE FOLLOWING ONLY: MICHAEL AND CAROLYN MITCH

COPYRIGHT 2016 — DAVIS SURVEYING, INC.
THIS SURVEY MAY NOT BE REPRODUCED OR
THIS THAN THE CERTIFIED TO
PARTIES ABOVE. NOT VALID FOR PERMITTING
OR CONSTRUCTION WITHOUT WRITTEN
CONTRACT WITH SURVEYOR.

LEE COUNTY, FLORIDA

REVISED 10/12/18 FOUNDATION LOCATED

| BASIS FOR BEARINGS: MALIBU C | PANEL 1207100415 | suffix F | SCALE: DATE OF FRM INDEX | 0 8/28/08 | 20 SURVEY DATE: FRM AE | 6/14/18 BASE FLOOD B ELEVATION B | DAVIS SURVEYING INC. |
|--|---|--|--|---|------------------------------|--|---|
| FR = FOUND IRON ROD LEGEND FP = FOUND IRON PIPE FDH = FOUND DRILL HOLE FOM = FOUND CONCRETE MONUMENT | +0.0 = EXISTING ELEVATION = UTILITY RISER = UTILITY POLE | THE BEST OF M | KNOWLEDGE A CERTIFICATION | | 0 | | WWW.DAVISLANDSURVEYS.COM |
| SR = SET RON ROV 1/2" LBJ7075 PLE = P.BLIC UTLITY E-SSENDIT PU & DE = P.BLIC UTLITY & DRANGE FASEDENT SNED = SET NAL & DSK LB \$7075 PRA = PERANENT REPERIENCE MONIMENT PRAS = POLNO NAL & DSK POS=PONT OF BEGNASS | © = FRE HYDRANT = CATCH BASN (P)=PLAT (F)=FELD (D)=DEED | ANY REFERENCE ANY IS APPROXI ALL FIELD MEAS ARE IN SUBSTAN DIRECTIONS & DI PARCEL SURVEY SIGNATURE AND | TO UNDERGROU MATE UNLESS O MED DRECTION TIAL AGREEMEN STANCES OF RE ED. NOT VALID THE ORIGINAL R | CORD FOR THE WITHOUT THE AISED SEAL OF | P. (.) | | 4536 SE 16th PLACE SUITE 3 CAPE CORAL, FLORIDA 33904 TEL(239)549-6454 FAX(239)549-2548 CONTACT@DAVISLANDSURVEYS.COM |
| FE COR≔FENCE CORRER COCC=CONTRETE *=NOT FELD MEASURED LM=LAUE LAMITENNOE EASEMENT DE=LRANAGE EASEMENT | (c)=computedX =WRE FENCE | SHOWN ARE FRO | F TITLE WAS PI M THE RECORD IST VERBY WIT OTHER EASONEN EMENTS BURDE | ROVIDED, EASEMENTS PLAT OR DEED ONLY I CITY OR COUNTY ITS OR BUILDING VING THE PROPERTY | -OR- ERIC | 10/5/18 DERTIFICATE NO. 4839 C DAVIS, PSM # 5544 LB #7075 | 18—1310 |



4536 SE 16th Place Cape Coral, Florida 33904

February 13, 2019

Quit Claim Area

A parcel of land being part of the Malibu Basin and Lafayette Canal rights-of-way adjoining Lots 23, 24 and the East half of Lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida, more particularly described as follows:

Beginning at the Southwest corner of the East half of said Lot 25; Thence run S 90°00'00"E along the platted Southerly lines of the above described lots for a distance of 77.50 feet to the point of curvature of a curve to the left having for it's elements a Radius of 25 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of N 45°00'00"E, 35.36 feet; Thence along said curve for a distance of 39.27 feet; Thence run N 0°00'00"E along the easterly platted line of said Lot 23 for a distance of 165.00 feet to the Northeast corner of said Lot 23; Thence run N 90°00'00"E along the Easterly Prolongation of the North line of Lot 23 for a distance of 1.41 feet to a point on the water-face of the existing concrete seawall; Thence run along the water-face of the existing seawall for the following three courses; S 0°12'06"E for 37.12 feet; S 0°26'28"W for 80.94 feet; and S 0°48'10"W for 55.51 feet to the point of curvature of a non-tangent curve to the right having for it's elements a Radius of 19.52 feet, a Central Angle of 84°12'41" and a Chord Bearing and Distance of S 41°49'30"W, 26.18 feet; Thence run along said curve for a distance of 28.69 feet; Thence continue along said seawall S 89°20'54"W for a distance of 85.19 feet to a point on the southerly prolongation of the West line of the East Half of Lot 25; Thence run N 0°00'00"E, a distance of 4.04 feet along said southerly prolongation to the Southwest corner of the East Half of Lot 25 and the point of beginning. Parcel contains 596.8 sq. ft. +/-

SHEET 1 OF 2

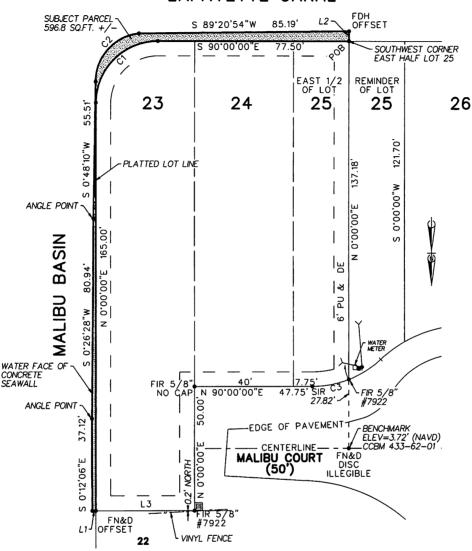
Prepared by Eric C. Davis FL PSM 5544

Phone: 239.549.6454 www.DAVISLANDSURVEYS.com Fax: 239.549.2548

| CURVE | Arc | Delta Angle | Chord | Ch Bearing | Radius | Tangent |
|-------|--------|-------------|--------|--------------|--------|---------|
| C1 | 39.27' | 90,00,00, | 35.36' | N 45'00'00"E | 25.00' | 25.00' |
| C2 | 28.69' | 84"12'41" | 26.18' | S 41'49'30"W | 19.52' | 17.64' |

| LINE | BEARING | DISTANCE |
|------|-----------------------|----------|
| L1 | N 90.00,00 <u>"</u> E | 1.41' |
| L2 | N 0.00,00 E | 4.04' |
| L3 | S 90'00'00"W | 40.00' |

LAFAYETTE CANAL



SKETCH TO ACCOMPANY LEGAL DESCRIPTION - NOT A SURVEY





4536 SE 16th Place Cape Coral, Florida 33904

December 17, 2018

VACATED 6' PUBLIC UTILITY AND DRAINAGE EASEMENT

A parcel of land being part of perimeter Public Utility and Drainage easement over and across Lots 23, 24 and the East half of Lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida, more particularly described as follows:

Commencing at the Southwest corner of the East half of said Lot 25; Thence run S 90°00'00"E along the platted Southerly line said Lot 25 for a distance of 6.00 feet to the Point Beginning; thence run N 0°00'00"E for a distance of 6.0 feet; Thence S 90°00'00"E for a distance of 71.50 feet to the point of curvature of a curve to the left having for it's elements a Radius of 19.00 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of N 45°00'00"E, 26.87 feet; Thence run along said curve to the left a distance of 29.85 feet; Thence run N 0°00'00"E for a distance of 159.00 feet; thence run N 90°00'00"E for 6.00 feet to the platted east line of said lot 23; Thence run along said east line S 0°00'00"W for a distance of 159.00 feet to the point of curvature of a curve to the right having for it's elements a Radius of 25.00 feet, a Central Angle of 90°00'00" and a Chord Bearing and Distance of S 45°00'00"W, 35.36 feet; Thence run along said curve to the right for a distance of 39.27 feet to the point of tangency; Thence run N 90°00'00W along the south lines of Lots 23, 24 and the East half of lot 25 for a distance of 71.50 feet to the Point of Beginning. Parcel Contains 1590.3 SQ.FT. +/-

SHEET 1 OF 2

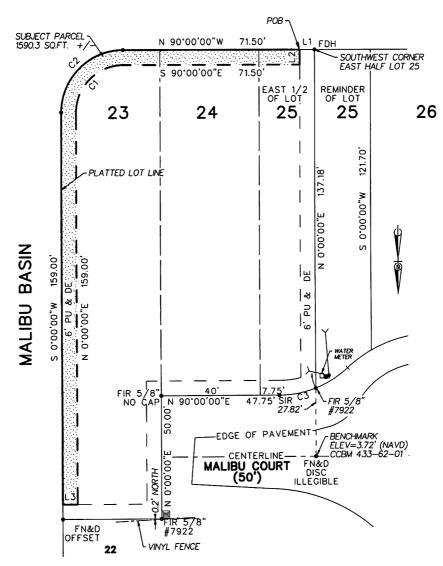
FL PSM 5544

Phone: 239.549.6454 www.DAVISLANDSURVEYS.com Fax: 239.549.2548

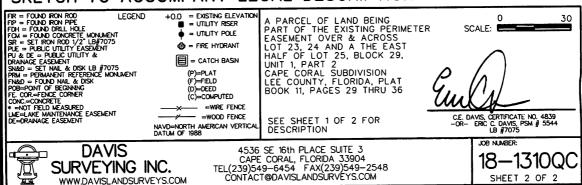
| CURVE | Arc | Delta Angle | Chord | Ch Bearing | Radius | Tangent |
|----------|-------|-------------|--------|--------------|--------|---------|
| C1 C2 | 29.85 | 90.00,00, | 26.87 | N 45'00'00"E | 19.00' | 19.00' |
| C2 | 39.27 | 90,00,00, | 35.36' | S 45'00'00"W | 25.00' | 25.00' |

| LINE | BEARING | DISTANCE |
|------|--------------|----------|
| L1 | N 90.00,00 E | 6.00' |
| L2 | N 0.00,00 E | 6.00' |
| L3 | N 90'00'00"E | 6.00' |

LAFAYETTE CANAL



SKETCH TO ACCOMPANY LEGAL DESCRIPTION - NOT A SURVEY





4536 SE 16th Place Cape Coral, Florida 33904

December 17, 2018

NEW PERIMETER EASEMENT

A 6' Public Utility and Drainage easement along the quit claimed portion of the Malibu Basin and Lafayette Canal adjoining Lot 23, 24 and the East Half of lot 25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, Plat Book 11, Pages 29 thru 36, Lee County, Florida being more particularly described as follows:

Commencing at the Southwest corner of the East Half of said Lot 25; Thence run N 0°00'00"E for a distance of 1.96 feet to the Point of Beginning; Thence run N 89°20'54"E for a distance of 84.81 feet to the point of Curvature of a non-tangent curve to the left having for it's elements a Radius of 13.52 feet, a Central Angle of 83°20'12" and a Chord Bearing and Distance of N 41°10'09"E, 17.98 feet; Thence along said curve a distance of 19.67 feet; Thence run N 0°48'10"E for a distance of 55.56' to an angle point; Thence run N 0°26'28"E for 80.89 feet to an angle point; Thence N 0°12'06"W for a distance of 37.11 feet to a point on the North line of said lot 23; Thence run N 90°00'00"E along said north line and the easterly extension thereof for a distance of 6.00 feet to the water-face of the existing seawall along Malibu Basin; Thence run S 0°12'06"E along said water-face for a distance of 37.12 feet to an angle point; Thence run S 0°26'28"W for a distance of 80.94 feet to an angle point; Thence run S 0°48'10"W for a distance of 55.51 feet to the point of curvature of a non-tangent curve to the right having for it's elements a Radius of 19.52 feet, a Central Angle of 84°12'41" and a Chord Bearing and Distance of S 41°49'30"W, 26.18 feet: Thence run along said curve a distance of 28.69 feet; Thence continue along said seawall S 89°20'54"W for a distance of 85.19 feet to the southerly prolongation of the west line of the east half of said lot 25; Thence run N 0°00'00"E along said prolongation for a distance of 6.00 feet to the point of beginning. Parcel contains 1696.4 sq. ft. +/-

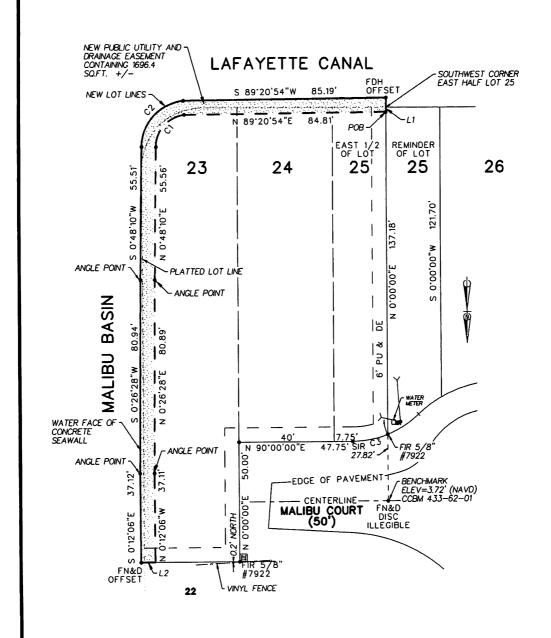
SHEET 1 OF 2

Prepared by Eric C. Davis FL PSM 5544

Phone: 239.549.6454 www.DAVISLANDSURVEYS.com Fax: 239.549.2548

| CURVE | Arc | Delta Angle | Chord | Ch Bearing | Radius | Tangent |
|-------|--------|-------------|--------|--------------|--------|---------|
| C1 | 19.67' | 83'20'12" | 17.98' | N 41°10'09"E | 13.52 | 12.03 |
| C2 | 28.69 | 84'12'41" | 26.18 | S 41°49'30"W | 19.52 | 17.64 |

| LINE | BEARING | DISTANCE |
|------|--------------|----------|
| L1 | N 0.00,00 E | 1.96' |
| L2 | N 90.00,00 E | 6.00' |



SKETCH TO ACCOMPANY LEGAL DESCRIPTION - NOT A SURVEY



Planning Division Case Report

Review Date:

March 6, 2019

Applicants/

Property Owners:

Michael and Carolyn Mitch

Rep:

Brian Haag, Windward Construction

Owner Address:

5362 Malibu Court Cape Coral, FL 33904

Request:

The applicant requests to vacate:

1. ±596.8 sq. ft. of canal right-of-way (ROW) and all underlying easements for a

portion of the Lafayette Canal and the Malibu Basin.

2. ±1,590.3 sq. ft. of platted easements associated with Lots 23-25, Block 29,

Unit 1, Part 2, Cape Coral Subdivision.

Property Location:

5362 Malibu Court

Cape Coral, FL 33904

Strap number: 18-45-24-C4-00029.0230 See Exhibit "A" for legal description

Prepared By:

Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator

Approved By:

Robert H. Pederson, AICP, Planning Manager

Recommendation:

Approval with conditions

Urban Service

Infill

Property Description:

The applicants own an $\pm 16,218$ sq. ft. site in southeast Cape Coral. A single-family dwelling that was constructed in 1967 was recently demolished in 2018. A permit for a new single-family dwelling was issued by the City in late August of 2018 and construction is currently underway on a 5,198-sq.ft. single-family residence. Construction of a new seawall on the site was completed in September 2018.

The site has a Single Family Future Land Use Classification and Single Family Residential (R-1B) Zoning and all properties within 1,500 feet share the same future land use classification and zoning.

Requests

A sketch of the site shows a narrow, uneven strip of canal ROW between the southern and eastern property lines and the outer edge of the seawall, adjacent to the Lafayette Canal the Malibu Basin, respectively. For most platted water-front sites in the City, property lines with water frontage extend to the edge of the canal. The applicants request to vacate ±596.8 sq. ft. of canal ROW and all underlying

easements for a portion of the Lafayette Canal and Malibu Basin to extend the site to the edge of the seawall. The applicants also request to vacate ±1,590.3 sq. ft. of platted easements in Lots 23-25.

Zoning History of Block 29

The site has always had a Single Family Future Land Use Classification and R-1B Zoning.

Analysis:

Staff analyzed this request with the Land Use and Development Regulations (LUDR), Section 8.11, "Vacation of plats, rights-of-way and other property." The City Comprehensive Plan was also reviewed for policies on vacations.

Request No. 1: Vacate ±596.8 sq. ft. of ROW Adjacent to the Lafayette Canal and Malibu Basin

The applicants request to vacate 596.8 sq. ft. of canal ROW between the east and south property lines of the site and the edge of the seawall. The applicants own the site that abuts this ROW and are therefore eligible to request this vacation. The ROW width is not uniform and appears between four to five feet at the widest point. The ROW is too narrow to provide a benefit to the public. As a result, there is no apparent reason for the City to maintain this strip of land as ROW. This vacation will enlarge the site by about 600 sq. ft. and will provide uninterpreted ownership of land between the east and south property lines and the edge of the seawall as was intended based on the subdivision plat for Unit 1, Part 2.

Request No. 2: Vacate ±596.8 sq. ft. of Easements Underlying the Subject ROW

The applicants seek to vacate 596.8 sq. ft. of easements underlying the ROW described above in Request No. 1. All three utility providers lack facilities in these easements. None of these providers object to this request. The City also lacks facilities within this easement. Staff recommends that an easement be deeded by the owners to the City for providing an uninterrupted six-foot wide perimeter easement around the expanded site.

Request No. 3: Vacate ±1,590.3 sq. ft. of Easements in Lots 23-25, Block 29

The applicants seek to vacate $\pm 1,590.3$ sq. ft. of platted easements in Lots 23-25 adjacent to the east and south property lines of the site. All three utility providers lack facilities in these easements and do not object to this request. The City lacks facilities within this easement. This easement will no longer be necessary as the owners will be providing the City with a six-foot wide replacement easement around the expanded site.

Consistency with the Comprehensive Plan

The City lacks specific policies in the Comprehensive Plan for vacations involving residential-zoned lands.

This request is consistent with Policy 1.15 of the Future Land Use Element.

Policy 1.15: Land development regulations adopted to implement this comprehensive plan will be based on, and will be consistent with, the standards for uses and densities/intensities as described in the

following future land use classifications. In no case shall maximum densities allowable by the following classifications conflict with Policy 4.3.3 of the Conservation and Coastal Management Element regulating density of development within the Coastal High Hazard Area.

a. <u>Single Family Residential:</u> Sites of 10,000 square feet and greater, with densities not to exceed 4.4 units per acre.

Staff comment: This request is consistent with Policy 1.15.a as the site will be $\pm 16,815.5$ sq. ft. following the ROW vacation. When the site is redeveloped with a new single-family dwelling, this will equate to a density of 2.6 dwelling units per acre. This density is less than the maximum 4.4 dwelling units per acre allowed within this future land use classification.

Recommendation:

Based on the above analysis, staff recommends **approval** of all requested vacations with the following conditions.

Conditions of Approval

- 1. The vacation of the 596.8 sq. ft. of ROW and underlying easements shall be consistent with that shown in the sketch and accompanying legal description prepared by Davis Surveying, Inc., dated February 13, 2019, entitled "Quit Claim Area."
- 2. The vacation of the 1,590.3 sq. ft. of easements in Lots 23-25, Block 29 shall be consistent with that shown in the sketch and accompanying legal description prepared by Davis Surveying, Inc., dated December 17, 2018, entitled "Vacated 6' Public Utility and Drainage Easement."
- 3. Within 60 days from the date of adoption of this vacation, the owners shall provide to the City an easement deed for a six-foot wide easement consistent with that shown in the sketch and accompanying legal description prepared by Davis Surveying, Inc., dated December 17, 2018, entitled "New Perimeter Easement." This deed shall be approved by the City Property Broker prior to execution.
- 4. This resolution shall be recorded with the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the owners provide the City with an easement deed as described in Condition #3 above and reimburses the Department of Community Development for all recording fees associated with this resolution and the easement deed.

Staff Contact Information

Mike Struve, AICP, LEED Green Associate, Development Management Team Coordinator

PH: 239-242-3255

Email: mstruve@capecoral.net

EXHIBIT A

LEGAL DESCRIPTION OF 5362 MALIBU COURT

Lots 23 and 24 and the east half of (E ½) of Lot 25, Block 29, Cape Coral Subdivision, Unit One, Part Two, according to the map or plat thereof, as recorded in Plat Book 11, Pages 29-36, inclusive, of the Public Records of Lee County, Florida.





NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: VP19-0004

REQUEST: The applicants, Michael and Carolyn Mitch, request a vacation of plat for a portion of the Lafayette Canal and Malibu Basin rights-of-way and the underlying public utility and drainage easements located adjacent to Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision; and request a vacation of plat for public utility and drainage easements associated with Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, property located at 5362 Malibu Court.

<u>CAPE CORAL STAFF CONTACT:</u> Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator, 239-242-3255, mstruve@capecoral.net

<u>UPCOMING PUBLIC HEARING:</u> Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday, March 19th, 2019 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.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available five days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

After Hearing Examiner has made a written recommendation, the case will be scheduled for a public hearing before the City Council who will review the recommendation and make a final decision. You will receive another public hearing notice when this case is scheduled for a City Council hearing.

<u>DETAILED INFORMATION:</u> The case report and colored maps for this application are available at the City of Cape Coral website, <u>www.capecoral.net/publichearing</u> (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.

<u>HOW TO CONTACT:</u> 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.

<u>ADA PROVISIONS:</u> 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.

<u>APPEALS:</u> If a person decides to appeal any decision made by the Hearing Examiner 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.



Please contact us with changes or cancellations as soon as possible, otherwise no further action needed.

TOLL-FREE

Local#

\$

888-516-9220

239-335-0258

FNPLegals@gannett.com

Customer:

CITY OF CAPE CORAL_DEPT OF COM

Ad No.:

0003423942

Address:

1015 CULTURAL PARK BLVD

Net Amt:

CAPE CORAL FL 33990 USA

Run Times: 1

No. of Affidavits:

Run Dates: 03/09/19

Text of Ad:

NOTICE OF PUBLIC HEARING

CASE NUMBER: VP19-0004

REQUEST: The applicants, Michael and Carolyn Mitch, request a vacation of plat for a portion of the Lafayette Canal and Malibu Basin rights-of-way and the underlying public utility and drainage easements located adjacent to Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision; and request a vacation of plat for public utility and drainage easements associated with Lots 23-25, Block 29, Unit 1, Part 2, Cape Coral Subdivision, property located at 5362 Malibu Court.

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by order of Kimberly Bruns, CMC Interim City Clerk REF # VP19-0004 AD# 3423942 Mar. 9, 2019

Department of Community Development Planning Division

AFFIDAVIT

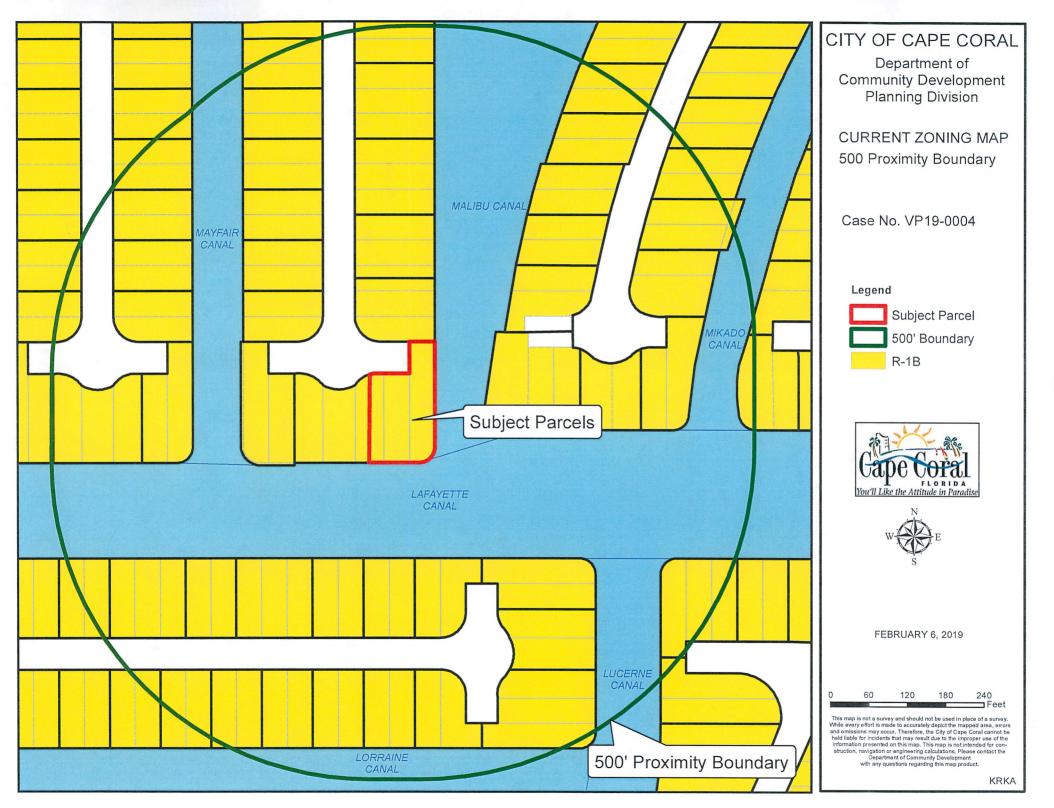
| IN RE: APPLICATION OF: Michael and Carolyn Mitch |
|--|
| APPLICATION NO: VP19-0004 |
| STATE OF FLORIDA)) § |
| COUNTY OF LEE) |
| I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following: |
| That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral. |
| That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A. |
| DATED this 12th day of march, 2019. |
| Ash. Ca |
| Vincent A. Cautero, AICP |
| STATE OF FLORIDA COUNTY OF LEE |
| The foregoing instrument was acknowledged before me this day of march, 2019, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath. |

ELISABETH A DELGADO MY COMMISSION # GG030474 EXPIRES December 06, 2020

Exp. Date 12 12 Commission # 66030474

Elisabeth A. Delgado
Print Name of Notary Public







DEPARTMENT OF COMMUNITY DEVELOPMENT VACATION OF PLAT APPLICATION

Questions: 239-574-0776

| Case | # |
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| | |

INSTRUCTIONS - APPLICATION FOR VACATION OF A PLAT, STREET, ALLEY, CANAL, RIGHT OF WAY OF EASEMENT

- 1. Application, Acknowledgement Form, Authorization to Represent.
 - a. All forms must be filled out completely.
 - b. All forms must be signed by the property owner(s) and must be notarized.
 - c. If the Authorized Representative is an attorney, the Application and the Acknowledgement form may be signed by the attorney and an Authorization to Represent Property Owner is not required.
- Letter of intent identifying your request.
- 3. Proof of title to the tract or parcel of land covered by the plat or, of the plat of which vacation is sought.
- 4. Letters of approval from the following:

| Lee County Electric Cooperative, Inc | Century Link (Telephone) | Comcast (Cable) | | |
|--|--|---|--|--|
| Russell Goodman | Justin Lane | Mark Cook | | |
| Project Coordinator-Land Acquisition | OSP Engineering | Project Coordinator | | |
| LCEC, PO Box 3455 North Ft Myers, FL 33918-3455 | 3301 Del Prado Blvd S. Cape Coral, FL | 26100 Westlinks Drive Suite 4 Fort Myers, FL 33913 | | |
| Russel.goodman@lcec.net | Justin.lane@centurylink.com | Mark_cook@comcast.com | | |
| (239) 656-2112 | (239) 984-7009 | (239) 432-1805 | | |

- 5. A sketch and legal description of the area proposed to be vacated area.
- 6. If there are any deed restrictions on the property, a copy of the restrictions will be required.
- 7. Certified topographic survey (done within the past six (6) months), and showing all pavement, utility and drainage features in said area, including but not limited to water, sewer and irrigation lines and manholes; power, cable and utility lines and poles; catch basins, inlets, pipes, and swales. In the case where no features exist, a signed, sealed and dated certification by a Florida registered Professional Engineer can be submitted which certifies that there are no such roadway, utility or drainage features within the limits of and adjacent to the proposed vacated area.
- 8. Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.
- 9. IT IS REQUIRED THAT APPLICANT AND/OR REPRESENTATIVE ATTEND HEARINGS BEFORE BOTH THE HEARING EXAMINER AND THE CITY COUNCIL.



VACATION OF PLAT APPLICATION

Questions: 239-574-0776

OWNED OF DOODERS

| Case | # | | | | |
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REQUEST TO PLANNING & ZONING COMMISION AND COUNCIL FOR A VACATION OF PLAT

FEE: \$843.00 – 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 must be paid prior to public hearing otherwise case will be pulled from public hearing.

Following the approval of your request, the applicant shall be responsible for reimbursing the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.

| OWNER OF PROPERTY | |
|--------------------------------------|---------------------------------------|
| michael + Carolyn Mitch | Address: 5362 Malike (+ |
| 1 | City: Cape Coral State: FL Zip 33904 |
| | Phone: 410-490-7263 |
| APPLICANT | 110 410 1200 |
| Michael + Cardyn Mitch | Address: 5362 Malika (4 |
| EMAIL | 78 |
| michael insley financial | City: Cape Corral State: FL Zip 33904 |
| t cmcil com | Phone: 410-490-7263 |
| AUTHORIZED REPRESENTATIVE | |
| Brian HAAG | Address: 1309 Cape Conal PKWY E. |
| EMAIL BH4610 @ amail.com | City Or a Con O |
| d | |
| 0 | Phone: 239 - 229-1199 |
| Unit part 2 Block 29 Lot(s) + E /2 | Subdivision Cape Copa O |
| Address of Property | |
| Current Zoning Romando | |
| Kesicontal | Plat Book , Page 3 @ |
| | Strap Number 18-45-24-04-0029-023 |



VACATION OF PLAT APPLICATION

Questions: 239-574-0776

| Case | # | | | | |
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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.

(SIGNATURE MUST BE NOTARIZED)

APPLICANT NAME (PLEASE TYPE OR PRINT)

APPLICANT'S SIGNATURE

APPLIC

STATE OF <u>CO</u>, COUNTY OF <u>Saquache</u>

Sworn to (or affirmed) and subscribed before me this 13 day of March Carden Insley-Mitch who is personally known or produced had

___ 20__ by

as identification.

FRANCES PERRIN

NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20174026517

MY COMMISSION EXPIRES JUNE 23, 2021

Exp. Date:

6.23.2021 Commission Number:

201740ab517

Signature of Notary Public:

Printed name of Notary Public:

France Poppin

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 Hearing Examiner, Planning & Zoning Commission/Local Planning Agency, and City 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.



VACATION OF PLAT APPLICATION

Questions: 239-574-0776

| Case | # | |
|------|---|--|
| | | |

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.

STATE OF COUNTY OF SOOU

CORPORATION/COMPANY NAME Sworn to (or affirmed) and subscribed before me this 13 day of march 2019 by

who is personally known or produced and lyn Mit

PROPERTY SWINER (PLEASE TYPE OR PRINT)

FRANCES PERRIN NOTARY PUBLIC STATE OF COLORADO

NOTARY ID 20174026517 MY COMMISSION EXPIRES JUNE 23, 2021 PROPERTY OWNER'S SIGNATURE

Exp. Date: 623.21 Commission Number:

r: <u>20174026517</u>

Signature of Notary Public:

Printed name of Notary Public: (SIGNATURE MUST BE NOTARIZED)

Francis Litereir



DEPARTMENT OF COMMUNITY DEVELOPMENT

| VACATION O | F PLAT | APPL | CATION |
|------------|---------------|------|--------|
|------------|---------------|------|--------|

Questions: 239-574-0776

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|-------|--|---|---|
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| | | | |
| | | | |

| AUTHORIZATION TO REPRESENT PROPERTY OWNER(s) |
|--|
| PLEASE BE ADVISED THAT (Name of person giving presentation) |
| IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE PLANNING & ZONING COMMISSION/ LOCAL PLANNING AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS AND/OR CITY COUNCIL FOR VOCALL OF Property between segments to the property line. |
| UNIT pret a BLOCK 29 LOT(S) 231241E SUBDIVISION Capeccial |
| OR LEGAL DESCRIPTION Cape Coral Unit 1 Part 2 BIK 29 PB11 PG 32 LOTS 23+24+5 721 T25 |
| LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA. |
| CArolyn Mitch |
| PROPERTY OWNER (Please Print) PROPERTY OWNER (Please Print) |
| PROPERTY OWNER (Signature & Title) PROPERTY OWNER (Signature & Title) |
| TATE OF |
| who is personally known or produced personall |
| FRINCES PERRIN Exp. Date: 623-2 Commission Number: 20174036817 |
| NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20174026517 Signature of Notary Public: |
| MY COMMISSION EXPIRES JUNE 23, 2021 Printed name of Notary Public: |
| |

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation paper.



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

| Case | # | |
|---|---|--|
| 100000000000000000000000000000000000000 | | |

DOCUMENTARY EVIDENCE (LUDR, Section 8.3.1.C.6.f)

A copy of all documentary evidence shall be made available to the decision-making body or the Hearing Examiner and to staff no later than two business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

I have read the above requirement and agree to comply with this provision.

| OWNER/APPLICANT (PLEASE TYPE OR PRINT) OWNER/APPLICANT SIGNATURE |
|--|
| (SIGNATURE MUST BE NOTARIZED) |
| STATE OF COUNTY OF Sagrado |
| Sworn to (or affirmed) and subscribed before me on this 13 day of March 20 19 by Caroly Mitch, who is personally known or who has produced personally known or who has personally known or who has produced personally known or who has personally known or who |
| Exp. Date 6 23-21 Commission # 20174020517 Signature of Notary Public |
| FRANCES PERRIN Print Name of Notary Public |

NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20174026517 MY COMMISSION EXPIRES JUNE 23, 2021

Planning Division City of Cape Coral

RESOLUTION 80-19 VP 19-0004

Cape Coral City Council Meeting Final Public Hearing

May 13, 2019

VP 19-0004

Owners: Michael and Carolyn Mitch

Rep: Brian Haag

Request: The applicants request to vacate:

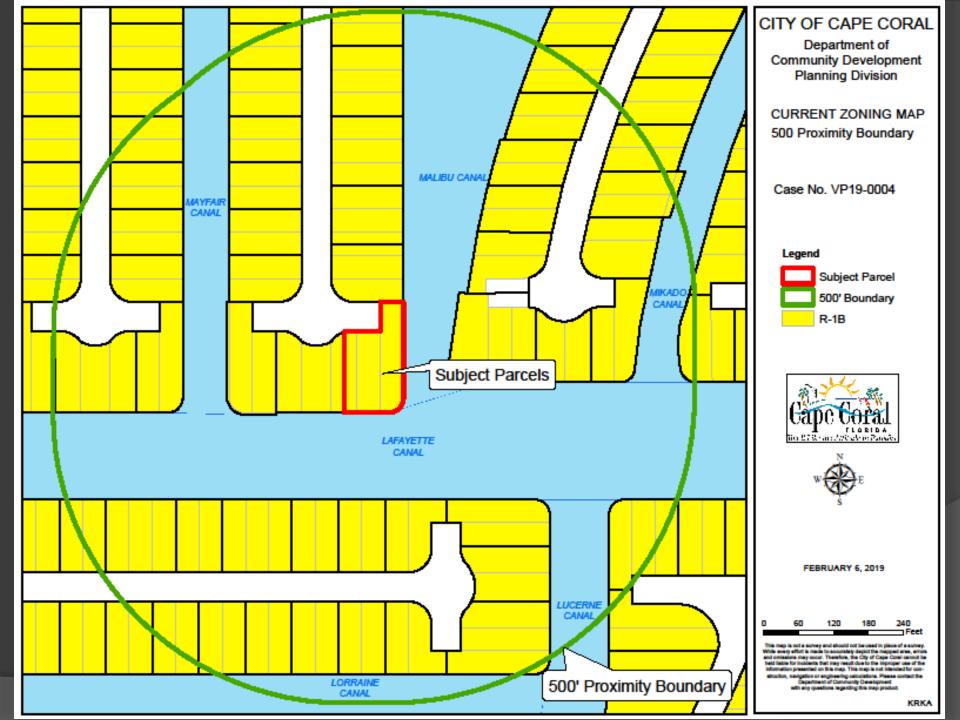
- 1. ±596.8 sq. ft. of canal ROW and all underlying easements for a portion of the Lafayette Canal and the Malibu Basin.
- 2. ±1,590.3 sq. ft. of platted easements associated with Lots 23-25, Block 29, Unit 1, Part 2.

Location: 5362 Malibu Court



VP19-0004





Background

 The site is 16,218 sq. ft. and is at the intersection of two waterways.

A house was demolished from the site in 2018.
 Construction on a new house is underway.

 The owner seeks to vacate ROW between the east and south property lines and the edge of the seawall.

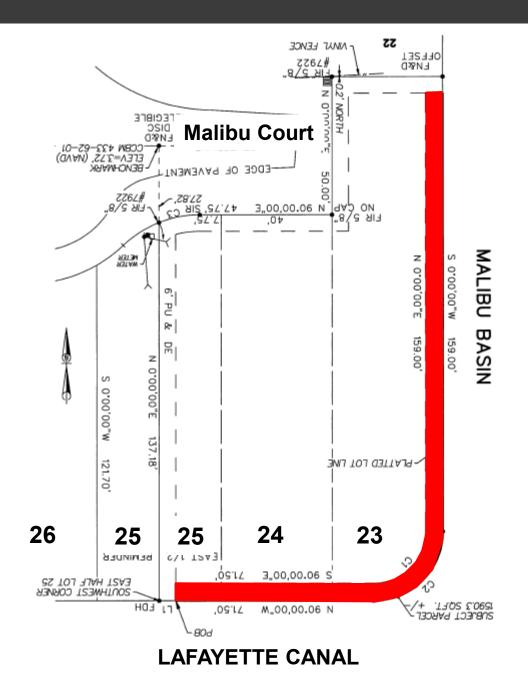
22 NIAKT EENCE T17 OFFSET ZZ62# FN&D 0"12"06"E ILLEGIBLE DISC FN&D **Malibu Court** -CCBM 422-62-01 EFEN=3:72' (NAVD) BENCHWARK FDGE OF PAVEMENT1 .12 ANCLE POINT-.8/S ≥/8, -£IB ≥/8, 27.75 SIR C NO ¢∀Ь[N 80.00,00,E FIR 5/8" CONCRETE WATER FACE OF MALIBU RETER 3,00,00,0 2 8* BASIN 문 0.00,00 M_00,00.0 ANGLE POINT אראדודם נסד נואכ 26 24 23 25 25 **BEWINDER** EV21 1/5 EAST HALF LOT 25 SOUTHWEST CORNER 3,,00,00,06 S 596.8 SQ.FT. +/-M~45,0Z.68 S FDH .61.28 LAFAYETTE CANAL

Vacate Canal ROW & Underlying Easements

Area is 596.8 sq. ft.

Analysis (LUDR, Section 8.11)

- The applicant owns the site that abuts the ROW.
- The ROW is narrow. The ROW is not needed for any foreseeable public purpose.
- The vacation will be consistent with the plat of Unit 1, Part 2.
- City and private provider utilities are absent in the underlying easements.



Vacate Existing Six Foot Wide Platted Easement

Area is 1,590.3 sq. ft.

Analysis (LUDR, Section 8.11)

- The City lacks facilities in the easements.
- Century Link, Comcast, and LCEC lack utilities in the easements.
- The owner will deed to the City new easements sufficient for providing a continuous perimeter easement.

Recommendations

<u>Planning Division</u> Staff recommends approval.

Hearing Examiner

A public hearing was held on March 19, 2019. The Hearing Examiner recommends approval with staff conditions. No speakers at public input.

Correspondence

One phone call – caller sought more information on case.

Item

A.(2)

Number: Meeting

Date:

5/13/2019

Item

ORDINANCES/RESOLUTIONS -

Type:

Public Hearings

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Ordinance 22-19 First Public Hearing (After 5:00 p.m.); Set Second and Final Public Hearing for June 3, 2019

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:

P&Z Recommendation: At their May 1, 2019 Regular Meeting, the Planning and Zoning Commission/Local Planning Agency voted unanimously to recommend approval of Ordinance 22-19.

Staff Recommendation: Staff recommends approval.

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance amending the City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .15, South Cape Downtown District (SC), by eliminating the South Cape Redevelopment Incentive Program (SCRIP). amending the maximum floor area ratio, maximum residential density, and maximum building height in the South Cape Downtown District, establishing regulations to allow certain architectural elements in City easements and rights-of-way in the South Cape Downtown District, and establishing regulations to allow outdoor dining on public rights-of-way and City-owned parking lots in the South Cape Downtown District.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 22-19 Staff Presentation

PREPARED BY:

Division- Department- City Attorney

SOURCE OF ADDITIONAL INFORMATION:

Vince Cautero, DCD Director

ATTACHMENTS:

Description

□ Ordinance 22-19

Staff Presentation

Type

Ordinance

Backup Material

ORDINANCE 22 - 19

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL LAND USE AND DEVELOPMENT REGULATIONS, ARTICLE II, DISTRICT REGULATIONS, SECTION 2.7, DISTRICT REGULATIONS, SUBSECTION .15, SOUTH CAPE DOWNTOWN DISTRICT (SC), BY ELIMINATING THE SOUTH CAPE REDEVELOPMENT INCENTIVE PROGRAM (SCRIP), AMENDING THE MAXIMUM FLOOR AREA RATIO, MAXIMUM RESIDENTIAL DENSITY, AND MAXIMUM BUILDING HEIGHT IN THE SOUTH CAPE DOWNTOWN DISTRICT, ESTABLISHING REGULATIONS TO ALLOW CERTAIN ARCHITECTURAL ELEMENTS IN CITY EASEMENTS AND RIGHTS-OF-WAY IN THE SOUTH CAPE DOWNTOWN DISTRICT, AND ESTABLISHING REGULATIONS TO ALLOW OUTDOOR DINING ON PUBLIC RIGHTS-OF-WAY AND CITY-OWNED PARKING LOTS IN THE SOUTH CAPE DOWNTOWN DISTRICT; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

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

SECTION 1. The City of Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.7, District Regulations, Subsection .15, South Cape Downtown District, is hereby amended as follows:

.15 - South Cape Downtown District (SC).

Purpose and intent. The purpose and intent of the South Cape Downtown District is to promote and enhance the traditional commercial center of Cape Coral, otherwise known as South Cape, as a viable location for development, redevelopment and economic growth and to create a destination for both residents and visitors with daytime and nighttime activities that will serve the entire city and region. The provisions contained herein provide for the development of a wide range of uses in a compact and walkable form and encourage compound and mixed-use development. It is intended that these regulations act as a stimulus to development through provisions that permit a flexible approach to infill development on various lot sizes, as well as special provisions related to particular locations within the district. Therefore, many of the provisions contained herein, including uses and dimensional regulations, are regulated by lot size, street designation, or a combination thereof. It is further intended that these provisions incentivize compound use developments of significant size and character to serve as catalyzing forces to economic development through the South Cape Redevelopment Incentive Program (SCRIP), which provides for greater floor area ratio, residential density, and building height than that permitted by right.

For the purposes of this district, when the term LOT, or phrases including the term LOT are used, such terms or phrases shall mean and include, but not be limited to, single lots, sites or parcels, as well as adjoining, combined, or amalgamated lots, sites or parcels that are being developed simultaneously.

. .

- D. Special regulations. The following are special regulations for the South Cape Downtown District:
 - 1. Maximum floor area ratio. Maximum floor area ratio (FAR) is regulated by lot frontage/lot area and shall be as provided in Table SC-2. The South Cape Redevelopment Incentive Program (SCRIP) (§ 2.7.15.D.12.) may be utilized to achieve a higher FAR as provided in Table SC-2.

The FAR calculation for a compound use building shall not be affected by floor area in those portions of a building(s) dedicated to residential uses. For the purposes of this provision, residential uses shall include dwelling units and accessory uses to dwelling units intended solely for the use of residential use occupants and guests, such as, but not limited to, lobbies, common circulation areas, fitness and recreational facilities, and other amenities.

| TABLE SC-2 | | | | |
|------------------------------|--|--|--|--|
| MAXIMUM FLOOR AREA RATIO | | | | |
| SOUTH CAPE DOWNTOWN DISTRICT | | | | |

| | , | | | |
|--|--------------------------|-----------------------------|------------------------|-----------------------------|
| | Lot Frontage/Lot Area | | | Lot Area |
| Applicable Lots | ≤75'(a) | >75' but <125' | ≥125' but <60,000 s.f. | ≥60,000 s.f. |
| | Maximum Floor Area Ratio | | | |
| All lots (b) | 0.75 | 0.75 <u>1.00</u> | 1.00 <u>2.00</u> | 2.00 <u>4.00</u> |
| Parking area sites (c) | 2.00 | 2.00 | 2.00 | 2.00 |
| Lots with participation in the SCRIP or PILOP (d) | 2.00 | 2.00 | 4.00 | 4.00 |

- (a) When satellite parking is provided in accordance with § 2.7.15.D.13.b., lots with lot frontage less than or equal to 50 feet may have a maximum floor area ratio of 2.0.
 - (b) Except for parking area sites and lots participating in the SCRIP or PILOP programs.
 - (c) Parking area sites as identified in § 2.7.15.D.13.a.
- (d) Participation in the South Cape Redevelopment Incentive Program (SCRIP) shall be pursuant to § 2.7.15.D.12. Contributions to the Payment in Lieu of Parking (PILOP) Fund shall be pursuant to § 2.7.15.D.5.
 - 2. Maximum residential density. The maximum density of residential dwelling units shall be as provided in Table SC-3. As provided in the table, the South Cape Redevelopment Incentive Program (SCRIP) (§ 2.7.15.D.12.) may be utilized to achieve a higher density.

The number of residential dwelling units within the South Cape Downtown District shall be limited to those allowed within Downtown Mixed future land use classification in the Future Land Use Element (FLUE) of the Comprehensive Plan.

The following calculation shall be used to determine the maximum number of dwelling units (DU) permitted on a given parcel, with the result rounded to the nearest whole unit:

 $\left(\frac{Parcel\ Area\ in\ Square\ Feet}{43.500}\right)$ Allowable Density = Maximum Number of DU

| TABLE SC-3 MAXIMUM RESIDENTIAL DENSITY SOUTH CAPE DOWNTOWN DISTRICT | | | | |
|---|---|--|--|--|
| Applicable Lots | Maximum Density (dwelling units per acre) | | | |
| All lots (a) | 20 <u>75</u> | | | |
| Lots with participation in the SCRIP (b) | 40 | | | |
| (a) Except for lots participating in the SCRIP programs. | | | | |
| (b) Participation in the South Cape Redevelopment Incentive Program (SCRIP) shall be pursuant to § 2.7.15.D.12. | | | | |

- 3. Minimum size of dwelling units. Every dwelling unit shall have at least the following floor area:
 - a. Efficiency: 500 square feet.
 - b. One bedroom units: 650 square feet.

- c. For each additional bedroom: 150 square feet.
- d. At least 50% of the dwelling units in any development of more than 20 dwelling units shall be 650 square feet or more in floor area.
- 4. Maximum building height. Maximum building heights are regulated by lot frontage/lot area and shall be as provided in Table SC-4. As provided in the table, the South Cape Redevelopment Incentive Program (SCRIP) (§ 2.7.15.D.12.) may be utilized to achieve a greater building height, except as specified in § 2.7.15.D.4.e. Building heights are based on a maximum height or a maximum number of stories, whichever is less. For purposes of this subsection, stories used exclusively for parking vehicles count the same as habitable stories.
 - a. For non-residential buildings or non-residential portions of compound use buildings, the floor of the first story shall not be located any higher than one foot above that required by § 6.5.B.2.
 - b. For residential buildings or residential portions of compound use buildings, the floor of dwelling units on the first story shall not be located any lower than 18 inches above the elevation of the public sidewalk or otherwise required by § 6.5.B.1.
 - c. Except for off-street parking areas, any area under the floor of the first story shall not be counted as a story, shall not be habitable, and shall be enclosed by building walls.
 - d. Unless otherwise restricted within the South Cape Downtown District, maximum building height shall not apply to the following building components: elevator and stair bulkheads; solar energy systems; shade devices associated with parking structures or recreational amenities; skylights or similar components associated with daylighting; and mechanical equipment, provided that such equipment is architecturally screened on all sides.
 - e. Buildings or portions of buildings within 200 feet of any residential zoning district shall be limited to six stories or 95 feet, whichever is less, notwithstanding participation in the South Cape Redevelopment Incentive Program (SCRIP).

| TABLE SC-4 | | | | | |
|---|---------------------------------------|--|---------------------------|----------------------|--|
| MAXIMUM BUILDING HEIGHT SOUTH CAPE DOWNTOWN DISTRICT | | | | | |
| | | Lot Frontage/Lot Area | | | |
| Applicable Lots | ≤75' | >75' but <125' | ≥125' but <60,000 s.f. | ≥60,000 s.f. | |
| | | Maximum Height (stories/feet, whichever is less) | | | |
| All lots (a) | 6/95 6/95 6/95 6/95 12/160 | | | | |
| Lots with participation in the SCRIP(b) | 6/95 | 6/95 | 12/180(e) | 12/180(c) | |
| (a) Except for lots participating in the SCRIP programs. | | | | | |
| (b) Participation in the South-Cape Redevelopment Incentive Program (SCRIP) shall be pursuant to § 2.7.15.D.12. | | | | | |

⁽ae) Buildings on lots within 200 feet of any residential zoning district are subject to the limitations of § 2.7.15.D.4.e.

- 6. Building and off-street parking area placement. Building and off-street parking area placement shall be in accordance with the following standards:
 - a. Minimum building and off-street parking area setbacks. Minimum building and off-street parking area setbacks shall be as provided in Table SC-6. For the purpose of this provision, a parking structure shall be considered a building(s); and surface parking lots and similar facilities shall be considered off-street parking areas. Minimum off-street parking area setbacks shall apply to on-site and satellite parking areas, commercial parking lots/automotive parking establishments, and similar facilities.
 - (1) Exceptions from building and off-street parking area placement provisions are permitted to protect non-exotic extant trees with diameters greater than eight inches as measured four feet up from grade. Such provisions shall only be modified to the extent necessary to protect the tree(s) as determined by a certified arborist or licensed landscape architect.
 - (2) Minimum building and off-street parking area setbacks shall not apply to commercial type trash receptacles and enclosures. Commercial type trash receptacles and enclosures shall be subject to § 2.7.15.D.11.
 - (3) The following elements are not subject to the minimum building setbacks, but shall not extend forward of a lot line, except in accordance with these regulations. Notwithstanding § 3.14 and § 3.24 of the Land Use and Development Regulations, awnings, canopies, colonnades, arcades, and balconies and may encroach into an easement or a public rightof-way if approved by the City Manager, or City Manager's designee, pursuant to the criteria provided in § 2.7.15.D.8.b.(1). If elements encroach, the city may require the property owner to enter into a formal easement agreement or right-of-way agreement in a form acceptable to the City Attorney. The property owner of the structure containing the elements encroaching into the easement or right-of-way is solely responsible for repairing any damage to encroachments in the easement or public right-of-way that result from maintenance or public infrastructure improvements.
 - (a) Architectural elements as provided in § 2.7.15.D.8.b.
 - (b) Elements lower than 42 inches in height above grade, including but limited to, retaining, landscape, and planter walls, and street furniture.
 - (c) Patios or plazas no higher than 12 inches in height above grade.
 - (d) Railings and any elements associated with ADA accessibility, regardless of height.
 - (e) Heating, air conditioning, pool, or similar equipment located in rear yards.

| TABLE SC-6 MINIMUM BUILDING AND OFF-STREET PARKING AREA SETBACKS SOUTH CAPE DOWNTOWN DISTRICT | | | |
|---|---|--|--|
| Applicable Location Minimum Building Setbacks (feet) (a) | | | |
| Front | 7 | | |
| Side 0 or 6 | | | |
| Side when abutting an alley(<u>b</u> *) 17 | | | |

| Rear | 7 |
|---|---|
| Rear when abutting an alley (<u>b</u> a) | 17 |
| Navigable waterway | 15 |
| Minimum Off-Street Parking Area Setbac | ks (feet) (<u>c</u> b) |
| Front | 7 |
| Side | 4(<u>d</u> e) |
| Side when abutting an alley(<u>b</u> 2) | 13 |
| Rear | 5 |
| Rear when abutting an alley (<u>b</u> a) | 13 |
| Navigable waterway | 10 |
| (a) See Section 2.7.15.D.6.a.(3) for exceptions | to the aforementioned setbacks. |
| (ba) Measured from abutting alley centerline. | |
| (cb) Measured from the face of curb abutting | the vehicular use area. |
| (de) Except for shared curb cuts, joint drivew lines. | vays and shared off-street parking areas across lot |

- b. Maximum building setbacks, minimum building frontages, and off-street parking area location. Maximum building setbacks, minimum building frontages, and off-street parking area locations are regulated by lot frontage/lot area and by street designations and shall be as provided in Table SC-7 and the Street Designation Map, respectively. Portions of parking structures not concealed by liner buildings shall not serve to meet the provisions for maximum building setbacks and minimum building frontages.
 - (1) On lots at the cornet of two streets or at the corner of a street and an alley, visibility triangles shall be maintained in accordance with § 3.7. In the event that requirements for visibility triangles impact the placement of a building(s) or portion of a building(s) such that the requirements for maximum building setbacks and minimum building frontages cannot be met, those portions of the building(s) impacted by the visibility triangle shall be deemed to be in compliance with and may be counted toward maximum building setback and minimum building frontage requirements.
 - (2) Exceptions from building and off-street parking area placement provisions are permitted to protect non-exotic extant trees with diameters greater than eight inches as measured four feet above grade. The building and off-street parking area placement provisions shall only be modified to the extent necessary to protect the tree(s) as determined by a certified arborist or licensed landscape architect.
 - (3) For lots abutting three or more street designations, only two street designations shall apply for maximum building setbacks, minimum building frontages, and parking locations. When determining the applicable street designations, the highest applicable street designation shall take priority. However, the frontage designations of "parkway" and "primary" shall apply and shall not be disregarded under any circumstances.

TABLE SC-7

MAXIMUM BUILDING SETBACKS, MINIMUM BUILDING FRONTAGES, AND PERMISSIBLE OFF-STREET PARKING AREA LOCATION SOUTH CAPE DOWNTOWN DISTRICT

| Street Designation (a) | A | Lot Area | | | | | |
|------------------------|---|-----------------|------------------------|--------------|--|--|--|
| Succe Designation (a) | ≤75' | >75' but <125' | ≥125' but <60,000 s.f. | ≥60,000 s.f. | | | |
| | Maximum Building Setbacks (feet) (b)(c) | | | | | | |
| Parkway | 20 | 20 | 20 | 20 | | | |
| Primary | 20 | 20 | 20 | 20 | | | |
| Secondary | Not Applicable | Not Applicable | Not Applicable | 20 | | | |
| Tertiary | Not Applicable | Not Applicable | Not Applicable | 20 | | | |
| | Minimum Building Frontage (% of lot frontage) (c) | | | | | | |
| Parkway | 60 | 40 | 60 | 60 | | | |
| Primary | 40 | 40 | 50 | 60 | | | |
| Secondary | 0 | 0 | 0 | 50 | | | |
| Tertiary | 0 | 0 | 0 | 40 | | | |
| | Permissible Off-Street Parking Area Location (d)(e) | | | | | | |
| Parkway | Rear/side(f) | Rear/side(f) | Rear/side | Rear/side | | | |
| Primary | Rear/side(f) | Rear/side(f) | Rear/side | Rear/side | | | |
| Secondary | Rear/side/front | Rear/side/front | Rear/side/front | Rear/side(g) | | | |
| Tertiary | Rear/side/front | Rear/side/front | Rear/side/front | Rear/side(g) | | | |

(a) As provided on the Street Designation Map.

- (b) Shall apply only to first story portions of building(s) meeting minimum building frontage requirements.
 - (c) Lots abutting three or more street designations shall be pursuant to § 2.7.15.D.6.b.(3).
 - (d) Not applicable to lots utilized solely for satellite parking.
- (e) For the purposes of this provision, the terms rear, side and front shall refer to the placement of off-street parking areas between the principal building(s) and the rear, side and front lot line. The terms rear and side shall not be construed to mean rear yard, side yard, or front yard as defined in § 11.1. When rear and side parking are required, no parking spaces/stalls shall be located between the principal building(s) and front lot line.
 - (f) For lots with a width of 100 feet or less, the abutting alley in its condition at the time of application must be approved by the city for vehicular access. If not approved, this requirement must be waived administratively.
 - (g) Shall not apply to lots abutting a navigable waterway.
 - 7. Vehicular ingress/egress. Vehicular ingress and egress to parking or other vehicular circulation areas shall comply with the City of Cape Coral Engineering Design Standards and the following standards;
 - a. Curb cuts along Cape Coral Parkway are prohibited unless one of the following conditions is applicable:
 - (1) The lot frontage is 150 feet or greater and 100% of the required residential parking and 50% of the non-residential is provided on-site;
 - (2) A shared curb cut between adjacent lots is provided with a combined lot frontage of 150 feet and with a signed agreement by all property owners;

- (3) No other ingress/egress can adequately serve the lot as determined by the City Manager or the City Manager's designee.
- b. Joint driveways and vehicular access between adjacent off-street parking areas across lot lines is encouraged in order to reduce the number of curb cuts along streets.
- c. Drive-thru facilities. Drive-thru service windows are prohibited on facades that face a street, except for lots abutting more than one street designation, where drive-thru windows may be on the facade that faces the lowest applicable street designation in accordance with the Street Designation Map.
- 8. Building and off-street parking area design standards. Every building and off-street parking area shall conform to the following requirements:
 - a. Building design standards. All buildings, whether residential, nonresidential or compound use, shall conform to the design standards provided in § 5.6., except as superseded by the following requirements. This provision shall not apply to parking structures, which shall conform to § 2.7.15.D.8.d.
 - (1) Public entrances. Public entrances shall be provided as follows:
 - Any building facade that faces a street (excluding alleys) shall provide a public entrance oriented toward such street. In the case of a corner lot where more than one building facade faces a street, a corner entrance may serve to meet the requirements for the two streets that intersect and create the corner. All public entrances shall have convenient pedestrian access providing a direct connection from the street to the entrance via a walkway a minimum of four feet in width and not traversing any portion of an off-street parking area. In the event the City Manager, or the City Manager's designee determines that this provision cannot be met due to site constraints, such walkway may traverse the off-street parking area but shall be clearly delineated by a change in paving material, pavement markings, or similar treatment.
 - (b) Any building facade that faces a dedicated city parking area shall provide a public entrance oriented toward such dedicated city parking area with convenient pedestrian access providing a direct connection via a walkway a minimum of four feet in width.
 - (c) It is not the intent of these provisions to require more than two public entrances to any use intended to be occupied by a single tenant. In the event that the provisions above cumulatively require more than two public entrances, then the requirements may be reduced such that two public entrances shall be required. In determining the orientation of such public entrances. Parkway street designations and dedicated city parking areas shall have priority.
 - (2) Transparency of building walls. Except for parking structures, building walls shall contain transparent windows, doors, or any combination thereof, meeting the following standards:
 - (a) For lots abutting parkway or primary street designations, transparent windows, doors, or any combination thereof, shall cover at least 50% of the first story building wall area that faces the parkway or primary street designation. Above the first story, non-residential uses, except hotels, shall provide transparent windows, doors, or any combination

- thereof, covering at least 25% of the entire building wall area; residential and hotel uses shall provide at least 15%.
- (b) For lots abutting secondary or tertiary street designations, non-residential uses, except hotels, shall provide transparent windows, doors, or any combination thereof, covering at least 25% of the entire building wall area that faces the secondary or tertiary street designations; residential and hotel uses shall provide at least 15%.
- (c) For lots abutting dedicated city parking areas or portions of alleys abutting dedicated city parking areas, non-residential uses, except hotels, shall provide transparent windows, doors, or any combination thereof, covering at least 25% of the entire building wall area that faces the dedicated city parking area; residential and hotel uses shall provide at least 15%.
- (d) Non-residential use building walls facing navigable waterways shall provide transparent windows, doors, or any combination thereof, covering at least 25% of the entire building wall area.
- (e) For lots abutting parkway, primary, or secondary street designations, all window and door glass that faces such designations, shall have a visible transmittance of at least 50% and an exterior reflectance no greater than 20%. The bottom of such windows shall be no higher than 36 inches above grade, or six inches above the floor of the lowest habitable story, whichever is higher. However, if the building is designed with floodproofing panels or barriers, the bottom of such windows shall be located no higher than six inches above the top of the floodproofing panel or barrier.
- (f) The exterior of windows and doors shall remain unshuttered at all times of the day. This provision shall not apply to the following:
 - (i) Un-walled areas such as, but not limited to, dining and seating areas associated with restaurants and bars.
 - (ii) Hurricane shutters or flood-proofing panels during the time period in which a flood watch or warning, a tropical storm watch or warning, or a hurricane watch or warning is in effect for any portion of Lee County. Such shutters or panels shall be removed within a week from the time they are put up, unless a hurricane, tropical storm, or flood has impacted the area, in which case the shutters may remain up for not more than three months from the date of the incident, except for good cause shown to the City Manager or the City Manager's designee.
- (3) Non-residential buildings with a first story consisting of more than 35,000 square feet of floor area and consisting of a single use shall meet the following requirements:
 - (a) One public entrance shall be provided for every 75 feet of overall building frontage; or
 - (b) Liner buildings meeting the following requirements shall be provided:

- (i) Liner buildings shall be provided along at least 50% of the overall building frontage.
- (ii) Liner buildings shall contain active uses with at least one public entrance provided for every 75 feet of liner building frontage. Such liner buildings shall comply with all applicable building setbacks and building frontages.
- (iii) Liner buildings shall have an interior depth of at least 15 feet.
- (iv) Liner buildings may be detached from, attached to, or integrated into the principal building.
- (4) Garage doors associated with residential uses, when facing the front of the lot, shall be set back at least 20 feet behind the building line.
- Architectural elements design standards: awnings, canopies, colonnades, arcades, b. balconies, front porches, stoops/landings, and cupolas. A first story facade facing a street or dedicated city parking area shall provide shade with awnings, canopies, colonnades, arcades, balconies, or any combination thereof, for at least 50% of its length/width, unless prohibited by § 2.7.15.D.9.b.(2). Architectural elements, or any combination of architectural elements, may occur forward of the minimum setback, as applicable, but shall not extend forward of a lot line, except as provided herein. Notwithstanding § 3.14 of the Land Use and Development Regulations, Aarchitectural elements, or any combination of architectural elements shall not encroach into an easement unless approved by the City Manager or the City Manager's designee. Notwithstanding § 3.24 of the Land Use and Development Regulations, awnings, canopies, colonnades, arcades, and balconies may extend forward of a lot line into the public right-of-way with the approval of the City Manager or the City Manager's designee. The city may require the property the property owner to enter into a formal easement agreement or formal right-of-way agreement in a form acceptable to the City Attorney. The property owner of the structure containing the architectural elements encroaching into the easement or right-of-way is solely responsible for repairing any damage to encroachments in the easement or public right-of-way that result from maintenance or public infrastructure improvements. The property owner must comply with the provisions of § 2.7.15.D.9, Utilities, below.
 - (1) The City Manager, or the City Manager's designee, shall consider the following criteria in determining whether to approve an architectural element, or any combination of architectural elements, that would encroach into the easement or right-of-way:
 - (a) The extent to which the architectural element would encroach into the easement or right-of-way;
 - (b) The effect of such encroachment on any utilities that are either currently located in the easement or right-of-way or that may be located in the easement or right-of-way in the future; and
 - (c) The effect of such placement on any abutting properties or streetscape and on the navigability of the public right-of-way.
 - (2) Awnings and canopies. Awnings and canopies extending from the first story, facing a street or dedicated city parking area, and serving to meet the 50% length/width requirement of § 2.7.15.D.8.b. shall conform to the following:

- (a) Depth shall be a five foot minimum projection from the building facade.
- (b) Height shall be an eight foot minimum clearance, including suspended signs.
- (3) Colonnades and arcades. Colonnades and arcades facing a street or dedicated city parking area shall conform to the following:
 - (a) Depth shall be a minimum of five feet from the building wall to the inside column face.
 - (b) Height shall be an eight foot minimum clearance, including suspended signs. The lowest point on arches shall not extend below seven feet.
 - (c) Openings between piers, columns, or similar supporting elements shall be at least 50% of the colonnade or arcade facade area.
 - (d) Open multi-story verandas, awnings, balconies, and enclosed habitable space shall be permitted above the colonnade or arcade.
- (4) Balconies. Balconies shall be open and un-air-conditioned. Balconies may have roofs. Roofed balconies may be enclosed with screen and may contain privacy partitions. Balconies shall not project beyond the rear building setback requirement, as applicable. Balconies shall be located no closer than six feet from the abutting side lot line. Balconies facing a street or dedicated city parking area shall have a height clearance of ten feet minimum from grade; their decorative or supporting elements that project from building walls shall have a clearance of seven feet from grade.
- (5) Front porches. Front porches shall be un-air-conditioned. may be screened, and shall conform to the following:
 - (a) Front porches facing a street or dedicated city parking area and serving to meet the minimum building frontage requirements of § 2.7.15.D.8.b. shall be a minimum of eight feet in depth.
 - (b) Open multi-story verandas, awnings, balconies, and enclosed habitable space shall be permitted above front porches.
- (6) Stoops and landings. Stoops and landings may be roofed or unroofed, and shall maintain the required minimum building setback, as applicable. However, access to a stoop, whether by stairs, ramp, or other means, may extend forward of the minimum building setback as applicable, if approved by the City Manager, or the City Manager's designee, but shall not be located less than three feet from the front lot line.
- (7) Cupolas. When provided, cupola(s) shall have a maximum of 400 square feet in horizontal dimension and shall be limited to two per building.
- c. Off-street parking area design standards. All off-street parking areas, except dedicated city parking areas, shall comply with the following standards:
 - (1) All off-street parking areas shall comply with the City of Cape Coral Engineering Design Standards.
 - (2) Where parking spaces/stalls abut landscape areas or sidewalks, the alternate stall layout provided in the City of Cape Coral Engineering Design Standards shall be utilized.
 - (3) Off-street parking areas shall not abut building walls on front and side facades. A minimum of four feet shall be provided between off-street parking areas and such building walls and

improved as a pedestrian walkway or landscaped in accordance with § 5.2.

- d. Parking structure design standards. For the purposes of this subsection, parking structures shall be deemed to include external vehicular or pedestrian ramps, elevator shafts, stairwells, and any associated mechanical equipment, chases, or rooms. The design and placement of parking structures, except for portions of parking structures located below grade, shall comply with the following standards:
 - (1) Liner buildings. When parking structures have facades facing parkway and primary street designations, as provided on the Street Designation Map, the first story facade of the parking structure facing such street designations, except for portions of facades dedicated to pedestrian and vehicular access, shall be concealed by liner buildings complying with the following standards:
 - (a) Liner buildings shall contain active uses with at least one public entrance provided for every 75 feet of liner building frontage. Such liner buildings shall comply with all applicable building setbacks and building frontages.
 - (b) Liner buildings shall have an interior depth of at least 15 feet.
 - (c) Liner buildings may be detached from, attached to, or integrated into the parking structure.
 - (2) Architectural treatment. For the purpose of this provision, architectural treatment shall mean the use of architectural or landscape elements on the parking structure facade that serve to visually screen or obscure the parking use(s) from adjacent streets or public areas. Parking structure facades, or portions thereof, without liner buildings and facing streets (except alleys), shall employ architectural treatments complying with the following standards:
 - (a) Architectural treatment includes, but is not limited to, the use of arbors and trellises; architectural screens, louvers and shading devices; cornices and pilasters; parapets; planter boxes and vegetated wall systems; fenestration and frames; structural components; material changes; and architectural elements that comply with § 2.7.15.D.8.b.
 - (b) Architectural treatment shall be provided to 70% of the facade area, including building walls and openings. This provision shall not be construed to mandate an enclosed parking garage or the mechanical ventilation of the parking structure. In the event that the Building Official determines that this provision has caused a parking structure to be classified as an enclosed parking garage, the required architectural treatment may be reduced to a point where the parking structure may be classified as an open garage.
- c. Streetscape design standards. Lots with applicable maximum building setbacks as provided in § 2.7.15.D.6.b., shall comply with the following standards:
 - (1) Front setback areas shall be improved with landscaping planters and appropriate sidewalk materials such as, but not limited to, concrete, architectural pavers, and stone. Developments are further encouraged to place sidewalk amenities such as benches, fountains, and outdoor dining tables within this area.

- (2) In the event that improvements are placed within the public utility easement, the city may require the property owner to enter into a formal easement agreement in a form acceptable to the City Attorney. The property owner is solely responsible for repairing any damage to encroachments within the aforesaid easement that result from maintenance of public infrastructure improvements.
- d. Administrative deviation. In the event a property owner is unable to comply with the requirements of this subsection, the owner may request an administrative deviation, in writing, from the City Manager, or the City Manager's designee. In determining whether to approve a request for an administrative deviation, the City Manager, or the City Manager's designee shall consider factors including, but not limited to, dimensions of the lot, site constraints such as existing development, impact on surrounding properties, or other location factors that may make compliance with this subsection impossible or impracticable. The determination to approve an administrative deviation shall be at the sole discretion of the City Manager or the City Manager's designee.

9. Utilities.

- For new buildings, all onsite utilities including, but not limited to, a. telephone, electric service, cable television, and other wires of all kinds shall be placed underground. However, appurtenances to these systems that require above ground installation including, but not limited to, utility panel boxes are exempt from this requirement if the appurtenances are not placed in front yards. When such appurtenances are located in utility easements abutting a platted alley, they shall be located at least ten and one-half feet from the centerline of the platted alley. These underground requirements also apply to those improvements to non-conforming structures that exceed the 50% thresholds as described in § 2.6.2. and 2.6.5. All utility infrastructure, including electric utility poles and power lines, shall be concealed from public view to the extent practicable and shall not be located on any yard area that abuts streets or sidewalks, to the extent practicable. All new electric primary and secondary distribution lines shall be located in utility easements abutting platted alleys and their utility poles shall be positioned so that a minimum clearance of ten and one-half feet from the centerline of any platted alley is maintained. For properties that do not have a rear platted alley, the electric distribution lines and utility poles shall be located in the rear utility easement wherever practicable.
- b. On certain blocks where overhead or underground utility lines have been placed in <u>any public right-of-way or</u> the front public utility easement beyond the edge of the street right-of-way (where improvements might otherwise be placed in accordance with these regulations) a property owner may choose one of the following options for the permitted construction in <u>any public right-of-way or</u> the front public utility easement:
 - (1) Relocate the utility lines to the alley or other acceptable location, at the property owner's sole expense and subject to approval by the affected utility provider(s) and the City of Cape Coral; or
 - (2) Place a concrete sidewalk, or architectural elements, on the front public utility easement. If overhead electric lines are in place, no awnings, canopies, balconies, colonnades, arcades, or front porches may be constructed in this area. If underground utilities of any type are in place, the property owner is solely responsible for repairing any damage to lawful encroachments into the front public utility easement resulting from maintenance or improvements to utility lines.

12. Outdoor dining on public rights-of-way and City-owned parking lots.

a. Generally. Outdoor dining on public rights-of-way and City-owned parking lots may be permitted subject to the approval of an outdoor dining permit.

b. Application. An application for an outdoor dining permit shall be submitted, on a form furnished by the City, to the Director of the Department of Community Development, or the Director's designee. In the application, the applicant shall provide information to show compliance with the requirements of this Section. The Director of the Department of Community Development, or the Director's designee, may require the applicant to supplement the information initially provided, if such additional information is deemed necessary to determine whether the requirements of Section 2.7.15.D.12. are met. City Council may establish a reasonable fee to cover the cost of the permit application and annual renewals by resolution. Applications for an outdoor dining permit shall, at a minimum, contain the following information:

- (1) The name, location, and mailing address of the food service establishment.
- (2) The name, mailing address, and telephone contact information for the permit applicant.
- (3) A diagram and description of the outdoor area to be designated as available for outdoor dining, including dimensions of the designated area. The diagram shall be accurate and drawn to scale but need not be prepared by a licensed design professional.
- c. Approval. The Director of the Department of Community Development, or the Director's designee, may approve an application for an outdoor dining permit upon the determination that the subject application complies with the requirements of Section 2.7.15.D.12. The City may impose reasonable conditions on the requested permit in order to protect the health, safety, and welfare of the community.
- d. Denial. An application which fails to comply with the requirements of Section 2.7.15.D.12. shall be denied. If the Director of the Department of Community Development, or the Director's designee, denies the application, the applicant shall have 30 days from the date of the notice of denial to appeal the decision to the City Council pursuant to the appeal procedure in Section 8.9, Appeals.
- e. Standards. In order to protect the health, safety and general welfare of the public, each approved establishment shall abide by the following requirements:
 - (1) Stanchions, planters, or other features approved by the City may be used to delineate outdoor dining areas.
 - (2) The number of outdoor seats and tables shall be limited to that number that can be reasonably accommodated according to the available widths of the associated storefront and sidewalk or patio area. Only the area(s) abutting the associated storefront may be used for outdoor dining. No fixtures or furniture may be attached to the right-of-way or public property.
 - (3) Clear pedestrian access shall be maintained at all times, and no seating or tables shall interfere with ingress and egress to buildings or create an unsafe situation with street traffic.

 Public sidewalks shall be free of obstructions that prevent safe

- passage of pedestrians. All ADA-requirements must be adhered to.
- (4) In City-owned parking lots, outdoor dining may not restrict traffic and cannot be placed in travel lanes or parking spaces.
- (5) The permit holder for the outdoor dining area shall remove any seating or tables when necessary for special events, inclement weather, or when an authorized agent of the City makes such a request.
- (6) The permit holder shall properly maintain public sidewalks adjacent to any approved outdoor dining area for safety and cleanliness on a daily basis. Litter, dirt, grime, grease, and food shall not be permitted to accumulate at any time. The sidewalk must be cleaned by pressure washing no less than every 30 days or when an authorized agent of the City makes such a request. The Public Works Department must approve the method and equipment used for pressure washing.
- (7) Portable lighting may be used in the outdoor dining area.

 Extension cords may not be run from any nearby buildings.

 The use of generators is prohibited. City light poles may not be used for electrical connections. Portable heaters may be used if approved by the Fire Department.
- (8) The permit holder shall sign an indemnity agreement provided by the City and shall provide proof of public liability insurance as approved by the City Attorney.
- (9) The use of furniture with glass components is prohibited. The use of plastic or PVC furniture, wooden picnic tables, or couches and chairs designed and constructed by the manufacturer for outdoor use is prohibited. All furniture and fixtures to be used shall be specified in the outdoor dining permit and approved by the City.
- f. Revocation. The City Manager, or the City Manager's designee, may revoke an outdoor dining permit if, after notice and reasonable time in which the grounds may be corrected, the applicant fails to comply with any of the standards of Section 2.7.15.D.12., any condition of approval, or any approved diagrams or plans. If the City Manager revokes an outdoor dining permit, the permit holder shall have 30 days from the date of the notice of revocation to appeal the decision to the City Council pursuant to the appeal procedure in Section 8.9, Appeals.

South Cape Redevelopment Incentive Program (SCRIP). Development incentives are opportunities offered to property owners and applicants as a means to meet specific development goals while increasing the quality of development and providing benefits to the community at large. Such incentives shall not be considered an inherent right, but a potential opportunity if certain requirements are met. Lot and area-wide constraints, overall residential density limitations of the Downtown Mixed Future Land Use Classification, public facility capacity limitations, regulatory controls, as well as other factors may limit the achievement and availability of densities, intensities, and heights offered under this program on any particular lot.

a. In addition to the baseline allowances as permitted in § 2.7.15.D.1., 2., and 4., respectively, increases in floor area ratio, residential density, building height, or any combination thereof, may be available through participation in the South Cape Redevelopment Incentive Program (SCRIP).

- . Categories of SCRIP improvement and amenity requirements. A variety of improvements and amenities in several different categories are eligible for consideration in the SCRIP. Although some improvements and amenities may fall within more than one category, such improvements and amenities shall be considered as within only one category for purposes of satisfying this requirement, unless otherwise specified. Improvements or amenities required by any other applicable regulation are not eligible to satisfy this requirement. Improvements, amenities, or any combination thereof, shall be provided as specified in § 2.7.15.D.12.b.(1) and § 2.7.15.D.12.b.(2):
 - (1) A participant in the SCRIP shall provide improvements, amenities, or any combination thereof, from at least one of the following three categories: connectivity and orientation, uses, and public parking, in order to be eligible for increased floor area ratio, residential density, building height, or any combination thereof.
 - (a) Connectivity and orientation. The physical layout, orientation, and design of a proposed development greatly affects on site activities, connectivity to off-site uses and activities, and overall downtown character. Therefore, the placement and orientation of uses, off-street parking areas, and pedestrian circulation areas shall be oriented to maximize on site activities and enhance the connection and access to off-site uses and activities, public open spaces, and adjacent streets. For consideration in this category, developments shall provide three of the following six requirements:
 - (i) Off street parking area location. A development on lots abutting secondary or tertiary street designations as provided in the Street Designation Map, shall place off-street parking areas in the side or rear of the lot in accordance with § 2.7.15.D.6.b. For lots which abut three or more street designations, off-street parking areas may be located between the principal building and the front lot line, provided that such off-street parking area locations abut the lowest applicable street designation in accordance with the Street Designation Map.
 - (ii) Vehicular ingress/egress. Access to off-street parking areas shall be provided only via the abutting alley. Should the abutting alley not be adequate to provide suitable vehicular access, alleys or portions of alleys shall be improved pursuant to § 2.7.15.D.12.b.(2)(c)(i) to allow for such access.
 - (iii) Joint driveways. In order to reduce the number of curb cuts along streets, the development shall provide a joint driveway or vehicular access between adjacent off street parking areas across lot lines, or any combination thereof. A signed agreement by all affected properly owners shall be provided.
 - (iv) Pedestrian walkways. Developments shall provide pedestrian walkways providing a direct connection from the primary building entrance to abutting side lots. Pedestrian walkways shall extend to the lot line and, if practicable, shall connect to existing similar walkways on abutting side lots. Such walkways shall be at least four feet in width and shall not be

- permitted to traverse any portion of any offstreet parking area.
- (v) Additional building frontage. Developments shall exceed the minimum building frontage requirement as provided in § 2.7.15.D.6.b. by an additional 10%. For example, if the required building frontage according to § 2.7.15.D.6.b. is 40%, then the development shall provide at least 50% building frontage.
- Connection to public open spaces and parks. Developments on lots abutting existing public open spaces or parks or that provide public open spaces pursuant to § 2.7.15.D.12.b.(2)(a) shall provide first story active uses that face such open spaces in a manner that enhances views and pedestrian connections to the public open space or park. Pedestrian-walkways shall be provided both between the active use and the public open space or park (which may count-towards meeting the requirements of § 2.7.15.D.12.b.(1)(a)(iv) above) and between the active use and the nearest street abutting the lot on which the active use is located. Building facades of such active uses shall provide at least one entrance and transparency-complying with § 2.7.15.D.8.a.(2).
- (b) Uses. The development shall-incorporate uses that support a thriving urban center and would be beneficial to the vitality of the South-Cape Downtown District.

 The development shall provide at least one of the following uses:
 - Class A office. Developments shall provide 70,000 square feet (total net floor area) of Class A office space. In order to be counted towards the minimum area requirement, no single story on which such Class A office space is located shall-measure-less than 15,000 square feet (net floor area). For the purposes of this requirement, NET FLOOR AREA shall mean the area of a story of a single building, excluding areas associated with stairwells and elevator-shafts, equipment rooms, and interior vehicular parking or loading. TOTAL NET FLOOR AREA shall mean the total of all-net floor areas of a building or buildings within a development. Further, such Class A office space shall be serviced by no fewer than two passenger elevators, not including freight elevators. For the purposes of this requirement, Class A office shall be deemed to be office space(s) that can be characterized as having excellent location and access; high quality-building materials and amenities. High quality and significant convenient amenities such as, but not limited to, banks, lobbies on the second floor or above, covered parking, restaurants, coffee shops, and health clubs typically differentiate this office type from Class B and C office types.
 - (ii) Full service hotel. Developments shall incorporate a full service hotel with at least 200

rooms with an average floor area of at least 350 square feet per room and a standard restaurant of at least 5,000 square feet. Such standard restaurant area shall be dedicated solely to the restaurant use and shall include full kitchen facilities and food preparation areas.

- (iii) Waterfront restaurants. Developments on lots abutting a navigable waterway shall incorporate a standard restaurant of at least 3,500 square feet, of which no more than 30% may be dedicated to bar or cocktail lounge uses. Such restaurant shall be adjacent to the navigable waterway and shall provide views and pedestrian access to and from the waterfront.
- (iv) Motion picture theaters. Developments shall incorporate a first-run motion picture theater that runs primarily mainstream film from the major film companies and distributors, during the initial release period.
- Public parking. To improve the vitality of the South Cape Downtown District, promote a pedestrian friendly environment and encourage entertainment uses and special events, developments shall make at least 50% of the total non-residential off-street parking requirement available for public parking, whether or not fees are charged for parking. Such parking spaces shall be available between the hours of 6:00 p.m. and 3:00 a.m. on weekdays and 8:00 a.m. to 3:00 a.m. on weekends and shall be clearly marked and reserved as such. Public parking availability and applicable rates shall be publicly posted at the entrance of the off-street parking area. If fees are charged for parking, rates shall be generally consistent with pay-to-park rates charged by other private publically accessible off-street parking areas, lots and garages in the Cape Coral-Fort Myers, Florida Metropolitan Statistical Area at similar times of day and for special events. The design of off-street parking areas and parking structures shall comply with § 2.7.15.D.8.c. and § 2.7.15.D.8.d., respectively.
- (2) In addition to the requirements listed above, a participant in the SCRIP shall provide improvements, amenities, or any combination thereof, from at least three of the eight following categories in order to be eligible for increased floor area ratio, residential density, building height, or any combination thereof pursuant to § 2.7.15.D.1, .2, and .4.
 - Public open space. The development shall improve at least 5% of the total lot area as on-site public open space. For the purposes of this subsection, PUBLIC OPEN SPACE shall be outdoor area open to the sky; shall be located at grade; shall abut a street (excluding alleys) on at least one side; and shall provide pedestrian access from the sidewalk for the general public. This requirement may be satisfied by providing more than one public open space; however, all such public open spaces shall have an area of at least 900 square feet and an average depth of at least 15 feet. Minimum public open space areas may incorporate portions of setback areas but shall not be solely comprised of setback areas pursuant to § 2.7.15.D.6.a. For lots abutting more than one street designation, public open spaces shall abut the highest-applicable street designation in accordance

with the Street Designation Map, except for good cause shown. Public open spaces shall be improved to include landscape, hardscape, or any combination thereof in accordance with § 5.2. Where possible, public open spaces should connect to existing public parks, recreational areas, and navigable waterways and contribute to the achievement of target areas and facilities identified in the city's Master Park Plan within the South Cape Downtown District.

- Community facilities. The development shall provide at least one community facility that supports a thriving urban center and is beneficial to the vitality of the South Cape Downtown District, as determined by the City Manager or the City Manager's designee. Community facilities that would be eligible for consideration in this category may be public, private, or a combination of public and private in nature; and may include, but shall not be limited to: government and public facilities; schools: non-profit, private, public or parochial; hurricane shelters; civic centers; performing arts centers; museums; libraries; opera and drama houses; and theaters. Community facilities serving to meet this requirement may be located offsite provided that such facilities are located within the South Cape Downtown District. Further, such off-site community facilities must receive a certificate of occupancy prior to the issuance of the certificate of occupancy for the development for which the increase in floor area ratio, residential density, building height, or any combination thereof, is being requested.
- (c) Right-of-way improvements. The development shall provide right-of-way improvements that exceed in quality, quantity, or any combination thereof, those required under the city's Land Use and Development Regulations, Engineering Design Standards, or any other applicable regulations. Developments shall provide three of the following five right of-way improvements for consideration in this category:
 - (i) Alley improvements. Developments on lots abutting alleys shall improve at least the abutting portions of alleys in accordance with the city's design standards. Developments which vacate an alley or abutting portions of an alley shall be deemed to meet this provision.
 - (ii) On-street parking improvements. When permitted by the City Manager, or the City Manager's designee, developments shall improve existing on-street parking that is located within the lot's projected frontage in accordance with the city's design standards; or when on-street parking is not present, developments shall provide on-street parking for the portion of the lot's projected frontage in accordance with the city's design standards.
 - (iii) Underground utilities. When-determined by the City Manager, or the City Manager's designee, to be both beneficial to the city and practicable, developments shall place utilities located within the right-of-way underground to enhance the aesthetic value of the community and so as to provide additional protection-of

the utilities from the effects of the elements, including but not limited to, hurricanes, fires, etc.

- (iv) Streetscape improvements. Developments shall provide the following streetscape improvements within rights-of-way abutting the lot frontage, excluding alleys:
 - (aa) Canopy trees shall be provided at a maximum of 30 feet on center. In the event that the provision of canopy trees is impracticable, palm trees shall be provided at a maximum of 20 feet on center.
 - (bb) Benches shall be provided at a maximum of 60 feet on center.
 - (cc) At least one decorative trash receptacle to be maintained by the owner shall be provided.

The city has the ability to require certain types of landscape and tree species, and designate where they must be planted. The city can also require certain materials and styles, as well as type of installation and location, of benches, trash receptacles, and other street furniture offered by the developer. To qualify under this category, the City Manager, or the City Manager's designee must determine that the city has a need for the streetscape improvement and that the streetscape improvement would benefit the city.

- (v) Public amenities. To improve the quality of the public realm, developments shall provide public amenities including, but not limited to, public art, sculptures, shade structures, fountains, streetscape improvements for non-abutting portions of rights of way and otherwise meeting the provisions of § 2.7.15.D.12.b.(2)(c)(iv), or a combination thereof with a value equal to at least 1% of the total estimated construction costs for the development. To qualify under this category, the City Manager, or the City Manager's designee must determine that the City has a need for the amenity and that the amenity would benefit the city.
- (d) Enhanced waterfront access and use. Developments on lots abutting navigable waterways shall provide the following:
 - (i) Developments shall improve the navigable waterway setback areas required by § 2.7.15.D.6.a. to provide new or enhanced public access to, and for the use of, waterfront resources such as: the provision of land, facilities, or any combination thereof, that expand existing public parks and facilities; the provision of waterfront boardwalks, esplanades, pathways, or any combination thereof; the provision of sitting areas and other passive-related improvements; the provision of piers or docks; or any combination thereof; and

- (ii) Developments shall provide outdoor, public access providing a direct connection from the abutting street to the waterway. Such walkway shall be at least eight feet in width and shall not be permitted to traverse any portion of any off street parking area. Pathways should be designed to enhance the visual connection to the water from the street.
- (c) Land assemblage. The development shall require an assemblage of not less than 60,000 square feet of land. In order to be considered an assemblage of land within this category, the minimum land area must have been attained after December 1, 2005, as the result of an amalgamation of smaller lots. For purposes of this requirement, lots shall be considered to have been "assembled" even if they are separated by an alley, so long as they are to be incorporated into a single development project and would be adjacent to each other if not separated by an alley. Areas of rights-of-way-that are vacated in accordance with § 2.7.15.B. shall count towards the minimum area requirement.
- Non-residential use percentage. The development shall provide non-residential uses in at least 15% of the total net-floor area of the development, 50% of which shall be-located on the first story and be comprised of restaurants, retail uses, or any combination thereof. For the purposes of this requirement, net floor area shall be deemed to be the total of all floor areas of a building or buildings within a development, excluding areas associated with stairwells and elevator shafts, equipment rooms, and interior vehicular parking or loading. Non-residential amenities associated with Class A office uses, as required in § 2.7.15.D.12.b.(1)(b)(i) may count towards this requirement. Non-residential uses shall be located on the-highest applicable abutting street designation in accordance with the Street Designation Map.
- (g) Sustainability. The development shall incorporate four of the following six green building features:
 - (i) Bicycles racks. To reduce pollution and land development impacts from automobile use and to encourage bicycle use, non-residential and compound use developments shall provide secure bicycle racks, storage, or both, at a ratio of one-rack per every 20-required parking spaces. Such racks or storage shall be provided within the building or within 200 feet of the building entrance.
 - (ii) Fuel efficient vehicles. To reduce pollution and land development impacts from automobile use, developments shall provide preferred parking for low-emitting and fuel-efficient vehicles for at least 5% of the total off street parking requirement or ten parking spaces, whichever is less. For the purposes of this requirement, "preferred parking" refers to the parking spaces that are closest to the main entrance of the project (exclusive of spaces designated for handicapped persons) and includes the provision of special signage which indicates that the use of the preferred parking

is limited to low-emitting and fuel efficient vehicles. For the purposes of this requirement, LOW-EMITTING AND FUEL EFFICIENT VEHICLES are defined as vehicles that are either classified as Zero Emission Vehicles (ZEV) by the California Air Resources Board or have achieved a minimum green score of 40 on the American Council for an Energy Efficient Economy (ACEEE) annual vehicle rating guide, as amended from time to time.

- (iii) Daylighting. To reduce energy consumption and to provide building occupants with a connection between indoor spaces and the outdoors, daylighting shall be provided in accordance with the LEED NC Reference Guide in effect at the time of permit submittal. Developments shall provide area calculations that define the daylight zone and provide prediction calculations or daylight simulations.
- (iv) Storage and collection of recyclables. To facilitate the reduction of waste generated by building occupants that is hauled to and disposed of in landfills, developments shall provide an easily-accessible dedicated area or areas for the collection and storage of recyclable materials for the entire building, and recycling of those materials. Materials must include, at a minimum, paper, corrugated cardboard, glass, plastics and metals.
- (v) Heat island effect, roof. To aid in the reduction of the urban heat index and to improve rooftop views—from—neighboring—buildings, developments shall install a vegetated roof that covers at least 25% of the total roof area of the development.
- (vi) Landscaping. To aid in the reduction of the urban heat index, improve stormwater runoff, and to improve the overall quality and character of open spaces in the South Cape Downtown District, developments shall provide at least an additional 25% of the quantity of trees otherwise required in the Land Use Development Regulations.
- (h) Affordable housing. The development shall provide affordable housing opportunities either on site or off-site. The minimum number of affordable housing units that shall be provided by a development pursuant to this subsection shall be at least 5% of the total number of units in the development.
 - (i) Off-site affordable housing units. Affordable housing units serving to meet this requirement may be located off-site provided that such affordable housing units are located within the jurisdictional boundary of the Cape Coral Community Redevelopment Agency (CRA). Further, such off-site affordable housing units must receive a certificate of occupancy prior to the issuance of the certificate of occupancy for the development for which the increase in floor-area ratio, residential density, building

height, or any combination thereof, is being requested.

- criteria for affordable housing. The affordable housing development incentive shall be available to a development only when an affordable housing incentive development agreement has been entered into by the applicant and the City of Cape Coral and such agreement has been approved by the City Attorney and the City of Cape Coral prior to execution. Amendments to such agreement shall be executed in the same manner as the original agreement. The affordable housing incentive development agreement shall include, at a minimum, the following provisions:
 - (aa) Legal description of the land subject to the agreement and the names of its legal and equitable owners;
 - (bb) Total number of residential dwelling units in the development;
 - (cc) Minimum number of affordable housing units, categorized by level of household income, type of unit (condominium or rental), and number of bedrooms, required in the development;
 - (dd) Total number of affordable housing dwelling units permitted in the development;
 - (ee) Gross residential density of the development;
 - (ff) Amount of monthly rent for rental units, or the price and conditions under which a condominium unit will be sold, for each affordable housing unit;
 - (gg) The price of affordable housing units offered for rent or sale shall be based on the number of bedrooms in the unit and shall not exceed low income limits established annually by the United States Department of Housing and Urban Development for the Metropolitan Statistical Area which includes the Cape Coral downtown CRA;
 - (hh) No affordable housing unit in the development shall be rented or sold to a tenant whose household income has not been verified as low income family. Such verification shall be the responsibility of the owner and shall be submitted to the City Manager, or the City Manager's designee, for approval. Tenant income verification and certification shall be repeated annually to assure continued eligibility;
 - (ii) No affordable housing unit that is to be sold, leased with option to purchase, or otherwise conveyed by the

development shall be sold, leased with option to purchase, or otherwise conveyed to a buyer whose household income has not been verified and certified in accordance with this subsection as low-income family. Such verification and certification shall be the responsibility of the applicant and shall be submitted to the City Manager, or the City Manager's designee, for approval. It is the intent of this subsection to-keep-housing affordable; therefore, any person who buys an affordable housing unit must agree, in a lien instrument to be recorded with the Clerk of the Circuit Court of Lee County, Florida, that if he or she sells the property (including the land, the unit, or any combination thereof) within 15 years after his or her original purchase at a sales price-in-excess-of 5% per year of his original-purchase price that he or she will pay to the City of Cape Coral an amount equal to the sales price in excess of 5% increase per year. The lien instrument may be subordinated to a qualifying first mortgage at the option of the city. For example, a person originally buys a designated affordable housing unit for \$100,000 and sells it after five years for \$150,000. A 5% increase per year for five years will give a value of \$127,628. Deducting this amount from the sales price of \$150,000 gives a difference of \$22,372. The seller would then owe the City of Cape Coral \$22,372. Payment of this amount would release the first owner-from the recorded lien against the property. Such payment shall be maintained in a segregated fund, established by the city solely for affordable housing purposes, and such money shall be used solely to encourage, provide for, or promote affordable-housing in the City of Cape Coral:

- (jj) No affordable housing unit for which credit is awarded shall be occupied by the applicant, any person related to or affiliated with the applicant, or a resident manager;
- (kk) The applicant shall advertise, rent, sell, and maintain the affordable housing unit in a nondiscriminatory manner and make available all relevant information to any person who is interested in renting or purchasing such affordable housing unit. The applicant shall agree to be responsible for payment of any real estate commissions and fees. The affordable housing units in the development shall

- be identified on all building plans submitted to the city and described in the application for affordable housing development incentive;
- (ll) Except as required in this subsection, the applicant shall not disclose to persons, other than the potential tenant, buyer or lender of the particular affordable housing unit or units, which units in the development are designated as affordable housing units;
- (mm) The square footage, eonstruction and design of the affordable housing units shall be the same as market rate dwelling units in the development;
- The affordable housing units shall be integrated with, and not segregated from, the market rate dwelling units in the development. The conditions contained in the affordable housing incentive development agreement shall constitute covenants, restrictions, and conditions which shall run with the land and shall be binding upon the property and every person having any interest therein at anytime and from time to time. The affordable housing incentive development agreement-shall be recorded in the official records of Lee County, Florida, subsequent to the recording of the deed pursuant to which the applicant acquired fee simple title to the property;
- In the case where a development will occur in more than one phase, the percentage of affordable housing units to-which the applicant has committed for the total development shall-be maintained in each phase and shall be constructed as part of each phase of the development on the property. For example, if the total development's affordable housing development incentive is based on the provision of 10%-of the total dwelling units as affordable housing rental units for low income households with bedrooms per unit, then each phase shall maintain that same percentage (10% in this case) cumulatively.
- (pp) Each affordable housing unit shall be restricted to remain and be maintained as an affordable housing unit designated in accordance with the affordable housing incentive development agreement for at least 15 years from the issuance of a certificate of occupancy for such unit; and
- (qq) The applicant and owner of the development shall provide on-site

management to assure appropriate security, maintenance and appearance of the development and the dwelling units where these issues are a factor.

- (iii) A certificate of occupancy shall not be issued to any affordable unit until all affordable housing requirements applicable to that unit are satisfied. If, after the issuance of the first certificate of occupancy, the city determines any requirement in this subsection has not been met, then the city may revoke the certificate of occupancy and would subject the applicant or owner to any penalty imposed by law.
- c. Applications for development incentives. To apply for an increase in floor area ratio, residential density, building height, or any combination thereof, through the SCRIP, a property owner shall submit an application to the City's Department of Community Development. The application shall be accompanied by a fee that will be set by the City Council and that shall be an amount that is adequate and reasonable for the administrative expenses incurred by the city in the review of the application. The application shall contain the following information:
 - (1) The application shall be on a form supplied by the Department of Community Development and shall be accompanied by all applicable supporting information and attachments including, but not limited to, all applicable site plan, planned development project documents, schematic architectural drawings, floor plans, elevations and perspectives, public benefits assessment(s), or any combination thereof, related to the proposed development.
 - (2) The documentation must clearly indicate baseline floor area ratios, residential density, building height, and the proposed increase of those items.
 - (3) Proof of ownership of the land for the development together with proof of ownership or other control of any property for which off-site improvements within the Cape Coral Community Redevelopment Area are sought for consideration under the SCRIP.
- d. Requests for increased floor area-ratio, residential density, building height, or any combination thereof, shall only be considered with respect to a specific proposed development. If granted by the city, an increase in floor area ratio, residential density, building height, or any combination thereof, shall be applied only to the development with respect to which such increase(s) were sought. Excess floor area ratio, residential density, height, or any combination thereof, awarded under the SCRIP are not transferable.
- e. Except as otherwise provided herein, all improvements and amenities used as the basis of approval for increased floor area ratio, residential density, building height, or any combination thereof, shall remain in place throughout the life of the development, unless such basis of approval is reseinded or amended by the city or the city determines that good cause has been shown by the applicant. Except as otherwise provided herein, the owner of the property which has benefitted from the SCRIP shall be responsible for maintaining any such improvements or amenities in good condition and in accordance with any conditions of approval throughout the life of the development. Such maintenance responsibility of said owner shall not apply for improvements or amenities which are donated or dedicated to the city or for which the city has approved alternative responsibility provisions. Failure to comply with this requirement shall constitute a violation of

the City of Cape Coral's Code of Ordinances, and would subject the aforementioned party to any penalty imposed by law.

Standards for approval of an increase in floor area ratio, residential density, building height, or any combination thereof pursuant to the SCRIP. For any development project applying for an increase in floor area ratio, residential density, building height, or any combination thereof, the development incentive proposals and the issuance of any increased floor area ratio, residential density, building height, or any combination thereof, shall be determined by the City Manager, or the City Manager's designee. A request pursuant to the SCRIP shall be submitted to the Department of Community Development, reviewed by all applicable department(s), and the Community Redevelopment Agency. In the event the City Manager, or the City Manager's designee approves the request pursuant to the SCRIP for a project that is proposed to be a planned development project (PDP), such approval shall be made prior to consideration of the PDP, and shall be contingent on the approval of a PDP for the subject development by either the City Council or the Hearing Examiner.

g. The City Manager or the City Manager's designee shall prepare and submit to the City Council an annual report identifying and describing all projects and public benefits achieved through the SCRIP.

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.

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|--|-------------------------|--|---------------------|
| | | JOE COVIELLO | , MAYOR |
| VOTE OF MAYO | OR AND COUNCILMEN | MBERS: | |
| COVIELLO GUNTER CARIOSCIA STOUT | | NELSON STOKES WILLIAMS COSDEN | |
| ATTESTED TO 2019. | And filed in my c | OFFICE THIS DA | AY OF, |
| | | KIMRERIVERI | INIC |

APPROVED AS TO FORM:

BRIAN R. BARTOS

ASSISTANT CITY ATTORNEY ord\South Cape Downtown District Amendments

INTERIM CITY CLERK

City of Cape Coral City Council ORDINANCE 22-19

Purpose

- A City-initiated change to Section 2.7.15, Land Use and Development Regulations
- Changes include elimination of the SCRIP, amending the maximum floor area ration to 4.0, increasing the maximum density to 75 units/acre, and increasing the maximum height to 160 feet
- Additional regulations include permitting architectural improvements into public easements and rights-of-way, and providing guidance for outdoor dining

Item

A.(3)

Number: Meeting

Date:

5/13/2019

Item

ORDINANCES/RESOLUTIONS -

Type:

Public Hearings

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Ordinance 23-19 Public Hearing for Transmittal

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:

P&Z Recommendation: At their May 1, 2019 Regular Meeting, the Planning and Zoning Commission/Local Planning Agency voted unanimously to recommend approval of Ordinance 23-19.

Staff Recommendation: Staff recommends approval.

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending Policy 1.15 of the Future Land Use Element. This amendment removes language doubling the allowable density for multi-family residential developments with a significant affordable housing component, provides additional flexibility for development in the Downtown Mixed and Pine Island Road District Future Land Use Classifications, and decreases the maximum density within Neighborhood Commercial Development Parameters for the Commercial Activity Center Future Land Use Classification.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Revised Ordinance 23-19 Revised Staff Presentation Case Report

PREPARED BY:

Division- Department- City Attorney

SOURCE OF ADDITIONAL INFORMATION:

Vince Cautero, DCD Director

ATTACHMENTS:

| | Description | Type |
|---|----------------------------|-----------------|
| D | Revised Ordinance 23-19 | Backup Material |
| D | Revised Staff Presentation | Backup Material |
| D | Case Report | Backup Material |

ORDINANCE 23 - 19

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING POLICY 1.15 OF THE FUTURE LAND USE ELEMENT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

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

The amendment to Policy 1.15 of the Future Land Use Element removes language doubling the allowable density for multi-family residential developments with a significant affordable housing component, provides additional flexibility for development in the Downtown Mixed Future Land Use Classification, and removes increased density within the Neighborhood Commercial zoning district. The amendment to the Future Land Use Element is described in Exhibit A, attached hereto and incorporated herein by reference.

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

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

| ADOPTED BY THE COUNCIL O SESSION THIS DAY OF | F THE CITY OF CAPE CORAL AT ITS REGULAR, 2019. |
|--|--|
| | |
| | JOE COVIELLO, MAYOR |
| VOTE OF MAYOR AND COUNCIL | MEMBERS: |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN |
| ATTESTED TO AND FILED IN M 2019. | IY OFFICE THIS DAY OF, |
| | KIMBERLY BRUNS INTERIM CITY CLERK |

APPROVED AS TO FORM:

BRIAN R. BARTOS

ASSISTANT CITY ATTORNEY

Comp Plan Amendment-Future Land Use Element-Bimini Density

5/1/19

FUTURE LAND USE ELEMENT

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

OBJECTIVE 1: Managing Future Growth and Development: The City of Cape Coral will manage future growth and land development by adopting, implementing, and enforcing new regulatory vehicles. All land development regulations called for in this Plan shall be adopted and implemented in accordance with the provisions of S. 163.3202, Florida Statutes. The short-term planning timeframe shall be established as up to the year 2025, while the long-term planning horizon shall be the year 2035.

<u>Policy 1.1:</u> The City will consider the impacts of climate change and sea level rise when determining the appropriate future land use map classification for property within the City of Cape Coral.

<u>Policy 1.2:</u> The City will regulate the use of land and water to protect State-owned preservation lands, the City's system of fresh and salt-water canals, and the outlying waters of the Caloosahatchee River and Charlotte Harbor.

<u>Policy 1.3:</u> The City will adopt measures to regulate areas subject to seasonal and periodic flooding and will provide for drainage and stormwater management.

<u>Policy 1.4:</u> The City will continue to protect potable water wellfields through the placement of the wellheads in a manner which uses street rights-of-way as buffers. The wellheads will continue to be protected from physical damage by using construction techniques appropriate for their location, such as locating future wellheads adjacent to street rights-of-way. However, due to population densities, it may be necessary to place wellheads in the median in isolated circumstances. Buffering for such locations will be evaluated on an individual site basis to prevent contamination via the wellhead itself.

<u>Policy 1.5:</u> The City will continue to regulate signage to prevent visual blight.

<u>Policy 1.6:</u> The City will continue to promote healthy communities and a diverse housing stock so that all persons may have an opportunity to reside in this community. To accomplish this goal, the City supports efforts to balance single-family and multi-family residential stock.

<u>Policy 1.7:</u> The City has identified a shortfall of multi-family residential housing stock in the community. To provide better guidance in identifying properties which are appropriate for multi-family residential development, to reduce this shortfall, locational guidelines have been developed. The following locational guidelines are as follows:

1.) Proximity to major roadways.

To prevent the establishment of multi-family residential development far in the middle of predominantly single-family neighborhoods, an appropriate location for multi-family residential development is adjacent to or within ½ mile of major roadways such as arterial and collector roadways, as identified by *Figure 7 City Roadway Classifications*.

2.) Proximity to non-residential land uses.

An important consideration for siting multi-family residential development is the need for multi-family residential uses to be in proximity to major employment centers. Providing housing near commercial uses can result in shorter trips, lessened traffic generation by workers, and providing multiple transportation mode options (walking, bicycling, automobile, bus) for employees.

An appropriate location for multi-family residential development is adjacent to or within ½ mile of non-residential land uses such as the Commercial/Professional, Light Industrial, Mixed Use, Downtown Mixed, Pine Island Road District, or Commercial Activity Center future land use classifications.

3.) Transitioning from commercial uses to less intense uses.

Multi-family residential uses have traditionally provided a role in buffering single-family uses or neighborhoods from nearby commercial development. Multi-family residential development is often self-contained with parking lots which provide a physical barrier visually separating commercial uses, particularly the lighting and loading areas, from single-family residential uses, which is a benefit to the community.

Therefore, an appropriate location for Multi-family residential development is physically between single-family development and non-residential land uses such as the Commercial/Professional, Light Industrial, Mixed Use, Downtown Mixed, Pine Island Road District, or Commercial Activity Center future land use classifications.

4.) Assemblage opportunities and adjacency to existing multi-family residential.

Single, isolated pre-platted parcels provide little opportunity for larger-scale multifamily residential development, and contribute to the same ills that strip center commercial developments offer; a proliferation of driveways onto major roadways.

Therefore, an appropriate location for multi-family residential development is a collection of properties of 3-acres or greater which provide multi-family assemblage opportunities, or for properties which alone are 3-acres or greater in size. Furthermore, consideration will be

given to logical extensions from existing multi-family residential designated properties.

<u>Policy 1.8:</u> The City will maintain regulations ensuring safe and convenient on-site traffic flow and vehicle parking needs for all developed lands.

<u>Policy 1.9:</u> The City will issue no development orders or construction permits, which result in a reduction in the level of service for any affected public facility below the level of service standard adopted in this comprehensive plan.

<u>Policy 1.10:</u> The City will periodically develop a buildout analysis to assist long-range planning activities. This analysis shall be conducted no less than once per five years and will be available to the public on the City website.

<u>Policy 1.11:</u> The City will continue to conduct studies to ascertain the feasibility of implementing alternative mechanisms to aid and encourage the de-platting of platted lands, and to encourage the acquisition and assembly of land for public uses.

<u>Policy 1.12:</u> The City will continue to conduct commercial land needs studies to identify potential areas of the City, which could accommodate commercially designated land, and then amend the Future Land Use Map, consistent with the studies, findings, and recommendations, and other provisions of the Comprehensive Plan.

Policy 1.13: In establishing commercial siting guidelines, it is the intent of the City of Cape Coral to discourage new "strip commercial" development. Strip commercial development, for the purpose of this policy, is often, but not always, linear in orientation, typically generates high volumes of traffic that is often associated with separate vehicular entrances and exits for each property on the primary street, may have poor or undefined pedestrian path systems that create conflicts between pedestrian and vehicular movements, and generally lacks sufficient onsite space to accommodate normal parking and loading activities. In discouraging new strip commercial development, the City shall also seek to limit or reduce traffic conflict points along arterial and collector roadways, to promote pedestrian-friendly development, and to create synergistic, compact patterns of commercial development.

To achieve this intent, the City will utilize commercial siting guidelines as a basis for considering the appropriateness of placing the Commercial/Professional Mixed Use, Commercial Activity Center future land use classifications at various locations. "Commercial siting guidelines," in the sense used herein, refers to guidelines for evaluating potential locations for non-residential (except industrial) development within the above-referenced future land use classifications. The City will also complement its consideration of potential commercial lands; by utilizing the policies contained in Future Land Use Objectives 2 and 3 and Policy 1.12 of this comprehensive plan. Finally, the City of Cape Coral's commercial siting guidelines shall be based on the ideal concept of a commercial node.

Commercial nodes may be defined as a compact concentration of commercial land within a relatively small area. Ideally, such nodes are located around or in the vicinity of intersections of major city roadways (typically, 4 or more lane divided parkways and boulevards). The City recognizes that commercial areas may periodically develop distant

from a major intersection, as some intersections may have insufficient undeveloped property in the vicinity of the intersection to allow for development of larger commercial centers. Such outlying commercial development can be useful in providing neighborhood commercial centers, professional buildings or office parks to serve a variety of local needs.

Preferably, however, commercial nodes should begin as a concentration of commercial properties adjacent to a major intersection. Once the node is established, it is difficult to define how far from the intersection subsequent commercial expansion should reach. It is also difficult to define the types of future land uses that should exist between nodes. The application of hard and fast rules is not appropriate as each area of the City is unique and has specific conditions and limitations that must be addressed.

The ideal commercial node development pattern thus would consist of commercial land located at the intersection of arterial and/or collector streets in a relatively compact manner. For purposes of this policy, "compact," relates to the form and interrelatedness of the commercial land uses within the commercial node. The commercial node should not only extend along the roadway but should also incorporate property to the rear of the road frontage. Such a pattern is referred to as "depth." The ideal pattern can be characterized by a 1:1 ratio of width to depth of the parcels (e.g., 100 feet of width per 100 feet of depth). Thus, the shape of the node can increase or decrease the potential for interrelatedness of uses. Increased depth also enables the development to accommodate adequate parking, buffering, retention, and open area for commercial development. Ideal commercial nodes provide limited access to the arterial roadway while providing interconnections between the various commercial uses within the node.

Policy 1.14: The City of Cape Coral's commercial siting guidelines are based upon comparison of the locational characteristics of a property proposed for conversion to a commercial future land use classification with the ideal commercial node concept, as described in Policy 1.13, above. The guidelines are also based upon the need to maintain compatibility between commercial development and adjacent or nearby residential future land use classifications. Additional guidance for consideration of such properties is contained in Future Land Use Objectives 2 and 3 and Policy 1.12 of this comprehensive plan. Within this broad, general context, consideration of properties proposed for conversion to a commercial future land use shall be based upon the following commercial siting guidelines:

Commercial Siting Guidelines

Major Intersection

Preferred locations for commercial properties are in the vicinity of major intersections (i.e., intersections of two or more arterial and/or collector roadways). Development of a commercial node at such an intersection may involve multiple parcels and, sometimes, multiple quadrants of the intersection. The benefits derived by having commercial properties located in the vicinity of the intersection diminish with distance, but the distance at which a property ceases to derive benefit from proximity to the intersection varies, based upon whether the subject property would represent a new, separate commercial property or an expansion of an existing commercial area. New commercial properties should preferably be located adjacent to the intersection, while commercial properties that clearly

represent an expansion of an existing commercial area can be any distance from the intersection, provided that such properties are integrated with existing properties.

Adequate Depth

Ideally, a commercial property should extend not only along the adjacent collector or arterial roadway, but also should extend inward with adequate depth to accommodate the necessary parking, buffering, retention, and open area for the future commercial development. In Cape Coral, most City blocks are rows of back-to-back lots approximately 250 feet deep. Therefore, adequate depth is achieved if any number of contiguous properties, occupy the entire 250 feet of depth.

Compactness

Compactness measures the ability of a property proposed for a commercial future land use to take advantage of economies of scale. The shape of an ideal compact commercial property approaches that of a square or rectangle. This quality allows for an orderly arrangement of development on the subject property and acts to reduce adverse visual, noise or aesthetic impacts to neighboring properties.

Integration

Integration, for the purposes of these guidelines, refers to the interrelatedness of development within a commercial node or area. The presence of features, such as internal access roads, shared parking, courtyards, walkways, or other features, binds the various commercial properties within the node together. This pattern of development reduces the traffic impacts associated with commercial development and often promotes a pedestrian-friendly environment. Integration of neighboring commercial properties should always be encouraged. Therefore, properties proposed for conversion to a commercial future land use should be evaluated for the likelihood that such properties would or could be integrated with adjacent existing commercial properties.

Assembly

For commercial areas to provide the most benefit to the surrounding community, they must be of relatively large size. The majority of buildable lots within the City of Cape Coral are approximately 10,000 square feet (0.23 acre) in size. These lots were designed primarily for single family residential development and do not typically have adequate width or depth for larger commercial developments that might serve the City as shopping and/or employment centers. Therefore, it is important for the City to encourage commercial applicants to assemble relatively large parcels (properties comprising 3 acres or more). Assembly of pre-platted parcels into tracts of 3 acres or more will promote the development of commercial properties that do not express the indicators of strip commercial development. Assembly of larger parcels also allows the developer to provide a greater variety of commercial land uses, and to provide architectural and landscape features that result in a more attractive end-product.

Properties proposed for conversion to a commercial future land use, where such properties

would represent an expansion of an existing commercial area may be considered "assembled," for the purposes of these guidelines if the proposed expansion properties are either owned by the landowner of one or more adjacent commercial properties, or if the expansion property is likely to be integrated with (see above) adjacent commercial properties.

Intrusion

"Intrusion," as defined for the purpose of these guidelines, is a measure of the objectionable qualities of the proposed commercial development. This guideline applies primarily to new commercial property (a property proposed for conversion to a commercial future land use in an area where it would not abut existing commercial properties). Intrusion evaluates the potential adverse impacts on surrounding properties that could be caused by converting a property from its existing future land use to a commercial use. There are no hard and fast guidelines for determining when a proposed commercial use would be intrusive to surrounding development. However, expansions of existing commercial areas are generally considered less intrusive than the establishment of new commercial areas. Commercial areas may be considered less intrusive to adjacent multi-family development than to adjacent single-family development. Commercial development that is separated from a residential area by a street, canal, a vegetative buffer, or other geographic features, may be considered less intrusive than commercial development that directly abuts a residential area. The degree of compactness (see above) of a commercial property can also reduce or increase its intrusion upon adjacent or nearby properties.

Typically, new commercial properties (properties proposed for conversion to a commercial future land use classification, which do not abut existing commercial properties) are less likely to be considered intrusive if the surrounding or adjacent residential areas are sparsely developed. While intrusion is subjective and depends on many factors, a rule of thumb is that the proposed commercial property would not likely be intrusive if adjacent residential areas are 25% or less developed. The area analyzed to determine the percentage of adjacent residential development may vary from 300 feet to 1,000 feet from the subject property, depending upon the degree to which streets, canals, landscaping or other geographic features separate the subject property from nearby residential areas.

Access

In the City of Cape Coral there are two ideal access provisions for a commercial property. If a subject property would meet the requirements for one or more of these provisions, the creation of a commercial future land use at the proposed location should be encouraged. These provisions are as follows:

a) Access via a platted City parking area. The City of Cape Coral contains a number of dedicated commercial parking areas; some created by plat, and some deeded to the City by landowners. The Comprehensive Plan and City Land Development Code refer to these as "dedicated City parking areas." These parking areas are often surrounded by smaller platted lots originally intended for commercial development with access to these lots only, or primarily, from the dedicated City parking area. In implementing this provision, it may sometimes be in the City's interest to promote

conversion of a dedicated City parking area to a fully functional commercial development (i.e., a portion of the dedicated parking area would become a commercial building site) in return for the applicant's agreement to own and manage the site.

b) Direct access onto an arterial or collector roadway having an adopted City access management plan. The City has adopted access management plans for certain arterial and collector roadways. Access management plans serve to facilitate mobility of the traveling public; therefore, such roadways more readily accommodate the impacts of commercial development than roadways without such access management plans.

Ownership Pattern

An ideal commercial node is a cohesive, compact, interrelated network of commercial properties. Properties proposed for conversion to a commercial future land use, which properties consist of multiple parcels, or groups of parcels, under multiple ownership are unlikely to develop as a true "commercial node." Instead, these properties are more likely to develop as separate, small commercial developments with multiple access points, leading to adverse, unsafe traffic conditions. Each small development may also have its own stormwater management pond, dumpster, and an appearance and/or landscaping design that is inconsistent with surrounding development. This pattern is a characteristic of strip commercial development. Therefore, the City of Cape Coral encourages land owners and developers to assemble the properties involved in a commercial future land use request under common ownership. Multiple, small properties under separate ownership, even if such properties are included in a single future land use amendment request, may not be appropriate for the full array of commercial uses.

APPLICATION OF GUIDELINES:

Dual purpose

The dual purpose of the above guidelines is to direct commercial development to appropriate locations (commercial nodes) and to prevent the propagation of new strip commercial centers. The development of new strip commercial centers and the expansion of existing strip commercial centers should be discouraged.

Comparison to Ideal Commercial Node

In utilizing the above guidelines to evaluate a proposed commercial property, the City is, in effect, comparing each proposed commercial future land use location to the concept of an ideal "commercial node." While one of the above guidelines may sometimes be the primary factor in evaluating a potential commercial location, it is in most instances the combination of various factors that is important. It is the evaluation of this combination of factors, in order to develop an overall assessment of the subject property, which will enable Staff, the Planning and Zoning Commission and the City Council to determine whether or not the siting of a proposed commercial future land use on the subject property is consistent with the intent of the City's Comprehensive Plan.

In context with the remainder of the Comprehensive Plan

It is also important to note that consideration of the commercial siting guidelines is in addition to all other analyses required by Florida Statutes and the Florida Administrative Code for future land use map amendments. In addition to evaluating a property's consistency with the above guidelines, the City will continue to provide, or request applicants to provide, environmental and protected species analysis, transportation impact analysis and public facility capacity (concurrency) review for all future land use map amendments.

The commercial siting guidelines should be considered in light of all other factors typically evaluated within a future land use amendment request. Thus, a request, which results in an unfavorable evaluation of the commercial siting guidelines, may receive a favorable recommendation from staff, based upon other factors not considered by the guidelines. Likewise, staff may recommend denial of a project that receives a favorable evaluation of the guidelines, if other factors (again, not considered by the guidelines) appear not to be favorable.

<u>Policy 1.15:</u> Land development regulations adopted to implement this comprehensive plan will be based on, and will be consistent with, the standards for uses and densities/intensities as described in the following future land use classifications. Table 1 shows the zoning districts which are consistent with and implement the respective future land use map classifications. In no case shall maximum densities allowable by the following classifications conflict with Policy 4.3.3 of the Conservation and Coastal Management Element regulating density of development within the Coastal High Hazard Area.

Table 1:

| Future Land Use | Consistent Zoning Districts |
|---------------------------------------|-----------------------------|
| Single-Family (SF) | R-1, RE |
| Single-Family and Multi-Family (SM) | R-1, RML, RMM, RE, A |
| Multi-Family (MF) | RML, RMM |
| Low Density Residential (LDR) | RE, A |
| Commercial/Professional (CP) | C, P |
| Mixed Use (MX) | ALL except MXB |
| Downtown Mixed (DM) | SC, MXB |
| Pine Island Road District (PIRD) | CC |
| Commercial Activity Center (CAC) | NC |
| Light Industrial (I) | I |
| Natural Resources/Preservation (PRES) | PV |
| Public Facilities (PF) | ALL |
| Parks and Recreation (PK) | ALL except MX7 and MXB |
| Open Space (OS) | PV |

Planned Unit Developments are considered to be consistent in all future land use map classifications except Natural Resources/Preservation and Open Space.

a. <u>Single-Family Residential:</u> Densities not to exceed 4.4 units per acre, except for micro-cottage communities. Densities in micro-cottage communities are restricted to 8.8 units per acre, for sites with a minimum of 3 acres.

The Single Family (R-1) District is proposed to permit a variety of single-family residential products including traditional single-family residences and microcottages.

b. <u>Multi-Family Residential</u>: Densities up to 25 units per acre are permitted in this future land use map classification. For properties less than one acre in size, densities shall be calculated as a product of the size of the property divided by 43,560, multiplied by 25, rounded down. The development of multi-family projects in the Urban Services Reserve Area is also subject to the terms of Policies 7.7 and 7.8, below.

The Residential Multi-Family Low (RML) District is designed to permit multi-family residential development. Single-family attached projects (three or more units only), single-family residences, and duplexes are also permitted in this zoning district.

The Residential Multi-Family Medium (RMM) District is designed to permit higherdensity multi-family residential development. Lower-density, multi-family residential projects such as duplexes or single-family residences are not permitted in this zoning district.

Multi-family residential developments in this future land use map classification that consist of 25–50% workforce or affordable housing, as determined by staff, may have their allowable densities doubled.

c. <u>Commercial/Professional</u>: Intensities of use in the Commercial/Professional (CP) land use classification shall not exceed a floor to lot area ratio (FAR) of 1.0. Zoning districts compatible with this classification may also be used in conjunction with the Mixed Use (MX) future land use classification. When used in conjunction with the MX Classification, densities, intensities and other parameters, as described for these districts may differ from those described for the CP Classification. Permitted uses will ultimately depend upon the zoning district of the subject parcel. Generally, two zoning districts are consistent with the Commercial/Professional future land use classification, identified below. However, the City may develop additional zoning districts, compatible with the CP future land use classification, in the future.

The Professional (P) District is designed to provide professional office and other compatible development in areas that are suitable for such activities. The P District is appropriate for development of both small-scale and large- scale office or professional development projects, or projects containing uses compatible with such development. The intensity of development within this district is based upon the size (including width, depth, and compactness) and location of the property, as well as on compatibility with adjacent future land use classifications and zoning districts.

The Commercial (C) District is designed to facilitate a broad variety of large or small commercial uses. Uses allowed in the C District range from a variety of small or

neighborhood-based commercial uses to larger retail or service uses, which may serve a relatively large trade area and, which may be developed as major shopping facilities. As many commercial uses have the potential to generate relatively high levels of vehicular trips from customers and sometimes delivery vehicles, preferred locations for the C District have direct access onto arterial or collector roads and adequate depth (a minimum of 250 feet) for larger- scale development.

In certain locations, fragmented ownership of relatively small properties, or other factors, may preclude the creation of larger properties with access onto a collector or arterial roadway. Under such circumstances, it may be appropriate for the C Zoning District to place additional limits on the intensities of commercial development on these properties. It may also be appropriate, under certain circumstances to place restrictions on some commercial uses, such as those with high trip generation rates, adverse aesthetic attributes, and generation of disturbing noises or odors. Factors to consider when establishing such limits on intensities or uses include the following: the depth of the property, whether the property is adjacent to a waterway, whether the property is adjacent to or proximate to future land use classifications or zoning districts that allow residential uses, or the functional classification of street(s) available for street access. The placement of limitations upon the types and intensities of uses allowed within the C Zoning District, in accordance with the factors described above, is intended to reduce conflicts between the C District and adjacent or nearby residential zoning districts.

- d. <u>Light Industrial</u>: Shall not exceed a floor to lot area ratio of 1.0.
- e. <u>Mixed-Use:</u> The mixed-use designation is intended to encourage the development of planned projects that include more than one type of use. The maximum permitted densities/intensities of various uses within the mixed-use designation will be 25 dwelling units per acre for a residential component and 1.0 FAR (Floor Area Ratio) for nonresidential uses. For example, a project combining multi-family and commercial uses would be subject to Policies 1.15.b. and/or 7.7 for the multi-family portion, and Policy 1.15.c. for the commercial portion.

The following will control the mix of uses allowed in the Mixed-Use Land Use category.

Properties less than one (1) acre: The designation of smaller properties as Mixed-Use is desired to encourage the accumulation of land into large properties. However, in some cases assemblage is difficult due to existing development. In these situations, a property with a Mixed-Use future land use classification may be developed with one use, which is also consistent with its underlying zoning district.

Properties one (1) acre and greater: Larger properties are prime candidates for mixed use developments. These properties shall include more than one type of use. The mix of uses may include residential, retail, office, services, light industrial or public facilities. Such uses may be mixed horizontally on a site or may be within a compound use building, (i.e. differing uses within one building or structure) consisting of residential and retail office, or services. For Mixed-Use developments

adopted after October 23, 2010, retail, office, services, light industrial, or public facilities uses may be developed up to 100% of building floor area within a Mixed-Use property; this will have the intended effect of not requiring a mix of non-residential uses for properties one (1) acre or greater in size. Stand-alone residential uses may comprise up to 20% of site area of a Mixed-Use property one (1) acre or greater in size. Compound use residences are permitted.

Notwithstanding any provisions that may be interpreted to the contrary, Mixed-Use developments approved prior to October 23, 2010 may continue to abide by the development requests granted within their respective adopted development orders or approved site plans. Furthermore, Mixed-Use properties located in the Urban Services Reserve Area require three (3) acres in order to develop a mixed-use project. Mixed Use designated property in the Urban Reserve Services Area less than three acres is limited to a single use that does not generate an estimated flow of more than 880 gallons of sewage per acre per day. Estimated flows shall be based on 64E-6.008 Florida Administrative Code, as may be amended.

Multi-family residential developments within this future land use map classification that consist of 25-50% workforce or affordable housing, as determined by staff, may have their allowable densities doubled.

f. <u>Single Family and Multi-Family:</u> The densities and intensities of use for this category, which is exclusively within the Urban Services Reserve Area, are 4.4 dwelling units per acre for single-family residential uses, 6 units per acre for multifamily residential uses on sites less than 3 acres. Multi-family residential uses for properties between 3 and 19.99 acres have a maximum density of 16 units per acre. Multi-family residential uses for properties greater or equal to 20 acres have a density of 25 dwelling units per acre.

Multi-family residential developments within this future land use map classification that consist of 25–50% workforce or affordable housing, as determined by staff, may have their allowable densities doubled.

g. <u>Natural Resources/Preservation</u>: The areas designated on the Comprehensive Plan's Future Land Use Map for Natural Resources/Preservation primarily consist of State-owned and/or regulated land. Development in these areas is limited to activities to make them accessible to the public for research and/or recreational purposes. Such activities would include accessways, nature trails, informational signs or displays, restroom facilities, picnic tables/shelters, beaches and boat ramps.

Privately-owned properties with this future land use map classification may develop at a density of one dwelling per 20 acres.

- h. <u>Public Facilities:</u> The majority of the public facilities category consists of schools, public safety buildings, and religious establishments. Government offices must conform to the Commercial/Professional densities/intensities of use.
- i. <u>Parks & Recreation:</u> The densities/intensities of use for various parks and recreational facilities are those established in the Recreation and Open Space

Element of this Comprehensive Plan, under the Section entitled "The Plan for Recreation and Open Space in Cape Coral" and the Parks Master Plan.

- j. <u>Historical Resources:</u> As noted in the Comprehensive Plan, most identified historic resources are located within the Natural Resources/ Preservation land use designation, and are therefore subject to the densities/intensities of use specified in Future Land Use Element Policy 1.13g.
- Downtown Mixed: Intended primarily for the Downtown Community k. Redevelopment Area, to provide, a vibrant, walkable, mixed-use district in the historical heart of Cape Coral, mixed-use projects containing commercial and professional uses in conjunction with multi-family housing opportunities where practical and feasible are encouraged. To this end, commercial/professional uses may develop at a maximum Floor Area ratio of four (4) with an average area-wide FAR of two and twenty-three one hundredths (2.23) with commercial/professional uses developed at a ratio of sixty-five (65) percent commercial and thirty-five (35) percent professional, on an area-wide basis. Residential development may develop at a density of seventy-five (75) one hundred twenty-five (125) dwelling units per acre, not to exceed an aggregate of eleven thousand one hundred forty-six (11,146) dwelling units. In order to maintain these development limits, the City shall track residential and non-residential development within this future land use map classification. No further residential development will be permitted in this future land use classification should dwelling unit limits be reached. If the average area-wide FAR of two and twenty-three hundredths (2.23) is reached, the City will permit only that nonresidential development with a FAR of 2.23 or below. Development at these intensities and densities are contingent on the availability of centralized city utility services and transportation network at sufficient capacities to accommodate the development at the appropriate level of service, the availability of sufficient and convenient parking to service the project, the availability of multimodal transportation opportunities, and compatibility with adjacent existing and future land use. Special zoning designations may be established to implement this future land use classification, designed to result in a compact urban form.

Zoning districts consistent with the Downtown Mixed future land use map classification are the South Cape Downtown District and the Mixed-Use Bimini Basin zoning district.

1. <u>Pine Island Road District:</u> This Land Use designation will encourage mixed-use development at key intersections with major North-South streets along Pine Island Road.

Corridor: Includes such uses as retail, office, office/warehouse, light manufacturing, institutional (schools, colleges), single-family residential, multifamily residential, larger scale commercial retail (big box stores over 50,000 squarefeet) and government uses such as parks and public facilities. Multi-family residential uses may be developed at a density of twenty-five units per acre, for sites of four acres or more. Multi-family residential uses may consist of no less than fifty units or have a density no less than ten or more units per acre. No duplexes are permitted. Commercial and light manufacturing uses shall not exceed

a floor to lot area ratio (FAR) of 1.25 in accordance with City design standards. Public facilities shall be subject to Policy 1.15.h., of the Future Land Use Element and parks and recreation shall be subject to Policy 1.15.i. of the Future Land Use Element.

Multi-family residential developments within this future land use map classification that consist of 25–50% workforce or affordable housing, as determined by staff, may have their allowable densities doubled.

At build-out, the mix of uses along the Pine Island Road District shall be under the following ranges:

Pine Island Road District. Build-Out Mixed-Use Ranges

| RANGE | | | | | |
|---------------------|-------|-----------|-----------|--|--|
| Use | Units | From | To | | |
| Retail | SF | 3,583,500 | 4,379,700 | | |
| Office/warehouse/ | SF | 1,144,800 | 1,582,500 | | |
| light manufacturing | | | | | |
| | | | | | |
| Hotels | Rooms | 700 | 790 | | |
| Residential | Units | 3,720 | 5,030 | | |

The criteria to be used for evaluating proposed Commercial Corridor zonings in relation to the intent of the City Comprehensive Plan, the Pine Island Road Master Plan and other planning principles are contained in the following tables:

Commercial Corridor Criteria

| CRITERIA | PERFORMANCE | |
|--|----------------------------|--|
| 1. Does the property abut an existing and | If yes, good candidate for | |
| developed corridor zoned area? | Corridor zoning. | |
| 2. Does the property abut corridor-zoned | If yes, good candidate for | |
| area on two sides or more? | Corridor zoning. | |
| 3. Is the property part of a larger tract, a | If yes, good candidate for | |
| portion of which is already zoned | Corridor zoning. | |
| Corridor? | | |
| 4. Is the parcel a large-lot assemblage of | If yes, good candidate for | |
| three or more acres? | Corridor zoning. | |
| | | |
| | | |
| | | |
| 5. Does the property front Pine Island Road | If yes, good candidate for | |
| on at least 180 feet? | Corridor zoning. | |
| | | |

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

Pre-Existing Single-Family Residences Allowed

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

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

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

The City has adopted the Neighborhood Commercial (NC) zoning district as consistent with the Commercial Activity Center Future Land Use Classification. Development standards in accordance with the Neighborhood Commercial zoning district are as follows:

| Neighborhood Commercial Development Parameters | | | | |
|---|----------------------------------|--|--|--|
| | Land Area of Development Project | | | |
| | 1 acre or less | 1 acre – 19.99 acres | 20 acres or greater | |
| Free-standing Commercial Development Area Maximum FAR | 0-100% 1.0 | 15%-100% 1.0 | 20%-75% 1.0 | |
| Free-standing Residential Development Area Minimum Density Maximum Density | N/A N/A N/A | 15%-85% 12 d.u./acre or 50 units 25- <u>16</u> d.u./acre | 25%-80% 12 d.u./acre or 75 units 25 - <u>16</u> d.u./acre | |
| Mixed-Use Development Area Minimum Density Maximum Density 1.0 Maximum FAR | | 0-100% 12 d.u./acre or 50 units 25-16 d.u./acre 2.0 | 0-100% 12 d.u./acre or 75 units <u>25-16</u> d.u./acre 2.0 | |
| Build-to / Front Setback | 6 ft. – 10ft. | 10 ft. | 10 ft. | |
| Minimum Side Setback | 0 or 6 | 0 or 6 | 0 or 6 | |
| Min. Rear Setback | 6 | 6 | 6 | |

Additional zoning districts may be developed in the future to implement this land use initiative.

Multi-family residential developments within this future land use map classification that consist of 25-50% workforce or affordable housing, as determined by staff, may have their allowable densities doubled.

n. <u>Low Density Residential</u>: This land use classification allows for a maximum density of one (1) dwelling unit per 40,000 square feet, excluding right-of-way.

OPEN SPACE (OS): The Open Space Future Land Use Classification is designed to 0. designate, with the consent of the property owner, areas for purposes or activities having no dwelling units, non-residential floor area or demand for public facilities. Areas suitable for designation under this classification include, but are not limited to, the following: lakes or other waterways not platted as rights-of-way, which may be used for recreational purposes; stormwater treatment facilities; buffer areas; preserves or conservation areas; or recreation areas having no access except by owners, guests or employees of the surrounding development project. included within this future land use classification used for recreation may have amenities, including, but not limited to, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Floor areas of any such structures shall not be considered as non-residential floor area, and may not be used to support the sale or rental of any items; nor may such structures be used for office or administrative purposes. No commercial use shall be made for any recreational facilities located within the Open Space Future Land Use Classification.

Paving of areas within this future land use classification shall be limited to the construction of foot paths and floors for open-sided shelters or pavilions, basketball, tennis or other recreational courts (however, no such courts shall have associated spectator seating or administrative/maintenance structures), as well as paving associated with minimal parking areas, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Lands or areas within this future land use classification shall not be used as parking for residential, commercial or industrial areas, although minimal onsite parking, including an access drive, may be allowed to facilitate recreational use of lands under this future land use classification, or to serve as parking for nearby properties that are within the Natural Resources/Preservation Future Land Use Classification.

All zoning districts are considered compatible with this future land use classification. However, this future land use classification allows only those activities that are consistent with this classification, as delineated above, and, which have no associated density, intensity, or demand for public facilities.

p. Sub-Districts: In addition to the regulations listed above, the City of Cape Coral also has sub-districts, as a means to efficiently regulate development in particular areas of interest. These sub-districts include:

Tyson Shores Sub-District

Within the Tyson Shores Sub-District, development shall be limited to a maximum of 115 dwelling units. All property within the Tyson Shores Sub-District shall be entitled to a proportional share of the 115 dwelling units; however, the development rights may be transferred among any properties within the Tyson Shores Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Development Code and other provisions of this Plan. This limitation may be amended when central water and sewer service is available to serve the site.

Judd Creek Sub-District

Within the Judd Creek Sub-District, development shall not exceed 16 dwelling units per acre on lands with a future land use map designation of Multi-Family. The number of residential dwelling units cannot exceed 1,170 units. Non-residential intensity on lands with a future land use map designation of Pine Island Road District shall not exceed 250,000 square feet of gross leasable floor area. All lands within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District shall be entitled to a proportional share of the 250,000 square feet of gross leasable floor area; however, the development rights may be transferred among any properties within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District through mutual agreement of the affected property owners, as long as the intensity is consistent with all Land Development Code and other provisions of this Plan. These limitations may be amended in the event that roadway network improvements are made that would allow development beyond these limitations without degradation of roadway level of service below the adopted level of service.

Paradise Preserve Sub-District

Within the Paradise Preserve Sub-District, development shall be limited to a maximum of 420 dwelling units. All property within the Paradise Preserve Sub-District shall be entitled to a proportional share of the 420 dwelling units; however, the development rights may be transferred among any properties within the Paradise Preserve Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Development Code and other provisions of this Plan.

Seven Islands Sub-District

Within the Seven Islands Sub-District, development shall be limited to a maximum of 995 dwelling units and 110,000 square feet of non-residential development. A hotel of no more than 240 rooms is also permitted in addition to the aforementioned non-residential square footage. Development rights within the Sub-District may be transferred among any properties within the Seven Islands Sub-District through mutual agreement of the property owners.

This Sub-District shall be placed within the Mixed-Use future land use map classification but is not subject to Mixed-Use future land use map classification baseline densities and intensities found within Policy 1.15.e and Policy 1.23. Mixed use development is required within the Seven Islands Sub-District. Development within the Seven Islands Sub-District shall not require a PDP.

The location of the Sub-District is legally described as:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

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All of Lots 12 through 17, Block 6400;
All of Tract "G" and all of Lots 1 through 5, Block 6401;
All of Tract "F" and all of Lots 1 through 7, Block 6402;
All of Tract "E" and all of Lots 1 through 4, Block 6403;
All of Tract "D" and all of Lots 1 through 3, Block 6404;
All of Tract "C" and all of Lots 1 and 2, Block 6405;
All of Tract "B" and all of Lots 1 through 7, Block 6406;
All of Tract "A" and all of Lots 1 through 8, Block 6407;
All of Tract "I" and all of Lots 1 through 4, Block 6408;
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All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

q. Council-adopted Vision Plans

Exemptions to the development requirements are permitted for master plan or vision planning efforts that meet the following criteria:

- 1. The master or vision planning effort must be adopted by resolution or ordinance by the City Council.
- 2. Property in question is city-owned at the time of the master or vision planning effort. Transfers of property or public-private partnerships occurring after the planning effort must contain a clause requiring the future property owner(s) or developer(s) to abide by the adopted master or vision planning effort.
- 3. The master or vision planning effort must have had no fewer than two (2) public hearings discussing the provisions of the plan. Residents living within 500 feet of a property considered for a master or vision planning effort shall receive notice of these public hearings in the same manner as a rezoning for future land use map amendment.
- 4. The minimum size of the area subject to the master or vision planning effort is twenty (20) acres.
- 5. At a minimum, the master or vision planning effort must address the following impacts of the planning effort on the property and surrounding area.
 - a.) Transportation Impacts
 - b.) Environmental Impacts
 - c.) Utility Capacity Availability
 - d.) Public Safety Availability
- 6. Development options approved by Council through a master or vision planning effort may result in densities and intensities greater than those permitted elsewhere in Policy 1.15. In such instances, staff will establish a Sub-District on the Future Land Use Map and depict specific development limits for the site in the Future Land Use Element.

7. Changes to the adopted master or vision planning effort shall occur through a public hearing process identical to s.166.041(3)(c)2, F.S.

<u>Policy 1.16:</u> Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address the location and extent of both residential and non-residential land uses in accordance with the Future Land Use Map and the policies and description of types, sizes, densities, and intensities of land use contained in the "Future Land Use Map" section of this Element.

<u>Policy 1.17:</u> Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address buffering and open space requirements, and will protect existing residential land uses from incompatible land uses.

<u>Policy 1.18:</u> Vested Rights. In circumstances in which constitutionally protected property rights or valid development expectations conflict with the City of Cape Coral Comprehensive Plan and judicially defined principles of equitable estoppel may override otherwise valid limitations imposed by the Plan, such property rights or expectations may be recognized by the Cape Coral City Council, acting by resolution after review and recommendation by the Cape Coral Planning & Zoning Commission/Local Planning Agency, on a case-by-case basis.

Such development expectations are exclusive to the following:

- 1. A development order issued prior to adoption of the Cape Coral Comprehensive Plan including Planned Unit Development, Planned Development Project, special exception, and site plan approvals which have been expressly approved by the City Council in writing and where construction has been or is being diligently pursued pursuant to such approval.
- 2. A development or project that has been issued a valid building permit prior to adoption of the Cape Coral Comprehensive Plan (February 13, 1989) which has commenced construction and is continuing in good faith.

Nothing in the Cape Coral Comprehensive Plan shall limit or modify the rights of any person to complete any development that has been authorized as a Development of Regional Impact pursuant to Chapter 380, Florida Statutes.

<u>Policy 1.19:</u> The City will adopt urban corridor design guidelines and special land use regulations along the City's roadways, which serve as entry points to the City. These guidelines and regulations will identify specific signage and setback requirements, and other regulations, which will serve to prevent visual and physical blight along specified roadways. The City has adopted guidelines within the Community Redevelopment Area, which may serve as an example for future corridor design guidelines.

<u>Policy 1.20:</u> The City will promote the development of identifiable residential neighborhoods and commercial districts through the encouragement of more compact development patterns, the use of shared design and landscaping characteristics, and the development of landmarks and gateways.

Policy 1.21: The need for additional educational facilities and programs in the City of Cape Coral will be met through cooperation between the City and the Lee County School Board. Prospective sites shall first be evaluated on projections of residential growth in the area, the ability to serve the current school age population, and transportation needs for use of the site. The City of Cape Coral will then coordinate with the Lee County School Board to evaluate the list of prospective sites to avoid impacts on unique or regionally significant natural systems, to avoid the placement of new public facilities within the Coastal High-Hazard Area, and to ensure compatibility with adjacent land uses and concurrency with other necessary urban services.

<u>Policy 1.22:</u> The City of Cape Coral shall continue to coordinate land use policies with hazard mitigation reports generated in the aftermath of a natural or manmade disaster. Furthermore, the City will continue to coordinate with other local agencies in the placement of public buildings, such as schools, in order to ensure that such buildings are not placed within the Coastal High-Hazard Area. Finally, the City may also consider measures designed to reduce potential hazards to life and property within the Coastal High-Hazard Area. Such measures may include reduction of densities in the Coastal High-Hazard Area, public acquisition of land, increased building requirements, or any other appropriate policies recommended in future hazard mitigation reports, or otherwise determined by the City Council to be warranted.

<u>Policy 1.23:</u> Based upon increased awareness of the difficulties associated with pesticides, herbicides, water quality, and habitat loss, the City has determined that all new golf courses should be developed in a manner that is sensitive to environmental and ecological quality. New golf courses throughout the City will be developed as Planned Unit Developments in accordance with the City of Cape Coral Land Development Code. Additionally, new golf courses will be developed following the Florida Department of Environmental Protection's Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses, January 2007, and be designed, constructed, certified, and then managed in accordance with the Audubon International Signature Program. Exempted from these regulations are former and existing golf course facilities in Cape Coral, otherwise known as the Coral Oaks Golf Course, Executive Golf Course, and the Palmetto Pine Golf Course. The term "golf course facilities" refers to all properties used in the operation and maintenance of golf courses, including, but not limited to, fairways, greens, bunkers, driving ranges, pathways, parking lots, clubhouses, and pro shops. The foregoing exemption from Policy 1.24 shall apply in perpetuity and run with the land.

To further ensure a high standard of golf course development in Cape Coral, natural waterways shall be left in a natural, unaltered condition and shall not be channelized, provided:

- i. If a crossing for a natural waterway, water body, or flow way is proposed, it must be designed, to the greatest extent practicable, to minimize the removal of trees and other shading vegetation;
- ii. Golf cart crossings must be designed to be permeable, be no wider than eight feet, and placed on pilings from edge of floodplain to edge of floodplain;
- iii. Created or restored flow ways and water bodies may be crossed by

bridges or culverts, or a combination thereof, if approved by the South Florida Water Management District;

- iv. An existing natural waterway may not be excavated for new lakes or ponds;
- v. Upland ponds must not expose stream channels to an increase in either the rate or duration of floodwater, unless otherwise required by the South Florida Water Management District in order to further regional water management objectives.

All fairways, greens, and tees are elevated above the 25-year flood level, and all greens must utilize underdrains. The effluent from these underdrains must be pre-treated prior to discharge into the balance of the development's water management system.

Further, to ensure water conservation, golf course irrigation systems must utilize computerized irrigation programs based on weather station information and moisture sensing systems to determine existing soil moisture and evapotranspiration rates so as to provide water efficient zone control. Where re-use water is available, new golf courses will, to the greatest extent practicable, utilize such re-use water for irrigation purposes.

Design of new golf courses will protect wildlife by: 1.) maintaining natural wildlife habitat in at least 50% of all minimally used portions of the property; 2.) connect natural areas as much as possible to improve wildlife movement throughout the golf course and from the course to neighboring natural areas; 3.) maintain a water source for wildlife with aquatic plants and shrubbery or native landscaping along the shoreline; 4.) naturalize at least 50% of out-of-play shorelines with emergent aquatic and shoreline plants; and 5.) maintain nesting boxes or other structures, when appropriate, to enhance nesting sites for birds or bats.

A Construction Management Plan will be required prior to new golf course development in accordance with the Florida Department of Environmental Protection's Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses.

New golf courses shall be monitored annually in the following areas:

- a. Surface and groundwater monitoring requirements
- b. Construction monitoring: Annual reports detailing construction activities, permitting, compliance with Audubon International Signature Standards and percent of project completed.
- c. Land management activities: Including those used on the golf course, as well as natural and preserve areas.
- d. Wildlife monitoring: An inventory of wildlife, wildlife activity, and wildlife management activities.
- e. Irrigation monitoring: A summary of the monthly irrigation withdrawal and irrigation sources.
- f. Mitigation/vegetation monitoring: Status reports on the viability of any mitigation or landscaping conducted on-site and an inventory of all fertilizers used for golf course and non-golf course areas maintained during the year.
- g. Integrated pest management monitoring: Provide a discussion on

the pest management techniques, and any pest problems that have occurred on the project.

h. If surface and/or groundwater monitoring shows degradation of water quality the City will notify the property owner that a plan, to correct the identified problem(s), must be submitted. The property owner must submit a plan of action within 30 days after receipt of written notice from the City. The plan must identify actions that will correct the problem(s) within the shortest possible time frame. This plan will be reviewed and must be found to be acceptable by the City. If the plan is not submitted as required, or is found to be unacceptable by the City, the City will require that all activities on the property cease until a plan is submitted and approved. The approved plan must be implemented by the property owner. If the City determines that the approved plan is not being implemented properly, the City can require that all activities on the property cease until the property owner comes back into compliance.

<u>OBJECTIVE 2:</u> Location of New Commercial Development: New commercial development shall be so located to provide minimal vehicle trip lengths, at or near transportation nodes, and compatible with neighboring residential uses.

<u>Policy 2.1:</u> The City shall encourage commercial development where it can efficiently use infrastructure, where their adverse impacts on adjacent uses are minimized and where they will effectively provide the community with desired products, services and employment opportunities.

OBJECTIVE 3: Development of Quality Commercial Centers: The City encourages development of quality commercial (retail, office, and/or services) centers on property that meets the recommended land configuration for such commercial centers and that is located proximate to an adequate trade area, relative to the size and character of the center, and necessary to ensure economic viability.

<u>Policy 3.1:</u> The City of Cape Coral will encourage the development of future commercial (retail, office and/or services) areas at or near transportation nodes by assigning appropriate future land use designations.

<u>Policy 3.2</u>: The size, location and function of commercial areas shall be related and central to the population, market area and the transportation network system. The distribution and size of commercial areas shall be spatially located to meet neighborhood, community and regional needs and to reduce vehicle trip lengths.

<u>Policy 3.3:</u> Application of the commercial areas along and proximate to commercial corridors at key locations is intended to address the projected demand for commercial development as summarized in the Table below, or other subsequent analysis.

| Commercial Centers by Corridor | | | | | |
|--|---|---------------------------------|---------------------------------|-----------------|--------------------------------|
| <u>Corridor Name</u> | Total Projected Demand For Commercial Acres of Land | Neighborhood Shopping Center | Community Shopping Center | Power Center | Regional Shopping Center |
| Burnt Store Road | 295 | 2 | 2* | | |
| Del Prado Boulevard North | 307 | 1 | 2* | | |
| Del Prado Boulevard South | 243 | 2 | 2* | | |
| Chiquita Boulevard South | 129 | 0 | | | |
| Chiquita Boulevard North | 129 | 2 | | | |
| Cape Coral Parkway (east of Palm Tree) | 144 | 1 | | | |
| Cape Coral Parkway (west of Palm Tree) | 94 | 1 | 1* | | |
| Santa Barbara North | 120 | 2 | 2* | | |
| Santa Barbara South | 56 | 0 | | | |
| Santa Barbara (Formerly Juanita Boulevard) | 79 | 1 | 1* | | |
| Veterans Parkway | 189 | 2 | 1* | 1 | |
| Kismet Parkway | 151 | 1 | | | |
| Skyline Boulevard | 148 | 2 | | | |
| Diplomat Parkway | 136 | 2 | | | |
| Tropicana Parkway | 117 | 1 | | | |
| Cultural Park Boulevard | 109 | 0 | | | |
| Hancock Bridge Parkway | 85 | 0 | | | |
| Andalusia Boulevard | 75 | 0 | | | |
| Embers Parkway | 73 | 0 | | | |
| Nicholas Parkway | 50 | 0 | | | |
| Viscaya Parkway | 27 | 0 | | | |
| Pine Island Road | 399(1) 299 | 3 | | | 2 |
| | | | | | |

Source: Based on information from the Commercial Corridor Study, dated April 30, 2003, City of Cape Coral, Planning Division (2003)

^(*) Asterisk indicates that the center has a dual function as a community commercial center and neighborhood commercial center.

There may be more than one Super Community/Power Center in the City of Cape Coral. (1) Adjusted on pro rata basis for incorporation of a regional commercial center on Pine Island Road

- <u>Policy 3.4:</u> The City shall initiate and/or consider privately initiated future land use map amendments necessary to provide an adequate supply of lands designated for retail, office, and services uses in quantities and locations appropriate for such uses, generally consistent with the findings of the Commercial Corridor Study (City of Cape Coral, 2003), or other subsequent analysis.
- <u>Policy 3.5:</u> Commercial development shall include bicycle parking areas, and when appropriate, bus bays and bus shelters in order to encourage alternative transportation modes.
- <u>Policy 3.6:</u> The City will adhere to the Pine Island Road Corridor Master Plan to provide guidance, standards, and to direct growth and development along the Pine Island Road Corridor.
- <u>Policy 3.7:</u> The City may consider the vacation of rights-of-way to facilitate land assembly and the development of a unified, contiguous commercial project.
- <u>Policy 3.8:</u> The City of Cape Coral may develop other zoning districts that are compatible with the Commercial/Professional future land use classification.
- <u>OBJECTIVE 4:</u> Location of Future Development: Future private development requiring public water and wastewater will be directed into the Urban Services Infill Area and the Urban Services Transition Area illustrated on the Future Land Use Map, unless specifically accepted by the provisions of this plan.
- <u>Policy 4.1:</u> Future development requiring access or connection to public water and sewer facilities will be located within either the Urban Services Infill or Transition areas.
- <u>Policy 4.2:</u> Exemption from the provisions of Policy 4.1 will be made only in extraordinary cases where the physical size, potentially disruptive nature, or geographic needs of the project would make strict adherence unreasonable. These projects include developments of regional impact, utilities plants, airports, public schools, technical schools, community colleges, parks and other government facilities.
- <u>Policy 4.3:</u> The City will continue to periodically review its Economic Development Master Plan to identify emerging trends and encourage large-scale commercial, professional, and industrial types of development within the City.
- <u>Policy 4.4:</u> Completed and city-accepted private initiatives to utility service, such as onsite sewage treatment plants and developer-extended utilities, shall be considered as extensions to the Urban Services Transition Area.
- <u>OBJECTIVE 5:</u> Extension of Infrastructure and Services in the Urban Services Infill Area: Infrastructure and community services will be extended to serve 100 percent of the anticipated functional population of the Urban Services Infill Area.
- <u>Policy 5.1:</u> Land use regulations, whether adopted or revised pursuant to this plan, shall provide incentives to encourage infill of residential, commercial, and other appropriate uses within the Urban Services Infill Area and Transition Area.

<u>Policy 5.2:</u> The City will amend the Future Land Use Map using the plan amendment process, to annex Urban Services Transition Area lands into the Urban Services Infill Area as soon as those lands are found to be served with the adopted level of infrastructure and community services.

<u>Policy 5.3:</u> New commercial development shall meet all of the requirements for adequate facilities based on the level of service standards adopted for roads, potable water and sanitary sewer, solid waste, storm water facilities and other services in this plan.

<u>Policy 5.4:</u> In addition to the facilities for which level of service standards are adopted as part of the concurrency management system of this plan; other services that should be considered to serve new commercial and mixed-use development include fire, police and emergency medical protection.

OBJECTIVE 6: Extension of Infrastructure and Services in the Urban Services Transition Area: Infrastructure and community services will be extended to serve 100 percent of the anticipated functional population of the Urban Services Transition Area at the same level of service standards available within the Urban Services Infill Area.

<u>Policy 6.1:</u> Future extension of utilities will be located and timed to attain a reasonable balance between the following factors:

Protection of public health, safety, and welfare.

Protection of the environment from contamination.

Protection of potable water aquifers from excessive withdrawal and/or saline-water intrusion.

Projected population increases.

Enhancement of economic development resulting from the provision of services.

Continuity with the future plans for utilities within the extension area and adjacent areas.

Collection and distribution facilities will only be extended with consideration given to the capacities of the aquifers, water wells, treatment plants, or disposal facilities capacities to provide the adopted levels of service.

Property value and financial impacts on property owners.

Financial feasibility of the utility expansion.

<u>Policy 6.2:</u> The City will continue to identify a portion of the Urban Services Transition Area for future land banking opportunities.

<u>OBJECTIVE 7:</u> Development in the Urban Services Reserve Area: The City will discourage premature "leap-frog" development within the Urban Services Reserve Area.

Policy 7.1: The City will amend the Future Land Use Map through the plan amendment process to annex Urban Services Reserve Area lands into the Urban Services Transition Area as a prerequisite to the extension of infrastructure and community services. Amendments of this type may take place only after the Urban Services Infill and Transition Areas are reevaluated as a whole and the City determines that the additional land is appropriate in size and location to meet the needs of the projected population. Per Policy 2.3.3 of the Infrastructure Element, extension of centralized potable water and wastewater infrastructure services beyond the Urban Services Infill and Transition Areas may be undertaken if such services are provided by a developer, independent utility franchise, or through the developer-financed extension of City utilities.

<u>Policy 7.2:</u> The City will concentrate its long-range land acquisition and assembly efforts within the Urban Services Reserve Area.

<u>Policy 7.3:</u> The City will provide incentives to individual property owners, builders, and developers to assemble parcels of land for future private uses, and will encourage the use of zero lot line (ZLL) and cluster type of development to improve lot layout, drainage, and stormwater retention.

<u>Policy 7.4:</u> Developers of lands within the Urban Services Reserve Area, shall bear the costs of extending water and wastewater infrastructure if onsite systems are impracticable.

Policy 7.5: Reserved.

<u>Policy 7.6:</u> Notwithstanding any provisions in this element which may be interpreted to the contrary, the right to a development order to build one (1) single family dwelling unit in the Urban Services Reserve Area on a property of 10,000 square feet or more, or to build no more than 4.4 single family dwelling units per developable acre, shall be permitted for privately-owned lands if classified as Park and Recreation Facilities or Public Facilities on the Future Land Use Map.

<u>Policy 7.7:</u> As an incentive to the assembly, holding, and development of sizable tracts of land in the Urban Services Reserve Area, tracts of the following sizes may be developed at the following residential densities, subject to (i) adopted performance standards capable of allowing residential development at such densities; (ii) any applicable concurrency requirements; (iii) applicable standards of other governmental agencies; and (iv) any other applicable goals, objectives and policies in the Cape Coral Comprehensive Plan:

| ACREAGE | DU/ACRE |
|----------|---------|
| 3-4.99 | 8 |
| 5-9.99 | 10 |
| 10-14.99 | 12 |
| 15-19.99 | 14 |
| 20 | 16 |

Policy 7.8: Platted lots in the Urban Services Reserve Area zoned for Commercial or

Professional use prior to the February 13, 1989 Cape Coral Comprehensive Plan that are now designated for Residential use, if they (i) are below the minimum size for Residential use, and (ii) adjoin City-owned property, may be conveyed to the City for an impact fee credit that may be lawfully granted by the City equal to their fair market value at the time of conveyance, based on their Commercial or Professional zoning prior to the adoption of the February 13, 1989 Cape Coral Comprehensive Plan.

<u>Policy 7.9:</u> Development of properties or projects that have access to city utilities and are divided by or adjacent to the Urban Services boundary may be developed, at the density or intensity of land use as designated on the Future Land Use Map. Such development must proceed as one compact and unified development and shall be governed by the rules for development in the Urban Services Infill and Transition Areas and be subject to the intensities and densities of policy 1.16.

<u>Policy 7.10:</u> The City shall discourage illogical and inefficient leapfrog development, by encouraging and directing development to areas adjacent to section of the City served by existing centralized utilities, and that the extension of centralized utilities will abide by Policy 1.1.6 of the Infrastructure Element.

<u>OBJECTIVE 8:</u> Restrictions upon Incompatible Land Uses: The City will prohibit land uses which are incompatible or inconsistent with the Future Land Use Map.

<u>Policy 8.1:</u> The City will prohibit the expansion or replacement of land uses which are inconsistent with the Future Land Use Element.

<u>Policy 8.2:</u> Land development regulations, adopted pursuant to s.163.3202, F.S., will require the buffering of incompatible land uses.

<u>Policy 8.3:</u> Commercial developments shall be designed to minimize negative impacts on surrounding residential uses and the land development regulations shall provide for adequate buffering between commercial and residential uses. The design should ensure adequate screening of unsightly views of commercial developments (such as loading docks, rooftop equipment, service entrances, trash containers, parking areas and exterior storage) through the extensive use of landscaping, berms, fencing, concealment, architectural features, open space, setbacks, and/or building orientation. Ensure that the placement of any noise generating activities such as ingress/egress, parking, deliveries, air conditioning equipment and dumpster collections are designed to minimize any adverse noise effects. Traffic and parking should not adversely affect neighborhood quality. Noise, safety and overall maintenance of commercial properties should be carefully monitored.

<u>Policy 8.4:</u> The City shall encourage transitions from commercial uses to less intensive land uses and site design that considers the following preferred characteristics to attain compatibility with adjacent residential uses:

a. Site Orientation

i. Vehicular access should be from a collector, arterial, access street, or an alley if the subject uses are located within the Downtown Community Redevelopment Area.

- ii. Pedestrian access should be designed to provide internal and external circulation from adjacent neighborhoods.
- iii. Streets should be designed with elements to provide visual or physical buffering may serve as boundaries between different intensities of land uses.
- iv. Site improvements within commercial areas such as lighting, signage and landscaping should be designed and coordinated in order to create a positive identity and visual image throughout the development area.
- b. Site design should promote the preservation and integration of mature trees, natural vegetation, natural and environmentally sensitive areas whenever feasible.
- c. Screening and landscaping
 - i. Creative and extensive use of landscaping and berming techniques for natural transitions between differing intensities of land uses is encouraged.
 - ii. Fences should not be used as a sole method of providing screening and buffering between differing intensities of land uses.
 - iii. The City shall review and revise landscaping and signage standards for commercial development to enhance the visual and physical environment to foster its integration of other land uses.
- d. Lighting used to illuminate parking areas, signs or structures should be placed and designed to deflect light away from adjoining property or public streets through fixture type, height, orientation and location.

<u>Policy</u> <u>8.5:</u> The City encourages the use of multi-family residential, compound buildings, professional offices, and parks as transitional uses between commercial development and low-density residential neighborhood. Such development should include:

- a. Design elements such as: height and scale compatible with the surrounding residential uses;
- b. Site design that is compatible with surrounding residential neighborhoods with consideration given to extensive screening, architectural features, building and parking orientation, and preservation of natural features; and
- c. Primary site access provided from arterials, collectors or access streets in order to discourage traffic from directly entering residential areas.

<u>Policy 8.6:</u> Commercial developments and compound buildings shall be encouraged to preserve substantial areas of natural vegetation.

<u>OBJECTIVE 9:</u> Coastal Development: The City will coordinate coastal area population densities with the Southwest Florida Comprehensive Hurricane Evacuation Plan.

<u>Policy 9.1:</u> The City will encourage the development of infrastructure in the northeastern portion of the community to take advantage of high elevations and opportunities for rapid evacuation.

Policy 9.2: The City will utilize the 2017 Climate Change Resiliency Strategy, and other strategies as updated, for the placement of public infrastructure in order to better prepare for sea level rise.

<u>OBJECTIVE 10:</u> Charlotte Harbor Management Plan: The City will coordinate its planning efforts with the provisions of the Charlotte Harbor Management Plan.

<u>Policy 10.1:</u> Requests for development orders and building permits will be coordinated with governmental agencies including, but not necessarily limited to, Lee County, Charlotte County, the Regional Planning Council, the South Florida Water Management District, and other State and Federal agencies.

<u>OBJECTIVE 11:</u> Protection of Marine, Estuarine, and Upland Environments: Cape Coral will continue to protect marine and estuarine communities and will continue its protection to include the ownership and maintenance of a significant example of an upland ecological community.

<u>Policy 11.1:</u> The City will own and maintain a minimum of 200-acre tract of upland for use as a major park emphasizing passive recreation and nature study.

<u>Policy 11.2:</u> The City will continue to use inland sites for dredge spoil to protect marine and estuarine communities. The identification of subsequent spoil sites will begin within two years of the existing site reaching capacity.

<u>OBJECTIVE 12:</u> Protection of Historic Resources: The City will continue to identify all historic resources within the City's jurisdiction, and will adopt regulations to preserve and protect those resources for future enjoyment.

<u>Policy 12.1:</u> The Department of Community Development will be the designated body responsible for preserving the City's historic resources and the identification of historic homes and structures within the City's jurisdictional boundaries.

<u>Policy 12.2:</u> Cape Coral will continue to cooperate with State and Federal agencies to protect identified historical and archaeological resources from vandalism and desecration, and will preserve these resources in a manner which promotes an understanding of historic peoples and their times.

<u>OBJECTIVE 13:</u> Renewal of Blighted Areas: The City will pursue the redevelopment and renewal of blighted areas in the downtown area consistent with the provisions of the Community Redevelopment Area (CRA) plan.

<u>Policy 13.1:</u> The City will continue the redevelopment of the Community Redevelopment Area (CRA) in downtown Cape Coral according to the schedule of the CRA plan as adopted by Council.

<u>Policy 13.2:</u> The City will, as part of its CRA planning process, investigate innovative market opportunities to property owners in blighted areas to remodel, rebuild and replat their buildings and properties.

<u>Policy 13.3:</u> In order to encourage and facilitate development and redevelopment and the provision of housing, employment, service and shopping opportunities in a compact area currently served by public facilities, mixed-use development shall be allowed in the Downtown Community Redevelopment Area. Such mixed-use development shall conform to the Community Redevelopment Area Plan, as same may be amended, and shall be reviewed in accordance with the City's Land Development Code.

Objective 14: In order to promote the economic viability of Downtown Cape Coral, the City of Cape Coral shall establish the Downtown Transportation Concurrency Exception Area (Downtown TCEA). Establishment of the TCEA will enhance the ability of the City to undertake the following activities:

Urban redevelopment;

Urban infill development;

Increasing retail and commercial services, as well as employment opportunities within the downtown area, thereby reducing the City's reliance on travel across bridges to reach such land uses;

Providing residents of, and visitors to, the downtown area with a variety of transportation choices and opportunities including automotive, pedestrian, bicycle and transit;

The creation and implementation of desirable urban design and form in the downtown area;

The creation of a broader mix of residential and non-residential uses in the downtown area;

Implementing streetscaping and landscaping improvements in the downtown area; and

Increasing comfort, safety and convenience for pedestrian, bicycle and transit users in the downtown area.

<u>Policy 14.1:</u> The City of Cape Coral hereby establishes the Downtown CRA Transportation Concurrency Exception Area (Downtown TCEA) to aid in the revitalization and redevelopment of the properties within the Community Redevelopment Agency (CRA) area. The purpose of the TCEA shall be to provide incentives for revitalization, infill development and redevelopment by eliminating or minimizing transportation concurrency requirements, in exchange for the implementation of sound land use and transportation planning techniques, which enhance mobility within the downtown area.

<u>Policy 14.2:</u> The City of Cape Coral Downtown CRA TCEA shall have boundaries as depicted on the Future Land Use Map. The general boundaries of the area are as follows: SE 44th Street and SE 46th Lane on the North, SE 17th Place, Waikiki Avenue, and the Caloosahatchee River on the East, Miramar Street, Bimini Basin Canal, and Norfolk Canal on the South, and Tudor Canal, Palm Tree Boulevard, Coronado Parkway and the alley in Block 396 on the West.

Policy 14.3: New development, redevelopment and infill development projects located within the City of Cape Coral Downtown Transportation Concurrency Exception Area (Downtown TCEA) may elect to be exempt from transportation concurrency requirements through implementation of the mitigation strategies described in Policy 14.5 of this Element. New development, redevelopment and infill development projects that do not choose to mitigate transportation concurrency impacts in such manner shall be subject to all applicable transportation concurrency requirements. Whether or not a project elects to mitigate its transportation impacts through the strategies identified in Future Land Use Policy 14.5, or elects to be subject to standard transportation concurrency requirements, all projects shall be subject to concurrency review for the purpose of assessing the transportation impacts of the proposed development.

<u>Policy 14.4:</u> The City of Cape Coral and the Cape Coral Community Redevelopment Agency (CRA) will work with Lee County Transit (LeeTran), or other local transit provider, and the Lee County Metropolitan Planning Organization (MPO) to expand and/or otherwise improve the public transportation system within the Downtown TCEA in an effort to reduce the demand on the existing transportation network by reducing the number of trips on the roadways within the Downtown TCEA.

<u>Policy 14.5:</u> In order to be exempt from link specific concurrency and to support mobility enhancement within the Downtown TCEA, all new development, redevelopment, or infill development projects may opt to incorporate any five of the following provisions:

Preferential parking for carpools, vanpools, and/or multiple occupancy vehicles with the object of increasing the average vehicle occupancy for trips generated by the development.

Parking price structures favoring carpools, vanpools, and/or multiple occupancy vehicles, with the object of increasing either the average vehicle occupancy for trips generated by the development, or increasing transit ridership.

Flexible work schedules for employees of the development, with the object of decreasing peak hour automobile trips generated by the development.

Payment of a subsidy to LeeTran to support an increased level of transit service within the TCEA.

Payment into one or more funds, to be established by the City or the CRA. Monies collected by such fund(s) shall be used to support programs and/or capital projects designed to provide additional parking and/or to enhance bicycle, pedestrian, and transit mobility within the TCEA.

The provision of transit shelters, built to City of Cape Coral specifications, within the development.

The provision of a safe and convenient internal pedestrian and bicycle circulation system within the development, including the placement of bicycle racks or bike lockers.

The provision of transit turn out lanes on heavily traveled roadways.

The provision of structured parking for use by residents, patrons and employees of the development.

Clustering buildings within the development, or otherwise designing the development to achieve maximum residential density or non-residential intensity at the development site in a manner, which preserves open space, enhances multi-modal opportunities and provides transit oriented densities or intensities.

Where feasible, the construction of new roadway or alleyway facilities to reduce congestion on major roadways and to provide alternate access to the development.

Any other innovative transportation related modifications or standards submitted by the developer and acceptable to and approved by the City of Cape Coral.

<u>Objective 15:</u> Downtown TCEA Administration: The City shall develop and implement strategies and programs designed to achieve the purposes of the City of Cape Coral Downtown CRA Transportation Concurrency Exception Area (TCEA).

<u>Policy 15.1:</u> The Community Redevelopment Plan for the Community Redevelopment Area (CRA) provides information regarding funding of redevelopment within the CRA. As provided for by Florida's Community Redevelopment Act, the principal source of funding for the Community Redevelopment Agency will be through the Tax Increment Trust Fund. Other sources of funding may include the sale or lease of acquired property, Enterprise Fund Revenue Bonds, one or more funds for mobility enhancement, as described in Policy 14.5, above, and Federal, State and Regional Grants.

<u>Policy 15.2:</u> In order to promote new development, redevelopment and infill development within the Downtown TCEA, funding for multimodal transportation modifications and identified improvements (not otherwise provided by the developer, as per Policy 14.5, above) will be provided to the maximum extent feasible by the City, the CRA, Lee County, state and/or federal governments, developers and other outside sources such as grant funds.

<u>Policy 15.3:</u> Within the Downtown TCEA, the City of Cape Coral and the Community Redevelopment Agency will continuously work to improve other forms of mobility such as pedestrian, bicycle and transit service and to implement connectivity between all modes so as to promote lower vehicular traffic.

Policy 15.4: The City of Cape Coral and the Community Redevelopment Agency will

implement sidewalk, or other pedestrian, and bicycle improvements to increase the Level of Service of these facilities within the downtown area. Pedestrian projects designed to increase the pedestrian level of service may include but shall not be limited to:

Construction of new or expanded sidewalk facilities to service streets or portions of streets not currently served by sidewalks;

A reduction in the number of physical obstructions within the sidewalk network;

Improvements to pedestrian crosswalk signalization;

The designation of one or more local streets as pedestrian only areas; and/or

The provision of shading, sitting areas and other streetscape amenities.

<u>Policy 15.5:</u> The City and the CRA will cooperate with Lee County Transit (LeeTran) to maintain/improve the transit facilities and transit level of service within the Downtown TCEA. In addition to developer-implemented strategies, as described in Policy 14.5 of this Element, strategies that may be implemented include, but may not necessarily be limited to, improving the density, intensity and mix of development in the downtown area, improving route headways, improving service time spans, and reducing the interval distance between stops.

Objective 16: The Cape Coral Downtown CRA Transportation Concurrency Exception Area (Downtown TCEA) will be administered in a manner that supports the Community Redevelopment Agency's goals concerning urban design, the preservation of open spaces, streetscaping and the removal of blighting factors.

<u>Policy 16.1:</u> With regard to open space and street layout within the Community Redevelopment Area, the intent of the City, in implementing the Downtown TCEA, is to create a high-intensity, yet pedestrian friendly, urban area that is served by multi-modal circulation systems, which are designed to ensure that visitors, employees, and residents can easily find their way, park, and enjoy their walk to their destinations.

<u>Policy 16.2:</u> Within the Downtown TCEA, the City shall utilize regulatory controls and incentives to provide appropriate limitations on the type, size, height and use of buildings in order to stimulate and attract private investment in real property and property improvements in the redevelopment area. Such investment and improvements will be directed toward the elimination of blighting factors, the improvement of the economic health of the City and the County, increasing employment opportunities within the downtown area, providing better services to residents, businesses, and tourists, and improving the tax base.

<u>Policy 16.3:</u> In regulating residential development (including, but not necessarily limited to, affordable housing) within the Downtown TCEA, the City will continuously seek to increase the number of people that both live and work downtown in order to promote the creation of pedestrian-friendly shopping areas, provide employment opportunities for downtown residents, and decrease automobile use in the downtown area.

Policy 16.4: In order to enhance the visual characteristics of roadways within the Downtown

TCEA, and to create an appealing environment that supports multi-modal transit opportunities, the City and the CRA will develop streetscaping guidelines and/or plans for roadways within the downtown area.

<u>Policy 16.5:</u> The City will include right of way and median landscaping as part of any major roadway modification program carried out within the Downtown TCEA.

<u>Policy 16.6:</u> The City of Cape Coral shall coordinate with the CRA, Lee County, and the Lee County Metropolitan Planning Organization to balance the need for and design of roadway improvements within the Downtown TCEA with the CRA's need for quality urban design concepts for all revitalization, redevelopment and infill development.

<u>Policy 16.7:</u> Land use intensities and densities within the Downtown TCEA shall be consistent with the goals objectives and policies of the City's Comprehensive Plan. In particular, Policy 1.15 (k) of this Element, describing the Downtown Mixed Future Land Use Classification, defines the allowable intensities and densities within the Downtown TCEA.

Objective 17: Downtown TCEA Network Connectivity: In implementing various mobility strategies and infrastructure projects within the Downtown TCEA, the City of Cape Coral and the Community Redevelopment Agency will seek to establish network connectivity within and between all modes of transportation within the downtown area.

<u>Policy 17.1:</u> In reviewing requests for vacation of streets within the downtown area, the City of Cape Coral shall consider the following:

Whether the loss of the street will adversely impact current or future bicycle/pedestrian mobility;

Whether the loss of the street will prevent access to adjacent land uses or transit stops; and,

Whether the loss of the street is necessary for the construction of high density, mixed use projects containing both residential and non-residential uses or projects that permit residential and non-residential uses to be constructed in close proximity to each other.

<u>Policy 17.2:</u> Within the Downtown TCEA, development plans for the placement of new parking structures and/or surface parking lots as a principal or accessory use shall:

Minimize conflicts between pedestrian, motor vehicle, and bicycle travel routes; and,

Utilize locations and designs, which discourage commercial vehicle access through residential streets.

Cape Coral City Council
May 6, 2019
ORDINANCE 23-19
TXT19-0001

Purpose

- A City-initiated change to Policy 1.15, Future Land Use Element of the Comprehensive Plan
- Makes some changes amending language adopted in Ordinance 71-18

Specifics

- Removes affordable housing density doubling language
- Increases residential densities from 75 to 125 units/acre in the Downtown Mixed future land use
- Reduces residential densities from 25 to 16 units/acre in the Commercial Activity Center future land use
- Staff recommends Approval
- We have received no correspondence

Planning Division Staff Report

TXT19-0001

Review Date: March 1, 2019

Prepared by: Wyatt Daltry, AICP, Planning Team Coordinator

Request: Amends the Future Land Use Element in preparation for updates to the

Future Land Use Map, Land Development Code, and Zoning Map.

STAFF RECOMMENDATION:

APPROVAL

| Positive Aspects of Application: | Removes an unintended consequence connected to doubling densities for developments with a significant affordable housing component Provides additional flexibility for development in the Downtown Mixed future land use map classification Removes increased density within Neighborhood Commercial zoning, an as-yet unmapped district, and returns the density (16/acre) to its former level, limiting increased impacts of development |
|----------------------------------|--|
| Negative Aspect of Application: | Amendment quickly follows up a major change to Comprehensive Plan (Ordinance 71-18), which may cause confusion |
| Mitigating Factors: | Adoption of updates to the Plan will better prepare the community for the 21st century. |

Background

In 2016, the City embarked upon the overhaul and complete rewrite of the Land Use and Development Regulations (LUDR). During this time, the City recognized adoption of a new zoning code (LDC) that will require changes to the text of the Comprehensive Plan, the Future Land Use Maps, and the Zoning Map. Changes to the Comprehensive Plan through Ordinance 71-18 were adopted on February 4, 2019.

Some additional changes were identified not long after Ordinance 71-18 was adopted, and the proposed amendments address concerns that were raised. Fortunately, this request's timing in relation to the recent adoption to Ordinance 71-18, which is not in effect as of the time of this report, mitigates impacts on development and private-property rights.

The following section identifies and analyzes the policies affected by this amendment.

Summary and Analysis of the Proposed Changes by Element

Note: Additions are indicated in <u>underline</u> format, while deletions are indicated by strikethrough.

FUTURE LAND USE ELEMENT

AMENDMENT 1: Removal of affordable housing doubling language in the following policies:

FLUE Policies 1.15.b, e, f, l, m

b. <u>Multi-Family Residential</u>: Densities up to 25 units per acre are permitted in this future land use map classification. For properties less than one acre in size, densities shall be calculated as a product of the size of the property divided by 43,560, multiplied by 25, rounded down. The development of multi-family projects in the Urban Services Reserve Area is also subject to the terms of Policies 7.7 and 7.8, below.

The Residential Multi-Family Low (RML) District is designed to permit multi-family residential development. Single-family attached projects (three or more units only), single-family residences, and duplexes are also permitted in this zoning district.

The Residential Multi-Family Medium (RMM) District is designed to permit higher-density multi-family residential development. Lower-density, multi-family residential projects such as duplexes or single-family residences are not permitted in this zoning district.

Multi-family residential developments in this future land use map classification that consist of 25-50%workforce or affordable housing, as determined by staff, may have their allowable densities doubled.

. . .

e. <u>Mixed-Use:</u> The mixed-use designation is intended to encourage the development of planned projects that include more than one type of use. The maximum permitted densities/intensities of various uses within the mixed-use designation will be 25 dwelling units per acre for a residential component and 1.0 FAR (Floor Area Ratio) for nonresidential uses. For example, a project combining multi-family and commercial uses would be subject to Policies 1.15.b. and/or 7.7 for the multi-family portion, and Policy 1.15.c. for the commercial portion.

The following will control the mix of uses allowed in the Mixed-Use Land Use category.

Properties less than one (1) acre: The designation of smaller properties as Mixed-Use is desired to encourage the accumulation of land into large properties. However, in some cases assemblage is difficult due to existing development. In these situations, a property with a Mixed-Use future land use classification may be developed with one use, which is also consistent with its underlying zoning district.

Properties one (1) acre and greater: Larger properties are prime candidates for mixed use developments. These properties shall include more than one type of use. The mix of uses may include residential, retail, office, services, light industrial or public facilities. Such uses may be mixed horizontally on a site or may be within a compound use building, (i.e. differing uses within one building or structure) consisting of residential and retail office, or services.

For Mixed-Use developments adopted after October 23, 2010, retail, office, services, light industrial, or public facilities uses may be developed up to 100% of building floor area within a Mixed-Use property; this will have the intended effect of not requiring a mix of non-residential uses for properties one (1) acre or greater in size. Stand-alone residential uses may comprise up to 20% of site area of a Mixed-Use property one (1) acre or greater in size. Compound use residences are permitted.

Notwithstanding any provisions that may be interpreted to the contrary, Mixed-Use developments approved prior to October 23, 2010 may continue to abide by the development requests granted within their respective adopted development orders or approved site plans. Furthermore, Mixed-Use properties located in the Urban Services Reserve Area require three (3) acres in order to develop a mixed-use project. Mixed Use designated property in the Urban Reserve Services Area less than three acres is limited to a single use that does not generate an estimated flow of more than 880 gallons of sewage per acre per day. Estimated flows shall be based on 64E-6.008 Florida Administrative Code, as may be amended.

Multi-family residential developments in this future land use map classification that consist of 25-50%workforce or affordable housing, as determined by staff, may have their allowable densities doubled.

f. <u>Single Family and Multi-Family:</u> The densities and intensities of use for this category, which is exclusively within the Urban Services Reserve Area, are 4.4 dwelling units per acre for single-family residential uses, 6 units per acre for multi-family residential uses on sites less than 3 acres. Multi-family residential uses for properties between 3 and 19.99 acres have a maximum density of 16 units per acre. Multi-family residential uses for properties greater or equal to 20 acres have a density of 25 dwelling units per acre.

Multi-family residential developments in this future land use map classification that consist of 25-50%workforce or affordable housing, as determined by staff, may have their allowable densities doubled.

. . .

l. <u>Pine Island Road District:</u> This Land Use designation will encourage mixed-use development at key intersections with major North-South streets along Pine Island Road.

Corridor: Includes such uses as retail, office, office/warehouse, light manufacturing, institutional (schools, colleges), single-family residential, multi-family residential, larger scale commercial retail (big box stores over 50,000 square-feet) and government uses such as parks and public facilities. Multi-family residential uses may be developed at a density of twenty-five units per acre, for sites of four acres or more. Multi-family residential uses may consist of no less than fifty units or have a density no less than ten or more units per acre. No duplexes are permitted. Commercial and light manufacturing uses shall not exceed a floor to lot area ratio (FAR) of 1.25 in accordance with City design standards. Public facilities shall be subject to Policy 1.15.h., of the Future Land Use Element and parks and recreation shall be subject to Policy 1.15.i. of the Future Land Use Element.

Multi-family residential developments in this future land use map classification that consist of 25-50%workforce or affordable housing, as determined by staff, may have their allowable densities doubled.

. . .

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

Pre-Existing Single-Family Residences Allowed

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

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

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

The City has adopted the Neighborhood Commercial (NC) zoning district as consistent with the Commercial Activity Center Future Land Use Classification. Development standards in accordance with the Neighborhood Commercial zoning district are as follows:

| Neighborhood Commercial Development Parameters | | | | |
|--|--|--|---|--|
| | Land Area of Development Project | | | |
| | 1 acre or less | 1 acre – 19.99 acres | 20 acres or greater | |
| Free-standing Commercial Development Area Maximum FAR | 0-100% 1.0 | 15%-100% 1.0 | 20%-75% 1.0 | |
| Free-standing Residential Development Area Minimum Density Maximum Density | N/A N/A N/A | 15%-85% 12 d.u./acre or 50 units 25 16 d.u./acre | 25%-80% 12 d.u./acre or 75 units 25 16 d.u./acre | |
| Mixed-Use Development Area Minimum Density Maximum Density Maximum FAR | 0-100% 3 d.u./acre 12 du/acre 1.0 | 0-100% 12 d.u./acre or 50 units 25 16 d.u./acre 2.0 | 0-100% 12 d.u./acre or 75 units 25 16 d.u./acre 2.0 | |
| Build-to/Front Setback | 6 ft. – 10ft. | 10 ft. | 10 ft. | |
| Minimum Side Setback | 0 or 6 | 0 or 6 | 0 or 6 | |
| Min. Rear Setback | 6 | 6 | 6 | |

Additional zoning districts may be developed in the future to implement this land use initiative.

Multi-family residential developments in this future land use map classification that consist of 25-50%workforce or affordable housing, as determined by staff, may have their allowable densities doubled.

An un-intended consequence of the proposed-to-be-removed language is the doubling of densities in areas, such as our Multi-Family and Single-Family/Multi-Family future land use map classifications, which are viewed as too dense even without this opportunity to double densities. The Cape Coral City Council has identified other avenues than density increases to attract affordable housing.

AMENDMENT 2: Increased maximum density within the Downtown Mixed future land use map classification to 125 dwelling units per acre:

FLUE Policy 1.15.k

k. <u>Downtown Mixed:</u> Intended primarily for the Downtown Community Redevelopment Area, to provide, a vibrant, walkable, mixed-use district in the historical heart of Cape Coral, mixed-use projects containing commercial and professional uses in conjunction with multi-family housing opportunities where practical and feasible are encouraged. To this end, commercial/professional uses may develop at a maximum Floor Area ratio of four (4) with an average area-wide FAR of two and twenty-three one hundredths

(2.23) with commercial/professional uses developed at a ratio of sixty-five (65) percent commercial and thirty-five (35) percent professional, on an area-wide basis. Residential development may develop at a density of seventy-five (75) dwelling units per acre, or at a density of one hundred twenty-five (125) dwelling units per acre not to exceed an aggregate of eleven thousand one hundred forty-six (11,146) dwelling units. In order to maintain these development limits, the City shall track residential and non-residential development within this future land use map classification. No further residential development will be permitted in this future land use classification should dwelling unit limits be reached. If the average area-wide FAR of two and twenty-three hundredths (2.23) is reached, the City will permit only that nonresidential development with a FAR of 2.23 or below. Development at these intensities and densities are contingent on the availability of centralized city utility services and transportation network at sufficient capacities to accommodate the development at the appropriate level of service, the availability of sufficient and convenient parking to service the project, the availability of multimodal transportation opportunities, and compatibility with adjacent existing and future land use. Special zoning designations may be established to implement this future land use classification, designed to result in a compact urban form.

Zoning districts consistent with the Downtown Mixed future land use map classification are the South Cape Downtown District and the Mixed-Use Bimini Basin zoning district.

This proposed amendment would provide additional densities within a newly-created zoning district in downtown Cape Coral. The long-standing cap of 11,146 dwelling units within the Downtown Mixed future land use map classification is unaffected, ensuring that there is no increase in maximum development impacts in this area

AMENDMENT 3: Decreased density within the Commercial Activity Center from twenty-five units per acre to sixteen units per acre per changes to the Neighborhood Commercial Development Parameters table.

FLUE Policy 1.15.m

| Neighborhood Commercial Development Parameters | | | |
|--|--|--|---|
| | Land Area of Development Project | | |
| | 1 acre or less | 1 acre – 19.99 acres | 20 acres or greater |
| Free-standing Commercial Development Area Maximum FAR | 0-100% 1.0 | 15%-100% 1.0 | 20%-75% 1.0 |
| Free-standing Residential Development Area Minimum Density Maximum Density | N/A N/A N/A | 15%-85% 12 d.u./acre or 50 units 25 16 d.u./acre | 25%-80% 12 d.u./acre or 75 units 25 16 d.u./acre |
| Mixed-Use Development Area Minimum Density Maximum Density Maximum FAR | 0-100% 3 d.u./acre 12 du/acre 1.0 | 0-100% 12 d.u./acre or 50 units 25 16 d.u./acre 2.0 | 0-100% 12 d.u./acre or 75 units 25 16 d.u./acre 2.0 |
| Build-to/Front Setback | 6 ft. – 10ft. | 10 ft. | 10 ft. |
| Minimum Side Setback | 0 or 6 | 0 or 6 | 0 or 6 |
| Min. Rear Setback | 6 | 6 | 6 |

The Cape Coral City Council has indicated a desire to keep residential densities unchanged within the Commercial Activity Center, at the level of the soon-to-be-former Marketplace Residential zoning district (16 units/acre).

Recommendation

Staff recommends approval of the proposed text amendments.

Item

B.(1)

Number: Meeting

Date:

5/13/2019

Item

ORDINANCES/RESOLUTIONS -

Type:

Introductions

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 88-19 (VP 19-0005*) Set Public Hearing Date for June 10, 2019

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:

Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject tot he conditions set forth in HEX Recommendation Order 6-2019.

Staff Recommendation: Staff recommends approval of both vacation requests with conditions. Conditions of approval recommended by staff mirror the conditions of approval recommended by the Hearing Examiner for this case.

SUMMARY EXPLANATION AND BACKGROUND:

A resolution providing for the vacation of plat for public utility and drainage easements underlying a previously vacated alley located between Lots 26-31 and Lots 42-47. Block 1484. Cape Coral Unit 17; providing for the vacation of plat for public utility and drainage easements along the east side of Lots 26-31 and the west side of Lots 42-47, Block 1484, Cape Coral Unit 17; property located at 112 Del Prado Boulevard North.

LEGAL REVIEW:

John E. Naclerio III, Assistant City Attorney

EXHIBITS:

Resolution 88-19 (VP 19-0005*) Back up materials from HEX Hearing Hearing Examiner Recommendation Order

Staff Presentation Utility Letters

PREPARED BY:

Division- Department- City Attorney

SOURCE OF ADDITIONAL INFORMATION:

Mike Struve, Planning Team Coordinator

ATTACHMENTS:

| Description | Туре |
|---------------------------------------|---|
| Resolution 88-19 (VP 19-0005) | Resolution |
| Back up material from HEX Hearing | Backup Material |
| Hearing Examiner Recommendation Order | Backup Material |
| Staff Presentation | Backup Material |
| Utility Letters | Backup Material |
| | Resolution 88-19 (VP 19-0005) Back up material from HEX Hearing Hearing Examiner Recommendation Order Staff Presentation |

RESOLUTION 88 - 19

A RESOLUTION PROVIDING FOR THE VACATION OF PLAT FOR THE PUBLIC UTILITY AND DRAINAGE EASEMENTS UNDERLYING A PREVIOUSLY VACATED

ALLEY LOCATED BETWEEN LOTS 26-31 AND LOTS 42-47, BLOCK 1484, CAPE CORAL UNIT 17; PROVIDING FOR THE VACATION OF PLAT FOR ALL PUBLIC UTILITY AND DRAINAGE EASEMENTS ALONG THE EAST SIDE OF LOTS 26-31 AND THE WEST SIDE OF LOTS 42-47, BLOCK 1484, CAPE CORAL UNIT 17; PROPERTY LOCATED AT 112 DEL PRADO BOULEVARD NORTH; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Petition was filed by FLORILAND REAL ESTATE INVESTMENTS, LLC, for the vacation of plat on property described herein; and

WHEREAS, the Petition meets the requirements of Land Use Development Regulations, Article VIII, Section 8.11, Vacation of Plats, Streets and Other Property of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that such Petition be granted.

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

Section 1. The Petition meets the requirements of Article VIII, Section 8.11, of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that such Petition be granted. The following-described public utility and drainage easements underlying the previously vacated alley are hereby vacated by the City of Cape Coral, to wit:

VACATION OF ANY AND ALL UNDERLYING EASEMENTS IN A 20 FOOT WIDE ALLEY IN CAPE CORAL UNIT 17, BLOCK 1484, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA

COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN SOUTH TO THE SOUTHWEST CORNER OF LOT 47, SAID BLOCK 1484 FOR 240.00 FEET; THENCE RUN WEST TO THE SOUTHEAST CORNER OF LOT 26, SAID BLOCK 1484 FOR 20.00 FEET; THENCE RUN NORTH TO THE NORTHEAST CORNER OF LOT 31, SAID BLOCK 1484; THENCE RUN EAST TO THE AFORESAID NORTHWEST CORNER OF LOT 42, BLOCK 1484 FOR 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 4,800 SQ FT, MORE OR LESS.

Section 2. The Petition meets the requirements of Article VIII, Section 8.11, of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that such Petition be granted. The following-described public utility and drainage easements are hereby vacated by the City of Cape Coral, to wit:

VACATION OF A PORTION OF A 6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN CAPE CORAL UNIT 17, BLOCK 1484, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

COMMENCING AT THE NORTHEAST CORNER OF LOT 31, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH FOR 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH FOR 228.00 FEET; THENCE RUN WEST FOR 6.00 FEET; THENCE RUN NORTH TO A POINT LYING 6 FEET SOUTH OF THE NORTH LINE OF SAID LOT 31, BLOCK 1484 FOR 228.00 FEET; THENCE RUN EAST FOR 6.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1,368.0 SQ FT, MORE OR LESS.

Section 3. The Petition meets the requirements of Article VIII, Section 8.11, of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that such Petition be granted. The following-described public utility and drainage easements are hereby vacated by the City of Cape Coral, to wit:

VACATION OF A PORTION OF A 6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN CAPE CORAL UNIT 17, BLOCK 1484, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH FOR 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN EAST FOR 6.00 FEET; THENCE RUN SOUTH FOR 228.00 FEET; THENCE RUN WEST FOR 6.00 FEET; THENCE RUN NORTH TO A POINT LYING 6 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 42, BLOCK 1484 FOR 228.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1,368.0 SQ FT, MORE OR LESS.

Section 4. Within sixty (60) days from the date of adoption of this resolution, applicant shall provide to the City a deed for a six (6) foot wide perpetual public utility and drainage easement. The deed shall be approved by the City's Real Estate Property Broker prior to execution. The property to be deeded to the City is as follows:

6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN A 20 FOOT WIDE ALLEY, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN SOUTH FOR 6.00 FEET; THENCE RUN WEST TO A POINT ALONG THE EAST LINE OF LOT 31, SAID BLOCK 1484 FOR 20.00 FEET; THENCE RUN NORTH TO THE NORTHEAST CORNER OF SAID LOT 31, BLOCK 1484 FOR 6.00 FEET; THENCE RUN EAST TO THE AFORESAID NORTHWEST CORNER OF LOT 42, BLOCK 1484 FOR 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 120.0 SQ FT, MORE OR LESS.

Section 5. Within sixty (60) days from the date of adoption of this resolution, applicant shall provide to the City a deed for a six (6) foot wide perpetual public utility and drainage easement. The deed shall be approved by the City's Real Estate Property Broker prior to execution. The property to be deeded to the City is as follows:

6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN A 20 FOOT WIDE ALLEY, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

COMMENCING AT THE SOUTHWEST CORNER OF LOT 47, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN WEST TO THE SOUTHEAST CORNER OF LOT 26, SAID BLOCK 1484 FOR 20.00 FEET; THENCE RUN NORTH FOR 6.00 FEET; THENCE RUN EAST TO A POINT ALONG THE WEST LINE SAID LOT 47, BLOCK 1484 FOR 20.00 FEET; THENCE RUN SOUTH TO THE SOUTHWEST CORNER SAID LOT 47, 1484 FOR 6.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 120.0 SQ FT, MORE OR LESS.

Section 6. The Applicant shall meet the following terms and conditions:

1. The vacation of the underlying easements associated with the alley right-of-way previously vacated by Resolution 112-90 shall be consistent with that shown in the sketch and accompanying legal description prepared by Harris-Jorgensen, LLC, dated January 25, 2019, and entitled "Vacation of Any and All Underlying Easements in a 20 Foot Wide Alley in Cape

Coral Unit 17, Block 1484."

res/vp19-0005

- 2. The vacation of the six-foot wide platted public utility and drainage easements near the east property line of Lots 26-31 and the west property line of Lots 42-47 shall be consistent with that shown in the sketches and accompanying legal descriptions prepared by Harris-Jorgensen, LLC, dated January 25, 2019, and entitled "Vacation of a Portion of a 6 Foot Wide Public Utility and Drainage Easement Lying in Cape Coral Unit 17, Block 1484."
- 3. Within 60 days from the date of adoption of this vacation, the owner shall provide to the City an easement deed providing for a continuous perimeter easement around the consolidated site. The easement deed shall be consistent with that shown in the sketches and accompanying legal descriptions prepared by Harris-Jorgensen, LLC, dated January 25, 2019, entitled "6 Foot Wide Public Utility and Drainage Easement Lying in a 20 Foot Wide Alley, Block 1484, Cape Coral Unit 17." This easement shall be approved by the City's Property Broker prior to execution.
- 4. This resolution shall be recorded with the Office of the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the applicant provides the City with the easement deed described in Condition #3 above and reimburses the City for all recording fees associated with this resolution and the easement deed.

Section 7. This Resolution shall take effect upon its recording within the Office of the Lee County Clerk of Court by the City of Cape Coral.

| ADOPTED BY THE CITY COUNCIL OF THE COUNCIL SESSION THIS DAY OF | |
|--|-----------------------------------|
| | JOE COVIELLO, MAYOR |
| VOTE OF MAYOR AND COUNCILMEMBERS: | |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN |
| ATTESTED TO AND FILED IN MY OFFICE 2019. | THIS, DAY OF, |
| APPROVED AS TO FORM: JOHN F. NACLERIO III | KIMBERLY BRUNS INTERIM CITY CLERK |
| ASSISTANT CITY ATTORNEY | |

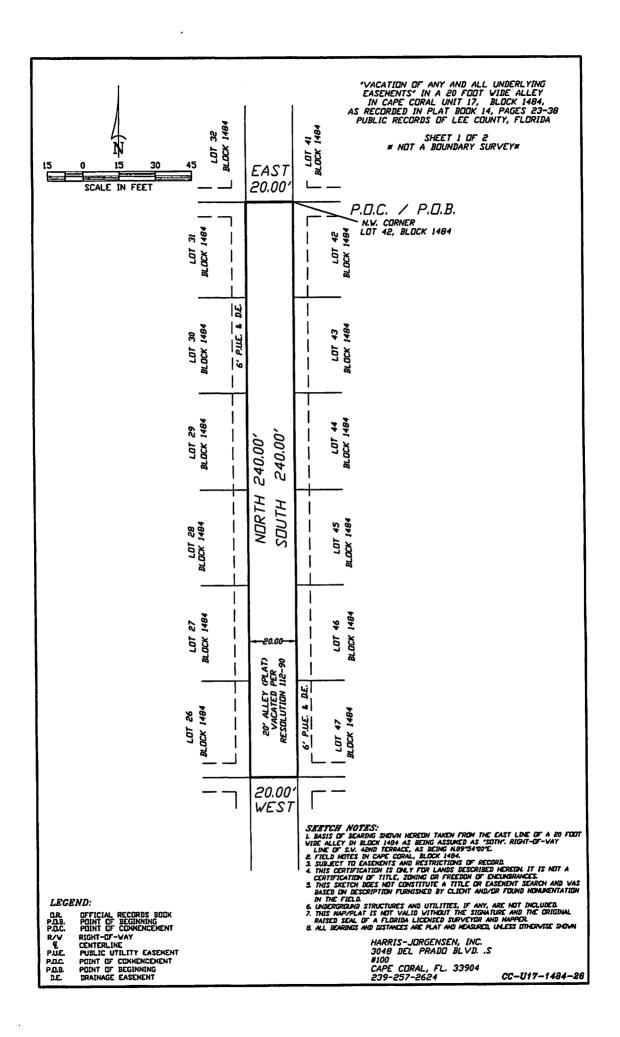


EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH

'VACATION OF ANY AND ALL UNDERLYING
EASEMENTS' IN A 20 FOOT WIDE ALLEY
IN CAPE CORAL UNIT 17, BLOCK 1484,
AS RECORDED IN PLAT BOOK 14, PAGES 23-38
PUBLIC RECORDS OF LEE COUNTY, FLORIDA
SHEET 2 OF 2

** NOT A BOUNDARY SURVEY**

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN SOUTH TO THE SOUTHWEST CORNER OF LOT 47, SAID BLOCK 1484 FOR 240.00 FEET, THENCE RUN WEST TO THE SOUTHEAST CORNER OF LOT 26, SAID BLOCK 1484 FOR 20.00 FEET, THENCE RUN NORTH TO THE NORTHEAST CORNER OF LOT 31, SAID BLOCK 1484; THENCE RUN EAST TO THE AFORESAID NORTHWEST CORNER OF LOT 42, BLOCK 1484 FOR 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 4,800 SQ FT, MORE OR LESS.

PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
#6515 - STATE OF FLORIDA
1-25-2019

Tillis M Moul

SHEET 2 OF 2 SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION CC-U17-1484-26 NOT A BOUNDARY SURVEY

HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD. .S #100 CAPE CORAL, FL. 33904 239-257-2624

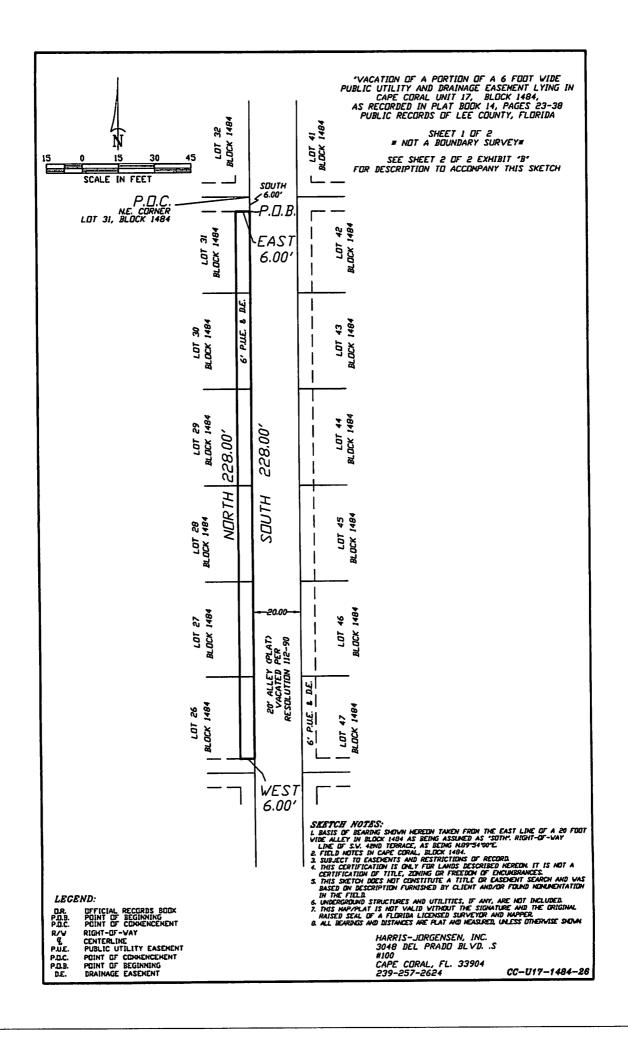


EXHIBIT "B"

DESCRIPTION TO ACCOMPANY SKETCH

'VACATION OF A PORTION OF A 6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN CAPE CORAL UNIT 17, BLOCK 1484, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA

NOT A BOUNDARY SURVEY#

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

SHEET 2 OF 2

DESCRIPTION:

COMMENCING AT THE NORTHEAST CORNER OF LOT 31, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH FOR 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH FOR 228.00 FEET; THENCE RUN WEST FOR 6.00 FEET; THENCE RUN NORTH TO A POINT LYING 6 FEET SOUTH OF THE NORTH LINE OF SAID LOT 31, BLOCK 1484 FOR 228.00 FEET; THENCE RUN EAST FOR 6.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1,368.0 SQ FT, MORE OR LESS.

PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
#6515 - STATE OF FLORIDA
1-25-2019

Tillis M Moul

SHEET 2 OF 2 SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION CC-U17-1484-26 NOT A BOUNDARY SURVEY

HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD. .S #100 CAPE CORAL, FL. 33904 239-257-2624

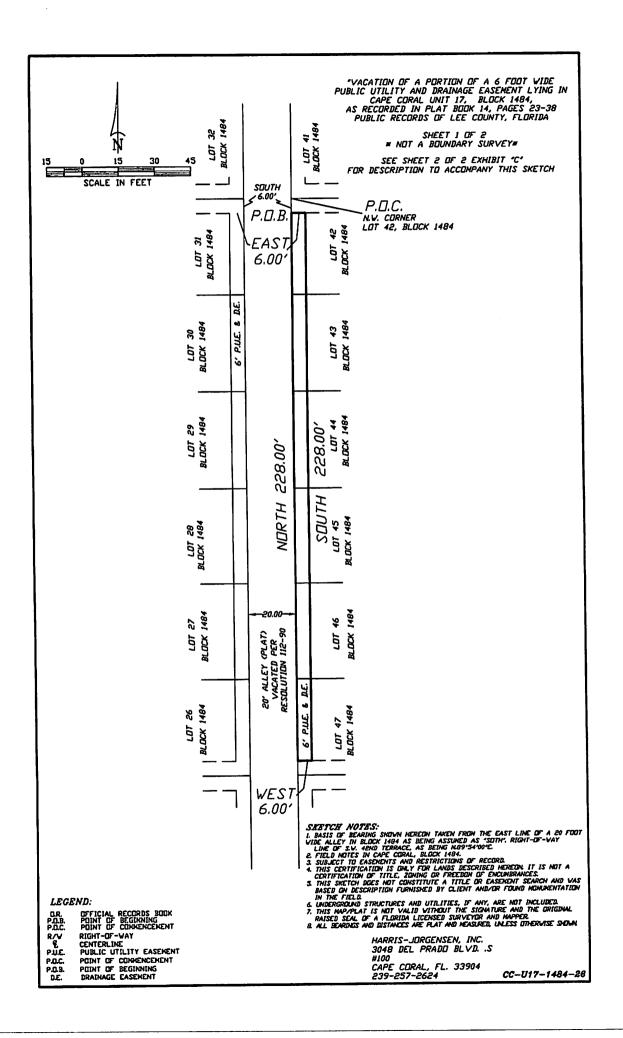


EXHIBIT "C"

DESCRIPTION TO ACCOMPANY SKETCH

'VACATION OF A PORTION OF A 6 FOOT WIDE
PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN
CAPE CORAL UNIT 17, BLOCK 1484,
AS RECORDED IN PLAT BOOK 14, PAGES 23-38
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

* NOT A BOUNDARY SURVEY*

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

SHEET 2 OF 2

DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH FOR 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN EAST FOR 6.00 FEET; THENCE RUN SOUTH FOR 228.00 FEET; THENCE RUN WEST FOR 6.00 FEET; THENCE RUN NORTH TO A POINT LYING 6 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 42, BLOCK 1484 FOR 228.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1,368.0 SQ FT, MORE OR LESS.

PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
#6515 - STATE OF FLORIDA
1-25-2019

Tilles M Moul

SHEET 2 OF 2 SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION CC-U17-1484-26 NOT A BOUNDARY SURVEY

HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD..S #100 CAPE CORAL, FL. 33904 239-257-2624

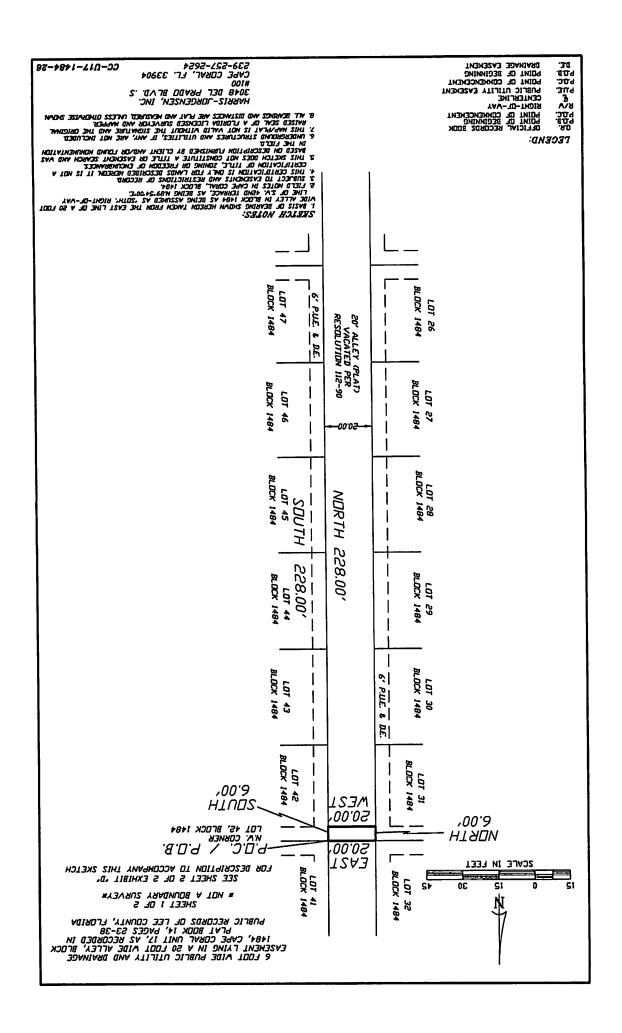


EXHIBIT "D"

DESCRIPTION TO ACCOMPANY SKETCH
6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE
EASEMENT LYING IN A 20 FOOT WIDE ALLEY, BLOCK
1484, CAPE CORAL UNIT 17, AS RECORDED IN
PLAT BOOK 14, PAGES 23-38
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

* NOT A BOUNDARY SURVEY*

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

SHEET 2 OF 2

DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN SOUTH FOR 6.00 FEET; THENCE RUN WEST TO A POINT ALONG THE EAST LINE OF LOT 31, SAID BLOCK 1484 FOR 20.00 FEET; THENCE RUN NORTH TO THE NORTHEAST CORNER OF SAID LOT 31, BLOCK 1484 FOR 6.00 FEET; THENCE RUN EAST TO THE AFORESAID NORTHWEST CORNER OF LOT 42, BLOCK 1484 FOR 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 120.0 SQ FT, MORE OR LESS.

PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
#6515 - STATE OF FLORIDA
1-25-2019

Lillis M Moul

SHEET 2 OF 2 SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION CC-U17-1484-26 NOT A BOUNDARY SURVEY

HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD..S #100 CAPE CORAL, FL. 33904 239-257-2624

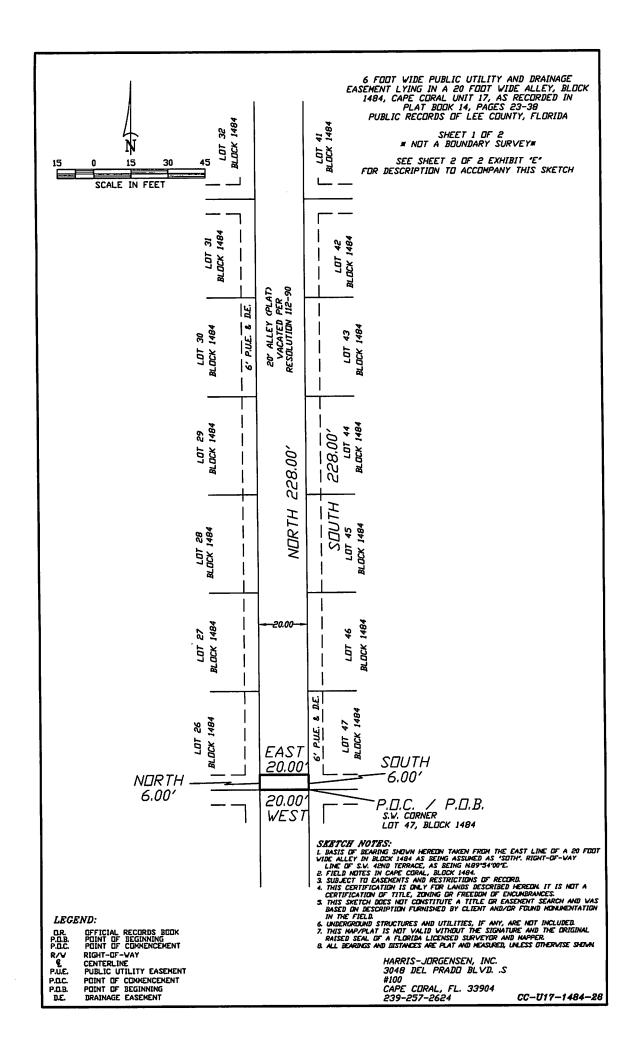


EXHIBIT "E"

DESCRIPTION TO ACCOMPANY SKETCH

6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE
EASEMENT LYING IN A 20 FOOT WIDE ALLEY, BLOCK
1484, CAPE CORAL UNIT 17, AS RECORDED IN
PLAT BOOK 14, PAGES 23-38
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

* NOT A BOUNDARY SURVEY*

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

SHEET 2 OF 2

DESCRIPTION:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 47, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN WEST TO THE SOUTHEAST CORNER OF LOT 26, SAID BLOCK 1484 FOR 20.00 FEET; THENCE RUN NORTH FOR 6.00 FEET; THENCE RUN EAST TO A POINT ALONG THE WEST LINE SAID LOT 47, BLOCK 1484 FOR 20.00 FEET; THENCE RUN SOUTH TO THE SOUTHWEST CORNER SAID LOT 47, 1484 FOR 6.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 120.0 SQ FT, MORE OR LESS.

PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
#6515 - STATE OF FLORIDA
1-25-2019

Lillis M Moul

SHEET 2 OF 2 SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION CC-U17-1484-26 NOT A BOUNDARY SURVEY

HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD. .S #100 CAPE CORAL, FL. 33904 239-257-2624



DEPARTMENT OF COMMUNITY DEVELOPMENT VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0005

REQUEST TO PLANNING & ZONING COMMISION AND COUNCIL FOR A VACATION OF PLAT

FEE: \$843.00 — In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-09, Sec. 5.4) Advertising costs must be paid prior to public hearing otherwise case will be pulled from public hearing.

Following the approval of your request, the applicant shall be responsible for reimbursing the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.

| OWNER OF PROPERTY Floriland Real Estate Investments, LLC | Address: <u>1245 Court Street, Suite 102</u> City: <u>Cape Coral</u> State: <u>FL</u> Zip <u>33756</u> Phone: <u>239-940-2613</u> | |
|--|---|-----|
| APPLICANT Same as Owner | Address: | |
| EMAIL liebs@comcast.net (Mark Liebetreu) | City: State: Zip | |
| ilosotageomodoli fot (mark Elosotica) | Phone: | |
| AUTHORIZED REPRESENTATIVE Linda Miller, AICP | Address: 2503 Del Prado Boulevard South, Suite 200 | |
| EMAIL linda@avaloneng.com | City: Cape Coral State: FL Zip 33 | 904 |
| | Phone: 239-573-2077 | |
| Unit 17 Block 1484 Lot(s) ar | Lots 42-47 and 26-31 Subdivision Cape Coral ard North, Cape Coral, Florida | |
| Address of Froperty | | |
| Current Zoning C-1 (Pedestrian Commercial) | Plat Book ¹⁴ , Page ²⁵ | |
| | Strap Number 07-44-24-C3-01484.0420 | |



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

| Case # | | |
|--------|------|------|
| | | |
| | | |
| | | |

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.

| | (SIGNATURE WIUST BE NUTARIZED) | |
|--|---|---------------------------------------|
| Mark Quigley | | Ne D |
| APPLICANT NAME (PLEASE TYPE OR F | PRINT) APPLICAN | TSSIGNATURE |
| STATE OF FL , COUNTY OF Sworn to (or affirmed) and subscrib Mark Quigley as identification. | LEE Deed before me this <u>0.5</u> day of <u>0.0</u> who is personally known or produce Exp. Date: <u>912/2020</u> Common Signature of Notary Public: Printed name of Notary Public: | · · · · · · · · · · · · · · · · · · · |





DEPARTMENT OF COMMUNITY DEVELOPMENT

| ACATION OF PLAT APPLICATION | |
|-----------------------------|--|
| Questions: 239-574-0776 | |

Case #

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 Hearing Examiner, Planning & Zoning Commission/Local Planning Agency, and City 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.

| Floriland Real Estate Investments, LLC | | |
|--|---|------------------------------|
| CORPORATION/COMPANY NAME | | |
| Mark Quigley | | |
| PROPERTY OWNER (PLEASE TYPE OR I | PRINT) | PROPERTY OWNER'S SIGNATURE |
| STATE OF FL, COUNTY | OF LEE | |
| Sworn to (or affirmed) and subscribe Mark Quigley | ed before me this 25 who is personally kno | |
| as identification. | Exp. Date: 917 Signature of Notary I Printed name of Not (SIGNATURE MUST B) | otary Public: Rebecco hample |





RTMENT OF COMMUNITY DEVELOPMENT

Questions: 239-574-0776

| Case # |
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| |
| DWNER(s) |
| on) |
| ONING COMMISSION/ LOCAL PLANNING DUNCIL FOR |
| ISION Cape Coral |
| |
| |
| TY OWNER (Please Print) |
| TY OWNER (Signature & Title) |
| day of <u>ANLOW</u> , 20 <u>19</u> , by |
| Imber: 1 GG 028987 |

AUTHORIZATION TO REPRESENT PROPERTY O PLEASE BE ADVISED THAT Avalon Engineering, Inc. (Name of person giving presentatio IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE PLANNING & Z AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS AND/OR CITY CO Vacation of Plat BLOCK 1484 UNIT 17 LOT(S) 42-47 & 26-31 **SUBDIV** OR LEGAL DESCRIPTION LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA. Floriland Real Estate Investments, LLC Mark Quigley, MGR PROPER PROPERTY OWNER (Please Print) PROPER PROPERTY OWNER (Signature LEE STATE OF , COUNTY OF Subscribed and sworn to (or affirmed) before me this Mark Quigley who is personally known or produced as identification. Exp. Date: Commission Nu Signature of Notary Public: Printed name of Notary Public:

Abe Righning Division with a copy of corporation Note: Please list all owners. If a ਟਿਹਾ ਹੋਈ ਕੀ ਜਹਿਮੀ paper.

becca Lample ly Commission GG 028987



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

| Case # | | _ |
|--------|------|-------|
| | | |
| | | |
| | | |

DOCUMENTARY EVIDENCE (LUDR, Section 8.3.1.C.6.f)

A copy of all documentary evidence shall be made available to the decision-making body or the Hearing Examiner and to staff no later than two business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

I have read the above requirement and agree to comply with this provision.

Floriland Real Estate Investments, LLC Mark Quigley, MGR

OWNER/APPLICANT (PLEASE TYPE OR PRINT)

OWNER/APPLICANT SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

| (State that the st | 52110771112257 |
|---|------------------------------|
| STATE OFFL COUNTY OFLEE | |
| Sworn to (or affirmed) and subscribed before me on this | |
| 20 19 by Mark Quigley , who is persona | ly known or who has produced |
| as identification. | $\overline{}$ |
| Exp. Date 917/2020 | |
| Commission # C7G1 02848 Signate | ure of Notary Public , |
| R | beeca Lampley |
| Print N | lame of Notary Public |



Department of State / Division of Corporations / Search Records / Detail By Document Number /

Detail by Entity Name

Florida Limited Liability Company
FLORILAND REAL ESTATE INVESTMENTS, LLC

Filing Information

Document Number

L18000089445

FEI/EIN Number

N/A

Date Filed

04/09/2018

State

FL

Status

ACTIVE

Last Event

LC AMENDMENT

Event Date Filed

10/29/2018

Event Effective Date

NONE

Principal Address

6091 SOUTH POINTE BLVD FORT MYERS, FL 33919

Changed: 10/29/2018

Mailing Address

6091 SOUTH POINTE BLVD FORT MYERS, FL 33919

Changed: 10/29/2018

Registered Agent Name & Address

GASSMAN, ALAN S 1245 COURT STREET

SUITE 102

CLEARWATER, FL 33756

Authorized Person(s) Detail

Name & Address

Title MGR

QUIGLEY, MARK 1245 COURT STREET CLEARWATER, FL 33756

Title MGR

QUIGLEY, THOMAS A, III 6091 SOUTH POINTE BLVD FORT MYERS, FL 33919

Annual Reports

Report Year

Filed Date

2019

01/11/2019

Document Images

01/11/2019 -- ANNUAL REPORT

View image in PDF format

10/29/2018 -- LC Amendment

View image in PDF format

04/09/2018 -- Florida Limited Liability

View image in PDF format

Florida Department of State, Division of Corporations



Avalon Engineering, Inc.

2503 Del Prado Boulevard South, Suite 200 Cape Coral, Florida 33904 Phone: (239) 573-2077 Fax: (239) 573-2076 #AA C001936 #EB 0003128

January 31, 2019

Mr. Bob Pederson, Planning Manager Department of Community Development City of Cape Coral 1015 Cultural Park Boulevard Cape Coral, Florida 33915

PROJECT: VACATION OF THE UNDERLYING AND AJDOINING EASEMENTS WITHIN A

VACATED ALLEY IN BLOCK 1484 LOTS 26-32 & 42-47 SITE LOCATED AT: 112 DEL PRADO BLVD NORTH

SUBJECT: VACATION OF PLAT LETTER OF INTENT

Dear Mr. Pederson:

On behalf of the property owner, Floriland Real Estate Investments, LLC, we request approval of a Vacation of Plat to vacate the remaining 20' wide underlying easements within a vacated alley and the 6' PUE adjoining both sides of the vacated alley within Block 1484 between Lots 26-32 & 42-47.

The owner is requesting approval to vacate the 20' underlying easement remaining after the vacation of the alley The Alley was vacated by Resolution 112-90 on July 23, 1990 for Block 1484 Lots 10-36 and 37-63. A copy of the Resolution is provided as an attachment. The Resolution reserved the entire 20' alley as a public utility and drainage easement after approving the vacation of this area as an alley. A legal description and sketch of the underlying easement to be vacated is provided, see Exhibit A.

The owner is also requesting approval to vacate the two 6' public utility easement that originally adjoining the alley on the west and east sides. A legal description and sketch of the 6' PUE adjoining the vacated alley are provided, see Exhibit B and C.

A 6' PUE will be maintained around the perimeter of the site where the underlying and adjoining easements are vacated. Two legal descriptions and sketches are provided, see Exhibit D and Exhibit E.

Avalon has received no objection letters from all of the local service providers.

We respectfully request approval of this Vacation of Plat Application. If you have any questions or require additional information please let me know.

Sincerely.

AVALON ENGINEERING, INC.

Linda Miller, AICP Senior Planner

G:\2019\19-125\VOP INTENT LTR.DOC

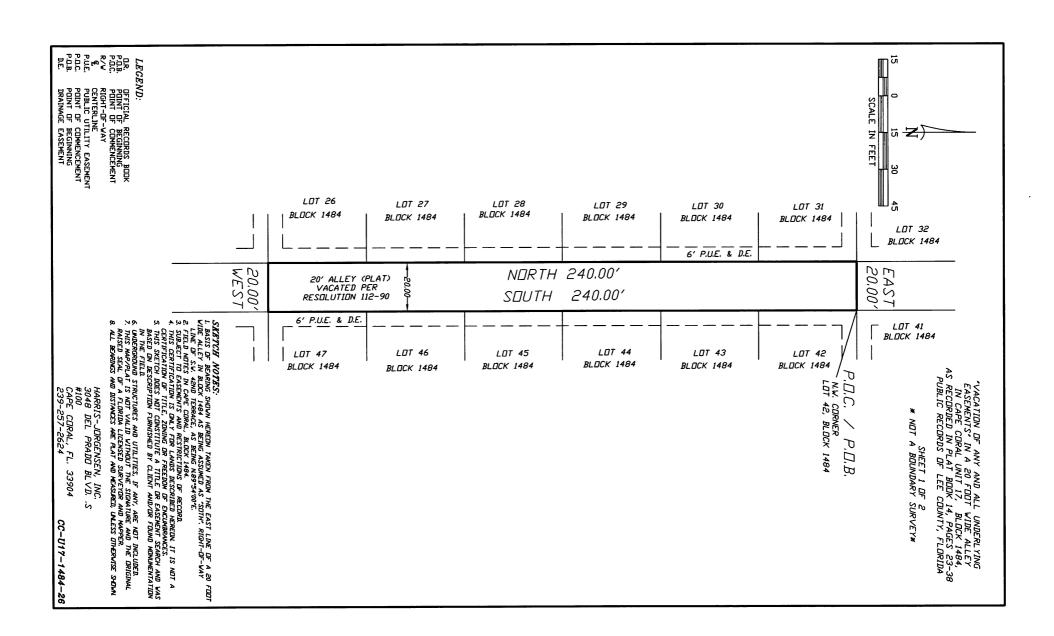


EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH

"VACATION OF ANY AND ALL UNDERLYING
EASEMENTS" IN A 20 FOOT WIDE ALLEY
IN CAPE CORAL UNIT 17, BLOCK 1484,
AS RECORDED IN PLAT BOOK 14, PAGES 23-38
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SHEET 2 OF 2

* NOT A BOUNDARY SURVEY*

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN SOUTH TO THE SOUTHWEST CORNER OF LOT 47, SAID BLOCK 1484 FOR 240.00 FEET; THENCE RUN WEST TO THE SOUTHEAST CORNER OF LOT 26, SAID BLOCK 1484 FOR 20.00 FEET; THENCE RUN NORTH TO THE NORTHEAST CORNER OF LOT 31, SAID BLOCK 1484; THENCE RUN EAST TO THE AFORESAID NORTHWEST CORNER OF LOT 42, BLOCK 1484 FOR 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 4,800 SQ FT, MORE OR LESS.

PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
#6515 - STATE OF FLORIDA
1-25-2019

Tillis M Moul

SHEET 2 OF 2 SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION CC-U17-1484-26 NOT A BOUNDARY SURVEY

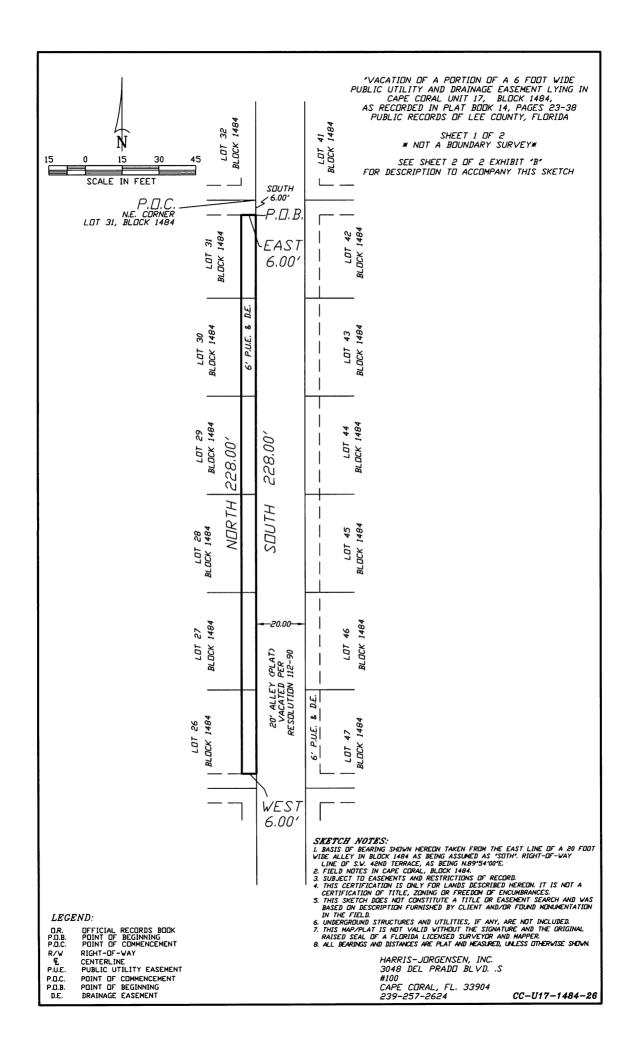


EXHIBIT "B"

DESCRIPTION TO ACCOMPANY SKETCH

"VACATION OF A PORTION OF A 6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN CAPE CORAL UNIT 17, BLOCK 1484, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA

* NOT A BOUNDARY SURVEY*
SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION
SHEET 2 OF 2

DESCRIPTION:

COMMENCING AT THE NORTHEAST CORNER OF LOT 31, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH FOR 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH FOR 228.00 FEET; THENCE RUN WEST FOR 6.00 FEET; THENCE RUN NORTH TO A POINT LYING 6 FEET SOUTH OF THE NORTH LINE OF SAID LOT 31, BLOCK 1484 FOR 228.00 FEET; THENCE RUN EAST FOR 6.00 FEET TO THE POINT OF BEGINNING.

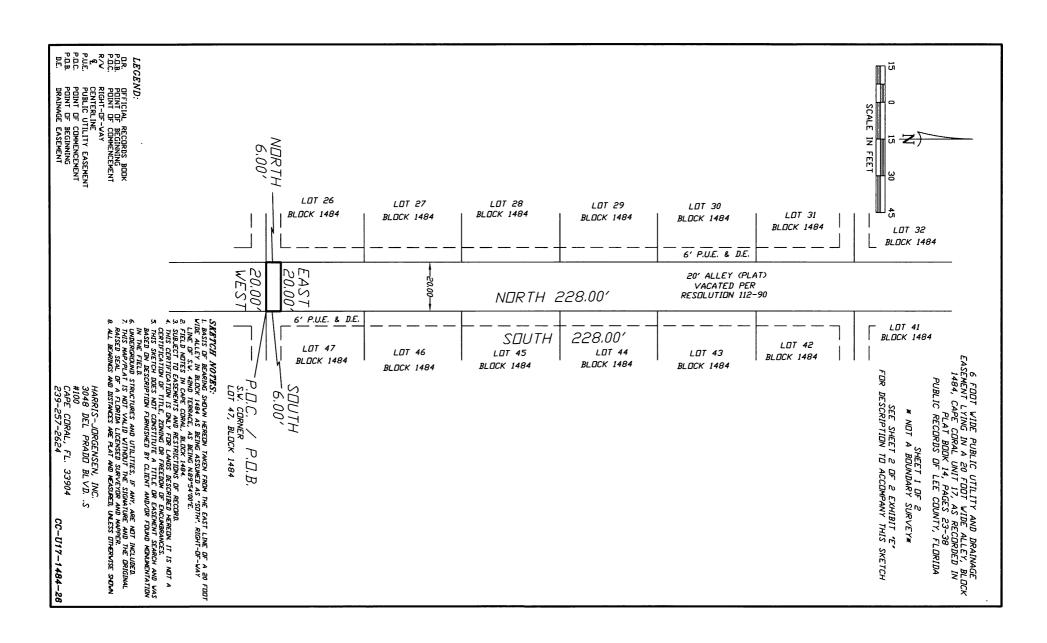
CONTAINING: 1,368.0 SQ FT, MORE OR LESS.

PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
#6515 - STATE OF FLORIDA
1-25-2019

Tillis M Moul

SHEET 2 OF 2
SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

CC-U17-1484-26 NOT A BOUNDARY SURVEY



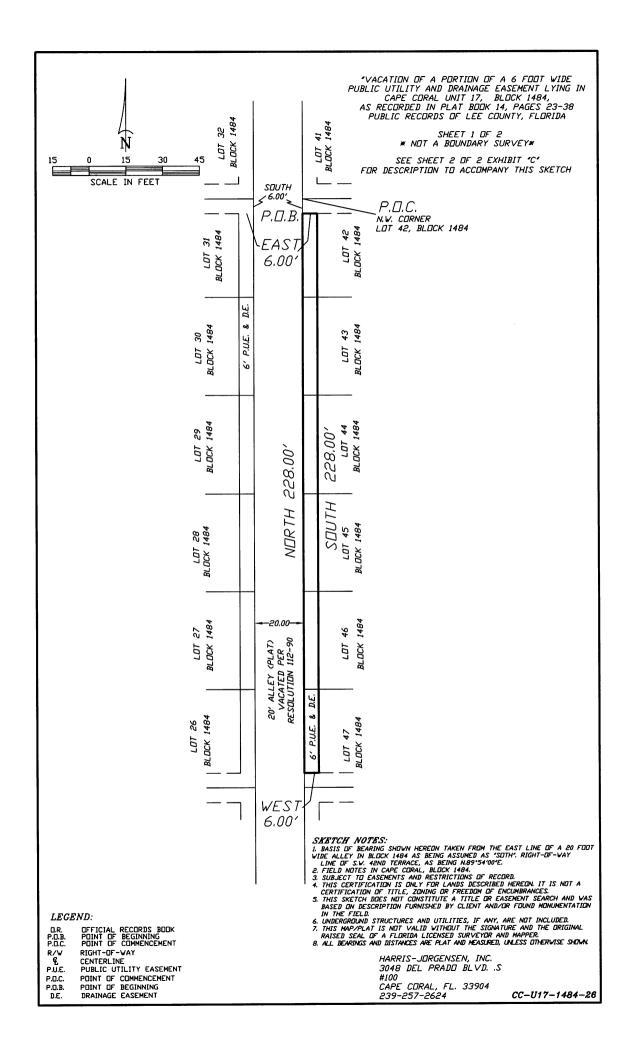


EXHIBIT "C"

DESCRIPTION TO ACCOMPANY SKETCH

"VACATION OF A PORTION OF A 6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN CAPE CORAL UNIT 17, BLOCK 1484, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA

* NOT A BOUNDARY SURVEY*
SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION
SHEET 2 OF 2

DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH FOR 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN EAST FOR 6.00 FEET; THENCE RUN SOUTH FOR 228.00 FEET; THENCE RUN WEST FOR 6.00 FEET; THENCE RUN NORTH TO A POINT LYING 6 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 42, BLOCK 1484 FOR 228.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1,368.0 SQ FT, MORE OR LESS.

PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
#6515 - STATE OF FLORIDA
1-25-2019

Tillis M Moul

SHEET 2 OF 2 SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION CC-U17-1484-26 NOT A BOUNDARY SURVEY

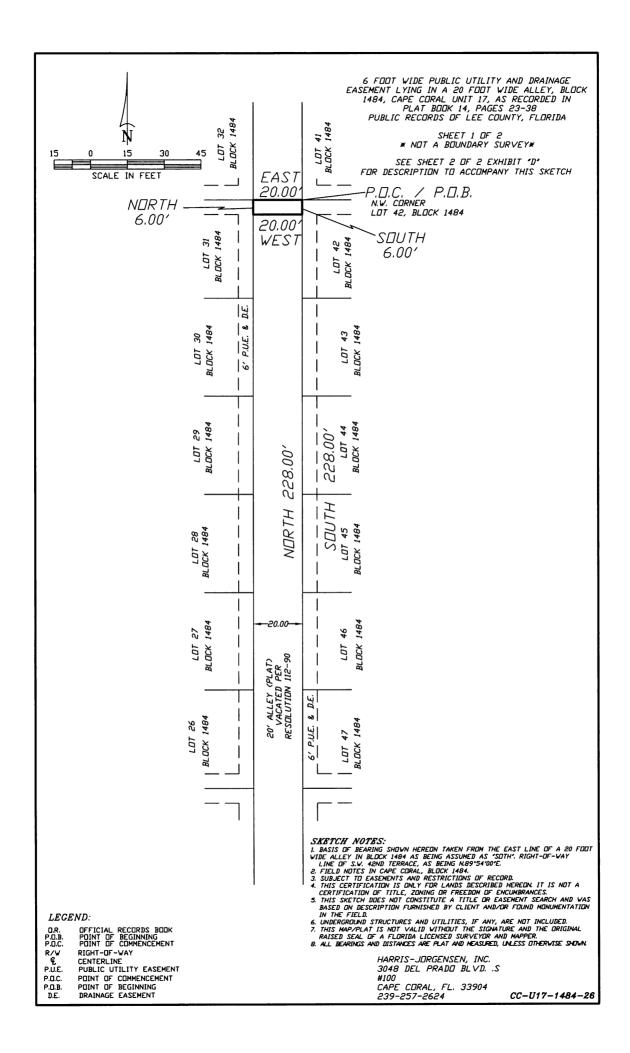


EXHIBIT "D"

DESCRIPTION TO ACCOMPANY SKETCH
6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE
EASEMENT LYING IN A 20 FOOT WIDE ALLEY, BLOCK
1484, CAPE CORAL UNIT 17, AS RECORDED IN
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* NOT A BOUNDARY SURVEY*
SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION
SHEET 2 OF 2

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COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN SOUTH FOR 6.00 FEET; THENCE RUN WEST TO A POINT ALONG THE EAST LINE OF LOT 31, SAID BLOCK 1484 FOR 20.00 FEET; THENCE RUN NORTH TO THE NORTHEAST CORNER OF SAID LOT 31, BLOCK 1484 FOR 6.00 FEET; THENCE RUN EAST TO THE AFORESAID NORTHWEST CORNER OF LOT 42, BLOCK 1484 FOR 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 120.0 SQ FT, MORE OR LESS.

PHILLIP M. MOULD

PROFESSIONAL SURVEYOR AND MAPPER

Lilles M Moul

#6515 - STATE OF FLORIDA

1-25-2019

SHEET 2 OF 2

SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

CC-U17-1484-26 NOT A BOUNDARY SURVEY

EXHIBIT "E"

DESCRIPTION TO ACCOMPANY SKETCH

6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE
EASEMENT LYING IN A 20 FOOT WIDE ALLEY, BLOCK
1484, CAPE CORAL UNIT 17, AS RECORDED IN
PLAT BOOK 14, PAGES 23-38
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

* NOT A BOUNDARY SURVEY*
SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION
SHEET 2 OF 2

DESCRIPTION:

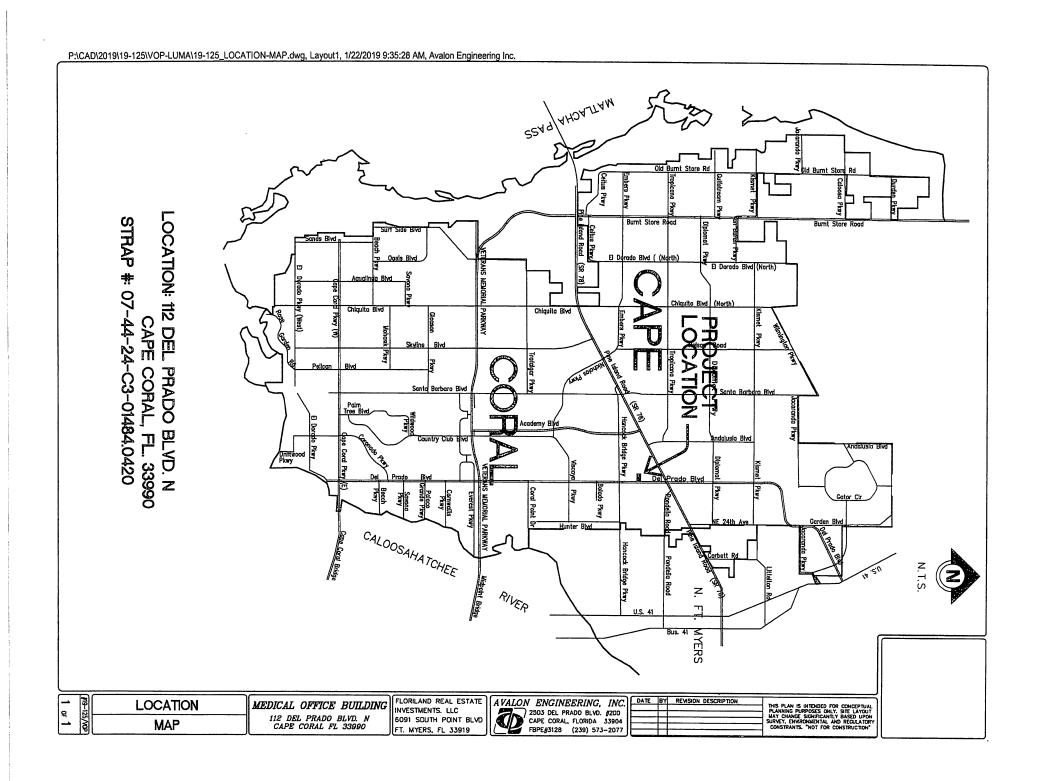
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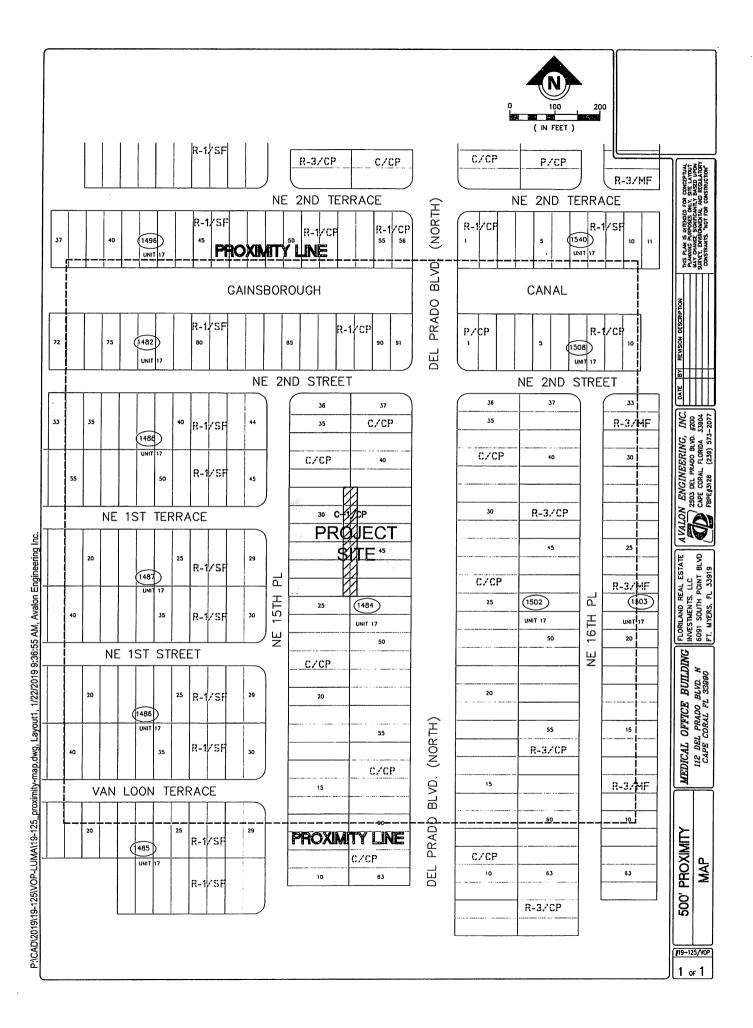
CONTAINING: 120.0 SQ FT, MORE OR LESS.

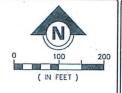
PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
#6515 - STATE OF FLORIDA
1-25-2019

Tilles M Moul

SHEET 2 OF 2 SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION CC-U17-1484-26 NOT A BOUNDARY SURVEY









P:ICADI2019119-125IVOP-LUMAV19-125_VICINITY-AERIAL.dwg, Layout1, 1/22/2019 9:38:27 AM, Avalon Engineering Inc.

THIS PLAN IS INTENDED FOR CONCEPTUAL PLANNING PURPOSES ONLY, SITE LAYOUT MAY CHANGE SOMPICANTLY BASED UPON SURFEY, ENGOMENTAL AND RECULATORY CONSTRAITS. "NOT FOR CONSTRUCTION"

AVALON ENGINEERING, INC. | DATE BY REMSION DESCRIPT | 250.0 EL PRADO BUTO. (\$20.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |

FLORILAND REAL ESTATE
INVESTMENTS. LLC
6091 SOUTH POINT BLVD
FT. MYERS, FL 33919

MEDICAL OFFICE BUILDING 112 DEL PRADO BLVD. N CAPE CORAL FL 33990

VICINITY MAP (AERIAL)

#19-125/VOP

1 of 1

Review Date:

March 21, 2019

Owner/Applicant:

Floriland Real Estate Investments, LLC

Owner Address:

1245 Court Street, Suite 102

Cape Coral, FL 33756

Authorized Rep:

Avalon Engineering, Inc.

Request:

The applicant requests to vacate:

1. $\pm 4,800$ sq. ft. of easements underlying a previously vacated alley right-of-way (ROW) occupying portions of Lots 26-31 and Lots 42-47, Block 1484.

2. A total of $\pm 2,736$ sq. ft. of platted easements along the east side of Lots 26-31 and the west side of Lots 42-47, Block 1484.

Property Location:

112 Del Prado Boulevard North

Cape Coral, FL 33909

Lots 26-31 and Lots 42-47, Block 1484, together with ½ of a vacated alley abutting

said lots, Cape Coral, Unit 17 Strap No. 07-44-24-C3-01484.0420

Prepared By:

Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator

Approved By:

Robert H. Pederson, AICP, Planning Manager

Recommendation:

Approval with conditions

Urban Service Area:

Infill

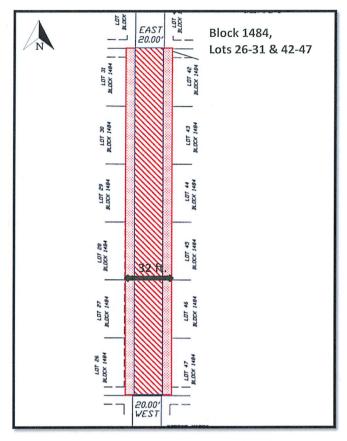
Property Description:

The 0.49-acre site is undeveloped. This property is about 1,000 feet north of the intersection of Del Prado Boulevard and Hancock Bridge Parkway. The site has a Commercial/Professional Future Land Use Classification (FLUC) and Pedestrian Commercial (C-1) Zoning. Adjacent properties to the north, east, and south share these same future land use and zoning classifications. Sites to the west across NE 15th Place have a Single Family FLUC and Single-Family Residential (R-1B) Zoning.

The site has full block depth as a 20-foot wide platted alley ROW was vacated by Resolution 112-90 between Lots 10-36 and 37-63. However, the City retained the ROW area for public utility and drainage purposes. The presence of this easement, along with the adjoining six-foot wide platted easements, still effectively divides the site into two halves (Figure 1).

In December 2018, a site plan (SP18-0077) for a 10,684-sq. ft. medical office building was submitted to the City for review.

Figure 1. Sketch showing the easements underlying the vacated alley (red diagonal pattern) and the adjoining six-foot wide platted easements (polka dot pattern) proposed to be vacated.



Zoning History of Lots 26-31 and 42-47

The FLU Classification of Lots 26-31 and 42-47 has always been Commercial/Professional.

Lots 26-31 were rezoned from R-3 to C-1 by Ordinance 119-04.

Lots 42-47 were rezoned from R-3 to R4 by Ordinance 16-74; from R4 to RC1 by Ordinance 68-76; and from RC1 to C-1 on 10-05-81.

Purpose of the Vacation

The Letter of Intent does not provide a stated purpose for the requested vacations. However, vacating the easements adjoining and underlying the vacated alley will provide the owner with greater flexibility in developing this site.

Analysis:

Staff analyzed these requests with the Land Use and Development Regulations (LUDRs), Section

8.11, "Vacation of plats, rights-of-way and other property." The Comprehensive Plan was also reviewed for policies on vacations.

Request to Vacate Easements Adjacent to and Underlying the Previously Vacated Alley

All easements requested to be vacated occupy Lots 26-31 and Lots 42-47 that are owned by the applicant. The owner is therefore eligible to request these vacations.

The applicant requests to vacate 4,800 sq. ft. of easements underlying the vacated alley. In addition, the applicant requests to vacate 2,736 sq. ft. of platted easements along the east and west sides of the vacated alley. Considering both requests together, the applicant is requesting to vacate a 32-foot wide strip of continuous easements that run north to south for the entire length of the site that total 7,536 sq. ft.

The applicant has provided letters of no objection from Century Link, Comcast, LCEC, and Teco as these providers lack facilities in these easements. The City also lacks infrastructure in these easements. The City supports this request provided the owner deed to the City sufficient easements for providing a continuous six-foot wide perimeter around the site.

Vacating these easements will benefit the owner by eliminating an unnecessary impediment that divides the site into east and west halves. The vacation will allow the owner to unify the site and increase the area where

buildings can be constructed. The City may benefit in such situations as greater flexibility in developing a site can increase the odds of a higher quality development, that is, a cohesive project featuring good internal traffic circulation, well-defined pedestrian pathways, and ample landscaping.

Consistency with the Comprehensive Plan

The project is consistent with the following policy appearing in the Comprehensive Plan.

Future Land Use Element

Policy 5.5. The City may consider the vacation of rights-of-way to facilitate land assembly and the development of a unified, contiguous commercial project. Staff comment: While the alley ROW was previously vacated, the underlying and adjacent easements were left in place. The easement vacations will provide greater flexibility in developing the site by increasing the area where building can be constructed. The intent of this policy is supportive of this request.

Recommendation:

Staff recommends approval of all requested vacations with the following conditions:

- 1. The vacation of the underlying easements associated with the alley right-of-way previously vacated by Resolution 112-90 shall be consistent with that shown in the sketch and accompanying legal description prepared by Harris-Jorgensen, LLC, dated January 25, 2019, and entitled "Vacation of Any and All Underlying Easements in a 20 Foot Wide Alley in Cape Coral Unit 17, Block 1484."
- 2. The vacation of the six-foot wide platted public utility and drainage easements near the east property line of Lots 26-31 and the west property line of Lots 42-47 shall be consistent with that shown in the sketches and accompanying legal descriptions prepared by Harris-Jorgensen, LLC, dated January 25, 2019, and entitled "Vacation of a Portion of a Foot Wide Public Utility and Drainage Easement Lying in Cape Coral Unit 17, Block 1484."
- 3. Within 60 days of the adoption of this vacation, the owner shall provide to the City an easement deed for providing a continuous perimeter easement around the consolidated site. The easement deed shall be consistent with that shown in the sketches and accompanying legal descriptions prepared by Harris-Jorgensen, LLC, dated January 25, 2019, entitled "6 Foot Wide Public Utility and Drainage Easement Lying in a 20 Foot Wide Alley, Block 1484, Cape Coral Unit 17". This easement shall be approved by the City Property Broker prior to recording.
- 4. This resolution shall be recorded with the Office of the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the applicant provides the City with the easement deed described in Condition #3 above and reimburses the City for all recording fees associated with this resolution and the easement deed.

Staff Contact Information

Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator

Planning Division

PH: 239-242-3255/Email: mstruve@capecoral.net

2884194

VP 05-90-507 06/26/90

RESOLUTION 112 - 90

A RESOLUTION PROVIDING FOR THE VACATION OF PLAT FOR A 20 FOOT ALLEY LYING WEST OF LOTS 37 THROUGH 63 OF BLOCK 1484 AND EAST OF LOTS 10 THROUGH 36 OF BLOCK 1484, UNIT 17, CAPE CORAL SUBDIVISION, CAPE CORAL, FLORIDA; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Petition was filed by CITY OF CAPE CORAL, for the vacation of plat on property described herein; and

WHEREAS, the Petition meets the requirements of Land Use Development Regulations, Article VIII, Section 8.11, Vacation of Plats, Streets and Other Property of the Code of Ordinances of the City of Cape Coral and it is to the best interest of the public that such Petition be granted.

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

Section 1. That the Petition meets the requirements of City of Cape Coral Code Article VIII, Section 8.11, of the Code of Ordinances of the City of Cape Coral and it is to the best interest of the public that such Petition be granted. The following-described alley is hereby vacated except the City retains and reserves the entire described alley for public utilities and drainage, and incidentals therewith, and all existing utility easements, to wit:

TWENTY FOOT ALLEY LYING WEST OF LOTS 37 THROUGH 63 OF BLOCK 1484 AND EAST OF LOTS 10 THROUGH 36 OF BLOCK 1484, UNIT 17, CAPE CORAL SUBDIVISION, CAPE CORAL, FLORIDA, LEGALLY DESCRIBED AS:

A certain tract of land situated in the Southeast one quarter (SE 1/4) of Section 7, Township 44 South, Range 24 East, being the North 1087.44 feet of the alley in Block 1484 Cape Coral Subdivision, Unit 17, as recorded in Plat Book 14, at Page 25 of the Public Records of Lee County, Florida, being more particularly bounded and described as follows: Commencing at the Southeast corner of Lot 10, Block 1484, the Point of Beginning; thence North a distance of 1087.44 feet along the West line of said alley to the Northeast corner of Lot 36, Block 1484, and point on the South right-of-way line of N.E. 2nd Street; Thence East a distance of 20.00 feet along last said right-of-way line to the Northwest corner of Lot 37, Block 1484; Thence South a distance of 1087.44 feet to the Southwest corner of Lot 63, Block 1484; Thence West a distance of 20.00 feet to the Point of Beginning, said tract containing 21,749 square feet of 0.499 acres, more or less.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 200 DAY OF 1990.

abell FRABELL, MAYOR PRO TEM ROBERT

ATTESTED TO AND FILED IN MY OFFICE THIS 27 DAY OF 1990.

R. JORGENSEN, CHTY CLERK

APPROVED AS TO FORM:

FM FOWELL WILLIAM M.

CITY ATTORNEY 1300H/62

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Please contact us with changes or cancellations as soon as possible, otherwise no further action needed.

TOLL-FREE 888-516-9220 Local# 239-335-0258

FNPLegals@gannett.com

Customer:

CITY OF CAPE CORAL DEPT OF COM

Ad No .:

0003448529

Address:

1015 CULTURAL PARK BLVD

CAPE CORAL FL 33990

Net Amt:

\$345.17

Run Times: 1

No. of Affidavits:

Run Dates: 03/23/19

Text of Ad:

NOTICE OF PUBLIC HEARING

CASE NUMBER: VP19-0005

REQUEST: The applicant, Floriland Real Estate Investments, LLC, requests a vacation of plat for public utility and drainage easements underlying a previously vacated portion of a platted alley within Block 1484, Lots 26-31 and 42-47, Cape Coral, Unit 17; and a vacation of plat for public utility and drainage easements occupying portions of Lots 26-31 and 42-47, Block 1484, Cape Coral, Unit 17; property is located at 112 Del Prado Boulevard North.

CAPE CORAL STAFF CONTACT: Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator, 239-242-3255

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday, April 2nd, 2019 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.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available five days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Bivd., Cape Coral, FL.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publi ichearing (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

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. 80x 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 accommoda-

tion 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.

by order of Kimberly Bruns, CMC Interim City Clerk REF # VP19-0005 AD# 3448529 Mar. 23, 2019

Department of Community Development Planning Division

AFFIDAVIT

| N RE: APPLICATION OF: Floriland Real Estate Invest. | | | | |
|--|--|--|--|--|
| APPLICATION NO: VP19-0005 | | | | |
| STATE OF FLORIDA)) § COUNTY OF LEE) | | | | |
| I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following: | | | | |
| That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral. | | | | |
| That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A. | | | | |
| DATED this 25 th day of March, 2019. | | | | |
| Vincent A. Cautero, AICP | | | | |

STATE OF FLORIDA COUNTY OF LEE

The foregoing instrument was acknowledged before me this 25 day of 2019, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

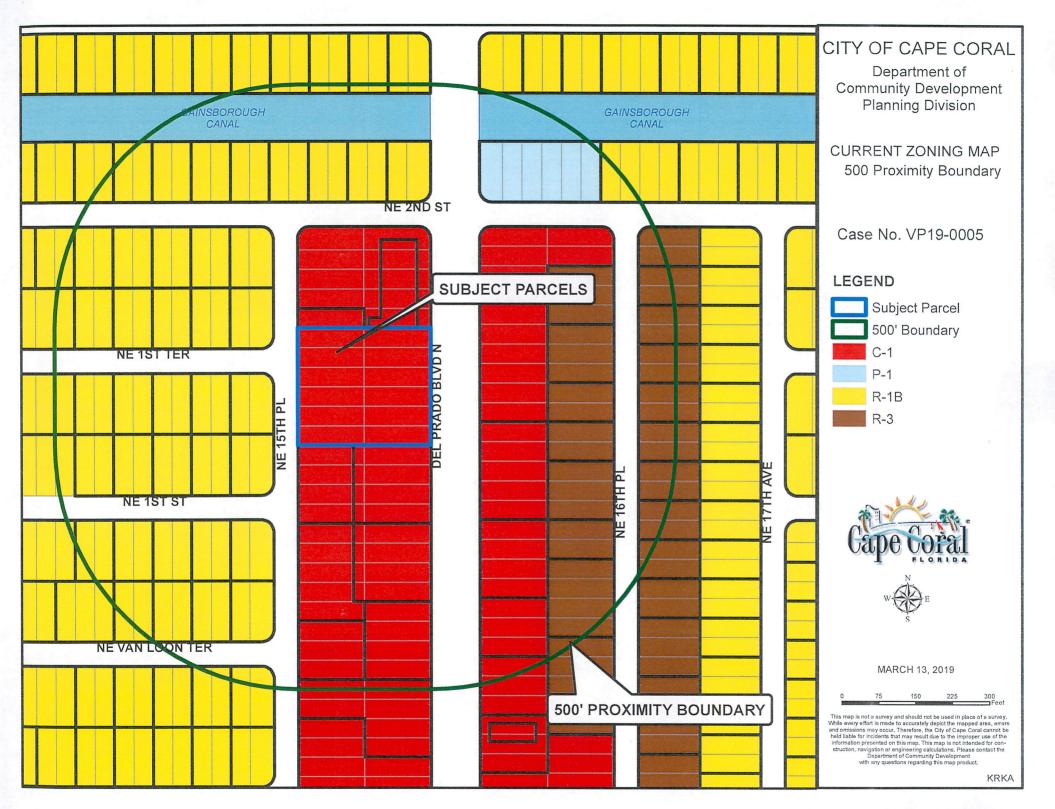
Exp. Date 12 6 Commission # 66030474

ELISABETH A DELGADO
MY COMMISSION # GG030474
EXPIRES December 08, 2020

Elizabetto Delyado Signature of Notary Public

Elizabeth A. Delgado Print Name of Notary Public





OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL

HEARING EXAMINER RECOMMENDATION

VP HEX Recommendation 6-2019

DCD CASE # VP 19-0005

Rendered April 2, 2019

APPLICATION FOR: Vacation of Platted Easements Underlying a Previously Vacated Alley Right of Way: Vacation of Additional Platted Easements

OWNER/APPLICANT: Floriland Real Estate Investments, LLC

APPLICANT'S REPRESENTATIVE: Avalon Engineering, Inc., Linda Miller, AICP

Senior Planner

LOCATION OF PROPERTY: 112 Del Prado Boulevard North, Cape Coral, FL 33909

Lots 26-31 and Lots 42-47, Block 1484, together with ½ of a

vacated alley abutting said lots, Cape Coral, Unit 17

Strap No. 07-44-24-C3-01484.0420

ZONING DISTRICT: Pedestrian Commercial (C-1)

FUTURE LAND USE CLASSIFICATION: Commercial/Professional

URBAN SERVICE: Infill

HEARING DATE: April 2, 2019

SUMMARY OF REQUEST: The Applicant requests to vacate:

- 1. ±4,800 sq. ft. of easements underlying a previously vacated alley right-of-way (ROW) occupying portions of Lots 26-31 and Lots 42-47, Block 1484.
- 2. A total of ±2,736 sq. ft. of platted easements along the east side of Lots 26-31 and the west side of Lots 42-47, Block 1484 (6' adjoining easements)

I. SUMMARY OF HEARING EXAMINER RECOMMENDATION

The Hearing Examiner recommends that City Council **approve** the application for the requested vacations, **subject to the conditions set forth below.**

II. NOTICE OF HEARING

Based on the testimony of City Staff Michael Struve at the Hearing, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance

It is recommended that the City Council retain perimeter easements for future utility installation and maintenance. The Owner, through Applicant's Representative, has agreed to this perimeter easement.

Consistency with the Comprehensive Plan (LUDR §8.11)

This request has been reviewed for consistency with the Comprehensive Plan, and specifically for consistency with Policy 5.5 of the Future Land Use Element which states:

"The City may consider the vacation of rights-of-way to facilitate land assembly and the development of a unified, contiguous commercial project."

Staff testified that, although the alley was previously vacated, the underlying and adjacent easements were not vacated at that time. While this Policy does not specifically address vacation of easements, the Hearing Examiner agrees with Staff's testimony that this policy is supportive of this request.

Accordingly, it is recommended that the City Council find that the vacation requests are consistent with the City's Comprehensive Plan

Consistency with City Requirements and All Applicable Law

It is recommended that City Council find that granting the requested vacation, as conditioned below, **would be consistent** with the City Comprehensive Plan, Land Use Development Regulations, and all other applicable law.

VIII. EXHIBITS

The following Exhibits are attached hereto and hereby incorporated by reference:

- Composite Exhibit "A": Sketch and accompanying legal description prepared by Harris-Jorgensen, LLC, dated January 25, 2019, and entitled "Vacation of Any and All Underlying Easements in a 20 Foot Wide Alley in Cape Coral Unit 17, Block 1484." (2 pages)
- Composite Exhibit "B": sketches and accompanying legal descriptions prepared by Harris-Jorgensen, LLC, dated January 25, 2019, and entitled "Vacation of a Portion of a 6 Foot Wide Public Utility and Drainage Easement Lying in Cape Coral Unit 17, Block 1484." (4 pages)
- Composite Exhibit "C": sketches and accompanying legal descriptions prepared by Harris-Jorgensen, LLC, dated January 25, 2019, entitled "6 Foot Wide Public Utility and Drainage Easement Lying in a 20 Foot Wide Alley, Block 1484, Cape Coral Unit 17." (4 pages)

Surrounding Area

The Applicant's Representative testified that to the North, South, and East across Del Prado Blvd are parcels with the same C-1 zoning and which have the same Future Land Use Designation (Commercial Professional) as the project site.

She further testified that to the West (across NE 15th Place) is R-1B (Single Family Residential) Zoned Parcels which have a SF (Single Family) Land Use designation.

Review of Request to Vacate Easements Adjacent to and Underlying the Previously Vacated Alley

All easements requested to be vacated occupy Lots 26-31 and Lots 42-47, which are owned by the Applicant. Specifically, the Applicant has requested to vacate 4,800 square feet of easements which underlie the previously vacated alley. In addition, the Applicant has requested to vacate 2,736 square feet of platted easements along the east and west sides of the vacated alley. Considering both requests together, the applicant is requesting to vacate a 32-foot wide strip of continuous easements that run north to south for the entire length of the site that total 7,536 square feet.

The Applicant's Representative has provided letters of no objection from Century Link, Comcast, LCEC, and Teco as these providers lack facilities in these easements. The City also lacks infrastructure in these easements. Staff testified that the City supports this request, provided the owner deed to the City sufficient easements for providing a continuous six-foot wide perimeter around the site. Applicant's Representative stated that Applicant agreed with this condition.

The Applicant's Representative testified that the existing underlying easements restrict the use of the parcel for building placement and for extension of utilities (water, sewer and irrigation services) to a future building. She further testified that the reason for this is that such private facilities may not cross a public easement.

Staff testified that vacating these easements would benefit the owner by eliminating an unnecessary impediment dividing the subject site into east and west halves, thereby allowing the owner to unify the site and increase the area where buildings can be constructed.

Staff Further testified that the City may benefit in such situations as greater flexibility in developing a site can increase the odds of a higher quality development, e.g., a cohesive project featuring good internal traffic circulation, well-defined pedestrian pathways, and ample landscaping.

with the requirements of Article VIII, §8.3, Public Hearings, of the City of Cape Coral Land Use and Development Regulations ("LUDRs").

III. PARTICIPANTS IN HEARING

CITY STAFF: Michael Struve, AICP1

CITY CLERK'S OFFICE: Patricia Sorrels

APPLICANT'S REPRESENTATIVE: Linda Miller²

MEMBERS OF PUBLIC: None

TELEPHONE CALL FROM PUBLIC: Staff testified that he received one telephone call for information from a member of the public

IV. **EXHIBITS**

APPLICANT'S AND CITY STAFF'S EXHIBITS: previously submitted.

V. REVIEW OF LUDR REQUIREMENTS

<u>Authority.</u> The Hearing Examiner has the authority to recommend approval or denial of an application for a vacation of a plat and associated easements pursuant to LUDR §9.2.3 b.8.

<u>Standard of Review of Evidence; Hearsay Evidence.</u> The Hearing Examiner's recommendation is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LUDRs, upon review of the entirety of the record.

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in court. The Hearing Examiner must consider all competent substantial evidence in the record as defined by LUDR § 8.3.1.C.3.b.

<u>LUDR Standards.</u> The Hearing Examiner reviewed the application in accordance with the standards set forth in LUDR § 8.11, *Vacation of plats, rights-of-way and other property*, in addition to the general standards set forth in the LUDRs and the City Comprehensive Plan.

¹ Mr. Struve was recognized as an expert in land planning issues associated with this Application, based upon his prior appearances before the Hearing Examiner and his credentials which are on file with the City Clerk's Office.

² Ms. Miller was recognized as an expert in land planning issues associated with this Application, based upon her prior appearances before the Hearing Examiner and her C.V. which is on file with the City Clerk's Office.

VI. <u>TESTIMONY AT HEARING</u>

Incorporation of Staff Report and Staff Testimony by Applicant's Representative

The Applicant's Representative incorporated the Staff Report and Staff Testimony ("Staff Input") into her presentation by reference. She requested the Hearing Examiner to recommend that City Council find the Staff Input as findings of fact, in addition to those separately presented by her.

Incorporation of Staff Report by Staff

Staff incorporated the Staff Report into his presentation by reference.

<u>Hearing Examiner's Recommended Findings of Fact.</u>

All documentary and oral testimony below is accepted by the Hearing Examiner as recommended findings of fact, unless specifically noted otherwise. The Hearing Examiner recommends that the City Council accept such testimony as findings of fact to substantiate its decision regarding this Application.

VII. **DISCUSSION**

Site Information

Staff testified that the 0.49-acre site is undeveloped and is located approximately 1,000 feet north of the intersection of Del Prado Boulevard and Hancock Bridge Parkway. Staff further testified that the site has full block depth as a 20-foot wide platted alley ROW was vacated by Resolution 112-90 between Lots 10-36 and 37-63. However, the City retained the ROW area for public utility and drainage purposes. The presence of this easement, along with the adjoining six-foot wide platted easements, still effectively divides the site into two halves.

In December 2018, Applicant submitted a site plan (SP18-0077) for review to the City for a 10,684-square foot medical office building.

Zoning History of Lots 26-31 and 42-27

Staff testified that the FLU Classification of Lots 26-31 and 42-47 has always been Commercial/Professional.

Staff further testified that Lots 26-31 were rezoned in 2004 from R-3 to C-1 by Ordinance 119-04. Staff further testified that Lots 42-47 were rezoned in 1974 from R-3 to R4 by Ordinance 16-74; from R4 to RC1 in 1976 by Ordinance 68-76; and in 1981 from RC1 to C-1 on 10-05-81.

Recommendation that City Council Find That Applicant Has Complied with All Requirements for the Requested Vacations, as Set Forth in LUDR §8.11

1. Applicant has color of title (LUDR §8.11.3b.1)

As set forth above, Applicant owns all properties subject to this Vacation request.

2. A copy of the plat **has** been provided, showing the portions for which vacation is sought (LUDR §8.11.3b.2)

It is attached as an Exhibit hereto.

3. and 4. Letters of No Objection from LCEC, TECO, Century Link and Comcast (LUDR §8.11.3b.3 and LUDR §8.11.3b.4-6) have been obtained.³

These are addressed above.

5. A copy of a recent boundary survey or survey sketch of the property prepared and executed by a registered surveyor, has been provided, showing the area requested to be vacated; providing complete metes and bounds legal descriptions of said areas, and showing all pavement and all utility and drainage facilities in said area, including water, sewer and cable lines, utility poles, swales, ditches, manholes and catch basins. Separate drawings and metes and bounds legal descriptions will be required for each proposed vacation area when the right-of-way and easement configurations differ. (LUDR §8.11.3b.7.B)

All necessary documents are attached as Exhibits.

6. No Reasonably Foreseeable Public Use of the Vacated Area. (LUDR, §8.11.3 d)

Staff testified that the City has no facilities in the properties subject to this request and, for the reasons outlined above, the City has **no reasonably foreseeable public use** for these properties.

It is recommended that, for the above reasons, the City Council finds there is no reasonably foreseeable public use for the requested vacations.

7. City's Retention of Easements for Utilities and/or Drainage in and Upon the Vacated Area. (LUDR, §8.11.3 d)

³ These are attached to this HEX Recommendation as Composite Exhibit "D".

VP HEX RECOMMENDATION 6-2019 April 2, 2019

5. <u>Compliance with Zoning District Standards and Requirements and Inclusion of LUDRs, City Ordinances and Other Applicable Law.</u> Applicant shall comply with all standards and requirements for the zoning district in which the property is located and all other requirements set forth in the LUDRs, City ordinances and all other applicable laws and regulations, which are incorporated herein by reference.

The Hearing Examiner hereby **RECOMMENDS APPROVAL** of the request for the above-referenced Vacations filed by Applicant, **WITH THE CONDITIONS** set forth above.

This Recommendation takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA

ANNE DALION, LOCOINE

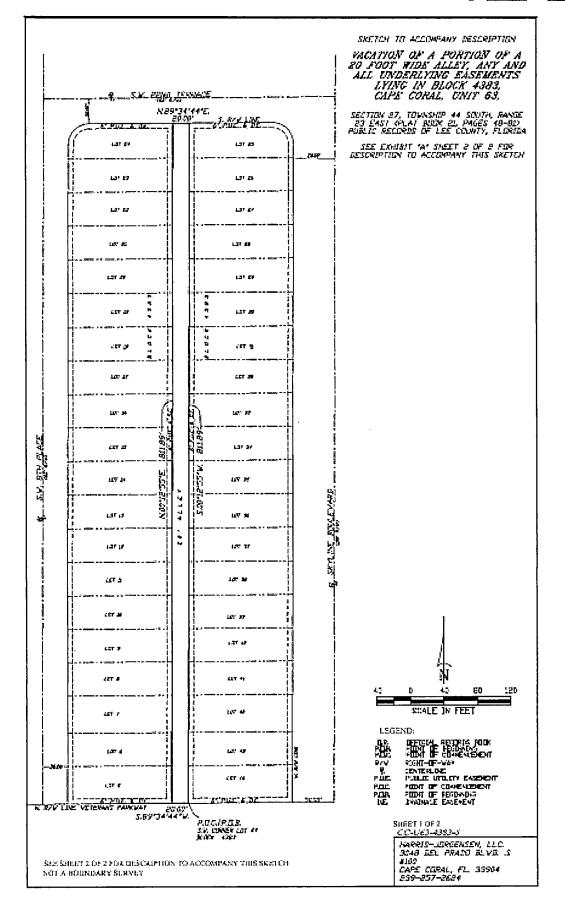
ATTEST:

VP19-0005
Exhibit A of Page of Of P

"VACATION OF ANY AND ALL UNDERLYING EASEMENTS" IN A 20 FOOT WIDE ALLEY IN CAPE CORAL UNIT 17, BLOCK 1484, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA

COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN SOUTH TO THE SOUTHWEST CORNER OF LOT 47, SAID BLOCK 1484 FOR 240.00 FEET; THENCE RUN WEST TO THE SOUTHEAST CORNER OF LOT 26, SAID BLOCK 1484 FOR 20.00 FEET; THENCE RUN NORTH TO THE NORTHEAST CORNER OF LOT 31, SAID BLOCK 1484; THENCE RUN EAST TO THE AFORESAID NORTHWEST CORNER OF LOT 42, BLOCK 1484 FOR 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 4,800 SQ FT, MORE OR LESS.

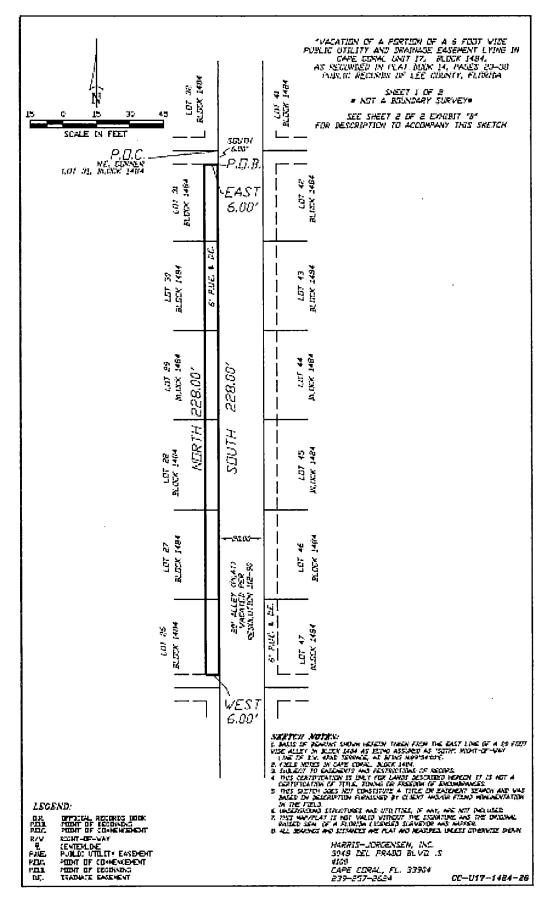


| VP19-09 | |
|----------------------|----------|
| Exhibit 🖔 | <u> </u> |
| Page \(\frac{1}{2}\) | of 4 |

"VACATION OF A PORTION OF A 6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN CAPE CORAL UNIT 17, BLOCK 1484, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

COMMENCING AT THE NORTHEAST CORNER OF LOT 31, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH FOR 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH FOR 228.00 FEET; THENCE RUN WEST FOR 6.00 FEET; THENCE RUN NORTH TO A POINT LYING 6 FEET SOUTH OF THE NORTH LINE OF SAID LOT 31, BLOCK 1484 FOR 228.00 FEET; THENCE RUN EAST FOR 6.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1,368.0 SQ FT, MORE OR LESS.

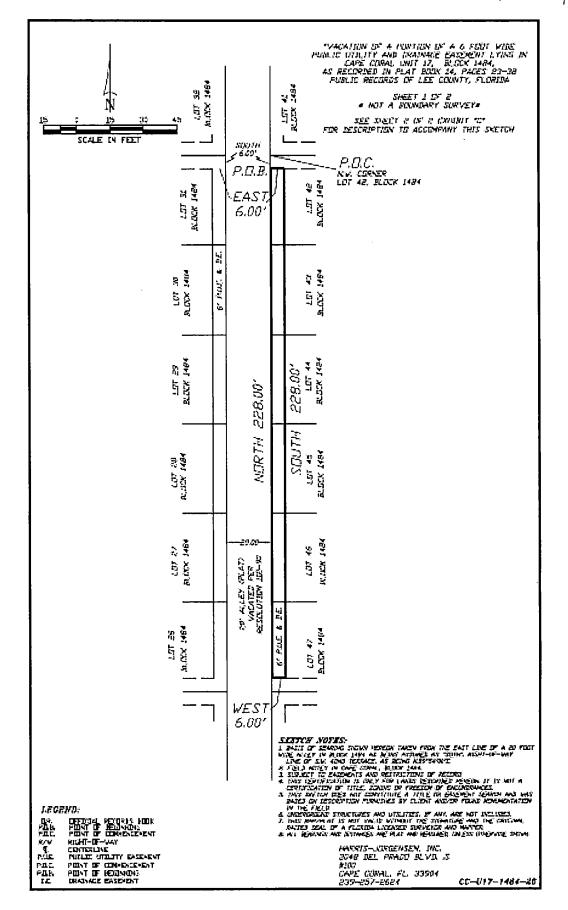


VP19-0005 Exhibit \underline{G} Page $\underline{3}$ of $\underline{\mathcal{L}}$

"VACATION OF A PORTION OF A 6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN CAPE CORAL UNIT 17, BLOCK 1484, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH FOR 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN EAST FOR 6.00 FEET; THENCE RUN WEST FOR 6.00 FEET; THENCE RUN NORTH TO A POINT LYING 6 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 42, BLOCK 1484 FOR 228.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1,368.0 SQ FT, MORE OR LESS.

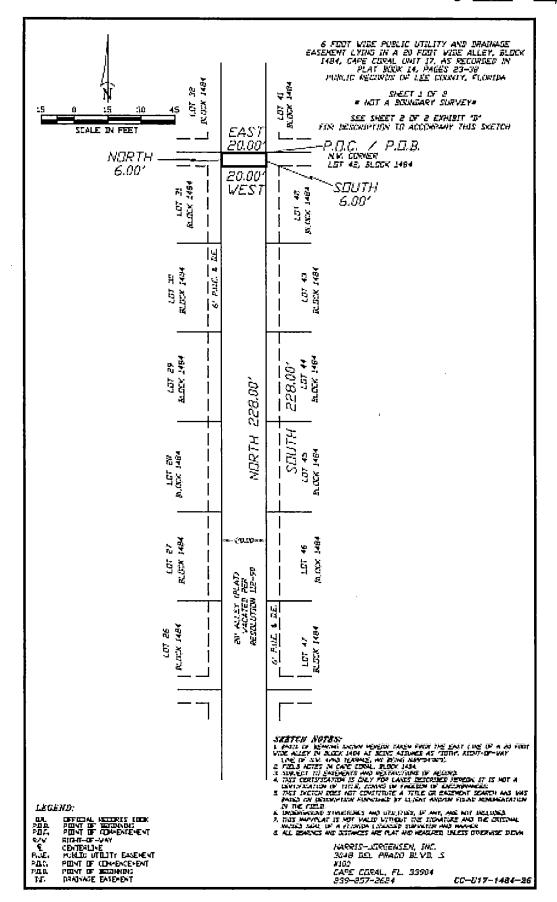


VP19-0005 Exhibit O Page of V

6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN A 20 FOOT WIDE ALLEY, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

COMMENCING AT THE NORTHWEST CORNER OF LOT 42, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN SOUTH FOR 6.00 FEET; THENCE RUN WEST TO A POINT ALONG THE EAST LINE OF LOT 31, SAID BLOCK 1484 FOR 20.00 FEET; THENCE RUN NORTH TO THE NORTHEAST CORNER OF SAID LOT 31, BLOCK 1484 FOR 6.00 FEET; THENCE RUN EAST TO THE AFORESAID NORTHWEST CORNER OF LOT 42, BLOCK 1484 FOR 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 120.0 SQ FT, MORE OR LESS.

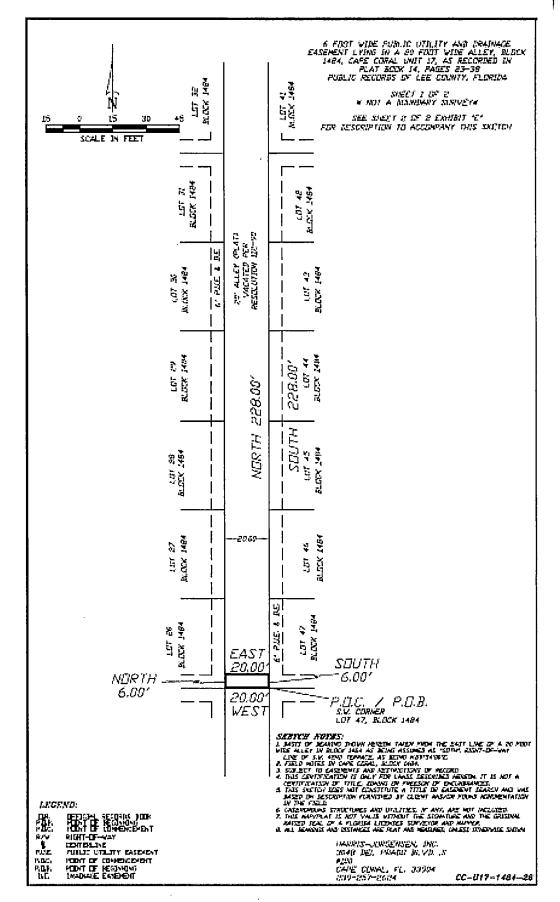


VP19-0005
Exhibit 7
Page 3 of 4

6 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN A 20 FOOT WIDE ALLEY, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38 PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

COMMENCING AT THE SOUTHWEST CORNER OF LOT 47, BLOCK 1484, CAPE CORAL UNIT 17, AS RECORDED IN PLAT BOOK 14, PAGES 23-38, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN WEST TO THE SOUTHEAST CORNER OF LOT 26, SAID BLOCK 1484 FOR 20.00 FEET; THENCE RUN NORTH FOR 6.00 FEET; THENCE RUN EAST TO A POINT ALONG THE WEST LINE SAID LOT 47, BLOCK 1484 FOR 20.00 FEET; THENCE RUN SOUTH TO THE SOUTHWEST CORNER SAID LOT 47, 1484 FOR 6.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 120.0 SQ FT, MORE OR LESS.



• Composite Exhibit "D": Letters of No Objection from Comcast (dated January 28, 2019), Century Link (dated January 30, 2018), LCEC (dated January 30, 2019) and TECO (dated January 28, 2019) (4 pages).

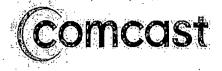
IX. RECOMMENDED CONDITIONS OF APPROVAL

City staff testified regarding recommendations for conditions of approval, set forth below. Applicant's Representative testified that Applicant has no objection to these conditions.

The Hearing Examiner **recommends** that these conditions of approval be adopted as part of the City Council's approval of Applicant's request:

- 1. <u>Vacation of Easements Underlying Vacated Alley Right-of-Way, Consistent with Sketch and Legal Description.</u> The vacation of the underlying easements associated with the alley right-of-way previously vacated by Resolution 112-90 shall be consistent with that shown in the sketch and accompanying legal description prepared by Harris-Jorgensen, LLC, dated January 25, 2019, and entitled "Vacation of Any and All Underlying Easements in a 20 Foot Wide Alley in Cape Coral Unit 17, Block 1484."
- 2. <u>Vacation of Six Foot Wide Platted Public Utility and Drainage Easements</u>
 The vacation of the six-foot wide platted public utility and drainage easements near the east property line of Lots 26-31 and the west property line of Lots 42-47 shall be consistent with that shown in the sketches and accompanying legal descriptions prepared by Harris-Jorgensen, LLC, dated January 25, 2019, and entitled "Vacation of a Portion of a 6 Foot Wide Public Utility and Drainage Easement Lying in Cape Coral Unit 17, Block 1484."
- 3. Provision of Deed for Six Foot Wide Easement to City. Within 60 days of the City's Council's adoption (if any) of this vacation, the owner shall provide to the City an easement deed for providing a continuous perimeter easement around the consolidated site. The easement deed shall be consistent with that shown in the sketches and accompanying legal descriptions prepared by Harris-Jorgensen, LLC, dated January 25, 2019, entitled "6 Foot Wide Public Utility and Drainage Easement Lying in a 20 Foot Wide Alley, Block 1484, Cape Coral Unit 17". This easement shall be approved by the City Property Broker prior to recording.
- 4. <u>Recording of Resolution</u>. This resolution shall be recorded with the Office of the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the applicant provides the City with the easement deed as described in Condition #3 above and reimburses the Department of Community Development for all recording fees associated with this resolution and the easement deeds.

Exhibit "D"



12600 Westlinks Drive Suite 4 Fort Myers, Fl. 33913 Phone: 239-432-1805

January 28, 2019

Avalon Engineering, Inc C/O Lynda Brooks 2503 Del Prado Blvd. So. Suite 200 Cape Coral, Florida 33904

RE: Block 1484, 18-125 Medical Bldg.

Dear Lynda Brooks,

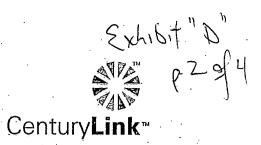
This letter will serve to inform you that Comcast has no objection to your vacate of the easements referenced above.

Should you require additional information or assistance, please feel free to contact me here at 432-1805.

Cordially,

Mark Cook

Project Coordinator



January 30, 2018

Linda Miller, AICP Senior Planner Avalon Engineering, Inc.

Dear: Linda Miller,

Re: REQUEST FOR LETTER OF NO OBJECTION FOR A VACATION OF PLAT APPLICATION IN ORDER TO VACATE THE UNDERLYING 20' EASEMENT WITHIN A VACATED ALLEY FOR A DEVELOPMENT OF AN OFFICE MEDICAL BUILDING ON BLOCK 1484, LOTS 26-32 AND 42-47

Embarq Corporation, Inc. (d/b/a CenturyLink) has reviewed the document for the above referenced project. Based on the review, we have no objections to the vacation of the 20' easement.

If you should require additional information, please contact me at 239 336-2012.

Sincerely,

John C. Schroeder

John C. Schroeder
Engineer
Fort Myers District
CenturyLink
John.schroeder@centurylink.com



North Fort Myers, FL 33918-3455

(239) 995-2121 n. Fax (239) 995-7904

January 30, 2019

Ms. Linda Miller, AICP Avalon Engineering, Inc. 2503 Del Prado Boulevard So., #200 Cape Coral, Florida 33904

Re:

Letter of No Objection to Vacation of Alley Reservation between Lots 26 through 31, and Lots 42 through 47, Block 1484, Cape Coral Subdivision, Unit 17, Plat Book 14, Pages 23-38, inclusive:

Owner: Floriland Real Estate Investments, LLC; Strap#: 074424C301484.0420.

Dear Ms. Miller:

You have opened up negotiations, on behalf of your client, Floriland Real Estate Investments, LLC, concerning the vacation of a certain alley at the rear between Lots 26 through 31, and Lots 42 through 47, all contained within Block 1484 for the solely purposes of vacating the alley reservation.

We have reviewed the Plat, the request with submitted with materials, and our internal records. LCEC has no objection to the vacation as requested, provided the alley has placed upon the north end and the south end a six-foot wide 20-foot easement in order to complete the perimeter easement. This vacation is solely for the vacation of the Alley.

However, should there be any substantive changes to the plans, as submitted, LCEC reserves its rights to additional review and comment with additional conditions, if necessary, consistent with its findings. If the vacation is not be submitted for jurisdictional approval within six months, this letter will be deemed void.

Should there be any questions please call me at 239-656-2112, or, if you prefer, I can be reached by email at russel.goodman@lcec.net.

Very truly yours,

Russ Goodman, Digitally signed by Russ Goodman, SR/WA

SR/WA

Date: 2019.01.30 15:32:05

Russel Goodman, SR/WA

Design & Engineering Coordinator - Land Rights

Exh, 5, + "D'



January 28, 2019

Lynda Brooks
Senior Administrative Coordinator **Avalon Engineering, Inc.**2503 Del Prado Boulevard South, Suite 200
Cape Coral, Florida 33904
Phone: (239) 573-2077, Ext. 252

Fax: (239) 573-2076

Email: lynda@AVALONENG.COM

RE: Letter of "No Objection" for Vacation of Alley

Site Address: 112 Del Prado Boulevard N.

STRAP: 07-44-24-C3-01484.0420

Folio ID: 10157071

Municipality: Cape Coral

County: Lee

TECO Peoples Gas System has received and reviewed your request to Petition for the Vacation of the 20' Alley within the property referenced above.

TECO Peoples Gas System currently has no Natural Gas infrastructure along and/or within the referenced property @ 112 Del Prado Boulevard N. (STRAP: 07-44-24-C3-01484.0420 - Folio ID: 10157071) in Cape Coral, Lee County.

Therefore, TECO Peoples Gas System currently has "No Objection" to the purpose and/or intent to Petition for the Vacation of the 20' Alley within the above referenced property.

Should you have any questions or require further information, please contact me at (239) 690-5517 (Office), (239) 896-0812 (Mobile) or by Email at mdaloi@tecoenergy.com

Sincerely,

Marilyn D. Aloi

Gas Design Project Manager

Planning Division City of Cape Coral

RESOLUTION 88-19 VP 19-0005

Public Hearing before the Cape Coral Hearing Examiner

June 10, 2019

VP 19-0005

Applicant: Floriland Real Estate Investments, LLC

Requests: Vacate 4,800 sq. ft. of easements underlying

a previously vacated alley in Lots 26-31 and

42-47, Block 1484

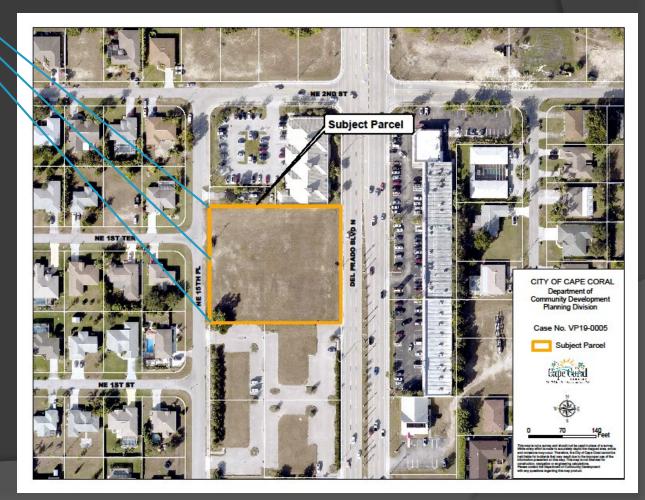
Vacate 2,736 sq. ft. of platted easements in

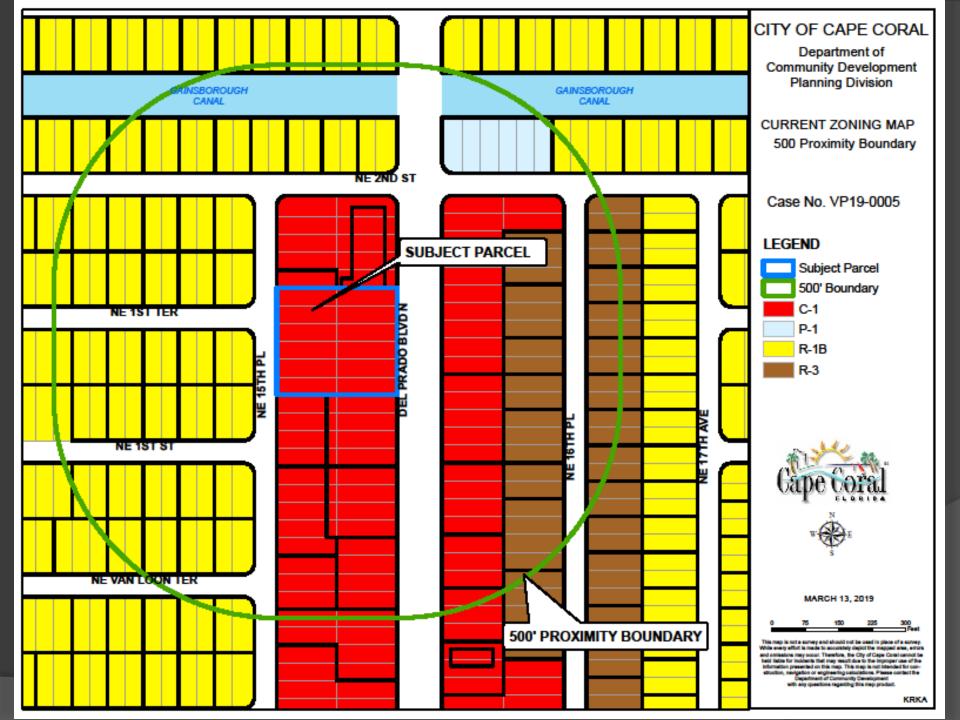
Lots 26-31 and 42-47, Block 1484

Location: 112 Del Prado Boulevard North



VP19-0005





Background

• The site is 0.49 acres and is undeveloped.

 A 20-ft. wide alley was vacated between Lots 10-36 and 37-63 by Resolution 112-90.

Underlying and adjacent easements were retained.

EAST 20.00 P.O.C. / P.O.B. LOT 42. BLOCK 148-32 ft. LOT 28 BLDCK 1484

Vacation Requests

4,800 sq. ft. in easements underlying the vacated alley

2,736 sq. ft. of platted easements adjacent to the vacated alley

The vacations would eliminate a 32-foot wide strip of easements occupying the middle of the site.

Analysis (LUDR, Section 8.11) Vacate Underlying and Adjacent Easements to the Vacated Alley ROW

- All easements occupy land owned by the applicant.
- The City lacks facilities in all easements.
- The utility providers lack infrastructure in all easements.
- A continuous easement will be provided around the site.
- Vacations will allow for more flexible development of this site.

Recommendations

<u>Planning Division</u> Staff recommends approval.

Hearing Examiner

A public hearing was held on April 2, 2019. The Hearing Examiner recommends approval with staff conditions. No speakers at public input.

Correspondence

One phone call – caller sought more information on case.



12600 Westlinks Drive Suite 4 Fort Myers, Fl. 33913 Phone: 239-432-1805

January 28, 2019

Avalon Engineering, Inc C/O Lynda Brooks 2503 Del Prado Blvd. So. Suite 200 Cape Coral, Florida 33904

RE: Block 1484, 18-125 Medical Bldg.

Dear Lynda Brooks,

This letter will serve to inform you that Comcast has no objection to your vacate of the easements referenced above.

Should you require additional information or assistance, please feel free to contact me here at 432-1805.

Cordially,

Mark Cook

Project Coordinator

Miller



January 30, 2018

Linda Miller, AICP Senior Planner Avalon Engineering, Inc.

Dear: Linda Miller,

Re: REQUEST FOR LETTER OF NO OBJECTION FOR A VACATION OF PLAT APPLICATION IN ORDER TO VACATE THE UNDERLYING 20' EASEMENT WITHIN A VACATED ALLEY FOR A DEVELOPMENT OF AN OFFICE MEDICAL BUILDING ON BLOCK 1484, LOTS 26-32 AND 42-47

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Sincerely,

John C. Schroeder

John C. Schroeder
Engineer
Fort Myers District
CenturyLink
John.schroeder@centurylink.com



Post Office Box 3455

North Fort Myers, FL 33918-3455

(239) 995-2121 = Fax (239) 995-7904

January 30, 2019

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Dear Ms. Miller:

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We have reviewed the Plat, the request with submitted with materials, and our internal records. LCEC has no objection to the vacation as requested, provided the alley has placed upon the north end and the south end a six-foot wide 20-foot easement in order to complete the perimeter easement. This vacation is solely for the vacation of the Alley.

However, should there be any substantive changes to the plans, as submitted, LCEC reserves its rights to additional review and comment with additional conditions, if necessary, consistent with its findings. If the vacation is not be submitted for jurisdictional approval within six months, this letter will be deemed void.

Should there be any questions please call me at 239-656-2112, or, if you prefer, I can be reached by email at russel.goodman@lcec.net.

Very truly yours,

Russ Goodman, Goodman, SR/WA SR/WA

Digitally signed by Russ Date: 2019.01.30 15:32:05 -05'00'

Russel Goodman, SR/WA Design & Engineering Coordinator - Land Rights



January 28, 2019

Lynda Brooks
Senior Administrative Coordinator **Avalon Engineering, Inc.**2503 Del Prado Boulevard South, Suite 200
Cape Coral, Florida 33904

Phone: (239) 573-2077, Ext. 252

Fax: (239) 573-2076

Email: lynda@AVALONENG.COM

RE: Letter of "No Objection" for Vacation of Alley

Site Address: 112 Del Prado Boulevard N.

STRAP: 07-44-24-C3-01484.0420

Folio ID: 10157071

Municipality: Cape Coral

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TECO Peoples Gas System currently has **no Natural Gas infrastructure** along and/or within the referenced property @ **112 Del Prado Boulevard N.** (STRAP: **07-44-24-C3-01484.0420** - Folio ID: **10157071**) in Cape Coral, Lee County.

Therefore, TECO Peoples Gas System currently has "No Objection" to the purpose and/or intent to Petition for the Vacation of the 20' Alley within the above referenced property.

Should you have any questions or require further information, please contact me at (239) 690-5517 (Office), (239) 896-0812 (Mobile) or by Email at mdaloi@tecoenergy.com

Sincerely,

Marilyn D. Aloi

Gas Design Project Manager

Item

B.(2)

Number: Meeting

Date:

5/13/2019

Item

ORDINANCES/RESOLUTIONS -

Type:

Introductions

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 106-19 (AP 19-0001*) Set Public Hearing Date for June 10, 2019

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No

2. Is this a Strategic Decision?

No

If Yes, Priority Goals Supported are

listed below.

If No, will it harm the intent or success of

the Strategic Plan?

No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

A resolution either affirming or reversing the decision of the Hearing Examiner rendered on January 18, 2019, in DE HEX Order 1-2019, that denied a deviation of nine (9) feet from the minimum side setback requirement of twelve (12) feet for marine improvements that extend more than six (6) feet into a waterway to allow a side setback of three (3) feet for expansion of an existing dock in a Single-Family Residential (R-1B) zone; property located at 2523 SE 23rd Place.

LEGAL REVIEW:

John E. Naclerio III, Assistant City Attorney

EXHIBITS:

Resolution 106-19 Affirm DE HEX Order 1-2019 Resolution 106-19 Reverse DE HEX Order 1-2019 AP Staff Report Hearing Examiner Order Back up from Hearing Examiner Hearing

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Justin Heller, Senior Planner

ATTACHMENTS:

| | Description | Type |
|---|-------------------------------------|-----------------|
| D | Resolution 106-19 Affirm HEX Order | Resolution |
| D | Resolution 106-19 Reverse HEX Order | Resolution |
| D | AP Staff Report | Backup Material |
| D | Hearing Examiner Order | Backup Material |
| D | Back up material from HEX Hearing | Backup Material |

RESOLUTION 106 - 19

A RESOLUTION PURSUANT TO THE CITY OF CAPE CORAL LAND USE AND REGULATIONS, DISTRICT DEVELOPMENT ARTICLE III, SUPPLEMENTAL REGULATIONS, SECTION 3.16, MARINE IMPROVEMENTS, SUBSECTION DEVIATIONS, ARTICLE VIII, ADMINISTRATION, SECTION 8.3, PUBLIC HEARINGS, AND SECTION 8.9, APPEALS, AND THE CITY OF CAPE CORAL COMPREHENSIVE PLAN, AFFIRMING THE DECISION OF THE HEARING EXAMINER RENDERED ON JANUARY 18, 2019, IN DE HEX ORDER 1-2019, THAT DENIED A DEVIATION OF NINE (9) FEET FROM THE MINIMUM SIDE SETBACK REQUIREMENT OF TWELVE (12) FEET FOR MARINE IMPROVEMENTS THAT EXTEND MORE THAN SIX (6) FEET INTO A WATERWAY TO ALLOW A SIDE SETBACK OF THREE (3) FEET FOR EXPANSION OF AN EXISTING DOCK IN A SINGLE-FAMILY RESIDENTIAL (R-1B) ZONE ON REAL PROPERTY DESCRIBED AS LOTS 29-30, BLOCK 1242, UNIT 19, CAPE CORAL SUBDIVISION; PROPERTY LOCATED AT 2523 SE 23RD PLACE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral Hearing Examiner has specifically considered the request of DONALD C. FRICK and, after a Public Hearing on January 8, 2019, denied the aforesaid request for a Deviation by rendering DE HEX Order 1-2019; and

WHEREAS, the Applicant, DONALD C. FRICK, is exercising his right to appeal to the Cape Coral City Council.

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

Section 1. That the City of Cape Coral City Council, having specifically considered the decision of the Cape Coral Hearing Examiner, the recommendation of the Planning Division of the City of Cape Coral, the presentation made by the Applicant(s) before this Board at a public meeting, and the criteria set forth in the City of Cape Coral Land Use and Development Regulations, Article III, Supplemental District Regulations, Section 3.16, Marine Improvements, Subsection .9, Deviations, Article VIII, Administration, Section 8.3, Public Hearings, the City of Cape Coral Comprehensive Plan, the application materials submitted with Application AP 19-0001, and all other evidence presented, hereby affirms the decision of the Hearing Examiner rendered in DE HEX Order 1-2019 that denied A DEVIATION OF NINE (9) FEET FROM THE MINIMUM SIDE SETBACK REQUIREMENT OF TWELVE (12) FEET FOR MARINE IMPROVEMENTS THAT EXTEND MORE THAN SIX (6) FEET INTO A WATERWAY TO ALLOW A SIDE SETBACK OF THREE (3) FEET FOR EXPANSION OF AN EXISTING DOCK IN A SINGLE-FAMILY RESIDENTIAL (R-1B) ZONE for the below-described property:

LOTS 29 AND 30, BLOCK 1242, CAPE CORAL SUBDIVISION, UNIT 19, ACCORDING TO THE PLAT THEREOF RECORDED AT PLAT BOOK 13, PAGES 121 THROUGH 135, INCLUSIVE, IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

PROPERTY LOCATED AT: 2523 SE 23RD PLACE

for the reason that the aforesaid deviation does not meet the criteria identified in the City of Cape Coral Land Use and Development Regulations, Article III, Supplemental District Regulations, Section 3.16, Marine Improvements, Subsection .9, Deviations.

| Section 2. This Resolution shall take effect imm | nediately upon its adoption. | | | |
|--|--|--|--|--|
| ADOPTED BY THE CITY COUNCIL OF TO COUNCIL SESSION THIS DAY OF | THE CITY OF CAPE CORAL AT ITS SPECIAL F, 2019. | | | |
| | JOE COVIELLO, MAYOR | | | |
| VOTE OF MAYOR AND COUNCILMEMBERS: | | | | |
| GUNTER S'CARIOSCIA W | VELSON TOKES WILLIAMS COSDEN | | | |
| ATTESTED TO AND FILED IN MY OFF. 2019. | ICE THIS DAY OF, | | | |
| APPROVED AS TO FORM: | KIMBERLY BRUNS INTERIM CITY CLERK | | | |
| JOHNE. NACLERIO III ASSISTANT CITY ATTORNEY res/ap19-0001confirmdeniedDE | | | | |

RESOLUTION 106 - 19

A RESOLUTION PURSUANT TO THE CITY OF CAPE CORAL LAND USE AND REGULATIONS, III, DEVELOPMENT ARTICLE SUPPLEMENTAL REGULATIONS, SECTION 3.16, MARINE IMPROVEMENTS, SUBSECTION DEVIATIONS, ARTICLE VIII, ADMINISTRATION, SECTION 8.3, PUBLIC HEARINGS, AND SECTION 8.9, APPEALS, AND THE CITY OF CAPE CORAL COMPREHENSIVE PLAN, REVERSING THE DECISION OF THE HEARING EXAMINER RENDERED ON JANUARY 18, 2019, IN DE HEX ORDER 1-2019, AND GRANTING A DEVIATION OF NINE (9) FEET FROM THE MINIMUM SIDE SETBACK REQUIREMENT OF TWELVE (12) FEET FOR MARINE IMPROVEMENTS THAT EXTEND MORE THAN SIX (6) FEET INTO A WATERWAY TO ALLOW A SIDE SETBACK OF THREE (3) FEET FOR EXPANSION OF AN EXISTING DOCK IN A SINGLE-FAMILY RESIDENTIAL (R-1B) ZONE ON REAL PROPERTY DESCRIBED AS LOTS 29-30, BLOCK 1242, UNIT 19, CAPE CORAL SUBDIVISION; PROPERTY LOCATED AT 2523 SE 23RD PLACE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral Hearing Examiner has specifically considered the request of DONALD C. FRICK and, after a Public Hearing on January 8, 2019, denied the aforesaid request for a Deviation by rendering DE HEX Order 1-2019; and

WHEREAS, the Applicant, DONALD C. FRICK, is exercising his right to appeal to the Cape Coral City Council.

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

Section 1. That the City of Cape Coral City Council, having specifically considered the decision of the Cape Coral Hearing Examiner, the recommendation of the Planning Division of the City of Cape Coral, the presentation made by the Applicant(s) before this Board at a public meeting, and the criteria set forth in the City of Cape Coral Land Use and Development Regulations, Article III, Supplemental District Regulations, Section 3.16, Marine Improvements, Subsection .9, Deviations, Article VIII, Administration, Section 8.3, Public Hearings, the City of Cape Coral Comprehensive Plan, the application materials submitted with Application AP 19-0001, and all other evidence presented, hereby reverses the decision of the Hearing Examiner rendered in DE HEX Order 1-2019 and grants A DEVIATION OF NINE (9) FEET FROM THE MINIMUM SIDE SETBACK REQUIREMENT OF TWELVE (12) FEET FOR MARINE IMPROVEMENTS THAT EXTEND MORE THAN SIX (6) FEET INTO A WATERWAY TO ALLOW A SIDE SETBACK OF THREE (3) FEET FOR EXPANSION OF AN EXISTING DOCK IN A SINGLE-FAMILY RESIDENTIAL (R-1B) ZONE for the below-described property:

LOTS 29 AND 30, BLOCK 1242, CAPE CORAL SUBDIVISION, UNIT 19, ACCORDING TO THE PLAT THEREOF RECORDED AT PLAT BOOK 13, PAGES 121 THROUGH 135, INCLUSIVE, IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

PROPERTY LOCATED AT: 2523 SE 23RD PLACE

for the reason that the aforesaid deviation meets the criteria identified in the City of Cape Coral Land Use and Development Regulations, Article III, Supplemental District Regulations, Section 3.16, Marine Improvements, Subsection .9, Deviations.

| Section 2. This Resolution shall take effect immed | liately upon its adoption. | | | |
|--|---|--|--|--|
| ADOPTED BY THE CITY COUNCIL OF THE COUNCIL SESSION THIS DAY OF _ | HE CITY OF CAPE CORAL AT ITS SPECIAL, 2019. | | | |
| | JOE COVIELLO, MAYOR | | | |
| | JOE COVIELEO, MITTOR | | | |
| VOTE OF MAYOR AND COUNCILMEMBERS: | | | | |
| GUNTER STO | CLSON OKES LLIAMS OSDEN | | | |
| ATTESTED TO AND FILED IN MY OFFICE 2019. | CE THIS DAY OF, | | | |
| | KIMBERLY BRUNS INTERIM CITY CLERK | | | |
| APPROVED AS TO FORM: JOHN E. NACLERIO III | | | | |
| ASSISTANT CITY ATTORNEY | | | | |
| res/ap19-0001repealdeniedDE | | | | |

Planning Division Case Report AP19-0001

Review Date: April 1, 2019

Owner/Appellant: Donald C. Frick

Authorized

Representative: Joe Mazurkiewicz Jr., BJM Consulting, Inc.

Request: Appealing the decision made by the Hearing Examiner that was rendered in Hex

Order 1-2019 (Case Number DE18-0034) The Hearing Examiner denied a nine-foot deviation to Section 3.16.2.B.1 of the City Land Use and Development Regulations to allow a three-foot side setback for expansion of the existing dock.

Location: 2523 SE 23rd Place

Unit 19, Block 1242, Lots 29-30

Prepared By: Justin Heller, Senior Planner

Reviewed By: Mike Struve, AICP, Planning Team Coordinator

Approved By: Robert Pederson, AICP, Planning Manager

Recommendation: Denial of the appeal, thereby affirming the decision of the Hearing Examiner

Property Description:

The 10,061-sq. ft. site is improved with a single-family home and marine improvements that include a dock with a boat canopy. The site has 78 feet of frontage on Shaw Canal which is about 80 feet wide at the applicant's property. The applicant proposes adding a 186 sq. ft. addition to the existing dock at the north end of the site (Exhibit 1).

The surrounding area consists primarily of single-family homes. The site and all surrounding properties have a Single Family (SF) Future Land Use Classification and Single-Family Residential (R-1B) Zoning.

Analysis:

LUDR, Section 3.16.2.B.1 states, "No part of a marine improvement which extends more than six feet into a waterway shall be located less than 12 feet from the ends of the water frontage line." The plans reviewed by staff show a marine improvement with a width of 19.75 feet near the north end of the site. Based on the width of the marine improvement, the dock is required to observe a minimum 12-foot side setback from the north property line.

LUDR, Section 3.16.9.C allows for deviations for marine improvements based upon the following general standards.

1. The deviation is not contrary to the public interest.

Hearing Examiner Finding: The Hearing Examiner found that the deviation was not contrary to the public interest since to the affected neighbor to the north submitted a letter in support of the request. The Hearing Examiner found that this standard was met.

Appellant Response: Agrees with the finding of the Hearing Examiner.

2. The deviation will be in harmony with the general intent and purpose of this section.

Hearing Examiner Finding: The Hearing Examiner noted that the setback relief requested by the appellant was unusually large (a 75% reduction from the standard). However, in balancing the magnitude of the deviation sought with the letter of support received from the neighboring owner to the north, the Hearing Examiner found the deviation would be in harmony with the general intent and purpose of this section since to the owner presumably most affected by the deviation supported this request. The Hearing Examiner found that this standard was met.

Appellant Response: Agrees with the finding of the Hearing Examiner.

3. Conditions exist which are the result of the applicant.

Hearing Examiner Finding: The Hearing Examiner found the following: based on testimony from the authorized representative, a "walk around" dock to the south could be constructed in compliance with City setback requirements although such construction would impact the neighbor. Staff testified that sufficient room exists along the waterfrontage line of the site to build a similarly designed dock within the need of a deviation. Based on these findings, the Hearing Examiner found that conditions do exist which are the result of the applicant and that this standard has been not been met.

Appellant Response: Conditions exist that are not the result of the present owner and applicant in this case; rather these conditions result from the actions taken by the prior owner by constructing the dock and lift in its current location.

4. A literal enforcement of the regulations involved would not result in unnecessary or undue hardship.

Hearing Examiner Finding: Based on information contained within the staff report, the Hearing Examiner found that the applicant could construct a dock on the site in compliance with the setback requirements that would accommodate a 47-foot long vessel entering the boat slip from the south. Further, the Hearing Examiner found that based on testimony at the public hearing constructing the marine improvement without the deviation while considered an inconvenience, and not the design preferred by the applicant, nevertheless, could be accomplished. Because the standard in this instance is "unnecessary or undue hardship" rather than inconvenience, the Hearing Examiner found that a literal enforcement of the regulations involved would not result in unnecessary or undue hardship and therefore this standard was not met.

Appellant Response:

The location of the existing boat lift and the adjoining marine improvements at the northern half of the property makes the best boating access to the proposed marine improvements to be from the south. Moving the boat lift to the south would place the burden of additional costs on the applicant.

Specific Deviation Review Criteria Pursuant to LUDR Section 3.16.9.C

1. Effect of proposed deviation on navigability of the waterway involved.

Hearing Examiner Finding: Based on testimony from staff and the applicant who both agreed the marine improvement would have no negative affect on navigability, the Hearing Examiner found the requested deviation would not adversely affect navigation in the Shaw Canal.

Appellant Response: Agrees with the Hearing Examiner's finding.

Design, size and proposed location of the marine improvement for which the deviation is sought.

Hearing Examiner Finding: The Hearing examiner found that other design options exist for the marine improvement that would not require a deviation.

Appellant Response:

The proposed location of the dock addition would allow for the best boating access to the existing marine improvements without having to relocate the boat lift.

3. Effect, if any, that the proposed deviation would have on any extant marine improvements in the subject waterway.

Hearing Examiner Finding: The Hearing Examiner found that the proposed deviation would have no negative effect on existing marine improvements in the canal.

Appellant Response: Agrees with the Hearing Examiners finding.

4. Is the minimum deviation from the provisions of the applicable section necessary to avoid the unnecessary or undue hardship required herein.

Hearing Examiner Finding: The Hearing Examiner found that the requested deviation is not the minimum deviation needed to avoid unnecessary hardship. A dock with a similar design and area could be constructed farther south on the site in compliance with the side setback requirement.

Appellant Response: The variance is the minimum required to allow the owner to build a walk around dock addition to the existing dock and lift with the safest boating access.

Summary:

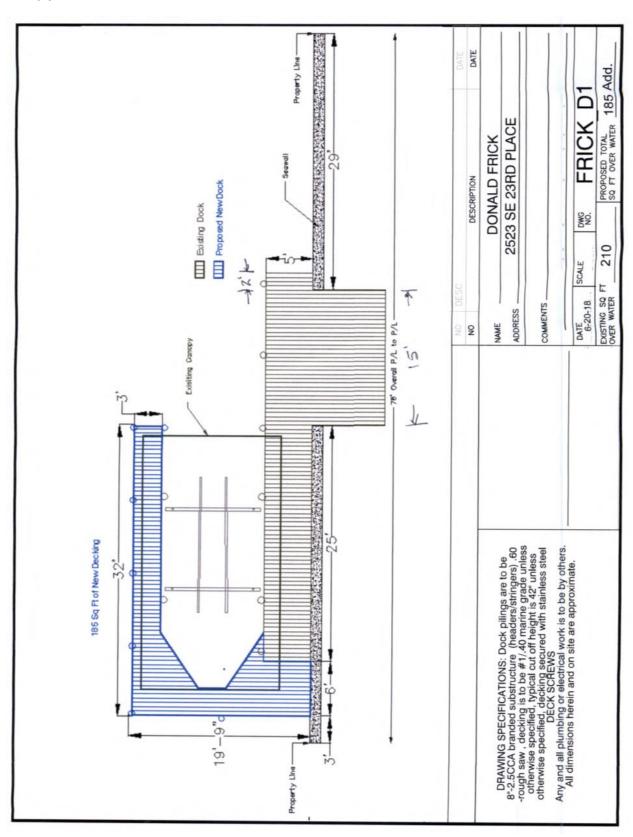
A public hearing before the Hearing Examiner was held on January 8, 2019 and a decision rendered in HEX Order 1-2019 on January 18, 2019. The Hearing Examiner found the deviation did not meet all the standards set forth in LUDR, Section 3.16.9.C and therefore denied the applicant's request for a deviation.

Based on the re-analysis of these standards and taking into consideration points raised by the appellant, staff finds that conditions exist which are a direct result of the applicant. Denial of the request would not result in an unnecessary or undue hardship as the applicant can still construct a dock with a similar design and area with equally safe boating access on their property. In short other design options are available to construct a dock on the site without the need for a deviation.

Recommendation:

In the re-analysis of this deviation resulting from the appeal filed by the appellant, staff finds the requested deviation does not meet the standards as required by LUDR, Section 3.16.9.C, as discussed in this report. As a result, the Planning Division recommends **denial** of the appeal, thereby affirming the earlier decision of the Hearing Examiner.

Exhibit 1:



OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL HEARING EXAMINER ORDER

DE HEX Order 1-2019

Rendered January 18, 2019

APPLICATION FOR: Deviation of 9 feet from requirement of 12 foot setback for marine

improvements extending more than 6 feet into a waterway

DCD CASE NUMBER: DE 18-0034

NAME OF APPLICANT/OWNER: Donald C. Frick

APPLICANT'S AUTHORIZED REPRESENTATIVE: BJM Consulting, Inc., through

Joe Mazurkiewicz Jr.

PROPERTY ADDRESS: 2523 SE 23rd Place, Cape Coral, FL

Unit 19. Block 1242. Lots 29-30

ZONING DISTRICT: Single-Family Residential (R-1B)

FUTURE LAND USE CLASSIFICATION: Single Family (SF)

DATE OF HEARING: January 8, 2019

I. SUMMARY OF REQUEST

The applicant is requesting a nine-foot deviation from the Land Use and Development Regulations (LUDR), Section 3.16.2.B.1, which requires a 12-foot setback for marine improvements that extend more than six feet into a waterway. This request represents a reduction of the required setback by 3/4 (three-fourths).

II. SUMMARY OF HEARING EXAMINER ORDER

The Hearing Examiner denies the application for a deviation.

III. NOTICE OF HEARING

Based on the testimony of City Staff Michael Struve at the Hearing, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of LUDR Article VIII, §8.3, Public Hearings.

IV. PARTICIPANTS IN HEARING

CITY STAFF: Michael Struve, AICP, LEED Green Associate¹

¹ Mr. Struve, AICP, was accepted as an expert witness in land planning issues, on the basis of his prior testimony before the Hearing Examiner regarding his education, experience, and other qualifications and his C.V. on file with the Clerk's Office.

CITY CLERK'S OFFICE: Patricia Sorrels

APPLICANT'S REPRESENTATIVE: Joe Mazurkiewicz Jr., Ph.D.²

TESTIMONY FROM PUBLIC: None

CORRESPONDENCE FROM PUBLIC: Letter of August 9, 2018, from Wayne Nagy, Applicant's next-door neighbor (to the north)

TELEPHONE CALL FROM PUBLIC: Staff testified he had received one telephone call from a member of the public, with a request for information.

V. **EXHIBITS REVIEWED AT HEARING**

APPLICANT'S AND CITY STAFF'S EXHIBITS: previously submitted

VI. REVIEW OF LUDR REQUIREMENTS

<u>Authority</u>. The Hearing Examiner has the authority to approve or deny an application for a deviation (LUDR §9.2.3.b.6). If granting a deviation, the Hearing Examiner may prescribe appropriate conditions and safeguards in conformity with the LUDRs. (LUDR §8.10.5)

<u>Standard of Review of Evidence: Hearsay Evidence.</u> The Hearing Examiner's decision is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LUDRs, upon review of the entirety of the record. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in court.

In rendering this decision, the Hearing Examiner must consider all competent substantial evidence in the record, as such is defined in LUDR § 8.3.1.C.3.b.

VII. TESTIMONY AT HEARING

Hearing Examiner's Findings of Fact.

The Order below sets forth the specific Findings of Fact made by the Hearing Examiner herein.

² Dr. Mazurkiewicz, Jr., was accepted as an expert witness in land planning issues, on the basis of his prior testimony before the Hearing Examiner regarding his education, experience, and other qualifications and his C.V. on file with the Clerk's Office.

VIII. DISCUSSION

Subject Site, Application Information and Surrounding Properties

Staff testified that the 10,061-square foot site is improved with a single-family home and marine improvements that include a dock with a boat canopy. Staff testified that the site contains approximately 78 feet of frontage on Shaw Canal. This Canal is approximately 80 feet wide at Applicant's property.

The Applicant's Representative testified that the property contained the existing dock and boat lift at the time that Applicant purchased the property. The Applicant proposes to increase the size of the existing dock through a 186 square foot addition. In order to accomplish this, Applicant is requesting a ¾ (three-fourths) reduction in the setback requirement, i.e., the setback requirement is 12 feet and the application is for a 9 foot reduction.

The Applicant's Representative testified that Applicant could build the proposed walk-around dock in compliance with the City's existing setback requirements, with a northern access point and the walk around dock going to the south.

However, he further testified that this would be hardship not so much to Applicant but rather to the adjacent property owner to the north, in that the improvement would allegedly intrude into the adjacent property owner's marine improvement area. Accordingly, the Applicant's Representative testified that Applicant wishes a deviation so as to construct the addition with a southern approach and alleged that this would provide safer boating access to Applicant and the adjacent property owner to the north. The Hearing Examiner considered the testimony of Applicant's Representative but has determined not to make it into a finding of fact. No marine or other regulation was presented to the Hearing Examiner to substantiate Applicant's testimony of intrusion into the marine improvement area of the neighboring property owner, nor were marine safe boating standards presented for that purpose.

Staff testified that the surrounding area consists primarily of single-family homes. All have a Single Family (SF) Future Land Use Designation and a Single-Family Residential (R-1B) Zoning Classification.

General Deviation Review Criteria Pursuant to LUDR §3.16.9.C

1. The deviation **is not** contrary to the public interest.

Staff testified that, were the deviation to be granted, the property owner to the north would be the one most likely to be affected. As set forth above, that property owner has provided a letter in support of the granting of this deviation.

Accordingly, the Hearing Examiner agrees with Applicant's Representative and staff that the deviation is not contrary to the public interest.

The Hearing Examiner finds that this standard is met.

2. The deviation **would** be in harmony with the general intent and purpose of this section.

Staff testified that the public purpose of the setback requirement is to maintain a minimum distance between a marine improvement and the property lines of a site so as to promote safe boating ingress and egress for adjacent property owners. Staff further testified that the intent of this section is also to minimize the effect that boat lifts, boat canopies and sun shelters have on impeding waterway views. This deviation could negatively affect the neighbor to the north. The Hearing Examiner also considered that the Applicant is requesting a three-fourths reduction in the setback requirement, which is an unusually large proportionate reduction request.

In mitigation of these concerns, however, is the fact that the neighbor to the north has submitted a letter supporting this deviation.

Accordingly, the Hearing Examiner must balance the acquiescence of this specific adjacent property owner against the needs expressed by the public purposes set forth above. The Hearing Examiner agrees with staff and the Applicant's Representative that this request is in harmony with the general intent and purpose of this section, based upon the neighboring property owner's letter.

The Hearing Examiner finds that this standard is met.

3. Conditions do exist which are the result of the Applicant.

The Applicant's Representative testified at the Hearing that Applicant could build a "walk around" dock going to the south, although he testified that such construction would impact the neighbor. This dock would comply with City setback regulations. Staff testified that sufficient room exists along the waterfrontage of the subject property to build a similarly designed dock within the requirements of the setback.

Based on the foregoing testimony, the Hearing Examiner finds that conditions **do exist** which are a result of the Applicant.

The Hearing Examiner finds that this standard is not met.

4. A literal enforcement of the regulations involved would not result in unnecessary or undue hardship.

The staff report sets forth that

..... Without the deviation, the applicant can still construct a 580 sq. ft. dock on the site. Constructing the dock at the 12-foot setback line would still allow sufficient space (± 47 ft.) for a vessel to enter the boat slip from the south,

assuming the owner to the south constructed a marine improvement at the 12 ft. setback line. Any hardship claimed by the applicant should be considered self-imposed as the proposed location of the dock does not comply with the minimum setback requirement of 12 feet. A denial of this request simply means that the new dock will need to be designed to meet the minimum setback requirements. The applicant could modify the design or location of the proposed dock to comply with the setback requirements without the need for a deviation. As a result, staff finds that reasonable use of this property exists.

The Hearing Examiner finds the above-quoted staff report as factual evidence to support her ruling under this standard #4.

Further, it is clear from the testimony at the Hearing that Applicant would find it more convenient to build the dock of his choice, with a deviation of three-fourths of the required setback distance. However, the standard is "unnecessary or undue hardship" rather than inconvenience.

Finally, as set forth above, both the Applicant's Representative and staff testified at the Hearing that Applicant could build the marine improvement under the existing regulations without the granting of a deviation.

Accordingly, the Hearing Examiner finds that the standard of "unnecessary or undue hardship" is not met by Applicant.

Specific Deviation Review Criteria Pursuant to LUDR §3.16.9.C

1. Effect of proposed deviation on navigability of the waterway involved.

Staff testified that the proposed dock would project 19.5 feet into Shaw Canal, which is less than 25% of the waterway width. The Applicant's Representative agreed with staff that the dock should have no effect on the ability of others to navigate the waterway.

Based on the foregoing testimony, the Hearing Examiner finds that the navigability of the canal will not be adversely affected.

2. Design, size and proposed location of the marine improvement for which the deviation is sought.

For the reasons set forth above, the Hearing Examiner finds that the design, size and proposed location of the marine improvement to not be in compliance with City code requirements, as this would constitute a three-fourths reduction in the required set back. The Hearing Examiner also finds that other possible designs exist.

The Hearing Examiner finds that the design, size and proposed location of this improvement **do not meet the criteria** for granting this deviation.

3. Effect, if any, that the proposed deviation would have on any extant marine improvements in the subject waterway.

Both staff and the Applicant's Representative testified that the dock should have no negative effect on the existing marine improvements in the subject waterway.

The Hearing Examiner finds that the proposed deviation would have **no negative effect** on the extant marine improvements in the subject waterway.

4. Is this the minimum deviation from the provisions of the applicable section necessary to avoid the unnecessary or undue hardship required herein?

Staff testified that the current design of the dock could be built without a deviation based on the length of waterfrontage of the site, in that construction could be moved southward to comply with the setback requirement. Other dock construction options are available, according to staff. As a result, this request does not constitute the minimum deviation needed to make reasonable use of this property.

The Hearing Examiner finds that the proposed deviation is not the minimum needed to avoid unnecessary hardship.

<u>Comprehensive Plan Provisions</u>. The denial is in compliance with Objective 1.3 of the Conservation and Coastal Management Element of the Comprehensive Plan.

Objective 1.3 requires the City to

...adopt and maintain, consistent with the provisions of §163.3202 Florida Statutes, land development regulations to direct the management of water-dependent facilities.

IX. EXHIBIT ATTACHED TO ORDER

The following Exhibit is attached to this Order and hereby incorporated by reference:

 Exhibit "A": Sketch Plan showing marked "FRICK D1" (preparer of drawing not indicated on document) and dated June 20, 2018, as provided by Applicant's Representative (one page)

X. FINDINGS AND CONCLUSIONS

The Hearing Examiner considered Applicant's application and all other documentation submitted, the City staff report, the sworn testimony of all participants, and all other written or verbal information provided prior to or at the time of the hearing.

The Hearing Examiner finds and concludes as follows:

The requested Deviation, as conditioned, **is not consistent** with the requirements of the zoning district(s) in which the property is located, the City Comprehensive Plan, City Land Use Development Regulations, and all other applicable law.

The Hearing Examiner hereby **DENIES** the request for a Deviation filed by Applicant.

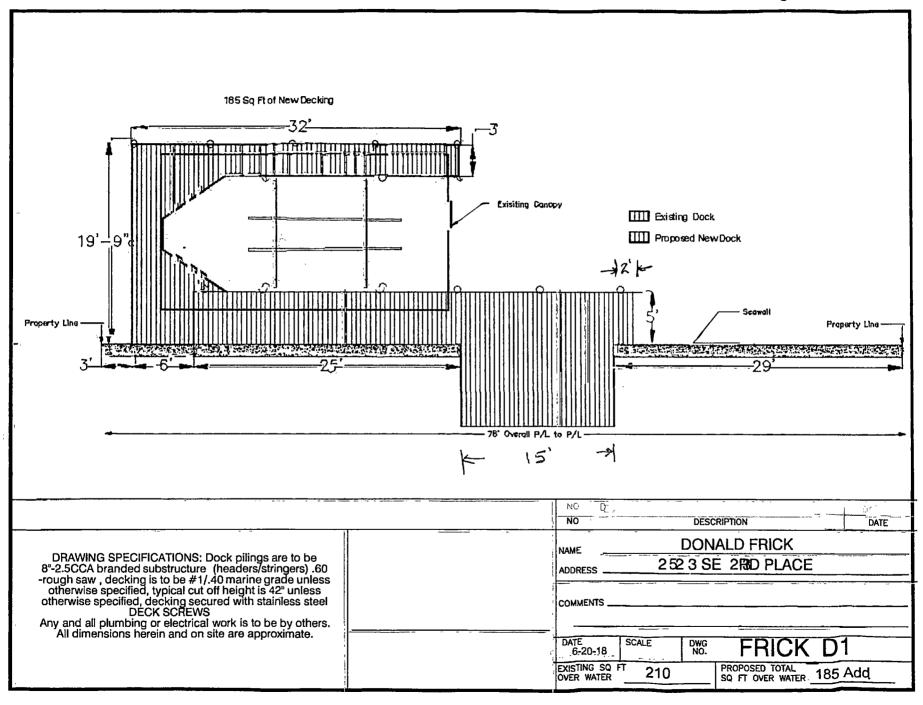
This Order takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA

ANNE DALTON, ESQUIRE

ATTEST:

CITY CLERK 7 (T





DEPARTMENT OF COMMUNITY DEVELOPMENT REQUEST TO CAPE CORAL HEARING EXAMINER FOR A DEVIATION TO MARINE IMPROVEMENT STANDARDS

Case # DE 18 - 0034

RESIDENTIAL FEE \$150.00; COMMERCIAL FEE \$673.00. In addition to the application fee, all 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. In addition, the applicant shall be responsible for reimbursing the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the City from issuing any applicable permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

| Donald C. Frick | Address 494 Golden Gate Drive |
|---|--|
| Email Address dcf@frick9.com | City Richboro State PA Zip Code 18954 |
| | Phone 215-514-0683 |
| AUTHORIZED REPRESENTATIVE | Address |
| Joe Mazurkiewicz/BJM Consulting | PO Box 101655 |
| Email Address joie@bjmconsult.com | City Cape Coral State FL Zip Code 33910 |
| | Phone 239-470-5778 |
| Location: Unit_19 Block_1242 Lot(s)_29- | |
| Legal Description | |
| Address of Property 2523 SE 23rd Place | Plat Book 13 , Page 134 p Number 33-44-24-C1-01242.0290 |
| Current Zoning R-1B Stra | p Number 33-44-24-01-01242.0290 |
| If the owner does not own the property in his/her persona | |
| corporate capacity. | al name, the owner must sign all applicable forms in his/her |
| corporate capacity. Donald C. Frick | Applicant's Signature |
| corporate capacity. | Applicant Signature |
| Donald C. Frick Name (Type or Print) | Applicant's Signature |

Revised 11/21/2016



DEPARTMENT OF COMMUNITY DEVELOPMENT REQUEST TO CAPE CORAL HEARING EXAMINER

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 Hearing Examiner, Planning & Zoning Commission/Local Planning Agency, and City 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.

Donald C. Frick

PROPERTY OWNER (PLEASE PRINT)

STATE OF COUNTY OF PROPERTY OWNER (SIGNATURE)

Sworn to (or affirmed) and subscribed before me this 19 day of Normal 20 18, by who is personally known or has produced as identification.

Exp. Date 07/07/2001 commission Number

Signature of Notary Public

Print Name of Notary Public

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

Matthew E. Hinkle, Notary Public Northampton Twp.. Bucks County My Commission Expires July 7, 2021 MEMBER, PENNSYLVANIA ASSESIATION OF NOTARIES



DEPARTMENT OF COMMUNITY DEVELOPMENT REQUEST TO CAPE CORAL HEARING EXAMINER

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

| PLEASE BE ADVISED THAT Joe Mazurkiewicz/BJM Consulting |
|---|
| (Name of person giving presentation) |
| IS AUTHORIZED TO REPRESENT ME IN THE APPEAL TO THE HEARING EXAMINER, OR CITY COUNCIL FOR |
| Devation Marine Improvement |
| (Type of Public Hearing – i.e. PDP, Zoning, Special Exception, Variance, etc.) |
| BLOCK 1242 LOTS 29+30 UNIT 19 SUBDIVISION Cape Coral |
| OR LEGAL DESCRIPTION |
| |
| Donald C. Frick |
| PROPERTY OWNER (PLEASE PRINT) PROPERTY OWNER (SIGNATURE) |
| STATE OF PA COUNTY OF BUCKS |
| Sworn to (or affirmed) and subscribed before me this day of NIVEMBER 2018, by DONALD C FRICK , who is personally known or has produced PA DUH 718778 as identification. |
| Exp. Date 07/07/2001 Commission Number NA |
| COMMONWEALTH OF PENNSYLVANIA NOTARIAL SEAL Matthew E. Hinkle, Notary Public Northampton Twp., Bucks County My Commission Expires July 7, 2021 MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES MITTURE STATES MITTURE STATES |
| Print Name of Notary Public |

Note: Please list all owners, if a corporation; please supply the Planning Division with a copy of corporation papers.

DOCUMENTARY EVIDENCE (LUDR, Section 8.3.1.C.6.f)

A copy of all documentary evidence shall be made available to the decision-making body or the Hearing Examiner and to staff no later than two business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

| I have read the above requirement and agree to comply with this provision. | |
|---|-------|
| Donald C. Frick | |
| OWNER/APPLICANT (PLEASE TYPE OR PRINT) OWNER/APPLICANT SIGNATURE | |
| (SIGNATURE MUST BE NOTARIZED) | |
| STATE OF PA COUNTY OF BUCKS | |
| Sworn to (or affirmed) and subscribed before me on this 19/2 day of NOVEMBLEAD 2018 by DINNEY C-FRICK, who is personally known or who has produced PH DL# 14 as identification. | 1877P |
| Exp. Date 07/07/2021 | |
| Commission # Signature of Notary Public MATTITE U E TINKLE Print Name of Notary Public | |
| COMMONWEALTH OF PENNSYLVANIA NOTARIAL SEAL Matthew E. Hinkle, Notary Public Northampton Twp Bucks County My Commission Expires July 7, 2021 MEMBER, PENNSYLVANIAASSOCIATION OF NOTARIES | |

Joe Mazurkiewicz, Jr. President P O Box 101655 Cape Coral, FL 33910 Telephone 239-470-5778 Email: joe@bjmconsult.com

November 20, 2018

Mr. Vince Cautero, Director Department Community Development City of Cape Coral PO Box 150027 Cape Coral FL 33915-0027

RE: Deviation for 2523 SE 23rd Place

Dear Mr. Cautero,

BJM Consulting, Inc. represents Donald C. Frick, owner of the property located at 2523 SE 23rd Place in Cape Coral, Florida. The owner is requesting a nine foot (9') reduction to the required 12' side setback within the marine Improvement Area to allow a walk around dock addition to be built with a 3' side setback to an existing dock and boat lift.

The site is located in Southeast Cape Coral in Block 1242, Lots 29 + 30. The property has a SF (Single Family) land use is zoned R-1B (Residential). The site is serviced by all three city utilities.

The existing dock and boat lift is built left of center at the rear of the property and the owner wishes to build a walk around dock to gain similar access to his boat that is enjoyed by other owners in the area. The proposed plans with requested deviation will allow for the construction of the marine improvements with the least impact on the neighbor's waterfront and boating access. The requested deviation is supported by Mr. Nary the neighbor to the North of the site. (See Letter) This is the reason to request the Deviation to the side setback.

In addressing the requirements in the Deviation Application we submit the following:

Hardship - The location of the existing boat lift on the northern half of the subject property and the location of the adjoining marine improvements makes the best boating access to the proposed marine improvements to be from the south. The proposed dock addition allowed by the Deviation will allow this to be built.

The approval of the requested Deviation will not confer any special privilege on the applicant, rather it will allow the applicant to construct a walk around dock with safer boating access enjoyed by many of the neighboring properties.

The required 12' side setback would deprive the owner from building a walk around dock with the safer boating access.

The Nine (9') Variance requested is the minimum required to allow the owner to build a walk around dock addition to the existing dock and lift with the safest boating access.

Purpose and Intent: Public Interest – The granting of the requested Deviation will not negatively impact the adjoining properties or neighborhood. Due to the location of the existing dock and boat lift the proposed dock addition allowed by the requested Deviation will allow for safer boating access with no impact to the property to the north.

We believe we meet the requirements to be granted the requested Deviation and therefor ask for a positive staff recommendation and approval from the Hearing Examiner.

Please let us know if you have any questions or concerns regarding this applications. Sincerely,

Joe Mazurkiewicz, Jr.

Joe Mazurkiewicz, Jr. Ph.D. President, BJM Consulting, Inc.

August 9, 2018

City of Cape Coral 1015 Cultural Park Boulevard Cape Coral, FL 33990

Re: Variance application, 2523 SE 23rd PI

Dear Sir/Madam,

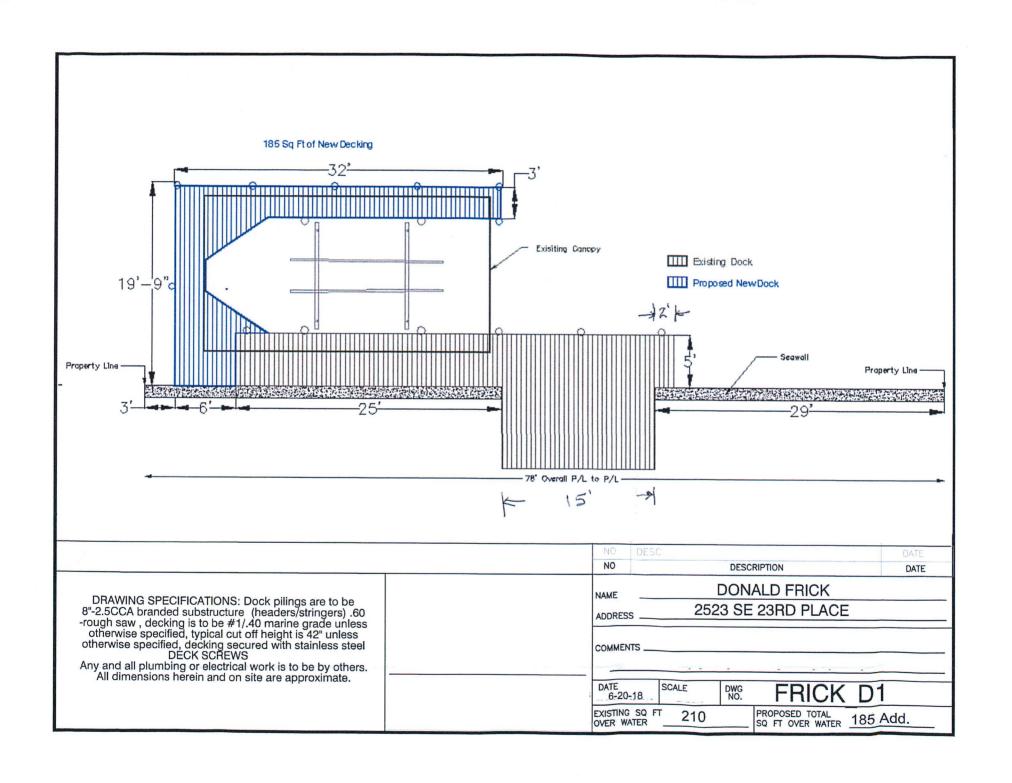
My name is Wayne Nagy and I own and reside at the property located at 2519 SE 23rd Place which is located on the north side of the property owned by Donald Frick. I am in favor of a variance allowing the expansion of his dock at 2523 SE 23rd Pl into the 12' property setback zone adjacent to my property. This would allow the approach to his existing boat lift to continue to be from the south.

Conforming to the existing setback requirements would require reconfiguration of his boat lift changing entry to the lift to be from the north. This would require maneuvering close to my existing dock and boat which would pose some level of risk to personal property. This risk would be eliminated by the proposed plan and continued approach to his boat lift from the south.

When the boat lift was originally constructed in 2016, I signed a wavier to allow the boat canopy to encroach into the 12' setback zone. The proposed dock expansion would only encroach approximately 3 feet further than the existing canopy.

Best regards,

wayne nagy



Planning Division Case Report DE18-0034

Review Date:

December 12, 2018

Owner/Applicant:

Donald C. Frick

Authorized

Representative:

Joe Mazurkiewicz Jr., BJM Consulting, Inc.

Request:

The applicant is requesting a nine-foot deviation from the Land Use and Development Regulations (LUDR), Section 3.16.2.B.1, which requires a 12-foot setback for marine improvements that extend more than six feet into

a waterway.

Location:

2523 SE 23rd Place

Unit 19, Block 1242, Lots 29-30

Prepared By:

Justin Heller, Senior Planner

Reviewed By:

Mike Struve, AICP, Planning Team Coordinator

Approved By:

Robert Pederson, AICP, Planning Manager

Recommendation:

Denial

Property Description:

The 10,061-sq. ft. site is improved with a single-family home and marine improvements that include a dock with a boat canopy. The site has about 78 feet of frontage on Shaw Canal which is about 80 feet wide at the applicant's property. The applicant proposes adding a 186 sq. ft addition to the existing dock (Exhibit 1).

The surrounding area consists primarily of single-family homes. The site and all surrounding properties have a Single Family (SF) Future Land Use Classification and Single-Family Residential (R-1B) Zoning.

Analysis:

LDR, Section 3.16.2.B.1 states, "No part of a marine improvement which extends more than six feet into a waterway shall be located less than 12 feet from the ends of the water frontage line."

LUDR, Section 3.16.9.C allows for deviations for marine improvements based upon the following general standards.

1. The deviation is not contrary to the public interest.

The property most likely to be affected by the approval of this deviation is the adjacent site to the north. The dock will be three feet from the north property line. The adjacent owner at 2519 SE 23rd Place has submitted a letter supporting the deviation. This owner also previously consented in 2015 to allow the applicant's boat canopy to encroach into the side setback to the north. Since this deviation will likely only affect the adjacent owner to the north, and this owner supports the request, staff finds that this deviation will not be harmful to the public interest.

2. The deviation will be in harmony with the general intent and purpose of this section.

The purpose of this regulation is to maintain a minimum distance between a marine improvement and the property lines of a site. Such setbacks promote safe boating ingress and egress for adjacent property owners and minimize the effect that boat lifts, boat canopies and sun shelters have on impeding waterway views. This deviation could negatively affect the neighbor to the north, however, this owner has submitted a letter supporting this deviation. Since no other properties should be directly affected by this deviation, staff finds that the request will be in harmony with the general intent and purpose of this section.

3. Conditions do exist which are the result of the applicant.

The applicant seeks approval for a dock within the 12 ft side setback. There is sufficient room along the waterfrontage of the site to construct a similarly designed dock without building in the setback. Other dock designs could be employed without a deviation. Therefore, conditions exist which are a result of the applicant.

4. A literal enforcement of the regulations involved would not result in unnecessary or undue hardship.

The literal interpretation of this ordinance would not deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district. Without the deviation, the applicant can still construct a 580 sq. ft. dock on the site. Constructing the dock at the 12-foot setback line would still allow sufficient space (± 47 ft.) for a vessel to enter the boat slip from the south, assuming the owner to the south constructed a marine improvement at the 12 ft. setback line. Any hardship claimed by the applicant should be considered self-imposed as the proposed location of the dock does not comply with the minimum setback requirement of 12 feet.

A denial of this request simply means that the new dock will need to be designed to meet the minimum setback requirements. The applicant could modify the design or location of the proposed dock to comply with the setback requirements without the need for a deviation. As a result, staff finds that reasonable use of this property exists.

Specific Deviation Review Criteria Pursuant to LUDR Section 3.16.9.C

1. Effect of proposed deviation on navigability of the waterway involved.

The proposed dock will project 19.5 feet into Shaw Canal, less than 25% of the waterway width. The dock should have no effect on the ability of others to navigate the waterway.

2. Design, size and proposed location of the marine improvement for which the deviation is sought.

Other than infringing in the side setback, the projection and area of the marine improvement meets City code requirements.

3. Effect, if any, that the proposed deviation would have on any extant marine improvements in the subject waterway.

The dock should have no negative effect on existing marine improvements in the canal.

4. Is the minimum deviation from the provisions of the applicable section necessary to avoid the unnecessary or undue hardship required herein.

The current design of the dock chosen by the applicant could be built without a deviation based on the length of waterfrontage of the site. The dock could be moved southward to comply with the setback requirement. As a result, this request does not constitute the minimum deviation needed to make reasonable use of this property.

Comprehensive Plan:

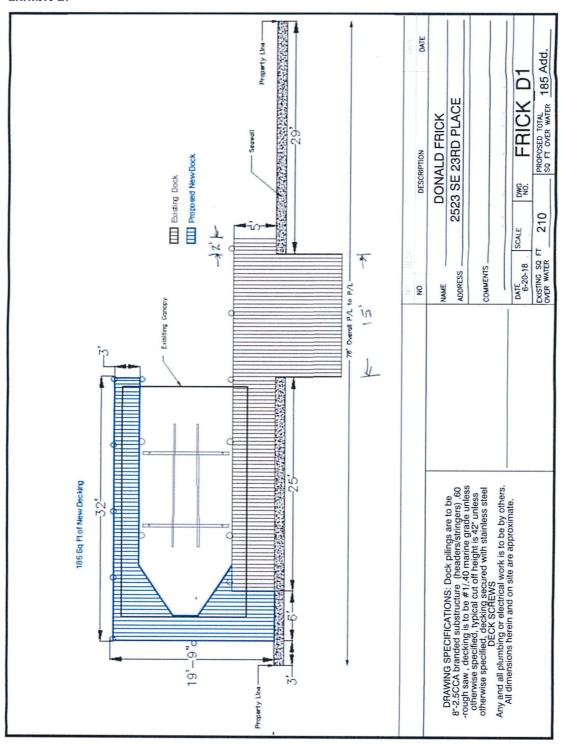
The project is consistent with Objective 1.3 and Policy 1.3.5 of the Conservation and Coastal Management Element of the Comprehensive Plan. The deviation does not involve fueling or repair facilities in a residential area.

Summary/Recommendation:

Staff finds that that conditions exist which are a direct result of the applicant. A denial of the request would not result in an unnecessary or undue hardship as the applicant can still construct a 580 sq. ft. dock on the site. Other options are available to construct a dock without the need for a deviation.

Based on the above analysis, staff recommends denial of the Deviation.

Exhibit 1:







NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: DE18-0034

REQUEST: The applicant is requesting a nine-foot deviation from the Land Use and Development Regulations (LUDR), Section 3.16.2.B.1, which requires a 12-foot setback for marine improvements that extend more than six feet into a waterway.

LOCATION: 2523 SE 23rd Place

CAPE CORAL STAFF CONTACT: Justin Heller, Senior Planner, 239-574-0587, jheller@capecoral.net

PROPERTY OWNER(S): Donald C. Frick

AUTHORIZED REPRESENTATIVE: Joe Mazurkiewicz Jr., BJM Consulting, Inc.

<u>UPCOMING PUBLIC HEARING:</u> Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday, January 8, 2019 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.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

<u>DETAILED INFORMATION:</u> The case report and colored maps for this application are available at the City of Cape Coral website, <u>www.capecoral.net/publichearing</u> (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.

<u>ADA PROVISIONS:</u> 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.

<u>APPEALS:</u> If a person decides to appeal any decision made by the Hearing Examiner 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.

Department of Community Development Planning Division

AFFIDAVIT

| IN RE: APPLICATION OF: Donald and Myra Frick | | |
|--|--|--|
| APPLICATION NO: DE18-0034 | | |
| STATE OF FLORIDA)) § | | |
| COUNTY OF LEE) | | |
| I, Richard Carr, having first been duly sworn according to law, state on my oath the following: | | |
| That I am the Acting Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral. | | |
| That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A. | | |
| DATED this 315T day of December, 2018. | | |
| Richard Carr | | |
| STATE OF FLORIDA COUNTY OF LEE | | |
| The foregoing instrument was acknowledged before me this 315 day of December, 2018, by Richard Carr, who is personally known to me and who did not take an oath. | | |
| Exp. Date 2 2 20 Commission # 6603047 | | |

ELISABETH A DELGADO MY COMMISSION # GG030474 EXPIRES December 06, 2020

Signature of Notary Public

Elisabeth A. Delgado

Print Name of Notary Public



Please contact us with changes or cancellations as soon as possible, otherwise no further action needed.

TOLL-FREE

Local#

Email

888-516-9220

239-335-0258

FNPLegals@gannett.com

Customer:

CITY OF CAPE CORAL DEPT OF COM

Ad No .:

0003311828

Address:

1015 CULTURAL PARK BLVD

Net Amt:

\$348.86

CAPE CORAL FL 33990 USA

No. of Affidavits:

Run Times: 1

Run Dates: 12/29/18

Text of Ad:

NOTICE OF PUBLIC HEARING

CASE NUMBER: DE18-0034

REQUEST: The applicant is requesting a nine-foot deviation from the Land Use and Development Regulations (LUDR), Section 3.16.2.B.1, which requires a 12-foot setback for marine improvements that extend more than six feet into a waterway.

LOCATION: 2523 SE 23rd Place

CAPE CORAL STAFF CONTACT: Justin Heller, Senior Planner, 239-574-0587, jh eller@capecoral.net

PROPERTY OWNER(S): Donald C. Frick

AUTHORIZED REPRESENTATIVE: Joe Mazurkiewicz Jr., BJM Consulting, Inc.

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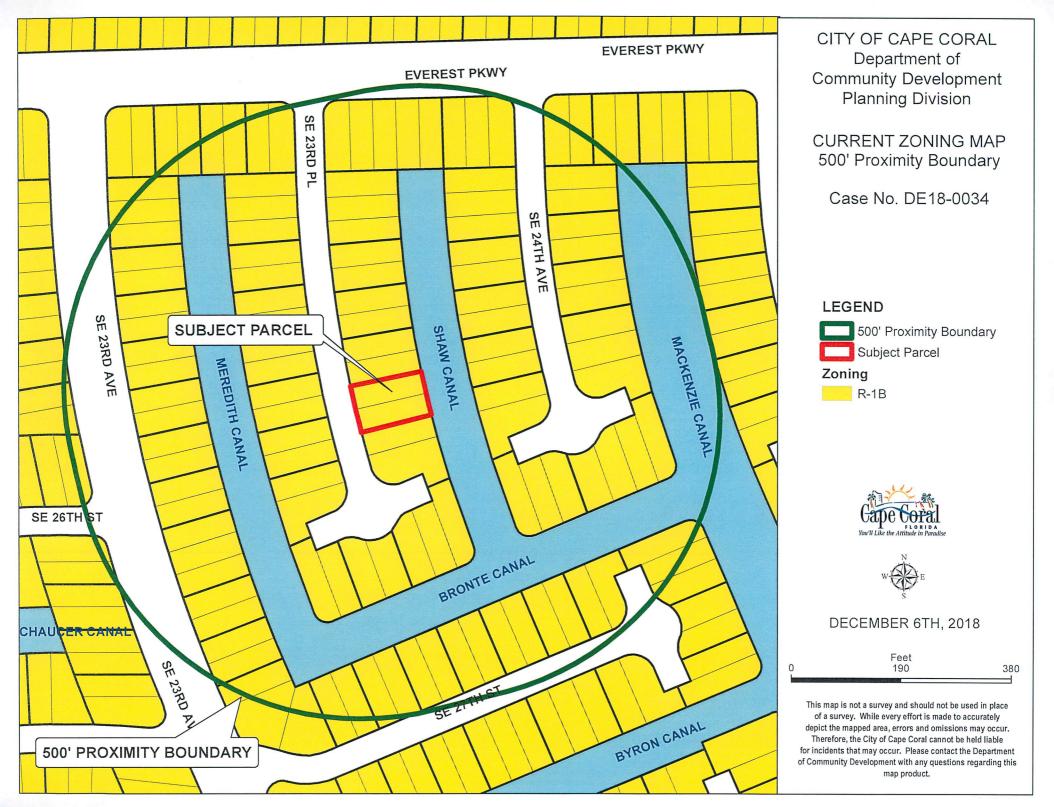
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by order of Kimberly Bruns, CMC Interim City Clerk REF # DE18-0034 AD# 3311828 Dec. 29, 2018





Item

B.(3)

Number: Meeting

Date:

5/13/2019

Item

ORDINANCES/RESOLUTIONS -

Type:

Introductions

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Ordinance 20-19 Set Public Hearing Date for June 10, 2019

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?

ELEMENT G: WORK TOWARD EFFICIENT AND COST-EFFECTIVE SOLUTIONS TO PROTECT AND CONSERVE NATURAL RESOURCES, WHILE PROMOTING ENVIRONMENTAL AWARENESS AND SUSTAINABILITY IN THE COMMUNITY.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 23, "Protected Species," Article II, "Burrowing Owl Protection," by renaming Article II to read "Burrowing Owl and Gopher Tortoise Protection," and to include protections for gopher tortoises located in the city.

LEGAL REVIEW:

John E. Naclerio III, Assistant City Attorney

EXHIBITS:

Ordinance 20-19

PREPARED BY:

Department-Division-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description Type

Ordinance

ORDINANCE 20 - 19

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 23, "PROTECTED SPECIES", ARTICLE II, "BURROWING OWL PROTECTION", BY RENAMING ARTICLE II TO READ "BURROWING OWL AND GOPHER TORTOISE PROTECTION" AND TO INCLUDE PROTECTIONS FOR GOPHER TORTOISES LOCATED IN THE CITY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2, Constitution of the state of Florida, and Chapter 166, Florida Statutes, the Cape Coral City Council ("Council") is authorized to adopt ordinances, except as otherwise provided by law; and

WHEREAS, the Florida Fish and Wildlife Conservation Commission has designated the gopher tortoise as a "Threatened Species" in the state of Florida; and

WHEREAS, the Council hereby finds that the protection of the gopher tortoise is an important public purpose; and

WHEREAS, the 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 23, Article II, is hereby amended to read as follows:

CHAPTER 23: - PROTECTED SPECIES

. . .

ARTICLE II: - BURROWING OWL AND GOPHER TORTOISE PROTECTION

§ 23-10 Purpose and intent.

The purpose of this article is to protect and preserve the burrowing owl (athene cunicularia floridana) and the gopher tortoise (Gopherus polyphemus) by protecting, enhancing, and preserving the burrows of the burrowing owl and the gopher tortoise and its their immediate environs, while recognizing the rights of property owners to use their properties in a manner consistent with the rules, policies, and guidelines of the Florida Fish and Wildlife Conservation Commission and the City. The burrowing owl is and gopher tortoise are currently classified as State Threatened by the Florida Fish and Wildlife Conservation Commission (hereinafter "Commission"). With reasonable and proper management, the populations of the burrowing owl and gopher tortoise can be conserved and improved.

§ 23-11 Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Active burrow, for purposes of the burrowing owl, means a potentially occupied burrow that contains eggs or is used by flightless young. (Per Commission guidelines, the Commission typically does not issue permits to take active nests, except in situations involving health and human safety. Removing an active nest may also require a Federal permit from the U.S. Fish and Wildlife Service.) For purposes of the gopher tortoise, an active burrow shall mean a burrow that is in good repair, has the classic half-moon shaped entrance, and appears to be in use by a tortoise. For burrow surveys and density determinations, active burrows are combined with inactive burrows to create the potentially occupied burrow classification.

Applicant means the property owner, or the property owner's agent or authorized representative.

Burrow means a hole or tunnel dug by a small animal to use as a dwelling.

Development means any improvement or change of the land induced by human activities.

Inactive burrow, for purposes of the burrowing owl, means a potentially occupied burrow that does not contain eggs or flightless young. (Per Commission guidelines, inactive burrows provide important shelter for burrowing owls year-round, and impacts to potentially occupied burrows may cause a take, even when burrows are inactive.) For purposes of the gopher tortoise, an inactive burrow shall mean a burrow that is in good repair, but does not show recent tortoise use.

Potentially occupied burrow means a burrow with obvious indications of use and those with minimal or no obvious indications of use. Obvious indicators of use include burrowing owls or gopher tortoises present in or near the burrow entrance or evidence around the entrance, such as whitewash, feces, pellets, prey remains, or adornments.

Protection zone means the land area that surrounds a burrow. <u>Protection zones will vary by species.</u>

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or an attempt to engage in any such conduct. The term "harm" in the definition of take means an act which actually kills or injures a burrowing owl or gopher tortoise. Such act may include significant habitat modification or degradation where it actually kills or injures burrowing owls or gopher tortoises by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. The term "harass" in the definition of take means an intentional or negligent act or omission which creates the likelihood of injury to a burrowing owl or gopher tortoise by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.

§ 23-12 Development standards.

For development, the following, as applicable, shall serve as guidelines or standards for the protection of burrowing owls <u>and gopher tortoises</u> as prescribed by the goals, objectives, and policies of the conservation and coastal management element of the Cape Coral Comprehensive Plan:

- (a) Prior to submission of development applications, the following procedures are required:
 - 1. Applicants shall conduct a visual survey of the affected property for burrowing owl and gopher tortoise burrows. If a burrow is found on the subject property, or observed on an adjoining property where the protection zone extends into the subject property, the applicant shall contact the Commission for management guidelines. The applicant shall include the visual survey results with the development application and expressly indicate whether a take permit is being sought from the Commission.
 - 2. In addition to the visual survey required in subsection (a)1., development applications requiring PDP or site plan approval are required to submit an environmental survey of the development site. The environmental survey shall indicate whether there is the presence of burrowing owls, gopher tortoises, or burrows on site; whether the development proposal will impact owl or gopher tortoise burrows; and whether a take permit is being sought from the Commission.
- (b) All development applications will be reviewed against the City database for burrowing owls and gopher tortoises. If the City database or the surveys required by subsections (a)1. or (a)2. above indicate the presence of burrowing owls, gopher tortoises, or burrows, the applicant shall submit an affidavit identifying such presence and indicate whether a take permit is being sought from the Commission.

§ 23-13 Protection and permit procedures.

The requirements for taking or protecting the burrowing owl <u>and gopher tortoise</u> are as follows:

(a) It shall be a violation of this article to take any <u>burrowing owl or gopher tortoise</u>, or <u>any</u> active or inactive burrowing owl <u>or gopher tortoise</u> burrow without proper state permits issued by the Commission.

- (b) Permits issued by the Commission shall be posted on site during all phases of the construction.
- (c) Except as otherwise authorized by state permit, Pprotection zone requirements shall include the following:
 - 1. For burrowing owls, Aa protection zone having at least a 10-foot buffer during the non-breeding season (July 11 February 14), and at least a 33-foot buffer during the breeding season (February 15 July 10), shall be maintained around the entrance of potentially occupied burrows during all phases of construction. A protection zone shall comply with Commission guidelines, as such guidelines may be amended.
 - 2. For gopher tortoises, a protection zone having at least a 25-foot buffer shall be maintained around the entrance of potentially occupied burrows during all phases of construction. A protection zone shall comply with Commission guidelines, as such guidelines may be amended.
 - 23. Contractors and property owners shall be responsible for maintaining the protection zone and informing all employees, workers, agents, and subcontractors to avoid the protection zone and to do nothing to affect the burrow(s) in such a manner as to make it collapse or to cause a take. Contractors and property owners shall be fully responsible for the actions of their employees, workers, agents, and subcontractors to ensure that all applicable laws, rules, and regulations protecting the burrowing owl and gopher tortoise are adhered to. Any take or violation of this article may subject the contractor and property owner to penalties as provided herein.
- (d) The City Building Official, code enforcement officers, law enforcement officers, or other City officials as may be designated by the City Council, may issue stop work orders for any development or construction that is not in compliance with the provisions of this article until any such violations have been inspected and complied with, and until any avoidance, minimization, or mitigation measures required by the Commission have been complied with or satisfied.
- (e) All Commission rules and guidelines relating to protection and taking procedures shall be followed at all times, even if not described in this article.

§ 23-14 Exempt activities within protection zones.

The following activities conducted within the protection zone of burrowing owl and gopher tortoise burrows shall not constitute a violation of this article, with the understanding that if any burrow does collapse or get damaged by the activity, it shall be immediately reported to the Commission and the City of Cape Coral to ensure proper rescue efforts may take place:

- (a) Burrow maintenance activities for the protection of owls and gopher tortoises, including the clipping of vegetation within the protection zone, staking and posting the protection zone with flagging tape and signage, and recording pertinent data.
- (b) Contractors and the property owner(s) may enter the protection zone for the limited purpose of removing debris with the full understanding that they can do nothing to disturb or harm the burrowing owl, gopher tortoise, or burrow in any manner. Contractors and lawn maintenance companies shall be fully responsible for the actions of their employees to ensure that all applicable laws, rules, and regulations protecting the burrowing owl and gopher tortoise are adhered to.
- (c) City employees, City agents and representatives, and the property owner(s) may enter the protection zone for the purpose of maintaining vegetation if using equipment that does not exert pressure on the ground to ensure the burrow does not collapse.
- (d) Scientific research or investigations approved by the Commission or the United States Fish and Wildlife Service. The City of Cape Coral shall be notified of all such research or investigations and provided with all study reports and publications produced.
- (e) Professional environmental consultants that are conducting surveys or monitoring of burrowing owls or gopher tortoises in conjunction with private or public construction.

(f) Activities permitted by Commission rules, policies, and guidelines.

§ 23-15 Penalties.

- (a) Any person found violating any of the provisions of this article shall, upon conviction, be punished by a fine not to exceed \$500 or by imprisonment in the county jail for a period not to exceed 60 days, or by both fine and imprisonment. Such person shall also pay all costs and expenses incurred by the City in instituting such action. Each day a violation continues shall be considered a separate and distinct offense.
- (b) In addition to any other penalty provided by this article, any person who violates this article may be required to restore the protection zone to its condition prior to the violation. In the event restoration is not completed within a reasonable time after notice to the violator of the restoration requirement, then the City may perform the restoration and the cost of the restoration shall constitute a lien upon the subject property until paid in full. Any such restoration must be approved by the Commission.
- (c) In addition to any other penalty provided by this article, any violation of this article shall constitute a public nuisance and may be subject to restraint by injunction.
- (d) The City Manager, or the City Manager's designee, shall inform the Commission of any violations of this article by any person or entity within fourteen (14) days of such violation.

§ 23-16 Supplemental regulations.

This article is not intended to replace the Florida Endangered and Threatened Species Act or any other applicable federal, state, or local laws, rules, and regulations. Rather, this article is intended to supplement those laws, rules, and regulations to ensure the protection of the burrowing owl <u>and the gopher tortoise</u>.

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 TH SESSION THIS DAY OF | HE CITY OF CAPE CORAL AT ITS REGULAF, 2019. |
|---|---|
| | JOE COVIELLO, MAYOR |
| VOTE OF MAYOR AND COUNCILMEM | BERS: |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN |
| ATTESTED TO AND FILED IN MY OI 2019. | FFICE THIS DAY OF |
| | KIMBERLY BRUNS INTERIM CITY CLERK |

APPROVED AS TO FORM:

JOHN E. NACLERIO III ASSISTANT CITY ATTORNEY

Ord/CopherTortoises

Item

B.(4)

Number:

Meeting

5/13/2019

Date:

Item

ORDINANCES/RESOLUTIONS -

Type:

Introductions

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Ordinance 21-19 Set Public Hearing Date for June 10, 2019

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:

An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 6, "Contractors and Construction Regulation Board," Article I, "General Provisions," Section 6-10.1, pertaining to disciplinary proceedings for contractor violations in the City.

LEGAL REVIEW:

John E. Naclerio III, Assistant City Attorney

EXHIBITS:

Memo

Ordinance 21-19

PREPARED BY:

Division-Department-

SOURCE OF ADDITIONAL INFORMATION:

Richard Carr, Code Compliance Division Manager

ATTACHMENTS:

Description

- □ Memo
- □ Ordinance 21-19

Туре

Backup Material Ordinance

MEMORANDUM

CITY OF CAPE CORAL DEPARTMENT OF COMMUNITY DEVELOPMENT

TO:

John Szerlag, City Manager

FROM:

Vincent Cautero, Community Development Director
Richard Carr. Code Compliance Marray

Richard Carr, Code Compliance Manager

DATE:

May 2, 2019

SUBJECT:

Ordinance 21-19 Amending the City of Cape Coral Code of Ordinances.

Chapter 6, "Contractors and Construction Regulation Board," Article I. "General Provisions," Section 6-10.1, Pertaining to Disciplinary Proceedings

for Contractor Violations in the City

Executive Summary

The purpose of Ordinance 21-19 is to enhance and expedite the Contractor Regulation Board's ability to review and impose discipline as appropriate to licensed contractors for violations of city ordinances.

Background

As part of the Cape Coral Construction Regulation Board's responsibilities, the Board hears and considers testimony, facts, and evidence presented by the City's Code Compliance Division staff related to contractors violating city code and/or state statute while performing their licensed construction work. The Board meets bi-monthly to perform their duties and can call special meetings as needed; however, that practice is uncommon.

The Code Compliance Division staff and the members of the Construction Regulation Board recognized that the process to impose discipline to contractors had some processes which created significant delay of intervention to correct violations of code by licensed contractors. In the current process it takes over four months for the board to formally act.

Proposed Changes

As part of staff's analysis of the current disciplinary process, we found that the "probable cause hearing" was a step that could be eliminated. By eliminating the requirement that the Board establish probable cause and allowing the Code Compliance officers to establish it. the case will be presented in front of the Board more quickly and ensure better protection of the public. The concept of Code staff establishing the existence of probable cause is similar City Manager – Ordinance 21-19 May 2, 2019 Page 2 of 2

to when a police officer makes an arrest with probable cause and later has it reviewed by the court. The contractor disciplinary process is not an arrest, but the concept is similar in that the Code Officer starts the process and the Board ultimately decides the outcome.

This recommended ordinance change will provide better protection to the citizens of Cape Coral and ensure appropriate and expeditious handling of complaints of improper conduct by licensed contractors.

The ordinance was reviewed during the March 27, 2019 meeting of the Construction Regulation Board and a unanimous vote was received from the members to proceed and request City Council approval of the changes to the ordinance.

VAC/RC:eh (memo_ordinance 21-19_05-02-2019.docx)

ORDINANCE 21 - 19

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 6, "CONTRACTORS AND CONSTRUCTION REGULATION BOARD", ARTICLE I, "GENERAL PROVISIONS", SECTION 6-10.1, PERTAINING TO DISCIPLINARY PROCEEDINGS FOR CONTRACTOR VIOLATIONS IN THE CITY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2, Constitution of the state of Florida, and Chapter 166, Florida Statutes, the Cape Coral City Council ("Council") is authorized to adopt ordinances, except as otherwise provided by law; and

WHEREAS, the 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 6, Article I, Section 6-10.1, is hereby amended to read as follows:

§ 6-10.1 Disciplinary Proceedings.

- (a) Complaint.
 - (1) All complaints involving a violation of this article are to be filed with the <u>Code Compliance dDivision ("Division")</u> on the appropriate form. The <u>dDivision</u> is responsible for the investigation of a complaint only if it is in writing and legally sufficient.
 - (2) A complaint is legally sufficient if it contains the necessary facts to indicate a probable violation of this article. During review for legal sufficiency, the Board or dDivision may request additional documentation or information from the complainant. If there is a question as to whether the complaint is legally sufficient, the final determination will be made by the building official and the City Attorney's office.
 - (3) The Board or dDivision may investigate an anonymous complaint if:
 - a. The complaint is in writing;
 - b. Legally sufficient;
 - c. The alleged violation is substantial; and
 - d. The <u>dDivision</u> has reason to believe, after preliminary inquiry, that the violation alleged in the complaint is true.
 - (4) Notwithstanding the foregoing, Tthe Board Division may initiate an investigation if there is reason to believe that a licensee or a group of licensees has committed a violation of this article.

(b) Investigation.

- (1) Code Compliance The Division must investigate all complaints that are in writing, signed by the complainant and found legally sufficient.
- (2) Code Compliance The Division must promptly furnish the subject contractor and the City Attorney's office with a copy of the complaint or document that results in the initiation of an investigation.
- (3) The subject contractor may submit a written response to the <u>dDivision</u> concerning the information contained in the complaint or document within 20 days after receipt service of notice to the contractor regarding the complaint. This The contractor's written response, if any, will be included in any documentation sent presented to the Board for review as part of any formal disciplinary hearing. The Division may request that the subject contractor meet with the Division regarding a complaint that is found to be legally sufficient.

(c) Mediation.

- (1) After the initial investigation, Code Compliance the Division may schedule a meeting with complainant and contractor. This meeting will be considered an informal mediation session.
- (2) Code Compliance The Division's role at this meeting is to explain the nature of the violation(s), offer possible methods of achieving abatement, and act as mediator.
- (3) The objective of this mediation session is to obtain an agreement identifying the action that will be taken to abate the violation(s). This agreement will be reduced to written form within five days after the meeting and become effective upon execution by all parties.
- (4) If the agreement is not executed within 30 days after the mediation session, the eity <u>Division</u> may present the complaint to the Board for a reasonable eause determination and proceed to the as a formal <u>disciplinary</u> hearing.
- (5) Once the agreement is executed, the parties are required to comply with its written terms. If the contractor fails to comply with the terms of the agreement, the eity <u>Division</u> may present the complaint to the Board for a reasonable cause determination and as a formal <u>disciplinary</u> hearing process.
- (6) Code Compliance The Division will retain a copy of the mediation agreement in the contractor's file.
- (7) A contractor can avoid the formal hearing process by entering into a mediation agreement and complying with its terms. However, a contractor can use this method of addressing violations only three times in any five-year period. Once the threshold limit is met, the contractor must obtain Board approval to enter into subsequent mediation agreements. The Board has the sole discretion to grant or deny approval. Mediation agreements that are fully complied with prior to a formal disciplinary hearing may still be presented to the Board at a formal disciplinary hearing. In such event, the Board may consider such mediation compliance when imposing penalties, if any, against the contractor.
- (8) Mediation is not mandatory. It is intended only as a means to obtain compliance on an expedited basis.

(d) Probable cause determination.

- (1) If, after Code Compliance conducts its investigation, the complaint is deemed legally sufficient, Code Compliance will submit a request for reasonable cause determination to the Board.
- (2) The determination as to whether reasonable cause exists will be made by a majority vote of the Board sitting as reasonable cause panel.
- (3) The reasonable cause panel may request additional investigation if the panel reasonably believes that additional information is necessary to make the reasonable cause determination.
- (4) If the panel finds reasonable cause does not exist, Code Compliance may issue a letter of guidance to the subject contractor.

(ed) Formal disciplinary hearing process.

- (1) After the Division conducts its investigation and the facts indicate a probable violation of this article, the Division may schedule a formal disciplinary hearing before the Board. Any formal disciplinary hearing date will be set within 30 days after the panel finds reasonable cause scheduled for the next regularly scheduled meeting of the Board, or as soon thereafter as possible.
- (2) Upon the request of the Division or the contractor, Tthe chairman Chairperson has the discretion to delay or continue the hearing date for good cause. A contractor's request for continuance must be delivered to Code Compliance the Division in writing and it must state the specific reasons for the request.
- (3) All parties must be given ten days notice prior to a formal disciplinary hearing unless otherwise agreed by the parties.
- (4) The notice of <u>formal disciplinary</u> hearing must include the following:
 - a. A statement of the time, place and nature of the hearing;

- b. A statement of the legal authority and jurisdiction under which the hearing is to be held; and
- c. A copy of the complaint.
- (5) During the hearing all parties will have an opportunity to present evidence and argument, to conduct cross-examination, and submit rebuttal evidence.
- (6) All testimony must be under oath.
- (7) A representative of the City Attorney's office will represent Code Compliance the Division in the disciplinary proceedings against the contractor.
- (8) The standard of proof applicable to these hearings is "clear and convincing evidence." Florida case law indicates that "clear and convincing evidence" requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit; and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produced in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.
- (9) Irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs will be admissible, whether or not the evidence would be admissible in civil court. Any part of the evidence may be received in written form.
- (10) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- (11) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties will be given an opportunity to compare the copy with the original.
- (12) All pleadings, motions or other papers filed in the proceedings must be signed by a party, the party's attorney or the party's qualified representative.
- (13) At the conclusion of the hearing the Board will render an oral decision. The decision becomes final upon execution of the final order. However, if the Board decision includes suspension or revocation of permit pulling privileges, this portion of the decision will go into effect at the start of business on the day following the hearing.

(fe) Final orders.

- (1) Within 14 days after the <u>formal disciplinary</u> hearing, the parties may submit a proposed recommended order to the Board attorney. The submitting party will also provide a copy to the opposing party.
- (2) Within 30 days after the conclusion of the hearing, the Board's attorney will prepare and submit a recommended order to code enforcement the <u>Division</u> that reflects the Board's determination. Any order imposing disciplinary action against a contractor must contain, at minimum, the following:
 - a. A clear statement of the violation charged and the factual basis for the charge;
 - b. Evidence that the contractor was given notice of the charges and an opportunity to appear and present evidence and testimony regarding the charges;
 - c. Findings of fact based exclusively on evidence of record and matters officially recognized by the Board. The findings of fact cannot merely track statutory language, unless the order contains a concise and explicit statement of the underlying facts used to support findings;
 - d. Conclusions of law demonstrating that the facts alleged constitute a violation of state or local regulations;
 - e. A statement of the penalty imposed against the contractor;
 - f. A recommended penalty to the construction industry licensing board for further action against the registered contractor or state certified contractor, if appropriate; and

- g. A clear statement concerning the right to appeal the Board's decision or challenge the recommendation to the construction industry licensing board.
- (3) Code Compliance The Division will provide each Board member present at the hearing, the subject contractor, and the city attorney's office with a copy of the recommended order. The Board will consider the recommended order at its next regular meeting.
- (4) The Board may adopt the recommended order as the final order or make any amendments it deems necessary.
- (5) The Board's attorney will prepare the final order. The final order must be in writing and signed by the chairman Chairperson, or the Vice Chairperson in the Chairperson's absence, within 60 10 days after the hearing is concluded meeting which the Board considered the recommended order.
- (6) A copy of any order rendered by the Board will be provided to the parties, including the complainant, by regular U.S. mail.
- (7) The Board's order is final upon execution by the chairman Chairperson, or the Vice Chairperson in the Chairperson's absence.

(gf) Recommendation to state construction industry licensing board.

- (1) If the disciplinary proceedings involve a registered <u>or certified</u> contractor, the Board must issue a recommended penalty for construction industry licensing board action. The Board's recommendation will be made part of the final order. The recommended penalty may include a recommendation for no further action, suspension, revocation, restitution, or restriction of the registration or a fine to be levied by the construction industry licensing board or a combination of these actions.
- (2) As part of the final order, the Board must inform the subject contractor and the complainant of the local penalty imposed, the recommendation to the construction industry licensing board, the contractor's right to appeal and the consequences should the contractor choose not to appeal.
- (3) The Board must inform the construction industry board of the action taken by the Board against any contractor, including the penalty imposed, within three days of the Board's final action. Sending a copy of the Board's final order along with a record of the proceedings to the construction industry licensing board will fulfill this requirement.

(hg) Record of the proceedings.

- (1) The record of these proceedings will consist of the following:
 - a. All notices, pleadings, motions and orders.
 - b. All evidence received or considered by the Board.
 - c. All staff memoranda or data submitted to the Board during the hearing or prior to its disposition except communications by advisory staff.
 - d. All matters placed on the record after ex parte communication.
 - c. The official transcript. The official transcript is the audio recording made during the hearing.
- (2) Code Compliance The Division is also responsible for preservation of the record. Upon written request, Code Compliance the Division must make a full or partial transcript of the proceedings available at no more that than actual cost. However, Code Compliance the Division is not responsible for payment of transcription costs unless the city is the requesting party.
- (ih) Challenge by a contractor of Board recommendation to construction industry licensing board. In accordance with F.S. § 489.131(7), the Department of Business and Professional Regulation, a complainant or contractor can challenge a recommendation of the Board to the construction industry licensing board. A challenge must be filed with the construction industry licensing board within 60 days after the Construction Regulation Board executes its final order. Failure to file a challenge with the construction industry licensing board constitutes a waiver of the right to a hearing before the construction industry licensing board. Under F.S. Ch. 489, a waiver is deemed an admission of the violation and the recommended order becomes the

final order of the construction industry licensing board without further action. A final order of the construction industry licensing board is appealable to the district court.

- $(\dagger \underline{1})$ Ex parte communications.
 - Ex parte communication is prohibited. No ex parte communication relative to the merits of a case under Board jurisdiction may be made to a member of the Board by:
 - Any city employee officially involved in prosecuting the matter under consideration.
 - A party to the proceeding, including an authorized representative or counsel, or any person who, directly or indirectly, would have a substantial interest in the proposed action.
 - (2)A Board member who is involved in the decision process that receives an ex parte communication must place on the record of the proceedings all written communication received or a memorandum stating the substance of all oral communications received and all oral responses made, and must also advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication must be allowed to do so. A request for rebuttal must be made within ten days after notice of the communication is received. The Board member may withdraw from participation in the decision if he deems it necessary to eliminate the effect of the ex parte communication.
- (i) Appeals. The violator or the City may appeal a decision of the Board by petition for writ of certiorari to the circuit court. The petition shall be filed no later than 30 days after the date of the decision of the Board.

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 CI SESSION THIS DAY OF | |
|--|--------------------------------------|
| | JOE COVIELLO, MAYOR |
| VOTE OF MAYOR AND COUNCILMEMBERS | : |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN |
| ATTESTED TO AND FILED IN MY OFFICE 2018. | THIS, |
| APPROVED AS TO FORM: | KIMBERLY BRUNS INTERIM CITY CLERK |

IOHN

10/10/18

E. NACLERIO III ASSISTANT CITY ATTORNEY

Ord/KorDisciplinaryProceedings

Item

B.(5)

Number:

Meeting 5/40/004

Date:

5/13/2019

Item

ORDINANCES/RESOLUTIONS -

Type:

Introductions

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Ordinance 26-19 Set Public Hearing Date for June 3, 2019

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 G: WORK TOWARD EFFICIENT AND COST-EFFECTIVE SOLUTIONS TO PROTECT AND CONSERVE NATURAL RESOURCES, WHILE PROMOTING ENVIRONMENTAL AWARENESS AND SUSTAINABILITY IN THE COMMUNITY.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance approving and granting to South Florida Water Management District a perpetual Conservation Easement upon property owned by the City located in the area of the Academic Village; authorizing and directing the Mayor to execute the Deed of Conservation Easement - Passive Recreational Uses.

LEGAL REVIEW:

John E. Naclerio III, Assistant City Attorney

EXHIBITS:

Ordinance 26-19

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Dawn Andrews, Real Estate Broker Michael Ilczyszyn, Senior Public Works Manager

ATTACHMENTS:

Description

□ Ordinance 26-19

Туре

Ordinance

ORDINANCE 26 - 19

AN ORDINANCE APPROVING AND GRANTING TO SOUTH FLORIDA WATER MANAGEMENT DISTRICT A PERPETUAL CONSERVATION EASEMENT UPON PROPERTY OWNED BY THE CITY LOCATED IN SECTION 30, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA AS SHOWN IN OFFICIAL RECORDS 4031 AT PAGE 3159 OF THE PUBLIC RECORDS, AS MORE PARTICULARLY DESCRIBED HEREIN; AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE THE DEED OF CONSERVATION EASEMENT – PASSIVE RECREATIONAL USES; A COPY OF THE DEED OF CONSERVATION EASEMENT – PASSIVE RECREATIONAL USES IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City purchased the property known as the Academic Village located at the northwest corner of Kismet Parkway East and Del Prado Boulevard North in 2003, and has subsequently purchased adjoining sites along the north side of Kismet Parkway East; and

WHEREAS, the South Florida Water Management District (SFWMD) has issued a permit (Permit No. 36-08114-P) to the City for development of the Academic Village property, authorizing certain activities which could affect wetlands or other surface waters; and

WHEREAS, in order to offset or prevent adverse impacts to natural resources, fish and wildlife, and wetland functions resulting from the development of the property, a condition of the Permit requires the City to grant a Conservation Easement as defined in Section 704.06, Florida Statutes over the area of the property described in Exhibit B of the Deed of Conservation Easement — Passive Recreational Uses attached hereto and to preserve the Conservation Easement Area in perpetuity in its natural condition, or, in accordance with SFWMD Permit No. 36-08114-P in an enhanced, restored, or created condition; and

WHEREAS, the City Council desires to grant to SFWMD a perpetual Conservation Easement upon the area of land described in Exhibit B of the Deed of Conservation Easement which shall run with the land and be binding upon the City, and shall remain in full force and effect forever.

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

Section 1. The City Council hereby approves and grants to South Florida Water Management District a perpetual Conservation Easement upon property owned by the City located in Section 30, Township 43 South, Range 24 East, Lee County, Florida as shown in Official Records 4031 at Page 3159 of the Public Records, as more particularly described in Exhibit B of the Deed of Conservation Easement – Passive Recreational Uses. A copy of the Deed of Conservation Easement – Passive Recreational Uses is attached hereto and incorporated herein by reference.

Section 2. The Mayor is hereby authorized and directed to execute the Deed of Conservation Easement – Passive Recreational Uses, a copy of which is attached hereto and incorporated herein by reference.

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

Section 4. Effective Date. This ordinance shall take effect immediately upon its adoption by the Cape Coral City Council.

| ADOPTED BY THE COUNTHIS DAY OF | CIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION, 2019. |
|--------------------------------|---|
| | JOE COVIELLO, MAYOR |
| VOTE OF MAYOR AND CO | • |
| COVIELLO GUNTER CARIOSCIA | NELSON STOKES WILLIAMS |

COSDEN

STOUT

| ATTESTED TO AND FILED IN MY OFF | FICE THIS DAY OF | , 2019. |
|--|------------------------------|---------|
| APPROVED AS TO FORM: JOHN E. NACLERIO ASSISTANT CITY ATTORNEY | KIMBERLY BRUNS CITY CLERK | |
| · // | | |

DEED OF CONSERVATION EASEMENT PASSIVE RECREATIONAL USES

| Prepared by: | | |
|---|--|--|
| Return original or certified recorded docum | nent to: | |
| THIS DEED OF CONSERVATION | N EASEMENT is given this | day of ("Grantor") |
| whose mailing address is | 41.2 N | (Grantor) |
| , 20, by | ("Grantee"). uccessors or assigns of the Grantor, and hereinafter defined) and the term "G | As used herein, the term d all subsequent owners of brantee" shall include any |
| | WITNESSETH | |
| WHEREAS, the Grantor is the fee County, Florida, and more specifically de incorporated herein (the "Property"); and | simple owner of certain lands situated in escribed on the location map in Exhibi | n it "A" attached hereto and |
| WHEREAS, Permit No Grantee authorizes certain activities which Florida; and | ("Permit") and any modification could affect wetlands or other surface | ons thereto issued by the waters in or of the State of |
| WHEREAS, the Grantor, in cons | ideration of the consent granted by the | Permit or other good and |

WHEREAS, the Grantor, in consideration of the consent granted by the Permit or other good and valuable consideration provided to Grantor, is agreeable to granting and securing to the Grantee a perpetual Conservation Easement as defined in Section 704.06, Florida Statutes (F.S.), over the area of the Property described on Exhibit "B" ("Conservation Easement Area"); and

WHEREAS, Grantor grants this Conservation Easement as a condition of the Permit, solely to off-set or prevent adverse impacts to natural resources, fish and wildlife, and wetland functions; and

WHEREAS, Grantor desires to preserve the Conservation Easement Area in perpetuity in its natural condition, or, in accordance with the Permit, in an enhanced, restored, or created condition; and

NOW, THEREFORE, in consideration of the issuance of the Permit to construct and operate the permitted activity, and as an inducement to Grantee in issuing the Permit, together with other good and valuable consideration provided to the Grantor, the adequacy and receipt of which are hereby acknowledged, Grantor hereby voluntarily grants, creates, conveys, and establishes a perpetual Conservation Easement for and in favor of the Grantee upon the area of the Property described on Exhibit "B" which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.













The scope, nature, and character of this Conservation Easement shall be as follows:

- 1. <u>Recitals.</u> The recitals hereinabove set forth are true and correct and are hereby incorporated into and made a part of this Conservation Easement.
- 2. <u>Purpose.</u> It is the purpose of this Conservation Easement to retain land or water areas in their existing, natural, vegetative, hydrologic, scenic, open or wooded condition and to retain such areas as suitable habitat for fish, plants, or wildlife in accordance with Section 704.06, F.S. Those wetland and upland areas included in this Conservation Easement which are to be preserved, enhanced, restored, or created pursuant to the Permit (or any modification thereto) and any Management Plan attached hereto as Exhibit "C" ("Management Plan") which has been approved in writing by the Grantee, shall be retained and maintained in the preserved, enhanced, restored, or created condition required by the Permit (or any modification thereto).

To carry out this purpose, the following rights are conveyed to Grantee by this easement:

- a. To enter upon the Conservation Easement Area at reasonable times with any necessary equipment or vehicles to inspect, determine compliance with the covenants and prohibitions contained in this easement, and to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Conservation Easement Area by Grantor at the time of such entry; and
- b. To proceed at law or in equity to enforce the provision of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any activity or use that is inconsistent with this Conservation Easement.
- 3. <u>Prohibited Uses.</u> Except for activities that are permitted or required by the Permit (or any modification thereto) (which may include restoration, creation, enhancement, maintenance, and monitoring activities, or surface water management improvements) or other activities described herein or in the Management Plan (if any), any activity on or use of the Conservation Easement area inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities are expressly prohibited in or on the Conservation Easement area:
- a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
 - c. Removing, destroying or trimming trees, shrubs, or other vegetation, except:
- i. The removal of dead trees and shrubs or leaning trees that could cause damage property is authorized;
- ii. The destruction and removal of noxious, nuisance or exotic invasive plant species as listed on the most recent Florida Exotic Pest Plant Council's List of Invasive Species is authorized;
- iii. Activities authorized by the Permit or described in the Management Plan or otherwise approved in writing by the Grantee are authorized; and
- iv. Activities conducted in accordance with a wildfire mitigation plan developed with the Florida Forest Service that has been approved in writing by the Grantee are authorized. No later than thirty (30) days before commencing any activities to implement the approved wildfire mitigation plan, Grantor shall notify the Grantee in writing of its intent to commence such activities. All such activities may only be completed during the time period for which the Grantee approved the plan;
- d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface:

- e. Surface use except for purposes that permit the land or water area to remain in its natural, restored, enhanced, or created condition;
- f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking, clearing, and fencing;
- g. Acts or uses detrimental to such aforementioned retention of land or water areas; and
- h. Acts or uses which are detrimental to the preservation of the structural integrity or physical appearance of sites or properties having historical, archaeological, or cultural significance.
- 4. <u>Grantor's Reserved Rights.</u> Grantor reserves all rights as owner of the Conservation Easement Area, including the right to engage or to permit or invite others to engage in all uses of the Conservation Easement Area that are not prohibited herein and which are not inconsistent with the Permit (or any modification thereto), Management Plan, or the intent and purposes of this Conservation Easement.
- 5. <u>No Dedication.</u> No right of access by the general public to any portion of the Conservation Easement Area is conveyed by this Conservation Easement.
- 6. <u>Grantee's Liability.</u> Grantee's liability is limited as provided in Subsection 704.06(10) and Section 768.28, F.S. Additionally, Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep, or maintenance of the Conservation Easement Area.
- 7. <u>Enforcement.</u> Enforcement of the terms, provisions and restrictions of this Conservation Easement shall be at the reasonable discretion of Grantee, and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder. Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.
- 8. <u>Taxes.</u> When perpetual maintenance is required by the Permit, Grantor shall pay before delinquency any and all taxes, assessments, fees, and charges of whatever description levied on or assessed by competent authority on the Conservation Easement Area, and shall furnish the Grantee with satisfactory evidence of payment upon request.
- 9. <u>Assignment.</u> Grantee will hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement except to another organization or entity qualified to hold such interests under the applicable state laws.
- 10. <u>Severability.</u> If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.
- 11. <u>Terms and Restrictions.</u> Grantor shall insert the terms and restrictions of this Conservation Easement in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Conservation Easement.
- 12. <u>Written Notice.</u> All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.
- 13. <u>Modifications.</u> This Conservation Easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns or

| successors-in-interest, which shall be filed in the public records in |
|--|
| County, Florida. 14. Recordation. Grantor shall record this Conservation Easement in timely fashion in the Official Records of County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Grantor will hold Grantee harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records. |
| 15. <u>Passive Recreational Facilities.</u> Grantor reserves all rights as owner of the Conservation Easement Area, including the right to engage in uses of the Conservation Easement Area that are not prohibited by the Permit (including any modification thereto) or Management Plan, and that are not inconsistent with any rule of the Grantee, and the intent and purposes of this Conservation Easement. Passive recreational uses that are not contrary to the purpose of this Conservation Easement may be constructed with the following limitations: |
| a. The Grantor may conduct limited vegetation removal but only to the extent necessary to construct boardwalks, mulched walking trails, observation platforms or other pervious or pile supported structures which have been approved in advance in the Permit (including any modification thereto) or Management Plan. |
| b. The construction and use of the approved passive recreational facilities shall be subject to the following conditions: |
| i. Grantor shall minimize and avoid, to the fullest extent possible, impact to any wetland or upland buffer areas within the Conservation Easement Area and shall avoid materially diverting the direction of the natural surface water flow in such area; |
| ii. Such facilities and improvements shall be constructed and maintained utilizing Best Management Practices; |
| iii. Adequate containers for litter disposal shall be situated adjacent to such facilities and improvements and periodic inspections shall be instituted by the maintenance entity, to clean any litter from the area surrounding the facilities and improvements; |
| iv. This Conservation Easement shall not constitute authorization for the construction and operation of the passive recreational facilities. Any such work shall be subject to all applicable federal, state,, and local permitting requirements. |
| TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions and purposes imposed with this Conservation Easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Conservation Easement Area. |
| Grantor hereby covenants with Grantee that Grantor is lawfully seized of said Conservation Easement Area in fee simple; that the Conservation Easement is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement; all mortgages and liens on the Conservation Easement area, if any, have been subordinated to this Conservation Easement; that Grantor has good right and lawful authority to convey this Conservation Easement; and that it hereby fully warrants and defends record title to the Conservation Easement Area hereby conveyed against the lawful claims of all persons whomsoever. |
| IN WITNESS WHEREOF, ("Grantor") has |
| hereunto set its authorized hand this day of , 20 . |

| | | | ., |
|--|-----------------------|------------|---------------------------------|
| A Florida corporation or | | _(choose | one) |
| By:(Signature) | | | |
| | | | |
| Name:(Print) | | _ | |
| | | | |
| Title: | | | |
| Signed, sealed and delivered in our presence | as witnesses: | | |
| Bv. | Bv. | | |
| By:(Signature) | | (| Signature) |
| Name:(Print) | Name: | | |
| (Print) | | (| Print) |
| STATE OF FLORIDA | | | |
| COUNTY OF | | | |
| On this day of | . 20 . befor | e me. th | ne undersigned notary public. |
| personally appeared | | | |
| the foregoing instrument, as the | | | |
| (corporation), a Florida co | rporation, or 🗌 | | |
| (choose one) and acknowledged to | hat he/she execu | uted the | same on behalf of said |
| corporation, or | (choose one) a | and the he | e/she was duly authorized to do |
| so. He/She is personally known to me or has \mid | produced a | | (state) |
| driver's license as identification. | | | |
| IN WITNESS WHEREOF, I hereunto set my hai | nd and official seal. | | |
| NOTARY PUBLIC, STATE OF FLORIDA | | | |
| (Signature) | | | |
| (Name) My Commission Expires: | _ | | |

MORTGAGEE JOINDER, CONSENT AND SUBORDINATION

| For Ten Dollars (\$10.00) and other goo | od and valuable consideration, the adequacy and |
|--|---|
| receipt of which are hereby acknowledged, | , the owner and holder of a |
| mortgage dated | , in the original principal amount of \$ |
| , given by | ("Grantor") to |
| ("Mortgagee"), encumbering the | e real property described on Exhibit "B" attached |
| hereto ("Conservation Easement Area"), which | is recorded in Official Records Book |
| at Page,(together with t | hat certain Assignment of Leases and Rents |
| recorded in Official Records Book, a | t Page, and those certain |
| UCC-1 Financing Statement(s) recorded in Offi | cial Records Book, at Page |
| , all of the Public Records of | County, Florida (said mortgage, |
| assignment of leases and rents, and UCC-1 Fi | nancing Statements, as modified, are hereinafter |
| referred to as the "Mortgage"), hereby joins | in, consents to and subordinates the lien of its |
| Mortgage, as it has been, and as it may be, mo | odified, amended and assigned from time to time, |
| to the foregoing Conservation Easement, execu | uted by, in |
| favor of | applicable to the Conservation Easement, |
| as said Conservation Easement may be mod | ified, amended, and assigned from time to time, |
| with the intent that the Mortgage shall be | subject and subordinate to the Conservation |
| Easement. | |

| IN WI | ITNESS WH | IEREOF, this | s Morto | gagee Joinder, C | onsent a | nd Subordina | ation is made | e this |
|---------------------------|-------------------|---------------------|---------------|--------------------|-----------|---|---------------|--------|
| | day of | | , 20 <u> </u> | | | | | |
| Ву: | (Signature | 5) | | | | (Mortgagee) | | |
| Name: | | | | | | (************************************** | | |
| Title: | (Print) | | | _ | | | | |
| WITNESSES | S: | | | | | | | |
| Ву: | (Signatur | e) | | By: | (| (Signature) | | |
| Name: | | | | Name: | (| (Print) | _ | |
| STATE OF F | LORIDA | | | | | | | |
| COUNTY OF | : | | _ | | | | | |
| The | foregoing , 20 | instrument _, by | was | acknowledged | before | me this (print name) | day | of |
| Mortgage), o conservation | Easement) | . He/She is | perso | nally known to m | ne or has | (Mortgagee produced a | Grantor o | f the |
| IN WITNESS | WHEREOF | F, I hereunto | set my | / hand and officia | ıl seal. | | | |
| NOTARY PU | BLIC, STAT | E OF FLOR | IDA | | | | | |
| (Signa | ature) | | | | (| (Name) | | |
| My Commiss | ion Expires: | | | | | | | |

Exhibit A

A Parcel of Land lying in Section 30, Township 43 South, Range 24 East, Lee County, Florida, as shown in Official Records 4031 at Page 3159 of the Public Records of Lee County, Florida; consisting of:

The Southeast Quarter (Southeast ¼) and the Southeast Quarter (Southeast ¼) of the Southwest Quarter (Southwest ¼) of Section 30, Township 43 South, Range 24 East, Lee County Florida, as recorded in Official Record Book 1885, Page 3718, Public Records of Lee County Florida.

Less and excepting that portion of said Southeast quarter (Southeast ¼) of said Section 30 lying Easterly from the Westerly Right-of-Way line of Del Prado Boulevard, (120 foot R/W) as presently constructed, and also less and excepting that portion of said Southeast Quarter (Southeast ¼) of the Southwest Quarter (Southwest ¼) of said Section 30 described in Official Record Book 2906, Page 3514, of the Public Records of Lee County, City of Cape Coral, Florida, said Tract or Parcel of Land being more particularly described as follows:

Beginning at the Northwesterly corner of said Southeast quarter (Southeast ¼) of said Section 30; a found concrete monument, thence run South 88° 56′ 58″ East along the Northerly line of said Southeast Quarter (Southeast ¼) for 2,118.25 feet to an Intersection with the Westerly Right-of-Way line of Del Prado Boulevard; thence run along said Westerly Right-of-Way line for the following five courses:

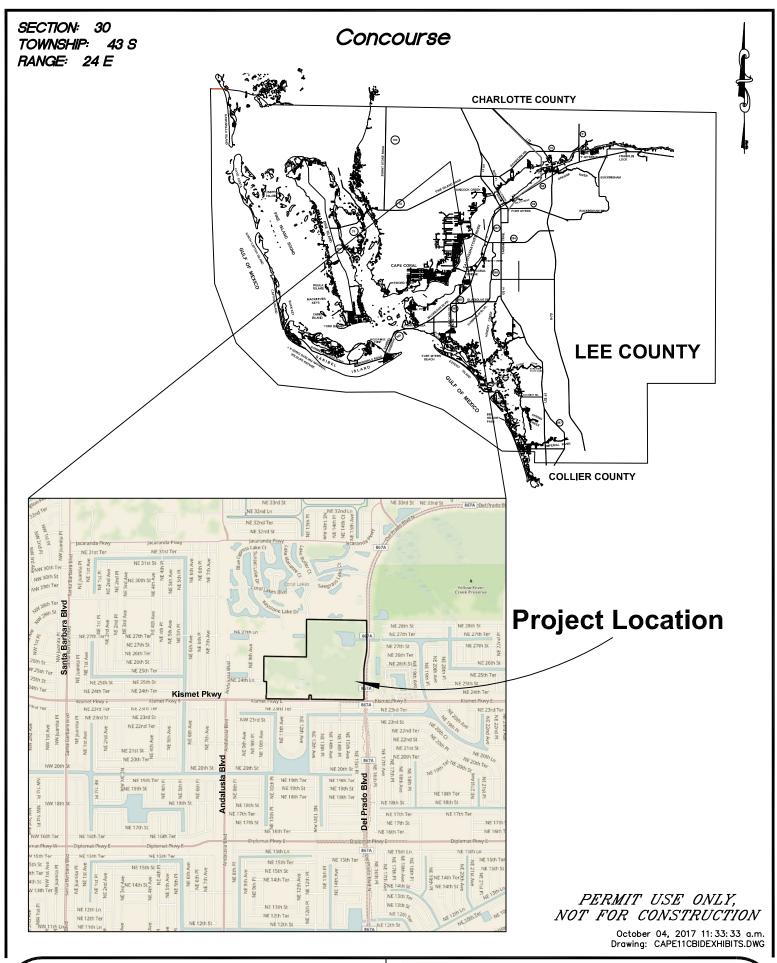
South 00° 19′ 00″ East for 898.00 feet to the Point of Curvature of a curve concave to the Northwest, then run along said curve having a radius of 1,940.00 feet and a Central angle of 11° 04′ 41″ (Chord South 05° 13′ 21″ West 374.51 feet) for 375.10 feet to the Point of Tangency, then run South 10° 45′ 41" West for 179.97 feet to the Point of Curvature of a curve concave to the Southeast, then run along said curve having a radius of 2,060.00 feet and a Central angle of 11° 06′ 42″ (Chord South 05° 12′ 20″ West, 398.88 feet) for 399.51 feet to the Point of Tangency, then run South 00° 21′ 01″ East for 792.84 feet to an intersection with said Southerly line of said Southeast Quarter (Southeast ¼), being also the Northerly line of Cape Coral Unit 32 according to Plat Book 16, Pages 1 through 13, thence run North 89° 33' 54" West along said Southern line and said Northerly line for 2,029.82 feet; thence run North 89° 13' 03" West along said Southerly line of said Southeast Quarter (Southeast ¼) of the Southwest Quarter (Southwest ¼) and said Northerly line of said Cape Coral Unit 32 for 1,401.93 feet to the Southeasterly corner of said Tract of land described in Official Record Book 3434, Page 4511; thence run North 00° 22′ 56″ East along the Easterly line of said Tract and the Easterly line of said Tract of Land described in Official Record Book 3434, Page 4543 for 455.69 feet to a non-tangent intersection with a curve concave to the Northwest, being also the Northeasterly corner of said last mentioned Tract; thence run along the Northerly line of said last mentioned tract for the following two courses: along said curve having a radius of 360.00 feet and a Central angle of 04° 48′ 44″ (Chord South 88° 22' 35" West, 30.23 feet) for 30.24 feet to the Point of Tangency and North 89° 13' 03" West for 69.79 feet to an intersection with the Westerly line of said Southeast quarter (Southeast ¼) of the Southeast Quarter (Southwest ¼), being also the Easterly line of Cape Coral-Lee County Industrial Park according to Plat Book 34, Pages 142 and 143, of the Public Records of Lee County; thence run North 00° 22′ 56″ East along said Westerly line and said Easterly line for 879.61 feet to the Northwesterly corner of said Southeast Quarter (Southeast ¼) of the Southwest Quarter (Southwest ¼); thence run South 89° 05′ 03″ East along the Northerly line of said Southeast Quarter (Southeast ¼) of the Southwest Quarter (Southwest ¼) for 1,496.05 feet to the Northeasterly corner of said Southeast Quarter (Southeast ¼) of the Southwest Quarter (Southwest ¼), being also a point on the Westerly line of said Southeast Quarter (Southeast ¼) of said Section 30; thence run North 00° 07′ 40″ East along the Westerly line of said Southeast Quarter (Southeast ¼) for 1,330.64 feet to the Point of Beginning.

Bearings are based on the North line of said Southeast Quarter (Southeast ¼) of Section 30, Township 43 South, Range 24 East, Lee County, Florida; as being South 88° 56′ 58″ East.

Together with Lots 35 through 47, Block 2175; Lots 1 through 13, Lots 18 through 37 and Lots 40 through 49, Block 2176; and Lots 1 and 2, Lots 6 through 13 and Lots 16 through 21, Block 2177; all as shown on the Plat of Cape Coral Unit 32, recorded in Plat Book 16 at Pages 1 through 13 of the Public Records of Lee County, Florida.

Parcel contains 180.71 Acres, more or less.

Subject to Easements, Reservations and Restrictions of Record.



Beginning at the Southeast corner of Coral Lakes Tract P-3, as recorded in Plat Book 80, Pages 12 through 28 of the public records of Lee County, Florida, said point also being a corner of that parcel described in Official Records Book 4031, Page 3159, all of the public records of Lee County, Florida; thence run N 62°06'03" E a distance of 30.74 feet; thence run along the arc of a curve to the left with an arc length of 95.56 feet, a radius of 252.00 feet, a chord bearing of S 38°45'48" E, a chord length of 94.99 feet; thence run S 49°37'39" E a distance of 93.17 feet; thence run S 81°01'29" E a distance of 11.57 feet; thence run S 56°01'27" E a distance of 18.93 feet; thence run S 21°42'06" E a distance of 49.88 feet; thence run S 48°08'56" E a distance of 23.00 feet; thence run S 70°33'34" E a distance of 32.20 feet; thence run S 31°52'29" E a distance of 24.92 feet; thence run S 04°30'16" E a distance of 42.19 feet; thence run S 63°47'23" E a distance of 29.46 feet; thence run S 31°52'29" E a distance of 25.78 feet; thence run S 40°40'02" W a distance of 49.06 feet; thence run S 30°18'49" E a distance of 30.31 feet; thence run S 38°18'24" W a distance of 49.29 feet; thence run S 20°13'59" W a distance of 52.15 feet; thence run S 37°04'07" E a distance of 89.17 feet; thence run S 32°46'27" E a distance of 76.46 feet; thence run S 73°58'40" E a distance of 60.98 feet; thence run N 70°58'52" E a distance of 79.75 feet; thence run S 23°38'01" E a distance of 127.49 feet; thence run along the arc of a curve to the left with an arc length of 165.05 feet, a radius of 522.00 feet, a chord bearing of S 32°41'30" E, a chord length of 164.36 feet; thence run S 41°44'58" E a distance of 80.76 feet; thence run along the arc of a curve to the right with an arc length of 71.22 feet, a radius of 175.00 feet, a chord bearing of S 30°05'26" E, a chord length of 70.73 feet; thence run S 03°23'06" E a distance of 154.91 feet; thence run along the arc of a curve to the left with an arc length of 110.73 feet, a radius of 181.00 feet, a chord bearing of S 20°54'38" E, a chord length of 109.01 feet; thence run S 23°31'39" E a distance of 72.54 feet; thence run S 02°11'09" E a distance of 15.82 feet; thence run S 87°48'51" W a distance of 50.12 feet; thence run N 52°45'46" W a distance of 15.25 feet; thence run S 53°41'53" W a distance of 73.23 feet; thence run S 87°52'34" W a distance of 57.40 feet; thence run N 77°19'17" W a distance of 49.88 feet; thence run N 86°49'09" W a distance of 41.12 feet; thence run N 71°40'58" W a distance of 119.36 feet; thence run S 45°26'57" W a distance of 71.64 feet to an intersection with the North line of Block 2176, Cape Coral Unit 32, according to Plat Book 16, Pages 1-32 of the public records of Lee County, Florida; thence continue S 45°26'57" W a distance of 60.06 feet; thence run N 89°22'50" W a distance of 117.94 feet; thence run N 00°41'44" E a distance of 51.23 feet; thence run N 89°33'54" W a distance of 104.00 feet; thence run S00°41'44"W a distance of 50.89 feet; thence run N89°22'50"W a distance of 180.73 feet; thence run N47°48'11"W a distance of 63.11 feet to the Northeast corner of lot 17 of said Block 2176; thence run N 82°25'17" W a distance of 39.90 feet; thence run N 86°03'52" W a distance of 51.09 feet; thence run N 53°38'55" W a distance of 31.40 feet; thence run N 85°13'05" W a distance of 38.22 feet; thence run N 22°52'02" W a distance of 42.27 feet; thence run N 37°48'11" W a distance of 29.27 feet; thence run N 43°06'34" W a distance of 50.60 feet; thence run N 33°27'40" W a distance of 31.93 feet; thence run S 14°59'14" W a distance of 45.99 feet; thence run S 42°51'21" W a distance of 63.21 feet; thence run S 69°54'47" W a distance of 58.28 feet; thence run N 79°57'38" W a distance of 33.55 feet; thence run N 73°07'51" W a distance of 97.75 feet; thence run N 45°59'08" W a distance of 18.14 feet; thence run N 86°02'59" W a distance of 38.37 feet; thence run N 50°44'29" W a distance of 100.54 feet; thence run N 34°17'57" W a distance of 18.36 feet; thence run N 38°34'34" W a distance of 111.01 feet; thence run N 41°23'00" W a distance of 34.38 feet; thence run N 90°00'00" W a distance of 276.67 feet; thence run N 00°00'00" W a distance of 246.23 feet; thence run along the arc of a curve to the right with an arc length of 42.75 feet, a radius of 30.00 feet, a chord bearing of N 40°49'15" E, a chord length of 39.22 feet; thence run N 81°38'29" E a distance of 72.61 feet; thence run N 90°00'00" E a distance of 689.14 feet; thence run N 38°56'20" E a distance of 55.23 feet; thence run N 00°46'47" W a distance of 212.29 feet; thence run N 09°20'34" W a distance of 181.07 feet; thence run N 57°17'37" W a distance of 21.55 feet; thence run N 38°30'38" E a distance of 51.94 feet; thence run N 71°55'09" E a distance of 36.69 feet; thence run N 27°55'25" E a distance of 22.70 feet; thence run N 19°12'12" E a distance of 43.69 feet; thence run N 15°42'57" E a distance of 48.61 feet; thence run N 11°12'07" E a distance of 66.45 feet; thence run N 16°15'30" W a distance of 26.33 feet; thence run N 89°06'08" W a distance of 63.72 feet; thence run S 55°31'40" W a distance of 81.47 feet; thence run S 85°11'53" W a distance of 56.05 feet; thence run S 67°58'19" W a distance of 37.31 feet; thence run S 53°05'15" W a distance of 42.78 feet; thence run S 75°02'32" W a distance of 51.44 feet; thence run S 89°09'39" W a distance of 53.36 feet; thence run N 89°54'53" W a distance of 44.88 feet; thence run N 49°37'00" W a distance of 56.81 feet; thence run N 84°44'14" W a distance of 96.60 feet; thence run N 69°42'53" W a distance of 74.04 feet; thence run N 57°56'08" W a distance of 50.37 feet; thence run N 56°34'53" W a distance of 62.66 feet; thence run N 49°18'47" W a distance of 23.37 feet; thence run N 73°46'32" W a distance of 117.47 feet; thence run S 89°05'03" E a distance of 1088.00 feet to the point of beginning.

Said Parcel Contains 1,445,072 square feet or 33.17 acres, more or less.

Description of EASEMENT. Lying in Section 30, Twp 43S, Rge 24E, Lee County, Florida.

SURVEY NOTES:

1. MEASUREMENTS SHOWN ARE IN FEET AND DECIMALS THEREOF.

- 2. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD. 3. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT
- INCLUDED.

 BEARINGS ARE BASED ON THE SOUTH LINE OF SECTION 30, TWP
 43S RGE 24E AS MONUMENTED IN THE FIELD, BEING N89°13'08"W.

 COORDINATES ARE STATE PLANE, FLORIDA EAST ZONE (3601)
 (NAD83 / 2007)

JOB # 12-0526 PREPARED FOR: City of Cape Coral

SECTION 30, TOWNSHIP 43S, RANGE 24E

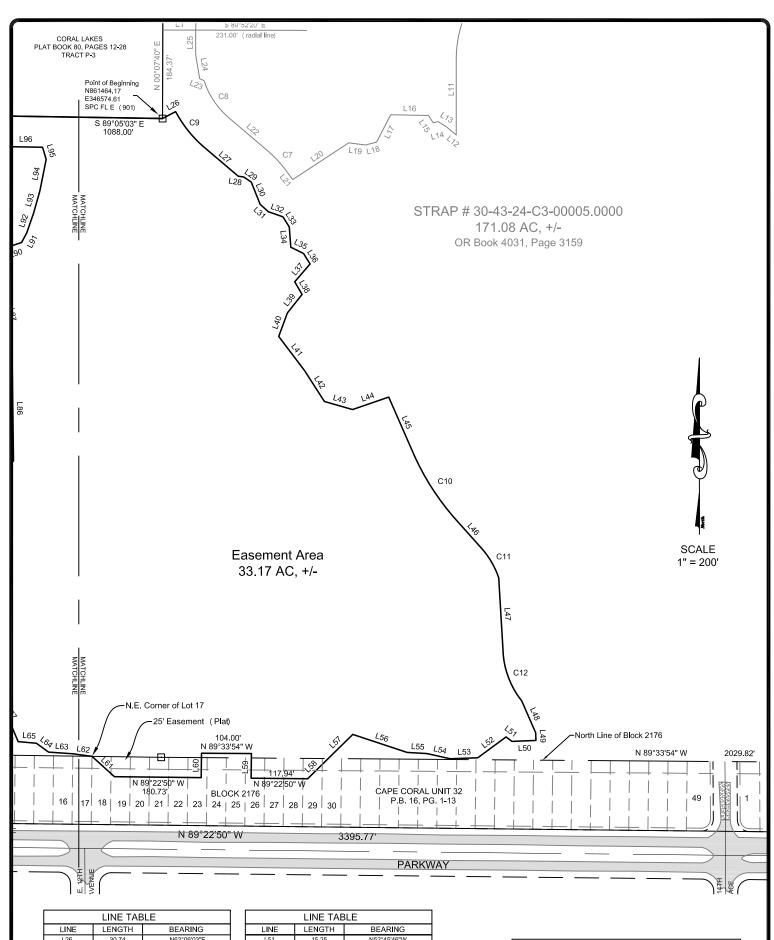
STOUTÉN CRAMER PROFESSIONAL SURVEYORS

CERTIFICATE OF AUTHORIZATION: LB7922 324 Nicholas Parkway West, Suite F, Cape Coral, FL 33991 Phone: (239) 673-9541 Fax: (239) 424-8181 www.scisurvev.com

* THIS IS NOT A SURVEY * PAGE 1 of 3

I hereby certify that, to the best of my knowledge and belief, the sketch represented hereon, made under my direction on **August 17, 2012** is in accordance with Minimum Technical Standards as set forth by the Florida Board of Professional Surveyors & Mappers in Chapter 5,1-17, Florida Administrative Code, pursuant to Section 472.027 Florida Statutes.

EY D STOUTEN A PROFESSIONAL SURVEYOR & MAPPER NO,6584 LID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A A LICENSED SURVEYOR AND MAPPER



| LINE TABLE | | | | |
|------------|-------------------|-------------|--|--|
| LINE | LENGTH | BEARING | | |
| L26 | 30.74 | N62°06'03"E | | |
| L27 | 93.17 | S49°37'39"E | | |
| L28 | 11.57 | S81°01'29"E | | |
| L29 | 18.93 | S56°01'27"E | | |
| L30 | 49.88 | S21°42'06"E | | |
| L31 | 23.00 | S48°08'56"E | | |
| L32 | 32,20 | S70°33'34"E | | |
| L33 | 24.92 | S31°52'29"E | | |
| L34 | 42.19 | S04°30'16"E | | |
| L35 | 29.46 | S63°47'23"E | | |
| L36 | 25.78 | S31°52'29"E | | |
| L37 | 49.06 S40°40'02"W | | | |
| L38 | 30.31 | S30°18'49"E | | |
| L39 | 49.29 | S38°18'24"W | | |
| L40 | 52.15 | S20°13'59"W | | |
| L41 | 89.17 | S37°04'07"E | | |
| L42 | 76.46 | S32°46'27"E | | |
| L43 | 60.98 | S73°58'40"E | | |
| L44 | 79.75 | N70°58'52"E | | |
| L45 | 127.49 | S23°38'01"E | | |
| L46 | 80.76 | S41°44'58"E | | |
| L47 | 154.91 | S03°23'06"E | | |
| L48 | 72.54 | S23°31'39"E | | |
| L49 | 15.82 | S02°11'09"E | | |
| L50 | 50.12 | S87°48'51"W | | |
| | | · | | |

| LINE TABLE | | | | |
|------------|--------|--------------|--|--|
| LINE | LENGTH | BEARING | | |
| L51 | 15.25 | N52°45'46"W | | |
| L52 | 73.23 | S53°41'53"W | | |
| L53 | 57.40 | S87°52'34"W | | |
| L54 | 49.88 | N77°19'17"W | | |
| L55 | 41.12 | N86°49'09"W | | |
| L56 | 119.36 | N71°40'58"W | | |
| L57 | 71,64 | S45°26'57"W | | |
| L58 | 60.06 | S45°26'57"W | | |
| L59 | 51.23 | N 0°41'44" E | | |
| L60 | 50.89 | S0°41'44"W | | |
| L61 | 63.11 | N47°48'11"W | | |
| L62 | 39.90 | N82°25'17"W | | |

| CURVE TABLE | | | | | |
|-------------|--------|--------|-----------|-------------|--------|
| CURVE | LENGTH | RADIUS | DELTA | CH BEARING | CHORD |
| C9 | 95.56 | 252.00 | 21°43'41" | S38°45'48"E | 94.99 |
| C10 | 165.05 | 522.00 | 18°06'57" | S32°41'30"E | 164.36 |
| C11 | 71.22 | 175.00 | 23°19'03" | N30°05'26"W | 70.73 |
| C12 | 110.73 | 181.00 | 35°03'03" | S20°54'38"E | 109.01 |
| C13 | 42.75 | 30.00 | 81°38'29" | S40°49'15"W | 39.22 |

Sketch of EASEMENT, Lying in Section 30, Twp 43S, Rge 24E, Lee County, Florida.

- SURVEY NOTES:

 1. MEASUREMENTS SHOWN ARE IN FEET AND DECIMALS THEREOF.

 2. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

 3. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT
- 18. ONDERGROOMS STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.

 4. BEARINGS ARE BASED ON THE SOUTH LINE OF SECTION 30, TWP 43S RGE 24E AS MONUMENTED IN THE FIELD, BEING N89°13'08"W.

 5. COORDINATES ARE STATE PLANE, FLORIDA EAST ZONE (3601) (NAD83 / 2007)

| JOB # 12-0526 | PREPARED FOR: City of Cape Coral | | |
|---------------|----------------------------------|--|--|
| SECTION | I 30, TOWNSHIP 43S, RANGE 24E | | |

STOUTEN CRAMER PROFESSIONAL SURVEYORS

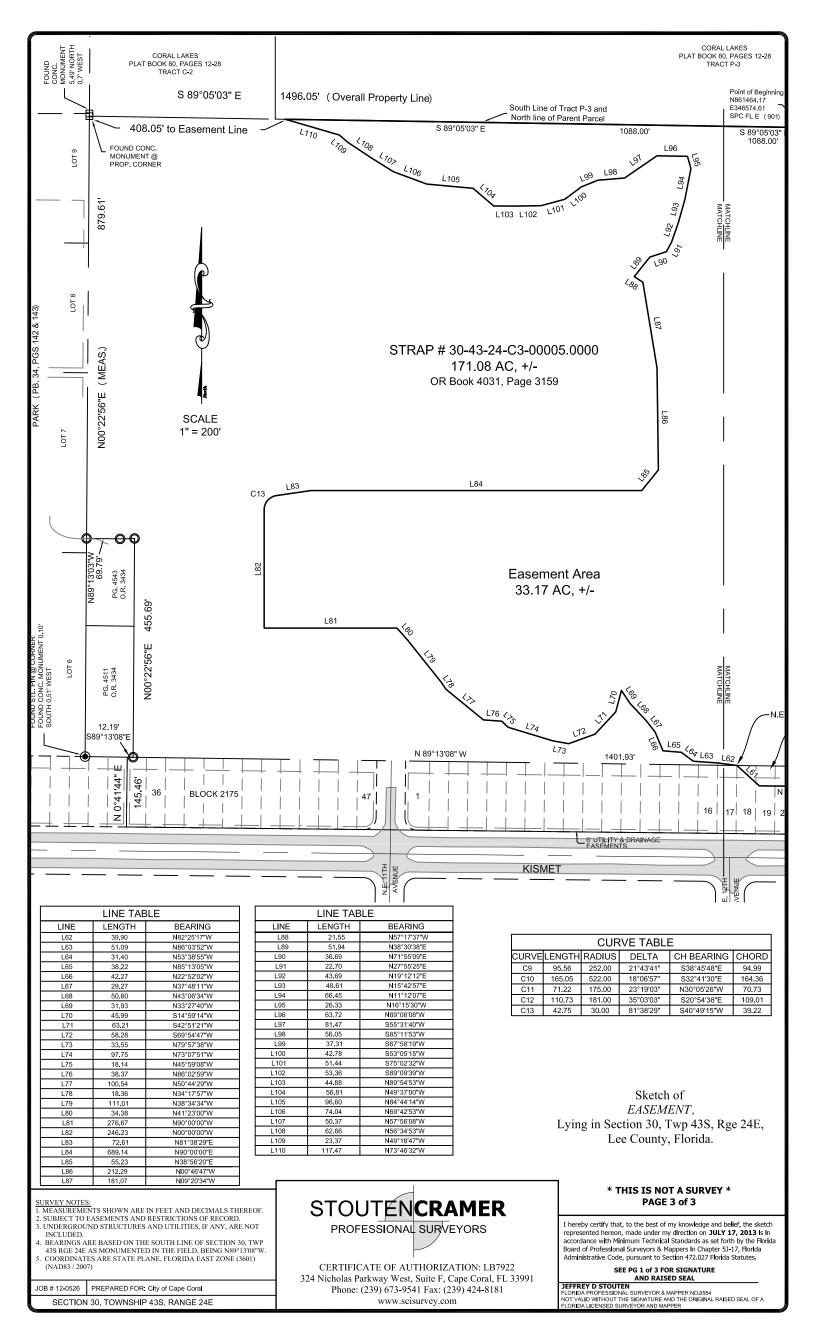
CERTIFICATE OF AUTHORIZATION: LB7922 324 Nicholas Parkway West, Suite F, Cape Coral, FL 33991 Phone: (239) 673-9541 Fax: (239) 424-8181 www.scisurvey.com

* THIS IS NOT A SURVEY * PAGE 2 of 3

I hereby certify that, to the best of my knowledge and belief, the sketch represented hereon, made under my direction on **JULY 17, 2013** is in accordance with Minmum Technical Standards as set forth by the Florida Board of Professional Surveyors & Mappers in Chapter 51-17, Florida Administrative Code, pursuant to Section 472.027 Florida Statutes.

SEE PG 1 of 3 FOR SIGNATURE
AND RAISED SEAL

JEFFREY D STOUTEN
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO.6584
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A
FLORIDA LICENSED SURVEYOR AND MAPPER



Commencing at the Southeast corner of Coral Lakes Tract P-3, as recorded in Plat Book 80, Pages 12 through 28 of the public records of Lee County, Florida, said point also being a corner of that parcel described in Official Records Book 4031, Page 3159, all of the public records of Lee County, Florida; run N00°07'40"E along the east line of said Tract P-3 and the West line of said parcel recorded in Official Records Book 4031, Page 3159 for a distance of 184.37 feet, thence leaving said line run S89°52'20"E for a distance of 68.58 feet to the Point of Beginning.

From said Point of Beginning thence along a curve to the right to which a radial line bears S89°52'20"E, having an arc length of 212.26 feet, a radius of 231.00 feet, a chord bearing of N 26°27'07" E, a chord length of 204.87 feet; thence run N 52°46'34" E a distance of 197.00 feet; thence along the arc of a curve to the right with an arc length of 123.39 feet, a radius of 469.00 feet, a chord bearing of N 60°18'47" E, a chord length of 123.03 feet; thence run N 67°51'00" E a distance of 187.93 feet; thence run along the arc of a curve to the right with an arc length of 95.82 feet, a radius of 169.00 feet, a chord bearing of N 84°05'33" E, a chord length of 94.54 feet; thence run S 79°39'55" E a distance of 52.93 feet; thence run along the arc of a curve to the right with an arc length of 88.15 feet, a radius of 169.00 feet, a chord bearing of S 64°43'20" E, a chord length of 87.16 feet; thence run S 49°46'44" E a distance of 112.87 feet; thence run S 45°09'17" E a distance of 43.37 feet; thence run S 38°22'31" E a distance of 20.23 feet; thence run S 23°30'22" E a distance of 58.90 feet; thence run along the arc of a curve to the right with an arc length of 26.20 feet, a radius of 15.00 feet, a chord bearing of S 26°32'10" W, a chord length of 23.00 feet; thence run S 76°34'43" W a distance of 33.96 feet; thence run S 80°55'53" W a distance of 120.22 feet; thence run along the arc of a curve to the left with an arc length of 339.01 feet, a radius of 240.00 feet, a chord bearing of S 40°27'57" W, a chord length of 311.52 feet; thence run S 00°00'00" W a distance of 158.20 feet; thence run N 50°18'08" W a distance of 27.94 feet; thence run N 58°49'18" W a distance of 19.33 feet; thence run S 77°22'19" W a distance of 10.25 feet; thence run N 33°15'27" W a distance of 17.99 feet; thence run N 88°48'29" W a distance of 78.59 feet; thence run S 27°21'33" W a distance of 64.38 feet; thence run S 75°51'33" W a distance of 23.92 feet; thence run N 82°40'05" W a distance of 35.12 feet; thence run S 56°44'33" W a distance of 139.38 feet; thence run N 37°31'07" W a distance of 14.40 feet; thence run along the arc of a curve to the left with an arc length of 66.67 feet, a radius of 252.00 feet, a chord bearing of N 42°02'52" W, a chord length of 66.48 feet; thence run N 49°37'39" W a distance of 104.19 feet; thence run along the arc of a curve to the right with an arc length of 94.86 feet, a radius of 172.00 feet, a chord bearing of N 33°49'43" W, a chord length of 93.66 feet; thence run N 67°33'07" W a distance of 9.87 feet; thence run N 09°28'20" W a distance of 50.56 feet; thence run N 00°07'40" E a distance of 51.52 feet to the point of beginning.

Contains an area of 366,759 square feet or 8.42 acres, more or less.

Description of EASEMENT. Lying in Section 30, Twp 43S, Rge 24E, Lee County, Florida.

SURVEY NOTES:

1. MEASUREMENTS SHOWN ARE IN FEET AND DECIMALS THEREOF.

- 2. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD. 3. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT
- INCLUDED.

 BEARINGS ARE BASED ON THE SOUTH LINE OF SECTION 30, TWP
 43S RGE 24E AS MONUMENTED IN THE FIELD, BEING N89°13'08"W.

 COORDINATES ARE STATE PLANE, FLORIDA EAST ZONE (3601)
 (NAD83 / 2007)

JOB # 12-0526 PREPARED FOR: City of Cape Coral

SECTION 30, TOWNSHIP 43S, RANGE 24E

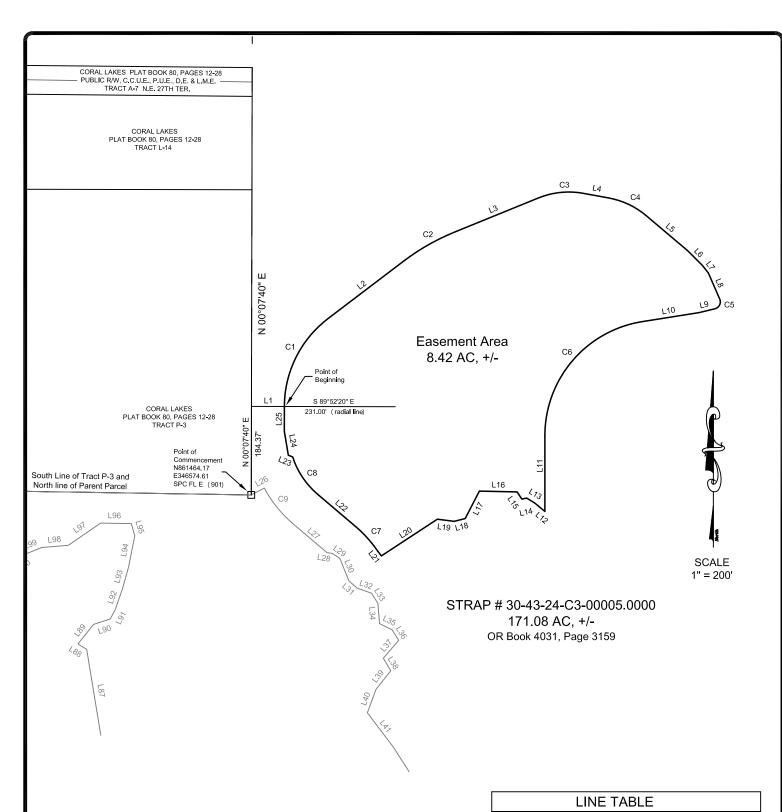


CERTIFICATE OF AUTHORIZATION: LB7922 324 Nicholas Parkway West, Suite F, Cape Coral, FL 33991 Phone: (239) 673-9541 Fax: (239) 424-8181 www.scisurvev.com

* THIS IS NOT A SURVEY * PAGE 1 of 2

I hereby certify that, to the best of my knowledge and belief, the sketch represented hereon, made under my direction on **August 17, 2012** is in accordance with Minimum Technical Standards as set forth by the Florida Board of Professional Surveyors & Mappers in Chapter 5,1-17, Florida Administrative Code, pursuant to Section 472.027 Florida Statutes.

PEFFRET D'STUUTEN
**LORIDA PROFESSIONAL SURVEYOR & MAPPER NO,6584
**OT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A
**LORIDA LICENSED SURVEYOR AND MAPPER



| CURVE TABLE | | | | | |
|-------------|--------|--------|------------|-------------|--------|
| CURVE | LENGTH | RADIUS | DELTA | CH BEARING | CHORD |
| C1 | 212.26 | 231.00 | 52°38'54" | N26°27'07"E | 204.87 |
| C2 | 123.39 | 469.00 | 15°04'27" | N60°18'47"E | 123.03 |
| C3 | 95.82 | 169.00 | 32°29'04" | N84°05'33"E | 94.54 |
| C4 | 88.15 | 169.00 | 29°53'11" | S64°43'20"E | 87.16 |
| C5 | 26.20 | 15.00 | 100°05'04" | S26°32'10"W | 23.00 |
| C6 | 339.01 | 240.00 | 80°55'54" | S40°27'57"W | 311.52 |
| C7 | 66.67 | 252.00 | 15°09'34" | N42°02'52"W | 66.48 |
| C8 | 94.86 | 172.00 | 31°35'53" | N33°49'43"W | 93.66 |

Sketch of EASEMENT, Lying in Section 30, Twp 43S, Rge 24E, Lee County, Florida.

| LINE LENGTH | | BEARING | |
|-------------|--------|-------------|--|
| L1 | 68.58 | N89°52'20"W | |
| L2 | 197.00 | N52°46'34"E | |
| L3 | 187.93 | N67°51'00"E | |
| L4 | 52.93 | S79°39'55"E | |
| L5 | 112.87 | S49°46'44"E | |
| L6 | 43.37 | S45°09'17"E | |
| L7 | 20.23 | S38°22'31"E | |
| L8 | 58.90 | S23°30'22"E | |
| L9 | 33.96 | S76°34'43"W | |
| L10 | 120.22 | S80°55'53"W | |
| L11 | 158.20 | S00°00'00"W | |
| L12 | 27.94 | N50°18'08"W | |
| L13 | 19.33 | N58°49'18"W | |
| L14 | 10.25 | S77°22'19"W | |
| L15 | 17.99 | N33°15'27"W | |
| L16 | 78.59 | N88°48'29"W | |
| L17 | 64.38 | S27°21'33"W | |
| L18 | 23.92 | S75°51'33"W | |
| L19 | 35.12 | N82°40'05"W | |
| L20 | 139.38 | S56°44'33"W | |
| L21 | 14.40 | N37°31'07"W | |
| L22 | 104.19 | N49°37'39"W | |
| L23 | 9.87 | N67°33'07"W | |
| L24 | 50.56 | N09°28'20"W | |
| L25 | 51.52 | N00°07'40"E | |

- SURVEY NOTES:

 1. MEASUREMENTS SHOWN ARE IN FEET AND DECIMALS THEREOF.

 2. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

 3. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT
- INCLUDED.
 BEARINGS ARE BASED ON THE SOUTH LINE OF SECTION 30, TWP
 43S RGE 24E AS MONUMENTED IN THE FIELD, BEING N89°13'08"W.
 COORDINATES ARE STATE PLANE, FLORIDA EAST ZONE (3601)
 (NAD83 / 2007)

JOB # 12-0526 PREPARED FOR: City of Cape Coral SECTION 30, TOWNSHIP 43S, RANGE 24E

STOUTEN CRAMER PROFESSIONAL SURVEYORS

CERTIFICATE OF AUTHORIZATION: LB7922 324 Nicholas Parkway West, Suite F, Cape Coral, FL 33991 Phone: (239) 673-9541 Fax: (239) 424-8181 www.scisurvey.com

* THIS IS NOT A SURVEY * PAGE 2 of 2

I hereby certify that, to the best of my knowledge and belief, the sketch represented hereon, made under my direction on **August 17, 2012** is in accordance with Minimum Technical Standards as set forth by the Florida Board of Professional Surveyors & Mappers in Chapter 5,147, Florida Administrative Code, pursuant to Section 472.027 Florida Statutes.

JEFFREY D STOUTEN
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO.6584
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

EXHIBIT C

[MANAGEMENT PLAN OR "INTENTIONALLY LEFT BLANK"]

Item

B.(6)

Number: Meeting

Date:

5/13/2019

Item

ORDINANCES/RESOLUTIONS -

Type:

Introductions

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Ordinance 27-19 Set Public Hearing Date for June 3, 2019

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:

An ordinance authorizing the City Manager to exchange municipal surplus property described as Lots 27 and 28, Block 5162, Unit 83, Cape Coral Subdivision, for real property described as Lot 25, Block 5162, Unit 83, Cape Coral Subdivision; authorizing the conveyance of surplus real property described herein pursuant to Section 2-155 of the City of Cape Coral Code of ordinances; authorizing and directing the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property.

LEGAL REVIEW:

John E. Naclerio III, Assistant City Attorney

EXHIBITS:

Ordinance 27-19

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Dawn Andrews, Property Broker

ATTACHMENTS:

Description

Ordinance 27-19

Туре

Ordinance

ORDINANCE 27 - 19

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXCHANGE MUNICIPAL SURPLUS PROPERTY DESCRIBED AS LOTS 27 AND 28, BLOCK 5162, UNIT 83, CAPE CORAL SUBDIVISION, FOR REAL PROPERTY DESCRIBED AS LOT 25, BLOCK 5162, UNIT 83, CAPE CORAL SUBDIVISION; AUTHORIZING THE CONVEYANCE OF SURPLUS REAL PROPERTY DESCRIBED HEREIN PURSUANT TO SECTION 2-155 OF THE CITY OF CAPE CORAL CODE OF ORDINANCES; AUTHORIZING AND DIRECTING THE MAYOR AND CITY CLERK TO EXECUTE A DEED CONVEYING THE AFOREMENTIONED SURPLUS REAL PROPERTY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral acquired a certain parcel of real property described as Lots 27-28, Block 5162, Unit 83, Cape Coral Subdivision, located at 2732 NW 46th Avenue, which has been declared to be surplus real property; and

WHEREAS, pursuant to City Code of Ordinances Chapter 2, Article VII, Division 3, Section 2-155(c) indicates prior to the sale or other disposition of any city-owned real property, an appraisal shall be obtained; and

WHEREAS, pursuant to City Code of Ordinances Chapter 2, Article VII, Division 3, Section 2-155(e) provides for eight methods in which the City may divest itself of City properties. The Ordinance further states "The property may be traded or exchanged for another property, provided, however, that if the properties being traded are not equal or nearly equal in value, as determined by valid appraisals, additional consideration may be required"; and

WHEREAS, the City Council desires to convey the subject parcel as surplus real property pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances in exchange for real property described as Lot 25, Block 5162, Unit 83, Cape Coral Subdivision; and

WHEREAS, Section 4.17 of the City Charter provides that conveyance of any lands owned by the City shall be by ordinance.

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

SECTION 1. The City Manager is hereby authorized to exchange the surplus real property described as Lots 27-28, Block 5162, Unit 83, Cape Coral Subdivision, as recorded in Plat Book 23, Pages 41 to 54, inclusive, in the Public Records of Lee County, Florida.

SECTION 2. City Council hereby accepts the Real Estate Exchange Contract, attached hereto and made a part hereof as Exhibit A, from William Carl Murden and Judith Lynn Murden, as co-Trustees of The Murden Family Revocable Trust, agreeing to exchange real property described as Lot 25, Block 5162, Unit 83, Cape Coral Subdivision, for the City-owned property described as Lots 27-28, Block 5162, Unit 83, Cape Coral Subdivision, pursuant to the terms set forth in the Real Estate Exchange Contract, including payment by William Carl Murden and Judith Lynn Murden, as co-Trustees of The Murden Family Revocable Trust, to the City the sum of \$50,300 for the difference between the two parcel values.

SECTION 3. The Mayor and City Clerk are hereby authorized to convey, by executing a warranty deed, the property described in Section 1 to William Carl Murden and Judith Lynn Murden, as co-Trustees of The Murden Family Revocable Trust, u/a dated May 26, 2016.

SECTION 4. 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.

| by the Cape Coral City Council. | | , |
|--|--|-----------|
| ADOPTED BY THE CITY COUNCIL OF COUNCIL SESSION THIS DAY | | |
| | JOE COVIEI | LO, MAYOR |
| VOTE OF MAYOR AND COUNCILMEM | BERS: | |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN | |
| ATTESTED TO AND FILED IN MY OI 2019. | FFICE THIS | DAY OF, |
| | KIMBERLY I | |
| APPROVED AS TO FORM: JOHN E. NACLERIO III ASSISTANT CITY ATTORNEY | | |

ord\Exchange of Surplus Property-Murden

SECTION 5. Effective Date. This ordinance shall become effective immediately after its adoption

REAL ESTATE EXCHANGE CONTRACT

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

| THIS AGREEMENT made and entered into this | day of | , 2019, |
|---|-------------------------------------|---------|
| by and between CITY OF CAPE CORAL, a Florida Municipal Co | orporation, hereinafter refe | rred to |
| as "FIRST PARTY" and William Carl Murden and Judith Lynn | Murden, as co-Trustees | of The |
| Murden Family Revocable Trust, u/a dated May 26, 2016, here | einafter referred to as " SE | COND |
| PARTY." | | |

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

1. **DESCRIPTION OF FIRST PARCEL**: The **FIRST PARTY**, in consideration of the conveyance by the **SECOND PARTY** hereinafter agreed to be made, hereby agrees to sell and convey to the **SECOND PARTY** the following described real property, situate, lying and being in the City of Cape Coral, County of Lee, State of Florida, more particularly described as follows:

Lots 27 and 28, Block 5162, Unit 83, Cape Coral Subdivision, as recorded in Plat Book 23, Pages 41 to 54, inclusive, in the Public Records of Lee County, Florida.

The above-described property is hereinafter referred to as the **FIRST PARCEL**.

2. **DESCRIPTION OF SECOND PARCEL**: The **SECOND PARTY**, in consideration of the conveyance by the **FIRST PARTY** hereinbefore agreed to be made, hereby agrees to sell and convey to the **FIRST PARTY** the following described real property, situate, lying and being in the City of Cape Coral, County of Lee, State of Florida, more particularly described as follows:

Lot 25, Block 5162, Unit 83, Cape Coral Subdivision, as recorded in Plat Book 23, Pages 41 to 54, inclusive, in the Public Records of Lee County, Florida.

The above-described property is hereinafter referred to as the **SECOND PARCEL**.

3. MATTERS RELATING TO FIRST PARCEL: The following provisions contained in this paragraph shall apply solely to the transfer by the FIRST PARTY to the SECOND PARTY of the FIRST PARCEL:

- (a) **FIRST PARTY** shall pay any and all outstanding lot mowing, stormwater and fire service assessment charges that have been levied against the **FIRST PARCEL** prior to or at closing.
- 4. MATTERS RELATING TO SECOND PARCEL. The following provisions contained in this paragraph shall apply solely to the transfer by the SECOND PARTY to the FIRST PARTY of the SECOND PARCEL:
 - (a) **SECOND PARTY** shall payoff any and all outstanding lot mowing, stormwater and fire service assessment balance(s) for the **SECOND PARCEL** prior to or at closing.
 - (b) **SECOND PARTY** shall pay their prorated share of the current year's taxes without regard to discount at closing.
 - (c) **SECOND PARTY** understands and agrees that in the event probate proceedings are necessary with respect to the **SECOND PARCEL**, **SECOND PARTY** shall be solely responsible for any and all expenses needed to complete said probate proceedings.
 - 5. MATTERS APPLICABLE TO BOTH PARCELS.
 - (a) **CONVEYANCE**. The respective Grantor(s) shall convey title to the property to the respective Grantee(s) by Warranty Deed, subject to matters contained in this contract and taxes for the year of closing.
 - (b) **RESTRICTIONS AND EASEMENTS**. Grantee(s) shall take title to the property conveyed to them subject to:
 - (i) Zoning, restrictions and prohibitions imposed by governmental authority;
 - (ii) Restrictive covenants of record;
 - (iii) 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:
 - (iv) Taxes for the year of closing and subsequent years;
 - (c) **EVIDENCE OF TITLE**. Within fifteen (15) days from the date of this contract, the **FIRST PARTY** shall, obtain title insurance binders issued by a qualified title insurer, agreeing to issue to the Grantees title insurance policies for the **FIRST** and **SECOND PARCELS** as provided for and in the amount of the value of the property indicated in

Provision 10 insuring the title to that real property, subject only to liens, encumbrances, exceptions or qualifications set forth in this contract and those which shall be discharged by the respective Grantors at or before closing.

- (d) Each respective Grantee shall have fifteen (15) days from the date of receiving the evidence of title to examine same. If title is found to be defective, the Grantee shall, within said period of time, notify the Grantor of that parcel in writing specifying the defects. If said defects render the title unmarketable or uninsurable, Grantor shall have ninety (90) days from the receipt of such notice to cure the defects, and, if after said period Grantor shall not have cured the defects, Grantee shall have the option of (1) accepting the title as it then is, or (2) affording Grantor additional time to cure the defect(s); or (3) terminating this contract, by providing written notice, thereby releasing the parties of all further obligations under this contract.
- (e) **EXISTING MORTGAGES**. The respective Grantor(s) shall furnish estoppel letters from mortgagee(s) setting forth the principal balance, escrow balance, method of payment, whether the mortgage is in good standing. It shall be Grantor's obligation to obtain any satisfactions of mortgage required for closing.
- (f) **SURVEY**. If a Grantee desires a survey, Grantee shall have the property being conveyed to that Grantee surveyed at Grantee's expense prior to closing. If the survey shows an encroachment, the same shall be treated as a title defect.
- (g) **DOCUMENTS FOR CLOSING**. Each Grantor shall execute a Warranty Deed, Seller's Affidavit and other necessary closing documents provided by closing agent.
- 6. **CONDITIONAL CONTRACT**. This contract is expressly subject to approval by the Cape Coral City Council. If the Cape Coral City Council fails or refuses to authorize the purchase within forty-five (45) business days, unless extended by mutual agreement, of the date when the executed contract by the **SECOND PARTY** is received by the **FIRST PARTY**, then this contract shall be null and void.

This contract is expressly subject to the adoption, by the City of Cape Coral Council, of an ordinance authorizing the exchange and the conveyance of the FIRST PARCEL to SECOND PARTY.

- 7. **CLOSING DATE**. This contract shall be closed and the deeds shall be delivered within thirty (30) business days after Council authorization unless extended by other provisions of this contract. Possession shall be granted on the same date unless otherwise agreed in writing.
- 8. **OTHER AGREEMENTS**. No agreements or representations, unless incorporated in this contract, shall be binding upon any of the parties, unless they are in writing and agreed to by all parties.
 - 9. **TIME IS OF THE ESSENCE** in the performance of this contract.
- 10. **EXPENSES**. Closing fee, title search and examine, title insurance and documentary stamps, which are required to be affixed to the instruments of conveyance, plus any other costs associated with the closing, shall be based on the appraised value of \$120,000 for the **FIRST PARCEL** and an applied value of \$69,700 for the **SECOND PARCEL**. **FIRST PARTY** is responsible for all said closing expenses, including documentary stamps, on the **SECOND PARCEL** and the **SECOND PARTY** is responsible for all said closing expenses, including documentary stamps, on the **FIRST PARCEL**.

At closing, the **SECOND PARTY** shall pay to the **FIRST PARTY** the sum of \$50,300, for the difference between the two parcel values.

11. **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.

- 12. **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.
- 13. This agreement may only be assigned or transferred by the **SECOND PARTY** with the written consent of the **FIRST PARTY**. All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors and assigns of the respective parties.
- 14. This agreement shall be interpreted, construed, and governed according to the laws of the State of Florida.
- 15. 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.
- 16. **FIRST PARTY** shall have the right to enter the **SECOND PARCEL** for the purpose of surveying, soil borings, or any other work as deemed necessary by the **FIRST PARTY**.
- 17. The place of closing and delivery of the deeds shall be at any local office located within the City of Cape Coral designated by **FIRST PARTY**.
- 18. **ENVIRONMENTAL AUDIT**: Either party may perform or have performed, at that party's expense, an environmental audit of the parcel they are purchasing. If such audit identifies environmental problems unacceptable to either party, then that party may elect to accept the property in its existing condition or that party may terminate this Agreement without obligation.
- 19. **REAL ESTATE COMMISSIONS**: The parties understand and agree that in the event the **FIRST PARTY** has knowledge of any existing or separate listing agreement for the **SECOND PARCEL**, then **FIRST PARTY**, at its option, may elect to notify and provide a copy of said contract to the Listing Broker. **SECOND PARTY** shall be solely responsible for any Broker's compensation,

Realtor notification, or any other terms and conditions to any existing or separate listing agreement.

- 20. DISCLOSURE OF BENEFICIAL INTERESTS: SECOND PARTY agrees to comply with the provisions of Section 286.23(1), Florida Statutes, if applicable. Said section requires that, prior to conveying property owned by a trust, partnership, or other legal entity to a governmental unit, the representative of the entity shall make 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.
- 21. DEFAULT BY SECOND PARTY. In the event SECOND PARTY defaults in the performance of this agreement, the FIRST PARTY shall be entitled to specific performance in addition to any other remedies available to FIRST PARTY.

IN WITNESS WHEREOF, the parties have signed this contract on the date set forth below.

CITY OF CAPE CORAL, FLORIDA

| A black | BY: | A 1-1-2-1- | 2.4 |
|--|----------|--|------------|
| Witness to A. John Szerleg | | A. John Szerlag City Manager | Date |
| 42 | BY: | | |
| Witness to Kimberly Bruns | | Kimberly Bruns City Clerk | Date |
| Barbonio H. Wood | BY: | 2h al shil | 5/5/19 |
| Witness Print Name: Toujam in H. Wood | | William Carl Murden Individually and as Trustee | Date |
| Eurice & Roloky | BY: | Shake Line Min. | ded 5/5/10 |
| Witness Eunice & Rofsk | × - | Judith Lynn Murden Individually and as Trustee | Date |
| | | | |
| APPROVED AS TO FORM: | | | |
| Dolores D. Menendez, City Attorney | Marijah. | | |

Item

B.(7)

Number: Meeting

E 14 0 10 0 4 0

Date:

5/13/2019

Item

ORDINANCES/RESOLUTIONS -

Type:

Introductions

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Ordinance 28-19 (VP 18-0007*) Set Public Hearing Date for June 10, 2019

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?

No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

<u>Hearing Examiner Recommendation:</u> The Hearing Examiner recommends that City Council approve the application for the requested vacations and release, subject to the conditions set forth in VP HEX Recommendation 3-2019.

Staff Recommendation: Staff recommends approval.

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance providing for the release of the right-of-way easement reserved by the City within Ordinance 56-02; authorizing the Mayor to execute a Release of said easement; providing for the vacation of plat for a portion of Rose Canal right-of-way and the underlying public utility and drainage easements located adjacent to Lot 23, Block 4944, Unit 74, Cape Coral Subdivision, as more particularly described herein; providing for the vacation of plat for public utility and drainage easements associated with Lot 23, Block 4944, Unit 74, Cape Coral Subdivision, as more particularly described herein; property located at 4033 Oasis Boulevard.

LEGAL REVIEW:

John E. Naclerio III, Assistant City Attorney

EXHIBITS:

Ordinance 28-19

Back up materials from the Hearing Examiner Hearing

Hearing Examiner Recommendation Order

Staff Presentation

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Mike Struve, Planning Team Coordinator

ATTACHMENTS:

| | Description | Туре |
|---|---------------------------------------|-----------------|
| ם | Ordinance 28-19 (VP 18-0007) | Ordinance |
| D | Back up material from HEX Hearing | Backup Material |
| D | Hearing Examiner Recommendation Order | Backup Material |
| D | Staff Presentation | Backup Material |

AN ORDINANCE PROVIDING FOR THE RELEASE OF THE RIGHT-OF-WAY EASEMENT RESERVED BY THE CITY WITHIN ORDINANCE 56-02; AUTHORIZING THE MAYOR TO EXECUTE A RELEASE OF SAID EASEMENT; PROVIDING FOR THE VACATION OF PLAT FOR A PORTION OF ROSE CANAL RIGHT-OF-WAY AND THE UNDERLYING PUBLIC UTILITY AND DRAINAGE EASEMENTS LOCATED ADJACENT TO LOT 23, BLOCK 4944, UNIT 74, CAPE CORAL SUBDIVISION, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR THE VACATION OF PLAT FOR PUBLIC UTILITY AND DRAINAGE EASEMENTS ASSOCIATED WITH LOT 23, BLOCK 4944, UNIT 74, CAPE CORAL SUBDIVISION, AS MORE PARTICULARLY DESCRIBED HEREIN PROPERTY LOCATED AT 4033 OASIS BOULEVARD; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on June 3, 2002, City Council adopted Ordinance 56-02, declaring a triangular-shaped parcel being a portion of Rose Canal, adjoining Lot 23, Block 4944, Unit 74, Cape Coral Subdivision, as unusable municipal surplus real property no longer needed by the City, and reserving a right-of-way easement for maintenance, construction, and renovation of the canal or bridge system, and for any utility lines including water, sewer, electrical, and a drainage easement to enlarge the existing channel in the future, across the entire surplus area; and

WHEREAS, a Petition was filed by KEITH D. FINKELSTEIN AND ELIZABETH A. MACGUIDWIN for the vacation of plat on property described herein; and

WHEREAS, the applicant for the vacation of plat has requested that the City release the right-of-way easement across the subject triangular-shaped surplus parcel; and

WHEREAS, the City Council desires to release said right-of-way easement because adequate easements within the vacated Right-of-Way will exist for public utility, drainage, and bridge and canal maintenance purposes; and

WHEREAS, the Petition for the vacation of plat meets the requirements of Land Use Development Regulations, Article VIII, Section 8.11, Vacation of Plats, Streets and Other Property of the Code of Ordinances of the City of Cape Coral and the City Council finds it is in the best interest of the public that such Petition be granted.

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

SECTION 1. The following-described right-of-way easement is hereby released by the City of Cape Coral, to wit:

A parcel of land being a portion of Rose Canal right of way adjacent to Lot 23, Block 4944, Cape Coral Subdivision, Unit 74, according to Plat Book 22, Pages 111 through 131, of the Public Records of Lee County, Florida, being more particularly described as follows:

Commencing at the northwest corner of said Lot 23, being a point on the easterly right of way line of Oasis Boulevard and the Point of Beginning; Thence N20°04'32"E a distance of 53.68 feet; Thence S64°27'19"E a distance of 118.13 feet; Thence N89°45'33"W a distance of 125.01 feet along the northerly line of said Lot 23 to the Point of Beginning, said parcel containing 3,156 square feet or 0.0725 acres, more or less.

SECTION 2. The Mayor is hereby authorized to execute a Release of Easement for the release of a right-of-way easement for maintenance, construction, and renovation of the canal or bridge system, and for any utility lines including water, sewer, electrical, and a drainage easement to enlarge the existing channel in the future reserved within Ordinance 56-02.

A copy of the Release of Easement is attached hereto and incorporated herein by reference as Exhibit

SECTION 3. The Petition for vacation of plat meets the requirements of Article VIII, Section 8.11, of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that

such Petition be granted. The following-described canal right-of-way and the underlying public utility and drainage easements, as shown in Exhibit A, are hereby vacated by the City of Cape Coral, to wit:

A PORTION OF ROSE CANAL RIGHT-OF-WAY, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

DESCRIPTION:

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF OASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN N.20°04'32"E. TO A POINT ALONG WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 52.57 FEET; THENCE RUN S.61°03'41"E. ALONG SAID FACE OF SEAWALL TO A POINT ALONG THE NORTH LINE SAID LOT 23, BLOCK 4944 FOR 102.98 FEET; THENCE RUN N.89°45'33"W. TO THE NORTHWEST CORNER OF SAID LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF THE AFORESAID OASIS BOULEVARD (100 FEET WIDE FOR 108.18 FEET TO THE POINT OF BEGINNING. CONTAINING: 2,674.8 SQ. FT, MORE OR LESS.

SECTION 4. The Petition for vacation of plat meets the requirements of Article VIII, Section 8.11, of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that such Petition be granted. The following-described public utility and drainage easements, as shown in Exhibit B, are hereby vacated by the City of Cape Coral, to wit:

LYING IN LOT 23, BLOCK 4944, CAPE CORAL UNIT 74, SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, (PLAT BOOK 22, PAGES 111-131) LEE COUNTY, FLORIDA

DESCRIPTION:

(PROPOSED) VACATION OF A PORTION OF PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN LOT 23, BLOCK 4944, CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF OASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA THENCE RUN S.89°45'33"E. ALONG THE NORTH LINE OF SAID LOT 23, BLOCK 4944 FOR 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN S.89°45'33"E. ALONG THE NORTH LINE SAID LOT 23 FOR 89.68 FEET; THENCE RUN S.61°03'41"E. FOR 12.50 FEET; THENCE RUN N.89°45'33"W. PARALLEL WITH AND 6 FEET SOUTH OF AS MEASURED ON A PERPENDICULAR FOR 100.72 FEET; THENCE RUN N.00°57'27"E. FOR 6.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 571.18 SQ. FT, MORE OR LESS.

SECTION 5. Applicant shall provide to the City an easement deed for public utility, drainage, and bridge and canal maintenance purposes, as shown in Exhibit C. The property to be deeded to the City is as follows:

LYING IN A PORTION OF ROSE CANAL RIGHT-OF-WAY, LYING IN CAPE CORAL, UNIT 74, SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-131), LEE COUNTY, FLORIDA.

DESCRIPTION:

A PORTION OF ROSE CANAL RIGHT-OF-WAY, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF OASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN N.20°04'32"E. TO A POINT ALONG WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 52.57 FEET; THENCE RUN S.61°03'41"E. ALONG SAID FACE OF SEAWALL FOR 87.37 FEET; THENCE RUN N.89°45'33"W. FOR 69.38 FEET; THENCE RUN S.00°57'27"W. TO A POINT ALONG THE NORTH LINE OF SAID LOT 23, BLOCK 4944 FOR 7.50 FEET; THENCE RUN N.89°45'33"W. TO A POINT ALONG THE AFORESAID EAST RIGHT-OF-WAY LINE OF OASIS BOULEVARD (100 FEET WIDE) AND THE SAID NORTHWEST CORNER OF LOT 23, BLOCK 4944 FOR 25.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 2,102.76 SQ. FT, MORE OR LESS.

SECTION 6. Applicant shall provide to the City an easement deed for public utility and drainage purposes, as shown in Exhibit D. The property to be deeded to the City is as follows:

LYING IN A PORTION OF ROSE CANAL RIGHT-OF-WAY AND LOT 23, BLOCK 4944; LYING IN CAPE CORAL, UNIT 74, SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-131), LEE COUNTY, FLORIDA.

DESCRIPTION: A PORTION OF ROSE CANAL RIGHT-OF-WAY AND A PORTION OF LOT 23, BLOCK 4944, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF OASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN S.89°45'33"E. ALONG THE NORTH LINE SAID LOT 23, BLOCK 4944 FOR 95.68 FEET TO THE POINT OF BEGINNING; THENCE RUN N.61°03'41"W. FOR 15.62 FEET; THENCE RUN S.89°45'33"E. TO A POINT ALONG THE WATERS EDGE OF FACE OF A CONCRETE SEAWALL FOR 12.50 FEET; THENCE RUN S.61°03'41"E. ALONG SAID WATERS EDGE FACE TO A POINT OF CURVATURE FOR 20.25 FEET; THENCE RUN ALONG THE ARC OF A CURVE TO THE RIGHT AND THE SAID WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 8.63 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 24.00 FEET, A CENTRAL DELTA ANGLE OF 20°36'34, A CHORD THAT BEARS S.50°45'24" AND A CHORD DISTANCE OF 8.59 FEET; THENCE RUN S.00°5727"W. TO A POINT OF CUSP OF A CURVE FOR 15.87 FEET; THENCE RUN ALONG THE ARC OF A CURE CONCAVE TO THE SOUTHWEST FOR 19.48 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 18.00 FEET, A CENTRAL DELTA ANGLE OF 62°01'08", A CHORD THAT BEARS N.30°03'07"W AND A CHORD DISTANCE OF 18.55 FEET; THENCE RUN N.61°03'41"W. TO A POINT ALONG THE NORTH LINE OF SAID LOT 23, BLOCK 4944 FOR 15.60 FEET TO THE POINT OF BEGINNING.

CONTAINING: 225.5 SQ. FT, MORE OR LESS.

SECTION 7. The applicant shall meet the following terms and conditions:

- 1. The vacation of the 2,674.8 square feet of right-of-way and underlying easements shall be consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Proposed Vacation of Any and all Underlying Easements a Portion of Rose Canal Right-of-Way," dated January 23, 2019.
- 2. The vacation of the 571.18 square feet of easements lying in Lot 23, Block 4944, shall be consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Vacation of a Portion of Public Utility and Drainage Easement Lying in Lot 23, Block 4944, Cape Coral Unit 74," dated August 13, 2018.
- 3. All right-of-way, public utility, drainage, and canal and bridge maintenance easements shall be released by the City for the quit claim area described in Ordinance 56-02.

- 4. Within 60 days from the date of adoption of this vacation, the owner shall provide to the City an easement deed for bridge maintenance, public utility, and drainage purposes consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Public Utility, Drainage and Bridge and Canal Maintenance Easement Lying in a Portion of Rose Canal Right-of-Way," dated January 23, 2019. This deed shall be approved by the City Property Broker prior to execution.
- 5. Within 60 days from the date of adoption of this vacation, the owner shall provide to the City an easement deed for public utility and drainage purposes consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Proposed Public Utility and Drainage Easement Lying in a Portion of Rose Canal Right-of-Way and Lot 23, Block 4944," dated January 23, 2019. This deed shall be approved by the City Property Broker prior to execution.
- 6. This ordinance shall be recorded with the Office of the Lee County Clerk of Court by the City of Cape Coral. This ordinance shall not be effectuated until the applicant provides the City with easement deeds as described in Conditions 4 and 5 above and reimburses the Department of Community Development for all fees for recording the resolution and easement deeds.

SECTION 8. 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 9. Effective Date. This ordinance shall take effect upon its recording within the Office of the Lee County Clerk of Court by the City of Cape Coral.

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|---|---------------------------------------|-----------|
| ADOPTED BY THE CITY COUNCIL OF T COUNCIL SESSION THIS DAY OF | | |
| | JOE COVIEL | LO, MAYOR |
| | | |
| VOTE OF MAYOR AND COUNCILMEMBI | ERS: | |
| GUNTER S CARIOSCIA V | NELSON TOKES WILLIAMS COSDEN | |
| ATTESTED TO AND FILED IN MY OFF 2019. | TICE THIS | DAY OF |
| ADDROVED AS TO FORM: | KIMBERLY E INTERIM CIT | |

JOHN E. NACLERIO III
ASSISTANT CITY ATTORNEY
Ord\VP 18-0007 & Release of Easement

Prepared by: City of Cape Coral C/o Real Estate Division P.O. Box 150027 Cape Coral, FL 33915-0027 Strap # 08-45-23-C2-04944.0210

RELEASE OF EASEMENT

THIS RELEASE OF EASEMENT executed this _____ day of ______, 2019, (this "Agreement") by THE CITY OF CAPE CORAL, a Florida municipal corporation, whose mailing address is c/o Real Estate Division, P.O. Box 150027, Cape Coral, Florida 33915-0027 (hereinafter referred to as "City") to Keith D. Finkelstein and Elizabeth A. MacGuidwin whose mailing address is 5131 SW 18th Avenue, Cape Coral, Florida 33991(hereinafter referred to as "Finkelstein").

RECITALS:

WHEREAS, on June 3, 2002, Cape Coral City Council adopted Ordinance 56-02, an ordinance declaring a triangular-shaped parcel being a portion of Rose Canal, adjoining Lot 23, Block 4944, Unit 74, Cape Coral Subdivision, as unusable municipal surplus real property no longer needed by the City; and

WHEREAS, said ordinance authorized the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property, as described in Exhibit "A", attached hereto and incorporated herein by reference, to Joan Falcetta, a previous owner of the property; and

WHEREAS, said ordinance retained the entire triangular-shaped surplus area as a right-of-way easement across the entire area for the maintenance, construction, and renovation of the canal or bridge system, and for any utility lines including water, sewer, electrical and a drainage easement to enlarge the existing channel in the future; and

WHEREAS, said Quit Claim Deed is recorded at Official Record Book 3661, Pages 4773 in the Public Records of Lee County, Florida; and

WHEREAS, Finkelstein, is the current owner of Lots 21, 22 and 23, Block 4944, Unit 74 and has applied for the vacation of said surplus real property and underlying easements (VP18-0007) and has requested the City release and terminate said retained easement area within Ordinance 56-02; and

WHEREAS, the City has declared said surplus real property and underlying easements to be unusable municipal surplus real property no longer needed by the City; and

WHEREAS, in return of the City releasing said underlying easements, Finkelstein has agreed to grant a six-foot wide public utility and drainage easement to the City to provide a continuous perimeter easement, as required in Ordinance 28-19; and

WHEREAS, Finkelstein shall also grant an easement over a portion of the quit claimed area for public utility, drainage, and bridge and canal maintenance purposes, as required in Ordinance 28-19; and

WHEREAS, the City agrees to said release of underlying easements in accordance with this Agreement.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the adequacy and sufficiency of said consideration is hereby acknowledged, City does hereby covenant and agree as follows:

- 1) The above referenced recitals are true and correct and are incorporated herein by reference.
- 2) The City by these present does remise, release and terminate said underlying easements retained in Ordinance 56-02 as further described in Exhibit "A", attached hereto and incorporated herein by reference.
- 3) This Release of Easement is being executed in accordance with Ordinance 28-19 adopted by the Cape Coral City Council on June 10, 2019.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal on the day and year first above written.

| Signed, Sealed and Delivered in the Presence of: | CITY OF CAPE CORAL, a Florida municipal corporation |
|--|---|
| Witness | By: Joe Coviello, Mayor |
| Print/Type Name of Witness | Joe Coviello, Mayor |
| Witness | |
| Print/Type Name of Witness | |
| State of Florida County of Lee | |
| | wledged before me this day of 2019 by Coral, a Florida municipal corporation, on behalf of said |
| My Commission Expires: | Notary Public Signature |
| Approved "As to Form" | Print/Type Name of Notary (seal) |
| Dolores D. Menendez, City Attorney | |

EXHIBIT "A"

A parcel of land being a portion of Rose Canal right of way adjacent to Lot 23, Block 4944, Cape Coral Subdivision, Unit 74, according to Plat Book 22, Pages 111 through 131, of the Public Records of Lee County, Florida, being more particularly described as follows:

Commencing at the northwest corner of said Lot 23, being a point on the easterly right of way line of Oasis Boulevard and the Point of Beginning; Thence N20°04'32"E a distance of 53.68 feet; Thence S64°27'19"E a distance of 118.13 feet; Thence N89°45'33"W a distance of 125.01 feet along the northerly line of said Lot 23 to the Point of Beginning, said parcel containing 3,156 square feet or 0.0725 acres, more or less.

Reserving therefrom, the westerly 25 feet as a Public Utilities, Drainage, Roadway and Bridge Maintenance Easement; the northeasterly 6 feet is reserved as a Public Utilities and Drainage Easement.

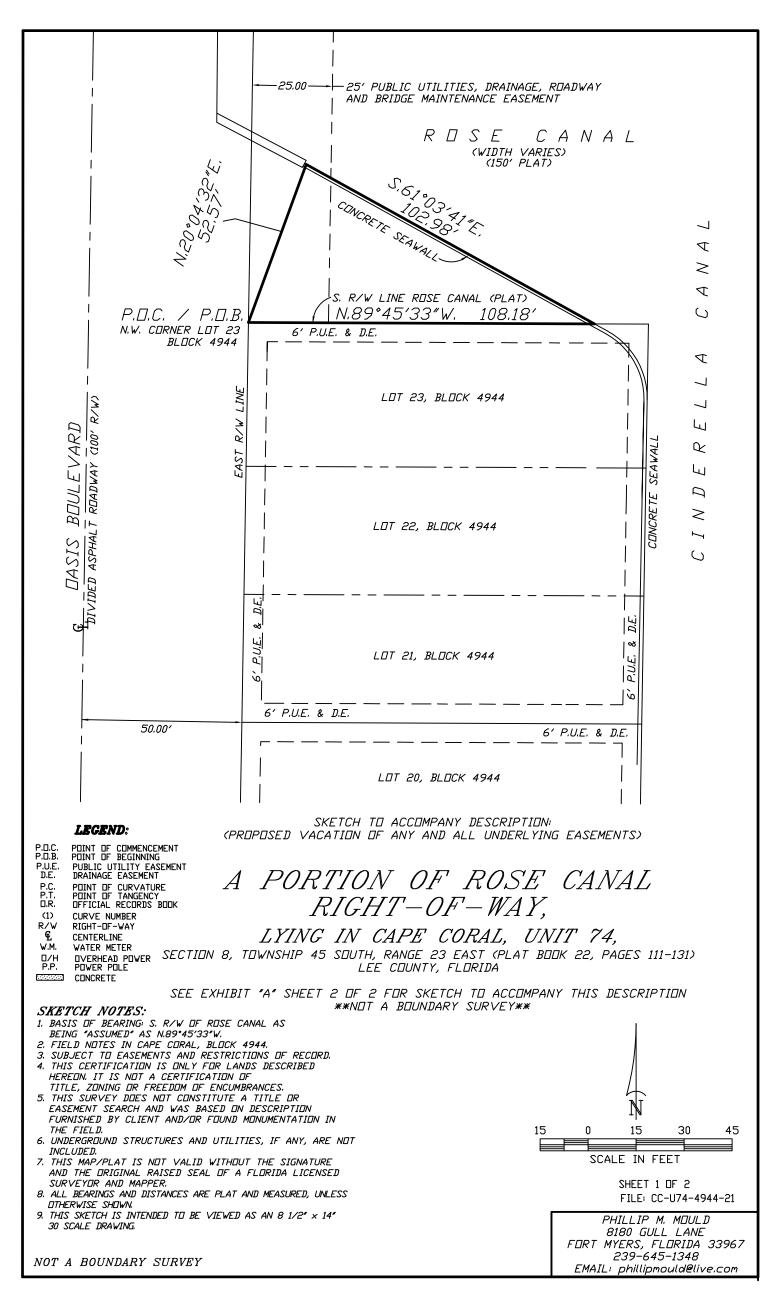


EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH (PROPOSED VACATION OF ANY AND ALL UNDERLYING EASEMENTS)

A PORTION OF ROSE CANAL RIGHT-OF-WAY,

LYING IN CAPE CORAL, UNIT 74,

SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-131)
LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

NOT A BOUNDARY SURVEY

DESCRIPTION:

A PORTION OF ROSE CANAL RIGHT-OF-WAY, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF DASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN N.20°04'32"E. TO A POINT ALONG WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 52.57 FEET; THENCE RUN S.61°03'41"E. ALONG SAID FACE OF SEAWALL TO A POINT ALONG THE NORTH LINE SAID LOT 23, BLOCK 4944 FOR 102.98 FEET; THENCE RUN N.89°45'33"W. TO THE NORTHWEST CORNER OF SAID LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF THE AFORESAID DASIS BOULEVARD (100 FEET WIDE FOR 108.18 FEET TO THE POINT OF BEGINNING.

CONTAINING: 2,674.8 SQ. FT, MORE OR LESS.

PHILLIP M. MOULD

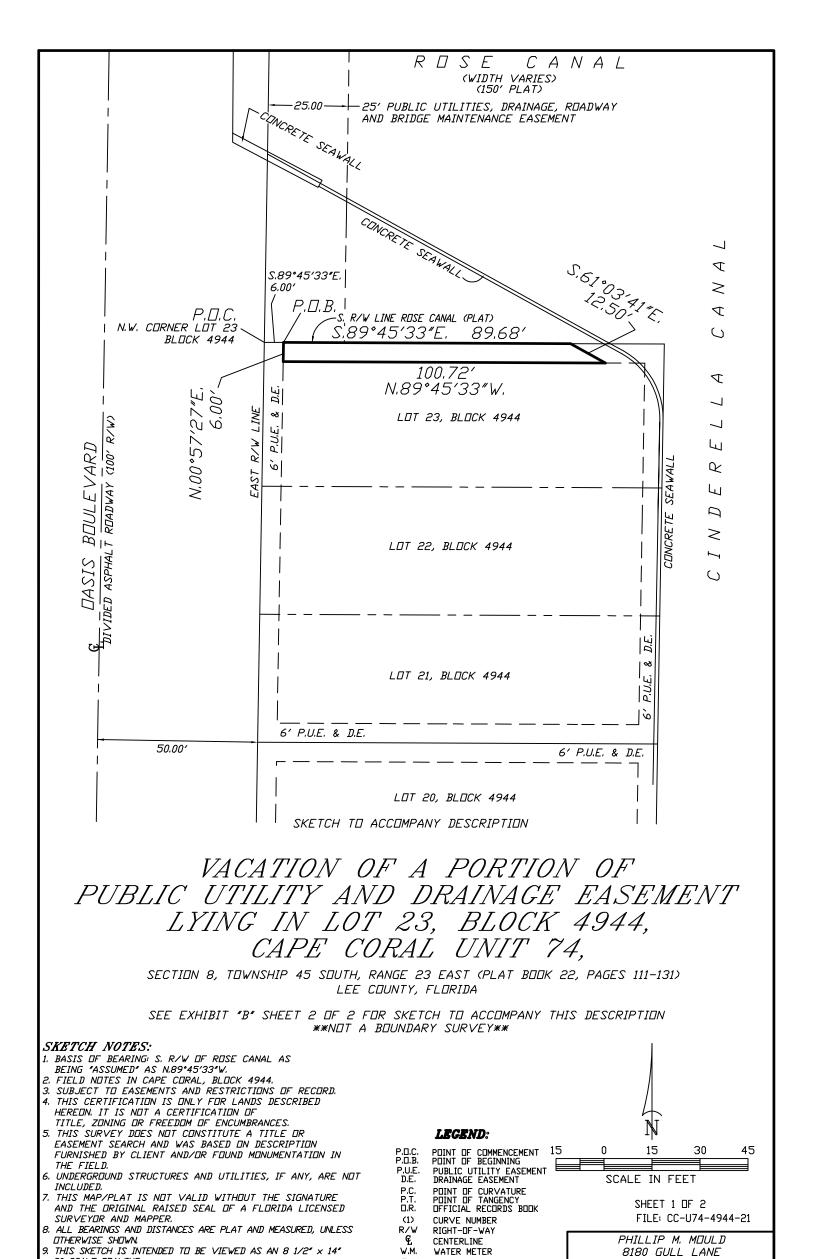
PROFESSIONAL SURVEYOR AND MAPPER

mond

#6515 - STATE OF FLORIDA

1/23/2019

SHEET 2 DF 2 FILE: CC-U74-4944-21



□/H P.P.

OVERHEAD POWER POWER POLE CONCRETE

PHILLIP M. MOULD 8180 GULL LANE

FORT MYERS, FLORIDA 33967 239-645-1348

EMAIL: phillipmould@live.com

OTHERWISE SHOWN.
THIS SKETCH IS INTENDED TO BE VIEWED AS AN 8 1/2" × 14"

30 SCALE DRAWING.

NOT A BOUNDARY SURVEY

EXHIBIT "B"

DESCRIPTION TO ACCOMPANY SKETCH

VACATION OF A PORTION OF PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN LOT 23, BLOCK 4944, CAPE CORAL UNIT 74,

SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-131) LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

NOT A BOUNDARY SURVEY

DESCRIPTION:

DESCRIPTION:
(PROPOSED) VACATION OF A PORTION OF PUBLIC UTILITY AND
DRAINAGE EASEMENT LYING IN LOT 23, BLOCK 4944, CAPE
CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES
111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45
SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF OASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA THENCE RUN S.89°45′33″E. ALONG THE NORTH LINE OF SAID LOT 23, BLOCK 4944 FOR 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN S.89°45′33″E. ALONG THE NORTH LINE SAID LOT 23 FOR 89.68 FEET; THENCE RUN S.61°03′41″E. FOR 12.50 FEET; THENCE RUN N.89°45′33″W. PARALLEL WITH AND 6 FEET SOUTH OF AS MEASURED ON A PERPENDICULAR FOR 100.72 FEET; THENCE RUN N.00°57′27″E. FOR 6.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 571.18 SQ. FT, MORE OR LESS.

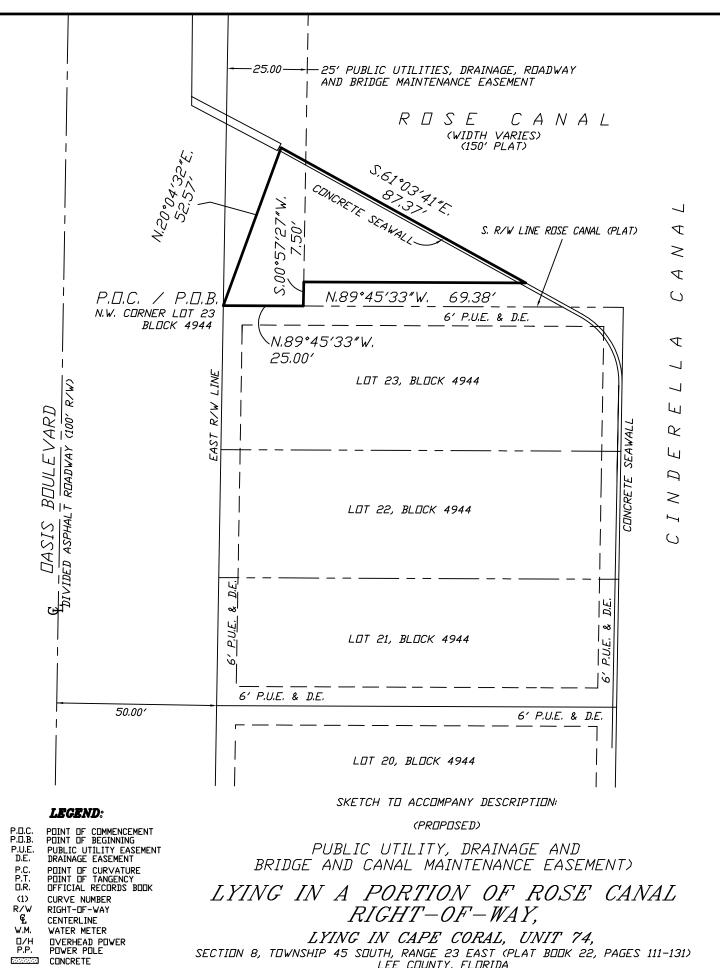
PHILLIP M. MOULD

PROFESSIONAL SURVEYOR AND MAPPER

#6515 - STATE OF FLORIDA

8/13/18

SHEET 2 DF 2 FILE: CC-U72-5008-1



LYING IN CAPE CORAL, UNIT 74, SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111–131) LEE COUNTY, FLORIDA

SEE EXHIBIT "A" SHEET 2 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION
NOT A BOUNDARY SURVEY

SEE EXHIBIT "A" S

1. BASIS OF BEARING S. R/W OF ROSE CANAL AS
BEING "ASSUMED" AS N.89*45'33"W.

2. FIELD NOTES IN CAPE CORAL, BLOCK 4944.

3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED
HEREON. IT IS NOT A CERTIFICATION OF
TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.

5. THIS SURVEY DOES NOT CONSTITUTE A TITLE OR
EASEMENT SEARCH AND WAS BASED ON DESCRIPTION
FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN
THE FIELD.

6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT

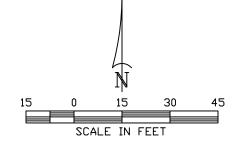
INCLUDED.
7. THIS MAP/PLAT IS NOT VALID WITHOUT THE SIGNATURE
AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED
SURVEYOR AND MAPPER.
8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS

OTHERWISE SHOWN.

9. THIS SKETCH IS INTENDED TO BE VIEWED AS AN 8 1/2" × 14"

30 SCALE DRAWING

NOT A BOUNDARY SURVEY



SHEET 1 DF 2 FILE: CC-U74-4944-21

EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH (PROPOSED)

PUBLIC UTILITY, DRAINAGE AND BRIDGE AND CANAL MAINTENANCE EASEMENT)

LYING IN A PORTION OF ROSE CANAL RIGHT-OF-WAY,

LYING IN CAPE CORAL, UNIT 74, SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111–131) LEE COUNTY, FLORIDA

NOT A BOUNDARY SURVEY
SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

DESCRIPTION:

A PORTION OF ROSE CANAL RIGHT-OF-WAY, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF DASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN N.20°04'32"E. TO A POINT ALONG WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 52.57 FEET; THENCE RUN S.61°03'41"E. ALONG SAID FACE OF SEAWALL FOR 87.37 FEET; THENCE RUN N.89°45'33"W. FOR 69.38 FEET; THENCE RUN S.00°57'27"W. TO A POINT ALONG THE NORTH LINE OF SAID LOT 23, BLOCK 4944 FOR 7.50 FEET; THENCE RUN N.89°45'33"W. TO A POINT ALONG THE AFORESAID EAST RIGHT-OF-WAY LINE OF DASIS BOULEVARD (100 FEET WIDE) AND THE SAID NORTHWEST CORNER OF LOT 23, BLOCK 4944 FOR 25.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 2.102.76 SQ. FT. MORE OR LESS.

PHILLIP M. MOULD

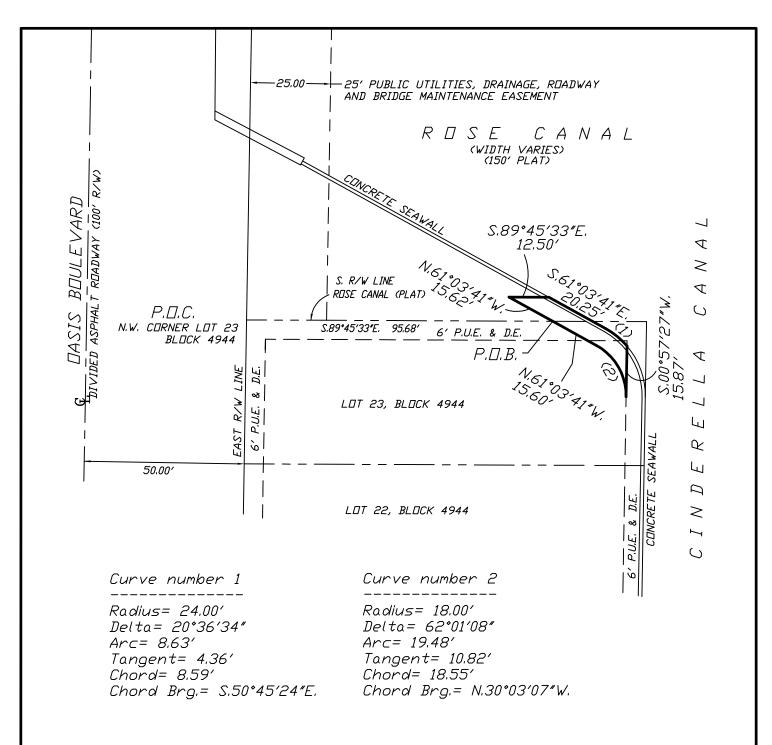
PROFESSIONAL SURVEYOR AND MAPPER

n Moule

#6515 - STATE OF FLORIDA

1/23/2019

SHEET 2 DF 2 FILE: CC-U74-4944-21



SKETCH TO ACCOMPANY DESCRIPTION: (PROPOSED PUBLIC UTILITY AND DRAINAGE EASEMENT)

LYING IN A PORTION OF ROSE CANAL RIGHT-OF-WAY AND LOT 23. BLOCK 4944:

LEGEND:

POINT OF COMMENCEMENT POINT OF BEGINNING PUBLIC UTILITY EASEMENT DRAINAGE EASEMENT P.C. P.T. D.R.

POINT OF CURVATURE
POINT OF TANGENCY
OFFICIAL RECORDS BOOK CURVE NUMBER RIGHT-OF-WAY

CENTERLINE WATER METER OVERHEAD POWER POWER POLE CONCRETE □/H P.P.

(1)

LYING IN CAPE CORAL, UNIT 74,

SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-131) LEE COUNTY, FLORIDA

SEE EXHIBIT "B" SHEET 2 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

NOT A BOUNDARY SURVEY

SKETCH NOTES:

1. BASIS OF BEARING, S. R/W OF ROSE CANAL AS BEING "ASSUMED" AS N.89*45'33"W.

2. FIELD NOTES IN CAPE CORAL, BLOCK 4944.

3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

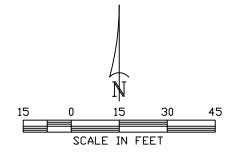
4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.

5. THIS SURVEY DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD. THE FIELD.

6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT

INCLUDED.
7. THIS MAP/PLAT IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
9. THIS SKETCH IS INTENDED TO BE VIEWED AS AN 8 1/2" x 14" 30 SCALE DRAWING.

NOT A BOUNDARY SURVEY



SHEET 1 DF 2 FILE: CC-U74-4944-21

EXHIBIT "B"

DESCRIPTION TO ACCOMPANY SKETCH
(PROPOSED PUBLIC UTILITY AND DRAINAGE EASEMENT)

LYING IN A PORTION OF ROSE CANAL RIGHT-OF-WAY AND LOT 23, BLOCK 4944;

LYING IN CAPE CORAL, UNIT 74,

SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-131) LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

NOT A BOUNDARY SURVEY

DESCRIPTION:

A PORTION OF ROSE CANAL RIGHT-OF-WAY AND A PORTION OF LOT 23, BLOCK 4944, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF DASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN S.89°45′33″E. ALONG THE NORTH LINE SAID LOT 23, BLOCK 4944 FOR 95.68 FEET TO THE POINT OF BEGINNING; THENCE RUN N.61°03′41″W. FOR 15.62 FEET; THENCE RUN S.89°45′33″E. TO A POINT ALONG THE WATERS EDGE OF FACE OF A CONCRETE SEAWALL FOR 12.50 FEET; THENCE RUN S.61°03′41″E. ALONG SAID WATERS EDGE FACE TO A POINT OF CURVATURE FOR 20.25 FEET; THENCE RUN ALONG THE ARC OF A CURVE TO THE RIGHT AND THE SAID WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 8.63 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 24.00 FEET, A CENTRAL DELTA ANGLE OF 8.59 FEET; THENCE RUN S.00°5727″W. TO A POINT OF CUSP OF A CURVE FOR 15.87 FEET; THENCE RUN ALONG THE ARC OF A CURC CONCAVE TO THE SOUTHWEST FOR 19.48 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 18.00 FEET, A CENTRAL DELTA ANGLE OF 62°01′08″, A CHORD THAT BEARS N.30°03′07″W AND A CHORD DISTANCE OF 18.55 FEET; THENCE RUN N.61°03′41″W. TO A POINT ALONG THE NORTH LINE OF SAID ;LOT 23, BLOCK 4944 FOR 15.60 FEET TO THE POINT OF BEGINNING.

CONTAINING: 225.5 SQ. FT, MORE OR LESS.

PHILLIP M. MOULD

PROFESSIONAL SURVEYOR AND MAPPER

#6515 - STATE OF FLORIDA

1/23/2019

SHEET 2 DF 2 FILE: CC-U74-4944-21



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776



REQUEST TO PLANNING & ZONING COMMISION AND COUNCIL FOR A VACATION OF PLAT

FEE: \$843.00 – 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 must be paid prior to public hearing otherwise case will be pulled from public hearing.

Following the approval of your request, the applicant shall be responsible for reimbursing the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.

| OWNER OF PROPERTY | | | | |
|--|--|----------|--------|----------|
| Keith D. Finkelstein & Elizabeth MacGuiduin | Address: 5131 SW 18th 1 | Ave | | |
| | City: Cape Cocal | State: | FL Zip | 33914 |
| | City: <u>Cape (ocal</u> Phone: <u>239-470-648</u> | 89 | | |
| APPLICANT Keith D. Finkelstein + Elizabeth A MacGuidmin | Address:5131 SW 18+ | ~ Ave | | |
| EMAIL Keith@marketstrats.com | City: Cape Coral Phone: 339-470-64 | State: | FL Zip | 33914 |
| | Phone: 339-470-64 | 8લ - | | |
| AUTHORIZED REPRESENTATIVE | | | | |
| | Address: | | | |
| EMAIL | City: | State: _ | Zip | |
| | Phone: | | | |
| Unit 74 Block 4944 Lot(s) 31-23-08 | | | | |
| Address of Property 4033 Oasis B | | | | |
| Current Zoning Vacant Residential | Plat Book 22 , | Page | 114 | |
| | | 15-23 | 5-C2-(| 24944,02 |



DEPARTMENT OF COMMUNITY DEVELOPMENT

JAIMIE MERRIMAN

Commission # FF 922342 My Comm. Expires Sep 28, 2019

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

| Case | # |
|------|---|
| | |
| | |
| | |
| | |

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.

(SIGNATURE MUST BE NOTARIZED)

| Keish Finkelstein | Elizabeth MacGudwin | Kath Sucker 1 | |
|----------------------|---------------------|-----------------------|--|
| APPLICANT NAME (PLEA | SE TYPE OR PRINT) | APPLICANT'S SIGNATURE | |

Signature of Notary Public:

Notary Public - State of Florida Printed name of Notary Public:



DEPARTMENT OF COMMUNITY DEVELOPMENT VACATION OF PLAT APPLICATION

Questions: 239-574-0776

| Case | # | |
|------|---|--|
| | | |

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 Hearing Examiner, Planning & Zoning Commission/Local Planning Agency, and City 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.

N/A CORPORATION/COMPANY NAME Elitabeta PROPERTY OWNER (PLEASE TYPE OR PRINT) Lee , county of Sworn to (or affirmed) and subscribed before me this 23 day of 4, 20 kg by Keith Finkelstein + Elizabeth who is personally known or produced as identification. 9.28.2019 Commission Number: Exp. Date: JAIMIE MERRIMAN Signature of Notary Public: Notary Public - State of Florida Commission # FF 922342 Printed name of Notary Public: My Comm. Expires Sep 28, 2019 (SIGNATURE MUST BE NOTARIZED)



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

| Case : | Ħ | |
|--------|---|--|
| | | |

DOCUMENTARY EVIDENCE (LUDR, Section 8.3.1.C.6.f)

A copy of all documentary evidence shall be made available to the decision-making body or the Hearing Examiner and to staff no later than two business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

I have read the above requirement and agree to comply with this provision.

| Keith Finkelstein Elitabeth Much | Criction fast The |
|--|--|
| OWNER/APPLICANT (PLEASE TYPE OR PRINT) | |
| (SIGNATU | JRE MUST BE NOTARIZED) |
| STATE OF FL COUNTY OF | |
| Sworn to (or affirmed) and subscribed before m 20 18 by Keith Finkels tells +, who is as identification. Elizabeth Ma(Guidwi Exp. Date 9.28 · 2019 Commission # FF 9223 12 | s personally known or who has produced Signature of Notary Public |
| JAIMIE MERRIMAN Notary Public - State of Florida Commission # FF 922342 My Comm. Expires Sep 28, 2019 | Print Name of Notary Public |

Director Department of Community Development City of Cape Coral P. O. Box 150027 Cape Coral, FI 33915-0027

RE: LETTER OF INTENT FOR A VACATION OF PLAT

Dear Director:

We are requesting a vacation of plat on our property located at 4033 Oasis Blvd, Cape Coral, FL, 33914. This Vacation is necessary in order to build our future home. Please see the details of our request below:

- 1. Vacate all canal right-of-way between the rear property line of the site and the edge of the canal. This area was subject to a quit claim deed that was granted by the City to a previous owner.
- 2. Vacate all underlying easements within the canal right-of-way area except for the 25-foot wide area shown as a public utility, drainage, roadway, and bridge maintenance easement.
- 3. Vacate platted easements located along the north property line of Lot 23 as shown on the submitted sketch.
- 4. Request a release from the City of all easements within the canal right-of-way area except for the 25-foot wide area shown as a public utility, drainage, roadway, and bridge maintenance easement on the submitted sketch.

Enclosed you will find supporting documents and exhibits for the proposal above.

If you have any questions, please don't hesitate to call. Thank you.

Sincerely,

Keith Finkelstein

239-470-6489

Elizabeth MacGuidwin

517-648-1923



Attention:

Keith Finkelstein keith@marketstrats.com 4033 Oasis Blvd Cape Coral, Fl 33914

Phone: (239) 470-6489

Subject: - Vacation of Easement on North Side of Lot 23 & adjacent lot north portion of the rose canal

Site Address: 4033 Oasis Blvd Cape Coral, Fl 33914 Strap# 08-45-23-C2-04944.0210

To whom it my concern

Regarding the referenced property above CenturyLink has **No Objection** to vacate the easement on the north side of lot 23 and adjacent lot north portion of the rose canal while still maintaining a 6' PUE around the properties parameter described by Keith Finkelstein.

Sincerely

Local Engineer

Justin Lane

3301 Del Prado Blvd S Office: (239)-984-7009

justin.lane@centurylink.com



12600 Westlinks Drive Suite 4 Fort Myers, FL 33913 Phone: 239-432-1805

July 10, 2018

Re: 4033 Oasis Blvd. Cape Coral, 33914 (Strap# 08-45-23-C2-04944.0210)

Dear Keith Finkelstein,

This letter will serve to inform you that Comcast has no objection to your proposed vacation of the address referenced above.

Should you require additional information or assistance, please feel free to contact me here at 432-1805.

Cordially,

Mark Cook

Project Coordinator



Lee County Electric Cooperative, Inc.

Post Office Box 3455

North Fort Myers, FL 33918-3455

(239) 995-2121 • Fax (239) 995-7904

August 1, 2018

Mr. Keith Finkelstein 4033 Oasis Boulevard Cape Coral, FL 33904

Re:

Letter of No Objection to Vacation of Utility Easement for 4033 Oasis Boulevard, Cape Coral, Florida 33904; Owner: Keith Finkelstein; Strap#: 08-45-23-C2-04944.0210.

Dear Mr. Finkelstein:

You have opened up negotiations on behalf of yourself, concerning the vacation of a certain utility easement that exists between parcels of land you own, known as Quit Claim Deed recorded at ORB 3661, Page 4773, and Lot 23, Block 4944, Unit 74, Cape Coral Subdivision, as recorded amongst the Public records of Lee County, Florida, at Plat Book 22, at Pages 111 through 131, inclusive.

We have reviewed the Plat, the request submitted, and our internal records. LCEC has no objection to the vacation as submitted and reflected in the request. However, we require a six-foot perimeter easement around the entire subject property in order to service the parcel in the after situation.

Should there be any questions please call me at 239-656-2112, or, if you prefer, I can be reached by email at russel.goodman@lcec.net.

Very truly yours,

Russ Goodman, Goodman, SR/WA SR/WA

Digitally signed by Russ Date: 2018.08.01 11:07:15

-04'00'

Russel Goodman, SR/WA Senior Right of Way Agent

BOUNDARY SURVEY OF SURVEY NOTES:

1. BASIS OF BEARING SHOWN HEREUN TAKEN FROM THE EAST RIGHT-OF-WAY LINE OF DASIS BULEVARD, AS BEING MOD'57/27/E.

2. FIELD MOTES IN CAPE CORAL, BLOCK 4944.

3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON, IT IS NOT A CERTIFICATION OF TITLE, ZOWING OR FREEDOM OF ENCUMPRANCES.

5. THIS SURVEY DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MODUMENTATION IN THE FIELD.

6. UNDERGOODEN STRUCTURES AND UTILITIES. IF ANY, ARE NOT INCLUDED. LOTS 21, 22 AND 23, BLOCK 4944 AND A PORTION OF ROSE CANAL RIGHT OF WAY AJACENT TO LOT 23 CAPE CORAL UNIT 74
SECTION 8, TOWNSHIP 45 SOUTH, RANGE 29 EAST
OPLAT BOOK 22, PAGES III-IJI)
LEE COUNTY, FLORIDA UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
THIS MAP/PLAT IS NOT VALID WITHOUT THE SIGNATURE AND THE
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ALL BEARINGS AND DISTANCES ARE PLAT AND NEASURED, UNLESS DITERVISE. AND AND
A PORTION OF ROSE CANAL RIGHT-OF-WAY, LYING IN CAPE CORAL,
UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131
(INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE
23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY
DESCRIBED AS FOLLOWS: SHOW 9 THIS SURVEY IS INTENDED TO BE VIEWED AS AN IIXI7, 30 SCALE DRAWING FLOOD ZONE: AE ELEVATION 8.00' M.A.V.D. COMMUNITY NO. 125095 PANEL NO. 0385 SUFFIX --- F REVISION DATE: 8/28/08 COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF DASIS BOULEVARD (100 FEET VIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-31 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING, THENCE RUN N.00°57'27'E. ALONG SAID EAST RIGHT-OF-WAY LINE TO A POINT ALONG WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 58.82 FEET, THENCE RUN S.61'03'41'E. ALONG SAID FACE OF SEAWALL TO A POINT ALONG THE NORTH LINE SAID LOT 23, BLOCK 4944 FOR 122.49 FEET, THENCE RUN N.89'45'23'W. TO THE NORTHWEST CORNER OF SAID LOT 23, BLOCK 4944 AND THE EAT RIGHTOOF-WAY LINE OF THE AFORESAID CASIS BOOLEVARD (100 FEET VIDE FOR 108.18 FEET TO THE POINT OF BEGINNING. MAD MIMBER: 12071C0385/ THIS SURVEY IS CERTIFIED TO KEITH FINKLESTEIN CITY OF CAPE CORAL RAIL CONTAINING 3,181.23 SQ. FT, MORE OR LESS. 25' PUBLIC UTILITIES, DRAINAGE, ROADVAY AND DRIDGE MAINTENANCE EASEMENT ROSE CANAL (VARIES) INCLUSIVE S RIV LINE ROSE CANAL (PLAT) S.89°45'33'E. -16.83 \$89.45'33'E. 125.01' RAIL A GUMBD 2 T.S.B. A LOT 23. BLOCK 4944 W ROADWAY GOO' R/V) 85 P 25. 183 BOUL W -27'27'V DASIS BI LOT 22, BLOCK 4944 Q: L 8 a N.00 5.00 > CONCRE Prog U LOT 21, BLOCK 4944 S' P.UE. & DE. TO A TO SE 100.01 25.00 6 PUE & BE SAFE UPLAND ELEVATION= 0.70' ALONG FACE SEAWALL (APPROXINATE ELEVATION OF NHV+0.50') PER LAMAR EVERS, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION DATED: FEBRUARY 10, 2015 50.00 T.S.B. FOUND 5/8' IR. FDUND 1/2" IR. PLS4631 SVY LINE NO ID LOT 80, BLOCK 4944 BM VEST FACE -P.P. N/D PLS4631 ELEV= 11.43' LEGEND: LEGEN

SET 84 IRDN RID (CAP LE 8692)
FOUND IRON RID (LR)
FOUND IRON RID (LR)
CDNCRETE MONARCHT (CA)
PERMANENT CONTROL POINT
PERMANENT CONTROL POINT
PERMANENT CONTROL POINT
PERMANENT CONTROL POINT
LAKE MAINTENANCE EASEMENT
LAKE MAINTENANCE EASEMENT
POINT OF TOURVATURE
POINT OF TANGENCY
OFFICIAL RECORDS ROCK
AS PER SURVEY
AS MEASURED
AS PER PLAT
AS PER PED
CURVE NUMBER
RIGHT-OF-WAY
CENTERLINE RECLAIM VATER BOX
VATER METER
VATER VALVE
FIRE HYDRAHT
DVERHEAD POWER
GUY ANCHOR & VIRE
ELECTRIC BOX
CABLE TELEVISION BOX
NAIL & DISK
NAIL & DISK
NAIL & TINTAB
ELEVATION
BENCHMARK
TYPICAL ELEVATION
AIR CONDITIONER
VATER SYSTEM
POOL EQUIPMENT
CONCRETE RV.B.
VM.
VFA
D/H
PP.
GAEV.
E.B.
CT.B.
IN/D.
N/T.
ELEV.
PE.
VS. DESCRIPTION REVISED P.C.P. P.U.E. P.C.P. CR. COO (P) (D) (L) (L) ly m moul PHOLLIP M. MOULD PROFESSIONAL SURVEYOR AND MAPPER 66515 - STATE OF FLORIDA DATE OF LAST FIELD VORK: 8/1/18 HARRIS-JORGENSEN, DAC. 3046 DEL PRADO BLVB. S. 3A CAPE CORAL, FLORIDA 33904 PHONE (239) 257-2524 FAX: (239) 257-2921 DRAVN CHECK SCALE PROJ. 4 PHH 1"=30" CC-U74-4944-EI SURVEY BATE FILE NO. SHT.- 1 8/1/18 45-23-00 OF - 1 FLORIDA CERTIFICATE OF AUTHORIZTION # LB6921

EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH
(PROPOSED VACATION OF ANY AND ALL UNDERLYING EASEMENTS)

A PORTION OF ROSE CANAL RIGHT-OF-WAY,

LYING IN CAPE CORAL, UNIT 74,

SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-131) LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION
NOT A BOUNDARY SURVEY

DESCRIPTION:

A PORTION OF ROSE CANAL RIGHT-OF-WAY, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF OASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN N.20*04'32"E. TO A POINT ALONG WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 52.57 FEET; THENCE RUN S.61*03'41"E. ALONG SAID FACE OF SEAWALL TO A POINT ALONG THE NORTH LINE SAID LOT 23, BLOCK 4944 FOR 102.98 FEET; THENCE RUN N.89*45'33"W. TO THE NORTHWEST CORNER OF SAID LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF THE AFORESAID DASIS BOULEVARD (100 FEET WIDE FOR 108.18 FEET TO THE POINT OF BEGINNING.

CONTAINING: 2,674.8 SQ. FT, MORE OR LESS.

PHILLIP M. MOULD

PROFESSIONAL SURVEYOR AND MAPPER

#6515 - STATE OF FLORIDA

1/23/2019

SHEET 2 OF 2 FILE: CC-U74-4944-21

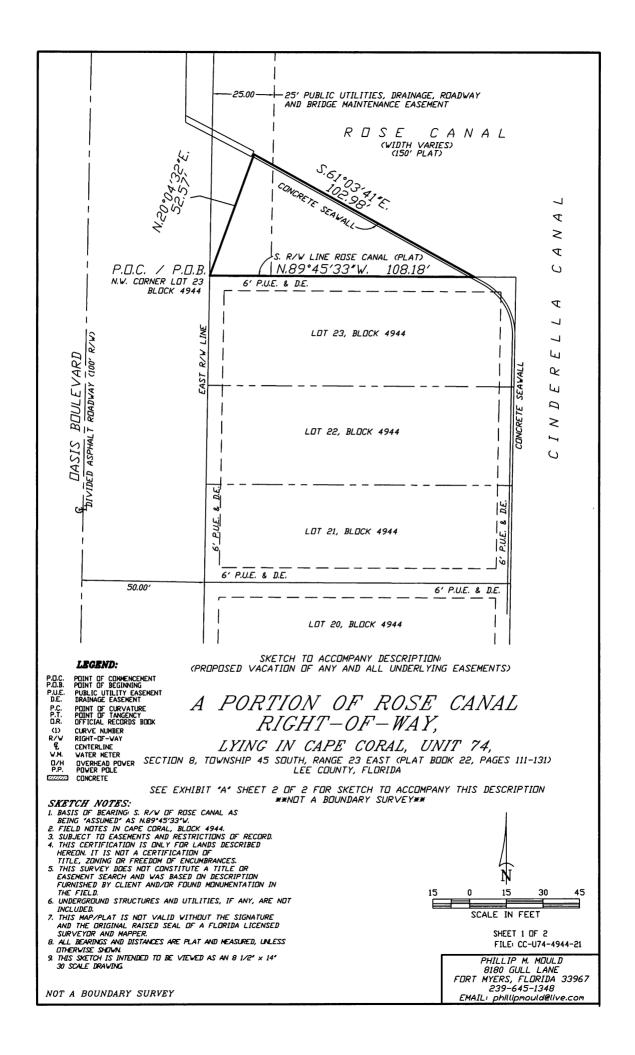


EXHIBIT "B"

DESCRIPTION TO ACCOMPANY SKETCH

VACATION OF A PORTION OF PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN LOT 23, BLOCK 4944, CAPE CORAL UNIT 74,

SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-131)
LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION
NOT A BOUNDARY SURVEY

DESCRIPTION:

DESCRIPTION:
(PROPOSED) VACATION OF A PORTION OF PUBLIC UTILITY AND
DRAINAGE EASEMENT LYING IN LOT 23, BLOCK 4944, CAPE
CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES
111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45
SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF DASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA THENCE RUN S.89°45'33"E. ALONG THE NORTH LINE OF SAID LOT 23, BLOCK 4944 FOR 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN S.89°45'33"E. ALONG THE NORTH LINE SAID LOT 23 FOR 89.68 FEET; THENCE RUN S.61°03'41"E. FOR 12.50 FEET; THENCE RUN N.89°45'33"W. PARALLEL WITH AND 6 FEET SOUTH OF AS MEASURED ON A PERPENDICULAR FOR 100.72 FEET; THENCE RUN N.00°57'27"E. FOR 6.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 571.18 SQ. FT, MORE OR LESS.

PHILLIP M. MOULD

PROFESSIONAL SURVEYOR AND MAPPER #6515 - STATE OF FLORIDA

8/13/18

SHEET 2 DF 2 FILE: CC-U72-5008-1

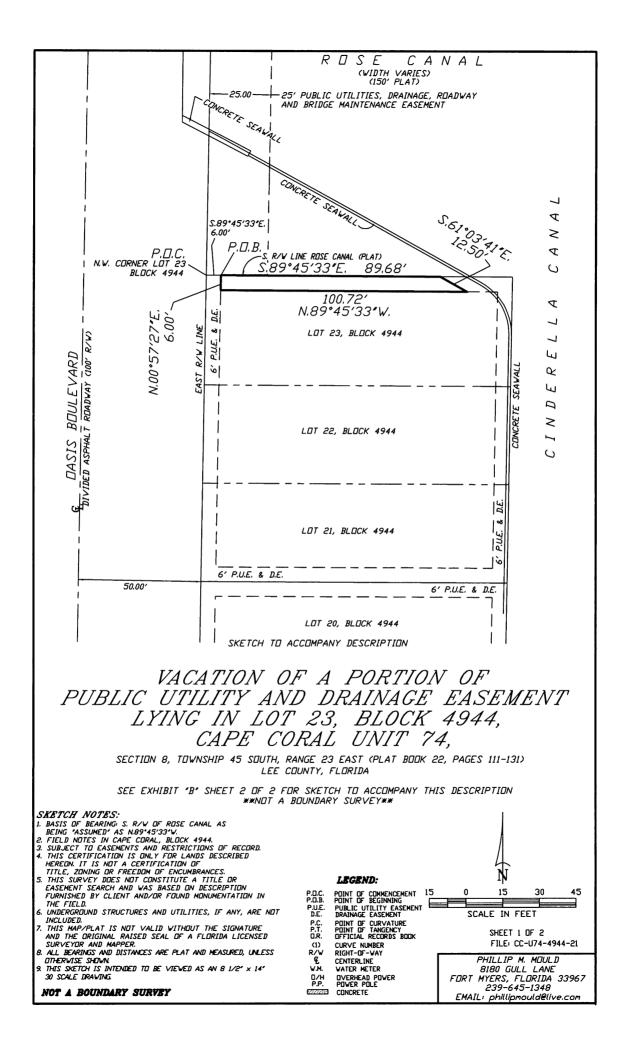


EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH (PROPOSED)

PUBLIC UTILITY, DRAINAGE AND BRIDGE AND CANAL MAINTENANCE EASEMENT)

LYING IN A PORTION OF ROSE CANAL RIGHT-OF-WAY.

LYING IN CAPE CORAL, UNIT 74, SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111–131) LEE COUNTY, FLORIDA

NOT A BOUNDARY SURVEY

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

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A PORTION OF ROSE CANAL RIGHT-OF-WAY, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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CONTAINING: 2,102.76 SQ. FT, MORE OR LESS.

PHILLIP M. MOULD

PROFESSIONAL SURVEYOR AND MAPPER

#6515 - STATE OF FLORIDA

1/23/2019

SHEET 2 OF 2 FILE: CC-U74-4944-21

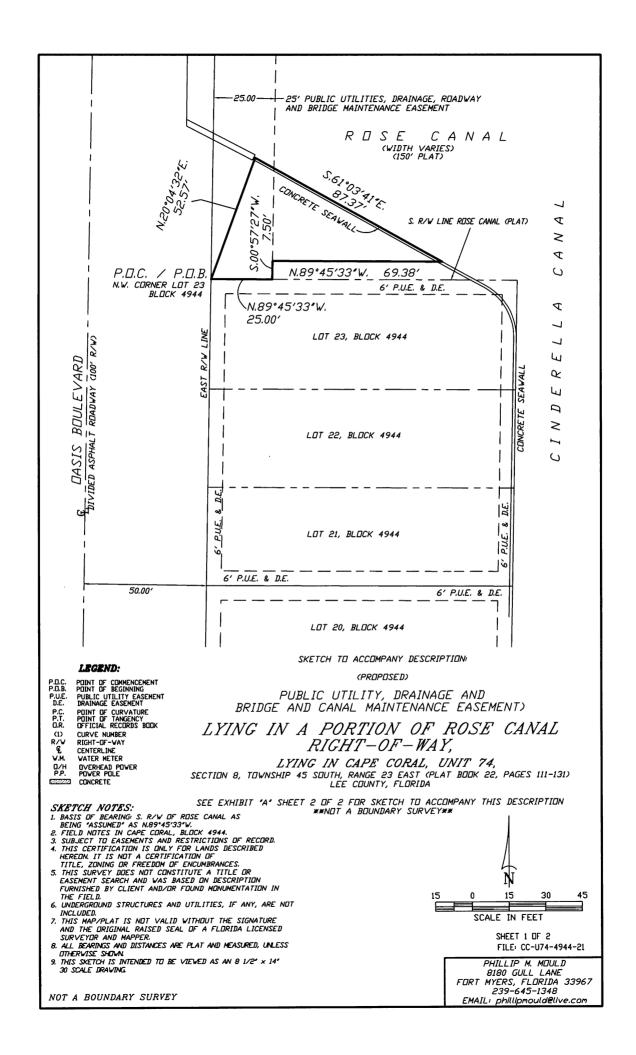


EXHIBIT "B"

DESCRIPTION TO ACCOMPANY SKETCH
(PROPOSED PUBLIC UTILITY AND DRAINAGE EASEMENT)

LYING IN A PORTION OF ROSE CANAL RIGHT-OF-WAY AND LOT 23, BLOCK 4944;

LYING IN CAPE CORAL, UNIT 74,

SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-131)
LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION
***NOT A BOUNDARY SURVEY**

DESCRIPTION:

A PORTION OF ROSE CANAL RIGHT-OF-WAY AND A PORTION OF LOT 23, BLOCK 4944, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF DASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN S.89°45′33″E. ALONG THE NORTH LINE SAID LOT 23, BLOCK 4944 FOR 95.68 FEET TO THE POINT OF BEGINNING; THENCE RUN N.61°03′41″W. FOR 15.62 FEET; THENCE RUN S.89°45′33″E. TO A POINT ALONG THE WATERS EDGE OF FACE OF A CONCRETE SEAWALL FOR 12.50 FEET; THENCE RUN S.61°03′41″E. ALONG SAID WATERS EDGE FACE TO A POINT OF CURVATURE FOR 20.25 FEET; THENCE RUN ALONG THE ARC OF A CURVE TO THE RIGHT AND THE SAID WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 8.63 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 24.00 FEET, A CENTRAL DELTA ANGLE OF 8.59 FEET; THENCE RUN S.00°5727″W. TO A POINT OF CUSP OF A CURVE FOR 15.87 FEET; THENCE RUN ALONG THE ARC OF A CURC CONCAVE TO THE SOUTHWEST FOR 19.48 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 18.00 FEET, A CENTRAL DELTA ANGLE OF 62°01′08″, A CHORD THAT BEARS N.30°03′07″W AND A CHORD DISTANCE OF 18.55 FEET; THENCE RUN N.61°03′41″W. TO A POINT ALONG THE NORTH LINE OF SAID ;LOT 23, BLOCK 4944 FOR 15.60 FEET TO THE POINT OF BEGINNING.

CONTAINING, 225.5 SQ, FT, MORE OR LESS.

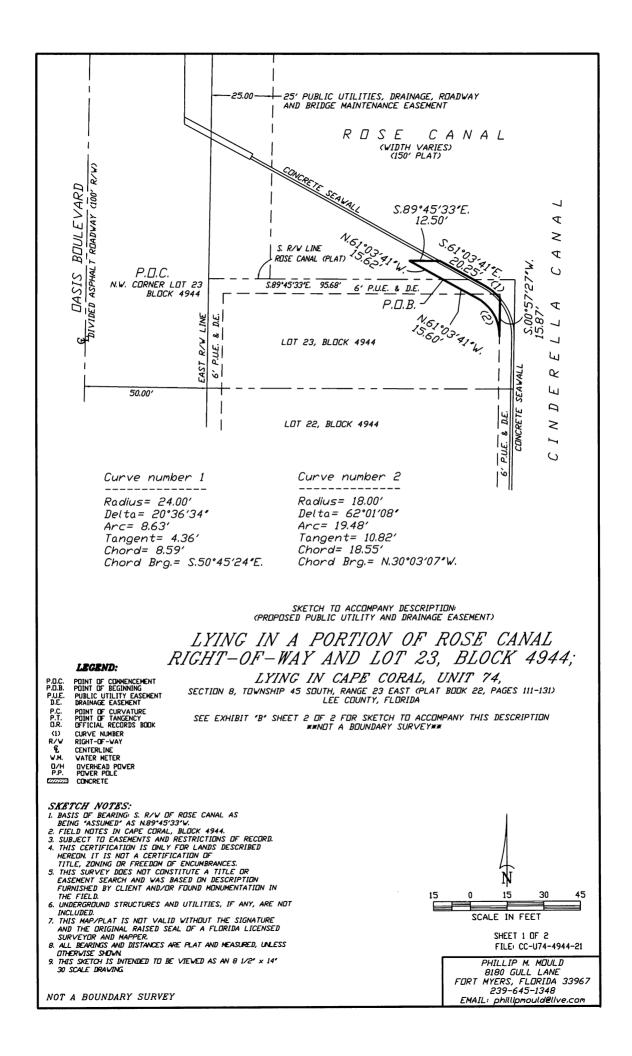
PHILLIP M. MOULD

PROFESSIONAL SURVEYOR AND MAPPER

#6515 - STATE OF FLORIDA

1/23/2019

SHEET 2 OF 2 FILE: CC-U74-4944-21



Review Date:

February 13, 2019

Applicant/

Property Owner:

Keith D. Finkelstein and Elizabeth A. MacGuidwin

Owner Address:

5131 SW 18th Avenue Cape Coral, FL 33914

Requests:

The applicant requests the following:

1) Vacate ±2,674.8 sq. ft. of canal right-of-way (ROW) and all underlying easements.

2) Vacate ±571.18 sq. ft. of platted easements in Lot 23, Block 4944.

3) A release of ±2,674.8 sq. ft. of ROW, public utility, drainage, and channel

enlargement easements previously reserved by Ordinance 56-02.

Property Location:

4033 Oasis Boulevard

Cape Coral, FL 33914

Cape Coral Subdivision, Unit 74, Block 4944, Lots 21-23

Prepared By:

Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator

Approved By:

Robert H. Pederson, AICP, Planning Manager

Recommendation:

Approval with conditions

Urban Service

Transition

Property Description:

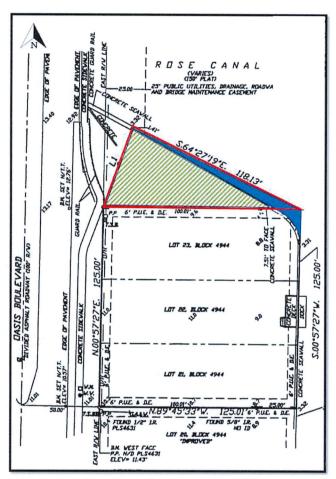
The applicant owns a three-lot platted site at 4033 Oasis Boulevard. Except for a concrete dock on Lot 22, the site is undeveloped. The site is at the intersection of the Cinderella and Rose Canals. The site has a Single Family Future Land Use Classification (FLUC) and Single Family Residential (R-1B) Zoning. All properties within 1,500 feet of the site share the same future land use and zoning classifications.

The plat for Unit 74 shows this site has water frontage along the Rose Canal to the north. However, land with a bridge abutment to the north of the site occupies platted canal ROW that extends along the north property line of Lot 23. A survey depicted in Figure 1 shows a concrete headwall extending about 30 linear feet eastward beginning near the bridge with a concrete seawall present along the rest of the water frontage line of the site.

In 2002 the City adopted Ordinance 56-02 that declared a triangular-shaped parcel of the Rose Canal as "unusable municipal surplus real property no longer needed by the City." This ordinance authorized the City to grant the owner (Joan Falcetta) of Lot 23 a quit-claim deed for 3,156 sq. ft. of land to the north of her site. The current owners, Keith D. Finkelstein and Elizabeth A. MacGuidwin, request to vacate ±2,674.8 sq. ft. of the "quit-claim area" and underlying and adjacent easements for constructing a single-family

residence on the site. This vacation will allow the current owners to demonstrate ownership of this triangular piece of land abutting their site consistent with Chapter 177 of the Florida Statutes.

Figure 1. Image from a survey prepared by Harris-Jorgensen, Inc. dated 02-04-15. The quit-claim area associated with Ordinance 56-02 is outlined in red and included area occupied by the Rose Canal shown in blue. The applicants in VP18-0007 are requesting to vacate the area indicated by the green cross-hatch pattern.



Zoning History of Block 4944

The FLUC of Lots 21-23 was amended from Single Family/Multi Family by PDP to Single Family by Ordinance 39-02. The site has always had R-1B Zoning.

Analysis:

Staff analyzed this request with the Land Use and Development Regulations (LUDR), Section 8.11, "Vacation of plats, rights-of-way and other property." The City Comprehensive Plan was also reviewed for policies on vacations.

Request No. 1: Vacate ±2,674.8 sq. ft. of ROW Adjacent to the Rose Canal

This vacation involves canal ROW directly to the north of Lot 23. Ordinance 56-02 identified 3,156 sq. ft. of ROW as surplus property and authorized and directed the Mayor and City Clerk to effectuate a deed granting the surplus property to the owner of Lot 23. The owners requesting this vacation, however, are seeking to vacate only 2,674.8 sq. ft. of ROW. The discrepancy between these two numbers

results from the quit-claim area identified in a 2002 survey that included part of the canal proper compared to a survey from 2018 that identified only "dry" ROW as the vacation area.

Public Works would generally prefer to retain all ROW along bridge sites, as future street and bridge maintenance obligations and canal expansion needs are difficult to predict. Retaining all 2,674.8 sq. ft. of ROW would provide the City with maximum flexibility should maintenance or major changes to the street or canal network be required. However, considering previous City Council action that relinquished claims of City ownership to this area in 2002, staff supports vacating this area.

Approval of this vacation will: 1) demonstrate private ownership of the vacated area to lenders, title companies, and insurers; 2) prohibit public access to this ROW; and 3) convey land to the owners consistent with prior City Council action in adopting Ordinance 56-02.

Request No. 2: Vacate 2,674.8 sq. ft. of Easements Underlying the Subject ROW

The applicant seeks to vacate 2,674.8 sq. ft. of easements underlying the ROW described under Request No. 1. The City lacks facilities within these easements. Century Link, Comcast, and LCEC also lack utilities in these easements. The applicant will deed to the City 2,102.76 sq. ft. of easements. This vacation will allow the property owner to construct a new home on the site based on the owner's preferred design, while the City will continue to hold an easement over most of the original area. LCEC requires that a six-foot wide perimeter easement be provided around the expanded site for future utility installation and maintenance; a condition of approval that is also recommended by City staff.

Request No. 3: Release of 2,674.8 sq. ft. Easements Underlying the Subject ROW

The applicant seeks a release of 2,674.8 sq. ft. of ROW, public utility, drainage, and canal and bridge maintenance easements. These easements were reserved by the City for the quit-claim area in 2002 by Ordinance 56-02. Since these easements were reserved by the City, these easements cannot be vacated but must be released by the City Council.

In evaluating this request, Planning has conferred with Public Works and Real Estate staff. Existing easements in the ROW retained by the City and new easements that will be deeded by the owner to the City will be adequate for future bridge access and maintenance purposes.

Request No. 4: Vacate 571.18 sq. ft. of Easements along the North Property Line of Lot 23

The applicant seeks to vacate 571.18 sq. ft. of platted easements along the north property line of Lot 23. The utility providers lack facilities in these easements and all three providers have no objection to this request. The City also lacks facilities within this easement. This platted easement will no longer be necessary as the owner will be providing the City with six-foot wide replacement easement around the perimeter of the expanded site.

Consistency with the Comprehensive Plan

The City lacks specific policies in the Comprehensive Plan for vacations involving residential-zoned lands. This request is consistent with Policy 1.15 of the Future Land Use Element.

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

a. <u>Single Family Residential:</u> Sites of 10,000 square feet and greater, with densities not to exceed 4.4 units per acre.

Staff comment: This request is consistent with Policy 1.15.a as the site is an estimated 18,779 sq. ft. following the ROW vacation and the property will have a maximum of one single-family home. This equates to a density of 2.32 dwelling units per acre. This density is less than the maximum 4.4 dwelling units per acre allowed within this future land use classification. This request complies with this policy.

Recommendation:

Staff recommends **approval** of all vacation requests as well as the request to release easements associated with the quit claim area that was deeded by the City in 2002 with the following conditions.

Conditions of Approval

- 1. The vacation of the 2,674.8 sq. ft. of ROW and underlying easements shall be consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Proposed Vacation of Any and All Underlying Easements A Portion of Rose Canal Right-of-Way" dated January 23, 2019.
- 2. The vacation of the 571.18 sq. ft. of easements lying in Lot 23, Block 4944 shall be consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Vacation of a Portion of Public Utility and Drainage Easement Lying in Lot 23, Block 4944, Cape Coral Unit 74", dated August 13, 2018.
- 3. All ROW, public utility, drainage, and canal and bridge maintenance easements shall be released by the City for the quit claim area described in Ordinance 56-02.
- 4. Within 60 days from the date of adoption of this vacation, the owner shall provide to the City an easement deed for bridge maintenance, public utility, and drainage purposes consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Public Utility, Drainage and Bridge and Canal Maintenance Easement Lying in a Portion of Rose Canal Right-of-Way", dated January 23, 2019. This deed shall be approved by the City Property Broker prior to execution.
- 5. Within 60 days from the date of adoption of this vacation, the owner shall provide to the City an easement deed for public utility and drainage purposes consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Proposed Public Utility and Drainage Easement Lying in a Portion of Rose Canal Right-of-Way and Lot 23, Block 4944", dated January 23, 2019. This deed shall be approved by the City Property Broker prior to execution.
- 6. This resolution shall be recorded with the Office of the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the applicant provides the City with easement deeds as described in Conditions #4 and #5 and reimburses the Department of Community Development for all fees for recording the resolution and easement deeds.

Staff Contact Information

Mike Struve, AICP, LEED Green Associate, Development Management Team Coordinator

PH: 239-242-3255

Email: <u>mstruve@capecoral.net</u>

ORDINANCE 56 - 02

AN ORDINANCE DECLARING A TRIANGULAR-SHAPED PARCEL OF PROPERTY BEING A PART OF ROSE CANAL AS SHOWN ON THE PLAT CONTAINING LOT 23, BLOCK 4944, CAPE CORAL, UNIT 74, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 22, PAGES 111 THROUGH 131, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AS MORE PARTICULARLY DESCRIBED HEREIN, AS UNUSABLE MUNICIPAL SURPLUS REAL PROPERTY NO LONGER NEEDED BY THE CITY; AUTHORIZING AND DIRECTING THE MAYOR AND CLERK TO EXECUTE A DEED CONVEYING THE AFOREMENTIONED SURPLUS REAL PROPERTY TO JOAN FALCETTA, AFTER THE GRANTEE HEREIN HAS CONSTRUCTED A SEAWALL UPON SAID PROPERTY; A COPY OF THE PROPOSED DEED IS ATTACHED HERETO AS EXHIBIT "1"; RESERVING THE RIGHT-OF-WAY AND UTILITY EASEMENTS FOR THE CITY OF CAPE CORAL; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral Public Works Department and the City Manager have recommended that a parcel of land being a part of Rose Canal as shown on the plat of Unit 74, Block 4944, Cape Coral Subdivision, is of no value and use to the City of Cape Coral, and would be of greater value to the City of Cape Coral if deeded to the property owner because of increased tax revenues; and

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

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

Section 1. That the parcel of land being a part of Rose Canal as shown on the plat containing Lot 23, Block 4944, Unit 74, Cape Coral Subdivision, said parcel being near the intersection of Oasis Boulevard and the bridge spanning the Rose Canal, more particularly described as follows:

A parcel of land being a portion of Rose Canal right of way adjacent to Lot 23, Block 4944, Cape Coral Subdivision, Unit 74, according to Plat Book 22, Pages 111 through 131, of the Public Records of Lee County, Florida, and being more particularly described as follows:

Commencing at the northwest corner of said Lot 23, being a point on the easterly right of way line of Oasis Boulevard and the Point of Beginning; Thence N20°04'32"E a distance of 53.68 feet; Thence S64°27'19"E a distance of 118.13 feet; Thence N89°45'33"W a distance of 125.01 feet along the northerly line of said Lot 23 to the Point of Beginning, said parcel containing 3,156 square feet, or 0.0725 acres, more or less.

Reserving therefrom the westerly 25 feet as a Public Utilities, Drainage, Roadway and Bridge Maintenance Easement; the northeasterly 6 feet is reserved as a Public Utilities and Drainage Easement.

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

The above described property shall immediately revert to grantor herein should grantee, its successors or assigns, fail to construct a seawall on said property within six (6) months of the date of this conveyance.

Section 2. That upon the recommendations of the City staff, it is in the best interest of the City of Cape Coral to deed the

above-described property to the owner of Lot 23, Block 4944, Cape Coral, Unit 74, according to the plat thereof, as recorded in Plat Book 22, Pages 111 through 131, of the Public Records of Lee County, Florida, subject to any easements, restrictions and reservations of record because the City will receive additional tax revenues by this grant. Accordingly, the Mayor and the Clerk of the City of Cape Coral are hereby authorized to effectuate a quit claim deed granting the property described herein to Joan Falcetta, the owner of property located at 4033 Oasis Boulevard, Cape Coral, Florida. Said grant shall be subject to the City retaining a right-of-way easement across the property granted for the purpose of entering upon said property for the expansion of the canal system, including a right-of-way across said parcel for the maintenance, construction, and renovation of the canal or bridge system, and reserving a right-of-way across said parcel for any utility lines including water, sewer, electrical and a drainage easement to enlarge the existing channel in the future, a copy of the Quitclaim Deed is attached hereto as Exhibit "1."

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

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

ADORTED AT A REGULAR COUNCIL MEETING THIS 3. DAY OF

ARNOLD E. KEMPE, MAYOR

ATTESTED TO AND FILED IN MY OFFICE THIS 64 DAY OF

BONNIE J. MAZURKIEWICZ CITY CLERK

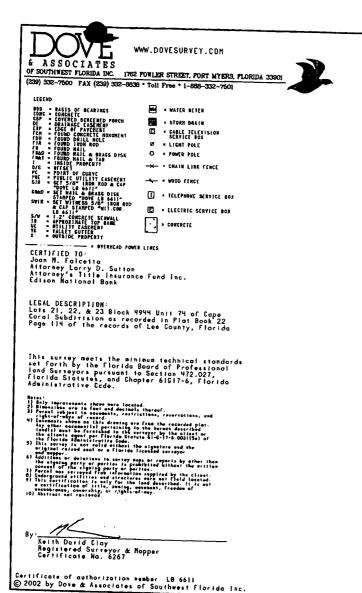
APPROVED AS TO FORM:

DOLORES D. MENENDEZ

CITY ATTORNEY ord\triprop-falcetta

QUITCLAIM DEED

| PREPARED BY: | |
|--|--|
| Marilyn W. Miller Assistant City Attorney | |
| City of Cape Coral | |
| P.O. Box 150027 | |
| Cape Coral, Florida 33915-0027 | |
| ******* | *************************************** |
| **************** | ******************** |
| | |
| / 1 | EED, EXECUTED this day |
| , 2002. | , |
| by first party: | CITY OF CAPE CORAL, A MUNICIPAL CORPORATION |
| | |
| whose post office address is: | Post Office Box 150027, Cape Coral, Florida 33915-0027 |
| to second party: | Joan Falcetta, a single woman |
| whose post office address is: | 401 East 64th Street, Apt. 5B |
| | New York, NY 10021 |
| WITNESSETH, that the said first par | rty, for good consideration and for the sum of Ten Dollars (\$10.00) |
| by the said second party, the receipt where | Of IS hereby acknowledged does hereby remise release and activity |
| unto the said second party forever, all the n | IGNI. Title. Interest and claim which the eaid first north has in and to |
| following described parcel of land, and implification for the following described parcel of land, and implifications are supported to the following described parcel of land, and implifications are supported to the following described parcel of land, and implifications are supported to the following described parcel of land, and implifications are supported to the following described parcel of land, and implifications are supported to the following described parcel of land, and implifications are supported to the following described parcel of land, and implifications are supported to the following described parcel of land, and implifications are supported to the following described to the | rovements and appurtenances thereto in the County of Lee, State |
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| Reserving therefrom the westerly 25 | feet as a Public Utilities, Drainage, Roadway and Bridge Maintenan |
| Easement; the northeasterly 6 feet is | reserved as a Public Utilities and Drainage Easement. |
| | |
| written. | first party has signed and sealed these presents the day and year f |
| | |
| Signed, sealed and delivered in presence of: | α |
| Barrie & Was & | _ Capallerye |
| Witness - Signature | Grantor Signature |
| Q | A signature |
| Bonnie J. MAZUrkiewicz | Annold E Kempe |
| Witness - Print or Type Name | Grantor - Print or Type Name |
| Werdy K. Lever | |
| Witness - Signature | _ |
| Wendy K Lexy | |
| Wendy K. Levy Nitness - Print or Type Name | _ |
| Militar Type Name | |
| | |
| STATE OF FLORIDA § | |
| COUNTY OF LEF | |
| COUNTY OF LEE § | |
| The foregoing instrument was acknow | wledged before me this 7 day of 0 |
| by Arnold E. Kempe, Mayor, wh | wledged before me this, 200 day of, 200 ho is personally known by me or has produce |
| -11 | as identification and who did/did not take a |
| eath. (Describe identification) | take t |
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| ly Commission Expires: | Tugina Q Vonios Alada & |
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| - Viminie A Konior-Gladick | Notary Public (Signature) |
| My Commission D0112866 | |
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Boundary Survey 15 FEB 02 Drawn By DMO 02-0140 Scale 1"=30' LEGAL DESKIPTION OF PROPOSED OUTT CLAIM AREA: 30 0 A tract or parcel of land lying Unit 74, of Cape Coral, a subdivision according to the map or plat thereof, on file and recorded in Plat Book 22, pages III-13] inclusive. Which tract or parcel is described as follows: Commencing at the Northwest corner of Lot 23, Block 4944, said point being the POINT OF BEGINNING: thence North 20 degrees 04 minutes 33 seconds East, a distance of 53.68 feet; thence South 64 degrees 27 sinutes 19 seconds East, a distance of 118.13 feet; thence North 89 degrees 45 minutes 33 seconds West along the Northerly line of said Lot 23, a distance of 120.10 feet to the POINT OF BEGINNING; said described tract containing 3,156 square feet, more or less. -CUARDRAIL EDGE OF WATER ROSE CANAL 125.01' POINT OF BEGGINNIN BOULEVARD CANAL ¥ ASPHALT 5 OASIS BOL CINDERELLA 19.6 LDT 22 BLOCK 4944 ģ

> # 69°45'33"W 125 01' SWIR 2 LOT 20 BLOCK 4944

L07 21 BLOCK 4944

FIR 5/8" -6'PUEADE-

S.M. 41ST STREET 60' RIGHT OF WAY





NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: VP18-0007

REQUEST: The applicants, Keith D. Finkelstein and Elizabeth A. MacGuidwin, seek a vacation of plat for a canal right-of-way and underlying easements being a part of the Rose Canal, adjacent to Lot 23, Block 4944, Cape Coral Subdivision, Unit 74; the release of easements that were previously reserved by the City and more particularly described by Ordinance 56-02; and the vacation of easements occupying a portion of Lot 23, Block 4944, Unit 74; property located at 4033 Oasis Boulevard.

<u>CAPE CORAL STAFF CONTACT:</u> Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator, 239-242-3255, <u>mstruve@capecoral.net</u>

<u>UPCOMING PUBLIC HEARING:</u> Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday, March 5, 2019 on the above-mentioned case. The public hearing will be held in the Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available five days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

After Hearing Examiner has made a written recommendation, the case will be scheduled for a public hearing before the City Council who will review the recommendation and make a final decision.

<u>DETAILED INFORMATION</u>: The case report and colored maps for this application are available at the City of Cape Coral website, <u>www.capecoral.net/publichearing</u> (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.

<u>HOW TO CONTACT:</u> 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.

<u>ADA PROVISIONS:</u> 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.

<u>APPEALS:</u> If a person decides to appeal any decision made by the Hearing Examiner 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.



Please contact us with changes or cancellations as soon as possible, otherwise no further action needed.

TOLL-FREE

Local#

0003404898

888-516-9220

239-335-0258

FNPLegals@gannett.com

Customer:

CITY OF CAPE CORAL_DEPT OF COM

Ad No .:

Net Amt:

Address:

1015 CULTURAL PARK BLVD

CAPE CORAL FL 33990 USA

Run Times: 1

No. of Affidavits:

Run Dates: 02/23/19

Text of Ad:

NOTICE OF PUBLIC HEARING

CASE NUMBER: VP18-0007

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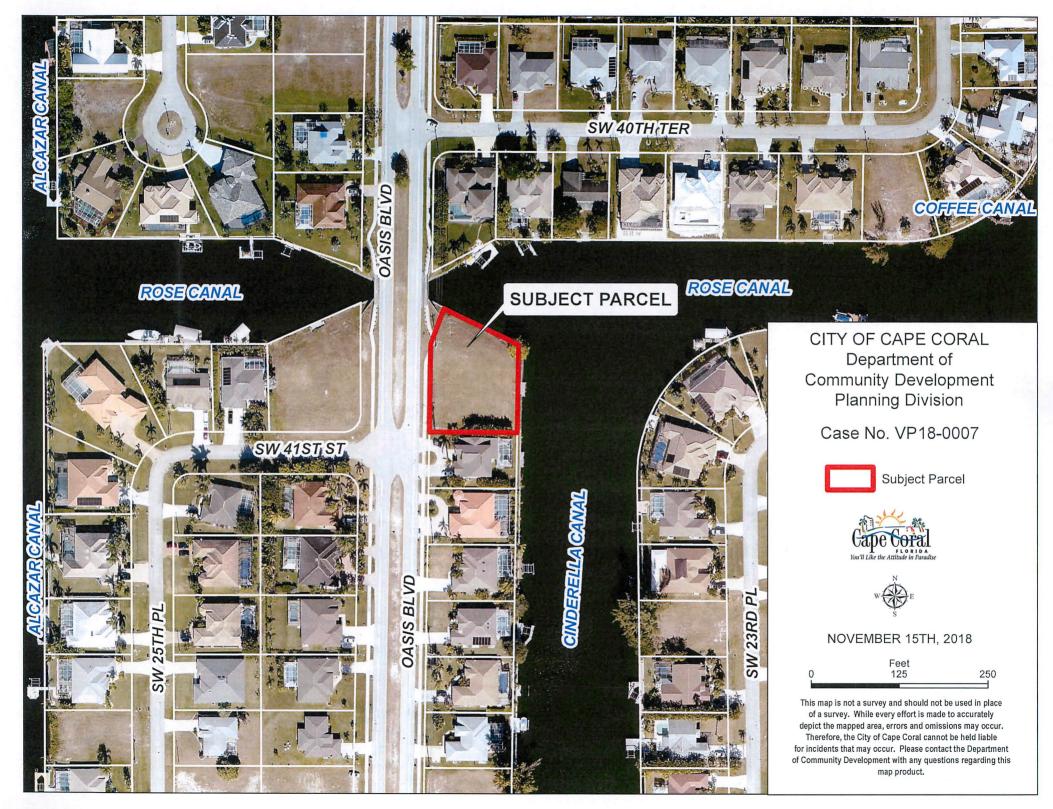
ADA PROVISIONS: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; in hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (V) for assistance.

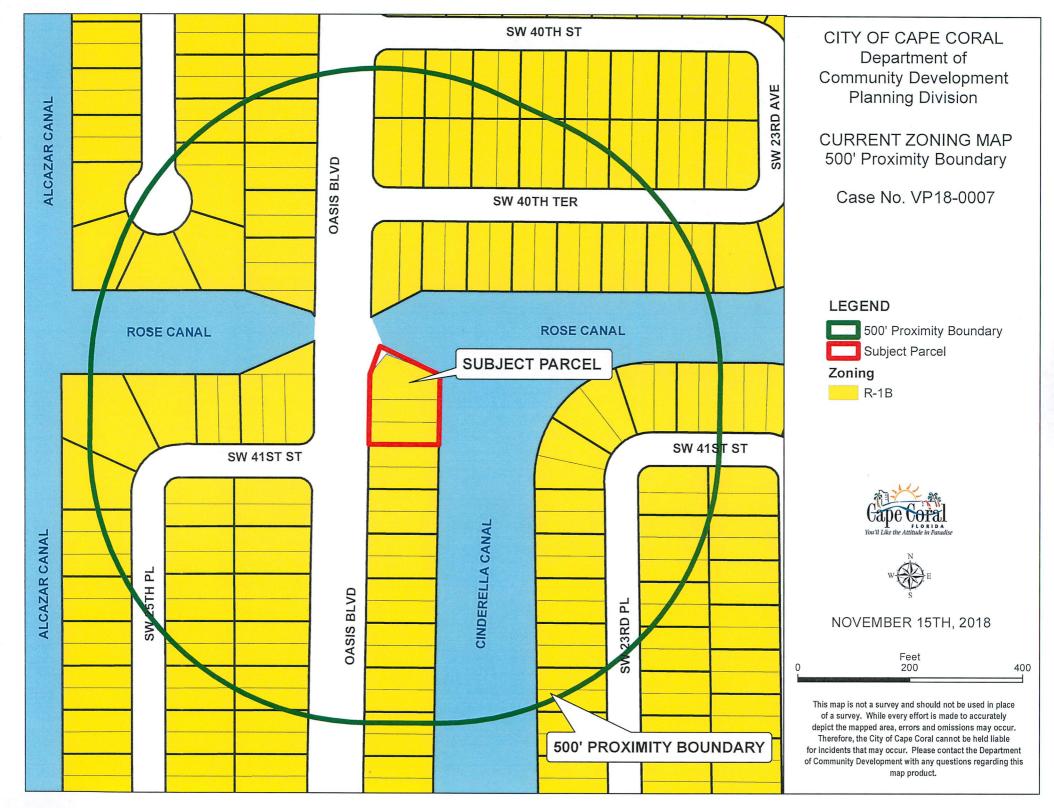
by order of Kimberly Bruns, CMC Interim City Clerk REF # VP18-0007 AD# 3404898 Feb. 23, 2019

Department of Community Development Planning Division

AFFIDAVIT

| IN RE: APPLICATION OF: FINKELSTEIN KEITH D & MACGUIDWIN ELIZABETH A |
|--|
| APPLICATION NO: VP18-0007 |
| STATE OF FLORIDA) |
| COUNTY OF LEE) § |
| I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following: |
| That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral. |
| That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A. |
| DATED this |
| STATE OF FLORIDA COUNTY OF LEE |
| The foregoing instrument was acknowledged before me this 26 day of, 2019 , by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath. |
| FRANK MORENO MY COMMISSION # GG070536 EXPIRES February 07, 2021 Exp. Date 47-21 Commission # 6 Go 7053 Signature of Notary Public Frank Moreno Print Name of Notary Public |





OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL HEARING EXAMINER RECOMMENDATION

VP HEX Recommendation 3-2019 Rendered March 5, 2019

DCD CASE # VP 18-0007

APPLICATION FOR:

Vacation of canal right-of-way and underlying easements and additional platted easements; release of ROW, public utility, drainage, and channel enlargement easement previous reserved by Ordinance 56-02.

NAME OF OWNERS/APPLICANTS: Keith D. Finkelstein and Elizabeth A. MacGuidwin

LOCATION OF PROPERTY: 4033 Oasis Boulevard, Cape Coral, FL 33914
Cape Coral Subdivision, Unit 74, Block 4944, Lots 21-23

ZONING DISTRICT: Single Family Residential (R-1B)

FUTURE LAND USE CLASSIFICATION: Single Family

HEARING DATE: March 5, 2019

SUMMARY OF REQUEST: Applicant requests:

- 1) Vacation of ±2,674.8 square feet of canal right-of-way (ROW) and all underlying easements.
- 2) Vacation of ±571.18 square feet of platted easements in Lot 23, Block 4944.
- 3) A release of ±2,674.8 square feet of ROW, public utility, drainage, and channel enlargement easements previously reserved by Ordinance 56-02.

SUMMARY OF HEARING EXAMINER RECOMMENDATION

The Hearing Examiner recommends that City Council **approve** the application for the requested vacations and release, subject to the conditions set forth below.

i. NOTICE OF HEARING

Based on the testimony of City Staff Michael Struve at the Hearing, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of Article VIII, §8.3, Public Hearings, of the City of Cape Coral Land Use and Development Regulations ("LUDRs").

II. PARTICIPANTS IN HEARING

COMMUNITY DEVELOPMENT CITY STAFF: Michael Struve, AICP and LEED Green Associate ¹

¹ Mr. Struve was recognized as an expert in land planning issues associated with this Application, based upon his prior appearances before the Hearing Examiner and his credentials which are on file with the City Clerk's Office.

PUBLIC WORKS CITY STAFF: Persides Zambrano, Public Works Permitting and Planning Manager

CITY CLERK'S OFFICE: Patricia Sorrels

APPLICANT'S REPRESENTATIVE: Keith D. Finkelstein

MEMBERS OF PUBLIC: None

TELEPHONE CALLS FROM PUBLIC: Staff testified that he received one telephone call for information from the public

III. EXHIBITS

APPLICANT'S AND CITY STAFF'S EXHIBITS: previously submitted.

IV. REVIEW OF LUDR REQUIREMENTS

<u>Authority.</u> The Hearing Examiner has the authority to recommend approval or denial of an application for a vacation of a plat and associated easements pursuant to LUDR §9.2.3 b.8.

Standard of Review of Evidence; Hearsay Evidence. The Hearing Examiner's recommendation is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LUDRs, upon review of the entirety of the record. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in court. In rendering this recommendation, the Hearing Examiner must consider all competent substantial evidence in the record as defined by LUDR § 8.3.1.C.3.b.

<u>LUDR Standards</u>. The Hearing Examiner reviewed the application in accordance with the standards set forth in LUDR § 8.11, *Vacation of plats, rights-of-way and other property*, in addition to the general standards set forth in the LUDRs and the City Comprehensive Plan.

V. TESTIMONY AT HEARING

Applicant's Incorporation of Staff Report and Staff Testimony

The Applicant's Representative incorporated the Staff Report and Staff Testimony ("Staff Input") into his presentation by reference. He requested the Hearing Examiner to recommend that City Council find the Staff Input as findings of fact, in addition to those separately presented by him.

Staff's Incorporation of Staff Report

Staff incorporated the Staff Report into his presentation by reference.

Hearing Examiner's Recommended Findings of Fact.

All documentary and oral testimony referenced below is accepted by the Hearing Examiner as recommended findings of fact, except as specifically noted otherwise. The Hearing Examiner recommends that the City Council accept such testimony as findings of fact to substantiate its decision regarding this Application.

VI. <u>DISCUSSION</u>

Site, Zoning Information and Surrounding Area

Staff testified that the applicant owns a three-lot platted site at 4033 Oasis Boulevard and that, except for a concrete dock on Lot 22, the site is undeveloped. The site is at the intersection of the Cinderella and Rose Canals.

The site has a Single Family Future Land Use Classification (FLUC) and Single Family Residential (R-1B) Zoning. All properties within 1,500 feet of the site share the same future land use and zoning classifications.

Staff testified that the plat for Unit 74 shows this site has water frontage along the Rose Canal to the north. However, land with a bridge abutment to the north of the site occupies platted canal ROW that extends along the north property line of Lot 23. A survey shows a concrete headwall extending about 30 linear feet eastward, beginning near the bridge, with a concrete seawall present along the rest of the water frontage line of the site.

In 2002 the City adopted Ordinance 56-02 that declared a triangular-shaped parcel of the Rose Canal as "unusable municipal surplus real property no longer needed by the City." This ordinance authorized the City to grant the owner (Joan Falcetta) of Lot 23 a quit-claim deed for 3,156 square feet of land to the north of her site.

The current owners, Keith D. Finkelstein and Elizabeth A. MacGuidwin, request to vacate ±2,674.8 square feet of the "quit-claim area" and underlying and adjacent easements to construct a single-family residence on the site. If granted by City Council, this vacation would allow the current owners to demonstrate ownership of this triangular piece of land abutting their site, consistent with Chapter 177 of the Florida Statutes.

Zoning History of Block 1904

The Future Land Use Designation of Lots 21-23 was amended from Single Family/Multi Family by PDP to Single Family by Ordinance 39-02 in 2002. The site has always had R-1B Zoning.

Reason for Application

Request No. 1: Vacate ±2,674.8 square feet of ROW Adjacent to the Rose Canal

Staff testified that the proposed vacation involves canal ROW directly to the north of Lot 23. Ordinance 56-02 identified 3,156 square feet of ROW as surplus property and authorized and directed the Mayor and City Clerk to effectuate a deed granting the surplus property to the owner of Lot 23. This area included both "dry" land, part of the Rose Canal, and the northeast corner of Lot 23 as originally platted (481.2 square feet) that is also occupied by the Rose Canal. The 2,674.8 square feet of ROW requested to be vacated by the applicants of VP18-0007 only includes "dry" land adjacent and north of Lot 23.

The Community Development Staff Report set forth that the City's Public Works would generally prefer to retain all ROW along bridge sites, as future street and bridge maintenance obligations and canal expansion needs are difficult to predict.

Public Works staff testified that they had worked closely with the Applicants and Community Development staff in developing the conditions (including proposed easements) set forth below, and that Public Works is supportive of this Applicant and the conditions proposed by Community Development staff.

Staff testified that Councill's approval of this vacation would: 1) demonstrate private ownership of the vacated area to lenders, title companies, and insurers; 2) prohibit public access to this ROW; and 3) convey land to the owners consistent with prior City Council action in adopting Ordinance 56-02.

Request No. 2: Vacate 2,674.8 square feet of Easements Underlying the Subject ROW

The applicant seeks to vacate 2,674.8 square feet of easements underlying the ROW described under Request No. 1. Staff testified that the City, Century Link, Comcast, and LCEC lack facitilies and/or utilities in these easements.

The applicant has offered to deed to the City 2,102.76 square feet of easements, which would allow the property owner to construct a new home on the site based on the owner's preferred design, while giving the City an easement over most of the original area. LCEC requires that a six-foot wide perimeter easement be provided around the expanded site for future utility installation and maintenance, which is addressed below in the conditions of approval.

Request No. 3: Release of 2,674.8 square feet Easements Underlying the Subject ROW

The applicant seeks a release of 2,674.8 square feet of ROW, public utility, drainage, and canal and bridge maintenance easements. These easements were reserved by the City for the quit-claim area in 2002 by Ordinance 52-06 in 2006. Since these easements were reserved by the City, these easements cannot be vacated but must be released by the City Council via subsequent Ordinance, if Council determines that is in the best interest of the City.

In evaluating this request, Planning staff testified that they have conferred with Public Works and Real Estate staff. Both staff members testified that the existing easements in the ROW retained by the City and new easements that will be deeded by the owner to the City will be adequate for future bridge access and maintenance purposes.

Request No. 4: Vacate 571.18 square feet of Easements along the North Property Line of Lot 23

The applicant seeks to vacate 571.18 square feet of platted easements along the north property line of Lot 23. Staff testified that the utility providers lack facilities in these easements and all three providers have no objection to this request. Staff further testified that the City also lacks facilities within this easement and that this platted easement would no longer be necessary, as the owner would be providing the City with six-foot wide replacement easement around the perimeter of the expanded site.

Recommendation that City Council Find That Applicant Has Complied with All Requirements for the Requested Vacations, as Set Forth in LUDR §8.11

1. Applicant has color of title (LUDR §8.11.3b.1)

Staff testified that Applicant owns the subject property and is, therefore, eligible to apply for the requested vacations.

- 2. A copy of the plat **has** been provided, showing the portions for which vacation is sought (LUDR §8.11.3b.2)
- 3. and 4. Letters of Approval from LCEC and Letters of No Objection from Century Link and Comcast (LUDR §8.11.3b.3 and LUDR §8.11.3b.4-6) are not necessary.

LCEC, Century Link, Comcast and Cape Coral all lack facilities in the right of way and easements which form the subject matter of this request. Accordingly, neither a letter of approval nor a letter of no objection is required from each of these providers.

Staff testified that Applicant's provision of a six-foot wide replacement easement around the expanded site will suffice for the City's purposes.

5. A copy of a recent boundary survey or survey sketch of the property prepared and executed by a registered surveyor, has been provided, showing the area requested to be vacated; providing complete metes and bounds legal descriptions of said areas, and showing all pavement and all utility and drainage facilities in said area, including water, sewer and cable lines, utility poles, swales, ditches, manholes and catch basins. Separate drawings and metes and bounds legal descriptions will be required for each proposed vacation area when the right-of-way and easement configurations differ. (LUDR §8.11.3b.7.B)

All of the required documents have been provided.

6. No Reasonably Foreseeable Public Use of the Vacated Area. (LUDR, §8.11.3 d)

It is recommended that, for the above reasons, the City Council finds there is no reasonably foreseeable public use for the requested vacations.

7. City's Retention of Easements for Utilities and/or Drainage in and Upon the Vacated Area. (LUDR, §8.11.3 d)

It is recommended that the City Council require the retention of a perimeter easement for utilities and/or drainage in and upon the vacated areas, as set forth in the conditions below. The owner has agreed to this perimeter easement.

Consistency with the Comprehensive Plan (LUDR §8.11)

Staff testified that the City does not have specific Comprehensive Plan policies for vacations involving residentially zoned sites.

It is recommended that the City Council find that the vacation requests are consistent with Policy 1.15 of the Future Land Use Element of the City's Comprehensive Plan which states:

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

a. <u>Single Family Residential.</u> Sites of 10,000 square feet and greater, with densities not to exceed 4.4 units per acre.

Staff testified that this request is consistent with Policy 1.15.a, as the subject site would have an estimated 18,779 square feet subsequent to the proposed ROW vacation and the property will have a maximum of one single-family home. This equates to a density of 2.32 dwelling units per acre, less than the maximum 4.4 dwelling units per acre allowed within this future land use classification.

Accordingly, it is recommended that City Council find that granting the requested vacations, as conditioned below, **is consistent** with the City Comprehensive Plan, Land Use Development Regulations, and all other applicable law.

VII. RECOMMENDED CONDITIONS OF APPROVAL

City staff testified regarding recommendations for conditions of approval, set forth below. Applicant's Representative testified that Applicant has no objection to these conditions.

The Hearing Examiner **recommends** that these conditions of approval be adopted as part of the City Council's approval of Applicant's request:

- <u>Vacation of ROW and Underlying Easements: Consistency with Exhibit.</u> The vacation of the 2,674.8 sq. ft. of ROW and underlying easements shall be consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Proposed Vacation of Any and All Underlying Easements A Portion of Rose Canal Right-of-Way" dated January 23, 2019.
- <u>Vacation of Additional Easements: Consistency with Exhibit.</u> The vacation of the 571.18 sq. ft. of easements lying in Lot 23, Block 4944 shall be consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Vacation of a Portion of Public Utility and Drainage Easement Lying in Lot 23, Block 4944, Cape Coral Unit 74", dated August 13, 2018.
- <u>Release by City.</u> All ROW, public utility, drainage, and canal and bridge maintenance easements shall be released by the City for the quit claim area described in Ordinance 56-02.
- Provision of Easement Deed For Bridge Maintenance, Public Utility and Drainage Purposes. Within 60 days from the date of adoption of this vacation, the owner shall provide to the City an easement deed for bridge maintenance, public utility, and drainage purposes consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Public Utility, Drainage and Bridge and Canal Maintenance Easement Lying in a Portion of Rose Canal Right-of-Way", dated January 23, 2019. This deed shall be approved by the City Property Broker prior to execution.

- Provision of Easement Deed for Public Utility and Drainage Purposes. Within 60 days from the date of adoption of this vacation, the owner shall provide to the City an easement deed for public utility and drainage purposes consistent with that shown in the sketch and accompanying legal description prepared by Phillip M. Mould entitled "Proposed Public Utility and Drainage Easement Lying in a Portion of Rose Canal Right-of-Way and Lot 23, Block 4944", dated January 23, 2019. This deed shall be approved by the City Property Broker prior to execution.
- <u>Recording of Resolution</u>. This resolution shall be recorded with the Office of the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the applicant provides the City with an easement deed as described in Condition #3 above, and reimburses the City for all recording fees associated with this resolution.
- <u>Compliance with Zoning District Standards and Requirements and Inclusion of LUDRs, City Ordinances and Other Applicable Law.</u> Applicant shall comply with all standards and requirements for the zoning district in which the property is located and all other requirements set forth in the LUDRs, City ordinances and all other applicable laws and regulations, which are incorporated herein by reference.

VIII. **EXHIBITS**

The following Exhibits are attached to this Recommendation and are hereby incorporated by reference:

- Exhibit "A": Sketch and accompanying legal description prepared by Phillip M. Mould entitled "Proposed Vacation of Any and All Underlying Easements – A Portion of Rose Canal Right-of-Way" dated January 23, 2019.
- Exhibit "B": Sketch and accompanying legal description prepare by Phillip M. Mould entitled "Vacation of a Portion of Public Utility and Drainage Easement Lying in Lot 23, Block 4944, Cape Coral Unit 74," dated August 13, 2018.
- Exhibit "C": Sketch and accompanying legal description prepare by Phillip M. Mould entitled "Public Utility, Drainage and Bridge and Canal Maintenance Easement Lying in a Portion of Rose Canal Right-of-Way," dated January 23, 2019.
- Exhibit "D": Sketch and accompanying legal description prepare by Phillip M. Mould entitled "Proposed Public Utility and Drainage Easement Lying in a Portion of Rose Canal Right-of-Way and Lot 23, Block 4944", dated January 23, 2019.

VP HEX RECOMMENDATION 3-2019 March 5, 2019

The Hearing Examiner herewith **RECOMMENDS APPROVAL** of the request for the above-referenced Vacations filed by Applicant, **WITH THE CONDITIONS** set forth above.

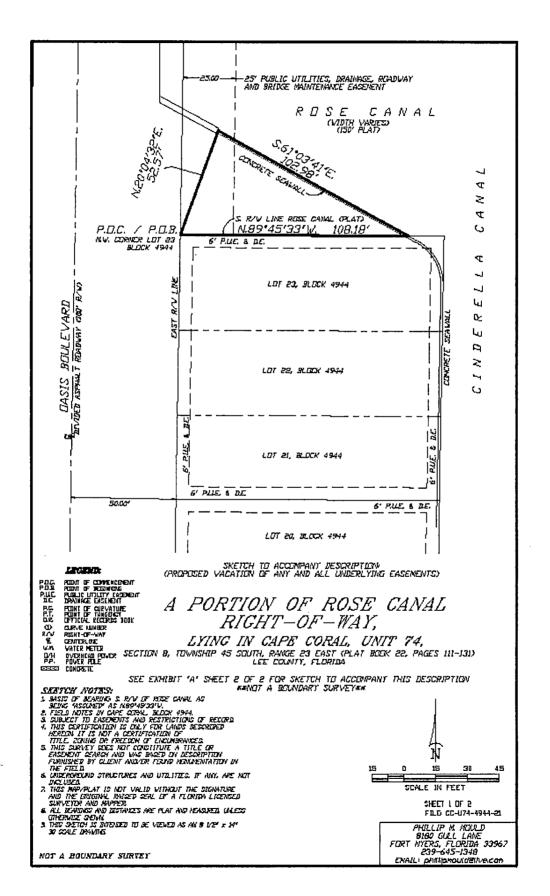
This Recommendation takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA

ANNE DALTON, ESQUIRE

DATE

ATTEST:



VP18-0007 Exhibit ______ of ______

EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH
(PROPOSED VACATION OF ANY AND ALL UNDERLYING EASEMENTS)

A PORTION OF ROSE CANAL RIGHT-OF-WAY.

LYING IN CAPE CORAL, UNIT 74,

SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-131) LEE COUNTY, FLORIDA

SEE SHEET 1 DF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION ##NOT A BOUNDARY SURVEY###

DESCRIPTION:

A PORTION OF ROSE CANAL RIGHT-DF-WAY, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MORTHWEST CORNER OF LOT 29, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF CASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING, THENCE RUN N.20'04'32'E. TO A POINT ALONG WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 52.57 FEET) THENCE RUN S.61'03'41'E. ALONG SAID FACE OF SEAWALL TO A POINT ALONG THE NORTH LINE SAID LOT 23, BLOCK 4944 FOR 102.98 FEET, THENCE RUN N.89'45'33'W. TO THE NORTHWEST CORNER OF SAID LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF THE AFORESAID DASIS BOULEVARD (100 FEET WIDE FOR 108.18 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,674.8 SQ. FT, MORE OR LESS.

PHILLIP N. MOULD

PROFESSIONAL SURVEYOR AND MAPPER

#6515 - STATE OF FLORIDA

1/23/2019

SHEET 2 OF 2 FILE: CC-1/74-4944-21

> PHILLIP M. MOULD 8180 GULL LANE FORT MYERS, FLORIDA 33967 239-645-1348 EMAIL: philipmould@live.com

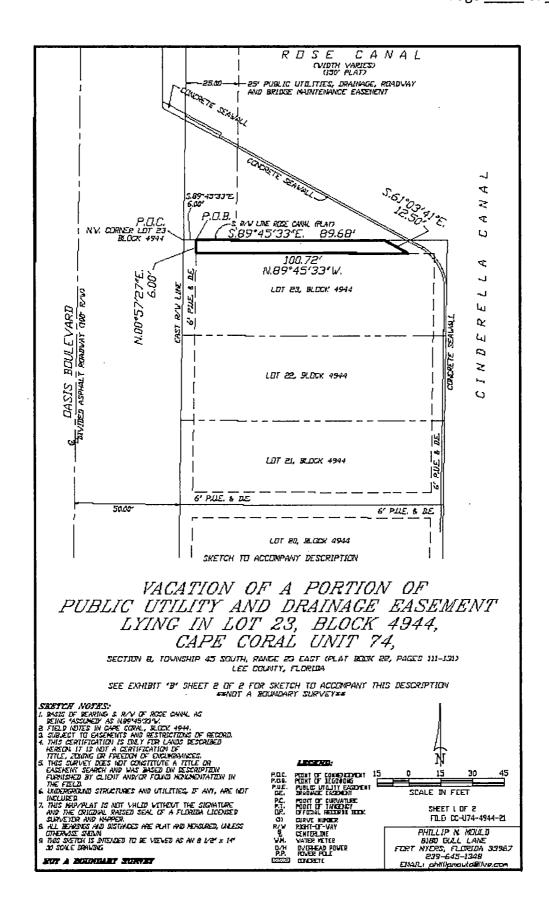


EXHIBIT "B"

DESCRIPTION TO ACCOMPANY SKETCH

VACATION OF A PORTION OF PUBLIC UTILITY AND DRAINAGE EASEMENT LYING IN LOT 23, BLOCK 4944, CAPE CORAL UNIT 74.

SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-13D)
LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION WENGT A BOUNDARY SURVEYOR

DESCRIPTION:

DESCRIPTION

OPENPOSED) VACATION OF A PORTION OF PUBLIC UTILITY AND

DRAINAGE EASEMENT LYING IN LOT 23, BLOCK 4944, CAPE

CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES

111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45

SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE

PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-DF-VAY LINE OF DASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA THENCE RUN C.89°45′33°E. ALONG THE NORTH LINE OF SAID LOT 23, BLOCK 4944 FOR 6.00 FEET TO THE POINT OF BEGINNING, THENCE RUN C.89°45′33°E. ALONG THE NORTH LINE SAID LOT 23 FOR 89.68 FEET, THENCE RUN S.61°03′41°E. FOR 12.50 FEET, THENCE RUN N.89°45′39°U. PARALLEL WITH AND 6 FEET SOUTH OF AS NEASURED ON A PERPENDICULAR FOR 100.72 FEET, THENCE RUN N.00°57′27°E. FOR 6.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 57118 SQ. FT, MORE DR LESS.

PHILLIP M. MOULD

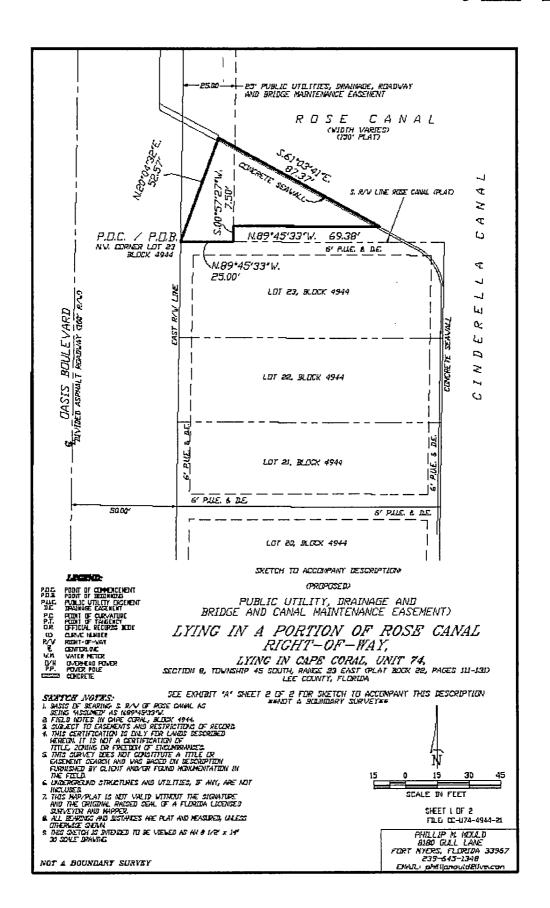
PROFESSIONAL SURVEYOR AND MAPPER

#6515 - STATE OF FLORIDA

8/13/18

SHEET 2 OF 2 FILD CC-U72-3008-1

> PHILLIP M. MOULD 8180 GULL LANE FORT MYERS, FLORIDA 33967 239-645-1348 EMAIL: phillipmould@live.com



VP18-0007 Exhibit C Page 2 of 2

EXHIBIT TX

DESCRIPTION TO ACCOMPANY SKETCH

PUBLIC UTILITY, DRAINAGE AND BRIDGE AND CANAL MAINTENANCE EASEMENT)

LYING IN A PORTION OF ROSE CANAL RIGHT-OF-WAY,

LYTING IN CAPE CORAL, UNIT 74, SECTION 8, TOWNSHIP 45 SOUTH, RAINSE 29 EAST (PLAT BOOK 22, PAGES 111–131) LEE COUNTY, FLORIDA

SEE SHEET I DE 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

DESCRIPTION:

A PORTION OF ROSE CANAL RIGHT-OF-WAY, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES III-I3I (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE OF DASIS BOULEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES III-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING, THENCE RUN NASO 4432'E. TO A POINT ALONG WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 52.57 FEET, THENCE RUN S.61°03'41'E. ALONG SAID FACE OF SEAWALL FOR 87.37 FEET, THENCE RUN M.89'45'33'W. FOR 69.38 FEET, THENCE RUN S.00°57'27'W. TO A POINT ALONG THE NORTH LINE OF SAID LOT 23, BLOCK 4944 FOR 7.50 FEET, THENCE RUN NASO 45'33'W. TO A POINT ALONG THE AFORESAID EAST RIGHT-OF-WAY LINE OF BASIS BOULEVARD (100 FEET WIDE) AND THE SAID NORTHWEST CORNER OF LOT 23, BLOCK 4944 FOR 25.00 FEET TO THE PODN'T OF BEGINNING.

CONTAINING 2,102.75 SQ. FT, MORE OR LESS.

PHILLIP M. MOULD

PROFESSIONAL SURVEYOR AND MAPPER

#6515 - STATE OF FLORIDA

1/23/2019

SHEET 2 OF 2 FILE: CC-U74-4944-21

> PHILLIP M. MOULD 8180 GULL LANE FORT MYERS, FLORIDA 33967 239-645-1348 EMAIL: phillipmould@live.com

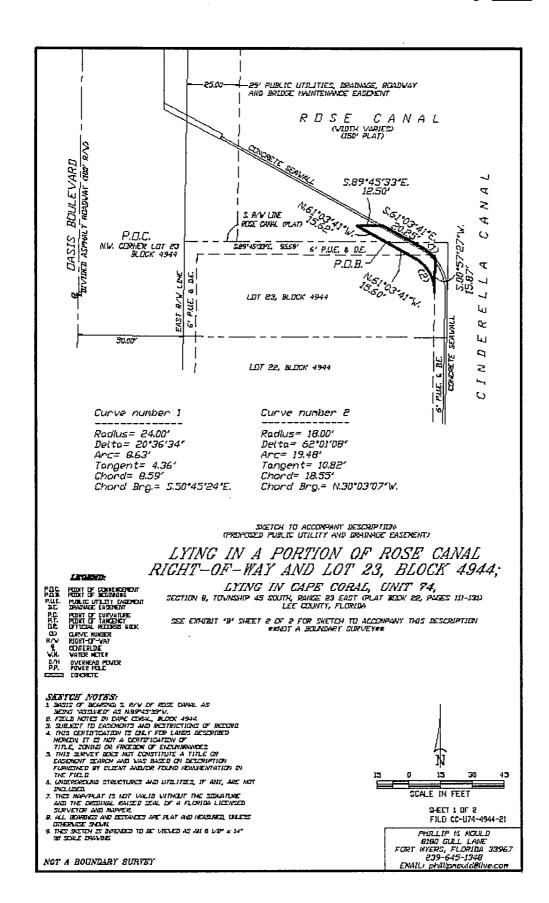


EXHIBIT "B"

DESCRIPTION TO ACCOMPANY SKETCH GREPOSED PUBLIC UTILITY AND DRAINAGE EASEMENT)

LYING IN A PORTION OF ROSE CANAL RIGHT-OF-WAY AND LOT 23, BLOCK 4944;

LYING IN CAPE CORAL, UNIT 74,

SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST (PLAT BOOK 22, PAGES 111-131) LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION MANUT A BOUNDARY SURVEYAN

DESCRIPTION

A PORTION OF ROSE CAMAL RIGHT-OF-WAY AND A PORTION OF LOT 23, BLOCK 4944, LYING IN CAPE CORAL, UNIT 74, AS RECORDED IN PLAT BOOK 22, PAGES 111-131 (INCLUSIVE), SITUATE IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE NORTHWEST CORNER OF LOT 23, BLOCK 4944 AND THE EAST RIGHT-OF-WAY LINE IN BASIS BOOLEVARD (100 FEET WIDE), CAPE CORAL UNIT 74, AS RECORDED IN PLAT BOOK 22, AT PAGES 111-131 (INCLUSIVE), PUBLIC RECORDS OF LEE COUNTY, FLORIBAT THENCE RUN S.89°45'33'E. ALONG THE NORTH LINE SAID LOT 23, BLOCK 4944 FOR 95.68 FEET TO THE POINT OF BEGINNING, THENCE RUN M.61'03'41'W. FOR 15.62 FEET, THENCE RUN S.89°45'33'E. TO A POINT ALONG THE WATERS EDGE OF FACE OF A CONCRETE SEAWALL FOR 12.50 FEET, THENCE RUN S.61'03'41'E. ALONG SAID WATERS EDGE FACE TO A POINT OF CURVATURE FOR 20.25 FEET, THENCE RUN BLONG THE ARC OF A CONCRETE SEAWALL FOR B.63 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 24.00 FEET, A CENTRAL DELTA ANGLE OF 20'36'34, A CHORD THAT BEARS S.50'45'24' AND A CHORD DISTANCE OF 8.59 FEET, THENCE RUN BLONG THE ARC OF A CURVE TO THE SOUTHWEST FOR 15.48 FEET, THENCE RUN ALONG THE ARC OF A CURCAVE TO THE SOUTHWEST FOR 15.48 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 15.60 FEET, A CENTRAL DELTA ANGLE OF 62'01'09', A CHORD THAT BEARS N.30'03'07'W AND A CHORD DISTANCE OF 62'01'09', A CHORD THAT BEARS N.30'03'07'W AND A CHORD DISTANCE OF 62'01'09', A CHORD THAT BEARS N.30'03'07'W AND A CHORD DISTANCE OF 62'01'09', A CHORD THAT BEARS N.30'03'07'W AND A CHORD DISTANCE OF 5AID JLOT THENCE RUN N.61"03"41"W. TO A POINT ALLING THE NORTH LINE OF SAID JLOT 23, BLOCK 4944 FOR 15.60 FEET TO THE POINT OF BEGINNING.

CONTAINING 225.5 SQ. FT, MORE OR LESS.

PHILLIP M. MOULD

PROFESSIONAL SURVEYOR AND MAPPER

#6515 - STATE OF FLORIDA

1/23/2019

SHEET 2 OF 2 FILD CC-U74-4944-21

> PHILLIP M. MOULD 8180 GULL LANE FORT MYERS, FLORIDA 33967 239-645-1348

EMAIL: phillipmould@live.com

Planning Division City of Cape Coral

ORDINANCE 28-19 VP 18-0007

Cape Coral City Council Meeting
Final Public Hearing

June 10, 2019

VP 18-0007

Applicants: Keith Finkelstein and Elizabeth MacGuidwin

Requests: Vacate 2,674.8 sq. ft. of canal ROW and

underlying easements.

Vacate 571.18 sq. ft. of platted easements in Lot

23, Block 4944.

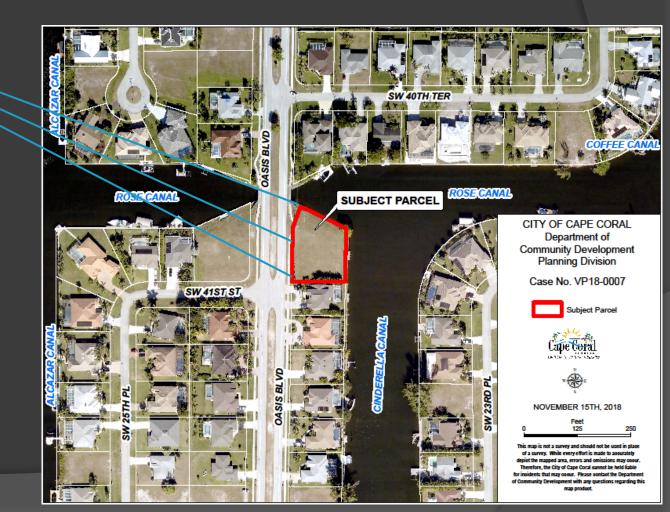
Release of 2,674.8 sq. ft. of easements reserved

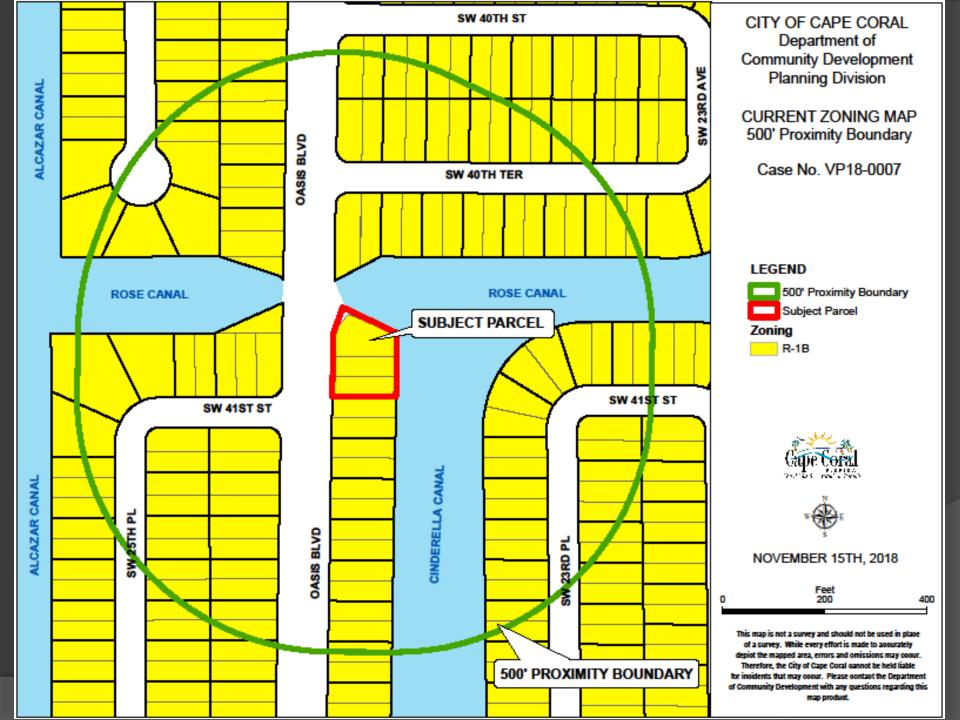
by ORD 56-02.

Location: 4033 Oasis Boulevard



VP18-0007





Background

The site is Lots 21-23, Block 4944, and is undeveloped.

 In 2002 the City declared a 3,156 sq. ft. triangular ROW as unusable municipal surplus "property" (ORD 56-02).

City granted a quit claim deed.

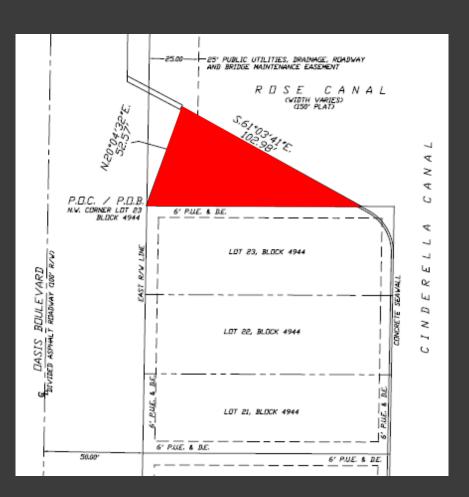
 Applicant requests include vacating most of the ROW and easements of the "quit claim" area.

Aerial of Site



Source: Lee County Property Appraiser, September 19, 2017 image.

Analysis (LUDR, Section 8.11) Request to Vacate ROW of "Quit Claim" Area

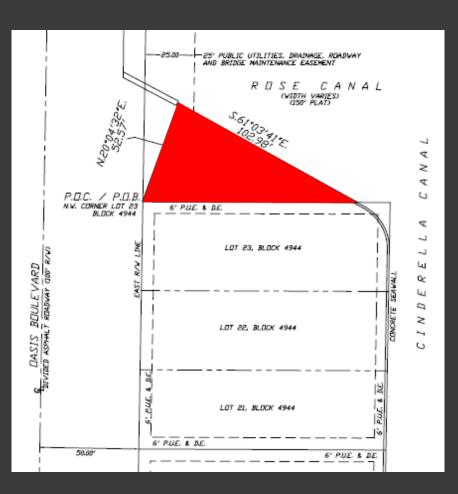


Area is 2,674.8 sq. ft.

 The applicant owns Lot 23 that abuts the ROW.

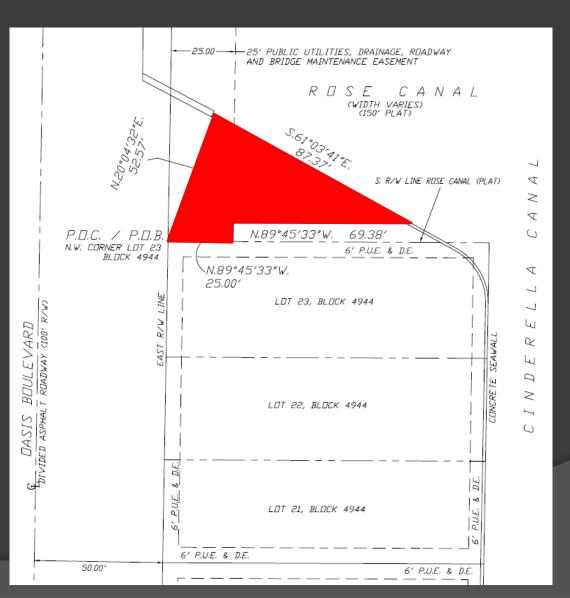
 The vacation will allow the owners to demonstrate ownership of the area.

Request to Vacate Underlying Easements of the "Quit Claim" Area

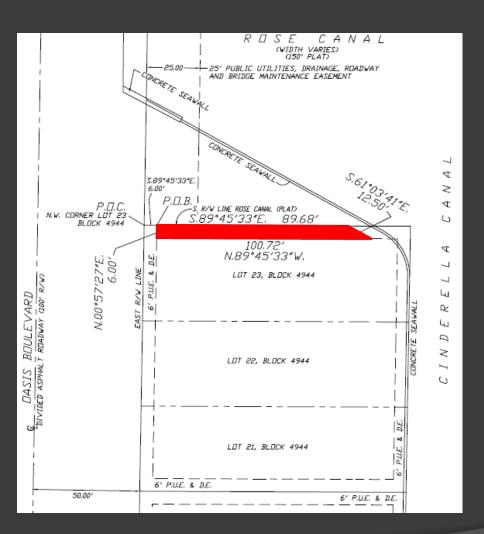


- Area is 2,674.8 sq. ft.
- The City lacks infrastructure in the easements.
- LCEC powerlines east of Oasis will be protected by easements.
- New easements for utility, drainage, & bridge maintenance will be provided.

Easements to be Deeded to the City from the Owners

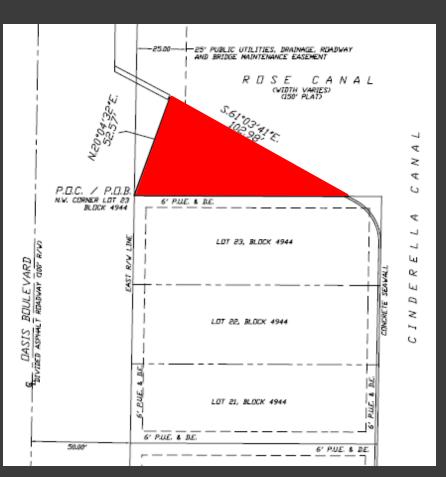


Request to Vacate Platted Easements Along the North Property Line of Lot 23



- The area is 571.18 sq. ft.
- The City and utility providers lack infrastructure in this easement.
- The owners will provide a replacement easement around the site.

Request to Release Easements Associated with the "Quit Claim" Area



- Area is 2,674.8 sq. ft.
- The City reserved ROW and utility easements in Ordinance 56-02.
- Easements reserved by ORD 56-02 not needed as new easements will be granted for most of the area.

Recommendations

<u>Planning Division</u> Staff recommends approval.

Hearing Examiner

A public hearing was held on March 5, 2019. The Hearing Examiner recommends approval with staff conditions. No speakers at public input.

Correspondence

One phone call – additional informational sought.

Item

B.(8)

Number:

Meeting

5/13/2019

Date:

Item

ORDINANCES/RESOLUTIONS -

Type:

Introductions

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Ordinance 30-19 Set Public Hearing Date for June 3, 2019

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:

An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 12 1/2, "Parks and Recreation," Article I, "Regulations," Section 12 1/2-2, "Definitions," and Section 12 1/2-4, "Rules and Regulations," to regulate commercial activity in City parks.

LEGAL REVIEW:

John E. Naclerio III, Assistant City Attorney

EXHIBITS:

Memo

Ordinance 30-19

PREPARED BY:

Division-Department-

SOURCE OF ADDITIONAL INFORMATION:

Kerry Runyon, Parks and Recreation Director

ATTACHMENTS:

Description Type

□ Ordinance 30-19

Backup Material Ordinance

MEMORANDUM

CITY OF CAPE CORAL CITY MANAGER'S OFFICE

TO:

John Szerlag, City Manager

FROM:

Connie Barron, Assistant City Manger

Kerry Runyon, Parks and Recreation Director

DATE:

May 7, 2019

SUBJECT: Commercial Activity in City Parks

BACKGROUND:

Recent events within specific City parks has identified a lack of regulatory authority granted to the City and its staff members to regulate commercial activity within city parks. Presently, individuals or businesses alike may conduct commercial activity and sell, rent, or barter any article, item, service, tangible or intangible. While not an exhaustive list, these items include food, beverages, sports equipment, boats or other watercraft, beach furniture and even an admission charge for entertainment or amusement. The lack of regulation of commercial activity is not conducive to the safe and efficient operation of the parks and best practices.

RECOMMENDATION:

City staff, in conjunction with the City Attorney's Office, has prepared an amendment to §12½-4 (3) of the Code of Ordinances which defines the term "Commercial Activity" and prohibits such activity without a permit, contract or approval from the City.

City staff recommends approval of the amendment.

ORDINANCE 30 - 19

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 12½, "PARKS AND RECREATION", ARTICLE I, "REGULATIONS", SECTION 12½-2, "DEFINITIONS", AND SECTION 12½-4, "RULES AND REGULATIONS" TO REGULATE COMMERCIAL ACTIVITY IN CITY PARKS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the 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 12½, Article I, Section 12½-2, is hereby amended to read as follows:

$\S 12\frac{1}{2}$ Definitions.

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall respectively mean the following.

ALCOHOLIC BEVERAGE. For purposes of this chapter, as the term is defined in the Florida Statutes, as same may hereafter be revised.

CITY. The City of Cape Coral, a municipal corporation, Cape Coral, Lee County, Florida.

COMMERCIAL ACTIVITY. The sale, rental, trade, barter, or offer for sale, rental, trade, or barter to the general public of any article, item, service, or thing, tangible or intangible, including, but not limited to, food or beverages, boats or watercraft, sports equipment, or beach furniture; the charging of admission fees for any activity; or the charging of fees for any service, entertainment, or amusement.

CONTROLLED SUBSTANCE. For purposes of this chapter, as the term is defined in the Florida Statutes, as same may hereafter be revised.

COUNCIL. The City Council of Cape Coral, a municipal corporation, Cape Coral, Lee County, Florida.

SECTION 2. The City of Cape Coral Code of Ordinances, Chapter 12½, Article I, Section 12½-4, is hereby amended to read as follows:

§ 12½-4 Rules and regulations.

(g) Disorderly conduct.

(3) Sale of merchandise/solicitation and commercial activity. No person shall sell or offer for sale any article, thing, privilege, or service within the park without a permit, contract, or approval from the city. No person shall do any hawking, peddling, or solicitation; buy or offer to buy any article of merchandise; take up any collection; or solicit or receive contributions of money or articles of value in any city park, except when authorized by permit, approval, or under contract with the city. No person shall conduct any commercial activity or utilize any park in a manner that will result in commercial activity, whether land-based or from the water, without a permit, contract, or approval from the City.

. . .

SECTION 3. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect. SECTION 4. Effective Date. This ordinance shall become effective immediately 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 _______, 2019. JOE COVIELLO, MAYOR VOTE OF MAYOR AND COUNCILMEMBERS: COVIELLO NELSON **GUNTER** STOKES CARIOSCIA WILLIAMS STOUT COSDEN ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF ____ KIMBERLY BRUNS CITY CLERK APPROVED AS TO FORM:

JOHN E. NACLERIO III

ASSISTANT CITY ATTORNEY

Ord/Parks-CommActivity

4/23/19

Item

10.A.

Number:

Meeting

5/13/2019

Date:

UNFINISHED

Item Type:

BUSINESS

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Water Quality - Update

REQUESTED ACTION:

STRATEGIC PLAN INFO:

- 1. Will this action result in a Budget Amendment?
- 2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below.

If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

Water Quality Memo

PREPARED BY:

Division-Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description Type

Water Quality Memo **Backup Material**

MEMORANDUM

CITY OF CAPE CORAL PUBLIC WORKS DEPARTMENT

TO:

John Szerlag, City Manager

FROM:

Paul Clinghan, Public Works Director PRG

Michael Ilczyszyn, Senior Public Works Manager

Maya Robert, Environmental Resources Manager MR

DATE:

May 10, 2019

SUBJECT: Lake Okeechobee Level and Release Information

As of Friday, May 10, 2019, the elevation of Lake Okeechobee was 11.25 ft. The outflows measured at the Franklin Lock & Dam (S-79) were 301 cfs and. Following the new pulse release schedule initiated last week by the US Army Corps of Engineers, salinity has been rising steadily at the Fort Myers Yacht Basin.

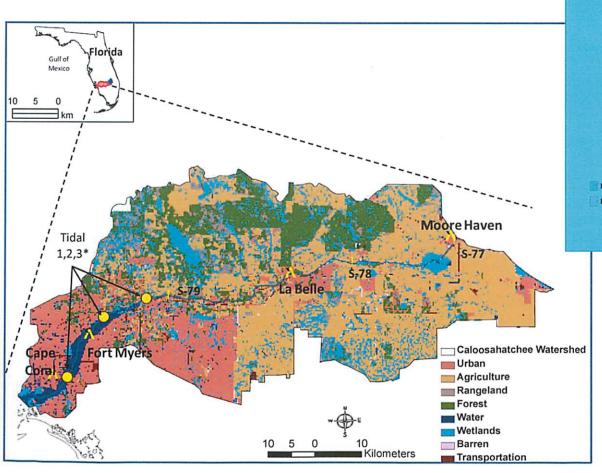
Blue Green Algae is still present in Lake Okeechobee and along the Caloosahatchee; however, the most recent water samples did not contain toxins.

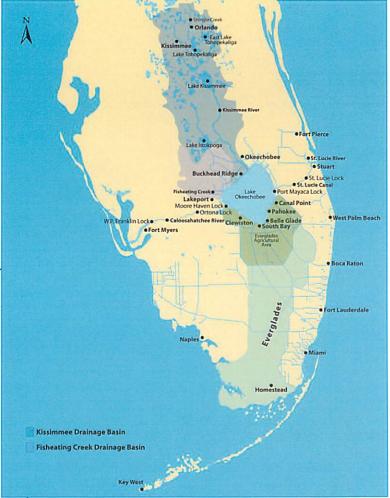
Some tidally influenced, saltwater canals of Cape Coral still see some harmless filamentous algae clumps rising to the surface. Some freshwater canal systems are experiencing buildups of submerged aquatic vegetation that die and rise to the surface. This is a seasonal and natural phenomenon; the material will sink. City staff reminds residents that per the City Fertilizer Ordinance, there should be no fertilizer applied during the rainy season, between June 1 and September 30 as they may exacerbate water quality issues in our canals. Residents concerned about water quality are highly encouraged to get in touch with the City via 311. Biologists will get in touch with them within 24 hours.

Red Tide remains below background concentration in Lee County.

Attached is a map showing drainage basins of the Lake Okeechobee and the current Lake's inflows and outflows from the USACOE.

PC/MI:mr (Weekly Lake Okeechobee Level and Release Information) Attachments; Lake Okeechobee drainage basins, USACOE inflows and outflows report







Daily averages for 10 May 2019

Lake Okeechobee stage: 11.25 ft
Previous day: 11.25 ft
One week ago: 11.17 ft
(1965-2007 avg for today): 13.41 ft

Total Structure/Creek Inflows: 1286 cfs Total Structure Outflow: 0 cfs

| Area | Stages (hover for notes) | Schedule |
|--------|---|----------|
| WCA-1 | Site 1-8C: 16.06 ft 3-Station: 16.12 ft | 15.78 ft |
| WCA-2A | Site 2-17: 11.79 ft S-11B HW: 10.94 ft | 11.00 ft |
| WCA-3A | 9.36 ft | 9.64 ft |



Water Management Main Page
Status Update Archives
Elevations are ft-NGVD.
Flows are average daily CFS.
Data is provisional and subject to revision.
Report generated: 10 MAY 2019 @ 08:35



Item Number: 11.A.

Meeting Date: 5/13/2019

Item Type: NEW BUSINESS

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 87-19 Amend City Council Rules of Procedure - Brought forward by Councilmember Cosden

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:

City Council has established Council Agenda Rules of Procedure that set forth certain items concerning the preparation of the agenda for Council meetings, and the procedures for running the Council meetings. At this time, the Rules of Procedure are proposed to be amended to clarify the setting of the schedule for the different Council meetings and the timing of submission of items for an agenda. The Rules of Procedure currently do not provide for Council attendance remotely. This resolution proposes a procedure and provisions to allow attendance remotely. Finally, the resolution provides that Council Member Reports pertain to or be related to City business.

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|------|-----|----------------|-------|---|----|----------|
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| , | | `- | • | | •• | |

Resolution 87-19

PREPARED BY:

bscheuer Division- Department-Attorney

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description Type

RESOLUTION 87 - 19

A RESOLUTION OF THE CITY OF CAPE CORAL, AMENDING RESOLUTION 3-01, AS AMENDED, WHICH ADOPTED RULES OF PROCEDURE FOR THE CITY COUNCIL AGENDAS AND MEETING, TO PROVIDE CLARIFICATION IN THE SCHEDULING OF VARIOUS ITEMS, AND TYPES OF MEETINGS; TO PROVIDE FOR ATTENDANCE AT MEETINGS REMOTELY BY ELECTRONIC MEANS; AND TO ESTABLISH GUIDELINES FOR COUNCIL REPORTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, City Council adopts a yearly calendar of regular meetings and occasionally finds it necessary to schedule additional meetings; and

WHEREAS, City Council desires to clarify the difference between a special meeting and the addition of a regular meeting not on the yearly calendar; and

WHEREAS, City Council also desires to be notified within a reasonable time of items that are added to an agenda after the packets have been distributed for the meeting; and

WHEREAS, City Council desires to provide an option to attend meetings remotely by electronic means for good cause; and

WHEREAS, City Council provides reports of their activities at each Council meeting; and

WHEREAS, City Council desires to define the purpose of their reports and the types of items to be covered at that time.

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

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

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

| ADOPTED BY THE CITY CO COUNCIL SESSION THIS | | CAPE CORAL AT ITS REGULAR , 2019. |
|--|------------------|--------------------------------------|
| | IOE CO | OVIELLO, MAYOR |
| VOTE OF MAYOR AND COU | NCILMEMBERS: | |
| COVIELLO GUNTER CARIOSCIA | NELSO STOKE | ES |
| STOUT | COSDI | |
| ATTESTED TO AND FILED I 2019. | N MY OFFICE THIS | DAY OF, |
| | | ERLY BRUNS IM CITY CLERK |

APPROVED AS TO FORM:

DOLORES D. MENENDEZ CITY ATTORNEY

years D. Mane

res/Council Rules-Scheduling

4/23/19

COUNCIL AGENDA RULES OF PROCEDURE

A. MEETINGS HELD; TIMES AND DATES

City Council holds meetings to accomplish the business of the City. Depending on the type of business to be conducted or timeliness of the business, meetings can be in the form of Regular meetings, Special meetings, or Committee of the Whole meetings, or Special meetings. Each year, City Council shall approve a schedule of Regular meetings and Committee of the Whole meetings for the year. The schedule may be adjusted throughout the year by adding, deleting, or rescheduling Regular meetings and Committee of the Whole meetings upon the vote of City Council. Special meetings may be called for governmental efficiency, as set forth below.

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

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

Upon the setting of its regular meeting schedule for the year, City Council shall vote to adopt the schedule; however, additional meetings or special meetings may be called at any time upon vote of Council as provided herein. Additional regular meetings may be scheduled throughout the year when there is a need to schedule additional agenda items, or scheduled regular meetings may be rescheduled, upon vote of Council.

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

Special meetings are voting meetings called when matters are not scheduled on a regular meeting due to time constraints or urgency and importance of the matter. The Mayor or any four members of Council may call special meetings, whenever practicable, upon at least a twelve_hour notice. When calling a special meeting, the subject matter for which the meeting is called shall be clearly defined.

The agenda shall be limited to only the subject matter for which the special meeting was called, and City Council shall not discuss any matter which does not appear on the agenda for the special meeting.

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

B. AGENDA PREPARATION AND AGENDA

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

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

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

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

Items may occasionally be placed on the agenda after the deadlines stated above provided there is a clear necessity for the item to be heard by Council at that meeting. In the event an item must be put on an agenda after the agenda has been published, causing an addendum to the agenda to be published, City Council must be notified by the Clerk at the time the request is made that the item will be forthcoming. Except in extraordinary circumstances, any item that City Council has not been notified of by noon on the Friday before the meeting day shall not be placed on the agenda absent good cause shown. Any item placed on the agenda after the deadline may be subject to a Council vote to remove the item from the agenda.

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

Monday, 3:00 pm (week prior to COW meeting) – submitted to City Manager Tuesday, 3:00 pm (week prior to COW meeting) – all packet materials submitted to City Clerk

Tuesday, 4:00 pm (week prior to COW meeting) – agenda provided to Mayor for approval Wednesday, 3:00 pm (week prior to COW meeting) – packets distributed/published

Thursday, 4:00 p.m. (prior to COW meeting - packets published

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

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

C. COUNCIL ATTENDANCE/ABSENCES

- (1) A Council member who for good cause cannot appear in person at a meeting may appear remotely by electronic means, providing that:
 - (a) There is a quorum physically present at the meeting location;
 - (b) There is good cause for why the member cannot attend in person;
 - (c) The member has provided notification to the City Council and City Clerk of his or her inability to attend in person and desire to attend electronically, at least two business days prior to the meeting, unless there is an exigent circumstance that prevents earlier notification; and
 - (4) When participating by remote electronic means, the member is visible and audible, or at least audible, to and from the members present at the meeting and the audience. In such case, the member has the same participation rights and voting privileges as though physically present.

"Good cause" means that the member cannot attend in person due to illness, personal or family matter, absence from the area, unavoidable scheduling conflict, or other good reason.

When appearing remotely the member is by law deemed to be present for all purposes and has all participation rights and voting privileges as if physically present.

Pursuant to Section 4.11 of the Charter, any member who has three consecutive, unexcused absences from regular meetings will be removed from office. Absences are presumed excused, and are unexcused only by a motion to hold the absence unexcused and a majority vote in favor of that motion. Such motion and vote must occur no later than the next regularly scheduled Council meeting after the date absent.

$\in \underline{\mathbf{D}}$. PRESIDING OFFICER

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

₽ E. INVOCATION/INSPIRATIONAL MESSAGE, OR MOMENT OF SILENCE

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

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

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

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

E F. ROLL CALL; QUORUM

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

F G. ORGANIZATIONAL MEETING OF COUNCIL

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

GH. ORDER OF BUSINESS

After the roll call, the first order of business shall be a vote on the adoption of the agenda for the meeting. Matters not listed on the agenda may be added to the agenda by a majority vote of all members of the Council prior to the adoption of the agenda for the meeting and not at any other time during the meeting.

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

HI. MOTION AND RESOLUTION

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

I. ORDER AND DIVISION OF A QUESTION

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

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

JK. THE PREVIOUS QUESTION

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

K.L. MOTION TO BE GERMANE

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

LM. MOTION FOR RECONSIDERATION

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

M N. PRECEDENCE OF MOTIONS

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

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

The motions shall have precedence in the order listed.

NO. MOTION TO ADJOURN

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

OP. DEBATE AND DECORUM

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

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

₽ Q. COUNCIL COMMITTEES

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

QR. PUBLIC COMMENT OPPORTUNITIES

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

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

Citizens may submit in writing a specific request to Council to be heard at a Council regular meeting under Petitions to Council. Citizens who submit petitions to Council pursuant to Section B. shall be allowed a maximum of ten (10) minutes per petition, and the speaker shall be limited to the particular subject stated.

- (b) Public Comment on Consent Agenda. Prior to Council addressing items on the Consent Agenda, citizens may address Council only on items listed on the Consent Agenda. Public comment shall be limited to a maximum of three (3) minutes per individual, with a maximum of sixty (60) minutes total, unless time is extended as described in subsection Q(3) below.
- (c) Citizen's Input Time.
 - (i) Time is set aside for any citizen to address the City Council on matters within Council jurisdiction during Citizens' Input Time. No prior scheduling is necessary.

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

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

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

₹ S. ADVISORY COMMITTEES, BOARDS AND COMMISSIONS

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

§ T. ROLL CALL

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

¥ <u>U</u>. ORDINANCE AND RESOLUTION ADOPTION PROCEDURE

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

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

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

V. COUNCILMEMBER REPORTS

At each regular meeting of City Council, the Mayor and Council members shall be given an opportunity to report to the City Council items or actions that pertain to or are directly related to City business that have not been scheduled on the agenda. Council members shall not use this time to

report on or address issues or actions that have no relevance to City business. Whenever practicable, an item shall not be voted on during the Reports of the Mayor and Council members, but be scheduled for a later agenda as a separate item.

UW. ROBERTS RULES OF ORDER

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

$\forall \underline{X}$. SUSPENSION OR AMENDMENT OF THE RULES

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

W. COUNCILMEMBER ABSENCES

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

Item Number: 11.B.

Meeting Date: 5/13/2019

Item Type: NEW BUSINESS

AGENDA REQUEST FORM CITY OF CAPE CORAL



TITLE:

Resolution 107-19 Approve temporary waiver of installation fees required in the South Cape Banner Program

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 D: IMPROVE THE CITY'S IMAGE WITH THE PURPOSE OF BUILDING LASTING RELATIONSHIPS WITH OUR RESIDENTS AND VALUABLE PARTNERSHIPS WITH OTHER ORGANIZATIONS, AND CONTINUALLY PROVIDE A WELL-BALANCED AND POSITIVE WORKPLACE FOR OUR INTERNAL STAKEHOLDERS.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

- 1. We have received several requests to waive the fees for the installation of banners.
- 2. The Public Works Department is currently in a position to absorb up to \$5,000 for the cost to install the banners.
- 3. We support suspending the installation fees for one year.
- 4. At the end of the period, we will evaluate the impact and bring back a recommendation to either reinstate the fees or eliminate them.

| | A /_ |
|---------------|------|
| I FGAL REVIEN | NI: |

EXHIBITS:

Memo Resolution 107-19 Letter Requesting Waiver of Fees South Cape Banner Program Legal Opinion

PREPARED BY:

Department- City Manager's Office Terri Division- CRA

Hall

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

| | Description | Туре |
|---|----------------------------------|-----------------|
| D | Memo | Backup Material |
| D | Resolution 107-19 | Resolution |
| D | Letter Requesting Waiver of Fees | Backup Material |
| D | South Cape Banner Program | Backup Material |
| D | Legal Opinion | Backup Material |

MEMORANDUM

CITY OF CAPE CORAL CITY MANAGER'S OFFICE

TO:

Mayor Coviello and Council Members

FROM:

John Szerlag, City Manager

Paul Clinghan, Public Works Director PRC

Terri Hall, CRA Coordinator-th

DATE:

May 8, 2019

SUBJECT:

Temporary Reduction in Installation Fees Required in the South Cape

Banner Program

Over the last few years we have received several requests to waive the fees for the installation of banners in the South Cape. The Public Works Department is currently positioned to absorb up to \$5,000 to install the banners.

We support suspending the installation fees for one year. At the end of the period, we will evaluate the impact and bring back a recommendation to either reinstate the fees or eliminate them.

JS:th

C: CRA Board of Commissioners

RESOLUTION 107 - 19

A RESOLUTION OF THE CITY OF CAPE CORAL TO WAIVE THE \$40 FEE FOR THE INSTALLATION AND REMOVAL OF BANNERS AS SET FORTH IN THE SOUTH CAPE STREET BANNER PROGRAM FOR A PERIOD OF ONE YEAR; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on April 27, 2015, City Council approved the South Cape Street Banner Program which allowed banners to be placed on available decorative street light poles; and

WHEREAS, the banner program was created by the Community Redevelopment Agency to identify the area known as "South Cape", to add color and vitality to streetscapes, and to publicize events and promote programs; and

WHEREAS, a fee was established to cover expenses directly related to the program such as installation of banners, removal of banners, repairs, or purchase of replacement parts; and

WHEREAS, on October 15, 2018, City Council adopted Resolution 222-18 which reduced the fee from \$80 for installation and removal of a banner to \$40; and

WHEREAS, the City Manager is now requesting that the banner fees be waived for a period of one year.

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

Section 1. The City Council of the City of Cape Coral hereby approves the waiver of the \$40 fee for the installation and removal of a banner as set forth in the "South Cape Street Banner Program" for a period of one year.

Section 2. During the one year period, the City will reimburse the Community Redevelopment Agency for any waived fees up to \$5,000.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR

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

| COUNCIL SESSION THIS | DAY OF, 2019. |
|---------------------------------|-------------------------------|
| | JOE COVIELLO, MAYOR |
| VOTE OF MAYOR AND COUN | NCILMEMBERS: |
| COVIELLO GUNTER CARIOSCIA STOUT | NELSON STOKES WILLIAMS COSDEN |
| ATTESTED TO AND FILED IN 2019. | N MY OFFICE THIS DAY OF, |
| | KIMBERLY BRUNS CITY CLERK |

APPROVED AS TO FORM:

BRIAN R. BARTOS ASSISTANT CITY ATTORNEY

res/CRA Banners-waive fee





5/3/2019

To: John Szerlag

Cape Coral, City Manager

Dear John,

As you know the SWF Military Museum and the Veterans foundation began a military Banner program on Memorial Day a few years ago.

It is a wonderful program for us and the city. However, over the past 3 or 4 times that we have tried to continue the program, it has become difficult to find military families to participate.

This program started out to be a source of revenue for the (501 nonprofit museum in our efforts to keep a FREE admission policy for visitors. Unfortunately, we found no profits coming to the Museum after paying all the expenses which included an \$80 charge per banner to hang them and take them down. At the very first CRA meeting that we presented this plan to it was suggested by some of the CRA committee that the city would not charge for this. Added to the cost of the banner itself, in most cases we lost money. Our Board decided that we would continue even at the losses we were absorbing, until last year when our local DAV chapter tried to revitalize the banner program and had the same problem.

I know the city has now offered to hang and take down for half of the \$80 making it \$40 and we thank you for that gesture. We have revised our program to install a minimum of 25 banners twice a year, on Memorial Day and Veterans Day, both times promoting the Veterans parades. We believe that this program will bring much attention to the City and raise then awareness of the Inaugural Memorial Day Parade as well as our traditional Veterans Day Parade.

Our experience in the past has been for our visitors to comment what a nice tribute the city of Cape Coral pays to their veterans with the Banners hanging on the Main St in downtown. I am pleased that our city is getting the credit for all that we do, but we are okay with that. It's the banners that count.

We are getting ready to install the Memorial Day Banners shortly promoting the very first Memorial Day Parade, however we are still having trouble finding the sponsors to help defray the cost.

My family is personally paying for 20 banners to kick this new program off.

I am asking the city to waive the entire cost of installing and taking down the banners so we can keep this important program going in a positive direction for the community.

Thank you for your support over the past 10 years!

Best Regards

Ralph A. Santillo, Founder CEO Pres.

South Cape Street Banner Program





Cape Coral Community Redevelopment Agency
South Cape CRA
4816 Chester Street
Cape Coral, FL 33904

Phone: 239-242-3737

Street Banner Program Overview

The South Cape CRA Banner Program was created by Cape Coral Community Redevelopment Agency [CRA] and City of Cape Coral to:

- Identify the South Cape Community Redevelopment Area known as South Cape; (hereinafter South Cape)
- Activate the public space;
- Add color and vitality to streetscapes;
- Publicize events or promote programs promulgated by non-profit or not-for-profit organizations.

The intent of the banner program is to place banners on available decorative street light poles year round to foster interest in the South Cape Community Redevelopment Area. The decorative street light poles are located on the north and south sides of Cape Coral Parkway between Del Prado Boulevard and Palm Tree Boulevard.

The decorative street light poles are available for non-profit and not-for-profit organizations. The City of Cape Coral and Community Redevelopment Agency are exempt from this program and reserve the option to display banners at will, provided that the banners are promoting events or activities taking place in the South Cape Community Redevelopment Area or otherwise enhancing the South Cape Community Redevelopment Area public space, such as banners promoting the South Cape Redevelopment Area as an attractive place to "live, work and play."

Responsibilities

In an effort to fully utilize the program to promote activities, special events, attractions or to promote programs, the South Cape CRA wants to encourage non-profit and not-for-profit organizations to use the South Cape Street Banner Program.

Banner applicants are responsible for requesting banner space, developing a design proposal, producing banners according to specifications, delivering banners, collecting banners and paying all required costs and fees. Applicants must submit a written application each year for the Community Redevelopment Agency to review.

The Community Redevelopment Agency is responsible for reviewing and approving banner designs, coordinating the installation and removal of banners and quality control checks. The Agency will contact the individual(s) listed on the application to notify them the banners have been removed and are ready to be picked up. Street banners not collected within ten (10) working days from the time of removal will be disposed of without further notice to the applicant.

The Community Redevelopment Agency and the City of Cape Coral shall not be responsible for storing banners, theft, vandalism or weather damage that occurs to South Cape street banners.

Eligibility

Because the demand for banner space occasionally exceeds the supply, the Community Redevelopment Agency has developed criteria for approving street banner applications:

- Applicants must be non-profit or not-for-profit organization.
- Banners must either promote activities or special events occurring in the South Cape Redevelopment area only or promote programs promulgated by eligible applicants.

Length of Programs

If the decorative light pole space is available, poles in which to attach banners may be reserved for up to 13 weeks, but not less than 4 weeks. Upon good cause shown by an applicant, the Executive Director, or the Executive Director's designee, may authorize the display of banners for an additional 13 weeks.

Banner Construction Specifications

Banners must meet the following requirements or they will not be placed on the poles. Banners that do not withstand the physical elements (so as to appear faded, tattered, or otherwise in a deteriorated condition) will be removed without refund.

Dimensions: 60 inches high and 30 inches wide and have 2-inch loop holes

Material: 18 oz., smooth, double sided, reinforced laminated vinyl with strong block

out polyester scrim and reinforced grommets.

Banner Design Guidelines

Street banners are different from most graphic designs. They are generally viewed quickly or from a distance. Therefore, the message needs to be conveyed rapidly. A small number of design elements, bright, contrasting colors, and large, clear typography are common elements of successful banner designs.

Although banners may identify the individual, business, or organization sponsoring the banner or the event, they are not to be used as a means of providing commercial advertising. Thus, a banner may state "sponsored by ABC Widgets" with or without logo or "John Q. Citizen", but it could not state "Eat at Joe's Restaurant, home of the best BBQ ribs". No more than 1/8 of the total banner area shall be used to identify the sponsor or sponsors of a banner, activity, event or program, including but not limited to the words "sponsored by" or their equivalent and the name(s) or logos of the sponsor(s).

Banners that are deemed by the Community Redevelopment Agency (CRA) to be obscene banners because their contents meet the judicially established definition of obscenity or that are otherwise considered obscene under Florida Statutes are not eligible for participation in the banner program and any application to install such banners shall be denied by the CRA Executive Director or the Director's designee.

Reservations and Program Costs

All applicants must submit a completed application to the Community Redevelopment Agency. Reservations will be accepted up to one (1) year in advance on a first-come, first- served basis, but not less than eight (8) weeks prior to requested reservation date. Although an applicant may request a preferred location, the decision concerning the specific poles on which banners will be installed will be made by the CRA, in its sole discretion, after consideration of factors including, but not limited to, number of applications received for the same period of time, number of banner locations requested by each applicant, banner installation history and proximity of banners to event site or venue. The overall goal is to make reasonable accommodations that consider the interests of all applicants as well as the community interest in showcasing special events and activities available for public participation as well as enhancing the "sense of place" in the South Cape Community Redevelopment Area.

At any time, banner sites may not be available because of construction, missing hardware, accidents, maintenance or other reasons.

Fees for the use of the poles are intended to cover expenses directly related to the program. Such expenses may include, but are not limited to, installation of banners, removal of banners, repairs, the purchase of additional or replacement of brackets.

Applicants are responsible for all costs related to the design, production, delivery, and storage of banners.

All fees must be paid in full to the City of Cape Coral prior to installation. The cost to install and remove each banner is \$40 per pole.

Number of Poles for Display of Banners.

Minimum number of poles allowed per organization to display banners is 10. There is no limit on the maximum number of poles allowed, however, the CRA shall consider factors including, but not limited to, the number of applications received for the same period of time, number of banner locations requested by each applicant, banner installation history, and proximity of banners to event site or venue, to determine the number of poles allowed per applicant.

Approval Process

The banner design must be approved by the Community Redevelopment Agency (CRA) prior to placement. The Executive Director or the Executive Director's designee will review and approve the banner design. If an application is denied, the applicant may request the CRA to review the denial. The CRA shall then have the option to uphold the denial or to approve the application, with or without modifications. An applicant can expect notification of the initial decision on the application within three (3) to five (5) business days of submittal. Applicants are strongly encouraged **not** to have banners produced prior to approval.

Please mail the attached application, and proof of non-profit or not-for-profit status to:

Cape Coral Community Redevelopment Agency 4816 Chester Street Cape Coral, FL 33904

Phone: (239) 242-3737

APPLICATION FOR SOUTH CAPE BANNER INSTALLATION

| olicant / Organization: | _ |
|---|--|
| dress: | |
| ntact Person: | Phone: |
| ail Address: | |
| Purpose of Banners: | |
| Number of Banners: Preferred Locations (use pole number) | bers as identified on the attached map) |
| Pole #'s Dates Requested: | |
| Date of Removal: | on the schedules of City facilities staff. It is reasonable to |
| Total Cost: | |
| Balance Due before Installation: _ | |
| approval. Approved banners must be dropped | ommunity Redevelopment Agency prior to final application off at the CRA office located at 4816 Chester Street, no less stallation. The installation fee shall be due when banners to the City of Cape Coral. |
| | ency and the City of Cape Coral will not be responsible for los ght to refuse any banner deemed unfit for installation. |
| The Cape Coral Community Redevelopment Ag storing banners. Applicants are to retrieve their | gency and the City of Cape Coral will not be responsible for banners within 3 business days of take down. |
| I have read and understand the South Cape CR | RA Street Banner Program policy. |
| | |
| Authorized Representative | Date |

Cape Coral Community Redevelopment Agency 4816 Chester Street Cape Coral, FL 33904 Phone: (239) 242-3737

| Palm Tree | Parkway Lucky Subs Star Apollo RX Circle K | Cape Coral Parkway | To the state of th | 75 Firestone Iguana Mia 55 Cape Diner | Wells Fargo DIY Yogart Seafood Bait & Tackle Wendy's 15 13 11 9 7 5 3 1 |
|-----------|--|--------------------|--|--|--|
| | 172 170 168 166 164 162 160 158 156 154 152 150 TIB Bank TO April 198 | st George's First | st Starbucks 106 DD 88 DD | THE PROPERTY OF THE PROPERTY O | ans Zaks Subway Enterprise 16 14 14 Perkins Holiday Inn Holiday Inn Holiday Inn Holiday Inn Subway Enterprise 16 16 17 Perkins Holiday Inn |

From: Brian R. Bartos
To: Terri Hall

Cc: <u>Dolores Menendez; John Naclerio; Steven Griffin</u>
Subject: RE: Waive Banner Fees for Veteran Organizations

Date: Friday, February 1, 2019 12:15:29 PM

Terri,

Based on the research I conducted, it is my opinion a risk exists that may subject the City to a Constitutional challenge should the City waive the fees for veteran organizations, but not other not-for-profit organizations. Not-for-profit organizations are the only type organizations allowed to apply for installation of banners on the light poles according to the program.

In JUZWICK v. BOROUGH OF DORMONT, PENNSYLVANIA, 2001 WL 34369467 (not reported in F. Supp 2d), the Borough of Dormont adopted two resolutions that waives the fee for use of a room in a municipal building. The Plaintiff could not afford the fee. However Dormont provides access to the room, without a fee, to the Keystone Oaks School District (KOSA), the Dormont Athletic Boosters Association (DABA), and the Keystone Oaks Area Soccer Association (KOAS). Dormont stated the fees were waived due to Dormont's use of school buildings, and in furtherance of the recreational and athletic activities they provide to the residents of Dormont. In a public forum, the government must demonstrate compelling reasons for restricting access to a class of speakers, a single viewpoint or subject. The U. S. District Court stated the resolutions did not condition the waiver of fees on content of ideas or viewpoints. However, one of the aforementioned groups could use the room for the very purpose Plaintiff wishes to use the room for, but the Plaintiff is required to pay a fee. The Court stated this case is a matter involving "speaker" discrimination.

'Speaker" discrimination exists at the intersection of the First (Free Speech) and Fourteenth (Equal Protection) Amendments. The United States Supreme Court has condemned government actions discriminating based on the identity of the speaker. In <u>POLICE DEPARTMENT OF THE CITY OF CHICAGO v. MOSLEY</u>, 408 U.S. 92, 92 S. Ct. 2286, 33L.ED.2d 212 (1972), the Supreme Court invalidated an ordinance that prohibited picketing within 150 feet of a school, but exempted picketing of a school involved in a labor dispute. In <u>GREATER NEW ORLEANS BROADCASTING ASSN. v. UNITED STATES</u>, 527 U.S. 173, 119 S.Ct. 1923, L.Ed.2d. 161 (1999), the Supreme Court ruled the government could not restrict advertising for private casinos while allowing advertising for tribal casinos.

Simply stated, in <u>DORMONT</u>, the government provides a public forum to certain speakers on more favorable terms than it does other speakers. When speakers and subjects are similar, governments may not pick and choose who gets preferential treatment. This action can only be justified based upon a compelling governmental interest. The Court enjoined the Borough of Dormont from charging a fee to the Plaintiff.

To conclude, to waive the fee for Veteran organizations (not-for-profit) but not for other not-for-profit organizations, would violate the First and Fourteenth Amendments of the Constitution, unless the City has compelling governmental interests to treat the different organizations differently for the speech (placing a banner on a light pole within the City's ROW commemorating a Veteran of the

Armed Services).

Please provide any compelling governmental interests the City believes it has to so treat the organizations differently.

Brian

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From: Terri Hall

Sent: Wednesday, January 16, 2019 9:41 AM

To: Dolores Menendez <dmenende@capecoral.net>; Brian R. Bartos <bbartos@capecoral.net>

Subject: Waive Banner Fees for Veteran Organizations

Good morning. John asked that I follow up with you regarding the idea of waiving the banner installation fees for veteran organizations around the Memorial and Veteran Day holidays. He would like you to respond whether or not it is legal for us (CRA and City) to waive the fees for these organization, but not waive the fees for other organizations should they ask.

Please advise. Thank you!

Terri