

**Mayor**

Joe Coviello

**Council Members**

District 1: 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**

August 19, 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.

### **VIDEO**

#### **1. MEETING CALLED TO ORDER**

A. MAYOR COVIELLO

#### **2. INVOCATION/MOMENT OF SILENCE**

A. COUNCILMEMBER STOKES

#### **3. PLEDGE OF ALLEGIANCE**

A. COUNCILMEMBER STOKES

#### **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. NONE

#### **7. APPROVAL OF MINUTES**

A. Regular Meeting - July 29, 2019

B. Regular Meeting - August 5, 2019

#### **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 261-19 Approval of Seller's counter offer to Purchase Lots 15 and 16, Block 3013, Unit 43, Cape Coral Subdivision, 1230 NW 25th Street, Cape Coral, for the Festival Park project for the purchase price of \$13,500 plus closing costs not to exceed \$1,500; Department: Financial Services / Real Estate Division; Dollar Value: \$15,000; (Parks Capital Project/GO Bond Fund) Note: Trade offer rejected by Seller.
- (2) Resolution 279-19 School Resource Officer Agreement with Heritage Charter Academy Inc.; Department: Police
- (3) Resolution 280-19 Authorizing and directing the Mayor to execute Amendment No. 2 to Agreement No. LP36011 Between Florida Department of Environmental Protection and City of Cape Coral, providing for \$3,000,000 in additional funding and a revision in the scope of work and an Extension of the Agreement for the "Cape Coral Reclaimed Water Transmission Main Caloosahatchee River Crossing Project"; Department: Utilities; Additional Grant Value: \$3,000,000; (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) NONE

E. PETITIONS TO COUNCIL

- (1) NONE

F. APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

- (1) NONE

**9. ORDINANCES/RESOLUTIONS**

A. Public Hearings

- (1) Ordinance 39-19 Public Hearing  
WHAT THE ORDINANCE ACCOMPLISHES:  
An ordinance authorizing the City Manager to sell municipal



surplus real property described as Lots 12 and 13, Block 5270, Unit 82 Cape Coral Subdivision pursuant to Section 2-155 of the Code of Ordinances; authorizing and directing the Mayor and Clerk to execute a deed conveying the surplus real property to John Marchese, Jr.; property located at 4125 NW 16th Terrace. (Applicant: Brought forward by City Management.)

(2) Ordinance 40-19 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance authorizing the City Manager to sell municipal surplus real property described as Lots 30 and 31, Block 5271, Unit 82 Cape Coral Subdivision pursuant to Section 2-155 of the Code of Ordinances; authorizing and directing the Mayor and Clerk to execute a deed conveying the surplus real property to PCI Management, Inc.; property located at 1727 NW 42nd Place. (Applicant: Brought forward by City Management.)

(3) Ordinance 25-19 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 18, Traffic, Section 18-6, Speed Limits, to regulate speed limits on arterial, collector, and local streets located in the City. (Applicant: Brought forward by City Management.)

(4) Ordinance 38-19 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends Chapter 12, "Offenses and Miscellaneous Provisions", Article VIII, "Offenses Creating Nuisances", Section 12-23(F) of the Code of Ordinances, to prohibit overnight parking of commercial vehicles on certain public streets posted with signs. (Applicant: Brought forward by City Management.)

B. Introductions

(1) Resolution 277-19 (VP 19-0008\*) Set Public Hearing Date for August 26, 2019

\*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 the San Carlos Canal Right-of-Way and the underlying public utility and drainage easements located adjacent to Lots 34-35, Block 101, Unit 2, Part 2, Cape Coral Subdivision; providing for the vacation of plat for public utility and drainage easements associated with Lots 34-35, Block 101, Unit 2, Part 2, Cape Coral Subdivision; property located at 5084 Sorrento Court. (Applicant: Daniel & Cornelia Huwiler Living Trust)

Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the

requested vacations, subject to the conditions set for in VP  
HEX Recommendation 9-2019.  
City Management Recommendation: City Management  
recommends approval.

#### **10. UNFINISHED BUSINESS**

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

#### **11. NEW BUSINESS**

- A. Resolution 274-19 Approving Jobs Incentive Agreement between Mercola.Com Health Resources, LLC and City of Cape Coral in the amount of not to exceed \$76,500; Department: City Manager/EDO Division; Dollar Value \$76,500; (EDO Incentive Fund).

#### **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 Joint Cape Coral City Council and Budget Review Committee Budget Workshop is Scheduled for Tuesday, August 20, 2019 at 1:00 p.m. in Council Chambers
- B. A Regular Meeting of the Cape Coral City Council is Scheduled for Monday, August 26, 2019 at 4:30 p.m. in Council Chambers

#### **15. MOTION TO ADJOURN**

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

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

Persons wishing to address Council under Citizens Input or the Consent Agenda may do so during the designated times at each meeting. No prior scheduling is necessary. All speakers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

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

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

Copies of the agenda are available in the main lobby of Cape Coral City Hall and in the City Council Office, 1015 Cultural Park Boulevard. Copies of all back-up documentation are also available for review in the lobby of Council Chambers. You

are asked to refrain from removing any documentation. If you desire copies, please request they be made for you. Copies are 15 cents per page. Agendas and back-up documentation are also available on-line on the City website (capecoral.net) after 4:00 PM on the Thursday prior to the Council Meeting.

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

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

1. The applicant, as well as witnesses offering testimony or presenting evidence, will be required to swear or affirm that the testimony they provide is the truth.
2. The order of presentation will begin with the City staff report, the presentation by the applicant and/or the applicant's representative; witnesses called by the applicant, and then members of the public.
3. Members of the City Council may question any witness on relevant issues, by the applicant and/or the applicant's representative, City staff, or by any member of the public.
4. The Mayor may impose reasonable limitations on the offer of testimony or evidence and refuse to hear testimony or evidence that is not relevant to the issue being heard. The Mayor may also impose reasonable limitations on the number of witnesses heard when such witnesses become repetitive or are introducing duplicate testimony or evidence. The Mayor may also call witnesses and introduce evidence on behalf of the City Council if it is felt that such witnesses and/or evidence are necessary for a thorough consideration of the subject.
5. After the introduction of all-relevant testimony and evidence, the applicant shall have the opportunity to present a closing statement.
6. If a person decides to appeal any decision made by the City Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and

that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

<b>Item Number:</b>	<b>7.A.</b>
<b>Meeting Date:</b>	<b>8/19/2019</b>
<b>Item Type:</b>	<b>APPROVAL OF MINUTES</b>

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

Regular Meeting - July 29, 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:**

**LEGAL REVIEW:**

**EXHIBITS:**

Regular Meeting - July 29, 2019

**PREPARED BY:**

Kimberly Bruns	Division- Managerial	Department- City Clerk's Department
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**SOURCE OF ADDITIONAL INFORMATION:**

Kimberly Bruns  
City Clerk  
1-239-574-0417

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▢ Regular Meeting - July 29, 2019	Backup Material

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

**July 29, 2019**

Council Chambers

4:30 p.m.

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

Invocation/Moment of Silence – Mayor Coviello

Pledge of Allegiance – Blake Bayly - Skyline Elementary School

Roll Call: Mayor Coviello, Councilmembers Carioscia, Gunter, Nelson, Stokes, Stout, and Williams were present. Councilmember Cosden was excused.

**CHANGES TO AGENDA/ADOPTION OF AGENDA**

Mayor Coviello requested that items 11 A, 11C, and 11D be moved right after 8C Citizens Input.

***Councilmember Nelson moved, seconded by Councilmember Stokes, to adopt the agenda, as amended.***

***Council polled as follows: Coviello, Gunter, Nelson, Stokes, Stout, Williams, and Carioscia voted "aye." Seven "ayes." Motion carried 7-0.***

**RECOGNITIONS/ACHIEVEMENTS**

**Recognition to Fire Chief Ryan W. Lamb who received the 2019 Fire Chief of the Year Award by the Florida Fire Chiefs' Association - Presented by City Manager Szerlag**

City Manager Szerlag recognized Fire Chief Lamb on receiving the 2019 Fire Chief of the Year Award for the entire State of Florida by the Florida Fire Chiefs' Association. He noted what made this award so remarkable is that he did not become Fire Chief until May of 2018. For the last year, he has been exemplary in leadership qualities, not just among the organization, but also with his peers.

Mayor Coviello commented on this great accomplishment since Chief Lamb has only been Fire Chief for a short time.

**Fleet Department Recognition: Ranked 12 out of 50 Leading Fleets in the Industry - Presented by City Manager Szerlag**

City Manager Szerlag recognized Fleet Manager Rawlings who made it possible for the City of Cape Coral to be within the top 50 fleets in the United States. He stated this was a great honor, especially where we came from what occurred in 2012 with emergency vehicles breaking down en route to calls. Staff from Fleet gathered together for a group picture, and a plaque was presented to Ms. Rawlings.

Mayor Coviello thanked Ms. Rawlings and the entire Fleet staff. He noted what a great honor this was for a City with approximately 2,000 vehicles.

**APPROVAL OF MINUTES**

None.

**BUSINESS**

**PUBLIC COMMENT - CONSENT AGENDA**

No speakers.

**CONSENT AGENDA**

- 1) Resolution 141-19 Authorize the Emergency Purchase Order (PO# 54617) to Centrifuge Pump Service Corp. (CPS) for the emergency repair of Biosolids Dewatering of Centrifuge #1 at the City's Bio-solids Facility for a not-to-exceed amount of \$55,000 and authorize the City Manager or Designee to execute the purchase order; Department: Utilities; Dollar value (NTE): \$55,000; (Water & Sewer Fund)
- 2) Resolution 145-19 Approve Agreement CON-UT18-98/MC for Construction Manager at Risk (CMAR) services for the Southwest Water Reclamation Facilities Operations Building. The construction firm, Wharton-Smith, Inc. was ranked #1, by the Selection Advisory Committee and ranking was approved by Council on January 7, 2019 via Resolution 4-19. Staff requests authorization for the City Manager or designee to execute the negotiated agreement for pre-construction services (Phase I) for the Southwest Water Reclamation Facilities Operations Building Project for \$142,426. The construction services (Phase II) will be brought forward at a later date when the Guaranteed Maximum Price (GMP) is determined; Department: Utilities; Dollar Value: \$142,426; (Water and Sewer Fund)
- 3) Resolution 152-19 Award Bid ITB#PW19-68/AP FY2019 Alley Resurfacing to Community Asphalt Corporation, as the lowest responsive responsible bidder, to furnish all labor, materials, equipment and operation necessary to complete the milling, resurfacing and select structural repairs on five (5) previously paved alleys located throughout the City, at the bid amount of \$189,000 with a 10% City controlled contingency of \$18,900 for a total of \$207,900; Authorize the use of Fund Balance/Reserves from the W&S Capital Project Reserves for the Utilities related items; And authorize the City Manager or Designee to execute the contract, renewals, amendments, and purchase orders. Department: Public Works Dollar Value: \$207,900 (Transportation Capital Fund -\$198,165/ Water & Sewer Fund Balance Reserves-\$9,735)
- 4) Resolution 156-19 2020 State Legislative Platform; Department: City Manager; Dollar Value: N/A; (Fund: N/A)
- 5) Resolution 247-19 School Resource Officer Agreement with the School Board of Lee County; Department: Police
- 6) Resolution 248-19 School Resource Officer Agreement with The Cape Coral Charter School Authority; Department: Police
- 7) Resolution 249-19 School Resource Officer Agreement with Accelerated Learning Solutions, Inc.; Department: Police
- 8) Resolution 250-19 School Resource Officer Agreement with Southwest Charter Foundation, Inc.; Department: Police
- 9) Resolution 257-19 Single Family Impact Fee Deferral Program Developer Agreements between the City of Cape Coral and Habitat for Humanity of Lee and Hendry Counties and Cape Coral Housing Development Corporation; Department: Community Development; Dollar Value: \$73,692; (Fund: N/A)
- 10) Resolution 258-19 Acceptance of Permanent Utility Easement in a portion of 2915 SW Pine Island Road (Strap #17-44-23-C4-00020.0000), to provide access to and maintenance of future City utility facilities to be installed at this location, as conditioned in site plan review SP18-0047 – Outdoor Storage; Department: Financial Services / Real Estate Division; Dollar Value: N/A; (Fund: N/A)

- 11) Resolution 259-19 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.

***Councilmember Stokes moved, seconded by Councilmember Carioscia, to approve items 8(B)(1), 8(B)(2), 8(B)(3), 8(B)(4), 8(B)(5), 8(B)(6), 8(B)(7), 8(B)(8), 8(B)(9), 8(B)(10), and 8(B)(11), as presented.***

***Council polled as follows: Coviello, Gunter, Nelson, Stokes, Stout, Williams, and Carioscia voted "aye." Seven "ayes." Motion carried 7-0.***

#### CITIZENS INPUT TIME

Joyce Easton appeared to discuss the request by Chengdu to come for a visit. She questioned why we need to send them a letter of invitation. If we sent a letter of invitation, what does that obligation entail? What will it cost the taxpayers? She expressed concern about the meeting times of the Budget Review Committee and the Joint Council/Budget Review Committee Budget Workshops which is difficult for the public to attend. She expressed concern about the recent appointment to the Budget Review Committee.

Bruce Marvin displayed a picture of a covered car. He appeared to voice his concern about residential parking, lower residential speed limits, and unlimited parking on lawns. Council has talked about limiting the number of boats and boat trailers in backyards; yet nothing has come forward to be approved by Council. He also mentioned regulation of vacation rentals. He requested removing an Ordinance regarding the use of vehicle covers.

Liz McCauley, first Executive Director of the Cape Coral Animal Shelter, noted the shelter was due to open in November and appreciated the community support. She discussed Ordinance 37-19 pertaining to the retail sale of dogs and cats. She stated responsible breeders would not allow their pets to be sold in retail stores. 98% of pet stores no longer sell puppies and kittens and work with local shelters to offer adoption, and their business is booming. She hoped passing this Ordinance would open up greater opportunities for partnerships.

Councilmember Carioscia asked the City Manager what the status was for any Ordinances questioned by Mr. Marvin.

City Manager Szerlag stated there were discussions with Council in the past about the massive re-write of the Land Use Development Regulations (LUDRs). There were some comments pertaining to commercial parking, residential parking on lawns, boat trailers, and tiny homes. He asked DCD staff to address the status of these items. He understood that we pulled those items from the LUDRs because we wanted to get 95% of the balance approved by Council. It is an Ordinance re-write that will help more orderly development in the City. He stated as soon as Council requests, staff is prepared to bring those issues back to a COW meeting for future inclusion in the LUDRs.

Planning Manager Pederson noted those issues collectively called Community Values issues were pulled from the LDC (Land Development Code) which is scheduled for final adoption on August 5, 2019. He noted it was agreed that staff would bring back any or all of those items at Council's direction for either a COW meeting or individual Ordinance consideration. Some may be part of the Calibration Ordinance about a year out.

Councilmember Carioscia inquired about covered vehicles parked in driveways. Does that fall into the category of outdoor storage?



Mr. Pederson stated if someone is parking a vehicle in their driveway, it is on residential property and is not outdoor storage.

Councilmember Carioscia questioned if dialogue should be considered on this topic.

City Manager Szerlag noted that if Council so desired to address vehicles that are not functional or registered and have a tarp over them, we could take a piece of the current Ordinance and address just that component without having to go through the whole parking and residential neighborhoods.

City Attorney Menendez stated in our current LUDRs and our new LDC, we currently prohibit abandoned, unregistered, inoperable vehicles from being parked, even on your personal residential property outside of a garage or carport. She understood from what Mr. Marvin was showing was a situation where the car cover is in dilapidated condition which may be a different issue.

Councilmember Gunter stated he recollected that staff did not dive into the Quality of Life issues too deeply until the new LUDRs were voted on which will be next Monday. He suggested after the approval of the LUDRs and before the one-year re-modification of what is passed to bring these issues to a COW meeting again.

City Manager Szerlag stated staff will be happy to discuss all these items if Council so desired at a COW meeting in October. He noted the topic for September will be Procurement Landscaping. He asked for direction. He noted he understood from City Attorney Menendez's comments that we can take a slice of the Quality of Life issue and require a certain type of tarp to be approved as part of our Code of Ordinances.

Mayor Coviello asked Mr. Marvin if the picture he displayed was from an open Code case.

Mr. Marvin responded in the affirmative.

Mayor Coviello stated it was already being addressed.

Councilmember Stokes noted the Tiny Homes had been shot down since no one wanted them. Regarding the parking issues, there seemed to be quite a balance on what should and should not be allowed, especially with parking on lawns.

Councilmember Nelson concurred with what has been said prior to regarding our parking ordinance. It should be discussed again at another COW meeting where there could be a consensus and clear direction could be given. She addressed the question regarding the appointment to the Budget Review Committee and noted how she tries to look for people with diverse backgrounds. She asked EDO Manager Noguera to address the question regarding the Chengdu request for invitation to visit.

Mayor Coviello stated he would discuss the Chengdu invitation when the agenda item appears. He explained his selection for the Budget Review Committee member and that he wanted to get more people involved.

Councilmember Stout explained why she voted for the member appointed to the Budget Review Committee since that person had attended all the BRC meetings.

#### **Youth Council Quarterly Report - Brought forward by Councilmember Williams**

Councilmember Williams noted that every quarter the Youth Council is required to present a report to the City Council. The Youth Council was appointed by the City Council as an advisory board to work with us on youth issues, problems, and suggestions.

Youth Council Members Bradish and Ico presented the following slides:

- League of Cities Attendance
- Fall Gala – Senior Project

Mayor Coviello noted he had reached out to the Gunterberg Foundation and received a commitment for \$2,500.

Youth Council Member Ico stated they would still be seeking out sponsors and noted money raised would go to their charity, Blessings in a Backpack.

Councilmember Nelson offered to assist with raffles and selling auction items.

Councilmember Williams commented on the Annual Florida League of Cities Conference. He noted that the Youth Council Members are able to network with other Youth Councils, as well as share their ideas and concerns. All Councilmembers will be invited to the Fall Gala, as well as some service organizations.

Mayor Coviello asked about the date of the Fall Gala.

Youth Council Member Ico stated it was scheduled for Saturday, September 14, 2019.

Councilmember Williams stated there would be a cash bar run by an organization and should be a pleasant event.

Councilmember Stout questioned where this is going to be located.

Youth Council Member Ico stated it would be held at the Kiwanis Hall. She noted they were still reaching out to local news stations to get the word out on this project.

Councilmember Stout requested that a flyer be sent soon indicating the levels of sponsorship. She noted she may have some interested parties in being a sponsor.

Youth Council Members Bradish and Ico continued with their presentation with the following slides:

- Traffic Advisory Meeting Appearance
- Bus Stops
- Adopt-a-Road
- Goals
- Thank you!

Councilmember Stokes stated he was proud of the work the Youth Council was doing, especially on the bus stops.

**Cape Coral's 50th Anniversary Celebration Planning - Presented by Gloria Tate  
moved to after Citizens Input**

Gloria Tate stated the Cape Coral Historical Society and Museum, in cooperation with the City of Cape Coral, are planning a year of excitement for our residents. She noted the following events:

- 50<sup>th</sup> Anniversary Jubilee Party on January 24, 2020 at the Cape Coral Yacht Club
- The next day, Saturday, there will be an Annual Musical Festival at the Cape Coral Historical Museum Park, open to everyone, with a minimal ticket price
- Contests to be held during the entire year: photo contests, museum scavenger hunt, history tours
- Saturday evening, Annual 50<sup>th</sup> Anniversary Martini Competition sponsored by the South Cape Entertainment and Hospitality Association

Ms. Tate stated they were asking all clubs, organizations, and business owners to use the 50<sup>th</sup> anniversary logo in all their advertising. The logo will be available on the museum website, as well as on the City's website. She noted more events such as the following:

- I Love Cape Coral Photo Contest
- Digital Capsule

She encouraged everyone to add community events to the website so that celebrations could be held all year long. There will be a Fourth of July Special 50<sup>th</sup> Anniversary Fireworks. She noted people could plant a tree in honor of our 50<sup>th</sup> Anniversary. All events will be coordinated through the Cape Coral Historical Museum. On August 18, 2020 we will be having a re-enactment signing of the actual day that we incorporated at the old City Hall. The present Mayor and all previous Mayors and Councilmembers will be invited to attend this celebration, as well as people who worked on the signing. The year will end with 50<sup>th</sup> Anniversary Fireworks at the Coconut Festival. Parks and Recreation has promised a golden spectacular for that evening.

**Update on Employee Health Center - Brought forward by City Management  
moved to after Citizens Input**

City Manager Szerlag stated the outcome of this item is to move forward with negotiations and the contract with the recommended clinic vendor. There is an estimated savings of almost \$4 million in claims over a 3-year period.

Assistant City Manager Barron noted when this was discussed at the COW meeting in March staff asked for Council's blessings to move forward with their due diligence. She discussed the update on the Employee Health Center. Currently there is a clinic (with limited services) that employees can go to during the day at Lee Hospital which will eventually be going away. We were looking to provide a full-range of health care services to our employees with the ultimate goal to save the City money within its medical savings account. We worked with the Gehring Group who has done some investigation. An RFP was put out; there were some respondents who were interviewed and ended up with My Health Onsite.

Dustin Kuehn, Senior Benefit Consultant, Gehring Group, provided an update on the findings of the recent Request for Proposal on clinic administrators. He presented the following slides:

- Executive Summary: Outcome/savings
- Overview
- Request for Proposal Results
- Recommendation of award

Ray Tomlinson, one of the co-founders of My Health Onsite, provided background on his firm. He noted in 2018 they operated up to 32 health centers throughout the State of Florida which represented 70,000 members from public entity organizations.

John Watson, one of the co-founders of My Health Onsite, explained the following topics:

- 5-year ROI Analysis
- City of Cape Coral 3 Year Projection

Mr. Kuehn explained the cost savings, reduced turnaround, and preventative illnesses through preventative care and wellness checks. He went over the next steps:

- August 12<sup>th</sup> - Council to approve the My Health Onsite contract and land lease ordinance
- August 13<sup>th</sup> – December 31<sup>st</sup> – implementation
- January 2020 – Grand Opening

Councilmember Stokes commented that his employer in Charlotte County has had this in place for many years and has saved the County millions.

Councilmember Carioscia asked if we could stipulate to only American-made generics?

Mr. Tomlinson responded that the short answer was yes. Some of the multi-national prescription manufacturers operate facilities outside of the U.S. as well. We use a domestic U.S.-based wholesaler for prescriptions.

Councilmember Carioscia stated it was no secret the problems that they've had in the past with foreign manufacturers of our generics. He noted that if this could be stipulated in writing, he would feel more comfortable for our employees.

Mr. Tomlinson stated there is a program in the United States called a Pedigree Program which actually tracks prescriptions from the time they are manufactured through the supply chain. That is something that has been done as a matter of practice since they have been in business.

Councilmember Carioscia again asked if they will use American-made generic products.

Mr. Tomlinson responded in the affirmative.

Councilmember Nelson asked the Assistant City Manager why Lee Health did not apply for the RFP.

Assistant City Manager Barron stated they provided them with the information, but they chose not to submit a proposal.

Mr. Kuehn explained they offered a limited scope, but we went out for a full-range scope. Lee Health did receive and review it; however, at the time they did not respond to the RFP.

Business Manager Murphy stated they met with Lee Health on a conference call last week, along with Mr. Kuehn. He noted that Lee Health did not respond although they acknowledged they received the RFP. Lee Health was coming forward with a program that would involve us getting rid of Blue Cross which is not something the City wants to currently investigate. He added that Lee Health served us with notice that they are closing their clinic.

Mayor Coviello liked the fact that a module would be across the street for close proximity for the employees. He questioned the slide on the additional savings over five years upwards of \$8 million. Is that difference so much because of all the upfront costs are satisfied during the first three years?

Mr. Kuehn stated the main reason why it is higher in the fifth year is because we estimated that utilization slowly picks up year after year when employees become more comfortable with the clinic. Year 5 assumes that you're getting a 75% capacity for utilization. This might be done quicker.

Councilmember Gunter wanted to make sure that this is a program that would be on a voluntary basis so if an employee desired to go to their own family doctor, they could still do that.

Mr. Kuehn responded in the affirmative. Florida Blue, which is the City's group health provider, will still be offered, and employees can still utilize Florida Blue for their medical services, if they wish.

Councilmember Stout wondered if there are any plans within the five years to possibly add a co-pay, whether it be visits or prescriptions. She found it difficult to imagine that there will not be increased costs. There was a built-in increase of 8 percent in costs year over year.

Mr. Kuehn stated offering a zero-cost visit will incentivize employees to use the clinic.

Councilmember Stout questioned if it would change after the first couple of years.

Mr. Kuehn stated it potentially would change. No clients have implemented a co-pay unless there may be an IRS requirement. It will constantly be reviewed and could be an option.

Councilmember Stout asked if it was in the agreement that things could change.

Mr. Kuehn responded in the affirmative.

Councilmember Stokes stated there has not been a co-pay in Charlotte County for many years, and they still save millions every year.

Mayor Coviello asked staff if there would be any adverse effect to our current health plan by implementing this type of program.

Mr. Kuehn stated that it would not adversely affect the plan since the City is self-insured and pays their own claims.

***There were no objections to negotiate the contract and bring it back to Council.***

## PERSONNEL ACTIONS

### Selection of Legislative Clerk to Council

Mayor Coviello stated there were two applicants for the Legislative Clerk to Council.

City Clerk Bruns stated neither applicant has checked in. Applicant #1 is James K, and Applicant #2 is Elke J.

Mayor Coviello asked the City Clerk to poll the Councilmembers.

***Council polled as follows: Carioscia – Kowaleski; Coviello – Kowaleski; Gunter – Kowaleski; Nelson – Kowaleski; Stokes – Kowaleski; Stout – Kowaleski; Williams – Kowaleski.***

City Clerk Bruns tallied the votes: 7 for Applicant #1 James Kowaleski.

***Councilmember Stout moved, seconded by Councilmember Gunter, to approve the selection of James Kowaleski as Legislative Clerk to Council at \$17.80 an hour as described in the job description contingent upon the background check and health screening.***

***Council polled as follows: Coviello, Gunter, Nelson, Stokes, Stout, Williams, and Carioscia voted "aye." Seven "ayes." Motion carried 7-0.***

## PETITIONS TO COUNCIL

None.

## APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

None.

## ORDINANCES/RESOLUTIONS

### PUBLIC HEARINGS

Resolution 142-19 (VP 19-0006\*) Public Hearing

Quasi-Judicial, All Persons Testifying Must Be Sworn In

WHAT THE RESOLUTION ACCOMPLISHES:

A resolution providing for the vacation of plat for the 7.5-foot wide platted public utility and drainage easement located along the south property line of Lot 5 and the 7.5-foot

wide platted public utility and drainage easement located along the north property line of Lot 4, both in Block 6400, Cape Coral, Unit 76, The Islands; property located at 218 Old Burnt Store Road South. (Applicant: Marion Mochrie, Trustee)

Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions set forth in VP HEX Recommendation 7-2019.

City Management Recommendation: City Management recommends approval.

City Clerk Bruns read the title of the Resolution and administered the oath.

Senior Planner Heller explained the purpose of the Resolution and displayed the following power point slides:

- VP19-0006
- Site, Subject Parcels
- Current Zoning Map
- Background
- Request
- Analysis (LUDR, Section 8.11) Vacate 7.5 ft. Wide Platted Easements
- Recommendation
- Correspondence – None.

Public Hearing opened.

No speakers.

Public Hearing closed.

***Councilmember Carioscia moved, seconded by Councilmember Nelson, to approve Resolution 142-19, as presented.***

***Council polled as follows: Coviello, Gunter, Nelson, Stokes, Stout, Williams, and Carioscia voted "aye." Seven "ayes." Motion carried 7-0.***

**Resolution 143-19 (VP 18-0008\*) Public Hearing**

Quasi-Judicial, All Persons Testifying Must Be Sworn In

**WHAT THE RESOLUTION ACCOMPLISHES:**

A resolution providing for the vacation of plat for a street right-of-way and the underlying public utility and drainage easement being a part of Sorrento Court, located between Lots 37 and 39, Block 101, Cape Coral Unit 2, Part 2; providing for the vacation of plat for a portion of the public utility and drainage easement associated with Lot 37, Block 101, Cape Coral Unit 2, Part 2; providing for the vacation of plat for a street right-of-way being a part of Sorrento Court, located along lots 36 and 37, Block 101, Cape Coral Unit 2, Part 2; property located at 5088 and 5095 Sorrento Court. (Applicants: Wilhelm Vullriede and Jerome and Catherine Lievre)

Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions set forth in VP HEX recommendation 8-2019.

City Management Recommendation: City Management recommends approval.

City Clerk Bruns read the title of the Resolution and administered the oath.

Planner Woellner explained the purpose of the Resolution and displayed the following power point slides:

- VP18-0008
- Site, Subject Parcels
- Current Zoning Map
- Background
- Aerial of Site
- #1. Request to Vacate Platted ROW

- #2. Request to Vacate Underlying and Adjacent Easements
- #3. Request to Vacate Sorrento Court ROW
- Recommendations
- Correspondence – None.

Public Hearing opened.

No speakers.

Public Hearing closed.

***Councilmember Carioscia moved, seconded by Councilmember Stout, to approve Resolution 143-19, as presented.***

***Council polled as follows: Coviello, Gunter, Nelson, Stokes, Stout, Williams, and Carioscia voted "aye." Seven "ayes." Motion carried 7-0.***

**Resolution 144-19 Public Input Establish Proposed Millage Rate and Public Hearing Dates for Adoption of Millage Rate and Budget**

**WHAT THE RESOLUTION ACCOMPLISHES:**

The resolution relates to the levy of City ad valorem taxes for the 2019 tax year, establishes proposed millage rates, establishes public hearing dates, and provides for notice to the Lee County Property Appraiser and Department of Revenue. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Resolution.

City Manager Szerlag noted this Resolution would establish a proposed millage rate. He stated he was proposing a rate in the budget that is lower than what is being proposed in the Resolution. He explained that Council sets the ceiling that will be discussed at public hearings on September 5, 2019 and September 19, 2019. Once that ceiling is established tonight, Council can go down, but they cannot go up.

Financial Services Director Bateman stated the City Manager's rate in the proposed budget is 6.55, but the 6.75 is what is being recommended by the City Manager. The rate can be reduced at the September hearings. The rollback rate is 6.4930. The following power point slides were included in the meeting packet:

- General Operations Millage Rate and Public Hearing Date, Resolution 144-19
- Purpose of Agenda Item
- Ad Valorem Taxes
- Changes in Property Tax
- Overview of Entire Budget
- Overview of General Fund Budget
- Important Dates

Public Hearing opened.

Joyce Easton questioned why we would set it at the 6.75 if the budget is already based on 6.55. She noted it did not state in the Resolution that it is a not to exceed rate. It says it is the proposed rate.

Mayor Coviello responded that last year we were going to 6.5 on our millage rate, but we set it and left it at 6.75. We were looking to go down, but we got hit with Hurricane Irma. Because of the reserves that were expended at the cleanup, we left it at 6.75. You can always go down, but you can't go up. If there is some type of hurricane, tornado, or other catastrophic event where we need to add to that millage, we want to have a little bit of flexibility.

City Manager Szerlag added that there may be some operational changes that Council may wish to make that could increase the expenditure. There would be an associated

revenue to adopt. He stated his recommended millage means that you are locking yourself into a specific revenue, something you may not want to do.

Councilmember Gunter agreed that the rate should be set at 6.75 in the event there are any unforeseeable circumstances that come up in the future.

Public Hearing closed.

Councilmember Stokes concurred with Councilmember Gunter.

***Councilmember Williams moved, seconded by Councilmember Gunter, to approve Resolution 144-19, as presented, setting the proposed not to exceed millage rate of 6.75%.***

Financial Services Director Bateman noted the dates for the public hearings are scheduled for September 5, 2019, and September 19, 2019.

***Council polled as follows: Coviello, Gunter, Nelson, Stokes, Stout, Williams, and Carioscia voted "aye." Seven "ayes." Motion carried 7-0.***

Resolution 153-19 (AP 19-0002\*) Public Hearing

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

WHAT THE RESOLUTION ACCOMPLISHES:

A resolution either affirming the Decision of the Public Works and Community Development Department Directors which granted an administrative deviation of 26 feet from the requirements of Sheet D-5 of the Engineering Design Standards to allow a driveway on Cape Coral Parkway to be located 124 feet from a signalized intersection with the condition that the driveway be limited to a right-in only driveway OR modifying the decision of the Directors to allow a right-in only driveway by eliminating the condition so as to allow a right-in/right-out driveway on Cape Coral Parkway. Property located at 1119 Cape Coral Parkway (Applicant: Brightwork Real Estate)

City Clerk Bruns read the title of the Resolution and administered the oath.

DCD Director Cautero stated the purpose of this Resolution is to discuss an appeal of a staff decision. Requests for a deviation from the Engineering Design Standards are done at a level of review. Those reviews are most often conducted by DCD Professional Engineer, David Hyyti, and William Corbett, Public Works Traffic Engineer. The Engineering Design Standards are part of the Land Use and Development Regulations, which is why the applicant is entitled to have an appeal heard by the elected officials. A decision is made on behalf of the two department directors, myself and Public Works Director Clinghan. They have to agree, and if they don't, they try to work it out until something can be done or a denial is granted (which is also appealable). In this case, the request for a deviation was approved. It involves a distance requirement regarding a driveway connection for a new development which is a bank on Cape Coral Parkway, a site that was previously developed. One of the conditions placed on it is what is being appealed. The condition deals with right in and right out. Council is being asked to decide whether to uphold staff's decision or grant the appeal. Two Resolutions have been prepared by Legal, one upholding the appeal and one denying the appeal.

Traffic Engineer Corbett explained the purpose of the Resolution and displayed the following power point slides:

- Resolution 153-19 (AP 19-0002)
- Site
- Original Project Scope and Staff Coordination (2 slides)
- Arterial/Collector Street
- Vicinity Map/Site Data Table
- Original Project Scope and Staff Coordination (4 slides)
- Approved Deviation and Appeal to Conditions
- Vicinity Map/Site Data Table



- Approved Deviation and Appeal to Conditions (4 slides) – City Management recommends denial of the appeal, thereby affirming the earlier deviation with the condition of approval limiting the driveway access on Cape Coral Parkway to right-in only.
- Questions?

Public Hearing opened.

Joe Mazurkiewicz, President, BJM Consulting, stated he was the authorized representative for Brightwork Real Estate, the developer of the aforementioned case. He noted he would not present a lot of pictures and specific testimony with regard to what is going to be on this site, rather the engineer will present his findings in support of the original deviation. We are appealing the limitation of the right-out. We want that taken off what is already a granted deviation to the Engineering Design Standards. Separation from the intersection has already been alleviated with the deviation that was granted.

Reid Fellows, Vice-President, TR Transportation Consultants, Inc., provided a short overview of the report and addressed possible issues with six-laning and any safety concerns about T-boning. He noted how bank issues have changed dramatically over the years. This will be a low volume exit if we are successful in getting the right-out on to Cape Coral Parkway. Without the right-out, existing vehicles would have to cut through the shopping center or use Vincennes.

Mr. Mazurkiewicz noted that this site was a former gas station which has expensive environmental remediation requirements to be developed. A bank for this size property is probably one of the only uses that has the capital necessary to pay the costs of remediation for this site. If this right in/right out is not approved, Chase is not interested in developing this site in Downtown Cape Coral. This site has been vacant or underutilized for decades because of the cost associated with the remediation for the site. That is a public policy decision. Chase Bank is ready and willing to provide the necessary capital investment to do the work and do it quickly. The site presently has two right in/right out driveways on Cape Coral Parkway. This improvement, as requested, will take away one of those and only redevelop one. He explained a common-sense approach to leaving this site. He discussed consistency and mentioned the current Winn-Dixie a block away which was approved with a similar right in/right out, as well as another similar project which was also approved. He requested that Council adopt the Resolution that reverses staff's decision and gives us the driveway as a right in/right out as requested.

Traffic Engineer Corbett addressed some responses to the appellant's testimony. He discussed the need to get traffic through downtown Cape and the sites mentioned where similar driveways were constructed. He displayed and explained a slide showing two non-conforming driveways of a former pool store which became a Dunkin's Diamonds and Gold prior to development. He also displayed a slide for the Steak House, this site met the requirements of the Engineering Design Standards for access spacing; no deviation was required for this parcel. Although the sites are similar on the surface, the permitting process and the redevelopment process for these sites were very different. He agreed that this would be a low volume driveway.

Mr. Mazurkiewicz stated that westbound traffic on Cape Coral Parkway is an intense activity; the bank closes at 5 p.m. The westbound traffic peaks after 5 p.m. He noted if this deviation does not pass, you will not have a bank there. Common sense needs to prevail.

Public Hearing closed.

***Councilmember Stokes moved, seconded by Councilmember Carioscia, to approve Resolution 153-19.***

Councilmember Stokes expressed a need to be fair to the business owners since there were three or four other right ins/right outs on Cape Coral Parkway. Trading an abandoned gas station for a successful Chase Bank is pretty exciting. He planned on supporting the right in/right out.

City Attorney Menendez clarified that there are two alternative resolutions. Normally, in an appeal those resolutions are approving an action and the other is reversing an action. In this case, the applicant has already received a deviation. The deviation approval is not in question. The Resolutions before Council has two alternatives: one is affirming the decision of the Public Works Director and the DCD Director to approve the deviation with the condition that the driveway only be right in with no right out. The other Resolution still has the deviation in there; it is modifying the deviation to eliminate the right in only condition. She stated the motion maker needs to be more explicit regarding what you are trying to approve. Are you affirming the decision of the Directors to grant the deviation subject to the condition? Or are you modifying the deviation to allow the in and out of that driveway?

**Councilmember Stokes clarified that his motion was to approve the right in and right out.**

City Attorney Menendez clarified that it was to modify the decision of the Directors.

**Councilmember Carioscia agreed.**

Councilmember Stout noted that the bank is giving up one of their two entrances/exits. There are other businesses on Cape Coral Parkway that are right in/right out. The fact that Chase Bank is going to clean up after an abandoned gas station is huge. She noted that she would support the motion.

Councilmember Gunter noted numerous businesses on Cape Coral Parkway have a right in and right out. He agreed having a developer that is willing to clean up a contaminated site has some bearing. He stated he would support the motion.

Councilmember Nelson questioned whether Mr. Corbett had information regarding the safety concerns. She asked him if he had accident data that occurred on Cape Coral Parkway because of these angles or T-bone type crashes.

Mr. Corbett stated he did not have that information available. The right in/right out in itself is not the problem. It is the spacing between the intersecting roadways and/or driveways, and the attempts to separate those conflicts.

Councilmember Nelson stated right in/right out made sense to her. She stated this was not a huge problem since the bank closes at 5 pm. She would support the current motion.

Mayor Coviello questioned the location of the building.

Mr. Corbett stated the building would be set back far enough which would not obstruct the sight distance.

Mayor Coviello noted that duplexes have been built on Cape Coral Parkway by intersections where residents have to back out; this would be a safety concern. He would support the motion.

***Council polled as follows: Coviello, Gunter, Nelson, Stokes, Stout, Williams, and Carioscia voted "aye." Seven "ayes." Motion carried 7-0.***

***Recessed at 6:46 p.m. and reconvened at 6:58 p.m.***

**Resolution 244-19 First Public Hearing Set Second and Final Public Hearing date for August 5, 2019**

**WHAT THE RESOLUTION ACCOMPLISHES:**

A resolution adopting the 2019-2020 One Year Action Plan for the Community Development Block Grant Entitlement Program including the Regional Analysis of Impediments to Fair Housing Choice 2019-2023; authorizing and directing the City Manager to prepare and submit the One Year Action Plan for the 2019-2020 fiscal year including the Regional Analysis of Impediments to Fair Housing Choice 2019-2023 to the United States Department of Housing and Urban Development (HUD); authorizing the City Manager or his designee to accept and execute the grant agreement for the 2019-2020 CDBG program when received from HUD; authorizing the City Manager or his designee to accept and execute grant agreements with subrecipients. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Resolution.

The second and final public hearing was scheduled for August 5, 2019.

Housing Coordinator Yearsley explained the purpose of the Resolution and displayed the following power point slides:

- Resolution 244-19
- Resolution
- Analysis of Impediments to Fair Housing Choice (3 slides)
- Community Development Block Grant (CDBG) Entitlement Program
- Allocation Funding Requirements
- Public Facilities/Housing Categories CAB Recommendations Post Allocation
- Public Services Request and CAB Recommendations Post Allocation
- Economic Development Category Request and CAB Recommendations Post Allocation
- Administration and Planning Allocation
- Citizen's Advisory Board for CDBG
- Timeline

Public Hearing opened.

No speakers.

Public Hearing closed.

**Resolution 251-19 (VP 19-0009\*) Public Hearing**

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

**WHAT THE RESOLUTION ACCOMPLISHES:**

A resolution providing for the vacation of plat for the platted interior lot line and public utility and drainage easements located between Lots 73 and 74, Block 5483, Cape Coral Unit 90; property is located at 4740 NW 36th Street. (Applicant: Joseph and Amy Walden) Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the applications for the requested vacations, subject to the conditions set forth in Hearing Recommendation Order 10-2019.

City Management Recommendation: City Management recommends approval with conditions.

City Clerk Bruns read the title of the Resolution and administered the oath.

Planner Woellner explained the purpose of the Resolution and displayed the following power point slides:

- Resolution 251-19
- Aerial Map
- Surrounding Properties
- Current Zoning Map
- Case Background
- Vacation Request

- Land Use and Development Regulations 8.11
- Staff Recommendation
- Correspondence – None

Public Hearing opened.

Amy Walden noted that she and her husband were simply trying to refinance their home.

Public Hearing closed.

***Councilmember Carioscia moved, seconded by Councilmember Nelson, to approve Resolution 251-19, as presented.***

***Council polled as follows: Coviello, Gunter, Nelson, Stokes, Stout, Williams, and Carioscia voted "aye." Seven "ayes." Motion carried 7-0.***

Ordinance 55-18 Public Hearing

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 2, Administration, Article III, Personnel Rules and Regulations, to allow exempt employees to earn additional pay during a declared emergency subject to terms and conditions. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

Assistant City Manager Barron stated this Ordinance addresses pay revisions for emergency pay specifically for exempt employees who work during a City-declared emergency and when City Hall has been closed. Council has already approved these pay revisions for the exempt bargaining positions. This Ordinance will now provide that to the non-bargaining exempt positions. It will allow these employees to be compensated at two times their regular pay rate for the first eight hours that they work during an emergency when City Hall is closed. They can receive up to 24 hours per event.

Public Hearing opened.

No speakers.

Public Hearing closed.

***Councilmember Gunter moved, seconded by Councilmember Stokes, to adopt Ordinance 55-18, as presented.***

***Council polled as follows: Coviello, Gunter, Nelson, Stokes, Stout, Williams, and Carioscia voted "aye." Seven "ayes." Motion carried 7-0.***

Ordinance 34-19 (ZA 19-0007\*) First Public Hearing Set Second and Final Public Hearing Date for August 12, 2019

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

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance amending the City of Cape Coral Official Zoning Map by rezoning property located at the intersection of Agualinda Boulevard and Beach Parkway from Marketplace Residential (MR) to Residential Multi-Family Low (RML) and Commercial (C) zones. (4.54-acres) (new amount: 21.14 acres) (Applicant: City of Cape Coral)

NOTE: Maximum residential densities will not be increased as a result of this ordinance. Hearing Examiner Recommendation: The Hearing Examiner recommends approval of the application for rezoning contingent upon approval of the LUDR revisions by Council.

City Management Recommendation: City Management recommends approval.

City Clerk Bruns read the title of the Ordinance and administered the oath.

The second and final public hearing was scheduled for August 12, 2019.

Planning Team Coordinator Daltry explained the purpose of the Ordinance and displayed the following slides:

- Aerial and Current Zoning
- Proposed Zoning and Future Land Use
- Background (4 slides)
- Comprehensive Plan/LUDR Analysis
- Conclusion
- One letter of correspondence in opposition received

Public Hearing opened.

Russ Whitney, one of the owners and representative of the Four Corners, stated that there has been a lot of discussion, but no one has really explained what the plan is for that property. He provided a brief history of past zoning for this property. He explained his proposal for this property: three stories in line with other new apartment buildings in the City. The design will fit in with the community. There will be access to each parcel. There will also be a roundabout proposed to slow down the traffic through that intersection. He would like to see Mixed Use on the Fourth Corner, residential and commercial, enough to support the neighborhood. He stated he would not be present for the final hearing on August 12, 2019, but his land use attorney and engineering firm will attend.

Randy Landers stated he was in full support of what staff has presented. He would prefer to see restaurants that the neighbors would be able to walk or bike to. There could also be a small number of apartments or condos on the southwest rather than having a dollar type of store. He agreed what Mr. Whitney proposed would fit quite well.

Public Hearing closed.

Councilmember Gunter inquired how many units can be placed on this site with the existing zoning and the proposed zoning.

Mr. Daltry stated there was a table (entitled LUDR and CAC Future Land Use Classification) included in the meeting packet which showed the following:

- The Northwest, Northeast, and Southeast Corners permit 85, 97, and 82 dwelling units, which is 264 among those corners.
- An additional 19 units could be produced for the Southwest Corner, if it was developed as Mixed Use, a total of 283.
- The proposal would be 264, basically the same density, 16 units/acre, permitted at the Northwest, Northeast, and Southeast Corners, except no units allowed on the Southwest Corner because of the commercial which does not permit any residential units in any circumstance.

Councilmember Gunter questioned how many units would be allowed with what Mr. Whitney was requesting with some type of Mixed Use.

Mr. Daltry explained as requested if we were to move forward with CAC Land Use, a Land Use Amendment would need to be undertaken for that Southwest Corner and rezone the neighborhood Commercial, which is the zoning district that is consistent with CAC. We would permit 16 units/acre times 4.5 acres would be approximately 70 additional units.

Councilmember Gunter inquired if it would be possible if we made some type of change to maximize or list exactly how many total units could go there.

Mr. Daltry explained if the property owner came forward with a PUD (Planned Unit Development) which would be adopted in Ordinance 17-19, then they could list the maximum number of units, uses permitted, and maximum amount of square footage which would be done separately.

Mayor Coviello requested that Mr. Whitney come to the podium and explain if there was a way for him to get Mixed Use and do a little less in the number of units than what he talked about.

Mr. Whitney stated 60 units would be less than 100 cars and would not impact the traffic at all. He wanted to do what was right for the neighborhood and expressed the desire to make this community friendly. He noted housing could be provided for firefighters, police, and nurses who cannot afford housing in this City. He stated 60 units and the right mix of commercial would be the right thing for this corner.

Mayor Coviello stated currently the Commercial/Professional does not allow any units. We don't know what would be put in there with Commercial, and it could end up with a gas station on that corner.

Mr. Daltry stated what is proposed in this Ordinance now has more commercial uses including a gas station, but zero residential whereas the CAC has 72 units for that Southwest Corner and fewer commercial uses.

Mayor Coviello expressed concern about the residents needing to inform Council what they want to see on that corner. He requested to hear more from Mr. Landers.

Randy Landers stated as it related to the commercial property versus the Mixed Use, he provided his personal opinion. He stated he could obtain results for Council within a week that would be representative of that area. He noted the Southwest Corner was the smallest of the four. 72 units and restaurants seem a lot to be placed within a very small area. He suggested placing 30-40 units of higher end condos.

Mayor Coviello stated he leaned towards tabling this Ordinance and coming back with comments on what the residents want and what the developer is able to come up with as far as making this fit in the neighborhood.

Mr. Landers stated he would come back with more details.

Mr. Daltry suggested it may be worthwhile to remove the Southwest Corner for further consideration.

Mayor Coviello noted the developer most likely does not want to delay moving forward with his project.

Councilmember Gunter expressed concern to have the residents come back to weigh in on this issue.

Mr. Daltry stated if you are looking at Mixed Use, we have already changed the Land Use to Commercial which is not compatible with each other. There would be a need to do a Land Use Amendment back to CAC for that property. That adds about four months to the process.

City Attorney Menendez explained there is a need to bring the zoning consistent with the Comprehensive Plan. If Council is going to proceed with the Second Hearing and this matter is not being withdrawn right now, it may be that Mr. Whitney needs to get together with staff and discuss his options. Even if the new LDC's are approved, which in turn will establish the ability to have a PUD, the project in that PUD still needs to be consistent with the Comprehensive Plan.

Mr. Daltry stated any sort of Commercial PUD would not have any residential units in it as the Commercial/Professional Future Land Use does not establish a density.

Councilmember Williams left the meeting at 7:42 p.m.

City Attorney Menendez stated if Council approves this Ordinance as it is written at the end of the Second Hearing, that will bring the Zoning into consistency with the Land Use. In the event that Mr. Whitney would prefer to see a different alternative in the future for one or all four corners of the property, he would have the ability to come forward and seek a Land Use change and a Rezoning that would be in accordance with that. He may also find a PUD process to be helpful. She noted you could choose to rezone three corners and leave the fourth one, but then the fourth one will not be consistent with the Land Use.

Mayor Coviello inquired when was the approval of LUDRs coming forward? Would it have any impact on Mr. Whitney?

City Attorney Menendez noted she stated that Mr. Whitney may want to take advantage of the PUD process. She stated the ability to have that process will occur after Council approves the new LDCs (Land Development Code). The new LDCs, if approved, will eliminate the PDPs and institute a new process called the PUD (Planned Unit Development).

Mr. Daltry confirmed that Ordinance 17-19 is scheduled for its second and final hearing on August 5, 2019.

Mayor Coviello questioned if that would have already been put in place if the Second Hearing was rescheduled to August 12, 2019.

Mr. Daltry responded in the affirmative.

Mayor Coviello stated that would allow Mr. Whitney more options in getting a Mixed Use.

Mr. Daltry stated part of the reason why we timed this in this manner was so that the LDCs, if adopted on August 5, 2019, would be active when this comes forward to Council for adoption on August 12, 2019.

City Attorney Menendez questioned what would happen if the LDCs are adopted on August 5, 2019 and the Second Hearing is on August 12, 2019. What options are available to us other than the ones that are stated in the Ordinance?

Mr. Daltry explained the options:

- Commercial as identified in the Ordinance
- Professional which is a separate zoning district
- Commercial PUD
- If we were looking at a Mixed Use, a Future Land Use Amendment would need to be undertaken to change that Land Use to something that would permit residential units at that corner.

City Attorney Menendez stated our ability to change the Ordinance in midstream from First Public Hearing to Second Public Hearing still remains constrained.

Mayor Coviello agreed. He stated the Second Final Public Hearing should be set for August 12, 2019 in order to receive more public input.

## INTRODUCTIONS

Ordinance 37-19 Set Public Hearing Date for August 5, 2019  
WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends Chapter 12, "Offenses and Miscellaneous Provisions" of the Code of Ordinances to create Section 12-128, Article XIII, "Retail Sale of Dogs and Cats Prohibited" prohibiting the retail sale of dogs and cats in the City; provides for purpose and intent, definitions, prohibition, disclosures, amortization, enforcement and penalties. (Applicant: Brought forward by Councilmember Williams)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for August 5, 2019 in Council Chambers.

#### **UNFINISHED BUSINESS**

##### **WATER QUALITY – UPDATE**

Public Works Director Clinghan provided the Water Quality Update. Since last week, Lake Okeechobee's releases were less than 100 cfs. As far as the drainage basin, there is about 2,000 cfs. Last year at this time there was about 8,000 cfs coming down. Levels remain low, about 11.5.

#### **FOLLOW UP ITEMS REQUESTED BY COUNCIL**

None.

#### **NEW BUSINESS**

**Youth Council Quarterly Report - Brought forward by Councilmember Williams-moved to after Citizens Input**

**Update on the Police Gun Range: The Police Department aims to move forward on the concept and design phase utilizing Police Impact Fee Reserves at an estimated cost of \$650,000. The denial of State Appropriations funding of \$500,000 will have no initial impact on this phase of the project**

City Manager Szerlag stated that he would like to advance options on moving forward on this Police Gun Range. If there are any questions that Council has that we cannot answer this evening, he would like to bring this discussion back to the Council table. Our objective is to give Council a zone of comfort with moving forward with this issue.

Chief of Police Newlan provided background on this request. He explained that we have outgrown our training capabilities which has changed over the years. They have been using the Lee County Range who has been very gracious in allowing us to use it. Over 20 agencies also use that range which is located in Lehigh off Gunnery Road which is a one-hour drive one-way. Most Local, State, and Federal agencies in Lee County use that range. Local agencies have first preference; however, they are only opened Monday through Friday 8 am to 5 pm. He provided history on who uses the range and programs available. There are over 260 sworn officers in the City who train once a year as the annual requirement for firearm training. There is one additional time for more training. He noted six hours per year is not enough for firearm training. This is not a want; this is a need. He stated he would like to move forward with a concept and design just to get a true cost. Once we get the true cost, we could go from there and seek approval using impact fees which are meant for growth.

Councilmember Carioscia stated he did some homework on this that we have the smallest department in the top ten cities of Florida. None of the other departments our size or smaller have their own gun range. For \$8 million at this time to have a gun range built, even if it does come out of impact fees or wherever, it doesn't warrant it at this time. He noted that just by the statistics, he will not be supporting this. How much money is it going to cost to move forward to find out what it's going to cost to build this building?



Chief of Police Newlan stated the estimated cost at most would be \$650,000 for a concept and design. He asked Councilmember Carioscia what cities he was speaking about that do not have a gun range.

Councilmember Carioscia stated everyone that does has a larger department than ours. You can do the homework to confirm the stats, starting with Jacksonville down to Fort Lauderdale. Fort Lauderdale has 515 police officers, even though it's the number tenth size city in the State of Florida. Port Saint Lucie does not, and they're very comparable in size and department, sworn personnel, to Cape Coral. He stated this was premature. He noted we should have one and will have one someday. He questioned what to do if we don't want it.

Chief of Police Newlan stated you have to look at each area. If they don't have a gun range, where do they train at? Maybe the others have more accessibility than we have. He mentioned that over 20 agencies train at one range; six hours per year is not enough. He noted they even looked at trying to rent a warehouse somewhere since they have no where to go.

Councilmember Carioscia stated the ones that do have a gun range have a larger department than we have. He noted that we are only 40 minutes to the gun range. The taxpayers here pay the bill for that facility in Lee County, and we would be asking the taxpayers to put up another \$8 million for another gun range. He stated that he would not support this.

Councilmember Stokes stated he supported the CCPD having their own gun range. He wants them to have the training. He echoed Councilman Carioscia's thoughts: \$650,000 just for the design seems like a lot of money, and \$8 million for our own gun range seems kind of high. It exceeds what we have in the reserves right now. He supported them having their own range but wanted them to go back on the cost, especially the design cost, and maybe the total cost.

Chief of Police Newlan stated the \$650,000 was an estimate of what it would cost to do the concept and design. We would have to bid and find out what that cost would be. We don't want to put too low of a cost for discussion. The \$8 million is another estimate, and we won't know the true cost until we do a concept and design. The only way we can do that is by going to a concept and design route. By doing that, it increases our chances on getting other grant opportunities as well because they know that we are serious about moving forward.

Councilmember Stout asked if impact fees were used for the purchases of the additional cars that were needed for the SROs last year?

Chief of Police Newlan stated they were not. When you're adding additional service, it is not considered growth; therefore, it could not be used for the SRO's cars.

Councilmember Stout stated she did not see that as growth. She believed impact fees have to be used in a certain timeframe. If they're not used, she understood that they have to be refunded to the developers that paid the impact fees. She asked the City Attorney if that was correct.

City Attorney Menendez stated our different impact fee ordinances each provide something different. There is an implication of reasonableness that you don't collect impact fees now and then years later you decide you accumulated enough to do something. It is related to growth and new development, not just current needs. Impact fees are supposed to be used within a reasonable period of time for the growth we said we needed them for.

Councilmember Nelson questioned what Chief Newlan felt the expense was annually for our officers to go train in Lehigh. She noted he had told her it was about \$240,000 if you factor in fuel, salary, time, bullets, and equipment.

Chief of Police Newlan responded in the affirmative. He added that we were an hour away. If something were to happen in the City, our officers would be far away.

Councilmember Nelson questioned the return on investment. Would other facilities be able to rent our facility to utilize it for their workforce?

Chief of Police Newlan responded in the affirmative.

Councilmember Nelson inquired if he had any idea of how much revenue we could possibly generate by allowing other agencies to use our facility.

Chief of Police Newlan stated he could estimate although some agencies would give us some revenue, and some would give us capital. It would save us the \$240,000 that we're spending right now and the wear and tear of our vehicles. When he called the Federal agencies to see if there was interest, the fees would be negotiable if it were to come to fruition. There was interest since a lot of them do have to travel far.

Councilmember Nelson stated when she was running for office, two officers told her their concern about level of service with response time especially should there be an emergency. Where do other departments that are larger than us train? What is their growth percentage in each of those cities? She requested information on how we compared in growth.

Chief of Police Newlan stated he would check other agencies and find out where they train at and if they have their own range. If they don't, where do they go and how far is it? How often do they do it as well?

Councilmember Gunter asked if we looked at any type of multi-agency agreement where we could be a partner with someone to build a facility.

Chief of Police Newlan stated discussions we have had right now are that they are not ready or there is no interest. He noted he talked to some other agencies about trying to get revenue if we build our own here. He stated we were limited on who we could partner with. It would be easier to bring revenue here for others to use our facilities which we could charge for.

Councilmember Gunter noted that the Charlotte County Sheriff's Department is building a new gun range in Punta Gorda, which is a little closer than the other. If we reached out to them to find out if we would be able to utilize it, would they be interested in renting some time to us when it opens at the beginning of the year?

Chief of Police Newlan stated he spoke to one of his department armorers earlier, and they said as of right now, they, they were being told there would not be any interest right now to have others use that facility once it's opened.

Councilmember Gunter stated additional information was needed. How many gun ranges are out there now? What size are their departments? How much does it cost the Lee County Sheriff's Office to build that gun range? When was it built? Is the time right for us now? He suggested reaching out to Charlotte County since they're right in the middle of their construction and see what it's costing them.

Chief of Police Newlan stated he has spoken to firms that build ranges. He was told they can give him the cost of the shell. He noted that they looked at the Lee County Range a long time ago; the costs have changed with what they paid ten years ago versus what you're going to pay now. He stated the cost of \$8 million would be for a totally enclosed indoor range. He stated he will look at other facilities and get those costs for Council.

Mayor Coviello agreed that information should be provided regarding costs for other ranges being built. Where did the \$8 million come from to build a range? Is that from

discussion with companies that build ranges or is that a number that we thought it would be?

Chief of Police Newlan explained we dealt with a couple of the companies that build the ranges and told them what we're looking for with specifics. We're looking for a 25 lane, 50-yard facility that can accommodate all of our needs for firearms, long rifles, for everything else, shotgun, with other rooms with it. A lot of the things that we do are stereo-based training. We don't have any access for that as well. We're trying to include other factors within the building to meet our needs that we're not meeting right now. Based on the size of the facility of those needs, we were given the price for the building itself and everything that goes inside with the range that you would need.

Mayor Coviello inquired if it was feasible to pare this down and still fulfill a need and reduce the cost?

Chief of Police Newlan stated a lot of it was the outside, the land, the prep, and the road. The concept does not give us a true cost until we really know where we are at.

Mayor Coviello stated that 25 lanes were a lot from what he has seen in gun ranges.

Chief of Police Newlan stated that was comparable to the ones they have seen, and we need to plan for future growth. The department is going to grow, and we have the plan to grow with it. If we plan too small, then someone in the future will say they need to expand the range or run out of space.

Mayor Coviello believed it was a little bit premature for right now. When you look at this cost, it is only a design, and a design once it's done could go up on the shelf and sit there if we didn't do it right away. If we feel in the long term it's going to be a definite need for the department and for the City, the commitment of the initial design phase wouldn't necessarily have to be used right away. He requested more information on going forward. The longer you wait, the more that design is going to cost.

Councilmember Gunter asked if there were approximately 33 agencies within the Lee County Sheriff's Office.

Chief of Police Newlan stated there were a little over 20 agencies. He noted he spoke to the Lieutenant tonight, and they used over 20. He stated that is just to get everybody up to range time for qualifications and basic and are not able to do any advance classes that are needed. There is no space for that training because of so many agencies that want to use the facility. We are lacking these needs that we don't have.

Councilmember Gunter stated he would like to see from the Lee County Sheriff's Department what type of revenue source that they have by renting this space out to other agencies.

Chief of Police Newlan stated he did not know if they charge. He noted they help them with supplies, so we do not get charged because they are gracious hosts.

Mayor Coviello noted that would be a good number to have because if we're paying \$240,000 a year, and you get 10 of those 20 agencies renting a facility we build, you got \$2.4 million coming in, so it's something to look at and consider.

City Manager Szerlag thanked Council for the questions. He noted that everything will be put in writing and respond to all Councilmembers. Staff will also delve further into what you might want to call the municipal versus regional approach to this, and a pro forma will be developed, as well as a needs analysis.

**Cape Coral's 50th Anniversary Celebration Planning - Presented by Gloria Tate  
moved to after Citizens Input**

**Update on Employee Health Center - Brought forward by City Management  
moved to after Citizens Input**

**Alternate for Florida League of Cities - Brought forward by Mayor Coviello**

Mayor Coviello stated currently Councilmember Williams is our representative on the Board for the Florida League of Cities (FLC). There is a convention in August that Councilmember Williams will be attending, and there may be times when he will not be able to make all of the FLC meetings and events. He suggested looking for an alternate that could fulfill some of those meetings in the event that Councilmember Williams is not able to. He asked if anyone going to the FLC meetings in August would be interested in becoming an alternate.

Councilmember Gunter stated he was a member of the Land Use and Development Committee for FLC. He understood that Alternates do not have voting rights but would still be able to attend and gather information on topics.

Mayor Coviello responded in the affirmative.

Councilmember Gunter volunteered to be the alternate in the event Councilmember Williams cannot.

***Councilmember Nelson moved, seconded by Councilmember Stokes, to appoint Councilmember Gunter as alternate for the Florida League of Cities.***

***Council polled as follows: Coviello, Gunter, Nelson, Stokes, Stout, and Carioscia voted "aye." Six "ayes." Motion carried 6-0.***

**Letter of Invitation to The City of Chengdu, PIDU District, China - Brought  
forward by Mayor Coviello**

Mayor Coviello stated he received an email from the City officials of Chengdu asking if we would invite one of their government officials to Cape Coral. There would be minimal costs associated with the visit. All we're looking for is the okay to send the invitation and allowing them to use a City van to tour some of the areas within the City for development. He opined that Chengdu was a better prospect for development projects in the City.

Economic Development Manager Noguera stated we were in China for six days. The first leg was 36 hours in Chengdu, arriving on a Sunday morning and toured the city on a Sunday. By 4 pm Monday, we were on our way to Baise. In those 36 hours we spent quite a bit of time meeting with the City officials who were so impressed with the business opportunities in Cape Coral. Six different businesses have expressed interest in doing business overseas. As a result of the time spent there, their officials are now planning a visit here in late September or early October. It would be at their cost, not the City's. We are looking for a vehicle, but we do not know how many would be travelling here. There are a number of businesses here that are already doing work in China and overseas that are interested in meeting with them, as well as the School District. He noted they spent more time in Baise, which is more of a cultural Sister City relationship. There may be some opportunities down the road with Baise. He stated a company in a city near Baise has reached out to us to provide services to one of our businesses.

Councilmember Gunter questioned how much money was spent when the delegation from Baise came here last spring. He understood that there would be zero cost for them to come here.

Mr. Noguera stated the cost for the Baise officials visiting here was approximately \$10,000.

Mayor Coviello stated \$10,000 was approved, but only \$8,000 was spent.

Mr. Noguera stated that included hiring a local firm to create a video that was used.

Mayor Coviello stated the only request was the use of a City van to transport them within the City.

Councilmember Gunter stated he did not see a problem if tax dollars were not being used.

Mayor Coviello stated when we went to Chengdu that was at the expense of our City. He asked for a consensus from Council to send an invitation, as well as providing transportation for them while they are here to show them some development opportunities.

***Consensus received.***

Councilmember Stout inquired about the use of a City vehicle for their use.

Mr. Noguera responded in the affirmative, offering to drive, if needed.

#### **REPORTS OF THE MAYOR AND COUNCIL MEMBERS**

Councilmember Cosden – Topics: Excused

Councilmember Gunter – Topics: spoke with the City Attorney today, he noted that she was willing to entertain the idea and do some background. He stated a few weeks ago he asked the Assistant City Manager about our Media Policy. There is a Media Policy for the employees written in 1998. He noted that Ms. Barron told him that staff will be looking at updating that particular Media Policy. He opined that we needed a Media Policy for our Advisory Boards. There is nothing in place today. Council should look at it to see if it is a viable option. He stated he would like to work with the City Attorney and staff to try to determine what would be a good policy and bring that back before Council.

Councilmember Nelson provided the second.

Councilmember Nelson – Topics: Regarding Media Policies, she had researched that when she first became elected, but she would be interested to find out if staff could also research what the Sheriff's Department's Media Policy is for their employees, volunteers, and candidates.

Councilmember Stokes – Topics: No Report

Councilmember Stout – Topics: No Report

Councilmember Williams – Topics: Excused

Councilmember Carioscia – Topics: No Report

Mayor Coviello – Topics: Regarding the Media Policy and some of our committees, he asked if a policy can be created for a volunteer without infringing on Freedom of Speech and First Amendment rights.

City Attorney Menendez stated what has just been seconded with Councilmember Gunter is the research involved in determining what, if any, kind of policy we could have. If it appears to be viable, then we would proceed with drafting the Ordinance or Resolution that might be involved.

#### **REPORTS OF THE CITY ATTORNEY AND CITY MANAGER**

City Attorney: Topics: No Report

City Manager: Topics: Announced that the Budget is available. He offered to take calls with questions.

#### **TIME AND PLACE OF FUTURE MEETINGS**

A regular meeting of the Cape Coral City Council was scheduled for Monday, August 5, 2019 at 4:30 p.m. in Council Chambers.

A Joint Cape Coral City Council and Budget Review Committee Budget Workshop was scheduled for Tuesday, August 6, 2019 at 1:00 p.m. in Council Chambers.

#### **MOTION TO ADJOURN**

There being no further business, the meeting adjourned at 8:28 p.m.

Submitted by,

Kimberly Bruns, CMC  
City Clerk

<b>Item Number:</b>	<b>7.B.</b>
<b>Meeting Date:</b>	<b>8/19/2019</b>
<b>Item Type:</b>	<b>APPROVAL OF MINUTES</b>

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

Regular Meeting - August 5, 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:**

**LEGAL REVIEW:**

**EXHIBITS:**

Regular Meeting - August 5, 2019

**PREPARED BY:**

Kimberly Bruns	Division- Managerial	Department- City Clerk's Department
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**SOURCE OF ADDITIONAL INFORMATION:**

Kimberly Bruns  
City Clerk  
1-239-574-0417

**ATTACHMENTS:**

Description	Type
□ Regular Meeting - August 5, 2019	Backup Material

MINUTES FOR THE REGULAR MEETING OF THE  
CAPE CORAL CITY COUNCIL

August 5, 2019

Council Chambers

4:30 p.m.

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

Invocation/Moment of Silence – Councilmember Gunter

Pledge of Allegiance – Councilmember Gunter

Roll Call: Mayor Coviello, Councilmembers Carioscia, Gunter, Nelson, Stokes, and Williams were present. Councilmember Stout was excused. Councilmember Cosden requested to be excused from being physically present.

Mayor Coviello stated previously Council voted to allow Councilmember Cosden to join us via Skype, and she would like to do so tonight. He asked if anyone had any objection.

***Consensus received to allow remote participation by Councilmember Cosden.***

CHANGES TO AGENDA/ADOPTION OF AGENDA

Councilmember Gunter requested to add one topic under Unfinished Business to discuss his findings on observations regarding the Noise Ordinance.

Mayor Coviello suggested that the item be added under Follow Up Items for Council.

Councilmember Gunter agreed.

***Councilmember Stokes moved, seconded by Councilmember Nelson, to adopt the agenda, as amended, to add an item to Follow Up Items for Council regarding the Noise Ordinance.***

***Council polled as follows: Gunter, Nelson, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.***

Mayor Coviello announced that Councilmember Cosden was connected via Skype.

RECOGNITIONS/ACHIEVEMENTS

None.

APPROVAL OF MINUTES

Regular Meeting – July 22, 2019

***Councilmember Williams, seconded by Councilmember Carioscia, to approve the minutes for the July 22, 2019 regular meeting as presented. Voice Poll: All "ayes." Motion carried.***

BUSINESS  
PUBLIC COMMENT - CONSENT AGENDA

Bruce Winchester appeared to discuss the grant for the Utility Expansion Project. He inquired if this would be done for other areas of the Cape that have not had the UEP yet.

CONSENT AGENDA

- 1) Resolution 154-19 Approve contract amendment to First Hospital Laboratories dba FS Solutions for Drug Testing Services at an estimated annual dollar amount of



\$60,000 not to exceed budgetary limit and Authorize the City Manager or Designee to execute the contract amendment and purchase orders. Department: Financial Services /Human Resources Estimated Annual Dollar: \$60,000 (General Fund)

- 2) Resolution 155-19 Approve the Selection Advisory Committee (SAC) ranking of the Request for Proposal (RFP) RFP-PW19-69/MM to engage a firm to serve as Construction Manager at Risk for Fire Station #2 project and authorize the City Manager or Designee to enter into negotiation with the number one ranked firm, Wright Construction Group, Inc. Department: Public Works; Dollar Value: N/A; (Fund: N/A)
- 3) Resolution 262-19 Approval of Seller's counter offer to Purchase Lots 53 and 54, Block 3013, Unit 43, Cape Coral Subdivision, 1215 NW 25th 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.
- 4) Resolution 263-19 Approval of Contract for Purchase of Lots 14 and 15, Block 3014, Unit 43, Cape Coral Subdivision, 1022 NW 25th Terrace, Cape Coral, for the Festival Park project for the purchase price of \$12,000 plus closing costs not to exceed \$1,500; Department: Financial Services / Real Estate Division; Dollar Value: \$13,500; (Parks Capital Project/GO Bond Fund) Note: Trade offer rejected by Seller.
- 5) Resolution 264-19 Approval of Seller's counter offer to Purchase Lots 31, 32, and 33, Block 3025, Unit 43, Cape Coral Subdivision, 1288 Wilmington Parkway, Cape Coral, for the Festival Park project for the purchase price of \$18,000 plus closing costs not to exceed \$1,500; Department: Financial Services / Real Estate Division; Dollar Value: \$19,500; (Parks Capital Project/GO Bond Fund) Note: Trade offer rejected by Seller.
- 6) Resolution 273-19 2019 Florida Department of Economic Opportunity Florida Job Growth Grant (Infrastructure); Department: City Manager/EDO Division; Dollar Value: \$413,362; (Water and Sewer Fund)

***Councilmember Carioscia moved, seconded by Councilmember Gunter, to approve items 8(B)(1), 8(B)(2), 8(B)(3), 8(B)(4), 8(B)(5), and 8(B)(6), as presented.***

***Council polled as follows: Gunter, Nelson, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.***

#### **CITIZENS INPUT TIME**

Steve Crane appeared to discuss Ordinance 25-19 to regulate speed limits on arterial connectors and local streets. He noted this was already provided for under Florida law. He stated if an Ordinance is needed, it should state that all speed limits must be subject to a valid speed study to determine what 85% of our residents deem appropriate.

Gary Eldred appeared to discuss his concern about the increase in Code violations and the lack of compliance in the City. He suggested that Council put comments in the local newspaper to communicate to the citizens that there is a serious issue. He noted he received an email from the Code Enforcement Manager addressing the problem which he forwarded to all of Council.

Dan Sheppard appeared to discuss his concern about older sample homes on Chiquita Boulevard that seem to be occupied and not kept up, especially with tall grass. He questioned what Ordinance that these homes need to abide by. Are semis and equipment allowed to be parked on the properties? He noted one property in particular that had a growing issue with Code violations.

Patricia Farnsworth appeared to discuss the China trip expenditures. She questioned the benefit of spending thousands of dollars and requested a review of trip expenses.

Jeff Lockhart appeared to discuss the closing of kayaking on Lake Kennedy. He inquired where they would be relocating it.

Councilmember Williams inquired if most of the public were in attendance regarding the Pet Ordinance. He informed them that prior to the Public Hearing on this Ordinance, he would be presenting an amendment to the Ordinance.

Councilmember Stokes informed the resident regarding Code violations to contact the 311 Call Center to report any issues.

Councilmember Gunter addressed the issue concerning Code violations and noted that there will be a COW meeting in October to discuss some of the Quality of Life issues.

Mayor Coviello provided information regarding the kayak relocation. He stated they were in the process of finding a new home temporarily before it will end up at a new permanent location. He addressed the concerns with the China trip and stated that no staff's passport was paid from the City funds. He provided information on expanding businesses and other ventures between the Cities to add more jobs in Cape Coral. There would be showcasing of the projects through the City's Economic Development Manager. He inquired about the requirements and restrictions for model homes.

Planning Manager Pederson responded that there are requirements for a bond issuance of the model homes. He addressed various issues raised by the resident regarding grass and other violations.

Mayor Coviello responded to the speed limit question. He noted that Council will have the decision-making power on that process as it moves forward. He informed them that there are different countries interested in doing business with the City. He discussed the plans for the Dragon Boat Races coming to Cape Coral; there were 12 teams with 20 members on each team, 240 individuals that would support our local businesses.

#### **PERSONNEL ACTIONS**

None.

#### **PETITIONS TO COUNCIL**

None.

#### **APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS**

None.

#### **ORDINANCES/RESOLUTIONS**

#### **PUBLIC HEARINGS**

##### Resolution 244-19 Second and Final Public Hearing

##### **WHAT THE RESOLUTION ACCOMPLISHES:**

A resolution adopting the 2019-2020 One Year Action Plan for the Community Development Block Grant Entitlement Program including the Regional Analysis of Impediments to Fair Housing Choice 2019-2023; authorizing and directing the City Manager to prepare and submit the One Year Action Plan for the 2019-2020 fiscal year including the Regional Analysis of Impediments to Fair Housing Choice 2019-2023 to the United States Department of Housing and Urban Development (HUD); authorizing the City Manager or his designee to accept and execute the grant agreement for the 2019-2020 CDBG program when received from HUD; authorizing the City Manager or his designee to accept and execute grant agreements with subrecipients. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Resolution.

Housing Coordinator Yearsley stated this was the Second Public Hearing on Resolution 244-19 adopting the One Year Action Plan which sets forth our funding levels, as well as the Regional Analysis to Fair Housing Choice. That document will be before the Board of County Commissioners tomorrow. Staff did a full presentation at the First Public Hearing. She noted she was available for any questions.

Public Hearing opened.

No speakers.

Public Hearing closed.

***Councilmember Williams moved, seconded by Councilmember Stokes, to approve Resolution 244-19, as presented.***

***Council polled as follows: Gunter, Nelson, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.***

Ordinance 17-19 Second and Final Public Hearing

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance repealing Articles I - X and XII and amending Article XI of the City of Cape Coral Land Use and Development Regulations; establishing Article 1, General Provisions; Article 2, Decision Making and Administrative Bodies; Article 3, Development Review; Article 4, Zoning Districts; Article 5, Development Standards; Article 6, Parking; Article 7, Sign Regulations; Article 8, Nonconformities and Lawfully Existing Uses; Article 9, Floodplain Management; Article 10, Subdivisions; Article 12, Building Code and Engineering Design Standards; and Article 13, Reasonable Accommodation & Dispute Resolution, of the new City of Cape Coral Land Development Code; incorporating Article XI, as amended, into the new City of Cape Coral Land Development Code as Article 11, Definitions. (Applicant: Brought forward by City Management)

Planning & Zoning Recommendation: At their June 5, 2019 Regular Meeting, the Planning & Zoning Commission voted 7-0 to recommend approval of Ordinance 17-19.

City Management Recommendation: City Management recommends approval.

City Clerk Bruns read the title of the Ordinance.

Planning Manager Pederson stated that this Ordinance was the culmination of four years of direct effort by City staff. The actual genesis of the project was a couple of years before that with some of the recommendations from the Zucker Report. A full detailed presentation was given at the First Public Hearing. Tonight's presentation will be abbreviated. He pointed out some changes. There was a scrivener's error on the memo sent to Council in the use tables, last line about the commercial/professional services where 50,000 sf was corrected to 30,000 sf. Another change is under Food and Beverage Uses. Early on in the Code we had a line in there for Mobile Food Vendors. At Council's direction a few months ago, we pulled that out to be brought back in the future. He stated staff's recommendation was for adoption.

Planning Team Coordinator Daltry explained the purpose of the Ordinance and displayed the following power point slides:

- Ordinance 17-19
- Background
- Adoption Dates
- Land Development Code Substantial Changes
- More Administrative Approvals
- Planned Unit Development (PUDs) to replace PDPs
- Updated Regulations
- Supplementary District Regulations
- Consolidation, elimination, and renaming of zoning districts
- Scrivener's Errors
- Staff recommendation

Public Hearing opened.

Randy Landers appeared to discuss his thanks to City staff on the Development and Code rewrite. He voiced that he objected to the neighborhood commercial zoning district as written for Parcels between 1 and 5.

Marianne Salerno appeared to discuss the impact of the passing of this Ordinance to her business. She has considered leaving Cape Coral and wishes not to take that direction. Her business has 22 employees, and she is in favor of the change.

Tony Salerno, spouse of Marianne Salerno, informed Council that he was in the extermination business and looked forward to expanding his business under this Ordinance.

Public Hearing closed.

***Councilmember Gunter moved, seconded by Councilmember Nelson, to adopt Ordinance 17-19, as presented.***

***Councilmember Gunter amended his motion to add the updated commercial and professional table and strike out Mobile Food Vendors to include the revised Table 4.1.6 addressing both large scale retail and mobile food vendors. Second agreed.***

Mayor Coviello noted that the Four Corners was not part of this Ordinance. It has become a separate item which will be heard at next week's meeting.

***Council polled as follows: Gunter, Nelson, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.***

Ordinance 4-19 (ZA 18-0013) Second and Final Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Official Zoning District Map by rezoning approximately 9,786 acres to be consistent with the changes to the Future Land Use Map, the Comprehensive Plan, and the new Land Development Code. (Applicant: City of Cape Coral) (9,786 acres)

Hearing Examiner Recommendation: The Hearing Examiner recommends approval of the application for rezoning.

City Management Recommendation: City Management recommends approval.

City Clerk Bruns read the title of the Ordinance.

Planning Team Coordinator Daltry stated his presentation will be an abbreviated version from what was presented two weeks ago. He displayed the following slides:

- Proposed Change – Block 3682, Lots 1-52
- Future Land Use and Proposed Zoning SW 18<sup>th</sup> Court and SW 19<sup>th</sup> Avenue
- Proposed Change – Block 4186A and Block 4186, Lots 1-58
- View – Yucatan Parkway
- Proposed Removal
- Far NE corner of City, frontage on US 41
- Changes from January
- Analysis (2 slides)
- Comprehensive Plan/LUDR
- Conclusion

Mr. Daltry stated staff recommended approval of the proposed rezoning with the proposed changes identified in this presentation.

Public Hearing opened.

Timothy Roach inquired if the area at Tropicana and Burnt Store Road will be changed.

Planning Team Coordinator Daltry explained that the area presently had the RD zoning district which is being removed. It was being proposed to be changed to the R1 residential zoning.

Public Hearing closed.

***Councilmember Gunter moved, seconded by Councilmember Williams, to adopt Ordinance 4-19.***

City Attorney Menendez inquired if all of the new zoning districts to be approved tonight were consistent with the Land Use classifications on those properties.

Planning Team Coordinator Daltry responded that not for those two blocks identified, 4186A and 4186 lots 1-58 which are multi-family. Staff will be coming back with changes to single family such as Block 3682.

City Attorney Menendez inquired if Staff considered pulling these two properties out of this Ordinance and bring them back when Council changes the Land Use, as well as bringing forward the Zoning to match the Land Use.

Mr. Daltry stated that was another option.

City Attorney Menendez recommended to Council that if you're going to adopt a new zoning district on those properties that the zoning should match and be consistent with the Land Use category that is on them. If they are inconsistent now, which may be the case, they would be inconsistent even with the zoning. She recommended changing the Land Use first, then the zoning should be adopted to be consistent with the Land Use.

***Councilmember Gunter amended his motion to incorporate where we withdraw those parcels out of this Ordinance. Second agreed.***

Mayor Coviello thanked staff for their hard work on these last two Ordinances.

City Attorney Menendez informed Council that the property owner understood that if the land use is not changed, that property will be inconsistent. It is inconsistent with its current zoning. The property owner was okay with being in that continued limbo. If the motion maker would prefer to go back to his old motion, that would be fine since this is acceptable to the property owner.

Mayor Coviello questioned if we should just go back to the motion and pass this Ordinance originally as is.

City Attorney Menendez stated it would be with all of the changes that Mr. Daltry had recommended.

Councilmember Gunter asked Mr. Daltry if it was the intent of the property owner to have the proposed change.

Mr. Daltry stated the property owner was perfectly happy with single family.

***Motion maker and second agreed to revert to the original motion, as presented, to adopt with the other changes that were mentioned in the presentation.***

***Council polled as follows: Gunter, Nelson, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.***

City Manager Szerlag acknowledged that staff worked diligently to get this Ordinance established with over five years in the making.

Ordinance 37-19 Public Hearing

**WHAT THE ORDINANCE ACCOMPLISHES:**

The ordinance amends Chapter 12, "Offenses and Miscellaneous Provisions" of the Code of Ordinances to create Section 12-128, Article XIII, "Retail Sale of Dogs and Cats Prohibited" prohibiting the retail sale of dogs and cats in the City; provides for purpose and intent, definitions, prohibition, disclosures, amortization, enforcement and penalties. (Applicant: Brought forward by Councilmember Williams)

City Clerk Bruns read the title of the Ordinance.

Councilmember Williams mentioned that there were several tweaks to be made to the Ordinance, and an amendment will be requested in the motion.

City Attorney Menendez read the amendment under Section 12-128 (e) Amortization. In lieu of the current language in that proposed subsection e, there would be an expansion of the existing paragraph. The new proposed subparagraph e would state as follows: *"Amortization, notwithstanding any provision to the contrary in this section, any existing pet store that sells dogs or cats and possess an active City local business tax receipt on October 1, 2018 shall be permitted to continue its sales of dogs and cats in the City. The grandfather provisions provided herein shall not be transferable or assignable in any manner. An existing pet store that discontinues the sale of dogs and cats for a period of time greater than 60 days shall be deemed to have abandoned its grandfather status and shall comply with all of the provisions in this section. Notwithstanding any provision to the contrary in this section, any pet store that sells dogs or cats and possesses an active City local business tax receipt on October 1, 2019 shall be permitted to continue its sales of dogs and cats until September 30, 2020."* She clarified the intent. She stated the expansion refers to the existing pet store. She understood that there is only one that falls into that category, Patriot Pets, and did not know if there were others.

Councilmember Carioscia voiced that he would not support an Ordinance with a timeline. He stated he would support the Ordinance with no timeline so that Patriot Pets would be able to stay in business and sell dogs and cats until they leave the business.

City Attorney Menendez stated if the concern is the discontinuance for 60 days, that could always be removed. She responded that the time limit would not be placed on Patriot Pets.

Mayor Coviello also voiced that he would not support the 60 days since he was concerned who would monitor and regulate.

Councilmember Stokes agreed to support the Ordinance if the 60 days was removed.

Councilmember Williams stated he had no problem with removing the 60 days out of the Ordinance.

City Attorney Menendez understood that the 60 days would be stricken. She noted that any pet store in the City that sells dogs and cats that had a business tax receipt on October 1, 2018 will be able to continue to sell without any time limitation being in place but is not transferable or assignable. Any new business here as of October 1, 2019 will be subject to the September 30, 2020 one-year time limit to sell cats and dogs.

Public Hearing opened.

Liz McCauley, Executive Director, Cape Coral Animal Shelter, appeared in support of the Ordinance. She mentioned all the groups that supported this Ordinance.

Shane Rinehart, Vice President, Patriot Pets, thanked Council for amending the Ordinance. He stated he would do his best to make sure that they adhere to it.

Laurie Sharp appeared in support of the Ordinance and encouraged Council's approval.

Sharon Deming, Southwest Florida District Leader, Humane Society of the United States, appeared in support of the Ordinance and requested Council approve the Ordinance.

Michelle Davis, Senior Director, Philanthropy for the Southeast for the Humane Society of the United States, appeared in support of the Ordinance.

Joan Capobianco appeared in support of the Ordinance. She also voiced her concern with the Facebook postings of retail stores for cats and dogs.

Mary Lawrence stated that she was the person who brought the idea of the Ordinance to Councilmember Williams.

Autumn Stokes, co-owner of Islandside Animal Hospital, read a statement from the other co-owner, Dr. Nicole Nichols, supporting the Ordinance.

B.J. Gerald appeared in support of the Ordinance.

Madeline Durant appeared to voice her support of the Ordinance .

Jeannie Jane, Southwest Florida Animal Advocate, appeared in support of the Ordinance.

Robert King appeared in support of Patriot Pets. He stated he purchased two dogs from them without any health issues. He noted he was against puppy mills.

Mindy Aversawyer, one of the owners of Paws For a Cause, Inc., stated they were probably one of the largest rescues in Lee County, outside of the Gulf Cost Humane Society. She appeared in support of the Ordinance.

Suzanne Brosseau shared her experience of her puppy mill dog. She appeared in support of the Ordinance.

Eileen Snider appeared to voice her support of the Ordinance.

Kevin McGrail, former Councilmember, read an email that he sent to Council. He discussed animal rights groups and animal welfare groups. He encouraged Council to do more research and not to approve this Ordinance. He stated Council's duties are to protect the health, safety, and welfare of the community by focusing on Police and Fire protection, roadways and bridges, and with any leftover money Parks and Recreation and amenities. To try to dictate who can do business in our community and how they can do business is a lesson in government overreach. He stated if Council approves this Ordinance, they should be prepared to see the additional lobbying from the HSUS (Humane Society of the United States) group to come to City Council to come closer to HSUS and PETA's stated goal of mandatory spay and neuter.

John Rhoades, owner of Petland in Fort Myers, voiced his opinion of the Ordinance.

Susan Levinson appeared in support of the Ordinance.

Alvaro Sanchez, Cape Coral Animal Shelter, appeared in support of the Ordinance, as amended.

Dan Sheppard voiced his opinion of the Ordinance and suggested another policy since it would not prevent people from going across the river to purchase pets. Maybe the answer was to get guarantees from store owners.

Celeste Rizzo appeared in support of the Ordinance.

Patricia Tonisha appeared in support of the Ordinance. She suggested adding to the Ordinance to impose a high fine if animals are purchased from puppy mills.

Public Hearing closed.

***Councilmember Williams moved, seconded by Councilmember Carioscia, to adopt Ordinance 37-19, as amended, (as read into the record by the City Attorney), with the City Attorney's wording, striking the 60-day time limit clause for existing businesses.***

Councilmember Stokes voiced his support of the Ordinance with the amendment.

***Council polled as follows: Gunter, Nelson, Stokes, Williams, Carioscia, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.***

*Recessed at 7:11 p.m. and reconvened at 7:30 p.m.*

#### INTRODUCTIONS

##### Ordinance 25-19 Set Public Hearing Date for August 19, 2019

##### WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 18, Traffic, Section 18-6, Speed Limits, to regulate speed limits on arterial, collector, and local streets located in the City. (Applicant: Brought forward by City Management)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for August 19, 2019 in Council Chambers.

Traffic Engineer Corbett provided background on the Ordinance and was available for any questions.

Councilmember Williams inquired about the timeframe for Public Input, especially since it was not a popular item last time an Ordinance of this type came around.

Traffic Engineer Corbett responded that the scheduled hearing date was for August 19, 2019. He emphasized that this was not specific to a single roadway but to cap the speed limits on local roadways at 30 mph.

City Manager Szerlag mentioned this would give a zone of comfort to residents living on local or arterial streets who believe that their speed limit should be reduced. If a speed study is done that shows that the speed should be increased, that would no longer be applicable.

Councilmember Williams stated that there may be a difference in opinion on the studies.

City Manager Szerlag mentioned that the Ordinance caps the speed limit to 30 miles per hour regardless of what the speed study shows.

City Attorney Menendez reminded Council that they have the capability of changing the August 19, 2019 hearing date as they can set the date.

Mayor Coviello stated that two-week's notice should be sufficient.

Councilmember Gunter opined that this Ordinance would be a protection for the residents.

##### Ordinance 38-19 Set Public Hearing Date for August 19, 2019

##### WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends Chapter 12, "Offenses and Miscellaneous Provisions", Article VIII, "Offenses Creating Nuisances", Section 12-23(F) of the Code of Ordinances, to prohibit overnight parking of commercial vehicles on certain public streets posted with signs. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.



The public hearing was scheduled for August 19, 2019 in Council Chambers.

Traffic Engineer Corbett provided background on the Ordinance and was available for any questions.

Ordinance 39-19 Set Public Hearing Date for August 19, 2019

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance authorizing the City Manager to sell municipal surplus real property described as Lots 12 and 13, Block 5270, Unit 82 Cape Coral Subdivision pursuant to Section 2-155 of the Code of Ordinances; authorizing and directing the Mayor and Clerk to execute a deed conveying the surplus real property to John Marchese, Jr.; property located at 4125 NW 16th Terrace. (Applicant: Brought forward by City Management)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for August 19, 2019 in Council Chambers.

Property Broker Andrews stated she would have a full presentation at the Public Hearing.

Ordinance 40-19 Set Public Hearing Date for August 19, 2019

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance authorizing the City Manager to sell municipal surplus real property described as Lots 30 and 31, Block 5271, Unit 82 Cape Coral Subdivision pursuant to Section 2-155 of the Code of Ordinances; authorizing and directing the Mayor and Clerk to execute a deed conveying the surplus real property to PCI Management, Inc.; property located at 1727 NW 42nd Place. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for August 19, 2019 in Council Chambers.

Property Broker Andrews stated she would have a full presentation at the Public Hearing.

Ordinance 41-19 Set Public Hearing for August 12, 2019

**WHAT THE ORDINANCE ACCOMPLISHES:**

The ordinance authorizes and directs the City Manager to enter into a Health Care Facility Ground Lease with Medical Risk Solutions, LLC for the lease of property owned by the City of Cape Coral located at 1020 Cultural Park Blvd. S. for the operation of a health care facility for city employees, retirees and dependents in the City's health insurance plan. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for August 12, 2019 in Council Chambers.

Assistant City Manager Barron provided background on the Ordinance establishing a health facility for employees across from City Hall. A companion Resolution will be coming forward next week that will establish the service agreement and contract. More information on the Ordinance will be forthcoming.

**UNFINISHED BUSINESS**

**WATER QUALITY – UPDATE**

Public Works Director Clinghan provided the Water Quality Update. He noted that the elevation of Lake Okeechobee was three feet lower than last year. As of August 2, 2019, the Army Corps of Engineers was releasing zero cfs.

**FOLLOW UP ITEMS REQUESTED BY COUNCIL**

Councilmember Gunter stated he had an opportunity last Friday evening to go with two police officers between the hours of 9:30 pm and 10:30 pm to observe several locations and measured the decibel level. He discussed the findings and observations of the noise studies and various readings from multiple sources. He opined it may be best to try and establish a distance away from residential structures. Different parameters may be needed for businesses closer to single family homes and condos versus someone who may be down the street. He mentioned that there were other cities that applied this approach. He stated we may need to consider restricting the outdoor playing of music within a certain distance from residential. The Ordinance should identify the different levels.

Councilmember Carioscia inquired if the condo reading of 52 decibel (dB) was disturbing.

Councilmember Gunter responded that the decibel level was nothing comparable to the other higher readings based on location. He stated nearby residents would not hear the music if they were inside with their windows closed.

Councilmember Williams discussed the accuracy of decibel readings.

Chief of Police Newlan clarified that they just purchased ten new decibel meters, the same that Tampa was using. They are professionally calibrated, and they measure high and low pitches.

Councilmember Gunter stated taking the reading at the source is the right approach. He mentioned after reviewing most of the noise ordinances, 90% of them were anywhere from 70 to 75 dB. He agreed that standing at the roadway and listening to 82 to 85 dB was pretty loud. He opined that the 75-dB level, like most of the jurisdictions are implementing, would be a better way to go.

#### ADDENDUM

Mooring Field Update – Brought forward by Councilmember Gunter

Councilmember Gunter explained why he brought this forward for discussion as a Mooring Ordinance was adopted by Council in June of 2018. He provided an update on the State grant application process. Staff decided to table the item due to some possible development in the Bimini Basin. He encouraged Council to discuss and decide how to move forward.

Mayor Coviello inquired about the denial of the grant in February 2019.

Assistant City Manager Barron provided information on the grant denial and process. The number of mooring buoys would need to be determined by the Council.

City Manager Szerlag acknowledged that Council should have been informed of the grant denial. He mentioned that the proposed budget was \$900 million, and funds could be allocated for this project if Council wished to have staff proceed with a design as opposed to waiting for a grant to come in.

Councilmember Gunter stated that the number of mooring balls would need to be determined first.

City Manager Szerlag responded that five to ten slips could be reviewed by Mr. Pederson. We will come back with a timeframe for permitting.

Mayor Coviello stated that the Council had already adopted the Ordinance of allocating \$40,000. He noted this could be put on a future agenda to see how many mooring balls we want.

Councilmember Gunter stated Mr. Pederson recommended that maybe we could move forward with five to ten. He agreed on that number.

Mayor Coviello also agreed on that range.

Assistant City Manager Barron responded that staff could move forward with an RFP with a range of five to ten.

Mayor Coviello questioned if the grant was in the amount of \$50,000.

Assistant City Manager Barron stated it was more than that.

Planning Manager Pederson recalled that the Phase One of the Mooring Field Ordinance was somewhere between \$40,000 to \$50,000. He stated they projected approximately \$40,000 for Phase Two, the development of the specifications and the plans for the Mooring Field, and that was to get it ready to submit for permitting to the State and Federal agencies. The third step which is the actual capital cost of constructing the Mooring Field and any required land base facilities has not been estimated at this time.

Mayor Coviello questioned if the group approved to work on this was Stantec.

Assistant City Manager Barron stated Stantec did the original.

Mayor Coviello asked if we could go back to them and get them to move forward with the next step.

Assistant City Manager Barron stated an RFP would be required. She noted they were in the processing of getting some quotes.

City Manager Szerlag recommended going out for the RFP and if the low bid is over \$50,000, it will be on a future agenda item. He noted he would also come back in conjunction with the RFP and try to estimate what our capital cost would be for this project.

#### **NEW BUSINESS**

None.

#### **REPORTS OF THE MAYOR AND COUNCIL MEMBERS**

Councilmember Gunter stated he had a meeting with Mr. Cautero two months ago where he mentioned issues in the new LUDRs about attached and detached garages, pools, and structures in the PUE (Public Utility Easement). The concern about the PUE is that an Ordinance was last written in 2004, and some of the language needs to be updated for correct interpretation. ***He requested a second to work on that issue with staff and the City Attorney.*** He explained the issue with pools and the requirement for the location to be behind a house. He also explained the problem with attached and detached garages.

Planning Manager Pederson acknowledged that they were aware of these issues, and there has been communication about these topics. He stated they would work with the City Attorney to craft an Ordinance.

***Councilmember Nelson provided the second.***

Councilmember Gunter – Topics: Attended Shop with a Cop with the Mayor last Friday at Target.

Councilmember Nelson – Topics: Sent her family to Shop with a Cop. She inquired about the Fertilizer Ordinance and signs. She suggested that there was some confusion about some of the communications posted around town. Our Ordinance actually states No Fertilizer that contains phosphorous and nitrogen. She suggested that next year we need to specify that in our communications. She asked for an update on when the Fertilizer Ordinance would be done.

PW Director Clinghan stated there was one component they were looking at with Utilities and Environmental Resources is the amount of phosphorous and nitrogen in our reclaimed water and how it impacts the lawn when the sprinkler systems are on.

Councilmember Nelson inquired what the timeframe would be for completion.

Director Clinghan stated they were considering possibly hiring a consultant to model our irrigation system to determine that value.

Councilmember Nelson inquired if other municipalities have done that.

Director Clinghan stated other municipalities have a calculation that they base on phosphorous and nitrogen levels such as Sanibel and Marco Island. Typically, with potable water systems when you chlorinate, you have to model that to see how much chlorine there is at the beginning so there is potential for more phosphorous and nitrogen closer to the treatment plants than at the end of the run.

Councilmember Nelson asked if they anticipated wrapping this up by the end of the year.

Director Clinghan stated they would try to get a handle of how much we want to get into that reclaimed water and how it will impact the Ordinance.

City Manager Szerlag requested that Utilities Director Pearson address trying to give an estimate.

Utilities Director Pearson stated they were trying to get a handle on the amount of phosphorous and nitrogen in the reclaimed water as sample readings from canals and plants are not uniform. He noted they were considering getting a consultant to look at that. We've done a lot of sampling, and based on that data, we can make some good assumptions and how we need to proceed next. Our Ordinance may not be like other municipalities since it may be a hybrid approach. In some ways our hands are tied because the State does not allow Cities to regulate fertilizer cells. He stated we will come up with something to bring forward to Council that will be in the best interest of our citizens and the City.

Director Clinghan added that Mr. Pearson was trying to look at ways to possibly reduce the reclaimed water in the sprinkler systems.

Director Pearson discussed another Ordinance that he was working on right now and that was the Irrigation Ordinance. There were a lot of antiquated sprinkler systems, and this Ordinance would allow residents who wished to upgrade to newer systems to not have to do the four-hour twice a week watering. It would have technology that gets data from satellites, and they only go off when the yard needs water.

Mayor Coviello mentioned the advertising in *On the Move*, the City website, and the City's Facebook page regarding the fact that no nitrogen and no phosphorus is allowed in the fertilizers used during a certain time period. He stated he gets quite a few calls from some of the companies that are aware of this. He mentioned the signs posted around town were misleading since they simply say No Fertilizer between these dates. He stated that needed to be addressed in the future because we are hurting some of the businesses that do that type of treatment.

City Manager Szerlag stated if we do not specify what is allowed and what is not allowed, then we will take down the signs.

Councilmember Stokes – Topics: No Report

Councilmember Stout – Topics: Excused

Councilmember Williams – Topics: Clarified his absence from the Council meetings.

Councilmember Carioscia – Topics: Inquired about the Fireworks Ordinance.

City Attorney Menendez responded that they were in the process of completing a Memorandum so that Council can have a better understanding of the complexities involved in the Fireworks State Regulations and how they affect our ability to regulate. She stated that Council would be receiving that this week.

Councilmember Cosden – Topics: (Participated remotely.) She requested to attend tomorrow's Budget Workshop remotely again. She stated she planned to be back in person on Monday for the next regular Council meeting.

Mayor Coviello stated they looked forward to her return. He asked if anyone had any objections to Councilmember Cosden participating remotely for tomorrow's workshop.

***Consensus received for Councilmember Cosden to again participate remotely at Tuesday's Budget Workshop.***

Mayor Coviello – Topics: Attended Shop with a Cop.

#### **REPORTS OF THE CITY ATTORNEY AND CITY MANAGER**

City Attorney: Topics: No Report

City Manager: Topics: He asked staff (Connie, Paul, Dave, and Bob) if he left anything out regarding terms for the RFP development for the Mooring Field as far as the capital cost for budgeting, timeframes, operations and maintenance, and revenue.

Assistant City Manager Barron stated he has it all covered.

#### **TIME AND PLACE OF FUTURE MEETINGS**

A joint Cape Coral City Council and Budget Review Committee Budget Workshop was scheduled for Tuesday, August 6, 2019 at 1:00 p.m. in Council Chambers.

A regular meeting of the Cape Coral City Council was scheduled for Monday, August 12, 2019 at 4:30 p.m. in Council Chambers.

#### **MOTION TO ADJOURN**

There being no further business, the meeting adjourned at 8:31 p.m.

Submitted by,

Kimberly Bruns, CMC  
City Clerk

**Item Number: B.(1)**  
**Meeting Date: 8/19/2019**  
**Item Type: CONSENT AGENDA**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 261-19 Approval of Seller's counter offer to Purchase Lots 15 and 16, Block 3013, Unit 43, Cape Coral Subdivision, 1230 NW 25th Street, Cape Coral, for the Festival Park project for the purchase price of \$13,500 plus closing costs not to exceed \$1,500; Department: Financial Services / Real Estate Division; Dollar Value: \$15,000; (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 449 of the 517 parcels required for Festival Park, with four 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 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 of \$12,000 to purchase the site based on an appraisal of a similar two-lot site by an independent state-certified appraiser. The property owner countered the City with an offer of \$13,500, which has been deemed reasonable when considering the costs of condemnation. 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 15 and 16, Block 3013, Unit 43, Cape Coral Subdivision, for the purchase price of \$13,500 plus closing costs not to exceed \$1,500.

**LEGAL REVIEW:**

**EXHIBITS:**

Resolution 261-19  
Property Appraiser Sheet  
Location Map  
Appraisal

**PREPARED BY:**

Dawn Y. Andrews, Property Broker	Division- Real Estate	Department- Financial Services
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**SOURCE OF ADDITIONAL INFORMATION:**

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

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

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Resolution 261-19	Backup Material
▣ PA Sheet - Block 3013, Lots 15-16	Backup Material
▣ Location Map - Block 3013, Lots 15-16	Backup Material
▣ Appraisal - 2-Lot Off Water - FP	Backup Material



RESOLUTION 261 – 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 ALAN LATOZA AND TOM LATOZA FOR THE PURCHASE OF LOTS 15-16, BLOCK 3013, UNIT 43, CAPE CORAL SUBDIVISION, FOR THE FESTIVAL PARK PROJECT; PROPERTY LOCATED AT 1230 NW 25<sup>TH</sup> 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 \$12,000 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 \$13,500; and

WHEREAS, City staff recommends acceptance of the seller's counter-offer of \$13,500, plus closing fees not to exceed \$1,500, to purchase Lots 15-16, Block 3013, 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 \$13,500, plus closing fees not to exceed \$1,500, to purchase Lots 15-16, Block 3013, Unit 43, Cape Coral Subdivision, for the Festival Park project. The property is located at 1230 NW 25<sup>th</sup> 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 Alan Latoza and Tom Latoza for the purchase of Lots 15-16, Block 3013, Unit 43, Cape Coral Subdivision, as more fully described in the Contract, in the amount of \$13,500, 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 COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	STOKES	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	CODEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res/Purchase Real Property-Festival Park L15-16 B3013 Counter



## 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:** Alan Latoza and Tom Latoza, each as to an undivided one-half interest, as tenants in common, 6125 Sapphire, Alta Loma, California 91701 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:

1. **LEGAL DESCRIPTION** of real estate located in Lee County, Florida:

Lots 15 and 16, 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**

~~\$12,000.00~~

\$13,500  
7/16/19

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 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

\_\_\_\_\_  
Witness to A. John Szerlag

BY: \_\_\_\_\_  
A. John Szerlag Date  
City Manager

\_\_\_\_\_  
Witness to Kimberly Bruns

BY: \_\_\_\_\_  
Kimberly Bruns Date  
Interim City Clerk

\_\_\_\_\_  
Witness

Print Name: Debbie Latoza

BY: Alan Latoza 8/9/19  
Alan Latoza Date

\_\_\_\_\_  
Witness

Print Name: Linda J. Latoza

BY: Tom Latoza 7/16/19  
Tom Latoza Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Dolores D. Menendez, City Attorney



## Property Data

STRAP: 27-43-23-C4-03013.0150 Folio ID: 10033626

## + Owner Of Record

LATOZA ALAN +  
 LOTOZA TOM T/C  
 6125 SAPPHIRE  
 ALTA LOMA CA 91701

## Site Address

1230 NW 25TH TER  
 CAPE CORAL FL 33993

## Property Description

**Do not use for legal documents!**

CAPE CORAL UNIT 43 BLK 3013 PB 17 PG 49 LOTS 15 + 16

## Classification / DOR Code

VACANT RESIDENTIAL / 00

## [ Tax Map Viewer ] [ View Comparables ]



## [ Pictometry Aerial Viewer ]



## Current Working Values



Just

9,300

As Of

07/16/2018

## Attributes

Land Units Of Measure	UT
Units	1.00
Total Number of Buildings	0
Total Bedrooms / Bathrooms	0
Total Living Area	0
1st Year Building on Tax Roll	N/A
Historic Designation	No

## Image of Structure



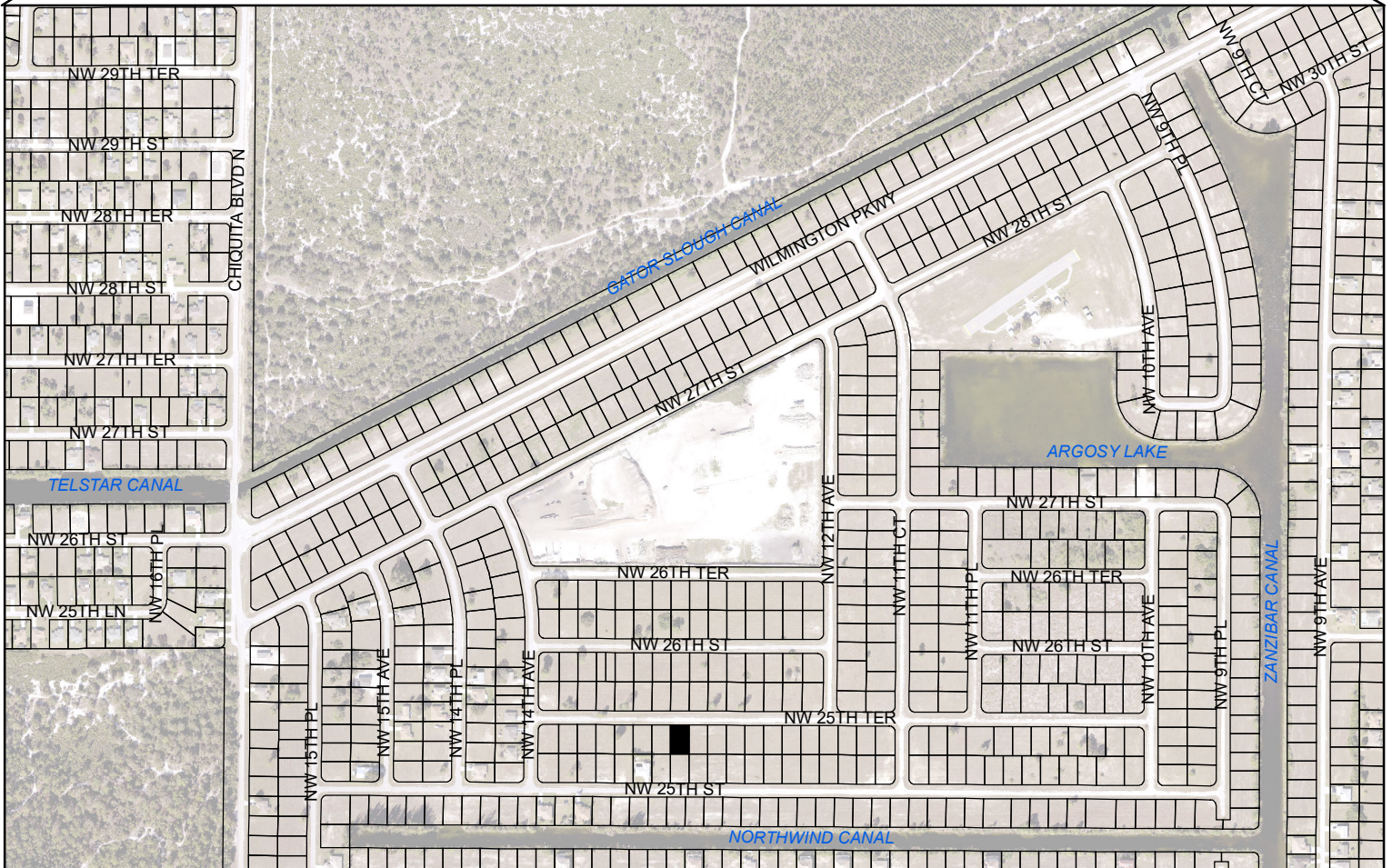
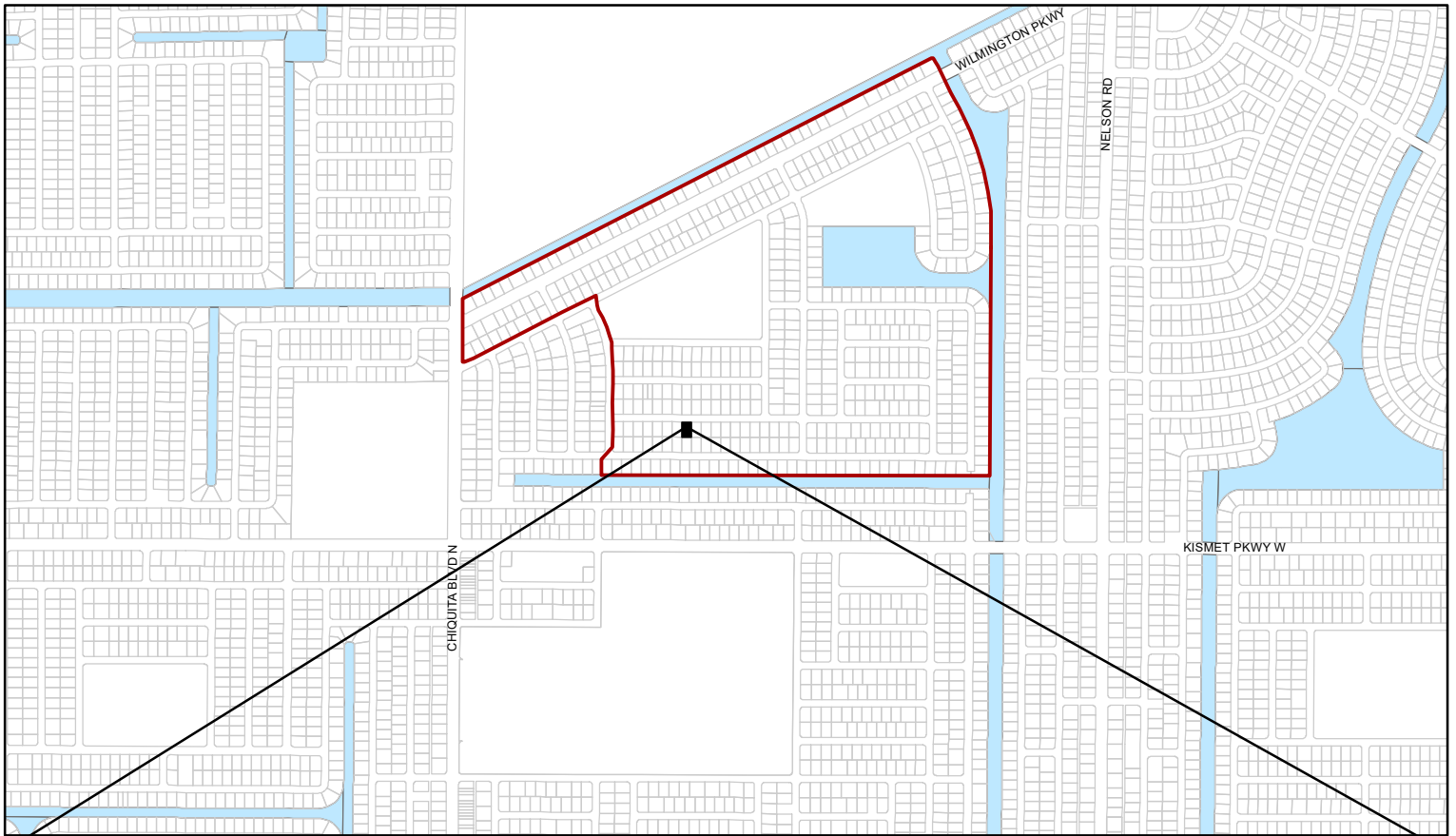
## Exemptions



## Values (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. Prepared by: The City of CAPE CORAL Real Estate Division-Gregory L. Spivey

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



**FESTIVAL PARK**  
Parcel 123  
Block 3013 Lots 15 through 16



**Restricted Real Estate  
Appraisal Report  
Of**

The Turpin Property  
1010 NW 25<sup>th</sup> Terrace  
City of Cape Coral, Lee County, Florida

**Prepared For**

The City of Cape Coral  
Real Estate Division  
c/o Dawn Andrews  
P.O. Box 150027  
Cape Coral, Florida 33915-0027

**DATE OF VALUATION:**

**May 3, 2019**

**Calhoun, Collister & Parham, Inc.**



## Calhoun, Collister & Parham, Inc.

*Real Estate Appraisers & Consultants*

### **Jacksonville Office**

10151 Deerwood Park Blvd.,  
Building 200, Suite 250  
Jacksonville, Florida 32256-0557  
Phone: (904) 764-0200  
Toll Free (800) 280-8140  
Fax: (904) 764-4006

### **Tampa Office**

10014 N Dale Mabry Highway  
Suite 201  
Tampa, Florida 33618-4426  
Phone: (813) 961-8300  
Toll Free (800) 280-8150  
Fax: (813) 962-6363

### **West Palm Beach Office**

777 South Flagler Drive  
Suite 800 – West Tower  
West Palm Beach, FL 33401  
Phone: (561) 909-3176  
Toll Free (800) 280-8140  
Fax: (561) 909-3177

May 30, 2019

The City of Cape Coral  
Real Estate Division  
c/o Dawn Andrews  
P.O. Box 150027  
Cape Coral, Florida 33915-0027

Re.: Owners : William and Delilah Turpin  
Property Address : 1010 NW 25<sup>th</sup> Terrace  
County : Lee  
City : Cape Coral

Dear Mrs. Andrews:

As requested, I have personally inspected and appraised the above referenced property. At the date of value, the subject property consisted of a 10,000 square feet lot. The property is located along the southern side of NW 25<sup>th</sup> Terrace, about 160 feet west of NW 10<sup>th</sup> Avenue, within the City of Cape Coral, in Lee County, Florida. The subject property is located in an area that will be developed as Festival Park by the City of Cape Coral.

The intended use of this Restricted Appraisal Report is to assist the client in determining the market value of the subject property. The purpose of the appraisal is to report the market value of the subject property. The format of the report is Restricted Appraisal Report, in that the findings and analysis of the report were prepared for exclusive use by the client, in conformance with Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice (USPAP). Portions of the supporting data analyzed in the appraisal process have been included in this appraisal report. Additional data and other material are contained in the appraisal file, which is incorporated herein by reference.

The City of Cape Coral  
Real Estate Division  
c/o Dawn Andrews  
May 30, 2019  
Page Two

Based upon those factors discussed herein, the market value of the subject property, as of May 3, 2019 (date of last inspection), is:

**\$12,000**

Please do not hesitate to contact me if you have any questions or comments.

Sincerely,

Calhoun, Collister & Parham, Inc.

A handwritten signature in blue ink that reads "Richard H. Parham". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard H. Parham  
State-Certified General  
Real Estate Appraiser  
RZ2256

**CERTIFICATION STATEMENT**

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

- The statements of fact contained in this report are true and correct.
- 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 not performed other 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*.
- I have made a personal inspection of the property that is the subject of this report.
- The following have provided significant real property appraisal assistance to the person signing this certification: Brett A. Meyers, State-Certified General Real Estate Appraiser RZ3409. This does not include any other professional assistance involving other disciplines, which are summarized under the "Scope of Appraisal" portion of the report.

**Certification Statement (Continued)**

- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I Richard H. Parham, State-Certified General Real Estate Appraiser RZ2256, have completed the Standards and Ethics Education Requirements for Candidates/Practicing Affiliates of the Appraisal Institute.



Richard H. Parham  
State-Certified General  
Real Estate Appraiser  
RZ2256

**GENERAL ASSUMPTIONS AND LIMITING CONDITIONS**

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated. The legal description is assumed to be correct for the purposes of this report.
2. The property has been appraised as free and clear, unencumbered by mortgages, liens, delinquent taxes, assessments, special or unusual deed conditions or restrictions, but subject to zoning regulations.
3. The plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
4. It is assumed there are no hidden or unapparent conditions of the property, subsoil, or structures. The appraiser(s) assumes no liability for any hidden or unapparent conditions of the property. No responsibility is assumed for such conditions, or for arranging for engineering studies that may be required to discover them.
5. Possession of this report, or a copy thereof, does not carry with it the right of publication.
6. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers, or the firm with which the appraisers are connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraiser.
7. This report is based on the best data available. If additional facts and/or data become available, the appraiser reserves the right to make adjustments and to update the value conclusions contained in this report.

**EXTRAORDINARY ASSUMPTIONS**

There are no extraordinary assumptions for this report.

**HYPOTHETICAL CONDITIONS**

There are no hypothetical conditions for this report.

**SUMMARY OF IMPORTANT FACTS AND CONCLUSIONS**

<b>Report Type:</b>	Restricted Appraisal Report
<b>Date of Value:</b>	May 3, 2019 (date of last inspection)
<b>Date of Report:</b>	May 30, 2019
<b>Type of Value:</b>	Market Value
<b>Location:</b>	The subject property is located along the southern side of NW 25 <sup>th</sup> Terrace, about 160 feet west of NW 10 <sup>th</sup> Avenue, within the City of Cape Coral, in Lee County, Florida.
<b>Owners:</b>	William and Delilah Turpin
<b>Tax I.D. No.:</b>	27-43-23-C3-03014.0200
<b>Rights Appraised:</b>	Fee Simple Estate
<b>Site Data:</b>	The subject property contains 10,000 square feet. The site has about 80 feet of frontage along the south side of NW 25 <sup>th</sup> Terrace, at a depth of 125 feet. Access to the property is from NW 25 <sup>th</sup> Terrace.
<b>Improvement Data:</b>	The subject property consists of vacant land.
<b>Zoning:</b>	R-1B, Single-Family Residential, City of Cape Coral
<b>Land Use Designation:</b>	PK, Parks and Recreation, City of Cape Coral
<b>Market Value:</b>	<b>\$12,000</b>

## **IMPORTANT DEFINITIONS**

**Appraisal** (noun) is the act or process of developing an opinion of value; an opinion of value. (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.<sup>1</sup>

**Client** is the party or parties who engage, by employment or contract, an appraiser in a specific assignment.<sup>2</sup>

**Easement** is the right to use another's land for a stated purpose.<sup>3</sup>

**Exposure Time** is an estimated length of time that the 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.<sup>4</sup>

**Extraordinary Assumption** is an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions.<sup>5</sup>

**Fee Simple** is absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.<sup>6</sup>

**Highest and Best Use** (in appraising real property) is the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value.<sup>7</sup>

**Hypothetical Condition** is a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.<sup>8</sup>

**Intended Use** is the use(s) of an appraiser's reported appraisal or appraisal review assignment results, as identified by the appraiser based on communication with the client at the time of the assignment.<sup>9</sup>

**Intended User** is the client and any other party as identified, by name or type, as users of the appraisal or appraisal review report by the appraiser, based on communication with the client at the time of the assignment.<sup>10</sup>

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<sup>1</sup> *Uniform Standards of Professional Appraisal Practice, 2018-2019 Edition, Published by the Appraisal Foundation, Page 3.*

<sup>2</sup> *Ibid, Page 4.*

<sup>3</sup> *The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, Published by the Appraisal Institute, Page 71*

<sup>4</sup> *Uniform Standards of Professional Appraisal Practice, 2018-2019 Edition, Published by the Appraisal Institute, Page 4.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *The Appraisal of Real Estate, 14<sup>th</sup> Edition, Published by the Appraisal Institute, Page 5.*

<sup>7</sup> *Ibid, Page 333.*

<sup>8</sup> *Uniform Standards of Professional Appraisal Practice, 2018-2019 Edition, Published by the Appraisal Foundation, Page 4.*

<sup>9</sup> *Ibid, Page 5.*

<sup>10</sup> *Ibid.*



**Jurisdictional Exception** is an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP.<sup>11</sup>

**Leased Fee Interest** is the ownership interest held by the lessor, which includes the right to the contract rent specified in the lease plus the reversionary right when the lease expires.<sup>12</sup>

**Leasehold Interest** is the right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease.<sup>13</sup>

**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 are 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.<sup>14</sup>

**Replacement Cost** is the estimated cost to construct, at current prices as of the effective appraisal date, a substitute for the building being appraised, using modern materials and current standards, design, and layout.<sup>15</sup> Such replacement cost sometimes offsets functional obsolescence.

**Report** is any communication, written or oral, of an appraisal or appraisal review that is transmitted to the client or a party authorized by the client upon completion of an assignment.<sup>16</sup>

**Reproduction Cost** is the estimated cost to construct, at current prices as of the effective date of the appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all the deficiencies, superadequacies, and obsolescence of the subject building.<sup>17</sup>

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<sup>11</sup> *Uniform Standards of Professional Appraisal Practice, 2018-2019 Edition, Published by the Appraisal Foundation, Page 5.*

<sup>12</sup> *The Appraisal of Real Estate, 14<sup>th</sup> Edition, Published by the Appraisal Institute, Page 72.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Uniform Standards of Professional Appraisal Practice (Advisory Opinion 22), 2018-2019 Edition, Published by the Appraisal Foundation, Page 127.*

<sup>15</sup> *Ibid, Page 197.*

<sup>16</sup> *Uniform Standards of Professional Appraisal Practice, 2018-2019 Edition, Published by the Appraisal Foundation, Page 5.*

<sup>17</sup> *The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, Published by the Appraisal Institute, Page 198.*

**Scope of Work** is the type and extent of research and analyses in an appraisal or appraisal review assignment.<sup>18</sup>

**Special Purpose Property** is a property with a unique physical design, special construction materials, or a layout that particularly adapts its utility to the use for which it was built.<sup>19</sup>

**Workfile** is documentation necessary to support an appraiser's analyses, opinions, and conclusions.<sup>20</sup>

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<sup>18</sup> *Uniform Standards of Professional Appraisal Practice, 2018-2019 Edition, Published by the Appraisal Foundation, Page 5.*

<sup>19</sup> *The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, Published by the Appraisal Institute, Page 217.*

<sup>20</sup> *Uniform Standards of Professional Appraisal Practice, 2018-2019 Edition, Published by the Appraisal Foundation, Page 6.*

**IDENTITY OF CLIENT**

This appraisal report has been prepared for Dawn Andrews with the City of Cape Coral, who is considered the client for this appraisal assignment.

**INTENDED USERS**

The intended users of this report are the above identified client. The use of this report by others is not intended.

**INTENDED USE**

The intended use of this report is to assist the client in determining the market value of the subject property.

**PURPOSE**

The purpose of the appraisal is to report the market value of the subject property.

**TYPE OF VALUE**

The type of value determined herein is market value, as defined within the previous Important Definitions section.

**DATE OF VALUE**

The date of value is May 3, 2019, which represents the date of last inspection.

**DATE OF REPORT**

The date of this report is May 30, 2019.

**PROPERTY RIGHTS APPRAISED**

The property rights or interest to be appraised is the undivided fee simple interest as if free and clear of all liens, mortgages, encumbrances, and/or encroachments, unless otherwise provided for herein.

**LEGAL DESCRIPTION**

Cape Coral Unit 43, Block 3014, Lots 20 and 21, as recorded in Lee County Official Records Book 17 Page 50.

**OWNERSHIP AND SALES HISTORY**

A search of the public records of Lee County indicates there have been no arm's length transfers of the subject property within the three years prior to the date of value. I am unaware of any contracts or agreements of sale involving the subject property at the date of value.

### **SCOPE OF APPRAISAL**

The scope of work performed in completing this appraisal includes:

- discussions with the client;
- the identification and inspection of the subject property;
- the determination of the appraisal problem and appropriate scope of work for this assignment;
- research into physical and economic factors regarding properties in the market area as related to value;
- a highest and best use analysis of the subject property, taking into consideration development trends in the area;
- the identification and inspection of all comparable sales utilized herein;
- extensive data research;
- the valuation of the subject property via the sales comparison approach.

The subject property is located along the southern side of NW 25th Terrace, about 160 feet west of NW 10th Avenue, within the City of Cape Coral, in Lee County, Florida. The vacant site contains 10,000 square feet.

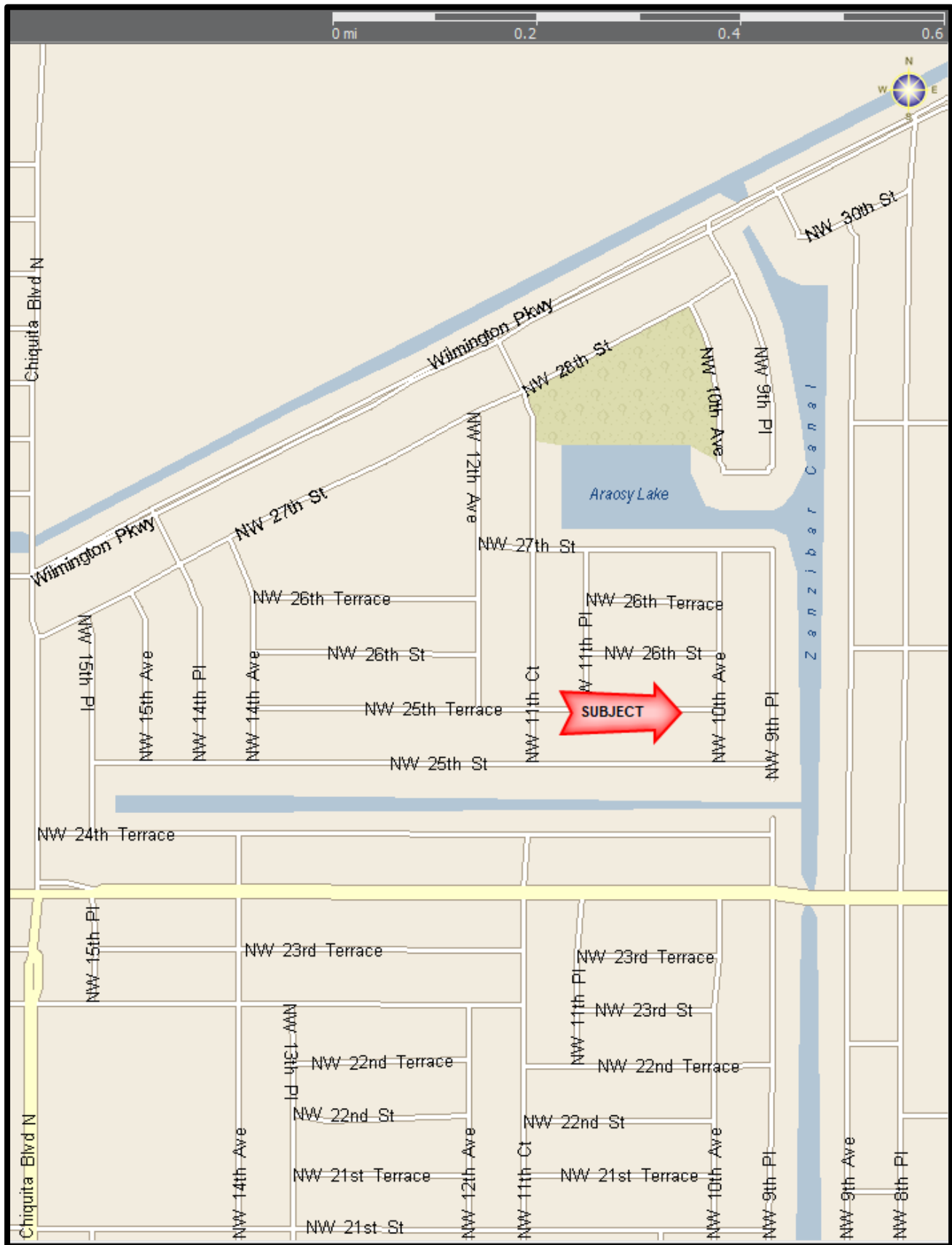
Within this report, the cost, sales comparison, and income approaches will be considered. Those approaches deemed applicable will be utilized, and if any particular approach is not considered applicable, then a summary explanation as to why this particular approach is excluded will be given.

Extensive and detailed research has been completed to research and analyze sales of properties similar to the subject. These properties are located in Lee County, with those utilized to value the subject summarized within the body of this report. Additional data is also contained within the appraisers' files. Therefore, these files are an integral part of this appraisal assignment and are incorporated herein by reference. In the process of researching each sale, the deed and mortgage (as applicable) of each transaction were obtained.

# **LOCATION MAP**

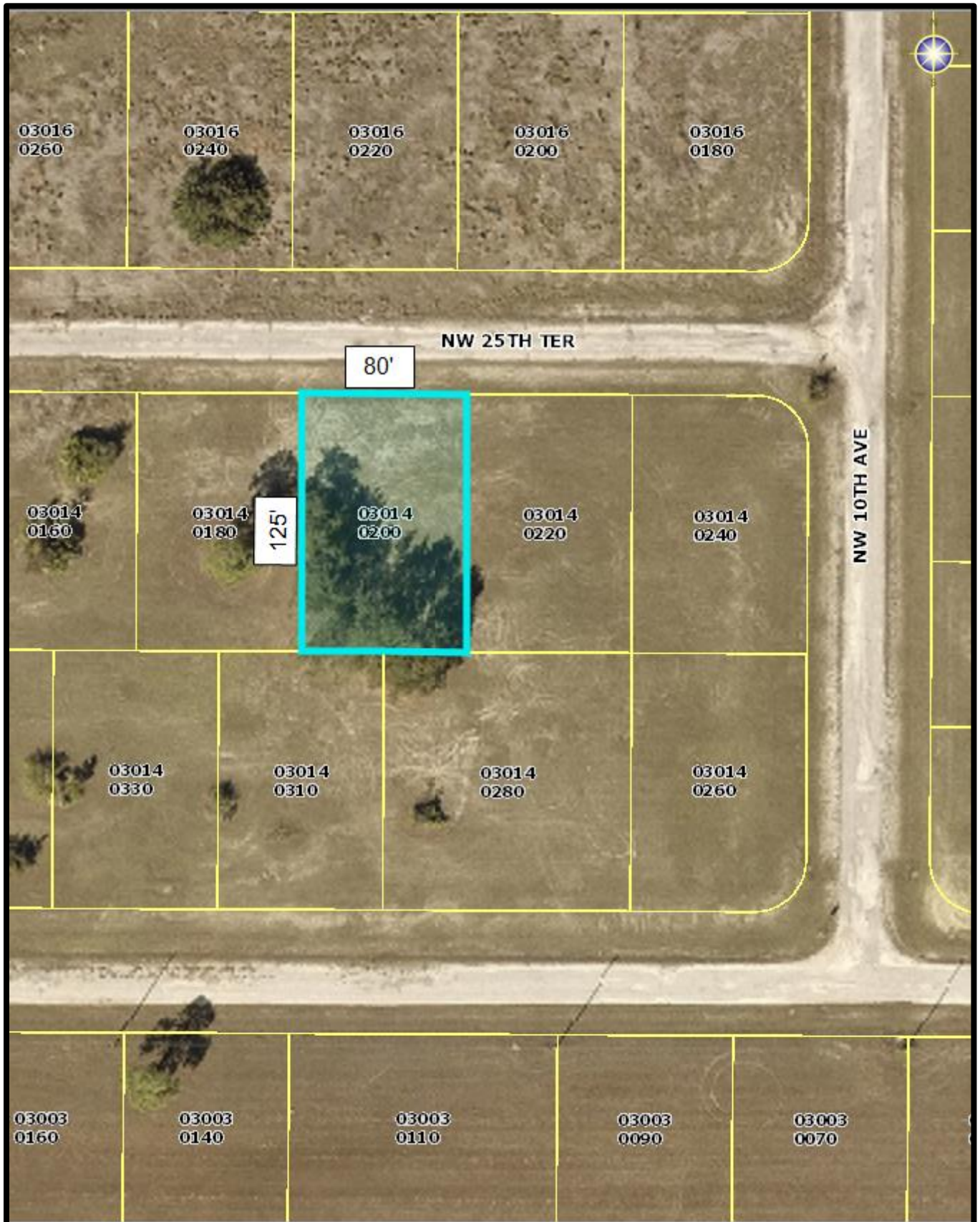


# **LOCATION MAP**





**AERIAL MAP**





**SUBJECT PHOTOGRAPHS**



**Photo #1** – Southeasterly view of subject property from NW 25<sup>th</sup> Terrace.



**Photo #2** – Southwesterly view of subject property from NW 25<sup>th</sup> Terrace.



## **PROPERTY DESCRIPTION**

### **Location**

The subject property is located along the southern side of NW 25<sup>th</sup> Terrace, about 160 feet west of NW 10<sup>th</sup> Avenue, within the City of Cape Coral, in Lee County, Florida.

### **Street/Roads**

NW 25<sup>th</sup> Terrace is a two-lane, asphalt-paved roadway.

### **Land**

The subject property contains two platted lots containing a total of 10,000 square feet. The site has about 80 feet of frontage along the south side of NW 25<sup>th</sup> Terrace, at a depth of 125 feet. The property is generally level, near road grade, and partially cleared.

A physical inspection of the subject property indicates its soils appear capable of supporting development, especially considering the surrounding development patterns. Electric and telephone services are available.

### **Ingress/Egress**

The subject property has access from NW 25<sup>th</sup> Terrace.

### **Easements/Encroachments**

Although title work was not provided, a review of public records indicates there are no easements or encroachments that would have an adverse impact on the development potential of the site.

### **Utilities**

The subject property has access to electricity and telephone. Well and septic systems are typical in the subject's market area.

### **Improvements**

The subject property consists of vacant land.

### **ZONING/FUTURE LAND USE**

The subject property has a zoning designation of R-1B, Single-Family Residential District by the City of Cape Coral. The subject's future land use designation is PK, and Parks and Recreation by the City of Cape Coral.

### **HIGHEST AND BEST USE**

#### **Highest and Best Use Conclusion**

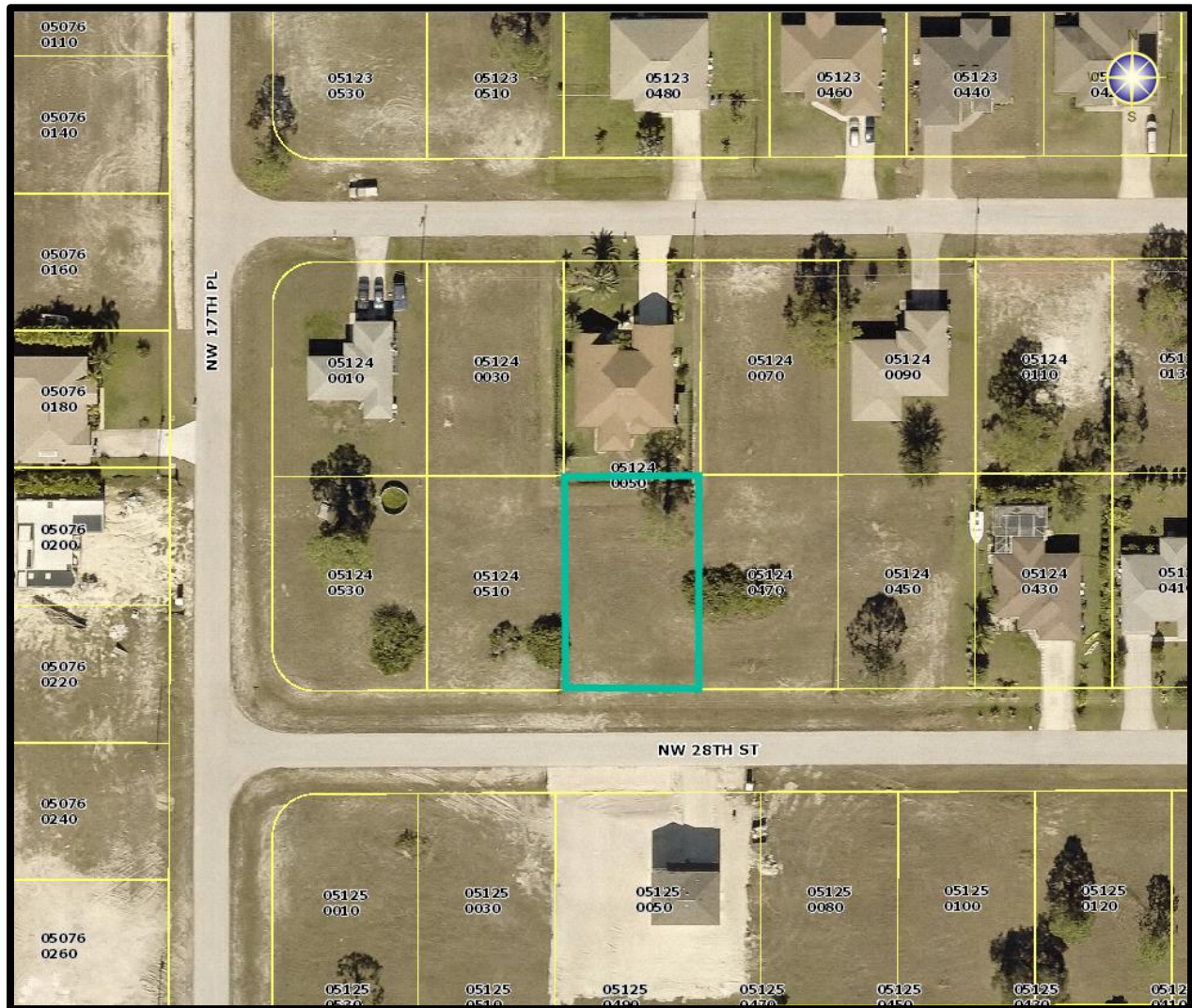
The highest and best use for the subject property is for a single-family residential use.

### **APPRAISAL METHODOLOGY**

In determining the market value of the subject property, consideration was given to the cost, sales comparison, and income capitalization approaches to value. The subject property consists of vacant land. Therefore, the sales comparison approach is applicable in valuing the property. The income and cost approaches are not applicable in valuing the subject property.

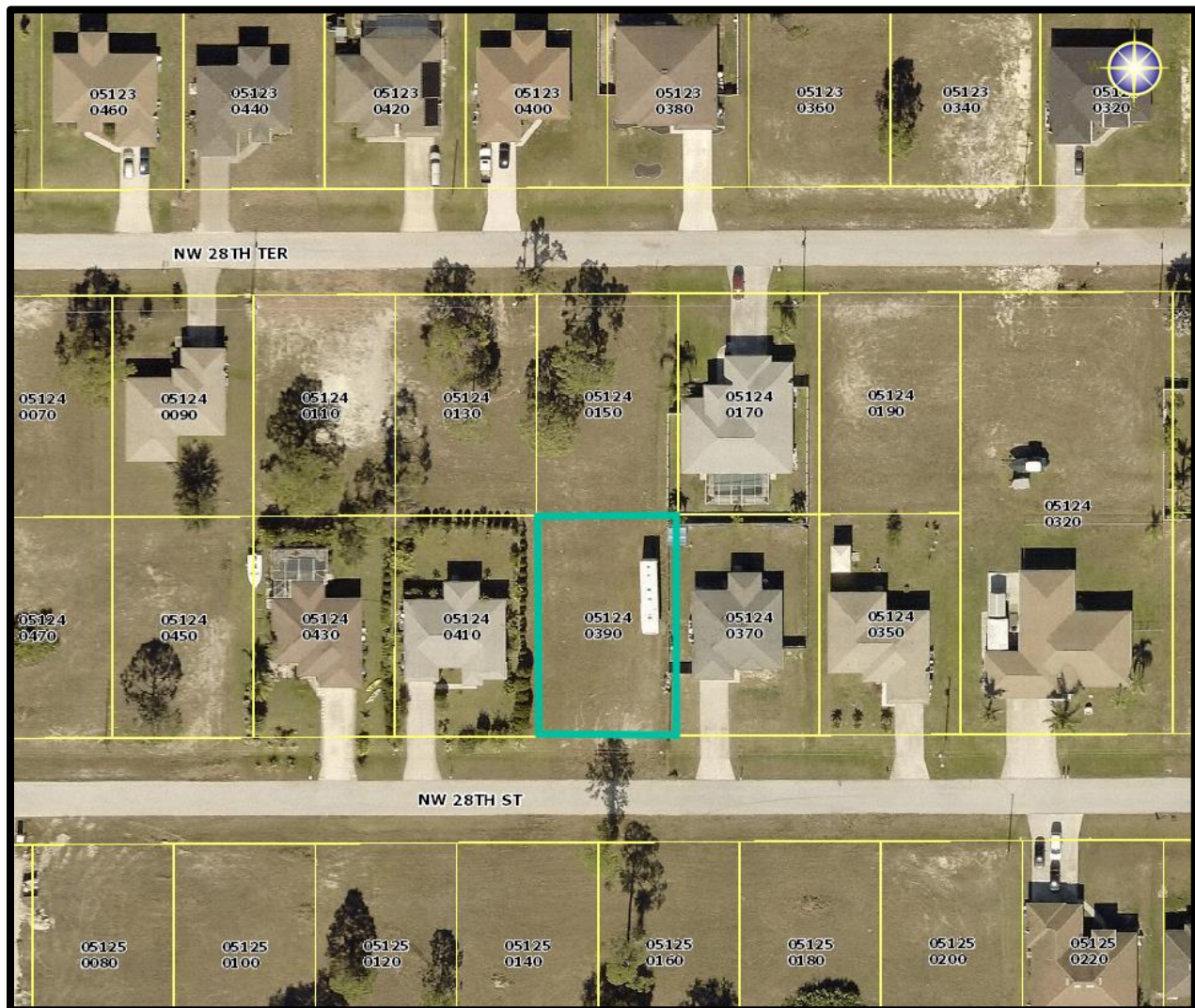
# **SALES MAP**



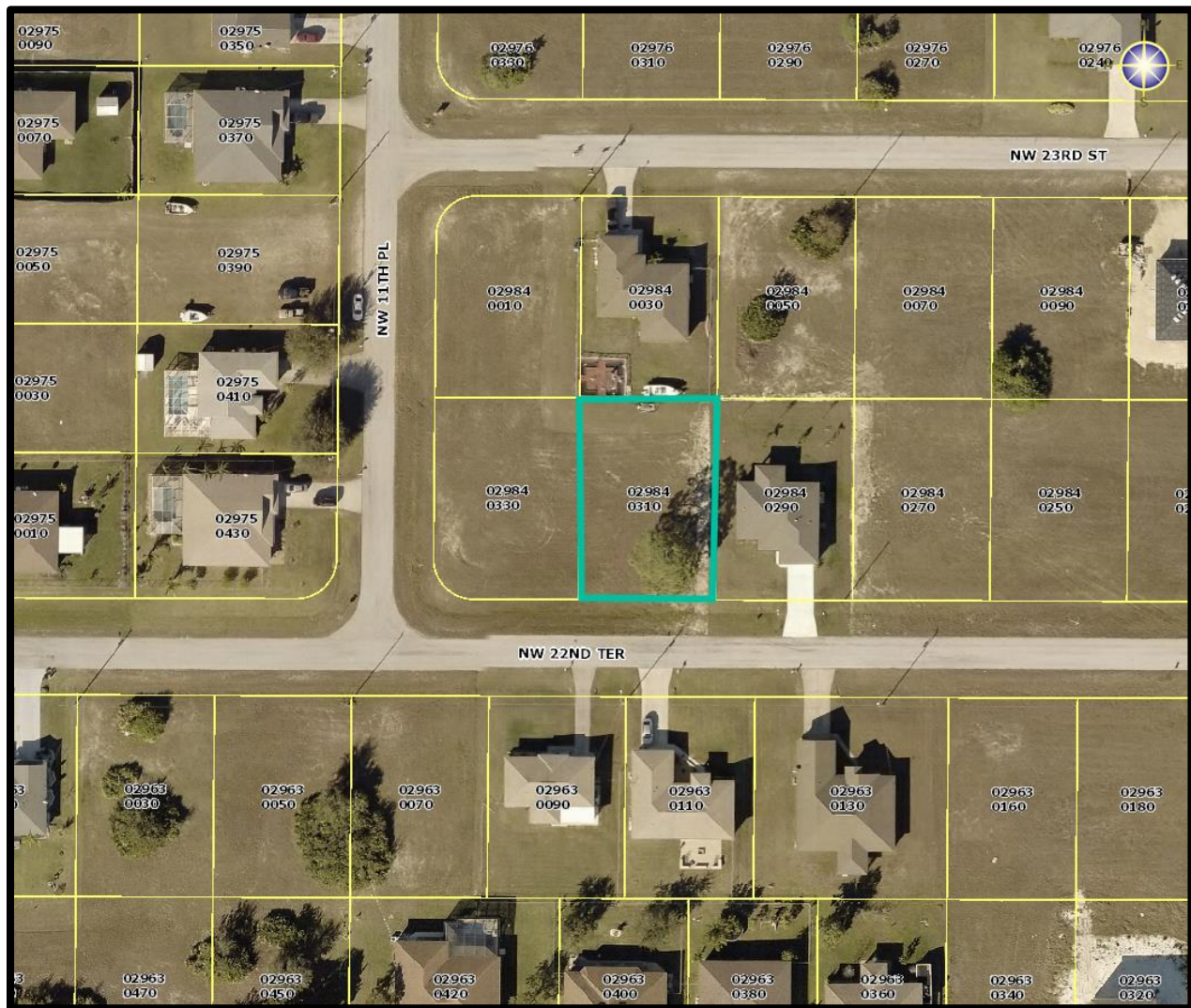
**SALE 1**

<b>Address:</b>	1717 NW 28 <sup>th</sup> Street
<b>Strap:</b>	28-43-23-C2-05124.0490
<b>Sale Date:</b>	February 8, 2019
<b>Sale Price:</b>	\$12,000
<b>Land Size:</b>	10,000 SF
<b>Utilities:</b>	Electric and telephone



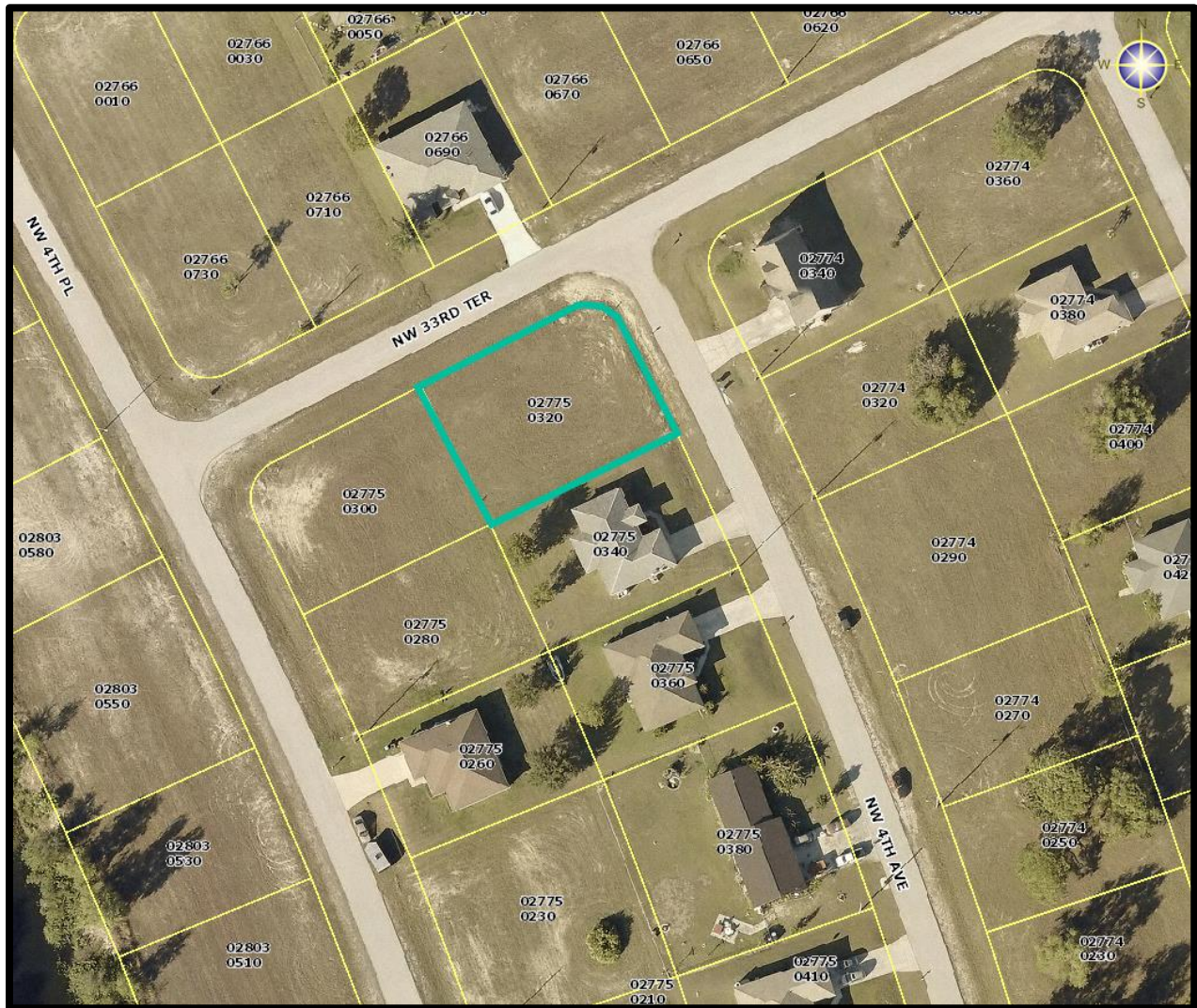
**SALE 2**

<b>Address:</b>	1625 NW 28 <sup>th</sup> Street
<b>Strap:</b>	28-43-23-C2-05124.0390
<b>Sale Date:</b>	April 19, 2019
<b>Sale Price:</b>	\$12,000
<b>Land Size:</b>	10,000 SF
<b>Utilities:</b>	Electric and telephone

**SALE 3**

<b>Address:</b>	1101 NW 22 <sup>nd</sup> Terrace
<b>Strap:</b>	34-43-23-C2-02984.0310
<b>Sale Date:</b>	March 1, 2019
<b>Sale Price:</b>	\$12,000
<b>Land Size:</b>	10,625 SF
<b>Utilities:</b>	Electric and telephone



**SALE 4**

<b>Address:</b>	3230 NW 4 <sup>th</sup> Avenue
<b>Strap:</b>	23-43-23-C3-02775.0320
<b>Sale Date:</b>	March 18, 2019
<b>Sale Price:</b>	\$11,500
<b>Land Size:</b>	10,000 SF
<b>Utilities:</b>	Electric and telephone

**LAND VALUE**

The subject property consists of a 10,000 square foot site with a highest and best use for a single-family residential use. In determining the subject's land value, a sales search was conducted for vacant sites similar in size, location, and highest and best use characteristics to the subject. As a result of the sales search, the land sales below have been researched, verified, analyzed, and compared to the subject.

I have analyzed the comparable sales based on the unit value paid and the qualitative method which gives consideration to the various similarities and differences between the sales and the subject but does not apply specific adjustments in the analysis.

The research of comparable land sales is summarized below:

<b>Sale No.</b>	<b>Sale Date</b>	<b>Sale Price</b>	<b>Size (SF)</b>
1	02/08/2019	\$12,000	10,000
2	04/19/2019	\$12,000	10,000
3	03/01/2019	\$12,000	10,625
4	03/18/2019	\$11,500	10,000

**Conclusion of Land Value**

The comparable sales have similar single-family residential highest and best use as the subject and range in price from \$11,500 to \$12,000. Considering the similarities and differences between the comparable sales and the subject, the indicated value for the subject, as of May 3, 2019 (date of last inspection), is:

**\$12,000**

**EXPOSURE TIME**

The previously reported value estimate is based upon a reasonable market exposure time. Based on current market conditions and research in the market, the estimated exposure time is in the range of three to six months to achieve the market value as shown above. This assumes a competitive open market, and further assumes a reasonable asking price relative to the value reported.



## QUALIFICATIONS



**QUALIFICATIONS**

**RICHARD H. PARHAM**

Academic Background:

Bachelor of Arts Degree, The American University, 1991

Coursework and Seminars:

The following courses have been completed under the direction of the Appraisal Institute:

- Appraisal Principles
- Appraisal Procedures (Successfully Challenged)
- Standards of Professional Practice (Part A & B)
- Basic Income Capitalization
- Standards of Professional Practice (Part C)
- Advanced Income Capitalization
- Highest and Best Use and Market Analysis
- Advanced Sales Comparison and Cost Approaches
- Report Writing and Valuation Analysis
- Advanced Applications
- Florida Condemnation Valuation and Appraiser Liability
- Appraisers Florida Core Law
- Land Valuation Assignments
- Business Practices and Ethics
- Condemnation Appraising: Principles and Applications
- The Appraiser as an Expert Witness: Preparation and Testimony
- Litigation Appraising: Specialized Topics and Applications

Other Coursework:

- Environmental Site Assessment, National Association of Master Appraisers
- Real Estate Principles, Santa Fe Community College
- Tree Trunk Formulas
- Uniform Standards of Professional Appraisal Practice
- Florida Appraisal License Law and Appraisal Board Regulations
- Eminent Domain Conference, CLE International, October 2002
- Eminent Domain Conference, CLE International, October 2003
- Eminent Domain Conference, CLE International, May 2004
- Eminent Domain Conference, CLE International, October 2004
- Easement Valuation, International Right of Way Association
- Eminent Domain Conference, CLE International, October 2005
- Eminent Domain Conference, CLE International, October 2006
- Eminent Domain Conference, CLE International, April 2007
- Eminent Domain Conference, CLE International, October 2007
- Eminent Domain Conference, CLE International, May 2008

Other Coursework (Cont'd):

Eminent Domain Conference, CLE International, October 2008  
Roles and Rules of Supervisors and Trainees  
Communicating the Appraisal

Professional Organizations:

State-Certified General Real Estate Appraiser RZ2256  
Member of Association of Eminent Domain Professionals (AEDP)  
Practicing Affiliate of the Appraisal Institute

Speaking/Instructing Engagements

CLE, Eminent Domain Institute, The Appraiser's Perspective, What You Need To Know

National Business Institute, Highest and Best Use

Association of Eminent Domain Professional, Highest and Best Use

University of Florida College of Law, Appraising For Litigation Purposes

CLE, Eminent Domain Institute, Apportionment Issues

Appraisal Institute, West Coast Chapter, Associate Member Leadership Council Presentation

Employment Experience:

Partner with Calhoun, Collister & Parham, Inc., Present  
Appraiser with Calhoun and Associates, Inc., 2000 to 2002  
Appraiser with Durrance & Associates, P.A., 1994 to 2000  
Appraiser with Candler-Sawyer & Associates, Inc., 1993 to 1994  
Appraiser with Hanford/Healy Appraisal Company, 1991 to 1993  
Intern with U.S. Senator Connie Mack, 1990 to 1991  
Appraiser with The L. James Parham Company, 1987-1989

Appraisal Experience:

Richard H. Parham has been personally involved in the appraisal of one or more properties of the following types:

ALF Properties	Daycare Centers	Reclaimed (Mining) Land
Anchored Shopping Centers	Easements	Residential Subdivision
Apartments	Farms	Restaurants
Auto Service	Health & Fitness Centers	Retail Buildings
Automotive Sales	Hotel/Motels	Retail Strip Center
Bank/Financial Institutions	Industrial and Manufacturing	Single Family Residences
Bars/Taverns	Mini Warehouses	Special Purpose Properties
Car Washes	Mobile Home Parks	Storm Water Retention Areas
Churches	Night Clubs	Utility Corridors
Citrus Trees	Office Buildings	Utility Systems
Condominiums	Phosphate Mines	Vacant land

Appraisals have been conducted for commercial banks, corporations, attorneys, condemning authorities, property owners, environmental agencies, and others. The geographic scope of appraisal assignments completed include numerous counties throughout the State of Florida.

Eminent Domain Projects:

Richard H. Parham has personally been involved in appraisal work of one or more properties on the following projects:

State Road 20	Alachua County
39 <sup>th</sup> Avenue Extension	Alachua County
I-95	Brevard County
Palm Bay Road	Brevard County
Babcock Street	Brevard County
Wickham Road	Brevard County
Beach Erosion	Brevard County
State Road 7	Broward County
Burnt Store Road	Charlotte County
Edgewater Flamingo Extension	Charlotte County
Murdock Village	Charlotte County
Proposed School Site	Charlotte County
Utility Easements	Charlotte County
U.S. 17/Duncan Road	Charlotte County
County Road 491	Citrus County
County Road 486	Citrus County
State Road 44	Citrus County
U.S. 41	Citrus County
Watson Street	Citrus County
County Road 209	Clay County
Green Cove Springs Police Expansion	Clay County
Seacoast Pipeline	Clay County
Collier Boulevard	Collier County
Golden Gate Boulevard	Collier County
Interstate 75	Collier County
Immokalee Road	Collier County
Livingston Road	Collier County
Santa Barbara	Collier County
Vanderbilt Beach Road	Collier County
Marco Island Water Reservoir	Collier County
U.S. 17	DeSoto County
Broward Road	Duval County
Collins Road	Duval County
State Road 23	Duval County
TECO Peoples Gas Pipeline	Duval County
U.S. 17	Hardee County

Florida Gas Transmission Pipeline	Hardee County
Gulfstream Pipeline	Hardee County
County Line Road	Hernando County
Sunshine Grove Road	Hernando County
State Road 50	Hernando County
Cortez Boulevard	Hernando County
Suncoast Parkway	Hernando County
State Road 45 (U.S. 41)	Hernando County
Gulfstream Pipeline	Highlands County
Bloomington Avenue	Hillsborough County
Bullard Parkway	Hillsborough County
Dale Mabry Highway	Hillsborough County
Florida Gas Transmission Pipeline	Hillsborough County
Gandy Boulevard	Hillsborough County
Interstate 275	Hillsborough County
Providence Road	Hillsborough County
State Road 39	Hillsborough County
State Road 60	Hillsborough County
Selmon Connector	Hillsborough County
Causeway Boulevard	Hillsborough County
SWFWMD Reservoir	Hillsborough County
Tampa Bay Water Pipeline	Hillsborough County
U.S. 301	Hillsborough County
Central Florida Pipeline	Hillsborough County
78 <sup>th</sup> Street	Hillsborough County
Interstate 4	Hillsborough County
U. S. 41	Hillsborough County
Dr. Martin Luther King Jr. Blvd.	Hillsborough County
22 <sup>nd</sup> Street	Hillsborough County
Linebaugh Avenue	Hillsborough County
Hanley Road	Hillsborough County
Hoover Blvd.	Hillsborough County
Florida Gas Transmission Pipeline	Hillsborough County
County Road 466	Lake County
State Road 50	Lake County
State Road 500 (U.S. 441)	Lake County
Colonial Boulevard	Lee County
Corkscrew Watershed	Lee County
Del Prado Boulevard	Lee County
Government Center	Lee County
Interstate 75	Lee County
Metro Parkway	Lee County
Southwest Community Park	Lee County
U.S. 41	Lee County
Mid-Point Bridge	Lee County
Dr. Martin Luther King Jr. Blvd	Lee County
State Road 78	Lee County

Interstate 10	Leon County
State Road 263	Leon County
17 <sup>th</sup> Street	Manatee County
43 <sup>rd</sup> Street	Manatee County
Cortez Boulevard	Manatee County
State Road 64	Manatee County
Wares Creek	Manatee County
Gulfstream Pipeline	Manatee County
School Board Site	Manatee County
30 <sup>th</sup> Avenue	Manatee County
53 <sup>rd</sup> Avenue	Manatee County
17 <sup>th</sup> Street Overpass	Marion County
31 <sup>st</sup> Street	Marion County
County Road 484	Marion County
NW 44 <sup>th</sup> Street	Marion County
State Road 40	Marion County
SW 95 <sup>th</sup> Street	Marion County
State Road 35	Marion County
County Road 484	Marion County
Gulfstream Pipeline	Martin County
Indian Street Bridge	Martin County
State Road 70	Okeechobee County
U.S. 441	Okeechobee County
Interstate 4	Orange County
John Young Parkway	Orange County
Kirkman Road	Orange County
Maguire Road	Orange County
Maitland Boulevard Extension	Orange County
Rouse Road	Orange County
State Road 50	Orange County
Western Beltway	Orange County
Orange Avenue	Orange County
Gulfstream Pipeline	Palm Beach County
Bell Lake Road	Pasco County
Boyette Road	Pasco County
Clinton Avenue	Pasco County
County Line Road	Pasco County
East Road	Pasco County
Florida Gas Pipeline	Pasco County
Lake Patience Road	Pasco County
Main Street	Pasco County
Moon Lake Road	Pasco County
Old Pasco Road	Pasco County
Overpass Road	Pasco County
Pasco County Government Complex	Pasco County
State Road 54	Pasco County
Shady Hills Road	Pasco County

Suncoast Parkway	Pasco County
U.S. 41	Pasco County
U.S. 19	Pinellas County
Blind Pass Road	Pinellas County
Clearwater Downtown Stormwater System	Pinellas County
City of St. Petersburg Beach	Pinellas County
County Road 296 Connector	Pinellas County
Dome Industrial Project	Pinellas County
Interstate 75 Connector	Pinellas County
Keene Road	Pinellas County
Keystone Road	Pinellas County
Largo High School Expansion	Pinellas County
Nebraska Avenue	Pinellas County
Ulmerton Road	Pinellas County
St. Pete/Clearwater Airport Expansion	Pinellas County
State Road 436	Pinellas County
Drew Street	Pinellas County
Airport	Pinellas County
Central Florida Pipeline	Polk County
Florida Gas Transmission Pipeline	Polk County
Gulfstream Pipeline	Polk County
State Road 60	Polk County
Drane Field Road	Polk County
Lake Howard Drive	Polk County
Polk County Parkway	Polk County
State Road 540	Polk County
State Road 655	Polk County
State Road 20	Putnam County
Honore Avenue	Sarasota County
Interstate 75	Sarasota County
U.S. 301	Sarasota County
Pinebrook Road Extension	Sarasota County
Fruitville Road/I-75	Sarasota County
State Rod 434	Seminole County
Eden Park Avenue	Seminole County
State Road436	Seminole County
TECO Peoples Gas Pipeline	St. Johns County
U.S. Highway 1	St. Lucie County
Port St. Lucie Utility System	St. Lucie County
County Road 4466A	Sumter County
Florida Wastewater Project	Sumter County
U.S. 301	Sumter County
State Road 35 CSX Overpass	Sumter County
State Road 44	Sumter County
State Road 45 (U.S. 41)	Sumter County
DeBary Avenue	Volusia County
State Road 415	Volusia County



## Calhoun, Collister & Parham, Inc.

*Real Estate Appraisers & Consultants*

### **QUALIFICATIONS BRETT A. MEYERS**

#### **Academic Background:**

Florida State University, Tallahassee, Florida  
College of Business Administration  
Bachelor of Science Degree; Finance and Real Estate - April 2006

#### **Certifications and Memberships:**

State-Certified General Real Estate Appraiser, State of Florida RZ3409

#### **Coursework and Seminars:**

Real Estate Principles, Florida State University, December 2004  
Real Estate Feasibility, Florida State University, May 2005  
Legal Environment of Real Estate, Florida State University, May 2005  
Real Estate Finance, Florida State University, December 2005  
Real Estate Appraisal, Florida State University, December 2005  
Advanced Appraisal/Market Analysis, Florida State University, April 2006  
15-Hour National USPAP Course, May 2009  
2010 – 2011 National USPAP Update, July 2010  
Florida Appraisal Laws and Regulations, July 2010  
Florida Supervisor/Trainee Roles & Relationships, July 2010  
The Cost Approach, July 2010

#### **Appraisal Experience:**

Experienced with various types of residential and commercial properties, including, but not limited to, single-family residences, office buildings, warehouses, retail centers, duplexes and triplexes, and commercial and residential land. His appraisals have been conducted for corporations, attorneys, government bodies, condemning authorities, and others.

#### **Employment Experience:**

May 2006 - Present	Calhoun, Collister & Parham, Inc.
September 2005 - May 2006	Boutin, Brown Realty Advisors, Inc.

#### **Projects:**

The following is a partial listing of projects on which Mr. Meyers has personally had valuation assignments involving acquisitions by private and governmental agencies:

Murdock Village	(Charlotte County)
Collier Boulevard	(Collier County)
Santa Barbara Boulevard Widening	(Collier County)
Vanderbilt Beach Road Extension	(Collier County)
State Road 39	(Hillsborough County)
U.S. Highway 1	(Indian River County)
U.S. Highway 441	(Lake County)



**Projects (Cont.)**

Public Safety Building Project	(Lee County)
Southwest Community Park	(Lee County)
Gulfstream Natural Gas Pipeline	(Martin County and Palm Beach County)
Interstate 4	(Orange)
Maguire Road	(Orange)
State Road 710	(Palm Beach County)
Clinton Avenue	(Pasco County)
East Road Realignment	(Pasco County)
Keystone Road	(Pinellas County)
Largo High School Expansion	(Pinellas County)
Lincoln/Beacon Intersection Improvement	(Polk County)
Maitland Boulevard Extension	(Orange County)
Narcoosee Road	(Osceola)
Nolte Road	(Osceola)
Honore Avenue	(Sarasota County)
U.S. Highway 301	(Sumter County)

**Item Number: B.(2)**  
**Meeting Date: 8/19/2019**  
**Item Type: CONSENT AGENDA**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 279-19 School Resource Officer Agreement with Heritage Charter Academy Inc.;  
Department: Police

**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:**

Prior to 2018, the Lee County Sheriff's office provided school resource officers (SROs) in Lee County Schools. In 2018, after the shooting at Marjory Stoneman Douglas High School that took the lives of 17 Florida students and educators, the State of Florida enacted the Marjory Stoneman Douglas High School Public Safety Act. The Act requires each school district to have one or more SROs at each school in the district.

At that time, the City of Cape Coral began providing the SROs at schools within the City, thereby increasing the number of SROs and vehicles prior to the 2018-2019 school year. The SRO program has now been established in the Cape Coral Police Department, and the Police Department desires to provide services to a new charter school. This resolution approves entering into an agreement with Heritage Charter Academy to provide an SRO for the 2019-2020 school year.

**LEGAL REVIEW:**

**EXHIBITS:**

Resolution 279-19

**PREPARED BY:**

Division- Department- City  
Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

	<b>Description</b>	<b>Type</b>
▣	Resolution 279-19	Resolution

RESOLUTION 279 - 19

A RESOLUTION OF THE CAPE CORAL CITY COUNCIL APPROVING AN AGREEMENT BETWEEN HERITAGE CHARTER ACADEMY INC. AND THE CITY OF CAPE CORAL TO ESTABLISH A SCHOOL RESOURCE OFFICER PROGRAM WHEREIN THE CITY OF CAPE CORAL PROVIDES POLICE OFFICERS IN HERITAGE CHARTER ACADEMY LOCATED IN THE CITY OF CAPE CORAL; AND AUTHORIZES THE MAYOR TO EXECUTE THE AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida adopted the Marjory Stoneman Douglas High School Public Safety Act which provides that each public school in the State must partner with law enforcement agencies to assign a sworn law enforcement officer at each school by implementing a school resource officer program through a cooperative agreement with law enforcement agencies; and

WHEREAS, Heritage Charter Academy Inc. desires to enter into an agreement with the City of Cape Coral to provide Cape Coral police as a School Resource Officer (SRO) at Heritage Charter Academy located in the City of Cape Coral; and

WHEREAS, Heritage Charter Academy Inc. will contribute a minimum of \$9,180 per SRO to assist with the cost of providing a law enforcement officer in the school; and

WHEREAS, the City of Cape Coral desires to enter into an agreement with Heritage Charter Academy Inc. in order to establish a School Resource Officer program and place an officer in Heritage Charter Academy for the protection and safety of school personnel, property, students, and visitors.

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 Agreement between Heritage Charter Academy Inc. and the City of Cape Coral to establish a School Resource Officer Program wherein the City provides a police officer in Heritage Charter Academy. A copy of the Agreement is attached hereto as Exhibit A.

Section 2. The City Council hereby authorizes the Mayor to execute the Agreement.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 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 \_\_\_\_\_, 2019.

\_\_\_\_\_  
KIMBERLY BRUNS, CMC  
CITY CLERK

APPROVED AS TO FORM:

  
DOLORES D. MENENDEZ  
CITY ATTORNEY

res/SRO Agreement - Heritage

# EXHIBIT A

## **AGREEMENT BETWEEN Heritage Charter Academy Inc. and The City of Cape Coral for School Resource Officer Program**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between Heritage Charter Academy Inc., located at 2107 Santa Barbara Blvd., Cape Coral, FL 33991 (hereinafter referred to as "HERITAGE") and the City of Cape Coral (hereinafter referred to as the "CITY").

WHEREAS, in the wake of the tragic shooting at Marjory Stoneman Douglas High School that took the lives of 17 Florida students and educators, the State of Florida adopted the Marjory Stoneman Douglas High School Public Safety Act that requires each district school board and school district superintendent to partner with law enforcement agencies to establish school resource officer programs, through a cooperative agreement with law enforcement agencies; and

WHEREAS, HERITAGE and the CITY recognize potential benefits of the School Resource Officer Program to the citizens of the City of Cape Coral, Florida, and particularly to the students of Heritage Charter Academy and recognize that it is in the best interest of HERITAGE to establish this program; and

WHEREAS, HERITAGE and the CITY desire to provide a school resource officer at Heritage Charter Academy.

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

### **ARTICLE I**

The recitals above are adopted and incorporated hereto as is fully restated.

### **ARTICLE II**

1. A School Resource Officer (SRO) Program is hereby established in Heritage Charter Academy located at 2107 Santa Barbara Boulevard, Cape Coral, FL.

### **ARTICLE III**

1. The CITY shall assign a minimum of one (1) SRO to the school identified in Article II.

2. The initial start-up cost for the SRO is approximately \$145,508.00 and the annual cost for the SRO is approximately \$78,293.

3. The SRO shall be assigned on those days that the school is in regular session. The officer may be temporarily re-assigned by the CITY during school, school holidays, school vacations, trainings, or during a period of law enforcement emergency.

4. The SRO will be available for summer school at certain times upon request.

#### **ARTICLE IV**

The SRO will endeavor to:

1. Coordinate school related activities with the principal, staff members and parents and if practicable will seek advice regarding school programs;

2. Educate students and staff on the role of law enforcement;

3. Familiarize himself/herself with the school, its policies, the faculty and students of the school;

4. Maintain confidentiality, (to the extent permitted by law), regarding students which he/she has occasion to counsel as well as protect the confidentiality of the student records to which he/she is provided access;

5. Interact with the students and faculty when reasonable, including during class breaks, lunch periods, before and after school, at school activities and in classrooms;

6. Serve as a referral resource for the students, faculty, and parents regarding services and facilities available to the public; and

7. Adhere to the policy of his/her assigned school (where that policy does not conflict with the City of Cape Coral's policy and/or law).

#### **ARTICLE V**

The administration and staff of Heritage Charter Academy shall:

1. Upon discovery of an issue that poses a threat to school safety, the principal, designee or other staff members, provide immediate notification to the SRO or other law enforcement officials;

2. Cooperate with the SRO and other law enforcement officials in the performance of their duties;

3. Provide the SRO the following materials and facilities:

- a. audio/video, aids/equipment for classroom presentations;
- b. a secure area for storage of equipment and communications; and

- c. a dedicated, air-conditioned and properly lighted, private office for the SRO, which shall have a telephone, a desk and a chair which may be used for general business purposes.

## **ARTICLE VI**

Heritage Charter Academy shall pay a minimum of \$9,180.00 to the CITY for the term of this Agreement toward the cost of each SRO assigned to the school identified in Article II. Such payment shall be due and owing within 30 days of the execution of this Agreement.

## **ARTICLE VII**

The term of this Agreement shall be the twelve (12) month period from August 1, 2019 to July 31, 2020.

## **ARTICLE VIII**

The CITY will maintain responsibility for all aspects of employment for each SRO. The SRO shall remain an employee of the CITY and shall not be an employee of the assigned school. HERITAGE acknowledges that the SRO is a Cape Coral Police Officer who shall uphold the law under the direct supervision and control of the Cape Coral Police Department. The SRO shall remain responsive to the chain of command of the Cape Coral Police Department.

## **ARTICLE IX**

1. Upon the appropriate principal's reasonable request, the supervisor of the SRO shall arrange a meeting to discuss concerns regarding the SRO's performance or responsibilities.
2. In the event of the reassignment of an SRO for any reason, the CITY will endeavor to provide a replacement for the SRO as soon as practicable.

## **ARTICLE X**

1. Termination of this Agreement may only be accomplished as provided herein.
  - a. This Agreement may be terminated without cause by either party upon ninety (90) days written notification.
  - b. Notwithstanding language to the contrary, in the event HERITAGE fails to make payment in full to the CITY, upon the date such payment is due and owing pursuant to this Agreement, the CITY may terminate this Agreement, upon ten (10) days written notification to HERITAGE.
2. In the event this Agreement is terminated, compensation shall be made to the CITY by HERITAGE for services performed to the date of termination on a pro rata basis.



3. HERITAGE shall be entitled to any pro-rated refunds due for the period of time for which SRO services were paid, but are not provided because of termination of this Agreement.

#### **ARTICLE XI**

Any and all notices, or any other communication herein required, or permitted, shall be deemed to have been given when deposited in the United States Postal Service as regular mail, postage prepaid, and addressed as follows:

David M. Newlan  
City of Cape Coral Police  
1100 Cultural Park Boulevard  
Cape Coral, FL 33990

Heritage Charter Academy  
2107 Santa Barbara Boulevard  
Cape Coral, FL 33991

#### **ARTICLE XII**

HERITAGE, the CITY, and their agents and employees agree to cooperate in good faith in fulfilling the terms of this Agreement. Unforeseen difficulties or questions will be resolved by negotiation between HERITAGE and the CITY, or their designees.

#### **ARTICLE XIII**

This document constitutes a full understanding of the parties, is a final written expression of all the terms of the Agreement between the parties and is a complete and exclusive statement of those terms. No terms, conditions or Agreement purporting to modify or vary the terms of this document shall be binding unless hereinafter made in writing and signed by both parties.

#### **ARTICLE XIV**

1. Each party agrees to be liable for any and all claims, suits, damages, including court costs and attorney's fees, arising out of the negligent or intentional acts or omissions of its own agents, subcontractors, and employees, in the course of the operation of this Agreement.

2. Further, each party agrees to indemnify the other to the extent allowed by law against all claims, suits, damages, including court costs and attorney's fees, arising out of the negligent or intentional acts or omissions of its own agents, subcontractors, and employees, in the course of the operation of this Agreement.

3. Nothing herein contained is intended to serve, nor shall be interpreted as a waiver of any defense or limitation of liability afforded a governmental entity as a result of sovereign immunity, or to extend or increase either party's liability provided pursuant to Section 768.28, Florida Statutes.



4. Nothing herein is intended to, nor shall be construed as creating any right, claim, duty or obligation to any third party not a signatory to this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized officers.

HERITAGE CHARTER ACADEMY INC

By: Nicole Scarpaci  
Nicole Scarpaci, President

Printed Name: Nicole Scarpaci

Date: 8/7/19

CITY OF CAPE CORAL

By: \_\_\_\_\_  
Joe Coviello, Mayor

Date: \_\_\_\_\_

Legal Review:

re Dolores Menendez, City Attorney

**Item Number: B.(3)**  
**Meeting Date: 8/19/2019**  
**Item Type: CONSENT AGENDA**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 280-19 Authorizing and directing the Mayor to execute Amendment No. 2 to Agreement No. LP36011 Between Florida Department of Environmental Protection and City of Cape Coral, providing for \$3,000,000 in additional funding and a revision in the scope of work and an Extension of the Agreement for the "Cape Coral Reclaimed Water Transmission Main Caloosahatchee River Crossing Project"; Department: Utilities; Additional Grant Value: \$3,000,000; (Fund: N/A)

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

n/a

**SUMMARY EXPLANATION AND BACKGROUND:**

City staff are requesting City Council approval to execute an amendment to Grant Agreement No. LP36011 between the Florida Department of Environmental Protection (FDEP) and the City of Cape Coral. On September 5, 2018, the City of Cape Coral and the City of Fort Myers executed a 30-year Reclaimed Water Purchase Agreement. The total grant funding acquired for the Fort Myers Reclaimed Water Pipeline Project is now \$3,790,000.

City staff and Cardno Inc. are in final negotiations for an engineering contract. Once the contract is approved by Council, the consultant, Cardno Inc. will begin final engineering design and permitting beginning in October 2019.

Funding in the amount of \$790,135 for engineering design was previously awarded under Line Item 1668A of the 2014-2015 General Appropriations Act for the City's project. In 2019, the City was successful in acquiring an additional \$3,000,000 in grant funding for the construction phase of the project that will be completed by January 2023. The remaining project costs will be funded either through the City's Capital Improvement Program or via additional grant funding.

The attached Agreement is effective until June 30, 2023. City staff submitted additional information to the FDEP recently and were advised that an additional \$25,000,000 may become available for various projects. FDEP advised that a decision will be made on the allocation of the additional funding within approximately 90 days. Also, staff was recently advised that the South

Florida Water Management District (SFWMD) has \$40,000,000 in cooperative grant funding for alternative water supply projects. Staff is submitting a grant to SFWMD for this grant program as well.

**LEGAL REVIEW:**

**EXHIBITS:**

Memorandum - FDEP Grant Agreement 8-5-2019  
Resolution 280-19  
Staff Presentation

**PREPARED BY:**

Amy  
Burdier      Division- Administration      Department- Utilities

**SOURCE OF ADDITIONAL INFORMATION:**

Jeff Pearson, Utilities Director


**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▢ Memo	Backup Material
▢ Resolution 280-19	Resolution
▢ Staff Presentation	Backup Material

MEMORANDUM

CITY OF CAPE CORAL  
CITY MANAGER'S OFFICE

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager  
Jeff Pearson, Utilities Director  ACTING DIRECTOR, ANDREW FENSKI

DATE: August 5, 2019

SUBJECT: Fort Myers Reclaimed Water Pipeline Project \$3M Grant

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City staff is requesting City Council approval to execute an amendment to Grant Agreement No. LP36011 between the Florida Department of Environmental Protection (FDEP) and the City of Cape Coral. On September 5, 2018, the City of Cape Coral and the City of Fort Myers executed a 30-year Reclaimed Water Purchase Agreement. The total grant funding acquired for the Fort Myers Reclaimed Water Pipeline Project is now \$3,790,000.

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The attached Agreement is effective until June 30, 2023. City staff submitted additional information to the FDEP recently and were advised that an additional \$25,000,000 may become available for various projects. FDEP advised that a decision will be made on the allocation of the additional funding within approximately 90 days. Also, staff was recently advised that the South Florida Water Management District (SFWMD) has \$40,000,000 in cooperative grant funding for alternative water supply projects. Staff is submitting a grant to SFWMD for this grant program as well.

Attachment: Grant Agreement Amendment No. 2 to Grant Agreement No. LP36011

RESOLUTION 280 - 19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AMENDMENT NO. 2 TO AGREEMENT NO. LP36011 BETWEEN FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND CITY OF CAPE CORAL, PROVIDING FOR \$3,000,000 IN ADDITIONAL FUNDING AND A REVISION IN THE SCOPE OF WORK AND AN EXTENSION OF THE AGREEMENT FOR THE "CAPE CORAL RECLAIMED WATER TRANSMISSION MAIN CALOOSAHATCHEE RIVER CROSSING PROJECT"; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on October 20, 2014, City Council adopted Resolution 79-14, which approved a State Financial Assistance Agreement (DEP Agreement No. LP360011) between the State of Florida Department of Environmental Protection and the City of Cape Coral, for grant assistance to fund engineering, design, and permitting for the "Cape Coral Reclaimed Water Transmission Main Caloosahatchee River Crossing Project" ("the Project"); and

WHEREAS, the Project implements the South Florida Water Management District's "2012 South Florida Environmental Report," particularly Appendix 10-2 ("Caloosahatchee River Watershed Protection Plan Update"), which cites the "Fort Myers-Cape Coral Reclaimed Water Interconnect Project," as a viable long-term option that will benefit water quality and water quantity for the local area; and

WHEREAS, on October 23, 2017, City Council Adopted Resolution 200-17, which approved DEP Agreement No. LP36011 Amendment No. 1, providing for a 36-month extension to the original Agreement, which was set to expire on October 31, 2017; and

WHEREAS, the grant initially awarded \$790,135 to be expended for final engineering, design, and permitting activity costs for the Project; and

WHEREAS, Amendment No. 2 to the Agreement provides for an addition \$3,000,000 in funding for the construction phase of the project, a revision in the scope of work and an extension of the Agreement until June 30, 2023; and

WHEREAS, the City Council desires to authorize and direct the Mayor to execute Amendment No. 2 to Agreement No. LP36011 between Florida Department of Environmental Protection and City of Cape Coral, attached hereto as Exhibit A.

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

SECTION 1. The City Council authorizes and directs the Mayor to execute Amendment No. 2 to Agreement No. LP36011 between Florida Department of Environmental Protection and City of Cape Coral, attached hereto as Exhibit A.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	PULEIO	_____
CARIOSCIA	_____	STOKES	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2019.

\_\_\_\_\_  
KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res\Grant Amendment-FDEP River Crossing

**AMENDMENT NO. 2  
TO AGREEMENT NO. LP36011  
BETWEEN  
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND  
CITY OF CAPE CORAL**

This Amendment to Agreement No. LP36011, as previously amended, (Agreement) is made by and between the Department of Environmental Protection (Department), an agency of the State of Florida, and the City of Cape Coral (Grantee), on the date last signed below.

WHEREAS, the Department entered into the Agreement with the Grantee for Cape Coral Reclaimed Water Transmission Main Caloosahatchee River Crossing Project, effective October 22, 2014 and amended October 30, 2017; and,

WHEREAS, funding in the amount \$790,135 was provided under Line Item 1668A of the 2014-2015 General Appropriations Act for Cape Coral Reclaimed Water Transmission Main Caloosahatchee River Crossing Project ("Project"); and,

WHEREAS, \$3,000,000 in additional funding for this Project was provided under Line Item 1657A of the 2019-2020 General Appropriations Act; and,

WHEREAS, the Grantee has requested a revision in the scope of work and an extension of the Agreement is needed due to the addition of a new task and increased funding; and,

WHEREAS, certain provisions of the Agreement need revision and several provisions need to be added to the Agreement.

NOW THEREFORE, the parties agree as follows:

1. The Agreement is effective until June 30, 2023. The reimbursement period for this Agreement begins on July 1, 2014 and ends at the expiration of the Agreement. The Department and the Grantee shall continue to perform their respective duties during this extension period pursuant to the same terms and conditions provided in the Agreement.
2. Section 3. of the Agreement is hereby deleted in its entirety and replaced with the following:

**FUNDING/CONSIDERATION/INVOICING:**

- A. As consideration for the satisfactory completion of services rendered by the Grantee under the terms of this Agreement, the Department shall pay the Grantee on a cost reimbursement basis up to a maximum of \$3,790,135 for completion of the work described in **Attachment A-2**. The parties hereto understand and agree that this Agreement does not require a match on the part of the Grantee.
- B. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following: (1) an increase or decrease in the Agreement funding amount; (2) a change in Grantee's match requirements; (3) a change in the expiration date of the Agreement; and/or (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in **Attachment A-2, Revised Grant Work Plan**, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department. A change order to this Agreement may be used when: (1) task timelines within the current authorized Agreement period change; (2) the cumulative transfer of funds between approved budget categories, as defined in **Attachment A-2, Revised Grant Work Plan**, are less than twenty percent (20%) of the total budget as last approved by Department; and/or (3) there are fund transfers between budget



categories for the purposes of meeting match requirements. This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.

- C. Prior written approval from the Department's Grant Manager shall be required for changes to this Agreement.
  - i. A Change Order to this Agreement is required when task timelines within the current authorized Agreement period change, and/or when the cumulative transfer of funds between approved budget categories, as defined in **Attachment A-2**, are less than twenty percent (20%) of the total budget as last approved by the Department. All Change Orders are subject to the mutual agreement of both parties as evidenced in writing.
  - ii. A formal Amendment to this Agreement is required for changes which cause any of the following: an increase or decrease in the Agreement funding amount, a change in the Grantee's match requirements, a change in the expiration date of the Agreement, and/or changes to the cumulative amount of funding transfers between approved budget categories, as defined in **Attachment A-2**, exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by the Department. All Amendments are subject to the mutual agreement of both parties as evidenced in writing.
- D. The Grantee shall be reimbursed on a cost reimbursement basis for all eligible project costs upon the completion, submittal and approval of each deliverable identified in **Attachment A-2**, in accordance with the schedule therein. Reimbursement shall be requested utilizing **Attachment B-2, Revised Payment Request Summary Form**. To be eligible for reimbursement, costs must be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: [http://www.myfloridacfo.com/aadir/reference\\_guide/](http://www.myfloridacfo.com/aadir/reference_guide/). All invoices for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. A final payment request should be submitted to the Department no later than sixty (60) calendar days following the completion date of the Agreement, to assure the availability of funds for payment. All work performed pursuant to **Attachment A-2** must be performed on or before the completion date of the Agreement, and the subsequent sixty-day period merely allows the Grantee to finalize invoices and backup documentation to support the final payment request.
- E. The State Chief Financial Officer requires detailed supporting documentation of all costs under a cost reimbursement agreement. The Grantee shall comply with the minimum requirements set forth in **Attachment C, Contract Payment Requirements**. The Payment Request Summary Form shall be accompanied by supporting documentation and other requirements as follows for each deliverable: Reimbursement shall be limited to the following budget categories:
  - i. Contractual (Subcontractors) – Reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from the Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the project. All multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) calendar days of written notification. Interest on the excessive charges shall be calculated based on the prevailing rate used by the State Board of Administration. Subcontracts, which involve equipment purchases as part of an installation/retrofit or that include infrastructure and/or infrastructure improvements, as defined in Florida Chief Financial Officer (CFO) Memorandum No. 5 (2011-2012), must be capitalized in accordance with Chapter 69I-72, Florida Administrative Code (F.A.C.). The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this

requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.

For fixed-price (vendor) subcontracts, the following provisions shall apply:

- a. The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in **Attachment A-2**. Invoices submitted to the Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (i.e., Invitation to Bid or Request for Proposals) resulting in the fixed-price subcontract.
  - b. The Grantee may request approval from the Department to award a fixed-price subcontract resulting from procurement methods other than those identified in the paragraph above. In this instance, the Grantee shall request the advance written approval from the Department's Grant Manager of the fixed price negotiated by the Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of the Department Grant Manager's approval of the fixed-price amount, the Grantee may proceed in finalizing the fixed-price subcontract.
  - c. All subcontracts are subject to the provisions of paragraph 12 and any other appropriate provisions of this Agreement which affect subcontracting activities.
- F. In addition to the invoicing requirements contained in paragraphs 3.C. and D. above, the Department will periodically request proof of a transaction (invoice, payroll register, etc.) to evaluate the appropriateness of costs to the Agreement pursuant to State and Federal guidelines (including cost allocation guidelines), as appropriate. This information, when requested, must be provided within thirty (30) calendar days of such request. The Grantee may also be required to submit a cost allocation plan to the Department in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). State guidelines for allowable costs can be found in the Department of Financial Services' Reference Guide for State Expenditures at [http://www.myfloridacfo.com/aadir/reference\\_guide/](http://www.myfloridacfo.com/aadir/reference_guide/).
- G.
- i. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, the Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
  - ii. If the Department finds that these funds have been commingled, the Department shall have the right to demand a refund, either in whole or in part, of the funds provided to the Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from the Department shall refund, and shall forthwith pay to the Department, the amount of money demanded by the Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the Department by the Grantee to the date repayment is made by the Grantee to the Department.
  - iii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by the Department, from another source(s), the Grantee shall reimburse the Department for all recovered funds originally provided under this Agreement. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration.

Interest shall be calculated from the date(s) the payment(s) are recovered by the Grantee to the date repayment is made to the Department by the Grantee.

3. Section 12. of the Agreement is hereby deleted in its entirety and replaced with the following:

**SPECIAL AUDIT REQUIREMENTS:**

- A. In addition to the requirements of the preceding paragraph, the Grantee shall comply with the applicable provisions contained in **Attachment G-1, Special Audit Requirements**, attached hereto and made a part hereof. **Exhibit 1 to Attachment G-1** summarizes the funding sources supporting the Agreement for purposes of assisting the Grantee in complying with the requirements of **Attachment G-1**. A revised copy of **Exhibit 1** must be provided to the Grantee for each amendment which authorizes a funding increase or decrease. If the Grantee fails to receive a revised copy of **Exhibit 1**, the Grantee shall notify the Department's Grants Development and Review Manager at (850) 245-2361 to request a copy of the updated information.
- B. The Grantee is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. The Grantee shall consider the type of financial assistance (federal and/or state) identified in **Attachment G-1, Exhibit 1** when making its determination. For federal financial assistance, the Grantee shall utilize the guidance provided under 2 CFR §200.330 for determining whether the relationship represents that of a subrecipient or vendor. For state financial assistance, the Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website:

<https://apps.fldfs.com/fsaa>

The Grantee should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

4. Section 33. is hereby deleted and replaced with **RESERVED. Attachment H, Public Records Requirements.** as attached to this Amendment, is hereby added to the Agreement.
5. Section 34. of the Agreement is deleted and replaced as follows:

**SCRUTINIZED COMPANIES:**

- A. Grantee certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee or its subcontractors are found to have submitted a false certification; or if the Grantee, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or are engaged in the boycott of Israel during the term of the Agreement.
- B. If this Agreement is for more than one million dollars, the Grantee certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Grantee, its affiliates, or its subcontractors are placed on the [Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List], or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- C. The Grantee agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
  - D. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.
6. Section 36. is added to the Agreement as follows:

**INSPECTOR GENERAL**

The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its Subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subgrantees.

7. Section 37. is added to the Agreement as follows:

**REFUND OF PAYMENTS TO THE DEPARTMENT**

Any balance of unobligated funds that have been advanced or paid must be refunded to the Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to the Department.

- 8. **Attachment A-1, Revised Grant Work Plan**, is hereby deleted in its entirety and replaced with **Attachment A-2, Revised Grant Work Plan**, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to **Attachment A** shall hereinafter refer to **Attachment A-2, Revised Grant Work Plan**.
- 9. **Attachment B-1, Payment Request Summary Form**, is hereby deleted in its entirety and replaced with **Attachment B-2, Revised Payment Request Summary Form**, attached hereto and made a part of the Agreement. All references in the Agreement to **Attachment B**, shall hereinafter refer to **Attachment B-2, Revised Payment Request Summary Form**.
- 10. **Attachment D, Progress Report Form**, is hereby deleted in its entirety and replaced with **Attachment D-1, Revised Progress Report Form**, attached hereto and made a part of the Agreement. All references in the Agreement to **Attachment D**, shall hereinafter refer to **Attachment D-1, Revised Progress Report Form**.
- 11. **Attachment G, Special Audit Requirements**, is hereby deleted in its entirety and replaced with **Attachment G-1, Revised Special Audit Requirements**, attached hereto and made a part of the Agreement. All references in the Agreement to **Attachment G**, shall hereinafter refer to **Attachment G-1, Revised Special Audit Requirements**.
- 12. All other terms and conditions of the Agreement remain in effect. If and to the extent that any inconsistency may appear between the Agreement and this Amendment, the provisions of this Amendment shall control.

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IN WITNESS WHEREOF, the parties have caused this amendment to Agreement No. LP36011 to be duly executed, the day and year last written below.

CITY OF CAPE CORAL

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Joe Coviello, Mayor

By: \_\_\_\_\_  
Trina L. Vielhauer, Division Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Sue Leitholf, DEP Grant Manager

\_\_\_\_\_  
Sandra Waters, DEP QC Reviewer

List of attachments/exhibits included as part of this Amendment:

Specify Type	Letter/ Number	Description (include number of pages)
Attachment	A-2	Revised Grant Work Plan (3 pages)
Attachment	B-2	Revised Payment Request Summary Form (1 page)
Attachment	D-1	Revised Progress Report Form (1 page)
Attachment	G-1	Revised Special Audit Requirements (6 pages)
Attachment	H	Public Records Requirements (1 page)

## **ATTACHMENT A-2 REVISED GRANT WORK PLAN**

**PROJECT TITLE:** Cape Coral Reclaimed Water Transmission Main Caloosahatchee River Crossing Project

**PROJECT LOCATION:** Fort Myers – Cape Coral Reclaimed Water Interconnect Project, Lee County, Florida. This project is located in the Caloosahatchee River and Estuary (CRE) watershed and is listed as Project ID CRE 126, 2012 South Florida Environmental Report, Appendix 10-2: Caloosahatchee River Watershed Protection Plan Update (CRWPP).

**PROJECT BACKGROUND:** This project addresses the construction of a new reclaimed water transmission main between the City of Fort Myers and the City of Cape Coral (Grantee). The project will reduce Total Nitrogen and Phosphorous nutrient pollution in the Caloosahatchee River Estuary by over 100,000 lbs. per year. Project will also reduce future groundwater withdrawals for non-potable uses and assist in combating further salt water intrusion into underlying aquifer systems.

**PROJECT DESCRIPTION:** The Grantee will design and construct a reclaimed water transmission main across the Caloosahatchee River in the general vicinity of the Midpoint Memorial Bridge. On the eastern side of the river, the reclaimed water transmission main would connect to the City of Fort Myers' reclaimed water transmission/distribution system near the terminus of the bridge. On the western end of the proposed river crossing, the reclaimed water transmission main would exit the river and continue westerly generally along the Veterans Parkway corridor to a tie-in point with the City of Cape Coral's existing reclaimed water transmission/distribution system. The proposed tie-in point would be in the vicinity of the Everest Water Reclamation Facility and/or Del Prado Boulevard.

The Grantee does not anticipate that the funding under this Agreement will result in a fully completed project, so this Agreement will cover a portion of the work.

### **TASKS**

#### **Task 1: Design and Permitting**

**Deliverables:** The Grantee will complete the design of the reclaimed water transmission main and obtain all necessary permits for construction of the project.

**Documentation:** The Grantee will submit a signed acceptance of the completed work by the Grantee and a summary of design activities to date, indicating the percentage of design completion of the time period covered in the payment request. For the final documentation, Grantee will also submit a copy of the final design and a list of all required permits identifying issue dates and issuing authorities.

**Performance Standard:** The Department's Grant Manager will review the documentation to verify that the deliverables are completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

**Payment Request Schedule:** The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

## **Task 2: Bidding and Contractor Selection**

**Deliverables:** The Grantee will prepare a bid package and publish notice and solicit bids, conduct pre-bid meetings, and respond to bid questions, in accordance with the Grantee's procurement process, to select one or more qualified and licensed contractors to complete construction of the reclaimed water transmission main.

**Documentation:** The Grantee will submit: 1) the public notice of advertisement for the bid, 2) access to all inquiries, questions, and comments regarding the bid documents, if applicable, 3) the bid package, and 4) written notice of selected contractor(s).

**Performance Standard:** The Department's Grant Manager will review the documentation to verify that the deliverables are completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

**Payment Request Schedule:** The Grantee may submit a payment request for cost reimbursement following the conclusion of the task.

## **Task 3: Project Management**

**Deliverables:** The Grantee will perform project management, including field engineering services, construction observation, site meetings with construction contractors, and design professionals, and overall project coordination and supervision.

**Documentation:** The Grantee will submit interim progress status summaries including summary of inspection(s), meeting minutes and field notes, as applicable.

**Performance Standard:** The Department's Grant Manager will review the documentation to verify that the deliverables are completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

**Payment Request Schedule:** The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

## **Task 4: Construction**

**Deliverables:** The Grantee will construct the reclaimed water transmission main in accordance with the construction contract documents.

**Documentation:** The Grantee will submit a signed acceptance of the completed work to date by the Grantee and the Engineer's Certification of Payment Request.

**Performance Standard:** The Department's Grant Manager will review the documentation to verify that the deliverables are completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

**Payment Request Schedule:** The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.



**PROJECT TIMELINE & BUDGET DETAIL:** The tasks must be completed by, and all deliverables received by, the corresponding task end date.

<b>Task No.</b>	<b>Task Title</b>	<b>Budget Category</b>	<b>Budget Amount</b>	<b>Task Start Date</b>	<b>Task End Date</b>
1	Design and Permitting	Contractual Services	\$ 474,081.00	7/1/2014	1/15/2023
2	Bidding and Contractor Selection	Contractual Services	\$ 79,013.50	7/1/2014	1/15/2023
3	Project Management	Contractual Services	\$ 237,040.50	7/1/2014	1/15/2023
4	Construction	Contractual Services	\$ 3,000,000.00	7/1/2019	1/15/2023
Total:			<b>\$3,790,135.00</b>		

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Exhibit B-2**

The **Revised Payment Request Summary Form** for this grant can be found on our website at this link:

<https://floridadep.gov/wra/wra/documents/payment-request-summary-form>

Please use the most current form found on the website, linked above, for each payment request.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Revised Progress Report Form**

**Exhibit D-1**

<b>DEP Agreement No.:</b>	<b>LP36011</b>
<b>Grantee Name:</b>	City of Cape Coral
<b>Grantee Address:</b>	PO Box 150027, Cape Coral, FL 33915
<b>Grantee's Grant Manager:</b>	Jeff Pearson
<b>Reporting Period:</b>	
<b>Project Number and Title:</b>	Cape Coral Reclaimed Water Transmission Main Caloosahatchee River Crossing Project

**Provide the following information for all tasks and deliverables identified in the Grant Work Plan:**

A summary of project accomplishments for the reporting period, and comparison to goals for the period. If goals were not met, provide reasons why. Provide an update on the estimated time for completion of the task and an explanation for any anticipated delays. Identify by task.

Use as many pages as necessary to cover all tasks in the Grant Work Plan. The following format should be followed.

**Task 1: Design and Permitting**

Progress for this reporting period:

Identify any delays or problems encountered:

**Task 2: Bidding and Contractor Selection**

Progress for this reporting period:

Identify any delays or problems encountered:

**Task 3: Project Management**

Progress for this reporting period:

Identify any delays or problems encountered:

**Task 4: Construction**

Progress for this reporting period:

Identify any delays or problems encountered:

This report is submitted in accordance with the reporting requirements of DEP Agreement No. LP36011 and accurately reflects the activities associated with the project.

---

Signature of Grantee's Grant Manager

---

Date

**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Revised Special Audit Requirements**  
**(State and Federal Financial Assistance)**

**Attachment G-1**

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

**MONITORING**

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

**AUDITS**

**PART I: FEDERALLY FUNDED**

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$750,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$750,00 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at [www.cfda.gov](http://www.cfda.gov)

**Attachment G-1**

## PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, 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.
2. In connection with the audit requirements addressed in Part II, paragraph 1; 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), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its 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 non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

## PART III: OTHER AUDIT REQUIREMENTS

*(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)*

## PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
  - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10th Street  
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

**Audit Director**

Florida Department of Environmental Protection  
Office of Inspector General, MS 40  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Electronically:

[FDEPSingleAudit@dep.state.fl.us](mailto:FDEPSingleAudit@dep.state.fl.us)

- B. The Auditor General's Office at the following address:

Auditor General  
Local Government Audits/342  
Claude Pepper Building, Room 401  
111 West Madison Street  
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

**Audit Director**

Florida Department of Environmental Protection  
Office of Inspector General, MS 40  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Electronically:

[FDEPSingleAudit@dep.state.fl.us](mailto:FDEPSingleAudit@dep.state.fl.us)

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

**Attachment G-1**

3 of 6

5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

## **PART V: RECORD RETENTION**

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.



**EXHIBIT – 1**

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

*Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded*

<b>Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:</b>					
<b>Federal Program A</b>	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	
<b>Federal Program B</b>	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

*Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:*

<b>Federal Program A</b>	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
<b>Federal Program B</b>	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

*Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.*

<b>State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:</b>					
<b>Federal Program A</b>	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
<b>Federal Program B</b>	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

*Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.*

<b>State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:</b>						
<b>State Program A</b>	State Awarding Agency	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	Department of Environmental Protection	2014-2015	37.039	Statewide Surface Water Restoration and Wastewater Projects	\$790,135	140047
Amendment 1	Department of Environmental Protection	2019-2020	37.039	Statewide Surface Water Restoration and Wastewater Projects	\$3,000,000	140047
<b>State Program B</b>	State Awarding Agency	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category

Total Award	\$3,790,135	
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*Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc) listed under this category.*

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [[www.cfda.gov](http://www.cfda.gov)] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [[https://apps.fldfs.com/fsaa/state\\_project\\_compliance.aspx](https://apps.fldfs.com/fsaa/state_project_compliance.aspx)]). The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Public Records Requirements**

**Attachment H**

**1. Public Records.**

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

**2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.**

For the purposes of this paragraph, the term “contract” means the “Agreement.” If Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Department, upon request from Department’s custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

- f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:**

**Telephone:** (850) 245-2118  
**Email:** [public.services@floridadep.gov](mailto:public.services@floridadep.gov)  
**Mailing Address:** Department of Environmental Protection  
ATTN: Office of Ombudsman and Public Services  
Public Records Request  
3900 Commonwealth Boulevard, MS 49  
Tallahassee, Florida 32399



# Reclaimed Water Transmission Main RIVER CROSSING PROJECT

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## **Purpose of Project**

- Provide a significant supplement to Cape Coral's supply of irrigation water.
- Decreases nutrient loading in the Caloosahatchee River Estuary due to a reduction in treated wastewater discharges to the waterway by the City of Fort Myers.

## **Background**

- In early 2016, the City of Cape Coral formally objected to the Florida Department of Environmental Protection (FDEP) draft discharge permits which would allow the City of Fort Myers to continue discharging up to 23.0 million gallons per day (MGD) of treated wastewater effluent to the Caloosahatchee River Estuary. In addition, the City of Cape Coral presented its objections at an FDEP public hearing and offered the river crossing project as an alternative.
- Despite Cape Coral's formal objections, in mid-2016, FDEP issued the discharge permit to the City of Fort Myers. The City of Cape Coral then filed two petitions to FDEP objecting to the issuance of the permits. Both petitions and all objections were dismissed by the FDEP.



# Reclaimed Water Transmission Main RIVER CROSSING PROJECT

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## **Background (Continued)**

- In late-2016, the City of Cape Coral filed an additional petition for an administrative hearing, objecting to the issuance of the Permits. The FDEP was also notified, for the protection of our local waterways, the City would seek all legal remedies to ensure equal enforcement of the regulations and standards relative to surface water discharges.
- After diligent negotiations with the City of Fort Myers and with the full support and assistance of the FDEP, in September of 2018, an “Inter-local Agreement Between Cape Coral and Fort Myers for the Purchase and Disposal of Reclaimed Water” was finalized.

## **Project Scope**

- Construction of a reclaimed water transmission main running across the Caloosahatchee River to connect the City of Fort Myers South Advanced Wastewater Treatment Facility (AWWTF) with the City of Cape Coral’s Everest Water Reclamation Facility (WRF), providing up to 12 MGD of reclaimed water from the City of Fort Myers.



# Reclaimed Water Transmission Main RIVER CROSSING PROJECT

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## **Project Timeline**

- The estimated completion of the River Crossing Project will be January 2023.

## **Grants**

- Initially awarded \$790,135 by FDEP for engineering, design, and permitting activity costs for the project.
- Additional \$3,000,000 in funding awarded by FDEP for the construction phase of the project.
- FDEP recently advised city staff that an additional \$25,000,000 may become available for various projects. FDEP advised that a decision will be made on the allocation of this additional funding within approximately 90 days.
- Staff was also recently advised that the South Florida Water Management District (SFWMD) has \$40,000,000 in cooperative grant funding for alternative water supply projects. Staff is submitting an application to SFWMD for this grant program as well.

<b>Item Number:</b>	A.(1)
<b>Meeting Date:</b>	8/19/2019
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Public Hearings</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Ordinance 39-19 Public Hearing

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

An ordinance authorizing the City Manager to sell municipal surplus real property described as Lots 12 and 13, Block 5270, Unit 82 Cape Coral Subdivision pursuant to Section 2-155 of the Code of Ordinances; authorizing and directing the Mayor and Clerk to execute a deed conveying the surplus real property to John Marchese, Jr.; property located at 4125 NW 16th Terrace.

**LEGAL REVIEW:**

Brian R. Bartos, Assistant City Attorney

**EXHIBITS:**

Ordinance 39-19  
Map

**PREPARED BY:**

Division-      Department- City  
   Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

Dawn Andrews, Property Broker



ATTACHMENTS:

Description	Type
▢ Ordinance 39-19	Ordinance
▢ Map	Backup Material

ORDINANCE 39 - 19

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SELL MUNICIPAL SURPLUS REAL PROPERTY DESCRIBED AS LOTS 12 AND 13, BLOCK 5270, UNIT 82 CAPE CORAL SUBDIVISION 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 TO JOHN MARCHESE, JR.; PROPERTY LOCATED AT 4125 NW 16<sup>TH</sup> TERRACE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral acquired a certain parcel of real property described as Lots 12 and 13, Block 5270, Unit 82 Cape Coral Subdivision, located at 4125 NW 16<sup>th</sup> Terrace, which has been declared to be surplus real property pursuant to City Code of Ordinances Chapter 2, Article VII, Division 3, Section 2-155(a), by the City Council in Ordinance 73-18; and

WHEREAS, 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, 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 listed for sale in the multiple listing service (MLS) for a period of not less than 30 days. The city may accept the highest or best offer received during the listing period, provided that such offer is not less than 90% of the appraised value of said property"; 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; and

WHEREAS, Section 4.17 of the City Charter provides that the conveyance of any lands owned by the City shall be by ordinance.

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

Section 1. The City Manager is hereby authorized to sell the surplus real property described as Lots 12 and 13, Block 5270, Unit 82 Cape Coral Subdivision as recorded in Plat Book 24, Pages 113 to 126, inclusive, in the Public Records of Lee County, Florida.

Section 2. The City Council hereby accepts the purchase contract offer, as attached hereto and made a part hereof as Exhibit "A", from John Marchese, Jr., to purchase 4125 NW 16<sup>th</sup> Terrace, legally described as Lots 12 and 13, Block 5270, Unit 82 Cape Coral Subdivision as recorded in Plat Book 24, Pages 113 to 126, inclusive, in the Public Records of Lee County, Florida.

Section 3. The Mayor and City Clerk are hereby authorized to convey, by executing a warranty deed, the property described in Section 1 to John Marchese, Jr.

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.

Section 5. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO  
GUNTER  
CARIOSCIA  
STOUT

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NELSON  
STOKES  
WILLIAMS  
COSDEN

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2019.

\_\_\_\_\_  
KIMBERLY BRUNS  
CITY CLERK


APPROVED AS TO FORM:



\_\_\_\_\_  
BRIAN R. BARTOS  
ASSISTANT CITY ATTORNEY  
Ord\Sale of Surplus Property-Marchese

## Vacant Land Contract

- 1\* **1. Sale and Purchase:** City Of Cape Coral ("Seller")  
2\* and John Marchese Jr ("Buyer")  
3 (the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property")  
4 described as:  
5\* Address: 4125 NW 16TH TER CAPE CORAL, FL 33993  
6\* Legal Description: CAPE CORAL UNIT 82 BLK 5270 PB 24 PG 115 LOTS 12 + 13  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11\* SEC 36 /TWP / 43 /RNG 22 of LEE County, Florida. Real Property ID No.: 364322C3052700120  
12\* including all improvements existing on the Property and the following additional property: \_\_\_\_\_  
13 \_\_\_\_\_
- 14\* **2. Purchase Price:** (U.S. currency).....\$ 18,501.00  
15 All deposits will be made payable to "Escrow Agent" named below and held in escrow by:  
16\* Escrow Agent's Name: City of Cape Coral  
17\* Escrow Agent's Contact Person: \_\_\_\_\_  
18\* Escrow Agent's Address: 1015 Cultural Park Boulevard Cape Coral, FL 33990  
19\* Escrow Agent's Phone: \_\_\_\_\_  
20\* Escrow Agent's Email: \_\_\_\_\_
- 21 **(a) Initial deposit (\$0 if left blank) (Check if applicable)**  
22\* ☒ accompanies offer  
23\* ☐ will be delivered to Escrow Agent within \_\_\_\_\_ days (3 days if left blank)  
24\* after Effective Date .....\$ 1,000.00  
25 **(b) Additional deposit will be delivered to Escrow Agent (Check if applicable)**  
26\* ☐ within \_\_\_\_\_ days (10 days if left blank) after Effective Date  
27\* ☐ within \_\_\_\_\_ days (3 days if left blank) after expiration of Feasibility Study Period .....\$ \_\_\_\_\_  
28\* **(c) Total Financing** (see Paragraph 5) (express as a dollar amount or percentage).....\$ \_\_\_\_\_  
29\* **(d) Other:** After Council Approval .....\$ 4,000.00  
30 **(e) Balance to close** (not including **Buyer's** closing costs, prepaid items, and prorations)  
31\* to be paid at closing by wire transfer or other Collected funds .....\$ 13,501.00
- 32\* **(f)** ☐ (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The  
33\* unit used to determine the purchase price is ☐ lot ☐ acre ☐ square foot ☐ other (specify): \_\_\_\_\_  
34\* prorating areas of less than a full unit. The purchase price will be \$ \_\_\_\_\_ per unit based on a  
35\* calculation of total area of the Property as certified to **Seller** and **Buyer** by a Florida licensed surveyor in  
36\* accordance with Paragraph 7(c). The following rights of way and other areas will be excluded from the  
37\* calculation: \_\_\_\_\_
- 38 **3. Time for Acceptance; Effective Date:** Unless this offer is signed by **Seller** and **Buyer** and an executed copy  
39\* delivered to all parties on or before See Additional Terms, this offer will be withdrawn and **Buyer's** deposit, if  
40 any, will be returned. The time for acceptance of any counter offer will be 3 days after the date the counter offer is  
41 delivered. **The "Effective Date" of this contract is the date on which the last one of the Seller and Buyer**  
42 **has signed or initialed and delivered this offer or the final counter offer.**
- 43\* **4. Closing Date:** This transaction will close on 45 days from approval ("Closing Date"), unless specifically  
44 extended by other provisions of this contract. The Closing Date will prevail over all other time periods including,  
45 but not limited to, Financing and Feasibility Study periods. However, if the Closing Date occurs on a Saturday,  
46 Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business  
47 day. In the event insurance underwriting is suspended on Closing Date and **Buyer** is unable to obtain property  
48 insurance, **Buyer** may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If  
49 this transaction does not close for any reason, **Buyer** will immediately return all **Seller** provided documents and  
50 other items.

Buyer  (\_\_\_\_) and Seller (\_\_\_\_) (\_\_\_\_) acknowledge receipt of a copy of this page, which is 1 of 7 pages.  
VAC-11 Rev 6/17

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51 **5. Financing: (Check as applicable)**

52 \* **(a) ☒ Buyer** will pay cash for the Property with no financing contingency.

53 \* **(b) ☐ This contract is contingent on Buyer** qualifying for and obtaining the commitment(s) or approval(s)  
54 \* specified below ("Financing") within \_\_\_\_\_ days after Effective Date (Closing Date or 30 days after Effective  
55 \* Date, whichever occurs first, if left blank) ("Financing Period"). **Buyer** will apply for Financing within \_\_\_\_\_  
56 days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial,  
57 and other information required by the lender. If **Buyer**, after using diligence and good faith, cannot obtain the  
58 Financing within the Financing Period, either party may terminate this contract and **Buyer's** deposit(s) will be  
59 returned.

60 \* **(1) ☐ New Financing:** **Buyer** will secure a commitment for new third party financing for \$ \_\_\_\_\_  
61 \* or \_\_\_\_\_% of the purchase price at **(Check one)** ☐ a fixed rate not exceeding \_\_\_\_\_% ☐ an  
62 \* adjustable interest rate not exceeding \_\_\_\_\_% at origination (a fixed rate at the prevailing interest rate  
63 \* based on **Buyer's** creditworthiness if neither choice is selected). **Buyer** will keep **Seller** and Broker fully  
64 \* informed of the loan application status and progress and authorizes the lender or mortgage broker to  
65 \* disclose all such information to **Seller** and Broker.

66 \* **(2) ☐ Seller Financing:** **Buyer** will execute a ☐ first ☐ second purchase money note and mortgage to  
67 \* **Seller** in the amount of \$ \_\_\_\_\_, bearing annual interest at \_\_\_\_\_% and payable as  
68 \* follows: \_\_\_\_\_

69 The mortgage, note, and any security agreement will be in a form acceptable to **Seller** and will follow  
70 forms generally accepted in the county where the Property is located; will provide for a late payment fee  
71 and acceleration at the mortgagee's option if **Buyer** defaults; will give **Buyer** the right to prepay without  
72 penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on  
73 conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require **Buyer** to  
74 keep liability insurance on the Property, with **Seller** as additional named insured. **Buyer** authorizes **Seller**  
75 to obtain credit, employment, and other necessary information to determine creditworthiness for the  
76 financing. **Seller** will, within 10 days after Effective Date, give **Buyer** written notice of whether or not  
77 **Seller** will make the loan.

78 \* **(3) ☐ Mortgage Assumption:** **Buyer** will take title subject to and assume and pay existing first mortgage to

79 \* \_\_\_\_\_  
80 \* LN# \_\_\_\_\_ in the approximate amount of \$ \_\_\_\_\_ currently payable at  
81 \* \$ \_\_\_\_\_ per month, including principal, interest, ☐ taxes and insurance, and having a  
82 \* ☐ fixed ☐ other (describe) \_\_\_\_\_  
83 \* interest rate of \_\_\_\_\_% which ☐ will ☐ will not escalate upon assumption. Any variance in the  
84 \* mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. **Buyer** will  
85 \* purchase **Seller's** escrow account dollar for dollar. If the interest rate upon transfer exceeds \_\_\_\_\_% or  
86 \* the assumption/transfer fee exceeds \$ \_\_\_\_\_, either party may elect to pay the excess,  
87 \* failing which this contract will terminate; and **Buyer's** deposit(s) will be returned. If the lender disapproves  
88 \* **Buyer**, this contract will terminate; and **Buyer's** deposit(s) will be returned.

89 \* **6. Assignability: (Check one) Buyer** ☐ may assign and thereby be released from any further liability under this  
90 \* contract, ☐ may assign but not be released from liability under this contract, or ☒ may not assign this contract.

91 \* **7. Title: Seller** has the legal capacity to and will convey marketable title to the Property by ☐ statutory warranty  
92 \* deed ☐ special warranty deed ☒ other (specify) \_\_\_\_\_ Warranty Deed \_\_\_\_\_, free of liens, easements,  
93 and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants,  
94 restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any  
95 \* other matters to which title will be subject) \_\_\_\_\_,  
96 provided there exists at closing no violation of the foregoing.

97 **(a) Title Evidence:** The party who pays for the owner's title insurance policy will select the closing agent and  
98 pay for the title search, including tax and lien search if performed, and all other fees charged by closing agent.  
99 **Seller** will deliver to **Buyer**, at

100 \* **(Check one) ☒ Seller's** ☐ **Buyer's** expense and

101 \* **(Check one) ☒** within 30 days after Effective Date ☐ at least \_\_\_\_\_ days before Closing Date,

102 **(Check one)**

103 \* **(1) ☐** a title insurance commitment by a Florida licensed title insurer setting forth those matters to be  
104 discharged by **Seller** at or before closing and, upon **Buyer** recording the deed, an owner's policy in the  
105 amount of the purchase price for fee simple title subject only to the exceptions stated above. If **Buyer** is  
106 paying for the owner's title insurance policy and **Seller** has an owner's policy, **Seller** will deliver a copy to  
107 **Buyer** within 15 days after Effective Date.

(2) ☐ an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or **Buyer's** closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller**, then (1) above will be the title evidence.

(b) **Title Examination:** After receipt of the title evidence, **Buyer** will, within \_\_\_\_\_ days (10 days if left blank) but no later than Closing Date, deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (i) **Buyer** fails to deliver proper notice of defects or (ii) **Buyer** delivers proper written notice and **Seller** cures the defects within \_\_\_\_\_ days (30 days if left blank) ("Cure Period") after receipt of the notice. If the defects are cured within the Cure Period, closing will occur within 10 days after receipt by **Buyer** of notice of such cure. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Cure Period. If the defects are not cured within the Cure Period, **Buyer** will have 10 days after receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) **Survey:** **Buyer** may, at **Buyer's** expense, have the Property surveyed and must deliver written notice to **Seller**, within 5 days after receiving survey but not later than 5 days before Closing Date, of any encroachments on the Property, encroachments by the Property's improvements on other lands, or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and **Seller's** and **Buyer's** obligations will be determined in accordance with Paragraph 7(b).

(d) **Ingress and Egress:** **Seller** warrants that the Property presently has ingress and egress.

8. **Property Condition:** **Seller** will deliver the Property to **Buyer** at closing in its present "as is" condition, with conditions resulting from **Buyer's** Inspections and casualty damage, if any, excepted. **Seller** will not engage in or permit any activity that would materially alter the Property's condition without the **Buyer's** prior written consent.

(a) **Inspections: (Check (1) or (2))**

(1) ☒ **Feasibility Study:** **Buyer** will, at **Buyer's** expense and within \_\_\_\_\_ days (30 days if left blank) ("Feasibility Study Period") after Effective Date and in **Buyer's** sole and absolute discretion, determine whether the Property is suitable for **Buyer's** intended use. During the Feasibility Study Period, **Buyer** may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and investigations ("Inspections") that **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state, and regional growth management plans; availability of permits, government approvals, and licenses; and other inspections that **Buyer** deems appropriate. If the Property must be rezoned, **Buyer** will obtain the rezoning from the appropriate government agencies. **Seller** will sign all documents **Buyer** is required to file in connection with development or rezoning approvals. **Seller** gives **Buyer**, its agents, contractors, and assigns, the right to enter the Property at any time during the Feasibility Study Period for the purpose of conducting Inspections, provided, however, that **Buyer**, its agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability incurred in application for rezoning or related proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a construction lien being filed against the Property without **Seller's** prior written consent. If this transaction does not close, **Buyer** will, at **Buyer's** expense, (i) repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in before conducting the Inspections and (ii) release to **Seller** all reports and other work generated as a result of the Inspections.

Before expiration of the Feasibility Study Period, **Buyer** must deliver written notice to **Seller** of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property as suitable for **Buyer's** intended use in its "as is" condition. If the Property is unacceptable to **Buyer** and written notice of this fact is timely delivered to **Seller**, this contract will be deemed terminated, and **Buyer's** deposit(s) will be returned.

(2) ☐ **No Feasibility Study:** **Buyer** is satisfied that the Property is suitable for **Buyer's** purposes, including being satisfied that either public sewerage and water are available to the Property or the Property will be approved for the installation of a well and/or private sewerage disposal system and that existing zoning



and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency, growth management, and environmental conditions, are acceptable to **Buyer**. This contract is not contingent on **Buyer** conducting any further investigations.

(b) **Government Regulations:** Changes in government regulations and levels of service which affect **Buyer's** intended use of the Property will not be grounds for terminating this contract if the Feasibility Study Period has expired or if Paragraph 8(a)(2) is selected.

(c) **Flood Zone:** **Buyer** is advised to verify by survey, with the lender, and with appropriate government agencies which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving the Property and rebuilding in the event of casualty.

(d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as defined in Section 161.053, Florida Statutes, **Seller** will provide **Buyer** with an affidavit or survey as required by law delineating the line's location on the Property, unless **Buyer** waives this requirement in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shore line of the Property being purchased.

☐ **Buyer** waives the right to receive a CCCL affidavit or survey.

9. **Closing Procedure; Costs:** Closing will take place in the county where the Property is located and may be conducted by mail or electronic means. If title insurance insures **Buyer** for title defects arising between the title binder effective date and recording of **Buyer's** deed, closing agent will disburse at closing the net sale proceeds to **Seller** (in local cashier's check if **Seller** requests in writing at least 5 days before closing) and brokerage fees to Broker as per Paragraph 19. In addition to other expenses provided in this contract, **Seller** and **Buyer** will pay the costs indicated below.

(a) **Seller Costs:**

Taxes on deed

Recording fees for documents needed to cure title

Title evidence (if applicable under Paragraph 7)

Other: \_\_\_\_\_

(b) **Buyer Costs:**

Taxes and recording fees on notes and mortgages

Recording fees on the deed and financing statements

Loan expenses

Title evidence (if applicable under Paragraph 7)

Lender's title policy at the simultaneous issue rate

Inspections

Survey

Insurance

Other: \_\_\_\_\_

(c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases, and other Property expenses and revenues. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with adjustment for any exemptions.

(d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller** will pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing; and **Buyer** will pay all other amounts. If special assessments may be paid in installments, ☐ **Seller** ☒ **Buyer** (**Buyer** if left blank) will pay installments due after closing. If **Seller** is checked, **Seller** will pay the assessment in full before or at the time of closing. Public body does not include a Homeowners' or Condominium Association.

(e) **PROPERTY TAX DISCLOSURE SUMMARY:** **BUYER** SHOULD NOT RELY ON THE **SELLER'S** CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT **BUYER** MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.



- (f) **Foreign Investment in Real Property Tax Act ("FIRPTA"):** If **Seller** is a "foreign person" as defined by FIRPTA, **Seller** and **Buyer** will comply with FIRPTA, which may require **Seller** to provide additional cash at closing.
- (g) **1031 Exchange:** If either **Seller** or **Buyer** wish to enter into a like-kind exchange (either simultaneously with closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided, however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing will not be contingent upon, extended, or delayed by the Exchange.

**10. Computation of Time:** Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays specified in 5 U.S.C. 6103(a). Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. (where the Property is located) of the next business day. **Time is of the essence in this contract.**

**11. Risk of Loss; Eminent Domain:** If any portion of the Property is materially damaged by casualty before closing or **Seller** negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain proceedings or an eminent domain proceeding is initiated, **Seller** will promptly inform **Buyer**. Either party may terminate this contract by written notice to the other within 10 days after **Buyer's** receipt of **Seller's** notification, and **Buyer's** deposit(s) will be returned, failing which **Buyer** will close in accordance with this contract and receive all payments made by the governmental authority or insurance company, if any.

**12. Force Majeure:** **Seller** or **Buyer** will not be required to perform any obligation under this contract or be liable to each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or prevented by an act of God or force majeure. An "act of God or "force majeure" is defined as hurricanes, earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably within the control of **Seller** or **Buyer** and which by the exercise of due diligence the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of God or force majeure is in place. However, in the event that such act of God or force majeure event continues beyond 30 days, either party may terminate this contract by delivering written notice to the other; and **Buyer's** deposit(s) will be returned.

**13. Notices:** All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or electronic means. **Buyer's failure to timely deliver written notice to Seller, when such notice is required by this contract, regarding any contingency will render that contingency null and void, and this contract will be construed as if the contingency did not exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a transactions broker) representing a party will be as effective as if delivered to or received by that party.**

**14. Complete Agreement; Persons Bound:** This contract is the entire agreement between **Seller** and **Buyer**. **Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this contract.** Modifications of this contract will not be binding unless in writing, signed or initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This contract, signatures, initials, documents referenced in this contract, counterparts, and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this contract prevail over preprinted terms. If any provision of this contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. **Seller** and **Buyer** will use diligence and good faith in performing all obligations under this contract. This contract will not be recorded in any public record. The terms "**Seller**," "**Buyer**," and "**Broker**" may be singular or plural. This contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if permitted, of **Seller**, **Buyer**, and Broker.

**15. Default and Dispute Resolution:** This contract will be construed under Florida law. This Paragraph will survive closing or termination of this contract.

- (a) **Seller Default:** If **Seller** fails, neglects, or refuses to perform **Seller's** obligations under this contract, **Buyer** may elect to receive a return of **Buyer's** deposit(s) without thereby waiving any action for damages resulting from **Seller's** breach and may seek to recover such damages or seek specific performance. **Seller** will also be liable for the full amount of the brokerage fee.

(b) **Buyer Default:** If **Buyer** fails, neglects, or refuses to perform **Buyer's** obligations under this contract, including payment of deposit(s), within the time(s) specified, **Seller** may elect to recover and retain the deposit(s), paid and agreed to be paid, for the account of **Seller** as agreed upon liquidated damages, consideration for execution of this contract, and in full settlement of any claims, whereupon **Seller** and **Buyer** will be relieved from all further obligations under this contract; or **Seller**, at **Seller's** option, may proceed in equity to enforce **Seller's** rights under this contract.

**16. Attorney's Fees; Costs:** In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 16 shall survive Closing or termination of this Contract.

**17. Escrow Agent; Closing Agent:** **Seller** and **Buyer** authorize Escrow Agent and closing agent (collectively "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper authorization and in accordance with Florida law and the terms of this contract, including disbursing brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

**18. Professional Advice; Broker Liability:** Broker advises **Seller** and **Buyer** to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting this contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax, property condition, environmental, and other specialized advice. **Buyer** acknowledges that Broker does not reside in the Property and that all representations (oral, written, or otherwise) by Broker are based on **Seller** representations or public records. **Buyer agrees to rely solely on Seller, professional inspectors, and government agencies for verification of the Property condition and facts that materially affect Property value.** **Seller** and **Buyer** respectively will pay all costs and expenses, including reasonable attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising from **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations. **Seller** and **Buyer** hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or damage based on (i) **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations; (ii) the use or display of listing data by third parties, including, but not limited to, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at **Seller's** or **Buyer's** request, of any task beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or services provided by any vendor; and (v) expenses incurred by any vendor. **Seller** and **Buyer** each assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this contract. This Paragraph will survive closing.

**19. Commercial Real Estate Sales Commission Lien Act:** If the Property is commercial real estate as defined by Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

**20. Brokers:** The brokers named below are collectively referred to as "Broker." **Instruction to closing agent:** **Seller** and **Buyer** direct closing agent to disburse at closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any MLS or other offer of compensation made by **Seller** or **Seller's** Broker to **Buyer's** Broker.

(a) \_\_\_\_\_ Dawn Y Andrews (Seller's Broker)  
will be compensated by ☐ **Seller** ☐ **Buyer** ☐ both parties pursuant to ☐ a listing agreement ☐ other  
(specify): \_\_\_\_\_ Is not accepting a commission

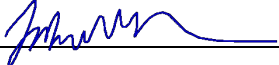
(b) \_\_\_\_\_ Premiere Plus Realty (Buyer's Broker)  
will be compensated by ☒ **Seller** ☐ **Buyer** ☐ both parties ☐ **Seller's** Broker pursuant to ☐ a MLS offer of  
compensation ☐ other (specify): \_\_\_\_\_ a MLS offer of compensation

327\* **21. Additional Terms:** Contract is subject to City Council Approval  
328 \_\_\_\_\_  
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342 \_\_\_\_\_

343 **COUNTER-OFFER/REJECTION**

344\* ☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and  
345 deliver a copy of the acceptance to Seller).  
346\* ☐ Seller rejects Buyer's offer

347 **This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney before**  
348 **signing.**

349\* **Buyer:**  Date: Jun 18, 2019

350\* Print name: John Marchese Jr

351\* **Buyer:** \_\_\_\_\_ Date: \_\_\_\_\_

352\* Print name: \_\_\_\_\_

353 **Buyer's address for purpose of notice:**

354\* Address: 3719 SW 1st St Cape Coral, FL 33991

355\* Phone: 631-379-9970 Fax: \_\_\_\_\_ Email: kazy316@icloud.com

356\* **Seller:** \_\_\_\_\_ Date: \_\_\_\_\_

357\* Print name: City Of Cape Coral

358\* **Seller:** \_\_\_\_\_ Date: \_\_\_\_\_

359\* Print name: \_\_\_\_\_


360 **Seller's address for purpose of notice:**

361\* Address: \_\_\_\_\_

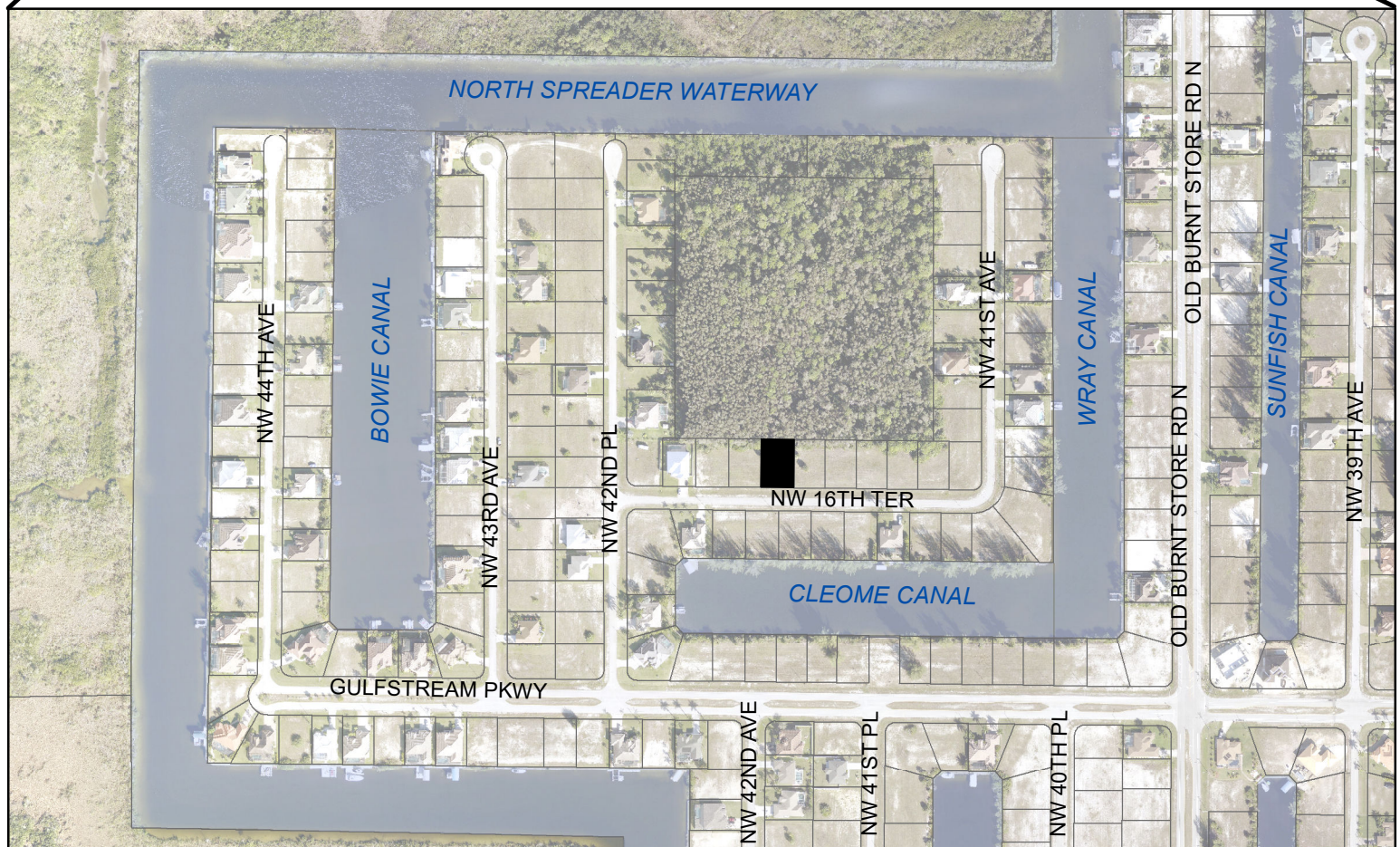
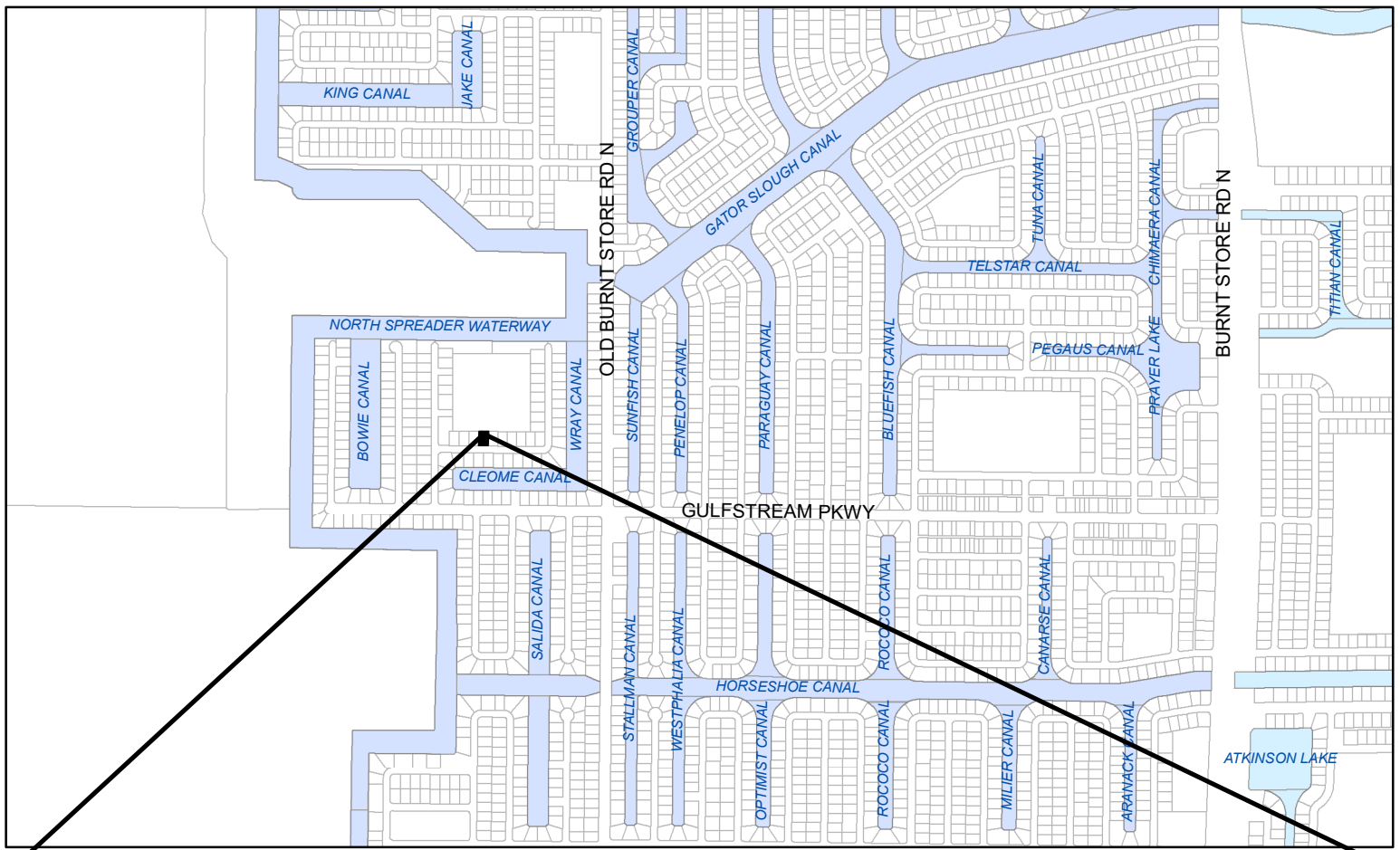
362\* Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

363\* **Effective Date:** \_\_\_\_\_ **(The date on which the last party signed or initialed and delivered the**  
364 **final offer or counter offer.)**

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Buyer  (\_\_\_\_) and Seller (\_\_\_\_) (\_\_\_\_) acknowledge receipt of a copy of this page, which is 7 of 7 pages.  
VAC-111 Rev 6/17





0 225 450 900 Feet  
1 inch = 450 feet 1:5,400



City of Cape Coral - Surplus Parcel 366  
Block 5270 Lots 12 & 13

<b>Item Number:</b>	A.(2)
<b>Meeting Date:</b>	8/19/2019
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Public Hearings</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Ordinance 40-19 Public Hearing

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

An ordinance authorizing the City Manager to sell municipal surplus real property described as Lots 30 and 31, Block 5271, Unit 82 Cape Coral Subdivision pursuant to Section 2-155 of the Code of Ordinances; authorizing and directing the Mayor and Clerk to execute a deed conveying the surplus real property to PCI Management, Inc.; property located at 1727 NW 42nd Place.

**LEGAL REVIEW:**

Brian R. Bartos, Assistant City Attorney

**EXHIBITS:**

Ordinance 40-19  
Map

**PREPARED BY:**

Division-      Department-      City  
   Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

Dawn Andrews, Property Broker

**ATTACHMENTS:**

Description	Type
▣ Ordinance 40-19	Ordinance
▣ Map	Backup Material

ORDINANCE 40 - 19

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SELL MUNICIPAL SURPLUS REAL PROPERTY DESCRIBED AS LOTS 30 AND 31, BLOCK 5271, UNIT 82 CAPE CORAL SUBDIVISION 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 TO PCI MANAGEMENT, INC.; PROPERTY LOCATED AT 1727 NW 42<sup>ND</sup> PLACE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral acquired a certain parcel of real property described as Lots 30 and 31, Block 5271, Unit 82 Cape Coral Subdivision, located at 1727 NW 42<sup>nd</sup> Place, which has been declared to be surplus real property pursuant to City Code of Ordinances Chapter 2, Article VII, Division 3, Section 2-155(a), by the City Council in Ordinance 73-18; and

WHEREAS, 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, 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 listed for sale in the multiple listing service (MLS) for a period of not less than 30 days. The city may accept the highest or best offer received during the listing period, provided that such offer is not less than 90% of the appraised value of said property"; 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; and

WHEREAS, the City of Cape Coral has received two purchase contract offers for said property located at 1727 NW 42<sup>nd</sup> Place: One offer from Homes and Land Group, LLC in the amount of \$18,000, attached as Exhibit "A" and one offer from PCI Management, Inc. in the amount of \$20,500 attached as Exhibit "B"; and

WHEREAS, pursuant to Section 2-155(e) the contract from PCI Management, Inc. is the highest or best offer and is therefore accepted by City Council; and

WHEREAS, Section 4.17 of the City Charter provides that the conveyance of any lands owned by the City shall be by ordinance.

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

Section 1. The City Manager is hereby authorized to sell the surplus real property described as Lots 30 and 31, Block 5271, Unit 82 Cape Coral Subdivision as recorded in Plat Book 24, Pages 113 to 126, inclusive, in the Public Records of Lee County, Florida.

Section 2. The City Council hereby rejects the offer from Homes and Land Group, LLC and accepts the purchase contract offer, as attached hereto and made a part hereof as Exhibit "B", from PCI Management, Inc., to purchase 1727 NW 42<sup>nd</sup> Place, legally described as Lots 30 and 31, Block 5271, Unit 82 Cape Coral Subdivision as recorded in Plat Book 24, Pages 113 to 126, inclusive, in the Public Records of Lee County, Florida.

Section 3. The Mayor and City Clerk are hereby authorized to convey, by executing a warranty deed, the property described in Section 1 to PCI Management, Inc.

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.



Section 5. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 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 \_\_\_\_\_, 2019.

\_\_\_\_\_  
KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:



BRIAN R. BARTOS  
ASSISTANT CITY ATTORNEY  
Ord\Sale of Surplus Property-PCI Home & Land Grp L30-31 B5271

# Vacant Land Contract

1. **Sale and Purchase:** \_\_\_\_\_ City of Cape Coral \_\_\_\_\_ ("Seller")  
and \_\_\_\_\_ Homes and Land Group LLC \_\_\_\_\_ ("Buyer")

(the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property") described as:

Address: \_\_\_\_\_ 1727 NW 42nd Place Cape Coral Florida 33993

Legal Description: \_\_\_\_\_ CAPE CORAL UNIT 82 BLK 5271 PB 24 PG 118 LOTS 30 + 31

SEC 36/TWP 43/RNG 22 of \_\_\_\_\_ LEE \_\_\_\_\_ County, Florida. Real Property ID No.: 36-43-22-C3-05271.0300 including all improvements existing on the Property and the following additional property: \_\_\_\_\_

2. **Purchase Price:** (U.S. currency) \_\_\_\_\_ \$ 18,000.00

All deposits will be made payable to "Escrow Agent" named below and held in escrow by:

Escrow Agent's Name: \_\_\_\_\_ City of Cape Coral

Escrow Agent's Contact Person: \_\_\_\_\_ Dawn Y Andrews

Escrow Agent's Address: \_\_\_\_\_ PO Box 150027 Cape Coral Florida 33915-0027

Escrow Agent's Phone: \_\_\_\_\_ 239-574-0735

Escrow Agent's Email: \_\_\_\_\_ Dandrews@capecoral.net

(a) Initial deposit (\$0 if left blank) (Check if applicable)

☒ accompanies offer

☐ will be delivered to Escrow Agent within \_\_\_\_\_ days (3 days if left blank)

after Effective Date \_\_\_\_\_ \$ 1,000.00

(b) Additional deposit will be delivered to Escrow Agent (Check if applicable)

☐ within \_\_\_\_\_ days (10 days if left blank) after Effective Date

☐ within \_\_\_\_\_ days (3 days if left blank) after expiration of Feasibility Study Period \_\_\_\_\_ \$

(c) Total Financing (see Paragraph 5) (express as a dollar amount or percentage) \_\_\_\_\_

(d) Other: \_\_\_\_\_ After City Council Approval \_\_\_\_\_ \$ 4,000.00

(e) Balance to close (not including Buyer's closing costs, prepaid items, and prorations)

to be paid at closing by wire transfer or other Collected funds \_\_\_\_\_ \$ 13,000.00

(f) ☐ (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The

unit used to determine the purchase price is ☐ lot ☐ acre ☐ square foot ☐ other (specify): \_\_\_\_\_

prorating areas of less than a full unit. The purchase price will be \$ \_\_\_\_\_ per unit based on a

calculation of total area of the Property as certified to Seller and Buyer by a Florida licensed surveyor in

accordance with Paragraph 7(c). The following rights of way and other areas will be excluded from the

calculation: \_\_\_\_\_

3. **Time for Acceptance; Effective Date:** Unless this offer is signed by Seller and Buyer and an executed copy delivered to all parties on or before \_\_\_\_\_ See Add Terms \_\_\_\_\_, this offer will be withdrawn and Buyer's deposit, if any, will be returned. The time for acceptance of any counter offer will be 3 days after the date the counter offer is delivered. The "Effective Date" of this contract is the date on which the last one of the Seller and Buyer has signed or initialed and delivered this offer or the final counter offer.

4. **Closing Date:** This transaction will close on 30 days from approval ("Closing Date"), unless specifically extended by other provisions of this contract. The Closing Date will prevail over all other time periods including, but not limited to, Financing and Feasibility Study periods. However, if the Closing Date occurs on a Saturday, Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business day. In the event insurance underwriting is suspended on Closing Date and Buyer is unable to obtain property insurance, Buyer may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If this transaction does not close for any reason, Buyer will immediately return all Seller provided documents and other items.

Buyer (\_\_\_\_\_) and Seller (\_\_\_\_\_) acknowledge receipt of a copy of this page, which is 1 of 7 pages.

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51 **5. Financing: (Check as applicable)**

52 (a) ☒ **Buyer** will pay cash for the Property with no financing contingency.

53 (b) ☐ This contract is contingent on **Buyer** qualifying for and obtaining the commitment(s) or approval(s)  
54 specified below ("Financing") within \_\_\_\_\_ days after Effective Date (Closing Date or 30 days after Effective  
55 Date, whichever occurs first, if left blank) ("Financing Period"). **Buyer** will apply for Financing within \_\_\_\_\_  
56 days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial,  
57 and other information required by the lender. If **Buyer**, after using diligence and good faith, cannot obtain the  
58 Financing within the Financing Period, either party may terminate this contract and **Buyer's** deposit(s) will be  
59 returned.

60 (1) ☐ **New Financing:** **Buyer** will secure a commitment for new third party financing for \$ \_\_\_\_\_  
61 or \_\_\_\_\_ % of the purchase price at (Check one) ☐ a fixed rate not exceeding \_\_\_\_\_ % ☐ an  
62 adjustable interest rate not exceeding \_\_\_\_\_ % at origination (a fixed rate at the prevailing interest rate  
63 based on **Buyer's** creditworthiness if neither choice is selected). **Buyer** will keep **Seller** and **Broker** fully  
64 informed of the loan application status and progress and authorizes the lender or mortgage broker to  
65 disclose all such information to **Seller** and **Broker**.

66 (2) ☐ **Seller Financing:** **Buyer** will execute a ☐ first ☐ second purchase money note and mortgage to  
67 **Seller** in the amount of \$ \_\_\_\_\_, bearing annual interest at \_\_\_\_\_ % and payable as  
68 follows: \_\_\_\_\_

69 The mortgage, note, and any security agreement will be in a form acceptable to **Seller** and will follow  
70 forms generally accepted in the county where the Property is located; will provide for a late payment fee  
71 and acceleration at the mortgagee's option if **Buyer** defaults; will give **Buyer** the right to prepay without  
72 penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on  
73 conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require **Buyer** to  
74 keep liability insurance on the Property, with **Seller** as additional named insured. **Buyer** authorizes **Seller**  
75 to obtain credit, employment, and other necessary information to determine creditworthiness for the  
76 financing. **Seller** will, within 10 days after Effective Date, give **Buyer** written notice of whether or not  
77 **Seller** will make the loan.

78 (3) ☐ **Mortgage Assumption:** **Buyer** will take title subject to and assume and pay existing first mortgage to

79 \_\_\_\_\_  
80 LN# \_\_\_\_\_ in the approximate amount of \$ \_\_\_\_\_ currently payable at  
81 \$ \_\_\_\_\_ per month, including principal, interest, ☐ taxes and insurance, and having a  
82 ☐ fixed ☐ other (describe) \_\_\_\_\_  
83 interest rate of \_\_\_\_\_ % which ☐ will ☐ will not escalate upon assumption. Any variance in the  
84 mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. **Buyer** will  
85 purchase **Seller's** escrow account dollar for dollar. If the interest rate upon transfer exceeds \_\_\_\_\_ % or  
86 the assumption/transfer fee exceeds \$ \_\_\_\_\_, either party may elect to pay the excess,  
87 failing which this contract will terminate; and **Buyer's** deposit(s) will be returned. If the lender disapproves  
88 **Buyer**, this contract will terminate; and **Buyer's** deposit(s) will be returned.

89 **6. Assignability: (Check one)** **Buyer** ☐ may assign and thereby be released from any further liability under this  
90 contract, ☐ may assign but not be released from liability under this contract, or ☒ may not assign this contract.

91 **7. Title: Seller** has the legal capacity to and will convey marketable title to the Property by ☒ statutory warranty  
92 deed ☐ special warranty deed ☐ other (specify) \_\_\_\_\_, free of liens, easements,  
93 and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants,  
94 restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any  
95 other matters to which title will be subject) \_\_\_\_\_  
96 provided there exists at closing no violation of the foregoing.

97 (a) **Title Evidence:** The party who pays for the owner's title insurance policy will select the closing agent and  
98 pay for the title search, including tax and lien search if performed, and all other fees charged by closing agent.  
99 **Seller** will deliver to **Buyer**, at

100 (Check one) ☒ **Seller's** ☐ **Buyer's** expense and

101 (Check one) ☒ within 30 days after Effective Date ☐ at least \_\_\_\_\_ days before Closing Date,

102 (Check one)

103 (1) ☒ a title insurance commitment by a Florida licensed title insurer setting forth those matters to be  
104 discharged by **Seller** at or before closing and, upon **Buyer** recording the deed, an owner's policy in the  
105 amount of the purchase price for fee simple title subject only to the exceptions stated above. If **Buyer** is  
106 paying for the owner's title insurance policy and **Seller** has an owner's policy, **Seller** will deliver a copy to  
107 **Buyer** within 15 days after Effective Date.

Buyer Ba (\_\_\_\_) and Seller (\_\_\_\_) (\_\_\_\_) acknowledge receipt of a copy of this page, which is 2 of 7 pages.



(2) ☐ an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to Seller, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to Buyer from the policy effective date and certified to Buyer or Buyer's closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to Seller, then (1) above will be the title evidence.

(b) **Title Examination:** After receipt of the title evidence, Buyer will, within \_\_\_\_\_ days (10 days if left blank) but no later than Closing Date, deliver written notice to Seller of title defects. Title will be deemed acceptable to Buyer if (i) Buyer fails to deliver proper notice of defects or (ii) Buyer delivers proper written notice and Seller cures the defects within \_\_\_\_\_ days (30 days if left blank) ("Cure Period") after receipt of the notice. If the defects are cured within the Cure Period, closing will occur within 10 days after receipt by Buyer of notice of such cure. Seller may elect not to cure defects if Seller reasonably believes any defect cannot be cured within the Cure Period. If the defects are not cured within the Cure Period, Buyer will have 10 days after receipt of notice of Seller's inability to cure the defects to elect whether to terminate this contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) **Survey:** Buyer may, at Buyer's expense, have the Property surveyed and must deliver written notice to Seller, within 5 days after receiving survey but not later than 5 days before Closing Date, of any encroachments on the Property, encroachments by the Property's improvements on other lands, or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and Seller's and Buyer's obligations will be determined in accordance with Paragraph 7(b).

(d) **Ingress and Egress:** Seller warrants that the Property presently has ingress and egress.

8. **Property Condition:** Seller will deliver the Property to Buyer at closing in its present "as is" condition, with conditions resulting from Buyer's Inspections and casualty damage, if any, excepted. Seller will not engage in or permit any activity that would materially alter the Property's condition without the Buyer's prior written consent.

(a) **Inspections:** (Check (1) or (2))

(1) ☒ **Feasibility Study:** Buyer will, at Buyer's expense and within 3 days (30 days if left blank) ("Feasibility Study Period") after Effective Date and in Buyer's sole and absolute discretion, determine whether the Property is suitable for Buyer's intended use. During the Feasibility Study Period, Buyer may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and investigations ("Inspections") that Buyer deems necessary to determine to Buyer's satisfaction the Property's engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state, and regional growth management plans; availability of permits, government approvals, and licenses; and other inspections that Buyer deems appropriate. If the Property must be rezoned, Buyer will obtain the rezoning from the appropriate government agencies. Seller will sign all documents Buyer is required to file in connection with development or rezoning approvals. Seller gives Buyer, its agents, contractors, and assigns, the right to enter the Property at any time during the Feasibility Study Period for the purpose of conducting Inspections, provided, however, that Buyer, its agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. Buyer will indemnify and hold Seller harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability incurred in application for rezoning or related proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any work authorized by Buyer. Buyer will not engage in any activity that could result in a construction lien being filed against the Property without Seller's prior written consent. If this transaction does not close, Buyer will, at Buyer's expense, (i) repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in before conducting the Inspections and (ii) release to Seller all reports and other work generated as a result of the Inspections.

Before expiration of the Feasibility Study Period, Buyer must deliver written notice to Seller of Buyer's determination of whether or not the Property is acceptable. Buyer's failure to comply with this notice requirement will constitute acceptance of the Property as suitable for Buyer's intended use in its "as is" condition. If the Property is unacceptable to Buyer and written notice of this fact is timely delivered to Seller, this contract will be deemed terminated, and Buyer's deposit(s) will be returned.

(2) ☐ **No Feasibility Study:** Buyer is satisfied that the Property is suitable for Buyer's purposes, including being satisfied that either public sewerage and water are available to the Property or the Property will be approved for the installation of a well and/or private sewerage disposal system and that existing zoning

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and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency, growth management, and environmental conditions, are acceptable to **Buyer**. This contract is not contingent on **Buyer** conducting any further investigations.

- (b) **Government Regulations:** Changes in government regulations and levels of service which affect **Buyer's** intended use of the Property will not be grounds for terminating this contract if the Feasibility Study Period has expired or if Paragraph 8(a)(2) is selected.
- (c) **Flood Zone:** **Buyer** is advised to verify by survey, with the lender, and with appropriate government agencies which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving the Property and rebuilding in the event of casualty.
- (d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as defined in Section 161.053, Florida Statutes, **Seller** will provide **Buyer** with an affidavit or survey as required by law delineating the line's location on the Property, unless **Buyer** waives this requirement in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shore line of the Property being purchased.
- ☐ **Buyer** waives the right to receive a CCCL affidavit or survey.

9. **Closing Procedure; Costs:** Closing will take place in the county where the Property is located and may be conducted by mail or electronic means. If title insurance insures **Buyer** for title defects arising between the title binder effective date and recording of **Buyer's** deed, closing agent will disburse at closing the net sale proceeds to **Seller** (in local cashier's check if **Seller** requests in writing at least 5 days before closing) and brokerage fees to Broker as per Paragraph 19. In addition to other expenses provided in this contract, **Seller** and **Buyer** will pay the costs indicated below.

(a) **Seller Costs:**

Taxes on deed  
Recording fees for documents needed to cure title  
Title evidence (If applicable under Paragraph 7)  
Other: \_\_\_\_\_

(b) **Buyer Costs:**

Taxes and recording fees on notes and mortgages  
Recording fees on the deed and financing statements  
Loan expenses  
Title evidence (if applicable under Paragraph 7)  
Lender's title policy at the simultaneous issue rate  
Inspections  
Survey  
Insurance  
Other: \_\_\_\_\_

- (c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases, and other Property expenses and revenues. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with adjustment for any exemptions.

- (d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller** will pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing; and **Buyer** will pay all other amounts. If special assessments may be paid in installments, ☐ **Seller** ☒ **Buyer** (**Buyer** if left blank) will pay installments due after closing. If **Seller** is checked, **Seller** will pay the assessment in full before or at the time of closing. Public body does not include a Homeowners' or Condominium Association.

- (e) **PROPERTY TAX DISCLOSURE SUMMARY:** **BUYER** SHOULD NOT RELY ON THE **SELLER'S** CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT **BUYER** MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.

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- (f) **Foreign Investment in Real Property Tax Act ("FIRPTA"):** If Seller is a "foreign person" as defined by FIRPTA, Seller and Buyer will comply with FIRPTA, which may require Seller to provide additional cash at closing.
- (g) **1031 Exchange:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided, however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing will not be contingent upon, extended, or delayed by the Exchange.
- 10. Computation of Time:** Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays specified in 5 U.S.C. 6103(a). Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. (where the Property is located) of the next business day. **Time is of the essence in this contract.**
- 11. Risk of Loss; Eminent Domain:** If any portion of the Property is materially damaged by casualty before closing or Seller negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain proceedings or an eminent domain proceeding is initiated, Seller will promptly inform Buyer. Either party may terminate this contract by written notice to the other within 10 days after Buyer's receipt of Seller's notification, and Buyer's deposit(s) will be returned, failing which Buyer will close in accordance with this contract and receive all payments made by the governmental authority or insurance company, if any.
- 12. Force Majeure:** Seller or Buyer will not be required to perform any obligation under this contract or be liable to each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or prevented by an act of God or force majeure. An "act of God or force majeure" is defined as hurricanes, earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably within the control of Seller or Buyer and which by the exercise of due diligence the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of God or force majeure is in place. However, in the event that such act of God or force majeure event continues beyond 30 days, either party may terminate this contract by delivering written notice to the other; and Buyer's deposit(s) will be returned.
- 13. Notices:** All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or electronic means. Buyer's failure to timely deliver written notice to Seller, when such notice is required by this contract, regarding any contingency will render that contingency null and void, and this contract will be construed as if the contingency did not exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a transactions broker) representing a party will be as effective as if delivered to or received by that party.
- 14. Complete Agreement; Persons Bound:** This contract is the entire agreement between Seller and Buyer. Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this contract. Modifications of this contract will not be binding unless in writing, signed or initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This contract, signatures, initials, documents referenced in this contract, counterparts, and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this contract prevail over preprinted terms. If any provision of this contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. Seller and Buyer will use diligence and good faith in performing all obligations under this contract. This contract will not be recorded in any public record. The terms "Seller," "Buyer," and "Broker" may be singular or plural. This contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if permitted, of Seller, Buyer, and Broker.
- 15. Default and Dispute Resolution:** This contract will be construed under Florida law. This Paragraph will survive closing or termination of this contract.
- (a) **Seller Default:** If Seller fails, neglects, or refuses to perform Seller's obligations under this contract, Buyer may elect to receive a return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach and may seek to recover such damages or seek specific performance. Seller will also be liable for the full amount of the brokerage fee.

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(b) **Buyer Default:** If Buyer fails, neglects, or refuses to perform Buyer's obligations under this contract, including payment of deposit(s), within the time(s) specified, Seller may elect to recover and retain the deposit(s), paid and agreed to be paid, for the account of Seller as agreed upon liquidated damages, consideration for execution of this contract, and in full settlement of any claims, whereupon Seller and Buyer will be relieved from all further obligations under this contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this contract.

**16. Attorney's Fees; Costs:** In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 16 shall survive Closing or termination of this Contract.

**17. Escrow Agent; Closing Agent:** Seller and Buyer authorize Escrow Agent and closing agent (collectively "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper authorization and in accordance with Florida law and the terms of this contract, including disbursing brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to Seller or Buyer, unless the misdelivery is due to Agent's willful breach of this contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

**18. Professional Advice; Broker Liability:** Broker advises Seller and Buyer to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting this contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax, property condition, environmental, and other specialized advice. Buyer acknowledges that Broker does not reside in the Property and that all representations (oral, written, or otherwise) by Broker are based on Seller representations or public records. Buyer agrees to rely solely on Seller, professional inspectors, and government agencies for verification of the Property condition and facts that materially affect Property value. Seller and Buyer respectively will pay all costs and expenses, including reasonable attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising from Seller's or Buyer's misstatement or failure to perform contractual obligations. Seller and Buyer hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or damage based on (i) Seller's or Buyer's misstatement or failure to perform contractual obligations; (ii) the use or display of listing data by third parties, including, but not limited to, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at Seller's or Buyer's request, of any task beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or services provided by any vendor; and (v) expenses incurred by any vendor. Seller and Buyer each assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this contract. This Paragraph will survive closing.

**19. Commercial Real Estate Sales Commission Lien Act:** If the Property is commercial real estate as defined by Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

**20. Brokers:** The brokers named below are collectively referred to as "Broker." **Instruction to closing agent:** Seller and Buyer direct closing agent to disburse at closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any MLS or other offer of compensation made by Seller or Seller's Broker to Buyer's Broker.

(a) Dawn Y Andrews (Seller's Broker)  
will be compensated by ☐ Seller ☐ Buyer ☐ both parties pursuant to ☐ a listing agreement ☒ other  
(specify): IS NOT ACCEPTING A COMMISSION

(b) Brian Barnhart - Gulf Gateway Realty (Buyer's Broker)  
will be compensated by ☐ Seller ☐ Buyer ☐ both parties ☐ Seller's Broker pursuant to ☒ a MLS offer of  
compensation ☐ other (specify): 3%

Buyer [Signature] and Seller        acknowledge receipt of a copy of this page, which is 6 of 7 pages.



327\* **21. Additional Terms:** This contract is subject to City of Cape Coral Council approval.  
328 Member of the buying LLC has a real estate license.  
329 Buyer is to assume any current and future assessments.  
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343 **COUNTER-OFFER/REJECTION**

344\* ☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and  
345 deliver a copy of the acceptance to Seller).  
346\* ☐ Seller rejects Buyer's offer

347 **This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney before**  
348 **signing.**

349\* **Buyer:**  Date: 5/28/19

350\* Print name: Homes and Land Group LLC

351\* **Buyer:** \_\_\_\_\_ Date: \_\_\_\_\_

352\* Print name: \_\_\_\_\_

353 **Buyer's address for purpose of notice:**

354\* Address: \_\_\_\_\_

355\* Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ - \_\_\_\_\_ Email: \_\_\_\_\_

356\* **Seller:** \_\_\_\_\_ Date: \_\_\_\_\_

357\* Print name: City of Cape Coral

358\* **Seller:** \_\_\_\_\_ Date: \_\_\_\_\_

359\* Print name: \_\_\_\_\_

360 **Seller's address for purpose of notice:**

361\* Address: PO Box 150027 Cape Coral Florida 33915 - 0027

362\* Phone: 239 - 574 - 0735 Fax: \_\_\_\_\_ - \_\_\_\_\_ Email: Dandrews@capecoral.net

363\* **Effective Date:** \_\_\_\_\_ **(The date on which the last party signed or Initialed and delivered the**  
364 **final offer or counter offer.)**


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VAC-11 Rev 6/17

Serial#: 006377-500155-8725965

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# Vacant Land Contract

1. **Sale and Purchase:** \_\_\_\_\_ City of Cape Coral ("Seller")  
 and \_\_\_\_\_ PCI Management Inc. ("Buyer")  
 (the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property")  
 described as:  
 Address: \_\_\_\_\_ 1727 NW 42ND PL CAPE CORAL FLORIDA 33993  
 Legal Description: \_\_\_\_\_ Lots 30 and 31, Block 5271, Cape Coral Unit 82, PB 24 PG 118  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 SEC 36 /TWP 43 /RNG 22 of \_\_\_\_\_ LEE County, Florida. Real Property ID No.: 36-43-22-C3-05271.0300  
 including all improvements existing on the Property and the following additional property: \_\_\_\_\_  
 \_\_\_\_\_
2. **Purchase Price:** (U.S. currency) ..... \$ 20,500.00  
 All deposits will be made payable to "Escrow Agent" named below and held in escrow by:  
 Escrow Agent's Name: \_\_\_\_\_ City of Cape Coral  
 Escrow Agent's Contact Person: \_\_\_\_\_ Dawn Y Andrews  
 Escrow Agent's Address: \_\_\_\_\_ P.O Box 150027, Cape Coral, Florida 33915 - 0027  
 Escrow Agent's Phone: \_\_\_\_\_ 239 - 574 - 0735  
 Escrow Agent's Email: \_\_\_\_\_ Dandrews@capecoral.net
- (a) Initial deposit (\$0 if left blank) (**Check if applicable**)  
☒ accompanies offer  
☐ will be delivered to Escrow Agent within \_\_\_\_\_ days (3 days if left blank)  
 after Effective Date ..... \$ 5,000.00
- (b) Additional deposit will be delivered to Escrow Agent (**Check if applicable**)  
☐ within \_\_\_\_\_ days (10 days if left blank) after Effective Date  
☐ within \_\_\_\_\_ days (3 days if left blank) after expiration of Feasibility Study Period ..... \$ \_\_\_\_\_
- (c) Total Financing (see Paragraph 5) (express as a dollar amount or percentage) ..... \$ \_\_\_\_\_
- (d) Other: ..... \$ \_\_\_\_\_
- (e) Balance to close (not including **Buyer's** closing costs, prepaid items, and prorations)  
 to be paid at closing by wire transfer or other Collected funds ..... \$ 15,500.00
- (f) ☐ (Complete only if purchase price will be determined based on a per unit cost instead of a fixed price.) The  
 unit used to determine the purchase price is ☐ lot ☐ acre ☐ square foot ☐ other (specify): \_\_\_\_\_  
 prorating areas of less than a full unit. The purchase price will be \$ \_\_\_\_\_ per unit based on a  
 calculation of total area of the Property as certified to **Seller** and **Buyer** by a Florida licensed surveyor in  
 accordance with Paragraph 7(c). The following rights of way and other areas will be excluded from the  
 calculation: \_\_\_\_\_
3. **Time for Acceptance; Effective Date:** Unless this offer is signed by **Seller** and **Buyer** and an executed copy  
 delivered to all parties on or before \_\_\_\_\_ See Add Terms \_\_\_\_\_, this offer will be withdrawn and **Buyer's** deposit, if  
 any, will be returned. The time for acceptance of any counter offer will be 3 days after the date the counter offer is  
 delivered. **The "Effective Date" of this contract is the date on which the last one of the Seller and Buyer**  
**has signed or initialed and delivered this offer or the final counter offer.**
4. **Closing Date:** This transaction will close on \_\_\_\_\_ 30 days from approval \_\_\_\_\_ ("Closing Date"), unless specifically  
 extended by other provisions of this contract. The Closing Date will prevail over all other time periods including,  
 but not limited to, Financing and Feasibility Study periods. However, if the Closing Date occurs on a Saturday,  
 Sunday, or national legal holiday, it will extend to 5:00 p.m. (where the Property is located) of the next business  
 day. In the event insurance underwriting is suspended on Closing Date and **Buyer** is unable to obtain property  
 insurance, **Buyer** may postpone closing for up to 5 days after the insurance underwriting suspension is lifted. If  
 this transaction does not close for any reason, **Buyer** will immediately return all **Seller** provided documents and  
 other items.

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Exhibit "B"



5. **Financing: (Check as applicable)**

(a) ☒ **Buyer** will pay cash for the Property with no financing contingency.

(b) ☐ This contract is contingent on **Buyer** qualifying for and obtaining the commitment(s) or approval(s) specified below ("Financing") within \_\_\_\_\_ days after Effective Date (Closing Date or 30 days after Effective Date, whichever occurs first, if left blank) ("Financing Period"). **Buyer** will apply for Financing within \_\_\_\_\_ days after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial, and other information required by the lender. If **Buyer**, after using diligence and good faith, cannot obtain the Financing within the Financing Period, either party may terminate this contract and **Buyer's** deposit(s) will be returned.

(1) ☐ **New Financing:** **Buyer** will secure a commitment for new third party financing for \$ \_\_\_\_\_ or \_\_\_\_\_ % of the purchase price at (**Check one**) ☐ a fixed rate not exceeding \_\_\_\_\_ % ☐ an adjustable interest rate not exceeding \_\_\_\_\_ % at origination (a fixed rate at the prevailing interest rate based on **Buyer's** creditworthiness if neither choice is selected). **Buyer** will keep **Seller** and Broker fully informed of the loan application status and progress and authorizes the lender or mortgage broker to disclose all such information to **Seller** and Broker.

(2) ☐ **Seller Financing:** **Buyer** will execute a ☐ first ☐ second purchase money note and mortgage to **Seller** in the amount of \$ \_\_\_\_\_, bearing annual interest at \_\_\_\_\_ % and payable as follows: \_\_\_\_\_

The mortgage, note, and any security agreement will be in a form acceptable to **Seller** and will follow forms generally accepted in the county where the Property is located; will provide for a late payment fee and acceleration at the mortgagee's option if **Buyer** defaults; will give **Buyer** the right to prepay without penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require **Buyer** to keep liability insurance on the Property, with **Seller** as additional named insured. **Buyer** authorizes **Seller** to obtain credit, employment, and other necessary information to determine creditworthiness for the financing. **Seller** will, within 10 days after Effective Date, give **Buyer** written notice of whether or not **Seller** will make the loan.

(3) ☐ **Mortgage Assumption:** **Buyer** will take title subject to and assume and pay existing first mortgage to

LN# \_\_\_\_\_ in the approximate amount of \$ \_\_\_\_\_ currently payable at \$ \_\_\_\_\_ per month, including principal, interest, ☐ taxes and insurance, and having a ☐ fixed ☐ other (describe) \_\_\_\_\_ interest rate of \_\_\_\_\_ % which ☐ will ☐ will not escalate upon assumption. Any variance in the mortgage will be adjusted in the balance due at closing with no adjustment to purchase price. **Buyer** will purchase **Seller's** escrow account dollar for dollar. If the interest rate upon transfer exceeds \_\_\_\_\_ % or the assumption/transfer fee exceeds \$ \_\_\_\_\_, either party may elect to pay the excess, failing which this contract will terminate; and **Buyer's** deposit(s) will be returned. If the lender disapproves **Buyer**, this contract will terminate; and **Buyer's** deposit(s) will be returned.

6. **Assignability: (Check one)** **Buyer** ☐ may assign and thereby be released from any further liability under this contract, ☐ may assign but not be released from liability under this contract, or ☒ may not assign this contract.

7. **Title:** **Seller** has the legal capacity to and will convey marketable title to the Property by ☐ statutory warranty deed ☒ special warranty deed ☐ other (specify) \_\_\_\_\_, free of liens, easements, and encumbrances of record or known to **Seller**, but subject to property taxes for the year of closing; covenants, restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any other matters to which title will be subject) \_\_\_\_\_, provided there exists at closing no violation of the foregoing.

(a) **Title Evidence:** The party who pays for the owner's title insurance policy will select the closing agent and pay for the title search, including tax and lien search if performed, and all other fees charged by closing agent. **Seller** will deliver to **Buyer**, at

(**Check one**) ☒ **Seller's** ☐ **Buyer's** expense and

(**Check one**) ☒ within 30 days after Effective Date ☐ at least \_\_\_\_\_ days before Closing Date,

(**Check one**)

(1) ☒ a title insurance commitment by a Florida licensed title insurer setting forth those matters to be discharged by **Seller** at or before closing and, upon **Buyer** recording the deed, an owner's policy in the amount of the purchase price for fee simple title subject only to the exceptions stated above. If **Buyer** is paying for the owner's title insurance policy and **Seller** has an owner's policy, **Seller** will deliver a copy to **Buyer** within 15 days after Effective Date.

Buyer  (\_\_\_\_\_) and Seller (\_\_\_\_\_) (\_\_\_\_\_) acknowledge receipt of a copy of this page, which is 2 of 7 pages.



(2) ☐ an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an existing firm. However, if such an abstract is not available to **Seller**, then a prior owner's title policy acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will include copies of all policy exceptions and an update in a format acceptable to **Buyer** from the policy effective date and certified to **Buyer** or **Buyer's** closing agent together with copies of all documents recited in the prior policy and in the update. If such an abstract or prior policy is not available to **Seller**, then (1) above will be the title evidence.

(b) **Title Examination:** After receipt of the title evidence, **Buyer** will, within 10 days (10 days if left blank) but no later than Closing Date, deliver written notice to **Seller** of title defects. Title will be deemed acceptable to **Buyer** if (i) **Buyer** fails to deliver proper notice of defects or (ii) **Buyer** delivers proper written notice and **Seller** cures the defects within \_\_\_\_\_ days (30 days if left blank) ("Cure Period") after receipt of the notice. If the defects are cured within the Cure Period, closing will occur within 10 days after receipt by **Buyer** of notice of such cure. **Seller** may elect not to cure defects if **Seller** reasonably believes any defect cannot be cured within the Cure Period. If the defects are not cured within the Cure Period, **Buyer** will have 10 days after receipt of notice of **Seller's** inability to cure the defects to elect whether to terminate this contract or accept title subject to existing defects and close the transaction without reduction in purchase price.

(c) **Survey:** **Buyer** may, at **Buyer's** expense, have the Property surveyed and must deliver written notice to **Seller**, within 5 days after receiving survey but not later than 5 days before Closing Date, of any encroachments on the Property, encroachments by the Property's improvements on other lands, or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a title defect and **Seller's** and **Buyer's** obligations will be determined in accordance with Paragraph 7(b).

(d) **Ingress and Egress:** **Seller** warrants that the Property presently has ingress and egress.

8. **Property Condition:** **Seller** will deliver the Property to **Buyer** at closing in its present "as is" condition, with conditions resulting from **Buyer's** Inspections and casualty damage, if any, excepted. **Seller** will not engage in or permit any activity that would materially alter the Property's condition without the **Buyer's** prior written consent.

(a) **Inspections:** (Check (1) or (2))

(1) ☒ **Feasibility Study:** **Buyer** will, at **Buyer's** expense and within \_\_\_\_\_ days (30 days if left blank) ("Feasibility Study Period") after Effective Date and in **Buyer's** sole and absolute discretion, determine whether the Property is suitable for **Buyer's** intended use. During the Feasibility Study Period, **Buyer** may conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and investigations ("Inspections") that **Buyer** deems necessary to determine to **Buyer's** satisfaction the Property's engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state, and regional growth management plans; availability of permits, government approvals, and licenses; and other inspections that **Buyer** deems appropriate. If the Property must be rezoned, **Buyer** will obtain the rezoning from the appropriate government agencies. **Seller** will sign all documents **Buyer** is required to file in connection with development or rezoning approvals. **Seller** gives **Buyer**, its agents, contractors, and assigns, the right to enter the Property at any time during the Feasibility Study Period for the purpose of conducting Inspections, provided, however, that **Buyer**, its agents, contractors, and assigns enter the Property and conduct Inspections at their own risk. **Buyer** will indemnify and hold **Seller** harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, expenses, and liability incurred in application for rezoning or related proceedings, and from liability to any person, arising from the conduct of any and all Inspections or any work authorized by **Buyer**. **Buyer** will not engage in any activity that could result in a construction lien being filed against the Property without **Seller's** prior written consent. If this transaction does not close, **Buyer** will, at **Buyer's** expense, (i) repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in before conducting the Inspections and (ii) release to **Seller** all reports and other work generated as a result of the Inspections.

Before expiration of the Feasibility Study Period, **Buyer** must deliver written notice to **Seller** of **Buyer's** determination of whether or not the Property is acceptable. **Buyer's** failure to comply with this notice requirement will constitute acceptance of the Property as suitable for **Buyer's** intended use in its "as is" condition. If the Property is unacceptable to **Buyer** and written notice of this fact is timely delivered to **Seller**, this contract will be deemed terminated, and **Buyer's** deposit(s) will be returned.

(2) ☐ **No Feasibility Study:** **Buyer** is satisfied that the Property is suitable for **Buyer's** purposes, including being satisfied that either public sewerage and water are available to the Property or the Property will be approved for the installation of a well and/or private sewerage disposal system and that existing zoning

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and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency, growth management, and environmental conditions, are acceptable to **Buyer**. This contract is not contingent on **Buyer** conducting any further investigations.

(b) **Government Regulations:** Changes in government regulations and levels of service which affect **Buyer's** intended use of the Property will not be grounds for terminating this contract if the Feasibility Study Period has expired or if Paragraph 8(a)(2) is selected.

(c) **Flood Zone:** **Buyer** is advised to verify by survey, with the lender, and with appropriate government agencies which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to improving the Property and rebuilding in the event of casualty.

(d) **Coastal Construction Control Line ("CCCL"):** If any part of the Property lies seaward of the CCCL as defined in Section 161.053, Florida Statutes, **Seller** will provide **Buyer** with an affidavit or survey as required by law delineating the line's location on the Property, unless **Buyer** waives this requirement in writing. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shore line of the Property being purchased.

☐ **Buyer** waives the right to receive a CCCL affidavit or survey.

9. **Closing Procedure; Costs:** Closing will take place in the county where the Property is located and may be conducted by mail or electronic means. If title insurance insures **Buyer** for title defects arising between the title binder effective date and recording of **Buyer's** deed, closing agent will disburse at closing the net sale proceeds to **Seller** (in local cashier's check if **Seller** requests in writing at least 5 days before closing) and brokerage fees to Broker as per Paragraph 19. In addition to other expenses provided in this contract, **Seller** and **Buyer** will pay the costs indicated below.

(a) **Seller Costs:**

Taxes on deed

Recording fees for documents needed to cure title

Title evidence (if applicable under Paragraph 7)

Other: \_\_\_\_\_

(b) **Buyer Costs:**

Taxes and recording fees on notes and mortgages

Recording fees on the deed and financing statements

Loan expenses

Title evidence (if applicable under Paragraph 7)

Lender's title policy at the simultaneous issue rate

Inspections

Survey

Insurance

Other: \_\_\_\_\_

(c) **Prorations:** The following items will be made current and prorated as of the day before Closing Date: real estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases, and other Property expenses and revenues. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with adjustment for any exemptions.

(d) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller** will pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing; and **Buyer** will pay all other amounts. If special assessments may be paid in installments, ☐ **Seller** ☒ **Buyer** (**Buyer** if left blank) will pay installments due after closing. If **Seller** is checked, **Seller** will pay the assessment in full before or at the time of closing. Public body does not include a Homeowners' or Condominium Association.

(e) **PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.**

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- (f) **Foreign Investment in Real Property Tax Act ("FIRPTA"):** If **Seller** is a "foreign person" as defined by FIRPTA, **Seller** and **Buyer** will comply with FIRPTA, which may require **Seller** to provide additional cash at closing.
- (g) **1031 Exchange:** If either **Seller** or **Buyer** wish to enter into a like-kind exchange (either simultaneously with closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will cooperate in all reasonable respects to effectuate the Exchange including executing documents, provided, however, that the cooperating party will incur no liability or cost related to the Exchange and that the closing will not be contingent upon, extended, or delayed by the Exchange.

**10. Computation of Time:** Calendar days will be used when computing time periods, except time periods of 5 days or less. Time periods of 5 days or less will be computed without including Saturday, Sunday, or national legal holidays specified in 5 U.S.C. 6103(a). Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. (where the Property is located) of the next business day. **Time is of the essence in this contract.**

**11. Risk of Loss; Eminent Domain:** If any portion of the Property is materially damaged by casualty before closing or **Seller** negotiates with a governmental authority to transfer all or part of the Property in lieu of eminent domain proceedings or an eminent domain proceeding is initiated, **Seller** will promptly inform **Buyer**. Either party may terminate this contract by written notice to the other within 10 days after **Buyer's** receipt of **Seller's** notification, and **Buyer's** deposit(s) will be returned, failing which **Buyer** will close in accordance with this contract and receive all payments made by the governmental authority or insurance company, if any.

**12. Force Majeure:** **Seller** or **Buyer** will not be required to perform any obligation under this contract or be liable to each other for damages so long as the performance or non-performance of the obligation is delayed, caused, or prevented by an act of God or force majeure. An "act of God or force majeure" is defined as hurricanes, earthquakes, floods, fire, unusual transportation delays, wars, insurrections, and any other cause not reasonably within the control of **Seller** or **Buyer** and which by the exercise of due diligence the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the act of God or force majeure is in place. However, in the event that such act of God or force majeure event continues beyond 30 days, either party may terminate this contract by delivering written notice to the other; and **Buyer's** deposit(s) will be returned.

**13. Notices:** All notices will be in writing and delivered to the parties and Broker by mail, personal delivery, or electronic means. **Buyer's failure to timely deliver written notice to Seller, when such notice is required by this contract, regarding any contingency will render that contingency null and void, and this contract will be construed as if the contingency did not exist. Any notice, document, or item delivered to or received by an attorney or licensee (including a transactions broker) representing a party will be as effective as if delivered to or received by that party.**

**14. Complete Agreement; Persons Bound:** This contract is the entire agreement between **Seller** and **Buyer**. **Except for brokerage agreements, no prior or present agreements will bind Seller, Buyer, or Broker unless incorporated into this contract.** Modifications of this contract will not be binding unless in writing, signed or initialed, and delivered by the party to be bound. Electronic signatures will be acceptable and binding. This contract, signatures, initials, documents referenced in this contract, counterparts, and written modifications communicated electronically or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms inserted in or attached to this contract prevail over preprinted terms. If any provision of this contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective. **Seller** and **Buyer** will use diligence and good faith in performing all obligations under this contract. This contract will not be recorded in any public record. The terms "**Seller**," "**Buyer**," and "**Broker**" may be singular or plural. This contract is binding on the heirs, administrators, executors, personal representatives, and assigns, if permitted, of **Seller**, **Buyer**, and Broker.

**15. Default and Dispute Resolution:** This contract will be construed under Florida law. This Paragraph will survive closing or termination of this contract.

- (a) **Seller Default:** If **Seller** fails, neglects, or refuses to perform **Seller's** obligations under this contract, **Buyer** may elect to receive a return of **Buyer's** deposit(s) without thereby waiving any action for damages resulting from **Seller's** breach and may seek to recover such damages or seek specific performance. **Seller** will also be liable for the full amount of the brokerage fee.

Buyer (  ) ( ) and Seller ( ) ( ) acknowledge receipt of a copy of this page, which is 5 of 7 pages.

VAC-11 Rev 6/17

Serial#: 002716-400156-2080782

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(b) **Buyer Default:** If **Buyer** fails, neglects, or refuses to perform **Buyer's** obligations under this contract, including payment of deposit(s), within the time(s) specified, **Seller** may elect to recover and retain the deposit(s), paid and agreed to be paid, for the account of **Seller** as agreed upon liquidated damages, consideration for execution of this contract, and in full settlement of any claims, whereupon **Seller** and **Buyer** will be relieved from all further obligations under this contract; or **Seller**, at **Seller's** option, may proceed in equity to enforce **Seller's** rights under this contract.

**16. Attorney's Fees; Costs:** In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 16 shall survive Closing or termination of this Contract.

**17. Escrow Agent; Closing Agent:** **Seller** and **Buyer** authorize Escrow Agent and closing agent (collectively "Agent") to receive, deposit, and hold funds and other items in escrow and, subject to Collection, disburse them upon proper authorization and in accordance with Florida law and the terms of this contract, including disbursing brokerage fees. "Collection" or "Collected" means any checks tendered or received have become actually and finally collected and deposited in the account of Agent. The parties agree that Agent will not be liable to any person for misdelivery of escrowed items to **Seller** or **Buyer**, unless the misdelivery is due to Agent's willful breach of this contract or gross negligence. If Agent interpleads the subject matter of the escrow, Agent will pay the filing fees and costs from the deposit and will recover reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party.

**18. Professional Advice; Broker Liability:** Broker advises **Seller** and **Buyer** to verify all facts and representations that are important to them and to consult an appropriate professional for legal advice (for example, interpreting this contract, determining the effect of laws on the Property and this transaction, status of title, foreign investor reporting requirements, the effect of property lying partially or totally seaward of the CCCL, etc.) and for tax, property condition, environmental, and other specialized advice. **Buyer** acknowledges that Broker does not reside in the Property and that all representations (oral, written, or otherwise) by Broker are based on **Seller** representations or public records. **Buyer agrees to rely solely on Seller, professional inspectors, and government agencies for verification of the Property condition and facts that materially affect Property value.** **Seller** and **Buyer** respectively will pay all costs and expenses, including reasonable attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents, and employees in connection with or arising from **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations. **Seller** and **Buyer** hold harmless and release Broker and Broker's officers, directors, agents, and employees from all liability for loss or damage based on (i) **Seller's** or **Buyer's** misstatement or failure to perform contractual obligations; (ii) the use or display of listing data by third parties, including, but not limited to, photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, and remarks related to the Property; (iii) Broker's performance, at **Seller's** or **Buyer's** request, of any task beyond the scope of services regulated by Chapter 475, Florida Statutes, as amended, including Broker's referral, recommendation, or retention of any vendor; (iv) products or services provided by any vendor; and (v) expenses incurred by any vendor. **Seller** and **Buyer** each assume full responsibility for selecting and compensating their respective vendors. This Paragraph will not relieve Broker of statutory obligations. For purposes of this Paragraph, Broker will be treated as a party to this contract. This Paragraph will survive closing.

**19. Commercial Real Estate Sales Commission Lien Act:** If the Property is commercial real estate as defined by Section 475.701, Florida Statutes, the following disclosure will apply: The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

**20. Brokers:** The brokers named below are collectively referred to as "Broker." **Instruction to closing agent:** **Seller** and **Buyer** direct closing agent to disburse at closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Paragraph will not be used to modify any MLS or other offer of compensation made by **Seller** or **Seller's** Broker to **Buyer's** Broker.

(a) \_\_\_\_\_ Dawn Y Andrews (Seller's Broker)  
will be compensated by ☐ **Seller** ☐ **Buyer** ☐ both parties pursuant to ☐ a listing agreement ☒ other (specify): IS NOT ACCEPTING A COMMISSION

(b) \_\_\_\_\_ N/A (Buyer's Broker)  
will be compensated by ☐ **Seller** ☐ **Buyer** ☐ both parties ☐ **Seller's** Broker pursuant to ☐ a MLS offer of compensation ☐ other (specify): N/A

Buyer (   *JD*   ) ( ) and Seller ( ) ( ) acknowledge receipt of a copy of this page, which is 6 of 7 pages.



327\* **21. Additional Terms:** This Contract is subject to City of Cape Coral Council approval.  
328 \_\_\_\_\_  
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343 **COUNTER-OFFER/REJECTION**

- 344\* ☐ Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and  
345 deliver a copy of the acceptance to Seller).  
346\* ☐ Seller rejects Buyer's offer

347 **This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney before**  
348 **signing.**

349\* **Buyer:** Edward R. Stafford, President Date: 7-2-19  
350\* Print name: \_\_\_\_\_ PCI Management Inc

351\* **Buyer:** \_\_\_\_\_ Date: \_\_\_\_\_  
352\* Print name: \_\_\_\_\_

353 **Buyer's address for purpose of notice:**

354\* Address: \_\_\_\_\_ 11887 King James Court, Cape Coral, Florida 33991  
355\* Phone: 760 - 807 - 1629 Fax: \_\_\_\_\_ - \_\_\_\_\_ Email: \_\_\_\_\_ Ed@pcica.com

356\* **Seller:** \_\_\_\_\_ Date: \_\_\_\_\_  
357\* Print name: \_\_\_\_\_

358\* **Seller:** \_\_\_\_\_ Date: \_\_\_\_\_  
359\* Print name: \_\_\_\_\_

360 **Seller's address for purpose of notice:**

361\* Address: \_\_\_\_\_ P.O Box 150027, Cape Coral, Florida 33915 - 0027  
362\* Phone: 239 - 574 - 0735 Fax: \_\_\_\_\_ - \_\_\_\_\_ Email: \_\_\_\_\_ Dandrews@capecoral.net

363\* **Effective Date:** \_\_\_\_\_ **(The date on which the last party signed or initialed and delivered the**  
364 **final offer or counter offer.)**

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Buyer (ES) (\_\_\_\_) and Seller (\_\_\_\_) (\_\_\_\_) acknowledge receipt of a copy of this page, which is 7 of 7 pages.

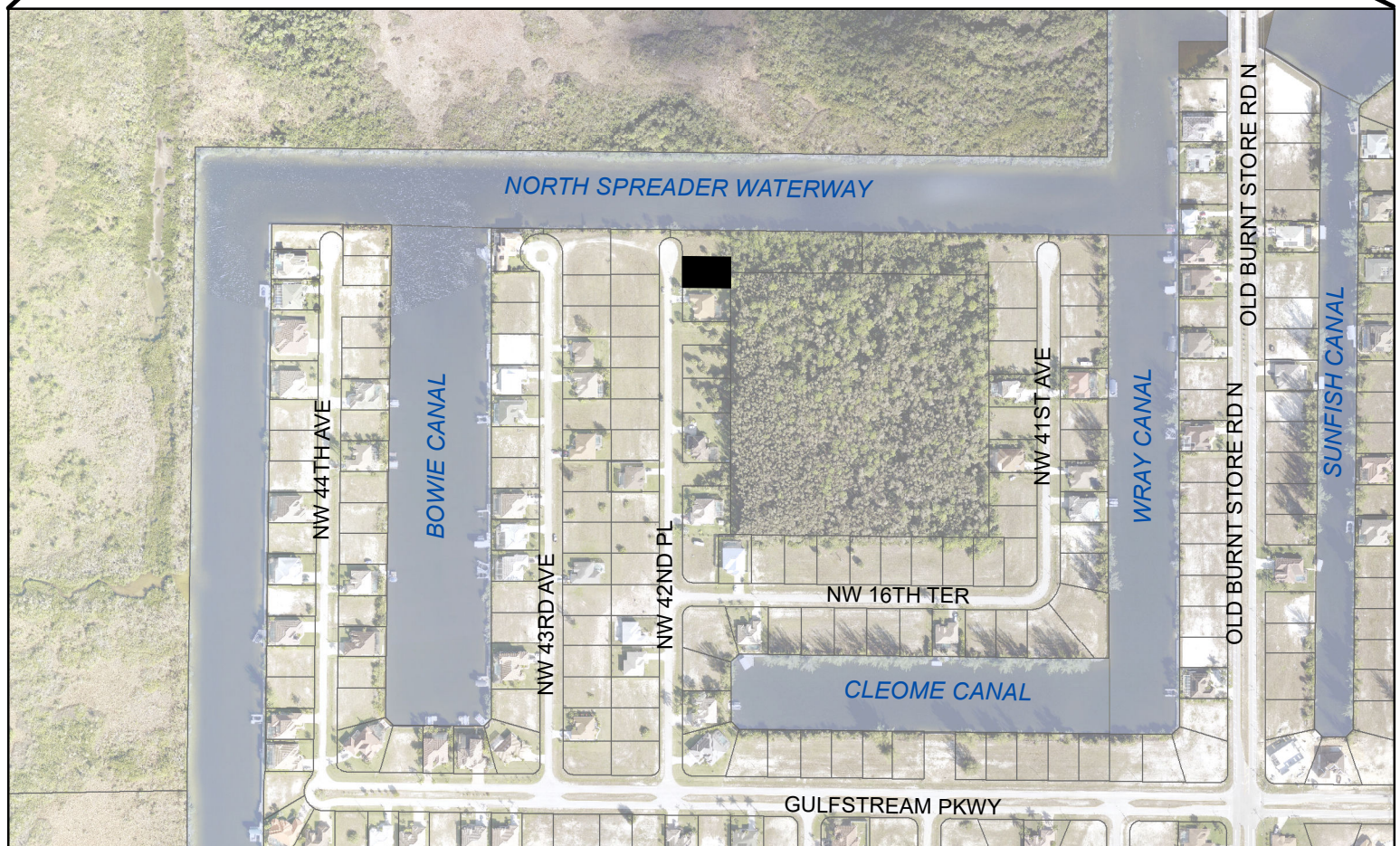
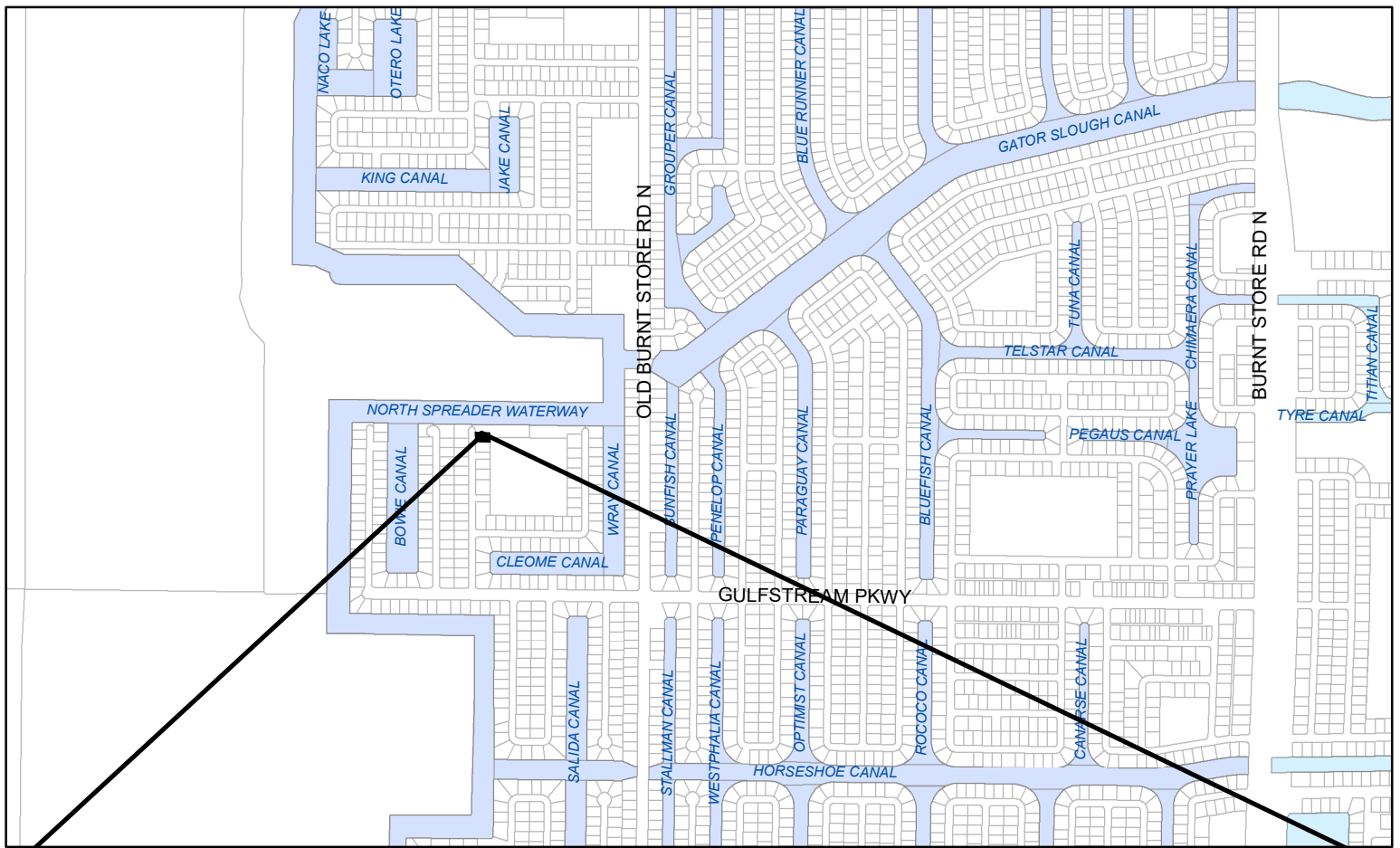
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City of Cape Coral - Surplus Parcel 369  
Block 5271 Lots 30 & 31

<b>Item Number:</b>	A.(3)
<b>Meeting Date:</b>	8/19/2019
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Public Hearings</b>

**AGENDA  
REQUEST FORM**  
CITY OF CAPE  
CORAL



**TITLE:**

Ordinance 25-19 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?

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 18, Traffic, Section 18-6, Speed Limits, to regulate speed limits on arterial, collector, and local streets located in the City.

**LEGAL REVIEW:**

John E. Naclerio III

**EXHIBITS:**

Ordinance 25-19

Memo

**PREPARED BY:**

Division- Department- City Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

William Corbett, Traffic Engineer

**ATTACHMENTS:**

Description		Type
▣	Ordinance 25-19	Ordinance
▣	Memo	Backup Material



ORDINANCE 25 - 19

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 18, "TRAFFIC", SECTION 18-6, "SPEED LIMITS", TO REGULATE SPEED LIMITS ON ARTERIAL, COLLECTOR, AND LOCAL STREETS LOCATED IN THE CITY; 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 18, Section 18-6, is hereby amended to read as follows:

**§ 18-6 Speed limits.**

No person shall operate any vehicle upon a eCity street at a rate of speed greater than 30 mph; except the City Manager may set speed zones altering the speed limit not to exceed 60 mph on streets designated by the City with a functional classification of arterial or collector, after investigation determines such a change is reasonable and in conformity to criteria promulgated by the Florida Department of Transportation, except that no changes shall be made on state or county highways or connecting links or extensions thereof, which shall be changed only by the Florida Department of Transportation or Lee County. Posted speed limits on streets designated by the City with a functional classification of local shall not exceed 30 mph.

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

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

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 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 \_\_\_\_\_, 2019.

\_\_\_\_\_  
KIMBERLY BRUNS  
INTERIM CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JOHN E. NACLERIO III  
ASSISTANT CITY ATTORNEY  
Ord/SpeedLimits  
2/26/19

MEMORANDUM

CITY OF CAPE CORAL  
PUBLIC WORKS DEPARTMENT

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager   
Paul Clinghan, Public Works Director *W/C G.R.P.C.*  
Stephanie Smith, Public Works Design & Construction Manager   
William Corbett, Public Works Traffic Engineer *W/C*

DATE: August 1, 2019

SUBJECT: Ordinance 25-19 – Speed Limits

---

Most local, residential roadways within the City of Cape Coral have a posted speed limit of 30 MPH, which is in accordance with the minimum and maximum statutory speed limits within a municipality. Public Works occasionally receives requests from residents to conduct a speed study on a roadway to determine if the posted speed limit is appropriate for the functional classification (local road), adjacent land use and overall neighborhood safety.

Occasionally, the results of the speed study require raising the posted speed limits to meet the requirements of the Florida Department of Transportation, as outlined in the State of Florida Speed Zoning Manual. As a result, the City Manager requested City of Cape Coral Code of Ordinances, Chapter 18, Traffic, Section 18-6, (Speed Limits, to regulate speed limits on arterial, collector, and local streets located in the City) be amended to set a maximum posted speed limit of 30 MPH on roadways with a functional classification of local. The revision to this ordinance will protect local, residential roadways from having increased speed limits and will enhance the safety and welfare of the motoring public.

WC:cam

c: Connie Barron, Assistant City Manager  
Dolores Menendez, City Attorney

<b>Item Number:</b>	<b>A.(4)</b>
<b>Meeting Date:</b>	<b>8/19/2019</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Public Hearings</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Ordinance 38-19 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?

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

Section 12-23 of the Code of Ordinances regulates the operation of motor-driven vehicles in certain places by prohibiting the parking of commercial vehicles on certain streets between 2:00 a.m. and 6:00 a.m. The public works department has identified a need to add a portion of four additional streets in order to prohibit overnight commercial parking in those areas.

**LEGAL REVIEW:**

**EXHIBITS:**

Ordinance 38-19

Memo

**PREPARED BY:**

Division- Department- City Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

ATTACHMENTS:

Description		Type
▣	Ordinance 38-19	Ordinance
▣	Memo	Backup Material



ORDINANCE 38 - 19

AN ORDINANCE AMENDING CHAPTER 12, "OFFENSES AND MISCELLANEOUS PROVISIONS", CITY OF CAPE CORAL CODE OF ORDINANCES, BY AMENDING ARTICLE II, "OFFENSES CREATING NUISANCES", SECTION 12-23(F) TO PROHIBIT OVERNIGHT PARKING OF COMMERCIAL VEHICLES ON CERTAIN PUBLIC STREETS POSTED WITH SIGNS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 166.021, Florida Statutes, municipalities may exercise their powers for municipal purposes and to preserve the health, safety, and general welfare of its residents, except when expressly prohibited by law;

WHEREAS, the City of Cape Coral has experienced a great increase in the proliferation of relatively large vehicles being parked and stored along certain streets in the City;

WHEREAS, the aforesaid parking and storage of large vehicles on City streets aggravates the problem of limited parking availability in certain areas of the City and obstructs the views of drivers and pedestrians who are attempting to navigate City streets; and

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

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

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 12, Article II, Section 12-23(f) is hereby amended to read as follows:

**CHAPTER 12: OFFENSES AND MISCELLANEOUS PROVISIONS**

**ARTICLE II: OFFENSES CREATING NUISANCES**

**§ 12-23      Operation of motor-driven vehicles in certain places prohibited, exceptions; parking regulations on certain public streets.**

...

- (f) *Overnight parking of commercial vehicles.* It shall be unlawful for any person to park a commercial vehicle between the hours of 2:00 a.m. and 6:00 a.m. on streets posted with signs reading as follows, "NO PARKING OF COMMERCIAL VEHICLES BETWEEN 2:00 A.M. AND 6:00 A.M." The following streets shall be posted as noted herein:

...

- (21) S.W. 17th Place from Cape Coral Parkway to S.W. 49th Terrace; and
- (22) S.W. 49th Terrace from Chiquita Boulevard to S.W. 17th Place;
- (23) Andalusia Boulevard from Kismet Parkway to 2603 Andalusia Boulevard;
- (24) N.E. 24<sup>th</sup> Lane from Andalusia Boulevard to 932 N.E. 24<sup>th</sup> Lane;
- (25) N.E. 9<sup>th</sup> Avenue from N.E. 24<sup>th</sup> Lane to N.E. 27<sup>th</sup> Lane; and
- (26) N.E. 27<sup>th</sup> Lane from 877 N.E. 27<sup>th</sup> Lane to 921 N.E. 27<sup>th</sup> Lane.

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

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



ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR  
SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:


COVIELLO \_\_\_\_\_  
GUNTER \_\_\_\_\_  
CARIOSCIA \_\_\_\_\_  
STOUT \_\_\_\_\_

NELSON \_\_\_\_\_  
STOKES \_\_\_\_\_  
WILLIAMS \_\_\_\_\_  
COSDEN \_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2019.

\_\_\_\_\_  
KIMBERLY BRUNS, CMC  
CITY CLERK

APPROVED AS TO FORM:

  
for \_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
ord/OvernightParkingCommVeh  
7/8/19

2. B. 2

MEMORANDUM

CITY OF CAPE CORAL  
PUBLIC WORKS DEPARTMENT

TO: Mayor and Council Members

FROM: John Szerlag, City Manager   
Paul Clinghan, Public Works Director *WC Go-PC*  
Stephanie Smith, Public Works Design & Construction Manager   
William Corbett, Public Works Traffic Engineer *WC*

DATE: August 1, 2019

SUBJECT: Ordinance 38-19 – No Overnight Parking

---

The Public Works Department has received concerns from the Northeast Industrial Park Association regarding nuisance overnight parking and abandoned vehicles which is in some cases obstructing business operations. These concerns were forwarded to the Cape Coral Police Department for enforcement. Utilizing the current ordinance, signs can be posted, and citations can be issued, only on the specific roadways listed in the ordinance. In order to address the concerns of the Association, the ordinance has been amended to include the roadways located within the Industrial Park.

In most conditions, parking within the public right-of way is permitted under Florida statute, unless prohibited by an approved official traffic control device (regulatory sign). If a sign is posted, it must be supported by an approved ordinance, statute or law in order for the Cape Coral Police Department to conduct enforcement and issue citations when vehicles are illegally parked. As a result, Chapter 12, "Offenses and Miscellaneous Provisions", Article VIII, "Offenses Creating Nuisances", Section 12-23(F) of the Code of Ordinances, prohibits overnight parking of commercial vehicles on specific listed public streets posted with signs throughout the City.

The revised ordinance will allow Public Works to post signage prohibiting overnight parking and will allow the Police Department to conduct enforcement and issue citations if necessary. The revisions to this ordinance will support safety of the motoring public within the Industrial Park and will allow businesses to resume safe, normal and unobstructed operation.

WC:cam

c: Connie Barron, Assistant City Manager  
Dolores Menendez, City Attorney

<b>Item Number:</b>	<b>B.(1)</b>
<b>Meeting Date:</b>	<b>8/19/2019</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Introductions</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Resolution 277-19 (VP 19-0008\*) Set Public Hearing Date for August 26, 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 to the conditions set for in VP HEX Recommendation 9-2019.

**Staff Recommendation:** Staff recommends approval.

**SUMMARY EXPLANATION AND BACKGROUND:**

A resolution providing for the vacation of plat for a portion of the San Carlos Canal Right-of-Way and the underlying public utility and drainage easements located adjacent to Lots 34-35, Block 101, Unit 2, Part 2, Cape Coral Subdivision; providing for the vacation of plat for public utility and drainage easements associated with Lots 34-35, Block 101, Unit 2, Part 2, Cape Coral Subdivision; property located at 5084 Sorrento Court.

**LEGAL REVIEW:**

John E. Naclerio III, Assistant City Attorney

**EXHIBITS:**

Resolution 277-19  
Hearing Examiner Recommendation  
Back up material from HEX Hearing  
Staff Presentation

**PREPARED BY:**

Division- Department- City  
Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

Mike Struve, Planning Team Coordinator

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Resolution 277-19 (VP 19-0008)	Resolution
▣ Hearing Examiner Recommendation	Backup Material
▣ Back up material from HEX Hearing	Backup Material
▣ Staff Presentation	Backup Material

RESOLUTION 277 - 19

A RESOLUTION PROVIDING FOR THE VACATION OF PLAT FOR A PORTION OF THE SAN CARLOS CANAL RIGHT-OF-WAY AND THE UNDERLYING PUBLIC UTILITY AND DRAINAGE EASEMENTS LOCATED ADJACENT TO LOTS 34-35, BLOCK 101, UNIT 2, PART 2, CAPE CORAL SUBDIVISION; PROVIDING FOR THE VACATION OF PLAT FOR PUBLIC UTILITY AND DRAINAGE EASEMENTS ASSOCIATED WITH LOTS 34-35, BLOCK 101, UNIT 2, PART 2, CAPE CORAL SUBDIVISION; PROPERTY LOCATED AT 5084 SORRENTO COURT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Petition was filed by the DANIEL & CORNELIA HUWILER LIVING TRUST 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 PLOT OR PORTION OF SAN CARLOS CANAL RIGHT OF WAY, CAPE CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT BOOK 11, PAGE 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 34, BLOCK 101 AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE CORAL UNIT TWO, PART TWO AS RECORDED IN PLAT BOOK 11, PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR A POINT OF BEGINNING; THENCE RUN SOUTH TO THE SOUTHWEST CORNER OF LOT 35, SAID BLOCK 101 FOR 80.00 FEET; THENCE RUN WEST TO A POINT ALONG THE WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 7.60 FEET; THENCE RUN NORTH ALONG SAID WATERS EDGE FACE OF CONCRETE SEAWALL FOR 80.00 FEET; THENCE RUN EAST TO THE AFORESAID NORTHWEST CORNER OF LOT 34, BLOCK 101 FOR 7.60 FEET TO THE POINT OF BEGINNING.

CONTAINING: 608.0 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, as shown in Exhibit B, are hereby vacated by the City of Cape Coral, to wit:

A PLOT OR PORTION OF LAND LYING LOTS 34 AND 35, BLOCK 101, CAPE CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT BOOK 11, PAGE 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 34, BLOCK 101 AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE CORAL UNIT TWO, PART TWO AS RECORDED IN PLAT BOOK 11, PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN EAST FOR 6.00 FEET; THENCE RUN SOUTH 68.00 FEET; THENCE RUN WEST TO A POINT ALONG THE WEST LINE OF SAID LOT 35, BLOCK 101 FOR 6.00; THENCE RUN NORTH ALONG WEST LINES OF SAID LOTS 35 AND LOT 34 BLOCK 101 FOR 68.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 408.0 SQ. FT±, MORE OR LESS.



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 PLOT OR PORTION OF LAND LYING IN SAN CARLOS CANAL RIGHT OF WAY, CAPE CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT BOOK 11, PAGE 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 34, BLOCK 101 AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT BOOK 11, PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, FOR A POINT OF BEGINNING; THENCE RUN SOUTH 6.00 FEET; THENCE RUN WEST FOR 1.60 FEET; THENCE RUN SOUTH ALONG A LINE 1.60 FEET WEST AND PARALLEL WITH THE WEST LINES OF LOT 34 AND 35, BLOCK 101, OF THE AFORESAID CAPE CORAL UNIT 2, PART 2, FOR 68.00 FEET; THENCE RUN EAST TO A POINT ALONG THE WEST LINE SAID LOT 35, BLOCK 101 FOR 1.60 FEET; THENCE RUN SOUTH TO THE SOUTHWEST CORNER OF SAID LOT 35, BLOCK 101, FOR 6.00 FEET; THENCE RUN WEST TO A POINT ALONG THE WATERS EDGE FACE OF A CONCRETE SEAWALL FOR 7.60 FEET; THENCE RUN NORTH ALONG SAID CONCRETE SEAWALL FOR 80.00 FEET; THENCE RUN EAST TO THE NORTHWEST CORNER OF SAID LOT 34, BLOCK 101 FOR 7.60 FEET TO THE POINT OF BEGINNING.

CONTAINING: 499.20 SQ. FT., MORE OR LESS.

Section 4. The applicant shall meet the following terms and conditions:

1. The vacation of the 608 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 Harris-Jorgensen, LLC, entitled "Portion of San Carlos Canal, Cape Coral Unit 2, Part 2," dated March 12, 2019 attached hereto as Exhibit A.
2. The vacation of the 408 square feet of public utility and drainage easement shall be consistent with that shown in the sketch and accompanying legal description prepared by Harris-Jorgensen, LLC, entitled "Vacation of a Portion of Public Utility and Drainage Easement, Lying in Lots 35 and 35, Block 101, Cape Coral Unit 2, Part 2," dated March 12, 2019, 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 Harris-Jorgensen, LLC, entitled "Public Utility and Drainage Easement, Lying in a portion of San Carlos Canal Right of Way, Cape Coral Unit 2, Part 2," dated March 12, 2019, 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.

Section 5. 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 CITY OF CAPE CORAL AT ITS REGULAR COUNCIL 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 \_\_\_\_\_,  
2019.

\_\_\_\_\_  
KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:



\_\_\_\_\_  
JOHN E. NACLERIO III  
ASSISTANT CITY ATTORNEY  
res/vp19-0008

EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH

*PORTION OF SAN CARLOS CANAL, CAPE CORAL  
UNIT 2, PART 2,*

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23 EAST,  
(PLAT BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY  
THIS DESCRIPTION

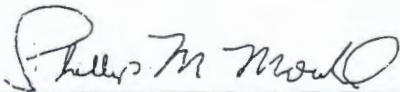
NOT A BOUNDARY SURVEY

DESCRIPTION:

A PLOT OR PORTION OF SAN CARLOS CANAL RIGHT OF WAY,  
CAPE CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT  
BOOK 11, PAGE 96-98, PUBLIC RECORDS OF LEE COUNTY,  
FLORIDA FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 34, BLOCK 101  
AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE  
CORAL UNIT TWO, PART TWO AS RECORDED IN PLAT BOOK 11,  
PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR  
A POINT OF BEGINNING; THENCE RUN SOUTH TO THE  
SOUTHWEST CORNER OF LOT 35, SAID BLOCK 101 FOR 80.00  
FEET; THENCE RUN WEST TO A POINT ALONG THE WATERS  
EDGE FACE OF A CONCRETE SEAWALL FOR 7.60 FEET; THENCE  
RUN NORTH ALONG SAID WATERS EDGE FACE OF CONCRETE  
SEAWALL FOR 80.00 FEET; THENCE RUN EAST TO THE  
AFORESAID NORTHWEST CORNER OF LOT 34, BLOCK 101 FOR  
7.60 FEET TO THE POINT OF BEGINNING.

CONTAINING: 608.0 SQ. FT±, MORE OR LESS.



PHILLIP M. MOULD  
PROFESSIONAL SURVEYOR AND MAPPER  
#6515 - STATE OF FLORIDA  
03/12/2019

CC-U2-101-34

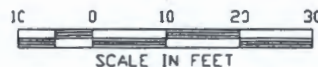
HARRIS-JORGENSEN, LLC.  
3048 DEL PRADO BLVD. .S  
#100  
CAPE CORAL, FL. 33904  
239-257-2624

SHEET 2 OF 2

SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

**LEGEND:**

O.R. OFFICIAL RECORDS BOOK  
P.O.B. POINT OF BEGINNING  
P.O.C. POINT OF COMMENCEMENT  
R/V RIGHT-OF-WAY  
C CENTERLINE  
P.U.E. PUBLIC UTILITY EASEMENT  
P.O.C. POINT OF COMMENCEMENT  
P.O.B. POINT OF BEGINNING  
D.E. DRAINAGE EASEMENT



**SKETCH TO ACCOMPANY DESCRIPTION**

**PORTION OF SAN CARLOS CANAL,  
CAPE CORAL UNIT 2, PART 2,**

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23  
EAST.

(PLAT BOOK 11, PAGES 96-98)

PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SEE EXHIBIT 'A' SHEET 2 OF 2 FOR  
DESCRIPTION TO ACCOMPANY THIS SKETCH

**SKETCH NOTES:**

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE WEST RIGHT-OF-WAY LINE OF SORRENTO COURT, AS BEING SOUTH
2. FIELD NOTES IN CAPE CORAL, BLOCK 101
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 SKETCH DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
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8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
9. THIS SURVEY IS INTENDED TO BE VIEWED AS AN 8 1/2 x 14", 20 SCALE DRAWING.

**NOT A BOUNDARY SURVEY**  
CC-U2-101-34

HARRIS-JORGENSEN, LLC.  
3048 DEL PRADO BLVD., S.  
#100  
CAPE CORAL, FL. 33904  
239-257-2624

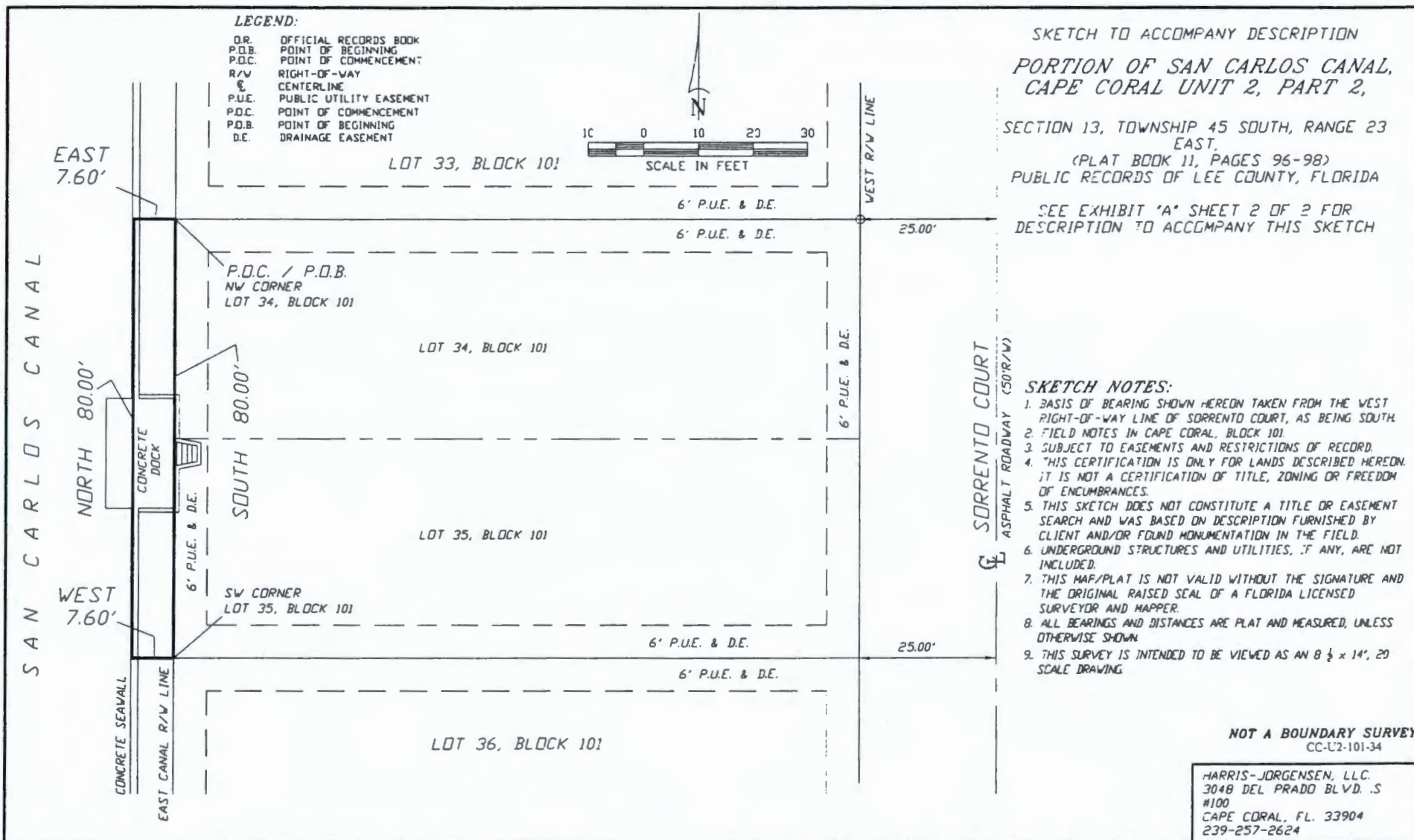


EXHIBIT "B"

DESCRIPTION TO ACCOMPANY SKETCH (PROPOSED)

*VACATION OF A PORTION OF PUBLIC  
UTILITY AND DRAINAGE EASEMENT, LYING IN  
LOTS 34 AND 35, BLOCK 101, CAPE CORAL  
UNIT 2, PART 2,*

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23 EAST,  
(PLAT BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY  
THIS DESCRIPTION

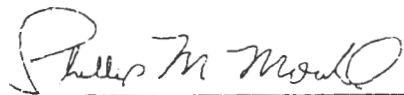
NOT A BOUNDARY SURVEY

DESCRIPTION:

A PLOT OR PORTION OF LAND LYING LOTS 34 AND 35, BLOCK 101, CAPE CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT BOOK 11, PAGE 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 34, BLOCK 101 AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE CORAL UNIT TWO, PART TWO AS RECORDED IN PLAT BOOK 11, PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN EAST FOR 6.00 FEET; THENCE RUN SOUTH 68.00 FEET; THENCE RUN WEST TO A POINT ALONG THE WEST LINE OF SAID LOT 35, BLOCK 101 FOR 6.00; THENCE RUN NORTH ALONG WEST LINES OF SAID LOTS 35 AND LOT 34 BLOCK 101 FOR 68.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 408.0 SQ. FT±, MORE OR LESS.



PHILLIP M. MOULD  
PROFESSIONAL SURVEYOR AND MAPPER  
#6315 - STATE OF FLORIDA  
03/12/2019

CC-U2-101-34

HARRIS-JORGENSEN, LLC.  
3048 DEL PRADO BLVD. S.  
#100  
CAPE CORAL, FL. 33904  
239-257-2624



**LEGEND:**

J.R. OFFICIAL RECORDS BOOK  
P.C.B. POINT OF BEGINNING  
P.C.C. POINT OF COMMENCEMENT  
R/W RIGHT-OF-WAY  
C CENTERLINE  
P.U.E. PUBLIC UTILITY EASEMENT  
P.O.C. POINT OF COMMENCEMENT  
P.O.B. POINT OF BEGINNING  
D.E. DRAINAGE EASEMENT

10 0 10 20 30  
SCALE IN FEET

N

**SKETCH TO ACCOMPANY DESCRIPTION  
(PROPOSED)**

**VACATION OF A PORTION OF  
PUBLIC UTILITY AND DRAINAGE  
EASEMENT, LYING IN LOTS 34  
AND 35, BLOCK 101, CAPE  
CORAL UNIT 2, PART 2,**

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23  
EAST, (PLAT BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SEE EXHIBIT "B" SHEET 2 OF 2 FOR  
DESCRIPTION TO ACCOMPANY THIS SKETCH

**SKETCH NOTES:**

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE WEST RIGHT-OF-WAY LINE OF SORRENTO COURT, AS BEING SOUTH.
2. FIELD NOTES IN CAPE CORAL, BLOCK 101
3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
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8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
9. THIS SURVEY IS INTENDED TO BE VIEWED AS AN 8 1/2" x 14", 20 SCALE DRAWING.

**NOT A BOUNDARY SURVEY**  
CC-U2-101-34

HARRIS-JORGENSEN, LLC.  
3048 DEL PRADO BLVD., S  
#100  
CAPE CORAL, FL. 33904  
239-257-2624

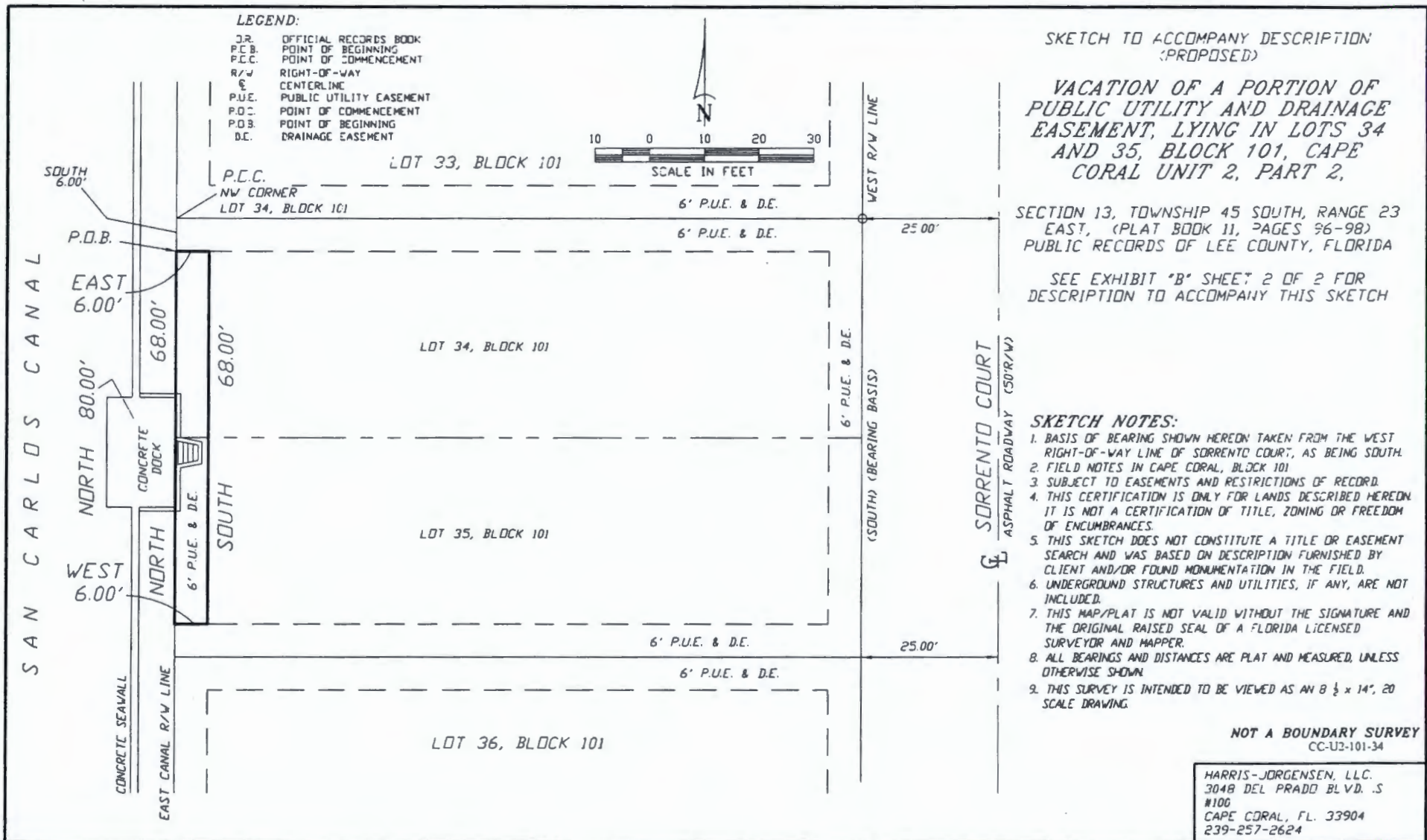


EXHIBIT "C"

DESCRIPTION TO ACCOMPANY SKETCH (PROPOSED)

*PUBLIC UTILITY AND DRAINAGE EASEMENT,  
LYING IN A PORTION OF SAN CARLOS CANAL  
RIGHT OF WAY, CAPE CORAL UNIT 2, PART 2,*

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23 EAST, (PLAT  
BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS  
DESCRIPTION

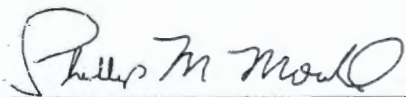
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RIGHT OF WAY, CAPE CORAL UNIT TWO, PART TWO, AS  
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AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE  
CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT BOOK 11,  
PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, FOR  
A POINT OF BEGINNING; THENCE RUN SOUTH 6.00 FEET; THENCE  
RUN WEST FOR 1.60 FEET; THENCE RUN SOUTH ALONG A LINE  
1.60 FEET WEST AND PARALLEL WITH THE WEST LINES OF LOT  
34 AND 35, BLOCK 101, OF THE AFORESAID CAPE CORAL UNIT  
2, PART 2, FOR 68.00 FEET; THENCE RUN EAST TO A POINT  
ALONG THE WEST LINE SAID LOT 35, BLOCK 101 FOR 1.60 FEET;  
THENCE RUN SOUTH TO THE SOUTHWEST CORNER OF SAID LOT  
35, BLOCK 101, FOR 6.00 FEET; THENCE RUN WEST TO A POINT  
ALONG THE WATERS EDGE FACE OF A CONCRETE SEAWALL FOR  
7.60 FEET; THENCE RUN NORTH ALONG SAID CONCRETE SEAWALL  
FOR 80.00 FEET; THENCE RUN EAST TO THE NORTHWEST CORNER  
OF SAID LOT 34, BLOCK 101 FOR 7.60 FEET TO THE POINT OF  
BEGINNING.

CONTAINING: 499.20 SQ. FT., MORE OR LESS.



PHILLIP M. MOULD  
PROFESSIONAL SURVEYOR AND MAPPER  
#6515 - STATE OF FLORIDA  
03/12/2019

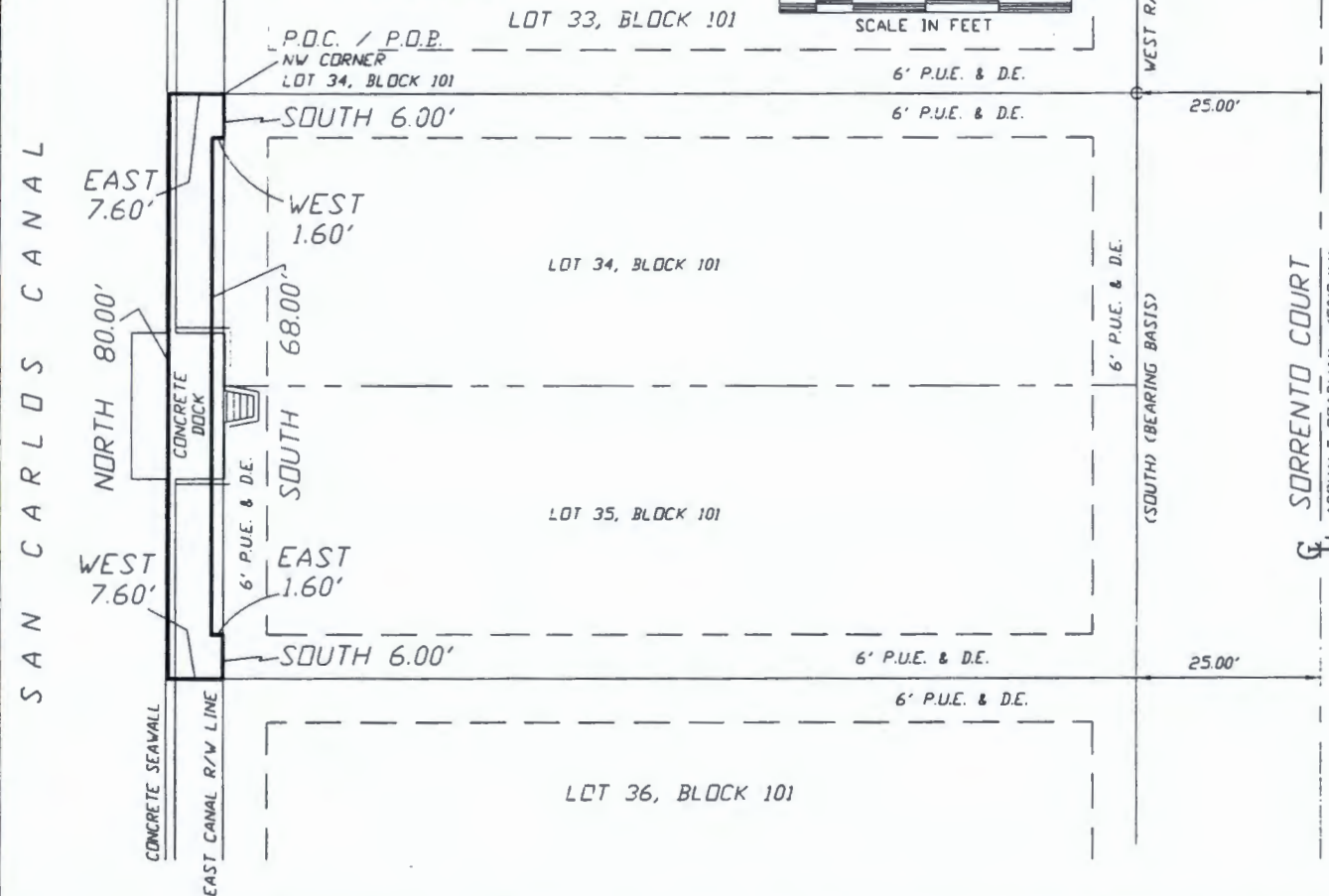
CC-U2-101-34

HARRIS-JORGENSEN, LLC.  
3048 DEL PRADO BLVD. .S  
#100  
CAPE CORAL, FL. 33904  
239-257-2624



**LEGEND:**

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



SKETCH TO ACCOMPANY DESCRIPTION  
(PROPOSED)

**PUBLIC UTILITY AND  
DRAINAGE EASEMENT, LYING  
IN A PORTION OF SAN  
CARLOS CANAL RIGHT OF WAY,  
CAPE CORAL UNIT 2, PART 2,**

SECTION 13, TOWNSHIP 45 SOUTH, RANGE  
23 EAST, (PLAT BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY,  
FLORIDA

SEE EXHIBIT 'C' SHEET 2 OF 2 FOR  
DESCRIPTION TO ACCOMPANY THIS  
SKETCH

**SKETCH NOTES:**

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE WEST RIGHT-OF-WAY LINE OF SORRENTO COURT, AS BEING SOUTH.
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9. THIS SURVEY IS INTENDED TO BE VIEWED AS AN 8 1/2 x 14", 20 SCALE DRAWING.

**NOT A BOUNDARY SURVEY**  
CC-U2-101-34

HARRIS-JORGENSEN, L.L.C.  
3046 DEL PRADO BLVD., S  
#100  
CAPE CORAL, FL. 33904  
239-257-2624

OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL  
HEARING EXAMINER RECOMMENDATION

VP HEX Recommendation 9-2019

Rendered July 2, 2019

DCD CASE # VP 19-0008

**APPLICATION FOR:** Vacation of canal right-of-way and underlying easements and additional platted easements

**NAME OF OWNERS/APPLICANTS:** Daniel and Cornelia Huwiler Living Trust  
dated July 31, 2018, Daniel Huwiler, Trustee

**APPLICANT'S REPRESENTATIVE:** Scott J. Hertz, Esquire

**LOCATION OF PROPERTY:** 5084 Sorrento Court, Cape Coral, FL 33904  
Lots 34 and 35, Block 101, Unit 2, Part 2,  
Cape Coral Subdivision  
Strap number: 13-45-23-C4-00101.0340

**ZONING DISTRICT:** Single Family Residential (R-1B)

**FUTURE LAND USE CLASSIFICATION:** Single Family

**URBAN SERVICE:** Infill

**HEARING DATE:** July 2, 2019

**SUMMARY OF REQUEST:** Owner requests to vacate:

- 608 square feet of canal right-of-way (ROW) and all underlying easements in Lots 34 and 35, Block 101; and
- 408 square feet of platted easements in Lots 34 and 35, Block 101.

**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.

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**

CITY STAFF: Michael Struve, AICP and LEED Green Associate<sup>1</sup>

CITY CLERK'S OFFICE: Patricia Sorrels

APPLICANT'S REPRESENTATIVE: Scott J. Hertz, Esquire

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**

Authority. 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.

LUDR Standards. 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**

*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

---

<sup>1</sup> 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.



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 Applicant owns a two-lot platted site in southeastern Cape Coral, with the rear of the site along the San Carlos Canal. Staff further testified that the San Carlos Canal, a saltwater canal, has a platted width of 200 feet at the owner's site.

Applicant provided a quit claim deed, executed August 10, 2018, showing that the subject property was conveyed to Applicant at that time.

A single-family dwelling on the property was demolished in 2018, a new seawall was installed in 2019 (Permit #B18-30507) and a permit (B19-04100) for a two-story, single-family dwelling with a living area of 4,614 square feet was issued by the City on March 21, 2019.

Staff testified that all properties within 2,00 feet share the same future land use designation and zoning classification as the subject property.

Reason for Application

Staff testified that the surveyor's sketch of the site shows a  $\pm 7.6$ -foot wide strip of canal ROW (totaling 608 square feet) between the western property line and the outer edge of the seawall. According to the letter of April 18, 2019, from Applicant's Representative, the Owner seeks to vacate this ROW strip (and underlying easements) so as to extend the site to the edge of the seawall, so as to conform to most platted waterfront sites within the City which have the rear property line extending to the edge of the canal.

Analysis of Request in Application

- Request No. 1: Vacate  $\pm 608$  Square Feet Canal ROW Between the West Property Line of the Site and the Seawall Edge

The Quit-Claim deed provided by the Owner's Representative proves that the Owner holds ownership of Lots 34 and 35 abutting this ROW and is

therefore eligible to request this relief. The ROW consists of a 7.6-foot wide strip of land at the rear of the site.

Staff testified that this ROW is too narrow to provide a tangible benefit to the public and, accordingly, there is no apparent reason for the City to maintain this strip of land as ROW.

Staff testified that the proposed vacation would enlarge the site by 608 feet and thereby provide uninterpreted ownership of land between the front property line and the edge of the canal.

The Letter of April 18, 2019, from Applicant's Representative stated that the Council's granting the requested vacations would return the land to the tax rolls and improve the City by enabling full development of these parcels, thus increasing the value of the land and providing taxable income to the City. Further, this letter set forth that the easement is not being used by the public or by utilities for any purpose.

- Request No. 2: Vacate ±608 Square Feet of Easements Underlying the Subject ROW

The documents supplied by the Owner state that CenturyLink, Comcast, and LCEC do not object to this request.

Staff testified that the City lacks facilities within this easement and that a perimeter easement will be sufficient for future utility installation and maintenance purposes.

- Request No. 3: Vacate 408 Square Feet of Easements Near the Western Property Line of Lots 34-35, Block 101

Staff testified that the City lacks drainage facilities in this easement. The documents supplied by the Owner state that CenturyLink, Comcast, and LCEC do not object to this request.

However, LCEC requests a new six-foot wide easement be provided along the west property line of the expanded site.

Consistent with that request, the owner has offered to provide the City with a six-foot wide replacement easement adjacent to the new western property line for maintaining a continuous easement around the 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. Applicant **has** color of title (LUDR §8.11.3b.1)
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 No Objection** from Century Link, LCEC and Comcast (LUDR §8.11.3b.3 and LUDR §8.11.3b.4-6) were supplied by Applicant's Representative.

Staff testified that Applicants' provision of a six-foot wide replacement easement around the expanded site would suffice for the City's purposes, as also set forth in the LCEC letter of April 30, 2019 to Applicant's Representative.

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. Single Family Residential. 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 size of the site would be 10,608 square feet if the ROW vacation were granted. The property will have one single-family home, equating to a density of 4.1 dwelling units per acre, less than the maximum density allowed in 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:

1. Vacation of 608 Square Feet of ROW and Underlying Easements: Consistency with Sketch and Legal Description. The vacation of the 608 square feet of ROW and all underlying easements shall be consistent with that shown in the sketch and accompanying legal description prepared by Harris-Jorgensen, LLC entitled "Portion of San Carlos Canal, Cape Coral Unit 2, Part 2", dated March 12, 2019.

2. *Vacation of 408 Square Feet of Easements: Consistency with Sketch and Legal Description.* The vacation of the 408 sq. ft. of easements in Lots 34 and 35, Block 101 shall be consistent with that shown in the sketch and accompanying legal description prepared by Harris-Jorgensen, LLC entitled "*Vacation of a Portion of Public Utility and Drainage Easement, Lying in Lots 34 and 35, Block 101, Cape Coral Unit 2, Part 2*", dated March 12, 2019.
3. *Provision of Easement Deed.* 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 Harris-Jorgensen, LLC, dated March 12, 2019, entitled "*Public Utility and Drainage Easement, Lying in a portion of San Carlos Canal Right of Way, Cape Coral Unit 2, Part 2.*" This deed shall be approved by the City Property Broker prior to execution.
4. *Recording of Resolution.* 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.
5. *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": sketch and accompanying legal description prepared by Harris-Jorgensen, LLC entitled "*Portion of San Carlos Canal, Cape Coral Unit 2, Part 2*", dated March 12, 2019.
- EXHIBIT "B": sketch and accompanying legal description prepared by Harris-Jorgensen, LLC entitled "*Vacation of a Portion of Public Utility and Drainage Easement, Lying in Lots 34 and 35, Block 101, Cape Coral Unit 2, Part 2*", dated March 12, 2019.
- Exhibit "C": sketch and accompanying legal description prepared by Harris-Jorgensen, LLC, dated March 12, 2019, entitled "*Public Utility and Drainage Easement, Lying in a portion of San Carlos Canal Right of Way, Cape Coral Unit 2, Part 2.*"




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:  
  
\_\_\_\_\_  
CITY CLERK  
*Acting.*



EXHIBIT "A"

## DESCRIPTION TO ACCOMPANY SKETCH

*PORTION OF SAN CARLOS CANAL, CAPE CORAL  
UNIT 2, PART 2,*

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23 EAST,  
(PLAT BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY  
THIS DESCRIPTION

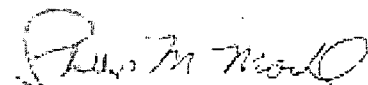
NOT A BOUNDARY SURVEY

## DESCRIPTION:

A PLOT OR PORTION OF SAN CARLOS CANAL, RIGHT OF WAY,  
CAPE CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT  
BOOK 11, PAGE 96-98, PUBLIC RECORDS OF LEE COUNTY,  
FLORIDA FURTHER DESCRIBED AS FOLLOWS.

COMMENCING AT THE NORTHWEST CORNER OF LOT 34, BLOCK 101  
AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE  
CORAL UNIT TWO, PART TWO AS RECORDED IN PLAT BOOK 11,  
PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR  
A POINT OF BEGINNING, THENCE RUN SOUTH TO THE  
SOUTHWEST CORNER OF LOT 35, SAID BLOCK 101 FOR 80.00  
FEET, THENCE RUN WEST TO A POINT ALONG THE WATERS  
EDGE FACE OF A CONCRETE SEAWALL FOR 7.60 FEET, THENCE  
RUN NORTH ALONG SAID WATERS EDGE FACE OF CONCRETE  
SEAWALL FOR 80.00 FEET, THENCE RUN EAST TO THE  
ADJACENT NORTHWEST CORNER OF LOT 34, BLOCK 101 FOR  
7.60 FEET TO THE POINT OF BEGINNING.

CONTAINING: 608.0 SQ. FT±, MORE OR LESS.



PHILLIP M. MOULD  
PROFESSIONAL SURVEYOR AND MAPPER  
#6515 - STATE OF FLORIDA  
03/12/2019

CG-02-101-34

HARRIS-JOHNSON, LLC  
3040 DEL PRADO BLVD. S  
R100  
CAPE CORAL, FL 33904  
239-237-2624

SHEET 2 OF 2

SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION



EXHIBIT "B"

DESCRIPTION TO ACCOMPANY SKETCH (PROPOSED)

*VACATION OF A PORTION OF PUBLIC  
UTILITY AND DRAINAGE EASEMENT, LYING IN  
LOTS 34 AND 35, BLOCK 101, CAPE CORAL  
UNIT 2, PART 2,*

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23 EAST,  
(PLAT BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY  
THIS DESCRIPTION

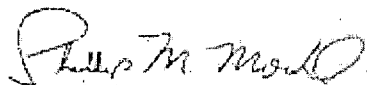
NOT A BOUNDARY SURVEY

## DESCRIPTION:

A PLOT OR PORTION OF LAND LYING LOTS 34 AND 35, BLOCK 101, CAPE CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT BOOK 11, PAGE 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 34, BLOCK 101 AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE CORAL UNIT TWO, PART TWO AS RECORDED IN PLAT BOOK 11, PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN EAST FOR 6.00 FEET; THENCE RUN SOUTH 68.00 FEET; THENCE RUN WEST TO A POINT ALONG THE WEST LINE OF SAID LOT 35, BLOCK 101 FOR 6.00; THENCE RUN NORTH ALONG WEST LINES OF SAID LOTS 35 AND LOT 34 BLOCK 101 FOR 68.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 4080 SQ. FT±, MORE OR LESS.



PHILLIP M. MOULD  
PROFESSIONAL SURVEYOR AND MAPPER  
#6515 - STATE OF FLORIDA  
03/12/2019

CC-U2-101-34

HARRIS-JORGENSEN, LLC  
3048 DEL PRADO BLVD. S  
#100  
CAPE CORAL, FL. 33904  
239-257-2624



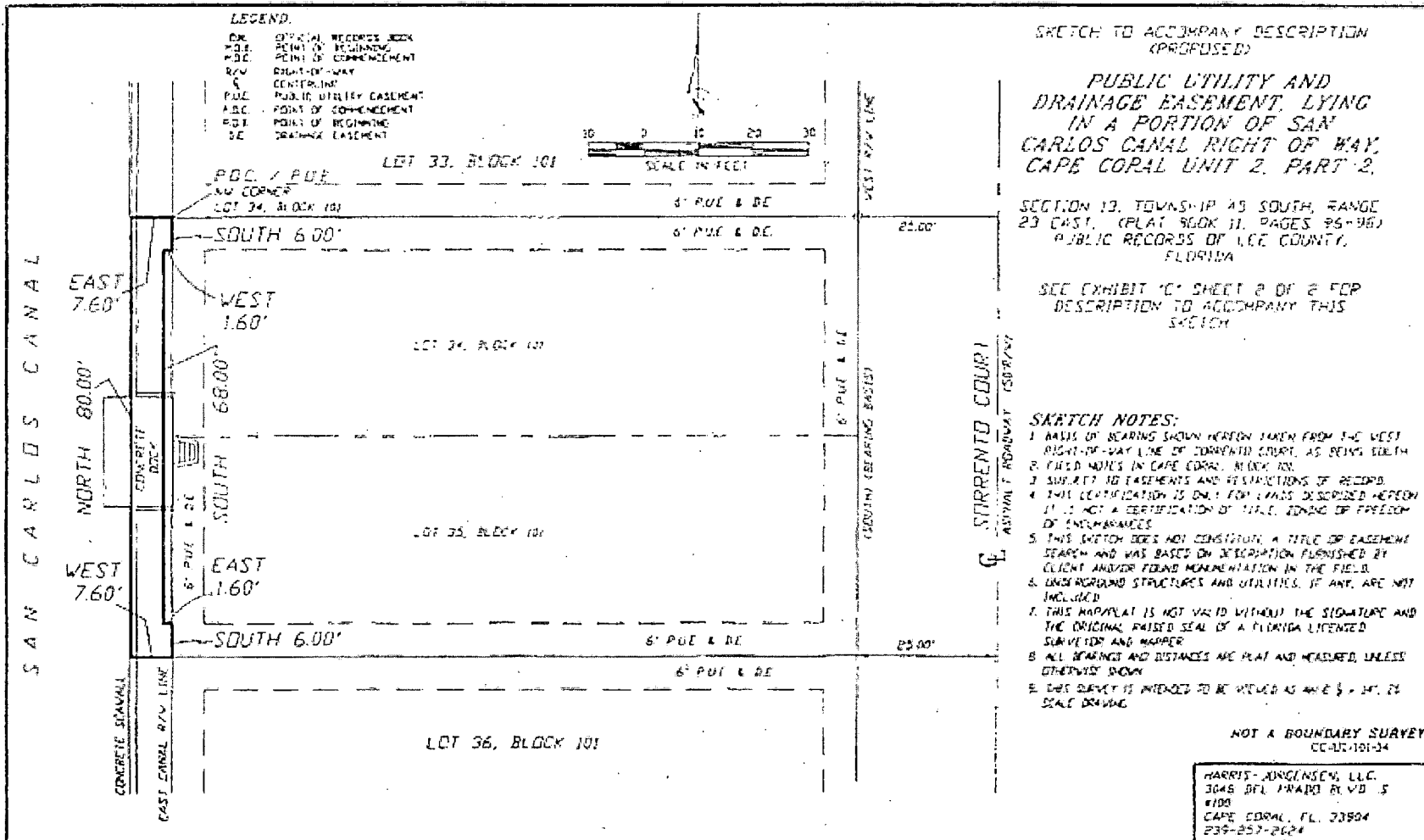


EXHIBIT "C"

DESCRIPTION TO ACCOMPANY SKETCH (PROPOSED)

*PUBLIC UTILITY AND DRAINAGE EASEMENT,  
LYING IN A PORTION OF SAN CARLOS CANAL  
RIGHT OF WAY, CAPE CORAL UNIT 2, PART 2,*

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23 EAST, (PLAT  
BOOK 11, PAGES 96-98)

PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS  
DESCRIPTION

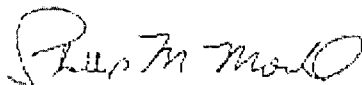
## NOT A BOUNDARY SURVEY

## DESCRIPTION:

A PLOT OR PORTION OF LAND LYING IN SAN CARLOS CANAL  
RIGHT OF WAY, CAPE CORAL UNIT TWO, PART TWO, AS  
RECORDED IN PLAT BOOK 11, PAGE 96-98, PUBLIC RECORDS OF  
LEE COUNTY, FLORIDA FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 34, BLOCK 101  
AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE  
CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT BOOK 11,  
PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, FOR  
A POINT OF BEGINNING; THENCE RUN SOUTH 600 FEET; THENCE  
RUN WEST FOR 160 FEET; THENCE RUN SOUTH ALONG A LINE  
160 FEET WEST AND PARALLEL WITH THE WEST LINES OF LOT  
34 AND 35, BLOCK 101, OF THE AFORESAID CAPE CORAL UNIT  
2, PART 2, FOR 69.00 FEET, THENCE RUN EAST TO A POINT  
ALONG THE WEST LINE SAID LOT 35, BLOCK 101 FOR 160 FEET;  
THENCE RUN SOUTH TO THE SOUTHWEST CORNER OF SAID LOT  
35 BLOCK 101 FOR 6.00 FEET; THENCE RUN WEST TO A POINT  
ALONG THE WATERS EDGE FACE OF A CONCRETE SEAWALL FOR  
7.00 FEET, THENCE RUN NORTH ALONG SAID CONCRETE SEAWALL  
FOR 80.00 FEET, THENCE RUN EAST TO THE NORTHWEST CORNER  
OF SAID LOT 34, BLOCK 101 FOR 76.0 FEET TO THE POINT OF  
BEGINNING.

CONTAINING: 49920 SQ. FT., MORE OR LESS



PHILLIP M. GOULD  
PROFESSIONAL SURVEYOR AND MAPPER  
#6515 - STATE OF FLORIDA  
03/12/2019

CC-U2-101-34

HARRIS-JORGENSEN, LLC  
3049 DEL PRADO BLVD. S  
#100  
CAPE CORAL, FL 33904  
239-257-2624

SHEET 2 OF 2

SEE SHEET 1 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0008

INSTRUCTIONS - APPLICATION FOR VACATION OF A  
PLAT, STREET, ALLEY, CANAL, RIGHT OF WAY or 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.
2. 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. (239) 656-2112 Russell Goodman Project Coordinator-Land Acquisition LCEC PO Box 3455 North Ft Myers, FL 33918-3455	Century Link (Telephone) (239) 336-2031 Century Link ATTN: Engineering Manager 8441 Littleton Rd. N. Ft Myers, FL 33903	Comcast (Cable) (239) 415-4744 Paul Bahizi Comcast 12641 Corporate Lakes Dr Fort Myers, FL 33913
--	--	---
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.





DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0008

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

Daniel Huwiler, Trustee

Daniel & Comelia Huwiler Living Trust

PROPERTY OWNER (PLEASE TYPE OR PRINT)

PROPERTY OWNER'S SIGNATURE

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this \_\_\_\_ day of \_\_\_\_, 20\_\_, by

\_\_\_\_\_, who is personally known or produced \_\_\_\_\_  
as identification.

Exp. Date: \_\_\_\_\_ Commission Number: \_\_\_\_\_

Signature of Notary Public: \_\_\_\_\_

Printed name of Notary Public: \_\_\_\_\_

(SIGNATURE MUST BE NOTARIZED)



## Official Certification

Seen for authentication of the reverse side signature, affixed in our presence by

Mr. **Daniel HUWILER**, born 8th June 1964, Swiss citizen of Thalwil ZH, according to his information residing at Säntisstrasse 98, 8820 Wädenswil, identified by identity card.

Schlieren. 17th April 2019  
BK no. 818  
Fee CHF 20.00



**NOTARIAT SCHLIEREN**

Beat Hirt, Notariatsassistent



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0008

**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.

Daniel Huwiler, Trustee  
Daniel & Cornelia Huwiler Living Trust

OWNER/APPLICANT (PLEASE TYPE OR PRINT)

OWNER/APPLICANT SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_ by \_\_\_\_\_, who is personally known or who has produced \_\_\_\_\_  
as identification.

Exp. Date \_\_\_\_\_  
Commission # \_\_\_\_\_

Signature of Notary Public

Print Name of Notary Public

**Official Certification**

Seen for authentication of the reverse side signature, affixed in our presence by

Mr. **Daniel HUWILER**, born 8th June 1964, Swiss citizen of Thalwil ZH, according to his information residing at Säntisstrasse 98, 8820 Wädenswil, identified by identity card.

Schlieren, 17th April 2019  
BK no. 819  
Fee CHF 20.00



**NOTARIAT SCHLIEREN**

Beat Hirt, Notariatsassistent

Application for vacation of plat

KRKA 11/15/16



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP19-0008

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)

Daniel Huwiler, Trustee

Daniel & Cornelia Huwiler Living Trust

APPLICANT NAME (PLEASE TYPE OR PRINT)

APPLICANT'S SIGNATURE

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_ who is personally known or produced \_\_\_\_\_  
as identification.

Exp. Date: \_\_\_\_\_ Commission Number: \_\_\_\_\_

Signature of Notary Public: \_\_\_\_\_

Printed name of Notary Public: \_\_\_\_\_

**Official Certification**

Seen for authentication of the reverse side signature, affixed in our presence by

Mr. **Daniel HUWILER**, born 8th June 1964, Swiss citizen of Thalwil ZH, according to his information residing at Santisstrasse 98, 8820 Wädenswil, identified by identity card.

Schlieren, 17th April 2019

BK no. 820

Fee CHF 20.00



**NOTARIAT SCHLIEREN**

Beat Hirt, Notariatsassistent

Application\_for\_vacation\_of\_plat

KRKA 11/15/16

# INTELLIGENT SOLUTIONS LAW FIRM, PLLC



1222 SE 47th Street  
Suite C1  
Cape Coral, FL 33904  
DIRECT DIAL: 239.244.2346  
shertz@is4law.com  
www.is4law.com

April 18, 2019

Mike Struve  
City of Cape Coral  
Planning Division  
1015 Cultural Park Boulevard  
Cape Coral, FL 33990  
Email: mstruve@capecoral.net

Re: Vacation of Plat application for 5084 Sorrento Ct, Cape  
Coral, FL 33904

Mr. Struve:

As you are aware, my client, the (Owner), is applying for a vacation of plat as a result of the accretion of land resulting from a seawall installation with the City of Cape Coral. The seawall, which was recently replaced under Permit #B18-30507 is in line with the seawalls of the two adjacent properties. This vacation will only affect the rear property line of the lot as depicted in the attached sketches and site plan. We are requesting the right-of-way at the West lots 34-35 of Block 101 in Unit 2 Part 2 be vacated along with all underlying easements. The Owner will provide a new 6' PUE extending along the length of the new property line, as set forth in the enclosed sketches and descriptions. The resulting condition will match what has been done on similar lots in this area of the City, where the rear lot was extended as a result of the land accreted during seawall construction.

Vacating the requested land will return this land to the tax rolls and improve the City by enabling full development of these parcels, thus increasing the value of the land and taxable income to the City. As the easement is currently unused and being simply moved back with the property line, and there are no objections from any of the utilities using them, there will no negative impact to the City or any of the adjoining or neighboring properties. The current right-of-way design is unusual, and the requested vacations will improve the use of the land without causing any detrimental effects.

We will provide all of the requested documents set forth in the application packet and look forward to working with the City to accomplish this vacation. Requests have been made to the utility providers specified, but we have not yet received responses. Documents being provided at this time include the following site plan, surveys, sketches, and descriptions:

5084 Sorrento Survey - CC-U2-101-34

Exhibit A – ROW to be Vacated

City of Cape Coral – Planning Department

Page 2

April 18, 2019

Exhibit B – PUE to be Vacated

Exhibit C – PUE to be Created

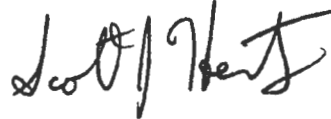
Exhibit D – Underlying Easements to be vacated

SP-1 Site Plan

Deed evidencing the Daniel & Cornelia Huwiler Living Trust's Ownership of Property

Very truly yours,

INTELLIGENT SOLUTIONS LAW FIRM, PLLC

A handwritten signature in black ink, appearing to read "Scott J. Hertz". The signature is stylized with a large, prominent "S" and "H".

Scott J. Hertz, Esq.

SJH/me



INSTR # 2018000209152, Doc Type D, Pages 4, Recorded 08/30/2018 at 10:05 AM,  
Linda Doggett, Lee County Clerk of Circuit Court, Deed Doc. D \$0.70 Rec. Fee  
\$35.50 Deputy Clerk PSMITH

This instrument prepared by:  
*(without title examination or opinion)*  
KEVIN F. JURSKI, Esq.  
KEVIN F. JURSKI, P.A.  
15701 S. Tamiami Trail  
Ft. Myers, Florida 33908

Parcel ID # 13-45-23-C4-00101.0340  
Consideration: \$10.00

## QUIT CLAIM DEED

---

**THIS QUIT-CLAIM DEED**, executed this 10th day of August, 2018, by  
**Daniel Huwiler and Cornelia Huwiler**, husband and wife, first party, to **Daniel Huwiler & Cornelia Huwiler, Trustees**, or their successors in interest, of the **Daniel & Cornelia Huwiler Living Trust** dated July 31, 2018, and any amendments thereto, with full power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the real property described herein, second party, whose address is:

Saentisstrasse 98  
Waedenswil, Switzerland 8820

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

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

**Lots 34 and 35, Block 101, Cape Coral Unit Two Amended Part Two, a Subdivision, according to the Plat thereof as recorded in Plat Book 11, page(s) 96 through 98, inclusive, of the Public Records of Lee County Florida.**

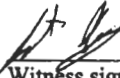
Which property address is: 5084 Sorrento Court, Cape Coral, Florida 33904.

The property is not the homestead of the grantor; it does not adjoin the homestead of the grantor; no member of the grantor's family resides therein and grantor presently resides at: Saentisstrasse 98, Waedenswil, Switzerland 8820.

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

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

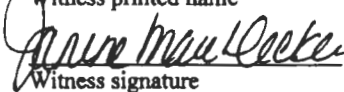
Signed, sealed and delivered  
in the presence of:



Witness signature

Justin Monney

Witness printed name



Witness signature



Witness printed name

  
Cornelia Huwiler

STATE OF FLORIDA

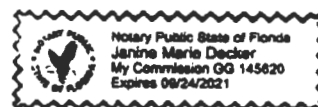
SS:

COUNTY OF LEE

I HEREBY CERTIFY that the foregoing instrument was sworn to and acknowledged before me, an officer duly authorized in the State and County aforesaid, to take acknowledgements, this 10 day of Aug, 2018, by Cornelia Huwiler, who is personally known to me (or who has produced Passport as identification) and who executed the foregoing instrument and who did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 10 day of Aug, 2018.

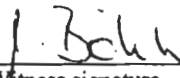
NOTARY PUBLIC



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

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

Signed, sealed and delivered  
in the presence of:

  
\_\_\_\_\_  
Witness signature

Alexander Böhne  
\_\_\_\_\_  
Witness printed name

  
\_\_\_\_\_  
Daniel Huwiler

  
\_\_\_\_\_  
Witness signature

Ronique Rimensberger  
\_\_\_\_\_  
Witness printed name

STATE OF Switzerland SS:  
COUNTY OF Zürich

I HEREBY CERTIFY that the foregoing instrument was sworn to and acknowledged before me, an officer duly authorized in the State and County aforesaid, to take acknowledgements, this 21 day of August, 2018, by Daniel Huwiler, who is personally known to me (or who has produced Passport (identity card) as identification) and who executed the foregoing instrument and who did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC

**Official Certification**

Seen for authentication of the reverse side signature, affixed in our presence by

Mr. Daniel HUWILER, born 8th June 1964, Swiss citizen of Thalwil, according to his information residing at Sântisstrasse 98, 8820 Wädenswil, identified by identity card.

SCHLIEREN, 21st August 2018  
BK no. 1533  
Fee CHF 20.00

**NOTARIAT SCHLIEREN**  
  
Beat Hirt, Notariatsassistent



EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH

*PORTION OF SAN CARLOS CANAL, CAPE CORAL  
UNIT 2, PART 2,*

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23 EAST,  
(PLAT BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY  
THIS DESCRIPTION

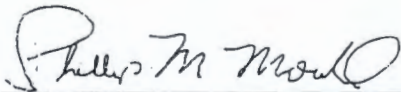
NOT A BOUNDARY SURVEY

DESCRIPTION:

A PLOT OR PORTION OF SAN CARLOS CANAL RIGHT OF WAY,  
CAPE CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT  
BOOK 11, PAGE 96-98, PUBLIC RECORDS OF LEE COUNTY,  
FLORIDA FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 34, BLOCK 101  
AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE  
CORAL UNIT TWO, PART TWO AS RECORDED IN PLAT BOOK 11,  
PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR  
A POINT OF BEGINNING; THENCE RUN SOUTH TO THE  
SOUTHWEST CORNER OF LOT 35, SAID BLOCK 101 FOR 80.00  
FEET; THENCE RUN WEST TO A POINT ALONG THE WATERS  
EDGE FACE OF A CONCRETE SEAWALL FOR 7.60 FEET; THENCE  
RUN NORTH ALONG SAID WATERS EDGE FACE OF CONCRETE  
SEAWALL FOR 80.00 FEET; THENCE RUN EAST TO THE  
AFORESAID NORTHWEST CORNER OF LOT 34, BLOCK 101 FOR  
7.60 FEET TO THE POINT OF BEGINNING.

CONTAINING: 608.0 SQ. FT±, MORE OR LESS.



PHILLIP M. MOULD  
PROFESSIONAL SURVEYOR AND MAPPER  
#6515 - STATE OF FLORIDA  
03/12/2019

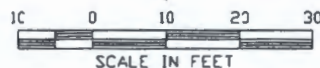
CC-U2-101-34

HARRIS-JORGENSEN, LLC.  
3048 DEL PRADO BLVD. .S  
#100  
CAPE CORAL, FL. 33904  
239-257-2624



**LEGEND:**

O.R. OFFICIAL RECORDS BOOK  
P.O.B. POINT OF BEGINNING  
P.O.C. POINT OF COMMENCEMENT  
R/V RIGHT-OF-WAY  
C CENTERLINE  
P.U.E. PUBLIC UTILITY EASEMENT  
P.O.C. POINT OF COMMENCEMENT  
P.O.B. POINT OF BEGINNING  
D.E. DRAINAGE EASEMENT



**SKETCH TO ACCOMPANY DESCRIPTION**

**PORTION OF SAN CARLOS CANAL,  
CAPE CORAL UNIT 2, PART 2,**

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23  
EAST.

(PLAT BOOK 11, PAGES 96-98)

PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SEE EXHIBIT 'A' SHEET 2 OF 2 FOR  
DESCRIPTION TO ACCOMPANY THIS SKETCH

**SKETCH NOTES:**

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE WEST RIGHT-OF-WAY LINE OF SORRENTO COURT, AS BEING SOUTH
2. FIELD NOTES IN CAPE CORAL, BLOCK 101
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 SKETCH 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 SURVEY IS INTENDED TO BE VIEWED AS AN 8 1/2 x 14", 20 SCALE DRAWING.

**NOT A BOUNDARY SURVEY**  
CC-U2-101-34

HARRIS-JORGENSEN, LLC.  
3048 DEL PRADO BLVD., S.  
#100  
CAPE CORAL, FL. 33904  
239-257-2624

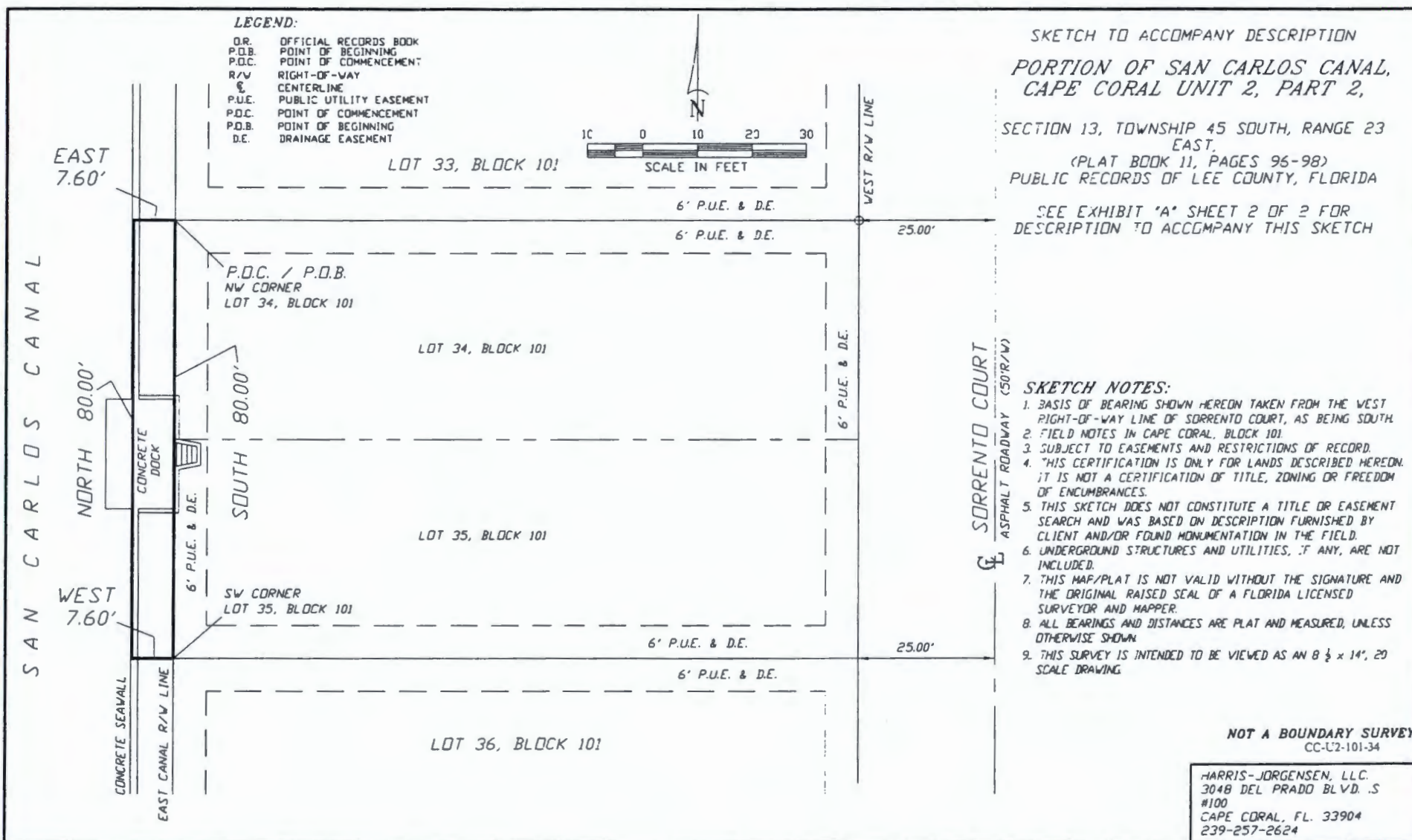


EXHIBIT "B"

DESCRIPTION TO ACCOMPANY SKETCH (PROPOSED)

*VACATION OF A PORTION OF PUBLIC  
UTILITY AND DRAINAGE EASEMENT, LYING IN  
LOTS 34 AND 35, BLOCK 101, CAPE CORAL  
UNIT 2, PART 2,*

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23 EAST,  
(PLAT BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY  
THIS DESCRIPTION

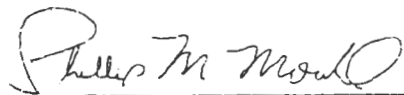
NOT A BOUNDARY SURVEY

DESCRIPTION:

A PLOT OR PORTION OF LAND LYING LOTS 34 AND 35, BLOCK 101, CAPE CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT BOOK 11, PAGE 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 34, BLOCK 101 AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE CORAL UNIT TWO, PART TWO AS RECORDED IN PLAT BOOK 11, PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTH 6.00 FEET TO THE POINT OF BEGINNING; THENCE RUN EAST FOR 6.00 FEET; THENCE RUN SOUTH 68.00 FEET; THENCE RUN WEST TO A POINT ALONG THE WEST LINE OF SAID LOT 35, BLOCK 101 FOR 6.00; THENCE RUN NORTH ALONG WEST LINES OF SAID LOTS 35 AND LOT 34 BLOCK 101 FOR 68.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 408.0 SQ. FT±, MORE OR LESS.



PHILLIP M. MOULD  
PROFESSIONAL SURVEYOR AND MAPPER  
#6515 - STATE OF FLORIDA  
03/12/2019

CC-U2-101-34

HARRIS-JORGENSEN, LLC.  
3048 DEL PRADO BLVD. S.  
#100  
CAPE CORAL, FL. 33904  
239-257-2624

**LEGEND:**

J.R. OFFICIAL RECORDS BOOK  
P.C.B. POINT OF BEGINNING  
P.C.C. POINT OF COMMENCEMENT  
R/W RIGHT-OF-WAY  
C CENTERLINE  
P.U.E. PUBLIC UTILITY EASEMENT  
P.O.C. POINT OF COMMENCEMENT  
P.O.B. POINT OF BEGINNING  
D.E. DRAINAGE EASEMENT

10 0 10 20 30  
SCALE IN FEET

N

**SKETCH TO ACCOMPANY DESCRIPTION  
(PROPOSED)**

**VACATION OF A PORTION OF  
PUBLIC UTILITY AND DRAINAGE  
EASEMENT, LYING IN LOTS 34  
AND 35, BLOCK 101, CAPE  
CORAL UNIT 2, PART 2,**

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23  
EAST, (PLAT BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SEE EXHIBIT "B" SHEET 2 OF 2 FOR  
DESCRIPTION TO ACCOMPANY THIS SKETCH

**SKETCH NOTES:**

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE WEST RIGHT-OF-WAY LINE OF SORRENTO COURT, AS BEING SOUTH.
2. FIELD NOTES IN CAPE CORAL, BLOCK 101
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 SKETCH 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 SURVEY IS INTENDED TO BE VIEWED AS AN 8 1/2 x 14", 20 SCALE DRAWING.

**NOT A BOUNDARY SURVEY**  
CC-U2-101-34

HARRIS-JORGENSEN, LLC.  
3048 DEL PRADO BLVD., S  
#100  
CAPE CORAL, FL. 33904  
239-257-2624

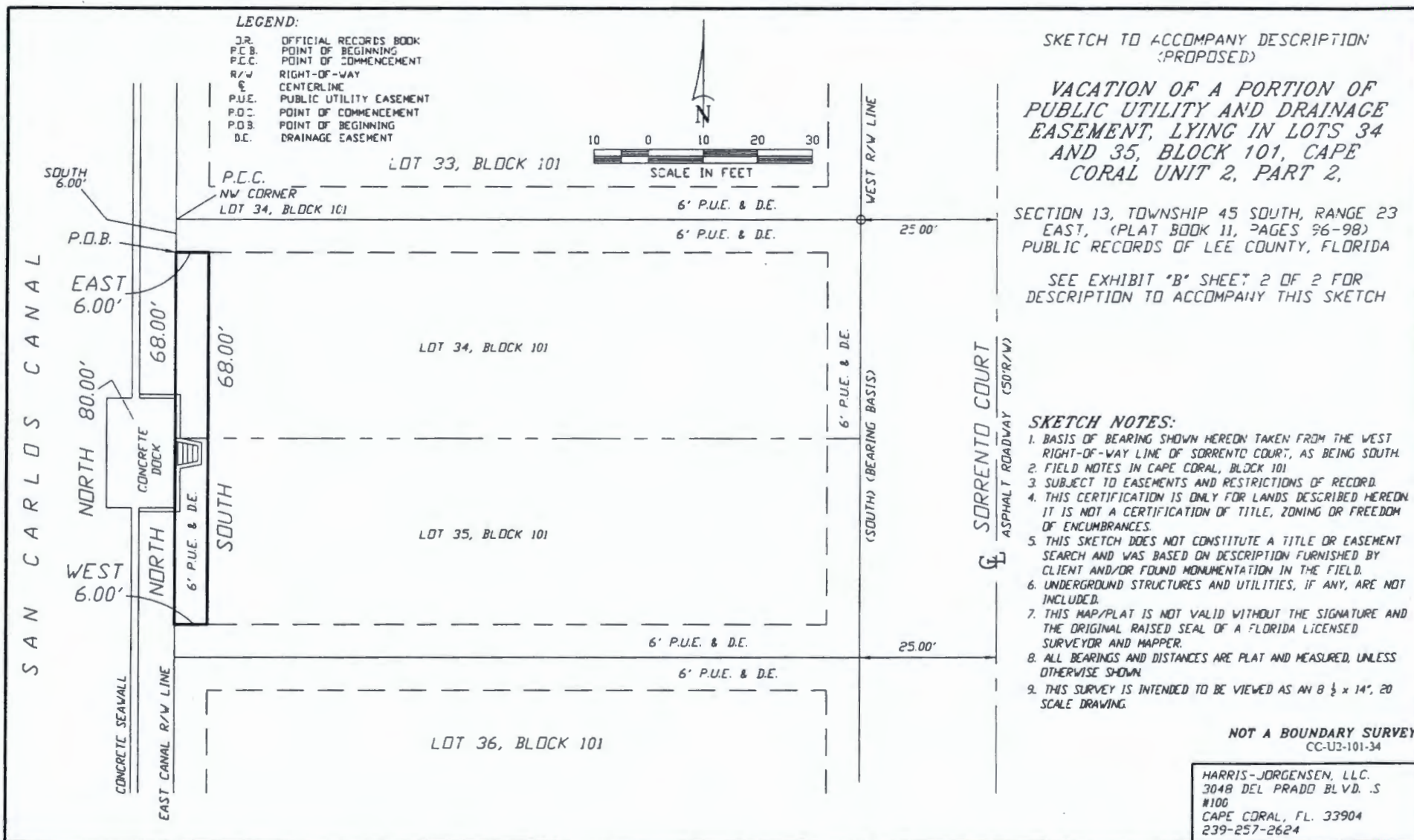




EXHIBIT "C"

DESCRIPTION TO ACCOMPANY SKETCH (PROPOSED)

*PUBLIC UTILITY AND DRAINAGE EASEMENT,  
LYING IN A PORTION OF SAN CARLOS CANAL  
RIGHT OF WAY, CAPE CORAL UNIT 2, PART 2,*

SECTION 13, TOWNSHIP 45 SOUTH, RANGE 23 EAST, (PLAT  
BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS  
DESCRIPTION

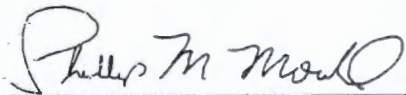
NOT A BOUNDARY SURVEY

DESCRIPTION:

A PLOT OR PORTION OF LAND LYING IN SAN CARLOS CANAL  
RIGHT OF WAY, CAPE CORAL UNIT TWO, PART TWO, AS  
RECORDED IN PLAT BOOK 11, PAGE 96-98, PUBLIC RECORDS OF  
LEE COUNTY, FLORIDA FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 34, BLOCK 101  
AND THE EAST RIGHT OF WAY OF SAN CARLOS CANAL, CAPE  
CORAL UNIT TWO, PART TWO, AS RECORDED IN PLAT BOOK 11,  
PAGES 96-98, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, FOR  
A POINT OF BEGINNING; THENCE RUN SOUTH 6.00 FEET; THENCE  
RUN WEST FOR 1.60 FEET; THENCE RUN SOUTH ALONG A LINE  
1.60 FEET WEST AND PARALLEL WITH THE WEST LINES OF LOT  
34 AND 35, BLOCK 101, OF THE AFORESAID CAPE CORAL UNIT  
2, PART 2, FOR 68.00 FEET; THENCE RUN EAST TO A POINT  
ALONG THE WEST LINE SAID LOT 35, BLOCK 101 FOR 1.60 FEET;  
THENCE RUN SOUTH TO THE SOUTHWEST CORNER OF SAID LOT  
35, BLOCK 101, FOR 6.00 FEET; THENCE RUN WEST TO A POINT  
ALONG THE WATERS EDGE FACE OF A CONCRETE SEAWALL FOR  
7.60 FEET; THENCE RUN NORTH ALONG SAID CONCRETE SEAWALL  
FOR 80.00 FEET; THENCE RUN EAST TO THE NORTHWEST CORNER  
OF SAID LOT 34, BLOCK 101 FOR 7.60 FEET TO THE POINT OF  
BEGINNING.

CONTAINING: 499.20 SQ. FT., MORE OR LESS.

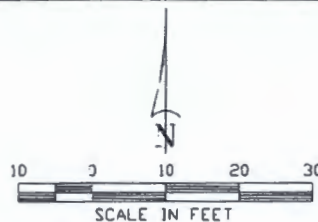


PHILLIP M. MOULD  
PROFESSIONAL SURVEYOR AND MAPPER  
#6515 - STATE OF FLORIDA  
03/12/2019

CC-U2-101-34

HARRIS-JORGENSEN, LLC.  
3048 DEL PRADO BLVD. .S  
#100  
CAPE CORAL, FL. 33904  
239-257-2624

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



PUBLIC UTILITY AND  
DRAINAGE EASEMENT, LYING  
IN A PORTION OF SAN  
CARLOS CANAL RIGHT OF WAY,  
CAPE CORAL UNIT 2, PART 2,

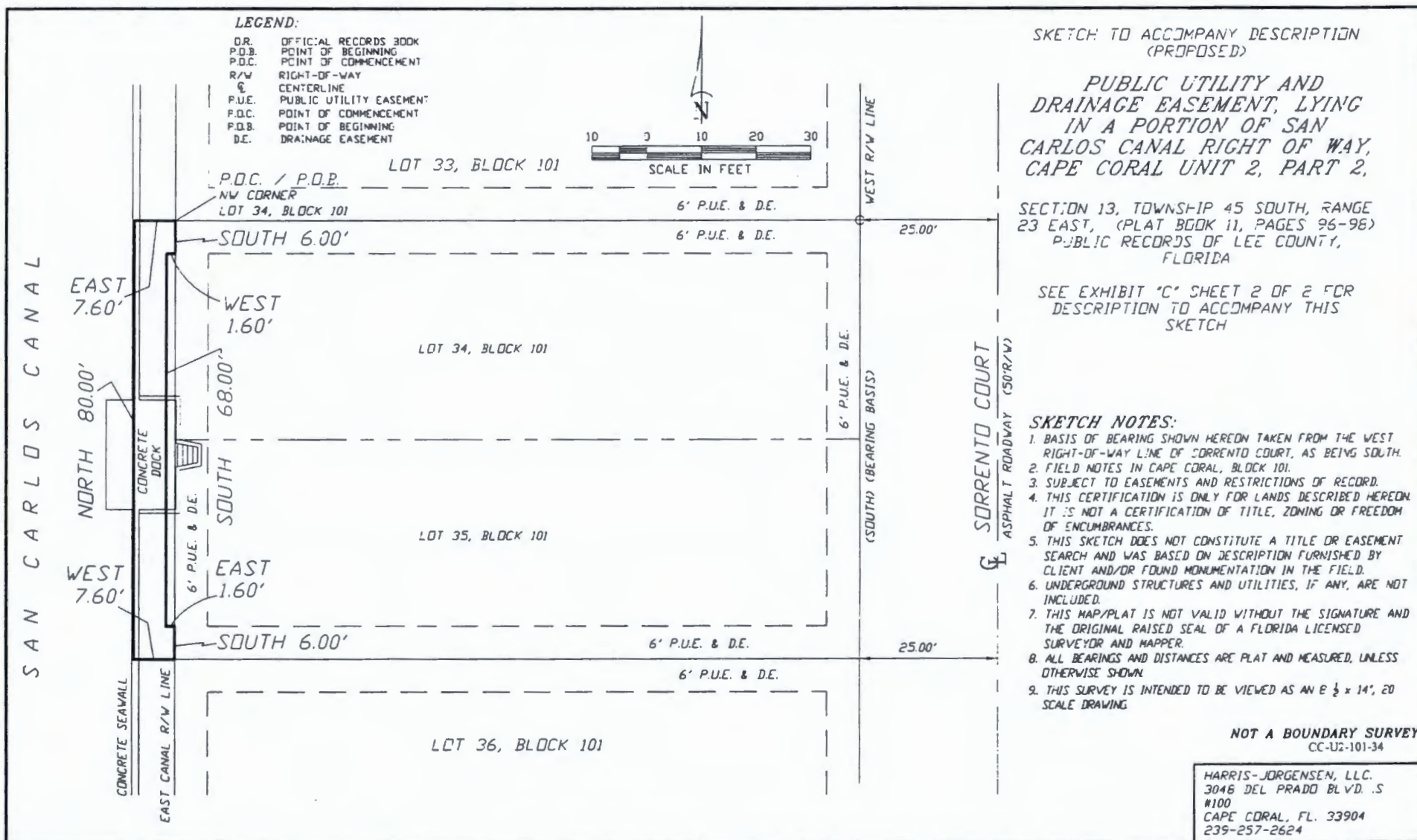
SECTION 13, TOWNSHIP 45 SOUTH, RANGE  
23 EAST, (PLAT BOOK 11, PAGES 96-98)  
PUBLIC RECORDS OF LEE COUNTY,  
FLORIDA

SEE EXHIBIT "C" SHEET 2 OF 2 FOR  
DESCRIPTION TO ACCOMPANY THIS  
SKETCH

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE WEST RIGHT-OF-WAY LINE OF CORRETO COURT, AS BEING SOUTH.
2. FIELD NOTES IN CAPE CORAL, BLOCK 101.
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 SKETCH DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
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8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
9. THIS SURVEY IS INTENDED TO BE VIEWED AS AN  $8\frac{1}{2} \times 14$ , 20 SCALE DRAWING.

NOT A BOUNDARY SURVEY  
CC-U2-101-34

HARRIS-JORGENSEN, LLC.  
3046 DEL PRADO BLVD. S  
#100  
CAPE CORAL, FL. 33904  
239-257-2624







May 14, 2019

Scott J. Hertz, Esq.  
Intelligent Solutions Law Firm, PLLC  
1222 SE 47<sup>th</sup> Street, STE C1  
Cape Coral, FL 33904  
[shertz@is4law.com](mailto:shertz@is4law.com)

Re: ROW vacation request for 5084 Sorrento Ct, Cape Coral, FL 33904 Strap: 134523C4001010340

Dear Mr. Hertz:

Embarq Corporation, Inc. (d/b/a CenturyLink) has reviewed the document for the above referenced property. Based on the review, we have no objections to the proposed vacation of Right-of-Way and PUE along San Carlos Canal shown on the plats provided.

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](mailto:John.schroeder@centurylink.com)



**12600 Westlinks Drive Suite 4  
Fort Myers, FL 33913  
Phone: 239-432-1805**

May 15, 2019

Re: 5084 Sorrento Ct, Cape Coral, Fl. 33904

Dear Scott Hertz,

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,

A handwritten signature in blue ink, appearing to read 'Mark Cook'.

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  
[www.lcec.net](http://www.lcec.net)

April 30, 2019

Mr. Scott J. Hertz, Esq.  
Intelligent Solutions Law Firm, PLLC  
1222 SE 47th Street, STE C1  
Cape Coral, FL 33904

Re: Letter of No Objection to Vacation of Utility Easement and Canal right of Way 5084 Sorrento Court, Cape Coral, FL 33904; Owners: Daniel & Cornelia Huwiler Living Trust; Strap: 134523C400101.0340.

Dear Mr. Hertz:

You have opened up negotiations, on behalf of your client, the Huwiler's.

We have reviewed the sketch, the request submitted, and our internal records. LCEC has **no objection** to the request. 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 to provide 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.

In the event 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.

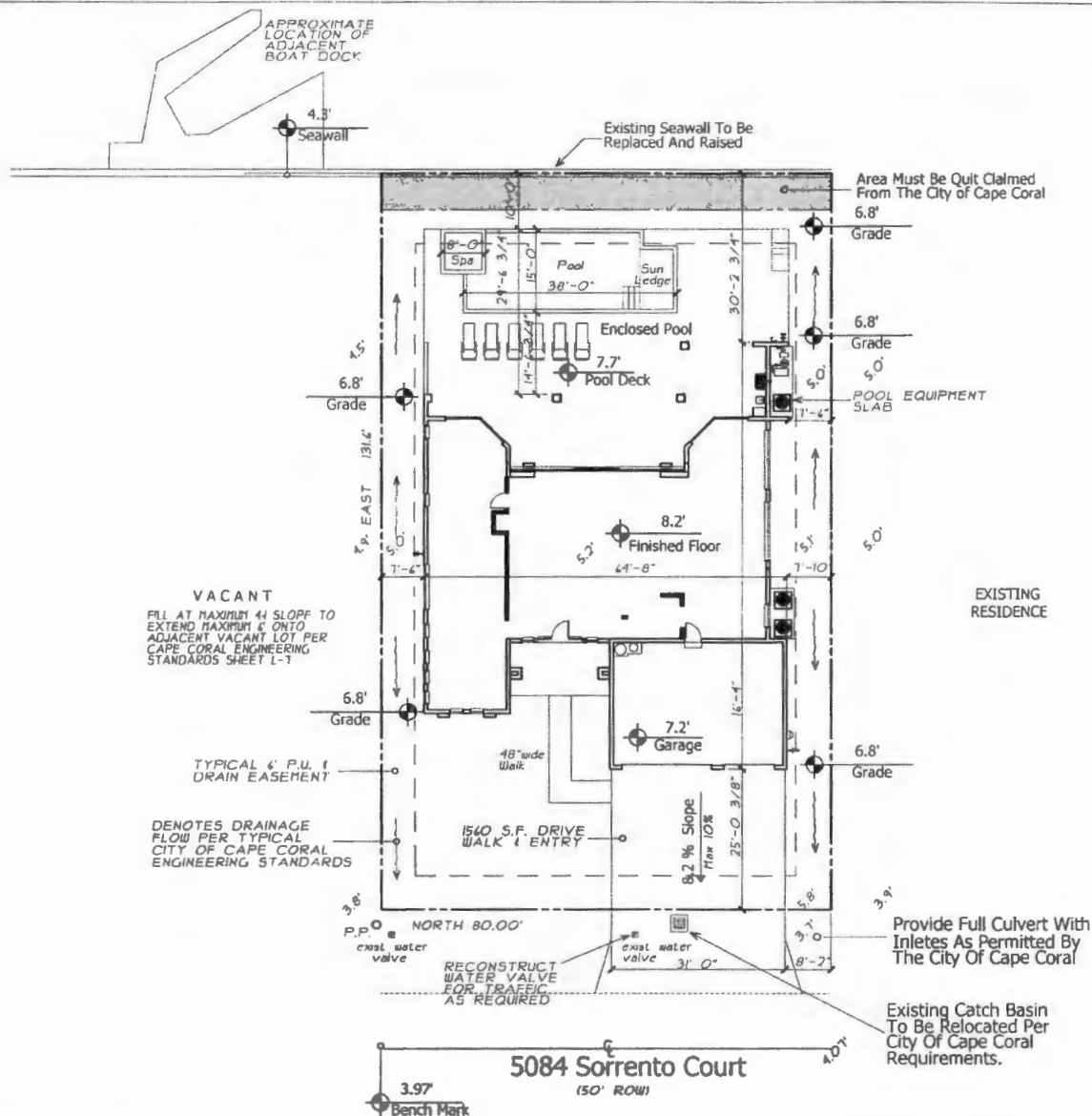
Should there be any questions please call me at 239-656-2112, or, if you prefer, I can be reached by email at [russel.goodman@lcec.net](mailto:russel.goodman@lcec.net).

Very truly yours,

Russ Goodman,  
SR/WA

Digitally signed by  
Russ Goodman, SR/WA  
Date: 2019.04.30  
15:48:41 -04'00'

Russel Goodman, SR/WA  
Design & Engineering Coordinator – Land Rights



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## Huwiler Residence

5084 SORRENTO COURT, CAPE CORAL  
UNIT: 2 part 2, BLOCK: 101, LOTS: 34/35  
STRIP #13-45-23-C4-00101.0340

DRAWN: H. VOLZ

DRAWN: H. VOLZ	DATE: 7-20-18	SCALE: 20
----------------	---------------	-----------

DATE: 1-20-18

REVISIONS

7-27, 7-30, 8-22, 12-3

cinnamon  
design

19 Minimar Street, Suite 201 Cape Coral, FL 33904 Ph. 239.5408332

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www.getcinamon.com

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www.gainamon.com

SITE PLAN

S-1

## ELEVATION CERTIFICATE

Important: Follow the instructions on pages 1-9.

Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.

SECTION A - PROPERTY INFORMATION				FOR INSURANCE COMPANY USE	
A1. Building Owner's Name DANIEL & CORNELIA HUWILER				Policy Number:	
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 5084 SORRENTO COURT				Company NAIC Number:	
City CAPE CORAL		State FLORIDA		ZIP Code 33904	
A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.) 13-45-23-C4-00101 0340					
A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) <u>RESIDENTIAL</u>					
A5. Latitude/Longitude: Lat. <u>26.554275</u> Long. <u>-81.973647</u> Horizontal Datum: <input type="checkbox"/> NAD 1927 <input checked="" type="checkbox"/> NAD 1983					
A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.					
A7. Building Diagram Number <u>1B</u>					
A8. For a building with a crawlspace or enclosure(s): a) Square footage of crawlspace or enclosure(s) <u>0</u> sq ft b) Number of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade <u>0</u> c) Total net area of flood openings in A8.b <u>0</u> sq in d) Engineered flood openings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
A9. For a building with an attached garage: a) Square footage of attached garage <u>717</u> sq ft b) Number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade <u>0</u> c) Total net area of flood openings in A9.b <u>0</u> sq in d) Engineered flood openings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION					
B1. NFIP Community Name & Community Number CITY OF CAPE CORAL 125095			B2. County Name LEE COUNTY, INDEPENDENT CITY		B3. State FLORIDA
B4. Map/Panel Number 12071C0415	B5. Suffix F	B6. FIRM Index Date 8/28/08	B7. FIRM Panel Effective/ Revised Date 8/28/08	B8. Flood Zone(s) AE	B9. Base Flood Elevation(s) (Zone AO, use Base Flood Depth) 7
B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9: <input type="checkbox"/> FIS Profile <input checked="" type="checkbox"/> FIRM <input type="checkbox"/> Community Determined <input type="checkbox"/> Other/Source: _____					
B11. Indicate elevation datum used for BFE in Item B9: <input type="checkbox"/> NGVD 1929 <input checked="" type="checkbox"/> NAVD 1988 <input type="checkbox"/> Other/Source: _____					
B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Designation Date: _____ <input type="checkbox"/> CBRS <input type="checkbox"/> OPA					



# ELEVATION CERTIFICATE

OMB No. 1660-0008  
Expiration Date: November 30, 2018

<b>IMPORTANT: In these spaces, copy the corresponding information from Section A.</b>			<b>FOR INSURANCE COMPANY USE</b>
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 5084 SORRENTO COURT			Policy Number:
City CAPE CORAL	State FLORIDA	ZIP Code 33904	Company NAIC Number

## SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on. ☒ Construction Drawings\* ☐ Building Under Construction\* ☐ Finished Construction  
\*A new Elevation Certificate will be required when construction of the building is complete.

C2. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO. Complete Items C2.a-h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters.

Benchmark Utilized: GPS FPRN Vertical Datum: NAVD 1988

Indicate elevation datum used for the elevations in items a) through h) below.

☐ NGVD 1929 ☒ NAVD 1988 ☐ Other/Source: \_\_\_\_\_

Datum used for building elevations must be the same as that used for the BFE.

Check the measurement used.

- |   |      |  |
|---|------|--|
| a) Top of bottom floor (including basement, crawlspace, or enclosure floor)   | 8. 0 | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| b) Top of the next higher floor   | N/A  | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| c) Bottom of the lowest horizontal structural member (V Zones only)   | N/A  | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| d) Attached garage (top of slab)  | 7. 0 | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| e) Lowest elevation of machinery or equipment servicing the building<br>(Describe type of equipment and location in Comments) | 7. 0 | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| f) Lowest adjacent (finished) grade next to building (LAG)  | 6. 5 | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| g) Highest adjacent (finished) grade next to building (HAG)   | 7. 8 | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |
| h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support                                  | N/A  | <input checked="" type="checkbox"/> feet <input type="checkbox"/> meters |

## SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

Were latitude and longitude in Section A provided by a licensed land surveyor? ☒ Yes ☐ No ☐ Check here if attachments.

Certifier's Name  
ERIC C DAVIS OR CHARLES E DAVIS

License Number  
5544 or 4839

#5544 OR #4839

Title  
PROFESSIONAL SURVEYOR AND MAPPER

Company Name  
DAVIS SURVEYING, INC

Address  
4536 SE 18th PLACE

City  
CAPE CORAL

State  
FLORIDA


ZIP Code  
33904

2/06/19

Signature

Date  
2/06/19

Telephone  
239-549-6454



Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.

Comments (including type of equipment and location, per C2(e), if applicable)

SECTION C2, ITEM e REFERS TO THE A/C PLATFORM OR PAD

JOB #19-0280

NOT FOR PERMITTING OR CONSTRUCTION WITHOUT WRITTEN CONTRACT WITH SURVEYOR.

BENCHMARK BASED ON NAVD, NO CONVERSION NECESSARY



SAN CARLOS CANAL

**LEGEND:**

- SURVEY NOTES:**

- FLOOD ZONE: "AE" ELEVATION: 7.00' N.A.V.D.  
COMMUNITY No.: 125095 PANEL No.: 0415  
SUFFIX --- F REVISION DATE: 8/28/08  
MAP NUMBER: 12071C0415F

REVISED	DESCRIPTION	BY
2/14/19	ADDED SEAWALL	RBH
DATE OF LAST FIELD WORK: 2/14/19		
PHILLIP M. MOULD PROFESSIONAL SURVEYOR AND MAPPER #6515 - STATE OF FLORIDA		
DRAWN:	CHECK:	SCALE
GSM	PHM	1"=20'
SURVEY DATE		FILE NO.
7/3/18		45-23-13
		SHT. - 1
		OF - 1
PROJ. # HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD. S., SUITE 100 CAPE CORAL, FLORIDA 33904 PHONE: (239) 257-2624 FAX: (239) 257-2921		
FLORIDA CERTIFICATE OF AUTHORIZATION L.B. #6921		

SAFE UPLAND ELEVATION= 0.7'  
PER LETTER FROM LAMAR EVERS, FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DATED: FEBRUARY 15, 2019

**Review Date:** June 19, 2019

**Property Owner:** Daniel and Cornelia Huwiler Living Trust dated July 31, 2018

**Owner Address:** Saentisstrase 98  
Waedenswil, Switzerland 8820

**Request:** The owner requests vacating 608 sq. ft. of canal right-of-way (ROW) and all underlying easements, and 408 sq. ft. of platted easements in Lots 34 and 35, Block 101.

**Property Location:** 5084 Sorrento Court  
Lots 34 and 35, Block 101, Unit 2, Part 2, Cape Coral Subdivision  
Strap number: 13-45-23-C4-00101.0340

**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 applicant owns a two-lot platted site in southeastern Cape Coral. The rear of the site is along the San Carlos Canal. The San Carlos Canal is a saltwater canal with a platted width of 200 feet at the owner's site. The site has a Single Family Future Land Use Classification and Single Family Residential (R-1B) Zoning, and all properties within 2,000 feet share the same future land use and zoning classifications.

The site had a single-family residence that was demolished in 2018. A new seawall was installed in 2019. A permit (B19-04100) for a two-story, single-family dwelling with a living area of 4,614 sq. ft. was issued by the City on March 21, 2019.

**Request**

A surveyor sketch of the site shows a  $\pm 7.6$ -foot wide strip of canal ROW between the western property line and the outer edge of the seawall. For most platted water-front sites in the City, the rear property line extends to the edge of the canal. The applicant seeks to vacate this strip of ROW that totals 608 sq. ft. to extend the site to the edge of the seawall.

**Zoning History of Block 101**

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 608 sq. ft. of ROW Adjacent to the San Carlos Canal**

The applicant requests to vacate 608 sq. ft. of canal ROW between the west property line of the site and the edge of the seawall. The applicant owns Lots 34 and 35 that abut this ROW and is therefore eligible to request this vacation. The ROW consists of a 7.6-foot wide strip of land at the rear of the site. This ROW is too narrow to provide a tangible 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 608 feet and will provide uninterpreted ownership of land between the front property line and the edge of the canal as depicted by the approved subdivision plat for Unit 2.

**Request No. 2: Vacate 608 sq. ft. of Easements Underlying the Subject ROW**

The applicant requests to vacate 608 sq. ft. of easements underlying the ROW described above in Request No. 1. CenturyLink, Comcast, and LCEC lack facilities in these easements. None of these providers object to this request. The City also lacks facilities within this easement. A perimeter easement will be sufficient for future utility installation and maintenance purposes.

**Request No. 3: Vacate 408 sq. ft. of Easements in Lots 34-35, Block 101**

The applicant requests to vacate 408 sq. ft. of platted easements near the western property line of Lots 34 and 35. The City lacks drainage facilities in this easement. CenturyLink, Comcast, and LCEC also lack facilities in this easement. All three providers have no objection to this request. LCEC does request a new six-foot wide easement be provided along the west property line of the expanded site. Consistent with that request, the owner will provide the City with a six-foot wide replacement easement adjacent to the new western property line for maintaining a continuous easement around the 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. Single Family Residential: *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 10,608 sq. ft. following the ROW vacation and the property will have one single-family home. This equates to a density of 4.1 dwelling units per acre, less than the maximum density allowed in 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 608 sq. ft. of ROW and all underlying easements shall be consistent with that shown in the sketch and accompanying legal description prepared by Harris-Jorgensen, LLC entitled *"Portion of San Carlos Canal, Cape Coral Unit 2, Part 2"*, dated March 12, 2019.
2. The vacation of the 408 sq. ft. of easements in Lots 34 and 35, Block 101 shall be consistent with that shown in the sketch and accompanying legal description prepared by Harris-Jorgensen, LLC entitled *"Vacation of a Portion of Public Utility and Drainage Easement, Lying in Lots 34 and 35, Block 101, Cape Coral Unit 2, Part 2"*, dated March 12, 2019.
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 Harris-Jorgensen, LLC, dated March 12, 2019, entitled *"Public Utility and Drainage Easement, Lying in a portion of San Carlos Canal Right of Way, Cape Coral Unit 2, Part 2."* 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 owner 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 and the easement deed.

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**Staff Contact Information**

Mike Struve, AICP, LEED Green Associate, Development Management Team Coordinator

PH: 239-242-3255

Email: [mstruve@capecoral.net](mailto:mstruve@capecoral.net)



**Classified Ad Receipt**  
**(For Info Only - NOT A BILL)**

**Customer:** CITY OF CAPE CORAL\_DEPT OF COM

**Ad No.:** 0003639690

**Address:** 1015 CULTURAL PARK BLVD  
CAPE CORAL FL 33990  
USA

**Net Amt:** \$348.86

**Run Times:** 1

**No. of Affidavits:** 1

**Run Dates:** 06/22/19

**Text of Ad:**

**NOTICE OF PUBLIC HEARING  
ADVERTISEMENT**

**CASE NUMBER:** VP19-0008

**REQUEST:** A vacation of plat for a portion of San Carlos Canal right-of-way and the underlying public utility and drainage easements located adjacent to Lots 34-35, Block 101, Unit 2, Part 2, Cape Coral Subdivision; and a vacation of plat for public utility and drainage easements associated with Lots 34-35, Block 101, Unit 2, Part 2, Cape Coral Subdivision; property located at 5084 Sorrento Court.

**CAPE CORAL STAFF CONTACT:** Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator, 239-242-3255, mstruve@capecoral.net

**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 July 2, 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.

**DETAILED INFORMATION:** The case report and colored maps for this application are available at the City of Cape Coral website, [www.capecoral.net/publichearing](http://www.capecoral.net/publichearing) (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM.

**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 public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

**ADA PROVISIONS:** In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-

8771 (TDD) or 1-800-955-8770 (v) for assistance.

by order of  
Kimberly Bruns, CMC  
City Clerk  
REF # VP19-0008  
AD#3639690 JUNE 22, 2019

Department of Community Development  
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Daniel & Cornelia Humiler TR

APPLICATION NO: VP19-0008

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 24<sup>th</sup> day of June, 2019.

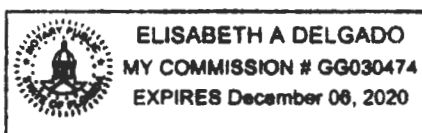


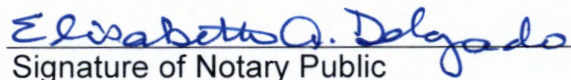
Vincent A. Cautero, AICP

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of June, 2019, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/6/20 Commission # 66030474



  
Signature of Notary Public

Elisabeth A. Delgado  
Print Name of Notary Public

# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

## AERIAL MAP

Case No. VP19-0008

### LEGEND

 Subject Parcel



0 20 40 60 80 Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

**SUBJECT PARCEL**

SORRENTO  
CANAL

SAN CARLOS  
CANAL

BIMINI CANAL

ROYAL CANAL

SEMINOLE  
CANAL



**CITY OF CAPE CORAL**  
Department of  
Community Development  
Planning Division

**CURRENT ZONING MAP**

500 Proximity Boundary

Case No.VP19-0008

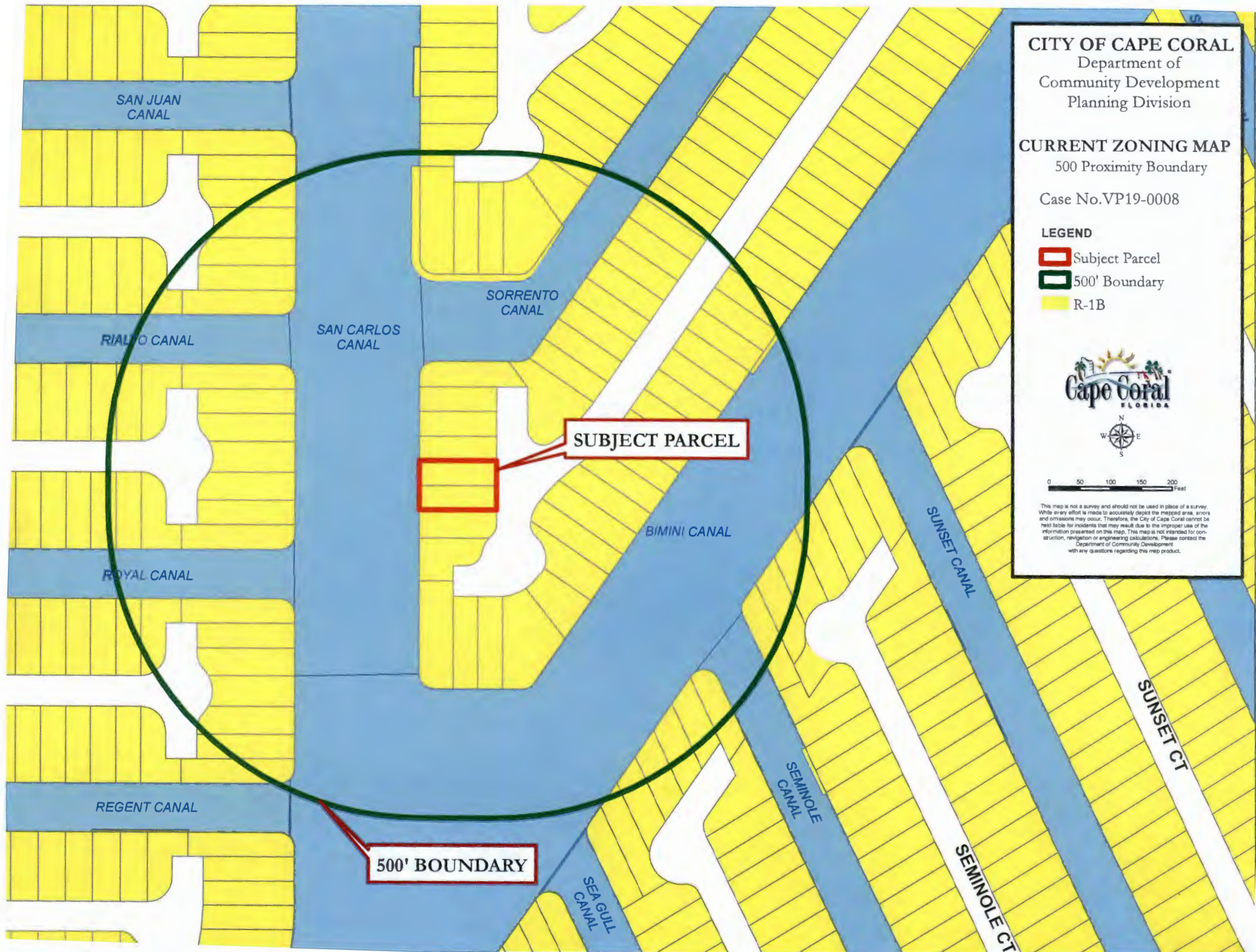
**LEGEND**

-  Subject Parcel
-  500' Boundary
-  R-1B



0 50 100 150 200 Feet

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# **RESOLUTION 277-19**

## **VP19-00008**

**Cape Coral City Council Meeting**  
**Final Public Hearing**

**August 26, 2019**

# VP19-0008

**Applicant:** Daniel and Cornelia Huwiler Living Trust dated July 31, 2018

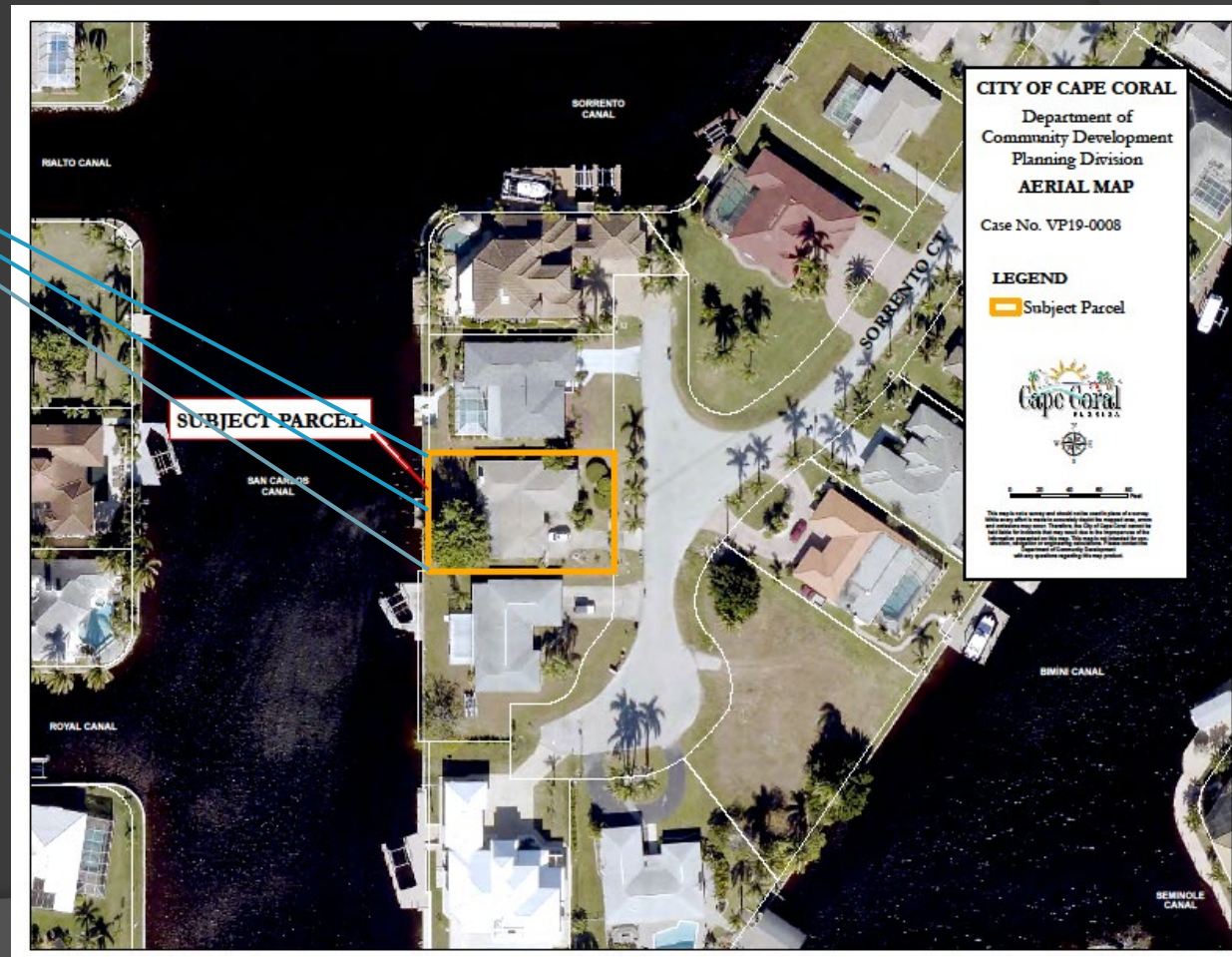
**Location:** 5084 Sorrento Court  
Unit 2, Part 2, Block 101, Lots 34-35

**Requests:** The applicant requests to vacate:

1. 608 sq. ft. of canal ROW and underlying easements.

2. 408 sq. ft. of platted easements.

# VP19-0008






**CITY OF CAPE CORAL**  
Department of  
Community Development  
Planning Division

**CURRENT ZONING MAP**

500 Proximity Boundary

Case No.VP19-0008

**LEGEND**

-  Subject Parcel
-  500' Boundary
-  R-1B



0 50 100 150 200 Feet

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SAN JUAN  
CANAL

RIALTO CANAL

SAN CARLOS  
CANAL

SORRENTO  
CANAL

**SUBJECT PARCEL**

BIMINI CANAL

ROYAL CANAL

REGENT CANAL

**500' BOUNDARY**

SEA GULL  
CANAL

SEMINOLE  
CANAL

SUNSET CANAL

SEMINOLE CT

SUNSET CT

# Background

- ◎ The site is 10,000 sq. ft.
- ◎ The site had a single-family dwelling that was demolished in 2018.
- ◎ A permit for a new house was issued in March, 2019.
- ◎ A 7.6-foot wide strip of land is between the west property line and the seawall.



**San Carlos  
Canal**

001 01  
0320

**5084 Sorrento Court**

SORRENTO CT

**7.6 ft. wide  
ROW**

00101  
0360

**Source: LEEPA, 2019**

## Analysis (LUDR, Section 8.11)

- The applicant owns Lots 34 and 35 that abut the ROW.
- New seawall was installed in 2019; no other improvements.
- The ROW is too narrow to provide any public benefit.
- Utilities are absent in all easements.
- The owner will deed to the City a replacement easement to provide a continuous perimeter easement.

# Recommendations

## Planning Division

Staff recommends approval.

## Hearing Examiner

A public hearing was held on July 2, 2019. The Hearing Examiner recommends approval with staff conditions. No speakers at public input.

No correspondence.

<b>Item Number:</b>	<b>10.A.</b>
<b>Meeting Date:</b>	<b>8/19/2019</b>
<b>Item Type:</b>	<b>UNFINISHED BUSINESS</b>

**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:**

<b>Description</b>	<b>Type</b>
<input type="checkbox"/> Water Quality Memo	Backup Material

MEMORANDUM

CITY OF CAPE CORAL  
PUBLIC WORKS DEPARTMENT

TO: John Szerlag, City Manager

FROM: Paul Clinghan, Public Works Director *PRC*  
Michael Ilczyszyn, Senior Public Works Manager *MI*  
Maya Robert, Environmental Resources Manager *MR*

DATE: August 16, 2019

SUBJECT: Lake Okeechobee Level and Release Information

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As of Friday, August 16, 2019, the weekly average flows neared 5,000 cfs at the Franklin Lock (S-79). Those high flows are lowering salinities and water clarity along the Caloosahatchee estuary and therefore harmful to the health of the ecosystem. However, those high flows are only comprised of watershed runoffs occurring upstream of S-79. No water from Lake Okeechobee is currently released by the US Army Corps of Engineers. The Lake level raised from 12.11 ft last week to 12.67 ft.

Blue Green Algae is still present in Lake Okeechobee. However, no toxins have been detected in samples taken along the Caloosahatchee.

The Fertilizer Black-out Period per City Code began on June 1<sup>st</sup> and will continue until September 30<sup>th</sup>. Fertilizer containing nitrogen and phosphorus may not be applied during this time city-wide.

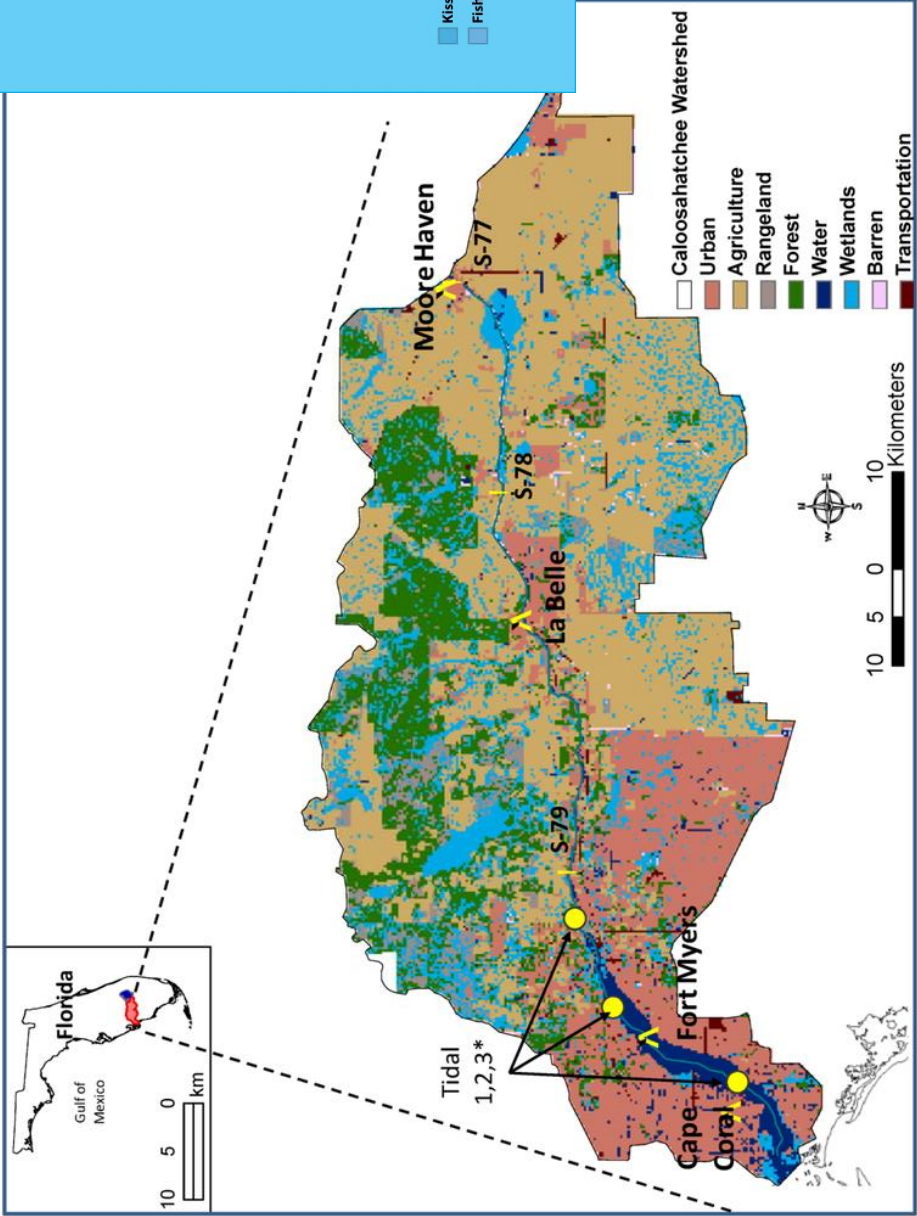
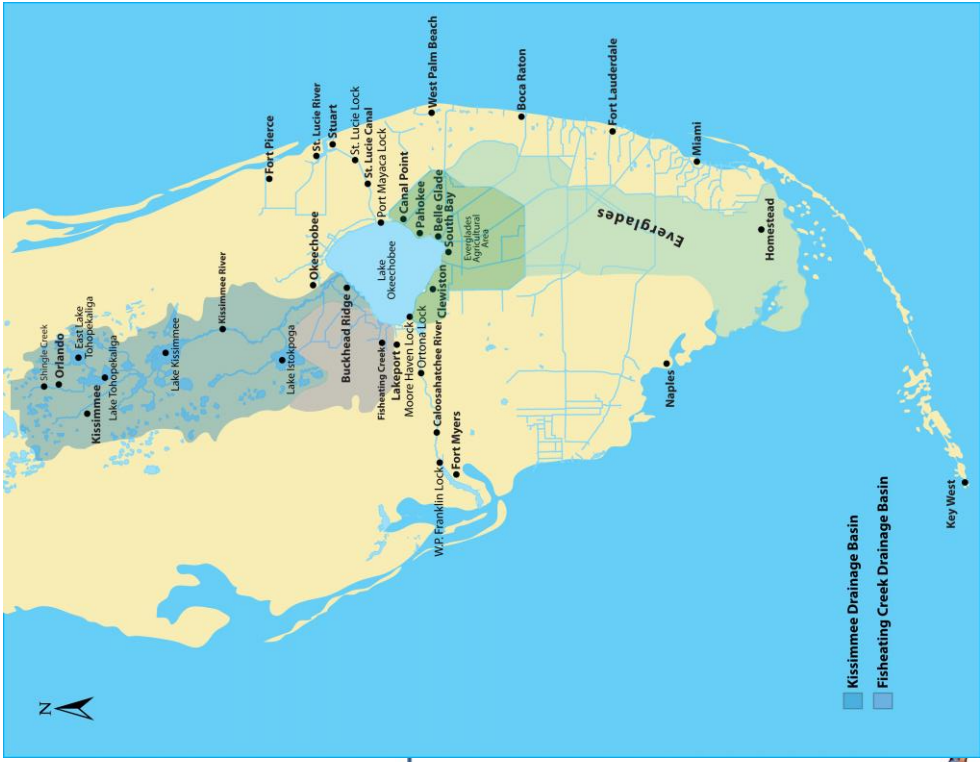
Several of our freshwater lakes and canals have had fragmented tape grass floating at the surface. This natural phenomenon is being addressed by the Lee County Hyacinth Control District in collaboration with City staff. Note that frequent storm events experienced recently have been impeding work.

Red Tide was not detected in Lee County this week.

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 16 August 2019

<u>Lake Okeechobee stage:</u>	12.67 ft
<u>Previous day:</u>	12.57 ft
<u>One week ago:</u>	12.17 ft
<u>(1965-2007 avg for today):</u>	13.98 ft

Total Structure/Creek Inflows: 13749 cfs  
Total Structure Outflow: 0 cfs

A map of the Lake O and WCAs region. The map shows the Kissimmee River, Lake O, and the surrounding watersheds. The Kissimmee River is labeled with a green box. Lake O and WCAs are labeled with a red box. South Dade is labeled with a green box.

Current Lake Release Schedule*		
West (Missing)	0 cfs	Constant
East (S-80)	0 cfs	Constant
*Updates are generally made on Fridays		
7 Day Average Outflows and % of total		
Total	0 cfs	
West (S-77)	0 cfs	0%
West (S-79)	5902 cfs	
East (S-308)	-296 cfs	****
East (S-80)	0 cfs	
South	0 cfs	0%
Other	0 cfs	0%





**Item Number: 11.A.**  
**Meeting Date: 8/19/2019**  
**Item Type: NEW BUSINESS**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 274-19 Approving Jobs Incentive Agreement between Mercola.Com Health Resources, LLC and City of Cape Coral in the amount of not to exceed \$76,500; Department: City Manager/EDO Division; Dollar Value \$76,500; (EDO Incentive 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 A:** INCREASE ECONOMIC DEVELOPMENT AND REDEVELOPMENT IN THE CITY

**ELEMENT B:** ENHANCE FINANCIAL SUSTAINABILITY DURING ALL ECONOMIC TIMES

**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:**

**SUMMARY EXPLANATION AND BACKGROUND:**

**Executive Summary**

Staff is requesting your approval of Resolution 274-19 entering a job creation incentive with Mercola Companies. This project, in total, will represent 90 new jobs to Cape Coral at an average wage of more than \$60,000. These are well paying jobs and meet the City's need for higher wage jobs as outlined in the EDO Master Plan adopted by City Council in 2017.

**Background**

Adding new jobs and investment is also part of the Economic Development Goal in the City's Strategic Plan and the EDO Master Plan. Additionally, increasing workforce housing in the Cape remains a priority and will allow more of these new employees to live in the Cape which will positively impact our local economy, also a goal in the City's Strategic Plan and EDO Master Plan.

**Overall Recommendation:**

Staff Recommends approval of the \$132,000 incentive agreement between the City of Cape Coral and Mercola Companies (see breakdown of \$132,000 below) from the Economic Development Incentive Fund created in Resolution 220-16 on December 14, 2016. The Incentive is to be paid quarterly beginning December 2019 for a period of 3 years with a maximum payout of

\$132,000.00.

Resolution 274-19 Request approval for \$76,500 is for 51 jobs Mercola.com Health Resources LLC .

City Manager Szerlag to approve \$33,000 for 22 jobs for Mercola Consulting Services, LLC

City Manager Szerlag to approve \$22,500 for 15 jobs (4 relocated and 11 created) for Mercola.com.

All totaled, equals incentives in the amount of \$132,000.

## **LEGAL REVIEW:**

## **EXHIBITS:**

Memo  
Resolution 274-19  
Staff Presentation  
Mercola Campus  
Mercola Org Chart  
Abridged Staff Presentation  
Final Staff Presentation

## **PREPARED BY:**

Ricardo                      Division- City                      Department- Economic  
Noguero                      Manager                      Development



## **SOURCE OF ADDITIONAL INFORMATION:**

## **ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Memo	Backup Material
▣ Resolution 274-19	Resolution
▣ Staff Presentation	Backup Material
▣ Mercola Campus	Backup Material
▣ Mercola Org Chart	Backup Material
▣ Mercola	Backup Material
▣ Abridged Staff Presentation	Backup Material
▣ Final Staff Presentation	Backup Material

CITY OF CAPE CORAL  
CITY MANAGER'S OFFICE

TO: Mayor Coviello and City Council Members

FROM: John Szerlag, City Manager   
Ricardo Noguera, Economic Development Manager 

DATE: August 2, 2019

SUBJECT: Mercola.com LLC, Mercola.com Natural Health Services, LLC & Mercola Consulting Services, LLC Incentive Agreement  
City Council Agenda Item August 19, 2019

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**Executive Summary**

Staff is requesting your approval of Resolution 274-19 entering a job creation incentive with Mercola Companies. This project, in total, will represent 90 new jobs to Cape Coral at an average wage of more than \$60,000. These are well paying jobs and meet the City's need for higher wage jobs as outlined in the EDO Master Plan adopted by City Council in 2017.

**Background**

Adding new jobs and investment is also part of the Economic Development Goal in the City's Strategic Plan and the EDO Master Plan. Additionally, increasing workforce housing in the Cape remains a priority and will allow more of these new employees to live in the Cape which will positively impact our local economy, also a goal in the City's Strategic Plan and EDO Master Plan.

**Recommendation**

Staff recommends approval of the \$132,000 incentive agreement between the City of Cape Coral and Mercola Companies from the Economic Development Incentive Fund created in Resolution 220-16 on December 14, 2016. The incentive is to be paid quarterly beginning December 2019 for a period of 3 years with a maximum payout of \$132,000.



RESOLUTION 274 – 19

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING THE ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH MERCOLA.COM HEALTH RESOURCES, LLC, TO ATTRACT AND RETAIN MERCOLA.COM HEALTH RESOURCES, LLC, AS A MAJOR EMPLOYER WITH THE CITY; PROVIDING FOR SUBSEQUENT EXECUTION OF THE AGREEMENT BY THE CITY MANAGER; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on December 5, 2016, City Council adopted Resolution 220-16, creating an Economic Development Incentive Fund to allow for small Economic Development Incentive Awards to support business growth and create new jobs; and

WHEREAS, Resolution 220-16 authorizes the Economic Development Incentive Committee to approve Economic Development Incentive Awards for amounts less than \$25,000; authorizes the City Manager to approve Economic Development Incentive Awards for amounts from \$25,000 to less than \$50,000; and provides that the City Council shall approve Economic Development Incentive Awards for amounts of \$50,000 or more; and

WHEREAS, Mercola.com, LLC, Mercola.com Health Resources, LLC, and Mercola Consulting Services are Florida corporations that relocated their businesses to the City of Cape Coral and anticipate creating 90 jobs over a three-year period; and

WHEREAS, the Economic Development Incentive Committee has approved an Economic Development Incentive Award of \$1,500 per job for the creation or relocation of 15 jobs over the next three years to Mercola.com, LLC, for a total amount not to exceed \$22,500; and

WHEREAS, the City Manager has approved an Economic Development Incentive Award of \$1,500 per job for the creation or relocation of 22 jobs over the next three years to Mercola Consulting Service for a total amount not to exceed \$33,000; and

WHEREAS, the Economic Development Incentive Committee requests Council approval to provide Mercola.com Health Resources, LLC, an Economic Development Incentive Award of \$1,500 for each newly created or relocated job established in the City of Cape Coral up to a total of 51 jobs over the next three years in furtherance of the municipal purpose of attracting and retaining Mercola.com Health Resources, LLC, as a major employer within the City of Cape Coral and expanding economic activity within its jurisdictional borders pursuant to section 166.021(8), Florida Statutes, and Resolution 220-16; and

WHEREAS, the maximum incentive amount the City shall pay Mercola.com Health Resources, LLC, for the 51 jobs created and maintained by Mercola.com Health Resources, LLC, shall be \$76,500; and

WHEREAS, the City has established terms and conditions herein whereby Mercola.com Health Resources, LLC, by complying with these terms and conditions, can receive the benefit outlined in the Agreement, while the City can fulfill its desire to support employers which will create jobs and significantly enhance the prospects of local economic development; and

WHEREAS, the parties agree that the economic incentives provided by the City are for the benefit of the public health, safety, welfare and convenience of the citizens of the City of Cape Coral; and

WHEREAS, the City Council finds and declares that the Agreement serves a public purpose, which includes promotion of economic development, job growth, and the future expansion of the City's tax base; and

WHEREAS, City Council recommends approval of the Economic Incentive Agreement between the City of Cape Coral and Mercola.com Health Resources, LLC.

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

Section 1. The City Council hereby authorizes the City Manager to enter into an Economic Development Incentive Agreement between the City of Cape Coral and Mercola.com Health Resources, LLC, and authorizes the City Manager to execute the Agreement. A copy of the Agreement is attached hereto as Exhibit A.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR  
COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 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 \_\_\_\_\_,  
2019.

\_\_\_\_\_  
KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_

DOLORES D. MENENDEZ  
CITY ATTORNEY

res/EDO Incentive Agreement-Mercola.com Health Resources, LLC

## **ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

**THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT** ("Agreement") is made and entered into by and between the CITY OF CAPE CORAL, FLORIDA, a Florida municipal corporation (hereinafter "CITY") and MERCOLA.COM HEALTH RESOURCES, LLC. (hereinafter MERCOLA HEALTH), its successors and assigns, whose address is 125 SW 3<sup>rd</sup> Place, Suite 205, Cape Coral, Florida 33991.

### **RECITALS:**

WHEREAS, MERCOLA HEALTH is a Florida corporation that relocated its business within the City of Cape Coral thereby creating certain full-time employment opportunities at a certain average salary level, and to make certain capital improvements thereby increasing tax revenues to the CITY; and

WHEREAS, MERCOLA HEALTH, in December 2018, relocated within the City of Cape Coral, Florida and anticipates relocating or creating 51 Jobs over a three (3) year period; and

WHEREAS, the City desires to provide MERCOLA HEALTH economic incentives in furtherance of the municipal purpose of attracting and retaining MERCOLA HEALTH as a major employer within the City of Cape Coral and expanding economic activity within its jurisdictional borders under section 166.021(8), Florida Statutes, and Resolution 220-16: and

WHEREAS, the parties recognize this Agreement is necessary to ensure that the economic incentives provided by the CITY to MERCOLA HEALTH ultimately serve their intended municipal purpose; and

WHEREAS, the City has established terms and conditions herein whereby MERCOLA HEALTH by complying with these terms and conditions, can receive the benefit outlined in this Agreement, while the CITY can fulfill the CITY'S desire to support employers which will create Jobs and significantly enhance the prospects of local economic development; and

WHEREAS, pursuant to Resolution 220-16, the Economic Development Incentive Committee, established criteria for the awarding of incentive funds consisting of the amount of funds invested and leverage ratio by the business versus the incentive request; the number of full time equivalent jobs created; average wage of employees versus the Lee County average; is it an innovative business; commitment to local procurement; and will the business construct a new building or expand, or renovate an existing building; and

WHEREAS, the parties agree that the economic incentives provided by the CITY hereunder are for the benefit of the public health, safety, welfare and convenience of the citizens of the City of Cape Coral, Florida; and

WHEREAS, the City Council finds and declares that this Agreement serves a public purpose, which includes promotion of economic development, job growth, and the future expansion of the CITY'S tax base.

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein, and other good and valuable consideration which the parties agree has been exchanged and received the parties agree as follows:

1. **Recitals.** The foregoing recitals are deemed to be true and accurate and are fully incorporated herein by reference.
2. **Definitions.** For purposes of this Agreement, the following terms and words shall have the meaning ascribed to them, unless the context clearly indicates otherwise:
  - (a) "County" shall mean Lee County, Florida
  - (b) "Effective Date" shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not be effective against any party until said date.
  - (c) "Jobs" shall have the meaning given to such terms in Section 288.106(2)(i), Florida Statutes. In addition, Jobs shall mean actual employees, not unfilled positions.
  - (d) "Local Resident" shall mean a person that has established their domicile within the City of Cape Coral or Lee County, Florida.
3. **Commitment by MERCOLA.COM HEALTH RESOURCES.**
  - (a) MERCOLA HEALTH agrees to relocate three (3) Jobs and to create forty-eight (48) Jobs, for a total of fifty-one (51) Jobs located in the City of Cape Coral within three (3) years beginning January 1., 2019, having an average annual wage of Sixty Thousand Dollars (\$60,000) during the entire term of this agreement. The average wage in Lee County is Forty-Three Thousand Nine Hundred Seventy-Nine Dollars (\$43,979).
  - (b) MERCOLA HEALTH acknowledges and agrees the below mentioned incentives shall be performance based and paid subsequent of the position(s) being established for a period of one year.
  - (c) MERCOLA HEALTH shall use its best good faith efforts to employ local residents.
  - (d) MERCOLA HEALTH, or its parent company, is a medical supplement business that purchased a commercial building on approximately ten (10) acres of property in the CITY and expended approximately One Million Three Hundred Thousand Dollars (\$1,300,000) renovating said building to accommodate its corporate headquarters. In addition to the foregoing renovations, MERCOLA HEALTH has submitted Plans to the CITY to add greenhouses, a cafeteria, walking trails, and green space to its ten acres complex at an approximate cost of One-Million Dollars (\$1,000,000). Said renovations were, or will be, constructed by local contractors or suppliers.
  - (e) MERCOLA HEALTH shall remain operating in the CITY for a minimum of five (5) years from the date of receipt of said funds. Should MERCOLA HEALTH leave the CITY prior to the five-year requirement the economic development incentive funds shall be repaid, on a pro-rated basis, to the CITY. The amount due shall be reduced

by twenty percent (20%) of the total incentive amount for each full year the company was operating in the CITY.

4. **Commitments by CITY.**

- (a) The CITY shall pay MERCOLA HEALTH an incentive of One Thousand Five Hundred Dollars (\$1,500.00) for each Job established in the City of Cape Coral by MERCOLA HEALTH up to a total of fifty-one (51) Jobs, within three (3) years beginning on the effective date of this Agreement, that have an average wage of Sixty Thousand Dollars (\$60,000).
- (b) The CITY shall pay MERCOLA HEALTH the aforementioned incentive of One Thousand Five Hundred Dollars (\$1,500.00) per Job after the Job has been created and maintained for one full year. The CITY shall pay the incentives to MERCOLA HEALTH upon receipt of evidence, in a form satisfactory to the CITY as stated below, of the Jobs created and the average wage in MERCOLA HEALTH on the first anniversary of the creation of the Job(s). Said payments will be paid on a quarterly basis, commencing December 2019.
- (c) The maximum incentive amount the CITY shall pay MERCOLA HEALTH for the fifty-one (51) Jobs created and maintained by MERCOLA HEALTH shall be Seventy-Six Thousand Five Hundred Dollars (\$76,500.00).

5. **Progress Reports.** Upon request by the CITY, and no less than annually from the effective date of this Agreement, MERCOLA HEALTH shall submit in sufficient and reasonable detail a written progress report, along with supporting documentation, as to the status of the number of employees employed by MERCOLA HEALTH at its office within the City of Cape Coral. If the detail is not sufficient, in the City Manager's reasonable discretion, to permit the CITY to determine compliance with this Agreement, the CITY may seek more reasonable written detail from MERCOLA HEALTH.

6. **Compliance with Laws.** MERCOLA HEALTH shall be responsible for complying with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority regarding the location and continued operation of its business within the City of Cape Coral, and any associated costs.

7. **Work is a Private Undertaking.** With regards to MERCOLA HEALTH business operations and compliance with applicable laws, ordinances, rules, and regulations, it is specifically understood and agreed to by and between the parties hereto that the contractual relationship between the CITY and MERCOLA HEALTH is such that MERCOLA HEALTH is an independent contractor and not an agent of the CITY. MERCOLA HEALTH and its contractors, partners, agents, and employees are independent contractors and not employees of the CITY. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the CITY, and MERCOLA HEALTH and its contractors, partners, employees, or agents, under this Agreement.

8. **Audit and Inspections; Job Compliance Check.** MERCOLA HEALTH agrees that any records, with respect to MERCOLA HEALTH obligations to the CITY under this Agreement, shall be made available to the CITY at any time during normal business hours



upon ten (10) days written notice to MERCOLA HEALTH, no more than once every calendar year, to audit, examine, and make excerpt or transcripts of all data relevant confirming MERCOLA HEALTH compliance with the Agreement. Any audit shall be conducted to Generally Accepted Government Auditing Standards (GAGAS), or Generally Accepted Auditing Standards (GAAS), as applicable at the time of audit. Notwithstanding the foregoing, (1) MERCOLA HEALTH shall not be required to make available any documents or information that (i) are attorney client privileged, (ii) constitute a trade secret under the Uniform Trade Secret Act, or (iii) which are determined exempt from disclosure under Florida's Public Records Laws as trade secrets; and (2) with respect to any information regarding the amount of employee wages for specific Jobs, the City shall not release any information determined exempt from disclosure under Florida's Public Records Laws. Any deficiencies noted in audit reports prepared by the CITY, or its consultants, must be corrected by MERCOLA HEALTH within thirty (30) days after notice of said deficiencies were received by MERCOLA HEALTH. The CITY shall also conduct a written annual compliance check on the number of employees employed by MERCOLA HEALTH on each anniversary date of this Agreement. Subject to restrictions set forth in this paragraph, MERCOLA HEALTH shall fully cooperate with the CITY's request providing access to appropriate payroll documentation to verify the number of employees and whether such employees are part-time or full-time and satisfy the income requirements within this Agreement. Failure of MERCOLA HEALTH to reasonably comply with the above audit requirements will constitute a material breach of this Agreement and may result, at the sole discretion of the CITY, in the withholding of future economic incentives, terminating pending economic incentives, and/or termination of any other obligation required hereunder.

9. **Promotion of Economic Incentives.** Either party may issue news releases, public announcements, advertisements, or other form of publicity concerning its efforts regarding this Agreement. However, unless otherwise agreed, the party publicizing its efforts shall provide a courtesy copy of any written material to the other party for review and comments prior to publication.
10. **Severability.** Should any paragraph or any part of any paragraph of this Agreement be rendered void, invalid, or unenforceable for any reason, the remaining paragraphs, or part of any paragraph, shall remain in full force and effect.
11. **Integration; Modification; Exhibits.** The drafting, execution, and delivery of this Agreement by the parties has not been induced by any representations, statements, warranties, or agreements other than those expressed herein. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof unless expressly referred to herein. Modifications of this Agreement shall only be made in writing, approved by City Council and signed by both parties. Any exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except if there is conflict between an exhibit and provisions of this Agreement, the provisions of this Agreement shall prevail over the exhibit.
12. **Attorney's Fees.** In any action brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney fees and costs.

13. **Headings.** All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
14. **Waiver.** No failure to insist on the prompt performance by MERCOLA HEALTH of its obligations under this Agreement shall be construed as a waiver by the CITY of its rights to demand performance. Further, any waiver by the CITY of any breach or violation of MERCOLA HEALTH obligations under this Agreement shall not be construed as continuing waiver or consent to any subsequent breach or violation or impede the CITY'S ability to enforce the terms of this Agreement.
15. **Notices.** All notices required or permitted under this Agreement and any written consents or approvals requires hereunder shall be in writing (including telecopy communication) and shall be (as elected by the person giving such notice) hand-delivered by messenger or overnight courier service, telecopied or mailed by registered or certified mail (postage pre-paid), returned receipt requested, and addressed to each party at their respective addresses as set forth below or to such other addresses any party may designate by notice complying with the terms of this Paragraph:

For the City of Cape Coral:  
Attn: City Manager  
City of Cape Coral  
1015 Cultural Park Blvd. (City Hall)  
P.O. Box 150027  
Cape Coral, FL 33915-0027

With copies provided to the City Attorney's office and the City's Economic Development Division

For MERCOLA.COM HEALTH RESOURCES:  
Name: Steve Rye  
Title: CEO, NHP Innovations, LLC  
Address: 125 SW 3<sup>rd</sup> Place, Suite 205  
Cape Coral, Florida 33991

Such notice, request, or other communication shall be considered given and deemed delivered: (a) on the date delivered if by personal delivery or courier service; (b) on the date of transmission with confirmed answer back if by telecopier if transmitted prior to 5:00 p.m. on a business day, and on the next business day if transmitted after 5:00 p.m. or on a non-business day, provided that copy of the notice is provided within two business days thereafter by one of the other methods permitted by this Paragraph: or (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

16. **Term; Termination; Termination by Parties.**

Unless sooner terminated by the CITY or MERCOLA HEALTH under this Agreement or terminated by mutual consent, the Agreement shall terminate five (5) years from the effective date of this Agreement. The City may terminate this Agreement in the event of a material

breach of any provision of this Agreement by MERCOLA HEALTH. The CITY may also terminate this Agreement if: (i) MERCOLA HEALTH is declared bankrupt or insolvent; (ii) MERCOLA HEALTH adopts a plan or resolution of liquidation of MERCOLA HEALTH or substantially sells all of its assets; (iii) MERCOLA HEALTH engages in fraud or misleading compliance reporting against the CITY; or (iv) a receiver or trustee is appointed on behalf of MERCOLA HEALTH for purposes of taking control of substantially all of MERCOLA HEALTH'S assets within the City of Cape Coral, Florida or the said assets are judicially seized for any reasons, and possession of said assets are not released to MERCOLA HEALTH within ninety (90) days. MERCOLA HEALTH may terminate the Agreement in the event of a material breach of any provision of this Agreement by the CITY which shall include, but not be limited to, failing to fulfill any of its legal obligations under Paragraph 4.

Prior to exercising its right to terminate this Agreement, the terminating party shall provide the other party with written notice of termination setting forth the reason for termination ("Default") and at least a thirty (30) day opportunity to cure the Default.

17. **Assignment.** This Agreement and the grant provided hereunder shall not be assigned by MERCOLA.COM without the prior written consent of the CITY.
18. **No City Obligation for Future Funds.** No provisions within this Agreement shall be construed as requiring the CITY to provide additional economic incentives of any kind, other than as specifically provided herein.
19. **Conflict of Interest.** MERCOLA HEALTH represents and warrants, and this Agreement is being made by the CITY in reliance thereon, that MERCOLA HEALTH and its officers, employees, and agents are neither officers nor employees of the CITY. Further, that no consideration of any kind is being paid, transferred, or conveyed directly to any CITY officer or employee, or indirectly to any CITY officer or employee through some other third party including a relative or legal entity, for the CITY'S commitment to enter into this Agreement.
21. **Representations of MERCOLA HEALTH.** MERCOLA HEALTH represents to the CITY that (i) MERCOLA.COM is an entity organized in the State of Florida and duly authorized to conduct business in Florida; (ii) MERCOLA HEALTH has the authority to enter into the Agreement and perform the requirements of this Agreement; (iii) to MERCOLA HEALTH'S best knowledge, MERCOLA HEALTH'S performance under this Agreement shall not violate any applicable judgment, order, law or regulation; (iv) to MERCOLA HEALTH'S best knowledge, MERCOLA HEALTH'S performance under this Agreement shall not result in the creation of any claims against the CITY for money or performance, any lien, charge, encumbrance or security interest upon any asset of the CITY; (v) MERCOLA HEALTH shall have sufficient capital to perform its obligations under this Agreement: and (vi) MERCOLA HEALTH does not require any third party consent to execute, deliver and perform its obligations under this Agreement unless otherwise stated in this Agreement.
22. **MERCOLA HEALTH'S Continuing Disclosure Requirement.** MERCOLA HEALTH must promptly notify the CITY of any developments that materially and adversely impact this Agreement and MERCOLA HEALTH'S obligations stated herein including, but not limited to, compliance with all applicable laws, rules, and regulations, initiation of any lawsuits or bankruptcy proceedings, labor disputes, and changes in business operations.

23. **No Delegation of Police Power.** MERCOLA HEALTH shall not pledge the credit of the CITY nor make the CITY a guarantor of payment or surety for any contract, debt, or obligation, judgment, lien, or any form of indebtedness. The parties agree that this Agreement does not nor shall it be construed as delegation of any of the CITY'S authority or police powers to MERCOLA HEALTH.
24. **Approval by City Council.** This Agreement, and any subsequent modifications or revisions, shall be approved by the City Council of the City of Cape Coral, Florida.

**IN WITNESS THEREOF**, this Agreement is entered into as of the day and year the last party signs this Agreement as stated below.

WITNESS:

CITY OF CAPE CORAL, FLORIDA

\_\_\_\_\_

By: \_\_\_\_\_

John S. Szerlag, City Manager

\_\_\_\_\_  
Printed name

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Kimberly Bruns, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney's Office

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by John S. Szerlag, City Manager for the City of Cape Coral, for the City of

Cape Coral who is personally known to me.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

WITNESSES:

\_\_\_\_\_

MERCOLA.COM HEALTH RESOURCES,  
LLC

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_

Name: Joseph M. Mercola

\_\_\_\_\_

Its: Manager

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_ the \_\_\_\_\_ of MERCOLA.COM HEALTH RESOURCES (check one) \_\_ who is personally known to me or \_\_ who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_



MERCOLA.COM  
MERCOLA.COM HEALTH RESOURCES  
MERCOLA CONSULTING SERVICES



Jobs Incentive Request

August 19, 2019





# ABOUT DR. MERCOLA

- Dr. Joseph Mercola is the man behind the brand. He is a Board Certified family doctor, best selling author and passionate health philanthropist.
- Founder of the world's #1 natural health website in 1997.
- Voted "Ultimate Wellness Game Changer" in 2009 by Huffington Post.
- Has appeared on Dr. Oz, CNN, Today Show and ABC's World News Tonight and been featured in Time and Forbes magazines.
- Has Donated millions of dollars to support select charities involved in health and wellness.



# PROJECT



- Mercola acquired the Mid-Cape Corporate Center for \$3.7 million in 2016 and established an office there with an interest in establishing a new world headquarters for their business.
- Mercola had 12 employees at that site with an average wage of \$73,388.
- Mercola relocated 19 existing employees from Chicago, IL and hired 69 new local employees for their Cape Coral Operation.
- Mercola made further investments in their Cape Coral facility through \$1.3 million in renovations and equipment to accommodate the new employees. They are currently in permitting to add greenhouses, organic cafeteria, walking paths and additional greenspace, with an additional estimated \$1 million investment.
- Total investment will be in excess of \$6 million when completed.





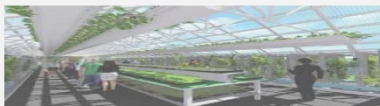
EXISTING SITE

**THE CAFE**  
HEALTH CENTERED AND NUTRITIOUS FARE, SERVED WITH A CONSCIENCE AND A VIEW OF THE REGENERATIVE GARDENS



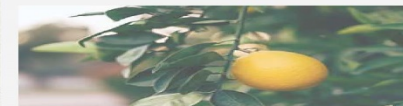
### GREENHOUSE

WORKING GMO FREE SEEDS INTO TOXIN FREE REGENERATIVE FARMING PRACTICE (+/- 2,200' SQ. PER HOUSE)



### ORCHARDS

GROWING HONEST FOOD IN THE NATIVE ENVIRONMENT, WHILE FEEDING THE SOUL



### KEY

- A. OUTDOOR DINING SHELTER (+/- 1,000' SQ.)
- B. OUTDOOR DINING DECK (SCALABLE)
- C. REGENERATIVE FARM, DEMONSTRATION GARDENS
- D. EDUCATION BUILDINGS (+/- 2,200' SQ. PER HOUSE)
- E. CENTRAL WAYFINDING ELEMENT
- F. OBSERVATION TRAIL & PLATFORM
- G. MEDITATION SPACE
- H. OPERATIONS & MAINTENANCE
- I. FUTURE GREENHOUSE EXPANSION (+/- 2,200' SQ. PER HOUSE)
- J. EXISTING HQ BUILDING
- K. OVERFLOW PVIOUS PARKING



SCALE : 1" = 50'



### WAYFINDING

CENTRAL LANDMARK TOOL THAT ADDS IDENTITY TO THE CAMPUS AND CONNECTS THE NATURAL AND BUILT ENVIRONMENTS

The Conceptual Master Plan for the Mercola Campus, nestled on a 16.95-acre site, assembles a spectrum of design methods in support of key health principles in one inviting place. The plan combines best practices in landscape architecture and planning with evidence-based health and wellness interventions. The environmental design engages both the built and natural environment as a vehicle to

support health and well-being. The fusion of landscape features and cultivation practices provides a healing and educational setting for visitors and staff, with the proven benefits from movement, nutrition, and the outdoors. The result is a dynamic campus where the Mercola Headquarters can flourish, as it hosts a plethora of individuals committed to a holistic life and united by a love for our planet.



## MERCOLA CAMPUS CONCEPTUAL MASTER PLAN

MARCH 2019

PREPARED BY





# REQUESTED INCENTIVE



- Requesting a job creation incentive of \$1,500 per job relocated and created over a period of three years, to be paid as of date confidentiality agreement was signed.
- The total amount of the incentive will not exceed \$132,000 to be paid out over 3 years.
- This incentive will assist Mercola with consolidation of their operations, relocation of key employees and hiring of local employees in support of their continued growth.
- The final average wage at Mercola is \$60,000
- The Return on Investment for the City's requested \$132,000 incentive is \$46 for every incentive dollar invested. The maximum City investment is \$1,500 per job.



# ADDRESSING CAPE CORAL'S NEEDS



- This project, in total, will represent over 88 new jobs to Cape Coral at an average wage in excess of \$60,000.
- These are well paying jobs and meet the City's need for higher wage jobs as outlined in the EDO Master Plan adopted by City Council in 2017
- Adding new jobs and investment is also part of the Economic Development Goal in the City's Strategic Plan and the EDO Master Plan.



# REQUESTED ACTION

- Informational Only: 1) Mercola Consulting Service Agreement in the amount of \$33,000 for 22 jobs created. 2) Mercola.com in the amount of \$22,500 for 15 jobs created.
- Staff recommends approval of Resolution 274-19 awarding a Job Incentive Agreement between Mercola.com Health Resources, LLC and the City of Cape Coral in the amount of \$76,500 for 51 jobs created and authorizing the City Manager or Designee to execute all required documents related to the project and subsequent incentive payments per the agreement.

# QUESTIONS?







EXISTING SITE

## THE CAFE

HEALTH CENTERED AND NUTRITIOUS FARE, SERVED WITH A CONSCIENCE AND A VIEW OF THE REGENERATIVE GARDENS



## GREENHOUSE

WORKING GMO-FREE SEEDS INTO TOXIN-FREE REGENERATIVE FARMING PRACTICE (+/- 2,200' SQ. PER HOUSE)



## ORCHARDS

GROWING HONEST FOOD IN THE NATIVE ENVIRONMENT, WHILE FEEDING THE SOUL

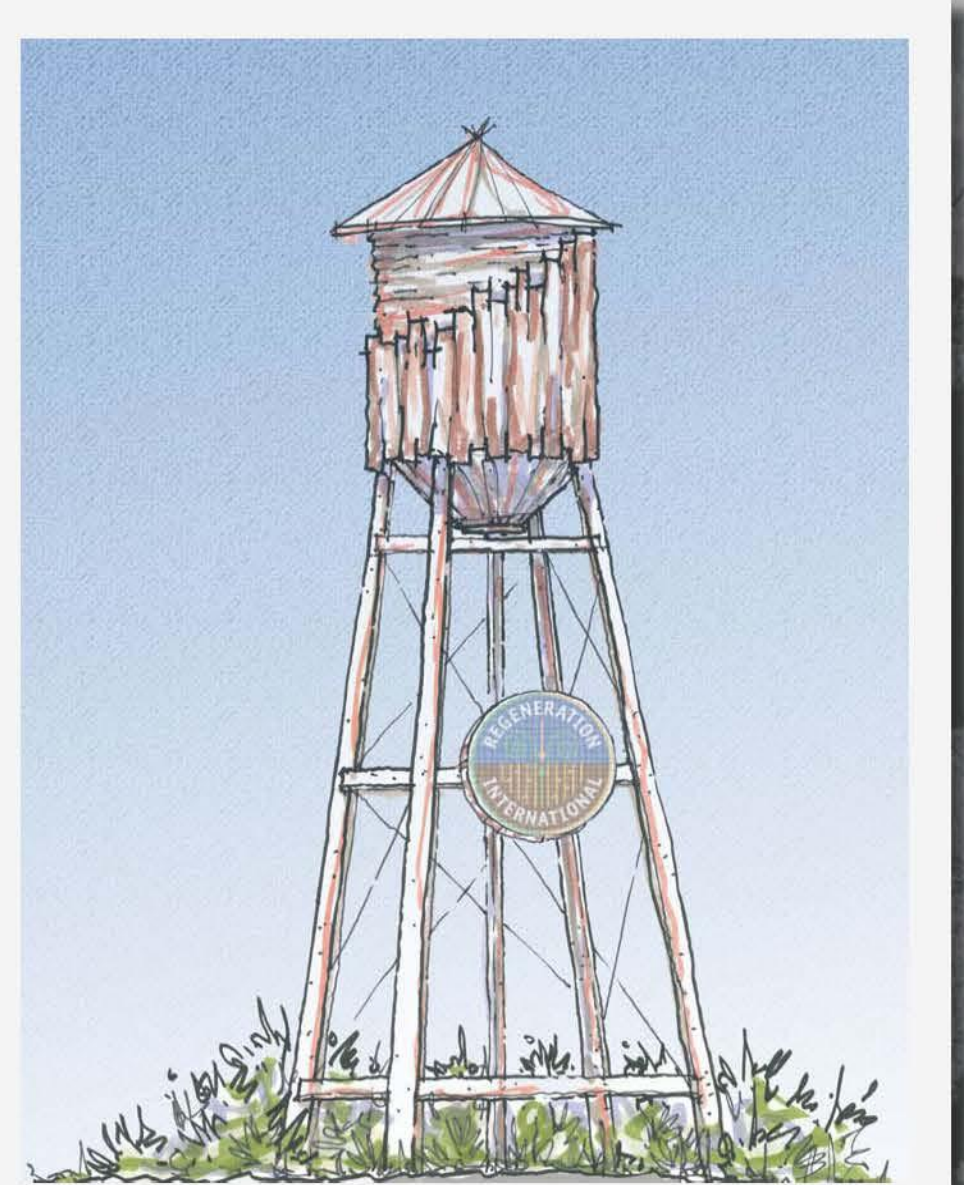


## KEY

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- B. OUTDOOR DINING DECK (SCALABLE)
- C. REGENERATIVE FARM, DEMONSTRATION GARDENS
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- E. CENTRAL WAYFINDING ELEMENT
- F. OBSERVATION TRAIL & PLATFORM
- G. MEDITATION SPACE
- H. OPERATIONS & MAINTENANCE
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- J. EXISTING HQ BUILDING
- K. OVERFLOW PERVIOUS PARKING



SCALE : 1" = 50'



## WAYFINDING

CENTRAL LANDMARK TOOL THAT ADDS IDENTITY TO THE CAMPUS AND CONNECTS THE NATURAL AND BUILT ENVIRONMENTS

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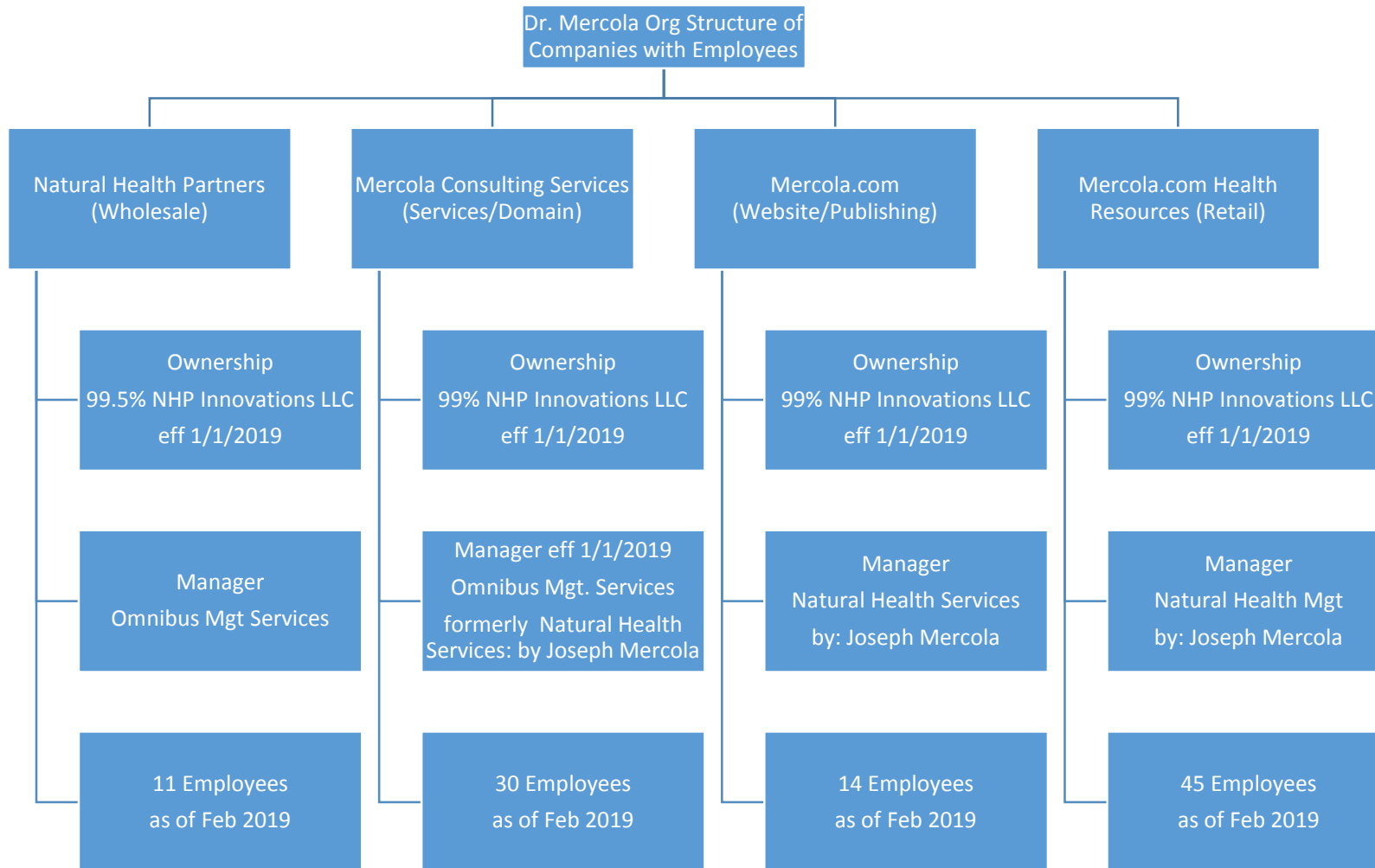
# MERCOLA CAMPUS CONCEPTUAL MASTER PLAN

MARCH 2019

PREPARED BY







\* Operating Agreement

\*\* SunBiz

\*

\*\*



**APPLICATION\***  
***Private Companies***

**1. SIGNATURE**

The undersigned person hereby affirms that he or she has been duly authorized and empowered to verify, execute and deliver this Application, that he or she will read this Application (including all attachments hereto) and he or she has knowledge of all of the facts stated herein, and that this Application, and all information submitted in connection herewith, shall be complete and accurate and shall contain no misstatements, misrepresentations, or omissions of material facts, to the best of his or her knowledge and belief.



Signature

5/14/2018

Date

Brad Plachter

Name

Controller, Natural Health Partners

Title

Mercola Group of Companies

Company

**2. BUSINESS INFORMATION**

A. Legal name of the Applicant: Mercola Group of Companies (Mercola.com Health Resources, Mercola.com, Mercola Consulting Services, Natural Health Partners, Innovations Health Properties)

B. Please provide contact information for the primary contact at the Applicant.

Brad Plachter

Controller

Name

Title

(239)673-2125 ext 5542

bradp@mercola.com

Telephone No.

Email Address

125 SW 3<sup>rd</sup> Place, Ste 205

Street Address

Cape Coral

FL

33991

USA

City

State

Zip Code

Country

\* For an explanation of certain capitalized terms used in this Application, please see Appendix 1.  
Revised 01/16

C. Name of Ultimate Parent Company (if applicable):

City

State/Province

Country

D. List each **Principal Executive Officer, director (or any person who performs a similar function regardless of title, e.g., a manager of a limited liability company or a general partner of a limited partnership) of the Applicant and the Ultimate Parent Company** (if applicable), and **any person or entity that Controls the Applicant**. Attach additional sheets if necessary.

<b>Name<sup>1</sup></b> <i>First, Middle Initial, Last</i>	<b>Title or Position<sup>2</sup></b>	<b>Percent of Ownership if Greater than 50%<sup>3</sup></b>
Steve, Rye	Chief Executive Officer	
	President (if different than CEO)	
	Chief Operating Officer	
Amalia, Legaspi	Chief Financial Officer	
	Chief Legal Officer/General Counsel	
	Director (i.e., member of the board of directors if a corp.) or Manager (i.e., member of the board of managers if an LLC)	
	Director (i.e., member of the board of directors if a corp.) or Manager (i.e., member of the board of managers if an LLC)	
	Director (i.e., member of the board of directors if a corp.) or Manager (i.e., member of the board of managers if an LLC)	
Joseph, Mercola	Equity Owner (if greater than 50%)	89.5

E. Applicant's Federal Employer Identification Number:

NHP 81-2694826  
MHR 26-1568365  
MCS 26-4388573  
COM 88-0499506  
IHP 81-1145353

F. Applicant's Reemployment Assistance Number (Formerly Unemployment #)

NHP 3382041

G. Applicant's Florida Sales Tax Registration Number (if applicable):

NHP 46-8017071907-6  
MHR 78-8016603561-5

H. Last day of Applicant's fiscal year (e.g., December 31, September 30, etc.):

12/31

<sup>1</sup> If not applicable, write "N/A".

<sup>2</sup> For example, chief executive officer, director, stockholders that directly or indirectly own more than 50% of the capital stock or other equity interests of the Applicant or the Ultimate Parent Company, etc.

<sup>3</sup> This should **only be included** if the individual directly or indirectly **owns more than 50%** of the capital stock or other equity interests of the Applicant or the Ultimate Parent Company.



I. Total number of employees (on a Full-Time Equivalent Job Basis) who are currently employed by the Ultimate Parent Company and its Subsidiaries (including the Applicant) in Florida: 11

J. Total number of employees (on a Full-Time Equivalent Job Basis) who are currently employed by the Ultimate Parent Company and its Subsidiaries (including the Applicant) worldwide: 161

K. What type of legal entity is the applicant?

C-Corporation	<input type="checkbox"/>	S-Corporation	<input type="checkbox"/>
Limited Liability Company	<input checked="" type="checkbox"/>	Partnership	<input type="checkbox"/>

L. Is it presently anticipated that the Applicant will have corporate income tax liability in Florida?<sup>4</sup>

Yes ☐ No ☒

M. Is the applicant a small business (i.e., is the aggregate net worth of the Applicant, the Ultimate Parent Company and its Subsidiaries (other than the Applicant) less than \$5,000,000 or does the Applicant have a Small Business Administration 8(a) certification)?

Yes ☐ No ☒

### 3. PROJECT OVERVIEW

A. Which of the following best describes the Applicant:

- ☒ New business to Florida (Mercola.com Health Resources, Mercola.com, Mercola Consulting Services)
- ☒ Existing Florida business creating and/or retaining jobs<sup>5</sup> (Natural Health Partners, Innovations Health Properties)

B. How many employees of the Applicant, the Ultimate Parent Company and its Subsidiaries (other than the Applicant) will be transferred from other Florida locations in connection with the Project (on a Full-Time Equivalent Job Basis), please indicate the number of employees being transferred and from which Florida county? 0

C. Please describe the Project, including the specific business activity(ies) and functions of the Project:

Headquarter expansion of all Mercola companies to Cape Coral, Florida

D. What is the anticipated commencement date of the Project? 6/1/2018

<sup>4</sup> In most cases, limited liability companies, S corporations, and partnerships will not have corporate income tax liability.

<sup>5</sup> A QTI Tax Refund award cannot be granted for existing Florida jobs.

- E. Break down of the Project's primary business activity(ies)/job functions and the corresponding wages:

Applicant's Activities	6 Digit NAICS Code(s)	Project Function (total = 100%)	Average Annualized Wage (\$)
90 New Employees in Florida	424490, 446191, 541611	100%	\$58,000
		%	\$
		%	\$

- F. Please provide the address of the proposed permanent location of the Project:

125 SW 3<sup>rd</sup> Place

Street Address

Cape Coral

FL

33991

City

State

Zip Code

- G. Will the Project be located in a current or proposed Brownfield Area?

Yes ☐ No ☒

If Yes, does the proposed site have a Brownfield Site Rehabilitation Agreement in place or are you pursuing one?

Yes ☐ No ☒ If yes, identify the site number?

Will the Project be located in a designated Rural Area of Opportunity?

Yes ☐ No ☒ If yes, which area?

Will the Project be located in an Urban area?<sup>6</sup>

Yes ☐ No ☒ If yes, describe?

- H. Which of the following best describes the location of the Project:

- ☐ Regional headquarters If it is a regional headquarters, what region?
- ☒ National headquarters
- ☐ International headquarters
- ☐ Not applicable

- I. Please provide an estimate of the percentage of goods or services from the Project that will be sold or delivered to customers outside of Florida:

N/A Explain, if necessary:

#### 4. JOB AND WAGE OVERVIEW

- A. How many new-to-Florida Full-Time Equivalent Jobs are projected to be created 90 as part of the Project?
- B. If the Applicant operates in Florida, how many of the Applicant's Full-Time Equivalent Jobs in Florida that would have otherwise moved to another state 11 are projected to be retained as part of the Project?

<sup>6</sup> An Urban area may include a Community Redevelopment Area (CRA), Urban Job Tax Credit eligible area, Federal Empowerment Zone, and an Urban Revitalization Area.



- C. What is the projected annualized average wage (excluding benefits) of the **retained** Full-Time Equivalent Jobs in Florida listed in Section 4(B) above (if any)?<sup>7</sup> \$128,000
- D. What is the projected annualized average wage (excluding benefits) of the new Full-Time Equivalent Jobs Florida jobs created as part of the Project?<sup>8</sup> \$58,000
- E. What is the projected annualized average cost to the Applicant of benefits for each Full-Time Equivalent Job created and retained as part of the Project? \$24,000 est
- F. Please list the benefits that are included in the above calculation (e.g., health insurance, matching 401(k) contributions, etc.)?  
Medical, Dental, Vision, STD, LTD, Life, 401k Match, Gym, Lunch
- G. Does the applicant contract with a third-party company to provide payroll services? Yes ☒ No ☐

### 5. CAPITAL INVESTMENT OVERVIEW

- A. Describe the capital investment in connection with the Project in real and personal property (Examples: construction of new facility; remodeling of facility; upgrading, replacing, or buying new equipment.):  
Remodeling of facility that includes leased space with renovations from related company.

- B. Identify whether the Project will be located in a/an:
- ☒ Leased space with renovations or build out
  - ☐ Newly constructed building(s) on newly acquired land
  - ☐ Newly constructed building(s) on previously acquired land
  - ☐ Newly acquired existing building(s) with renovations
  - ☒ Addition to previously acquired existing building(s)
  - ☐ Other (please describe in 5A above)

- C. List the projected capital investment to be made **in** Florida in connection with the Project (by type and year):

Calendar Year :	2016	2017	2018	2019		Total
Land or Building Purchase	\$4M	\$	\$	\$	\$	\$4M
Construction / Renovations	\$	\$	\$800k	\$500k	\$	\$1.3M
Manufacturing Equipment	\$	\$	\$	\$	\$	\$
R&D Equipment	\$	\$	\$	\$	\$	\$
Other Equipment (computer equipment, office furniture, etc.)	\$	\$	\$500k	\$	\$	\$500k
Total Capital Investment	\$4M	\$	\$1.3M	\$500k	\$	\$5.8M

- D. List the projected capital investment to be made **outside** of Florida, for equipment that will be located at the Project location in connection with the Project (by type and year):

<sup>7</sup> All cash payments to the employees (other than reimbursements of business expenses) should be included.

<sup>8</sup> All cash payments to the employees (other than reimbursements of business expenses) should be included.



Calendar Year :						Total
Manufacturing Equipment	\$	\$	\$	\$	\$	\$
R&D Equipment	\$	\$	\$	\$	\$	\$
Other Equipment (computer equipment, office furniture, etc)	\$	\$	\$	\$	\$	\$
Total Capital Investment	\$	\$	\$	\$	\$	\$

- E. What is the estimated square footage of the new or expanded facility?  
25,000+

#### 6. COMPETITIVE LANDSCAPE

- A. What role will the incentive(s) play in the Applicant's decision to locate the Project in Florida?  
Comparison to keeping headquarter in IL
- B. What other states or countries (including the cities) is the Applicant considering for the Project?  
Hoffman Estates, IL
- C. What advantages or incentives offered by these locations does the Applicant consider important in its decision?  
Job creation, tax, and capital investment incentives
- D. What advantages or disadvantages offered by the proposed Florida location does the Applicant consider important in its decision?  
Job creation, tax, and capital investment incentives
- E. Indicate any additional internal or external competitive issues impacting the Applicant's decision regarding the Project's location?  
N/A

#### 7. DISCLOSURE

- A. In the past 10 years, has (1) the Applicant, the Ultimate Parent Company or any of its Subsidiaries, (2) any Principal Executive Officer of the Applicant or the Ultimate Parent Company or (3) any entity that any Principal Executive Officer of the Applicant or the Ultimate Parent Company Controls or Controlled been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any Felony or Misdemeanor involving fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery or a conspiracy to commit any of these offenses?  
If yes,  
Yes ☐ No ☒ explain?
- B. Is (1) the Applicant, the Ultimate Parent Company or any of its Subsidiaries, or (2) any Principal Executive Officer of the Applicant or the Ultimate Parent Company or (3) any entity that any Principal Executive Officer of the Applicant or the Ultimate Parent Company Controls (a) the subject of a pending criminal prosecution or governmental enforcement action in any jurisdiction; (b) to the best of the Applicant's knowledge after due inquiry, the subject of any criminal, civil, or regulatory investigation by any law enforcement authority in the State of Florida, or any regulatory body in the State of Florida; or (c) subject to any unsatisfied tax liens in Florida or judgment liens in any jurisdiction in the U.S.?  
If yes,  
Yes ☐ No ☒ explain?

- C. In the past 5 years, has (1) the Applicant, the Ultimate Parent Company or any of its Subsidiaries, (2) any Principal Executive Officer of the Applicant or the Ultimate Parent Company or (3) any entity that any Principal Executive Officer of the Applicant or the Ultimate Parent Company Controls or Controlled (a) been named as a DEFENDANT in any civil litigation or arbitration in any jurisdiction, (b) had an application for license, or a license or its equivalent, to practice any profession or occupation denied, suspended or revoked in any jurisdiction, or (c) been subject to a bankruptcy or insolvency petition in any jurisdiction?

Yes ☐ No ☒ If yes,  
explain?

#### **8. CONFIDENTIALITY**

In accordance with Section 288.075 of the Florida Statutes, the Applicant may request that Enterprise Florida, Inc. and the Department of Economic Opportunity maintain the confidentiality of all information regarding the Project (including information contained in this application) for the lesser of a 12 month period after the date of this application (which may be extended for an additional 12 months upon request), 6 months after the issuance of the final project order approving the project or until the information is otherwise disclosed.

Please indicate whether the Applicant is requesting confidential treatment of the Project in accordance with Section 288.075 of the Florida Statutes. (Does not apply to SDST sales tax exemption applicants.)

☒ Yes ☐ No

**\*\*\*PLEASE BE SURE TO ATTACH THE PROPER INCENTIVE ATTACHMENT SHEET(S).\*\*\***



## APPENDIX 1

### EXPLANATION OF TERMS

The following terms used in this Application have the meanings set forth below:

**AFFILIATE** – An entity that is controlled, directly or indirectly, by the ultimate parent entity of such person.

**APPLICANT** – The entity(ies) that will satisfy all job creation and capital investment requirements under the incentive agreement with the Department and which are applying on or amending this Application.

**BROWNFIELD Site with a Brownfield Site Rehabilitation Agreement** – Has the meaning ascribed to such term in Section 288.107 of the Florida Statutes.

**CONTROL** – The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person or entity that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 50% or more of a class of a voting security or has the power to sell or direct the sale of 50% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 50% or more of the capital, is presumed to control that company.

**DEPARTMENT** – The Department of Economic Opportunity.

**FELONY** – For jurisdictions that do not differentiate between a felony and a misdemeanor, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least \$1,000. The term also includes a general court martial.

**FOUND** – Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

**FULL-TIME EQUIVALENT JOB** – One employee or two or more employees (without duplication) who perform at least 35 hours of paid work per week.

**JOBS** – Has the meaning ascribed to such term in Section 288.106 of the Florida Statutes.

**MISDEMEANOR** – For jurisdictions that do not differentiate between a felony and a misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than \$1,000. The term also includes a special court martial.

**NAICS** – Those classifications contained in the North American Industry Classification System, as published in 2012 by the Office of Management and Budget, Executive Office of the President, and updated from time to time.

**ORDER** – A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an order.

**PRINCIPAL EXECUTIVE OFFICER** – With respect to any entity, such entity's chief executive officer, chief financial officer, chief operations officer or any person who performs similar functions regardless of title.

**PROJECT** – Has the meaning ascribed to such term in Section 288.106 of the Florida Statutes.

**RURAL AREA OF OPPORTUNITY** – Has the meaning ascribed to such term in Section 288.0656 of the Florida Statutes.

**SUBSIDIARY** – An entity that is directly or indirectly controlled by the Applicant or the Ultimate Parent.

**ULTIMATE PARENT** – An entity that directly or indirectly controls the Applicant, which is not directly or indirectly controlled by any other entity.



# Qualified Target Industry Tax Refund Attachment to the Application

**Mercola Group of Companies**  
Name of Business

FOR EFI USE ONLY		
Date Received	Date Revised	Date Completed
EFI Project Number		

*Must be a separate business unit or reporting unit of a business unit that is or will be registered with the State of Florida for unemployment compensation purposes.*

**IMPORTANT NOTE:** This application must be filed and the incentive approved **prior** to making the decision to expand an existing Florida business unit or to locate a new business unit in Florida.

\*\*\*Be sure to submit the Application and Local Support Resolution<sup>1</sup> following passage by the City / County\*\*\*

## 1. PROJECT EMPLOYMENT AND WAGE COMMITMENTS

A. What is the total number of net new full-time equivalent Florida jobs created by the project at the business unit<sup>2</sup>? \_\_\_\_\_

90

B. Provide the job creation schedule to which you commit: (Please limit the phases to a maximum of three consecutive years and job creation to no less than ten jobs in the first year).

Phase	Number of net new full-time equivalent Florida jobs created in the business unit	Date by which jobs will be created
I	75	12/31/2018
II	15	12/31/2019
III		12/31/
Total	90	

C. For the purposes of certification, agreement, and claim review, indicate the average wage and corresponding threshold (percentage) to which you commit:

Check the relevant box (only one) and fill in the first field (wage commitment) and second field (county, state, or MSA used).

☒ \$58,000, which is at least 115% of the average wage in Lee County.

☐ \$\_\_\_\_, which is at least 150% of the average wage in \_\_\_\_.

☐ \$\_\_\_\_, which is at least 200% of the average wage in \_\_\_\_.

## 2. LOCAL FINANCIAL SUPPORT

A. Identify the local government(s) anticipated to provide local financial support<sup>3</sup>:  
Lee County

B. Indicate the date(s) the QTI support resolution(s) is / are anticipated to be passed by the local government:  
\_\_\_\_\_

<sup>1</sup> Submit the resolution adopted by the local governing body recommending the applicant be approved as a QTI Business unit and indicating the amount of local financial support that has been committed. Resolution should clearly indicate waivers requested and justification for such waivers.

<sup>2</sup> Must be a minimum of 10 new jobs and a 10 percent increase in current business unit employment (if an existing Florida business).

<sup>3</sup> The total QTI award may not exceed five times the local financial support provided by the community. If the community has requested a local financial support waiver or the support is provided in the form of ad valorem tax abatement, the QTI award will be reduced by this amount.



# Qualified Target Industry Tax Refund Attachment to the Application

## 3. SIGNATURES



Signature of Individual Completing this Attachment  
(if different from Application)

125 SW 3<sup>rd</sup> Place, Ste 205

Address (if different)

5-14-2018

Date

(239)673-2125 ext 5542

Phone Number (if different)



Signature (Authorized Company Officer) REQUIRED

Steve Rye, CEO

5/14/18

Date

Name and Title of Authorized Officer

## 4. KEY QTI PROGRAM INFORMATION

- The tax refund claim form will be due by January 31<sup>st</sup> each year for the number of jobs on December 31<sup>st</sup> of the previous calendar year. Tax refunds paid per state fiscal year (July 1 – June 30) may not exceed 25 percent of the total tax refund award associated with the phase(s) scheduled.
- The total award will be equal to \$3,000 (\$6,000 in Enterprise Zones or Rural Counties) times the number of jobs reported in item 1A. Additional per job bonuses may be available; however, the QTI award may not exceed five times the local financial support paid by the community.
  - \$1,000 per job if the average annual wage is at least 150% of the area's average; or \$2,000 per job if the average annual wage is at least 200%.
  - \$2,000 per job if the business falls within a designated high impact sector OR if the business increases exports of its goods through a seaport of airport in the state by at least 10 percent in value or tonnage in each year of receiving a QTI refund.
  - \$2,500 per job if the project locates in a designated Brownfield area (Brownfield Bonus).
  - \$1,000 per job if the local financial support is equal to the base QTI award.
- If in any year the applicant does not achieve the job creation schedule outlined in item 1C, but achieves at least 80% of the required net new jobs, the company will receive a pro-rated refund less a 5% penalty of the scheduled award amount for that year. **If job creation falls below 80% of the required jobs, the company will not receive a refund and will be terminated from the program. Similarly, if the average wage falls below the wage committed to in 1C, the company will not receive a refund and will be terminated from the program.**
- For an expanding Florida business unit:
  - Existing number of full-time equivalent Florida jobs must be maintained for the duration of the QTI agreement.
  - The average wage commitment should include wages paid for only the net new to Florida jobs, as shown on the unit's UCT-6 form. The applicant will be required to establish a tracking mechanism to distinguish between existing versus new jobs and employees filling those jobs. Contact Enterprise Florida for more information.
- QTI eligible jobs are those that are physically located within the State of Florida and located at the facility listed as the proposed location address in question 2G of the Application or subsequent QTI contract with the State of Florida. If any jobs will not be physically located at the proposed location address, contact Enterprise Florida to discuss the situation. Jobs that are paid out of the proposed location address facility but are not located at that facility or in the State of Florida are not considered net new jobs for QTI purposes.
- A qualified target industry business that fraudulently claims a refund under 288.106(2), *Florida Statutes*:
  - Is liable for repayment of the refund to the account, plus a mandatory penalty in the amount of 200 percent of the tax refund which shall be deposited into the General Revenue Fund.
  - Is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- Qualified Target Industry Tax Refund: [Section 288.106, Florida Statutes](#).



MERCOLA.COM  
MERCOLA.COM HEALTH RESOURCES  
MERCOLA CONSULTING SERVICES



Jobs Incentive Request

August 19, 2019





# ABOUT DR. MERCOLA

- Dr. Joseph Mercola is the man behind the brand. He is a Board Certified family doctor, best selling author and passionate health philanthropist.
- Founder of the world's #1 natural health website in 1997.
- Has appeared on Dr. Oz, CNN, Today Show and ABC's World News Tonight and been featured in Time and Forbes magazines.



# PROJECT



- Mercola acquired the Mid-Cape Corporate Center for \$3.7 million in 2016 and established an office there with an interest in establishing a new world headquarters for their business.
- Mercola relocated 19 existing employees from Chicago, IL and hired 69 new local employees for their Cape Coral Operation.
- Mercola invested \$1.3 million in renovations and equipment to accommodate the new employees. They are currently in permitting to add greenhouses, organic cafeteria, walking paths and additional greenspace, with an additional estimated \$1 million investment.
- Total investment will be in excess of \$6 million when completed.



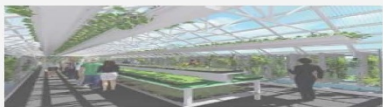


EXISTING SITE

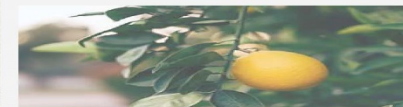
**THE CAFE**  
HEALTH CENTERED AND NUTRITIOUS FARE, SERVED WITH A CONSCIENCE AND A VIEW OF THE REGENERATIVE GARDENS



**GREENHOUSE**  
WORKING GMO FREE SEEDS INTO TOXIN FREE REGENERATIVE FARMING PRACTICE (+/- 2,200' SQ. PER HOUSE)



**ORCHARDS**  
GROWING HONEST FOOD IN THE NATIVE ENVIRONMENT, WHILE FEEDING THE SOUL



**WAYFINDING**  
CENTRAL LANDMARK TOOL THAT ADDS IDENTITY TO THE CAMPUS AND CONNECTS THE NATURAL AND BUILT ENVIRONMENTS

**KEY**

- A. OUTDOOR DINING SHELTER (+/- 1,000' SQ.)
- B. OUTDOOR DINING DECK (SCALABLE)
- C. REGENERATIVE FARM, DEMONSTRATION GARDENS
- D. EDUCATION BUILDINGS (+/- 2,200' SQ. PER HOUSE)
- E. CENTRAL WAYFINDING ELEMENT
- F. OBSERVATION TRAIL & PLATFORM
- G. MEDITATION SPACE
- H. OPERATIONS & MAINTENANCE
- I. FUTURE GREENHOUSE EXPANSION (+/- 2,200' SQ. PER HOUSE)
- J. EXISTING HQ BUILDING
- K. OVERFLOW PVIOUS PARKING



SCALE : 1" = 50'



The Conceptual Master Plan for the Mercola Campus, nestled on a 16.95-acre site, assembles a spectrum of design methods in support of key health principles in one inviting place. The plan combines best practices in landscape architecture and planning with evidence-based health and wellness interventions. The environmental design engages both the built and natural environment as a vehicle to

support health and well-being. The fusion of landscape features and cultivation practices provides a healing and educational setting for visitors and staff, with the proven benefits from movement, nutrition, and the outdoors. The result is a dynamic campus where the Mercola Headquarters can flourish, as it hosts a plethora of individuals committed to a holistic life and united by a love for our planet.



MERCOLA CAMPUS  
CONCEPTUAL MASTER PLAN

MARCH 2019

PREPARED BY





# REQUESTED INCENTIVE



- Requesting a job creation incentive of \$1,500 per job relocated and created over a period of three years.
- The total amount of the incentive will not exceed \$132,000.
- The final average wage at Mercola is \$60,000
- The Return on Investment for the City's requested \$132,000 incentive is \$46 for every incentive dollar invested. The maximum City investment is \$1,500 per job.

# ADDRESSING CAPE CORAL'S NEEDS



- This project, in total, will represent over 88 new jobs to Cape Coral at an average wage in excess of \$60,000.
- These are well paying jobs and meet the City's need for higher wage jobs as outlined in the EDO Master Plan adopted by City Council in 2017
- Adding new jobs and investment is also part of the Economic Development Goal in the City's Strategic Plan and the EDO Master Plan.





# REQUESTED ACTION

- Staff recommends approval of Resolution 274-19 awarding a Job Incentive Agreement between Mercola.com Health Resources, LLC and the City of Cape Coral in the amount of \$76,500 for 51 jobs created and authorizing the City Manager or Designee to execute all required documents related to the project and subsequent incentive payments per the agreement.

# QUESTIONS?



MERCOLA.COM, LLC  
MERCOLA.COM HEALTH RESOURCES, LLC  
MERCOLA CONSULTING, LLC



Jobs Incentive Request

August 19, 2019







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- Mercola relocated 19 existing employees from Chicago, IL and hired 69 new local employees for their Cape Coral Operation since May 2018.
- Mercola invested \$1.3 million in renovations and equipment to accommodate the new employees. They are currently in permitting to add greenhouses, organic cafeteria, walking paths and additional greenspace, with an additional estimated \$1 million investment.
- Total investment will be in excess of \$6 million when completed.



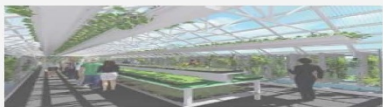


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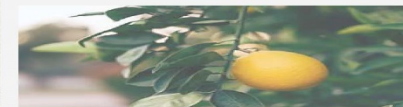
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MERCOLA CAMPUS  
CONCEPTUAL MASTER PLAN

MARCH 2019

PREPARED BY





# REQUESTED INCENTIVE



- Requesting a job creation incentive of \$1,500 per job relocated and created over a period of three years from May 29, 2018 for the three entities.
- The total amount of the incentive will not exceed \$132,000 for the three Mercola entities.
- Informational Only: 1) Mercola Consulting Service Agreement in the amount of \$33,000 for 22 jobs (14 new and 8 relocated). 2) Mercola.com in the amount of \$22,500 for 15 jobs (11 new and 4 relocated). 3) Mercola.com Health Resources in the amount of \$76,500 for 51 jobs (48 jobs created and 3 jobs relocated). All 3 entities have the same ownership
- The average wage at Mercola is \$60,000, well above Lee County average wage of \$43,979
- The Return on Investment for the City's requested \$132,000 incentive is \$46 for every incentive dollar invested. The maximum City investment is \$1,500 per job.

# ADDRESSING CAPE CORAL'S NEEDS



- This project, in total, will represent over 88 new jobs to Cape Coral at an average wage in excess of \$60,000.
- These are well paying jobs and meet the City's need for higher wage jobs as outlined in the EDO Master Plan adopted by City Council in 2017
- Adding new jobs and investment is also part of the Economic Development Goal in the City's Strategic Plan and the EDO Master Plan.





# INFORMATIONAL ONLY

- 1) Mercola Consulting Service Agreement in the amount of \$33,000 for 22 jobs created(14 new and 8 relocated).
- 2) Mercola.com in the amount of \$22,500 for 15 jobs created (11 new and 4 relocated). City Manager has authority to approve these requests.

# REQUESTED ACTION

- Staff recommends approval of Resolution 274-19 (Changing the date on Page 2 from January 1, 2019 to May 29, 2018), awarding a Job Incentive Agreement between Mercola.com Health Resources, LLC and the City of Cape Coral in the amount of \$76,500 for 51 jobs created (48 new and 3 relocated) since May 29, 2018, authorizing the City Manager or Designee to execute all required documents related to the project and subsequent incentive payments per the agreement.

# QUESTIONS?

