#### Mayor

Joe Coviello

#### Council Members

District 1: John Gunter

District 2: Dan Sheppard

District 3: Tom Hayden

District 4: Jennifer I. Nelson

District 5: Robert M. Welsh

<u>District 6</u>: Richard Williams <u>District 7</u>: Jessica Cosden



City Manager
Rob Hernandez
City Attorney
Dolores Menendez
City Auditor
Andrea R. Russell
City Clerk
Kimberly Bruns

1015 Cultural Park Blvd. Cape Coral, FL

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

January 6, 2021 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 NELSON

#### 3. PLEDGE OF ALLEGIANCE

A. COUNCILMEMBER NELSON

#### 4. ROLL CALL

 MAYOR COVIELLO, COUNCIL MEMBERS COSDEN, GUNTER, HAYDEN, NELSON, SHEPPARD, WELSH, WILLIAMS

### 5. CHANGES TO AGENDA/ADOPTION OF AGENDA

#### 6. RECOGNITIONS/ACHIEVEMENTS

- A. 2nd Place Digital Cities Award by the Center for Digital Government for Cities with Populations 125,000 to 249,999 - ITS Department
- B. Civilian Awards Presented by Interim Chief of Police Anthony Sizemore and Fire Chief Ryan Lamb

#### 7. APPROVAL OF MINUTES

- A. Regular Meeting December 7, 2020
- B. Special Meeting (Attorney Client Session) December 9, 2020
- C. Regular Meeting December 14, 2020

### 8. CITIZENS INPUT TIME

A maximum of 60 minutes is set for input of citizens on matters concerning the Consent Agenda and City Government within Council jurisdiction to include Resolutions appearing in Sections other than Public Hearings and Public Input; 3 minutes per individual.

#### 9. BUSINESS

#### A. CONSENT AGENDA

- (1) Resolution 274-20 Award Invitation to Bid #BPW2110AP Major Road Resurfacing FY2021 to Community Asphalt Corporation for asphalt resurfacing sections of three different major roadways totaling approximately 19 lane miles and other related work as the lowest responsive, responsible bidder, in the amount of \$1,776,872 with a 5% city controlled contingency of \$88,844 for a total of \$1,865,716 and authorize the City Manager or Designee to execute the contract, purchase orders and change orders; Department: Public Works; Dollar Value: \$1,865,716; (Transportation-Road Resurfacing Fund /Water and Sewer Fund)
- (2) Resolution 1-21 Approve a Sole and Single Source to Hach Company for the purchase of Hach laboratory water quality sampling equipment, including parts for repair and maintenance. Items that will be purchased include, but not limited to pH meters, composite samplers, chlorine analyzers, suspended solids sensors, turbidimeters, dissolved oxygen sensors, multiparameter spectrophotometer and lab sample reagents for Fiscal Year 2021 and Fiscal Year

- 2022, not to exceed budgetary limits and authorize the City Manager or Designee to execute the purchase orders. Department: Utilities. Combined Total Dollar Amount: \$340,000 (Water & Sewer Fund FY2021 \$170,000 and FY2022 \$170,000).
- (3) Resolution 2-21 Approve the sole and single source to Xylem Water Solution USA, Inc. and Tom Evans Environmental. Inc. for the purchase and repair of Flygt and Ebara Pumps, respectively, for fiscal year 2021 through 2023, not to exceed budgetary limits and authorize the City Manager or Designee to execute the purchase orders. Department: Utilities. Combined Dollar Amount: \$2,235,000 (Water & Sewer Fund FY-21 \$730,000, FY-22 \$745,000, and FY-23 \$760,000)
- (4) Resolution 4-21 Approving Impact Fee Deferral Agreements between the City of Cape Coral and Habitat for Humanity of Lee and Hendry Counties; Department: Community Development; Dollar Value: \$39,680.62; Fund: N/A
- (5) Resolution 5-21 Approve the Contract with Douglas S. Lee, MD for Medical Director Services in the amount of \$55,500 for the first year and a 3% cost escalation for future years; The term of the contract is for five years starting on February 12, 2021 thru February 11, 2026; And authorize the City Manager or Designee to execute the agreement, renewals and amendments. This procurement is exempt from competitive solicitation per the City of Cape Coral Procurement Ordinance exemption, Section 2-141 (12) Health services involving examination, diagnosis, treatment, prevention, medical consultation or administration; Department: Fire; Estimated Annual Dollar Value: \$55,500; (General Fund escalation up to 3% on future years)
- (6) Resolution 8-21 Acceptance of Drug Recognition Expert (DRE) Call Out Subcontract Agreement, to conduct DRE evaluations on an overtime basis; Department: Police; Dollar Value: \$8,000; No cash match; (Fund: N/A)
- (7) Resolution 11-21 Approval of Stipulated Order of Taking and Final Judgment for the eminent domain case of City of Cape Coral v. Joel Torres, et al., being Case Number 20-CA-005902 to resolve the acquisition of Festival Park Parcels #FP-128 and FP-129 (aka Lots 25 and 26, Block 3013, and Lots 27 and 28, Block 3013, both in Cape Coral Unit 43 1206 & 1210 NW 25th Terrace) for a total settlement cost of \$20,000 per parcel, inclusive of fees and costs; Department: Financial Services / Real Estate Division; Dollar Value: \$40,000; (Parks Capital Project/GO Bond Fund)
- (8) Resolution 12-21 Approval of, and authorization for the City Manager to execute License Agreements with Meta at Cape Harbour Community Association, Inc., LDC Cape Harbour Holdings, LLC and SHM Cape Harbour, LLC for the temporary use of portions of their ownerships within Cape Harbour for event parking, participant registration and activities, spectators and vendors attending the Tour de Cape community event on January 22nd through January 24th 2021. Department: Financial Services / Real Estate Division; Dollar Value: N/A (Fund: N/A)

#### B. PERSONNEL ACTIONS

- Resolution 10-21 Authorizing the addition of one FTE Housing Intake Specialist Department: Community Development
- (2) Resolution 13-21 Approving extension of the agreement with Fraternal Order of Police (Officers and Sergeants) bargaining units concerning sick leave related to COVID-19; Department: Human Resources
- (3) Resolution 14-21 Approving extension of the agreement with Fraternal Order of Police (Lieutenants) bargaining unit concerning sick leave related to COVID-19; Department: Human Resources
- (4) Resolution 15-21 Approving extension of the Agreement with the Fire Supervisory and Rank and File bargaining units concerning sick leave related to COVID-19; Department: Human Resources
- (5) Resolution 16-21 Approving extension of the Agreement with the Professional, Supervisory, White Collar and Blue Collar bargaining units concerning sick leave related to COVID-19; Department: Human Resources
- (6) Resolution 17-21 Approves the extension of Paid Sick Leave Related to the COVID-19 Pandemic for Non-bargaining Employees; Department: Human Resources
- C. PETITIONS TO COUNCIL
  - (1) NONE
- D. APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS
  - (1) NONE

#### 10. ORDINANCES/RESOLUTIONS

A. Public Hearings

#### NOTE: N/A

(1) Resolution 9-21 Public Input
WHAT THE RESOLUTION ACCOMPLISHES:

The Resolution authorizes the amendments to the 2019-2020 One-Year Action Plan for the Community Development Block Grant (CDBG) entitlement program and the 2015-2019 consolidated plan for the Community Development Block Grant program and authorizes and directs the City Manager or his designee to prepare and submit the amendments to the US Department of Housing and Urban Development, authorizes the City Manager or his designee to execute all agreements and documents necessary for submission of the amendments and the use of such funds and authorizes the City Manager or his designee to execute subrecipient agreements upon approval by the US Department of Housing and Urban Development. (Applicant: Brought forward by City Management.)

(2) Ordinance 54-20 (TXT 20-0007) Final Public Hearing

#### WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending Policy 1.15 of the Future Land Use Element to remove the Judd Creek Sub-District. (Applicant: Brought forward by City Management.)

Planning & Zoning Commission Recommendation: At their August 5, 2020 Regular Meeting, the Planning and Zoning Commission voted unanimously to recommend approval of Ordinance 54-20.

DCD Department Recommendation: Approval.

(3) Ordinance 83-20 Public Hearing

## WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending Ordinance 87-00, as amended by Ordinance 88-04, Ordinance 40-11, and Ordinance 13-19, which established the City of Cape Coral Investment Policy for Surplus Funds, by adopting an amended City of Cape Coral Investment Policy. (Applicant: Brought forward by City Management.)

(4) Ordinance 98-20 Public Hearing

#### WHAT THE ORDINANCE ACCOMPLISHES:

The Ordinance approves the sale of municipal surplus real property described as Lots 35 and 36, Block 5460, Unit 90, Cape Coral Subdivision pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances and authorizes and directs the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property located at 4122 NW 39th Lane to TSAVO Group, Inc. (Applicant: Brought forward by City Management) NOTE: Purchase price is \$53,000.00.

(5) Ordinance 99-20 Public Hearing

#### WHAT THE ORDINANCE ACCOMPLISHES:

The Ordinance approves the sale of municipal surplus real property described as Lots 53 and 54, Block 5241, Unit 81, Cape Coral Subdivision pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances and authorizes and directs the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property located at 1432 Old Burnt Store Road North to TSAVO Group, Inc. (Applicant: Brought forward by City Management) NOTE: Purchase Price is \$20,000.00.

(6) Ordinance 100-20 Public Hearing

#### WHAT THE ORDINANCE ACCOMPLISHES:

The Ordinance approves the sale of municipal surplus real property described as Lots 49 and 50, Block 5465, Unit 90, Cape Coral Subdivision pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances and authorizes and directs the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property located at 4111 NW 39th Street to TSAVO Group, Inc. (Applicant: Brought forward by City Management.) NOTE: Purchase Price is \$53,000.00.

#### B. Introductions

(1) Ordinance 1-21 (ZA 20-0001\*) Set Public Hearing for January 20, 2021

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

An ordinance amending the City of Cape Coral Official Zoning District Map of all property within the limits of the City of Cape Coral by rezoning property described as two parcels of land lying in Section 8, Township 44 South, Range 24 East, Lee County, Florida, from Industrial Planned Development (a Lee County designation) to Industrial (I) zone; property is located at 1109-1111 Pondella Road. (Applicant: Honc Docks & Lifts, Inc.) (6.21 acres)
Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council Grant the Rezoning DCD Department Recommendation: Approval

(2) Ordinance 2-21 (ZA 20-0006\*) Set Public Hearing for January 20, 2021

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

An ordinance amending the City of Cape Coral Official Zoning District Map of all property within the limits of the City of Cape Coral by rezoning property described as Tract A, Block 6114, Unit 97, Cape Coral Subdivision, from Single-Family Residential (R-1) to Commercial (C) zone: property is located at 4330 Burnt Store Road North. (Applicant: Durden 28, LLC) (26.19 acres) Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council APPROVE the rezone to the Commercial Zoning District.

DCD Department Recommendation: Approval

(3) Ordinance 3-21 (ZA 20-0010\*) Set Public Hearing for January 20, 2021

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

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Official Zoning District Map of all property within the limits of the City of Cape Coral by rezoning property described as Lots 1 through 28, Block 1048, Cape Coral Subdivision, Unit 24, from Professional (P) to Residential Multi-Family Low (RML) zone; property is located at 1101-1127 SE 5th Court and 1102-1128 SE 6th Avenue. (Applicant: City of Cape Coral) (3.27 acres)

Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council GRANT the Rezoning application.

DCD Department Recommendation: Approval.

#### 11. UNFINISHED BUSINESS

- A. Water Quality Update
- B. Follow Up Items for Council
- Council Meeting Calendar additions/changes request Brought forward by City Management/City Clerk Bruns

#### 12. NEW BUSINESS

- A. FY 2020 Annual Investment Performance Review
- 13. REPORTS OF THE MAYOR AND COUNCIL MEMBERS
- 14. REPORTS OF THE CITY ATTORNEY AND CITY MANAGER

#### 15. TIME AND PLACE OF FUTURE MEETINGS

- A. The Cape Coral City Council is Scheduled to meet on Thursday, January 14, 2021, at The Westin Cape Coral Resort at Marina Village, 5951 Silver King Boulevard, Tarpon Ballrooms 1, 2, and 3, Cape Coral, FL 33914. There will be an Executive Session regarding Collective Bargaining (Closed to the Public) beginning at 8:30 a.m. followed by the Retreat open to the public beginning at 10:00 a.m. (Subject to Approval)
- B. The Cape Coral City Council is Scheduled to meet on Friday, January 15, 2021, at The Westin Cape Coral Resort at Marina Village, 5951 Silver King Boulevard, Tarpon Ballrooms 1, 2, and 3, Cape Coral, FL 33914. There will be an Executive Session regarding ITS Security Policy (Closed to the Public) beginning at 8:30 a.m. followed by the Retreat open to the public beginning at 9:15 a.m. (Subject to Approval)
- C. A Regular Meeting of the Cape Coral City Council is Scheduled for Wednesday, January 20, 2021, at 4:30 p.m. in Council Chambers

#### 16. 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 may do so during the designated time at each meeting. No prior scheduling is necessary. All spealers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting. Any citizen must 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 any one, he or she represents. An address shall only be required if necessary to comply with a federal, state of local law Copies of the agenda are available in the main hebby of Cupe Coral City Hall and in the City Council Office; 1015 Cultural Park Budevard. Copies of all back-up documentation are also available for review in the hebby 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 (expected and after 400 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
- 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



## AGENDA REQUEST FORM CITY OF CAPE

CITY OF CAPE CORAL Item Number: 6.A.

Meeting 1/6/2021

Date:

Type:

**RECOGNITIONS/ACHIEVEMENTS** 

## TITLE:

2nd Place Digital Cities Award by the Center for Digital Government for Cities with Populations 125,000 to 249,999 - ITS Department

### **REQUESTED ACTION:**

Informational

## SUMMARY EXPLANATION AND BACKGROUND:

This is the third year in a row the City has placed second, and the fifth year in a row in the top three. This year the award recognizes cities using technology to tackle response to the pandemic while continuing strategic initiatives to enhance services. The award highlighted the City's Fiber Sharing agreement with the County and the Citywide fiber plan being built by IT and Utilities.

## STRATEGIC PLAN ALIGNMENT:

1. 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

## **RECOMMENDATIONS:**

n/a

## **SOURCE OF ADDITIONAL INFORMATION:**

Michelle Hoffmann, ITS Director

## FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

n/a

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

## PREPARED BY:

Kimberly

Division- Managerial Department-ITS

Bruns



## AGENDA REQUEST FORM CITY OF CAPE CORAL

Item Number: 6.B.

Meeting 1/6/2021

Date:

Type: RECOGNITIONS/ACHIEVEMENTS

### TITLE:

Civilian Awards Presented by Interim Chief of Police Anthony Sizemore and Fire Chief Ryan Lamb

## **REQUESTED ACTION:**

Informational

## **SUMMARY EXPLANATION AND BACKGROUND:**

On Wednesday November 25<sup>th</sup>, minutes before midnight of Thanksgiving, a vehicle crashed into a canal. Inside of the vehicle, which was now submerged, two children were trapped inside. Hearing the crash, a neighbor named Tyler Ravert, jumped into the water and attempted to rescue the children. Police Officers, Firefighters and Mr. Ravert were able to free the children from the car. Tragically, the boys did not survive.

However, the selfless actions of Tyler Ravert must be recognized. Actions such as his are the true spirit of citizenship...and are what makes Cape Coral a great city and community.

Mr. Ravert is being given the highest civilian award from both the Police and Fire Department.

## STRATEGIC PLAN ALIGNMENT:

1. 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

## **RECOMMENDATIONS:**

n/a

## **SOURCE OF ADDITIONAL INFORMATION:**

Anthony Sizemore, Interim Chief of Police, 1-239-574-0623 Ryan Lamb, Fire Chief, 1-239-242-3601

## FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

n/a

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

#### PREPARED BY:

Division- Managerial Department- Police Department and Fire Department



## AGENDA REQUEST FORM

CITY OF CAPE CORAL

Item

Number: 7.A.

Meeting

**Item Type:** 

1/6/2021

Date:

**APPROVAL OF** 

**MINUTES** 

TITLE:

Regular Meeting - December 7, 2020

## **REQUESTED ACTION:**

Approve or Deny

## SUMMARY EXPLANATION AND BACKGROUND:

n/a

## **STRATEGIC PLAN ALIGNMENT:**

1. 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

## **RECOMMENDATIONS:**

Approval

## SOURCE OF ADDITIONAL INFORMATION:

Kimberly Bruns, City Clerk, 1-239-574-0417

## FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

n/a

1. Will this action result in a Budget Amendment?

## PREPARED BY:

Division- Managerial Department- City Clerk's Department

## ATTACHMENTS:

Description Type

Regular Meeting - December 7, 2020 Backup Material

## SUBJECT TO APPROVAL

VOLUME: LXXVI PAGE: 1

DECEMBER 7, 2020

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

December 7, 2020

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 Cosden, Gunter, Hayden, Nelson, Sheppard, and Welsh were present. Councilmember Williams was excused.

#### CHANGES TO AGENDA/ADOPTION OF AGENDA

<u>Mayor Coviello</u> announced that Item 6.A for the 2<sup>nd</sup> Place Digital Cities Award has been withdrawn. Item 9.D.(1) for the CRA appointment of the Chair and Vice Chair has some issues with an individual relocating. Item 10.(A).(2) Ordinance 90-20 was being withdrawn by the purchaser. He asked if anyone had any changes to the agenda. There were none.

City Manager Hernandez requested to pull Item 10 from the Consent Agenda and move it to a regular agenda item before Personnel Actions.

Mayor Coviello agreed to keep the item in the Consent Agenda for discussion.

City Attorney Menendez discussed the CRA Chair and Vice Chair appointments. She recommended the idea of addressing the item at today's meeting and did not see a downside of appointing the Chair and Vice Chair.

Mayor Coviello agreed to keep the CRA item on the Agenda. He confirmed the removal of Items 6.A and 10.(A).(2). Item 10 in the Consent Agenda will be pulled.

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

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

#### RECOGNITIONS/ACHIEVEMENTS

2nd Place Digital Cities Award by the Center for Digital Government for Cities with
Populations 125,000 to 249,999 - ITS Department
(withdrawn - will be rescheduled in the future)

Civilian Award of Exemplary Action - Awarded by Fire Chief Ryan Lamb

Fire Chief Lamb stated that on the night of October 21, 2020, two couples by the names of William and Michelle Schoenborn and William and Isabelle Shuga rescued a sinking vehicle's trapped occupants before the CCFD arrived. The CCFD is proudly presenting them the Civilian Award of Exemplary Action.

#### APPROVAL OF MINUTES

Regular Meeting - November 2, 2020

Councilmember Nelson moved, seconded by Councilmember Welsh, to approve the minutes for the November 2, 2020 Regular Meeting, as presented. Voice Poll: All "ayes." Motion carried.

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#### Regular Meeting - November 16, 2020

Councilmember Welsh moved, seconded by Councilmember Nelson, to approve the minutes for the November 16, 2020 Regular Meeting, as presented. Voice Poll: All "ayes." Motion carried.

#### **CITIZENS INPUT TIME**

Steve Crane appeared to discuss the Chiquita Lock removal and lock permit process. He inquired about what has been done, who is in charge, what is the game plan, what is the schedule, and what mission was given to the new lawyer. Does the lawyer understand the research and data done submitted with the previous application? Has anyone spoken to the DEP or DOAH? He has requested to meet with the City Manager and new lawyer. He is requesting a Public Works Engineer be assigned to the Chiquita Lock removal as the primary contact and produce the previous permit application. A meeting should be set up before December 15, 2020 to get appointments with State Officials and determine what we need to do to avoid spending big money on legal fees.

Gunner Julian appeared to discuss the vacation rentals. Is a house a residence when it has never been lived in by the owner? He believed it would be commercial property. He voiced his concerns with the rentals around his neighborhood. He stated that the options provided by the City to build a privacy fence would not be sufficient.

Jeff Lockhart appeared to thank the Councilmember for the signs on Saratoga Lake, and he suggested that more signs were necessary on the ramps. He was not in favor of searching for a Police Chief as there are qualified employees to choose from and save on expenditures. He requested an update on the football field of Oasis High School. He discussed the Chiquita Lock issue.

Mayor Coviello inquired about the eComments.

City Clerk Bruns stated that there were no eComments received for today's meeting.

Councilmember Sheppard inquired about the Chiquita Lock and voiced his interest in working on this item. He welcomed the idea of having progress reports from the City Attorney and have an opportunity for the Council to add input.

<u>Mayor Coviello</u> discussed that there was an item on the agenda to approve a Waterway Advisory Board.

City Manager Hernandez responded that his office and the City Attorney's Office were working together to advocate for the removal of the Chiquita Lock. He stated that conversations will be held with the Councilmembers either individually or at a COW meeting as more definite progress becomes available.

City Attorney Menendez discussed that the new Council was not in office when the outgoing Council decided to remove the lock. Staff members are still in the fact-finding stage and working on this project. There have been meetings with Staff, outside consultants, and the DEP. Things are moving along with the law firm hired, and she discussed their credentials and experience.

Mayor Coviello inquired if there could be a quarterly update.

City Attorney Menendez responded that there would be updates but not at public meetings.

<u>Councilmember Gunter</u> welcomed the idea of a working timeline to provide a baseline to start with so that all players would have a sense of direction. Periodic updates would be beneficial.

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City Attorney Menendez stated that the outside attorney has been working on the timeline. She welcomed suggestions from Council as needed and was available to set up meetings as requested with her office and the outside attorney.

<u>Councilmember Sheppard</u> agreed with Councilmember Gunter's suggestion and the City Attorney's progress update.

<u>Councilmember Cosden</u> discussed the vacation rental issue and State Law constraints. She discussed the law violations of one- or three-days rentals and suggested that noise complaints should be reported to the Police. She stated that this topic would be discussed at the December 9, 2020 COW meeting. She discussed the fence issue due to property height difference and that she would look into this issue.

City Manager Hernandez requested that someone from Staff reach out to the Resident regarding the vacation rental issue.

#### **BUSINESS**

#### **CONSENT AGENDA**

- 1) Resolution 244-20 Approve Sole Source with Hyland Software, Inc. to upgrade the current OnBase Software and Database by migrating the City's Hyland OnBase software and database to Hyland's Hosted Cloud Platform, for a three year agreement, at the annual amount stated in the agreement, for an estimated three year cost of \$220,315, in accordance with the City of Cape Coral Procurement Ordinance Chapter 2, Article VII, division 1, Section 2-144(c) Purchase of an item that is an update or upgrade to a software program previously purchased by the City, and authorize the City Manager or designee to execute the agreement, renewals, purchase orders and corresponding documents. Department: ITS Estimated Dollar Value \$220,315 (General Fund Year 1 \$90,315; Year 2 \$65,000; Year 3 \$65,000)
- 2) Resolution 247-20 Award Request for Proposal #RFN2080AP for Financial Advisory Services to RBC Capital Markets, LLC. at the proposed value range of bonds fee per \$1,000 and authorize the City Manager or designee to execute the contract, renewals, purchase orders, and change orders. Department: Finance Dollar Value: est. \$80,000 based on estimated issuance of \$80 million (Fund: N/A paid from any resulting bond proceeds)
- 3) Resolution 254-20 Approval of Termination of Contract with SWFL Workforce Development Board/Career Source of SWFL; Dept: EDO Division/CMO
- 4) Resolution 262-20 Approval of Termination of Contract with Lee County School Board/Business Services Industries; Dept: Economic Development Office, Division of City Manager's Office
- 5) Resolution 258-20 A Resolution requesting authorization to extend payment up to \$5,000 in reimbursable relocation expenses as allowed in section 2-37.3 of the City of Cape Coral Code of Ordinances to the selected candidate for the Risk Manager position in Finance Department; Department(s): Finance; Dollar Value: maximum of \$5,000 per position; (General Fund)
- 6) Resolution 260-20 Award ITB #BUT2099MC for the Purchase and Delivery of Water, Sewer & Irrigation Materials to: Core & Main LP; Ferguson Enterprises, LLC; Fortiline Inc. D/B/A Fortiline Waterworks; and Harrington Industrial Plastics, respectively, at the unit prices bid, not to exceed budgetary limit, as the lowest responsive responsible bidder in each particular group and authorize the City Manager or designee to execute the contract(s), purchase order(s), and any renewals. Department: Utilities Estimated Annual Dollar Value: \$1,200,000. (Water & Sewer Fund)

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- 7) Resolution 263-20 Approval of final plat for Harbourside Estates. This replat encompasses 10 contiguous Cape Coral lots that will become 4 new lots/homesites, each comprised of 2 ½ existing lots, located on SW 16th Pl. Appropriate Public Utility and Drainage are provided. Department: DCD; Dollar Value: N/A; (Fund; N/A)
- 8) Resolution 267-20 Approval the Agreement to relocate the Southwest Florida Vietnam Veterans Memorial monument to Four Mile Cove Ecological Preserve: Department: Parks and Recreation Dollar Value: N/A; (Fund: N/A)
- 9) Resolution 272-20 Approval of settlement offer regarding the eminent domain case of City of Cape Coral v. Maria Elena Arenas Tamayo, et al., being Case Number 20-CA-001439 to resolve the acquisition of Lake Meade Parcel #LM-014 (aka Lots 1 and 2, Block 2152, Cape Coral Unit 32 2101 NE 12th Avenue) for a total acquisition cost of \$47,000, inclusive of attorney fees and expert costs. The City previously deposited into the Court Registry \$36,000; remaining funds due is \$11,000; Department: Financial Services / Real Estate Division; Dollar Value: \$11,000; (Parks Capital Project/GO Bond Fund)
- 10) Resolution 273-20 Paramedicine Vaccine Administration Memorandum of Agreement Between the Florida Department of Health, Lee County Health Department, the City of Cape Coral and the City of Cape Coral Medical Director; Department: Fire; Dollar Value: N/A; (Fund: N/A)
- 11) Waiver of Conflict of Interest for the Law Firm of Bryant Miller Olive/PNC Bank
- 12) Waiver of Conflict of Interest for the Law Firm of Becker & Poliakoff/RKR, LLC and Smithfield Apartments Corp.

<u>Mayor Coviello</u> stated that item 9(A)(10) be pulled at the City Manager's request. He asked if anyone wanted to pull any item. There were none.

Councilmember Nelson moved, seconded by Councilmember Cosden, to approve items 9(A)(1), 9(A)(2), 9(A)(3), 9(A)(4), 9(A)(5), 9(A)(6), 9(A)(7), 9(A)(8), 9(A)(9), 9(A)(11), and 9(A)(12), as presented.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

City Manager Hernandez requested to pull item 9(A)(10). He stated that a last-minute change was requested by the Department of Health and a revised Memorandum of an Agreement was submitted to allow paramedics to administer the vaccines once it becomes available for Hepatitis A, Flu, and COVID-19 vaccines. He did not have information on when the vaccine would be available in Cape Coral and distribution sites.

City Attorney Menendez stated that the Council received an updated amended Resolution and Agreement. She recommended that the motion be made clear that it was with the amended documents.

Councilmember Gunter moved, seconded by Councilmember Nelson, to approve item 9(A)(10), as amended.

<u>Councilmember Hayden</u> inquired about which vaccine would be administered or timeline when they would be available to the public and distribution centers.

Fire Chief Lamb responded that they were notified late Friday that the State could start entering into these agreements. They are actively working on the process.

<u>Councilmember Sheppard</u> inquired about the vaccines' lack of history. Will the City inherit any liability if something were to go wrong?

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Fire Chief Lamb responded that they would act as agents of the Health Department in administering the vaccines. The Health Department will do all the work in securing the vaccine and registration. He discussed the allergic reactions to the vaccine.

City Attorney Menendez discussed releases that would need to be signed as the vaccine becomes available.

Mayor Coviello inquired if the Fire Department was working with Lee Health.

Chief Lamb responded in the affirmative. He discussed the testing site on Chester Street.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

#### PERSONNEL ACTIONS

Resolution 259-20 Extend Filling Out-of-Classification for Financial Services Director and Management/Budget Administrator positions

Human Resources Director Sonego explained that this Resolution was a routine item that would extend the filling of the Financial Services Director and Management/Budget Administrator positions with an employee acting out-of-classification for an additional three months (through March 9, 2021).

Councilmember Nelson moved, seconded by Councilmember Hayden, to approve Resolution 259-20, as presented.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

## PETITIONS TO COUNCIL

None.

## APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

Community Redevelopment Agency Appointment of Chair and Vice Chair
Stacy Lomonaco – CRA Chair
Linda Biondi – Vice Chair

City Clerk Bruns stated in accordance with Agency's By-Laws, during the first regularly scheduled meeting in November the CRA Board of Commissioners shall recommend to City Council a Chair and Vice Chair to be appointed by the City Council. At their meeting held on November 4, 2020, the CRA Commission voted unanimously to recommend to Council approval of retaining both current positions as is: Chair Stacy Lomonaco and Vice-Chair Linda Biondi. The CRA Commission respectfully requests that the City Council accept and affirm the appointment as a ministerial duty of the Council.

Councilmember Welsh moved, seconded by Councilmember Gunter, to re-appoint Stacy Lomonaco as CRA Chair and Linda Biondi as Vice Chair.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

<u>Audit Committee - 1 Vacancy</u> John Stevens – re-appointment – not present

City Clerk Bruns stated there was one vacancy. John Stevens is seeking re-appointment (term expired 12/1/2020; four-year term to expire 12/1/2024). The vacancy was advertised on 10/9/2020 and 10/23/2020 in the Breeze Newspaper and posted on the City's Website.

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Councilmember Nelson moved, seconded by Councilmember Cosden, to reappoint John Stevens to the Audit Committee (term expires 12/1/2024).

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

<u>Municipal Police Employees' Pension Trust Fund Board of Trustees - 1 Vacancy</u>

David Tourney - re-appointment - not present

City Clerk Bruns stated there was one vacancy to be appointed by Council. One applicant, David Toumey, is seeking re-appointment, and he indicated that he was very interested in continuing serving on the Board. The term expired on 10/31/2020; new term will expire 10/31/2024. The vacancy was advertised on 10/30/2020 and 11/13/2020 in the Breeze and was posted on the City's website.

Councilmember Nelson moved, seconded by Councilmember Gunter, to re-appoint David Toumey to the Municipal Police Employees' Pension Trust Fund Board of Trustees (term expires 10/31/2024).

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

#### ORDINANCES/RESOLUTIONS

## **Public Hearings**

Ordinance 84-20 (ZA 20-0009\*) Public Hearing

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

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Official Zoning District Map of all property within the limits of the City of Cape Coral by rezoning property described as Lots 7, 8, 13 and 14, Block 1006, Cape Coral Unit 24, from Commercial (C) to Residential Multi-Family Low (RML) zone; property is located at 1406 SE 1st Place and 1418 SE 1st Place. (Applicants: Daniel Read and Big Marlin Properties, LLC) (20,000 square feet) Hearing Examiner Recommendation: Grant the rezone for both parcels

City Management Recommendation: Approval

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

Principal Planner Boyko explained what this Ordinance would accomplish and displayed the following slides:

- Ordinance 84-20, ZA 20-0009
- · Owners, Location, Size, Urban Services, Request
- Aerial Map
- Current Zoning Map, Proposed Zoning Map
- Analysis Land Development Code (3 slides)
- Recommendation Staff and HEX recommend approval
- Correspondence None

Public Hearing Opened.

Tom Slaughter requested that the Staff and Hearing Examiner Recommendations be entered into the record along with any other supportive material.

Public Hearing Closed.

Councilmember Cosden moved, seconded by Councilmember Nelson, to adopt Ordinance 84-20, as presented.

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<u>Councilmember Gunter</u> requested that the aerial map be displayed again. He stated that he typically does not favor this type of change from commercial to multi-family residential. However, he had the opportunity to drive by this neighborhood, and he would vote for approval. He commented about the platted alley way and recommended that Staff reach out to the other landowners on that street and that the entire block should be rezoned to Residential RML.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

Mayor Coviello stated that Ordinance 90-20 was being withdrawn by the purchaser.

### WITHDRAWN BY PURCHASER: Ordinance 90-20 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The Ordinance approves the sale of municipal surplus real property described as Lots 21 and 22, Block 5162, Cape Coral Unit 83, Pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances and authorizes and directs the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property to Paul A. Mezzanotte and Mizue Mezzanotte; property located at: 2744 NW 46th Avenue. (Applicant: Brought forward by City Management.)

#### Ordinance 91-20 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance authorizes and directs the Mayor and City Clerk to effectuate a Corrective Quit Claim Deed to convey any interest the City may have in the property described as Lots 24 and 25, Block 139, Unit 4, Part 2, Cape Coral Subdivision, to Achilles Stachtiaris and Marion Stachtiaris, husband and wife. The property is located at 755 Coral Drive. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

Public Hearing Opened.

No speakers.

Public Hearing Closed.

Property Broker Andrews explained what this Ordinance would accomplish.

Councilmember Nelson moved, seconded by Councilmember Welsh, to adopt Ordinance 91-20, as presented.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

## Ordinance 92-20 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance approving the sale of municipal surplus real property described as Lot 68, Block 5196, Cape Coral Spreader Waterway Plat, pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances; authorizing and directing the Mayor and City Clerk to execute a deed conveying the aforementioned surplus real property to Richard A. Kaplan and Monica R. Andres; property located at 2824 NW 46th Place. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

Property Broker Andrews explained what this Ordinance would accomplish and displayed the following slide:

Location Map

Public Hearing Opened.

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No speakers.

Public Hearing Closed.

Councilmember Welsh moved, seconded by Councilmember Hayden, to adopt Ordinance 92-20, as presented.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

#### Ordinance 93-20 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance creating and establishing the Waterway Advisory Board; amending the City of Cape Coral Code of Ordinances, Chapter 2, Administration, Article V, Boards and Commissions, creating Division 14, Waterway Advisory Board; providing purpose and creation; powers and duties; membership and appointment, term, and vacancies and forfeiture of office; meetings, procedures, records and quorum; compensation. (Applicant: Brought forward by Former Councilmember Carioscia through Councilmember Williams.)

City Clerk Bruns read the title of the Ordinance.

Public Hearing Opened.

Steve Crane appeared in support of Ordinance 93-20 and volunteered to serve on the Board. He discussed State and Land Law requirements. He suggested that as part of this Board that Council should support appointing a Public Works Engineer and a Councilmember.

Ron Austin appeared in support of Ordinance 93-20 to improve the City's waterways. He discussed the meetings between the Residents, City Manager, and City Officials. He stated that he knew of a number of Residents willing to serve on this Board.

John Bashaw appeared in support of Ordinance 93-20 and was excited about the opportunity to work on the issues regarding the waterways, especially in the Northwest.

Public Hearing Closed.

Councilmember Gunter discussed his concern about the nine-member Board since most Boards have seven. He stated that there are 250 miles of salt-water canals and 150 miles of freshwater canals. He pointed out the possible concerns with different areas throughout the City. He recommended that this should be a seven-member board consisting of Residents in each District. He did not see any mention of a Council Liaison position as most Advisory Boards have one; he opined this was essential. He supported the Ordinance and suggested the implementations he brought forward.

City Attorney Menendez stated that the proposed number of members could be amended from nine to seven. She discussed the initial term was based on four members serving for a period of one year and five members serving for a period of two years, thereafter every member would have a two-year term. Changing it to one per District is more significant. The Ordinance strives to establish diversity among different water sources and interests in the water. If the change to one member from each District was the requested format, then the Ordinance would need to be restarted. She opined that this change was beyond the current Ordinance. The number of members and the terms was something that could be done at this meeting. She added that a liaison could be appointed later on in the meeting when Council votes on Councilmember appointments to Boards.

<u>Mayor Coviello</u> questioned if two alternates could be added to this Board. He stated that he would not want to delay the Ordinance for changes to be made.

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City Attorney Menendez stated that it could be possible for Introduction to be at the first meeting in January 2021 and then voted on at the next available meeting.

<u>Councilmember Welsh</u> agreed with Councilmember Gunter's suggestion to have seven members, not nine; however, he did not think that a member from each District was the best option. He discussed the issues with water quality, advertisement, and powers and duties.

<u>Councilmember Hayden</u> inquired about how it was decided to have nine members on this Board.

City Attorney Menendez responded that the number was derived based on various factors such as geographical diversity. She mentioned her discussions with former Councilmember Carioscia on the five, seven, and nine members on this Board.

<u>Councilmember Hayden</u> stated he preferred seven members on this Board since it would achieve diversity, along with two alternates. He inquired about when the notice would go out to the public and when applications would be accepted.

City Attorney Menendez stated that the City Clerk would take several actions after the Board has been established.

City Clerk Bruns stated there would be a posting on the City website, email blast by the PIO, and published in the Breeze to allow applications to be received within 30 days with possible extensions.

Mayor Coviello stated that it would be difficult to getting a member from each District.

<u>Councilmember Nelson</u> concurred with Mayor Coviello. She inquired if this should be postponed as Councilmember Williams was not present.

City Attorney Menendez stated Councilmember Williams did agree to continue with this Ordinance when Councilmember Carioscia left. Council is able to proceed if they so desire. She stated that the changes that could be done were as follows:

- · Reduce the number of nine members to seven members.
- Add two alternates who would be able to participate in all discussions and only vote when a member is not present
- Amend the term for three members to serve a period of one year and four members serve for a period of two years initially
- · Geographical diversity

<u>Councilmember Cosden</u> agreed with a seven-member Board and two alternates. She advocated for a good mix in backgrounds.

Councilmember Cosden moved, seconded by Councilmember Nelson, to adopt Ordinance 93-20, as amended with seven members and two alternates; three members with one-year terms, four members with two-year terms (initially), and alternates with two-year terms.

Councilmember Gunter inquired if the Council Liaison would be added as well.

Motion maker and second agreed to amend motion to include the assignment of a Council Liaison.

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# Resolution 271-20 Notice of Intent to use Uniform Method of Collection for Non-Ad Valorem Special Assessments

WHAT THE RESOLUTION ACCOMPLISHES:

The resolution provides that the City elects to use the uniform method of collecting non-ad valorem special assessments levied within certain portions of the incorporated area of the City described within the resolution, states a need for such levy, and provides for the mailing of the resolution. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Resolution.

Interim Financial Services Director Phillips explained what this Resolution would accomplish and displayed the following slides:

- Uniform Method of Collection for Non-Ad Valorem Assessments
- Resolution 271-20: Notice of Intent, Public Input and Adoption: December 7, 2020
- Uniform Method of Collection and Statutory Requirements (2 slides)
- Non-ad valorem assessments (2 slides)

Public Hearing Opened.

No speakers.

Public Hearing Closed.

<u>Councilmember Welsh</u> inquired about the list of assessments and if these change every year. Is this a standard list?

Interim Financial Services Director Phillips responded that it is a standard list that stays the same all the time.

City Attorney Menendez explained that if there is one assessment to be considered for adoption, it would be included in a given year. There have been some changes in the past because some assessments did not exist previously.

Councilmember Nelson moved, seconded by Councilmember Welsh, to approve Resolution 271-20, as presented.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "ave." Seven "aves." Motion carried 7-0.

#### Introductions

## Ordinance 86-20 Set Public Hearing for December 14, 2020

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance declaring Lots 63 and 64. Block

An ordinance declaring Lots 63 and 64, Block 1915, Unit 28, Cape Coral Subdivision (1302 SW 5<sup>th</sup> Avenue), as unusable municipal surplus real property not projected to be used for municipal purposes; authorizing the City Manager to exchange said municipal surplus property for real property described as Lots 5 and 6, Block 1916, Unit 28, Cape Coral Subdivision (1309 SW 6<sup>th</sup> Avenue); authorizing the conveyance of surplus real property described herein pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances; authorizing and directing the Mayor and City Clerk to execute a deed conveying the aforementioned surplus real property. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for December 14, 2020 in Council Chambers.

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## Ordinance 94-20 Set Public Hearing for December 14, 2020

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance authorizes the issuance of not to exceed \$10,600,000 in principal amount of a Water and Sewer Revenue Bond of the City of Cape Coral, Florida to finance, on an interim basis, various costs and expenses relating to the design and planning for the water, wastewater and irrigation water utility capital improvements to be acquired, constructed and equipped within the North 1 assessment area. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for December 14, 2020 in Council Chambers.

## Ordinance 97-20 Set Public Hearing for December 14, 2020

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance approves a Ground Lease Agreement between the City of Cape Coral and Lee County, Florida for the lease of a portion of the property owned by the City of Cape Coral located at 815 Nicholas Parkway for placement of communication-related ground equipment and generator; authorizes the Mayor to execute the Ground Lease Agreement; and attaches a copy of the ground lease agreement. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for December 14, 2020 in Council Chambers.

#### **UNFINISHED BUSINESS**

#### Water Quality - Update

PW Director Clinghan provided the Water Quality Update.

- Lake Okeechobee was at about 16 feet, compared to 13 feet last year
- Since October, the Army Corps of Engineers have been releasing 4,000 cfs and started reducing that to 3,000 cfs on December 5<sup>th</sup>
- No Blue Green Algae present in our saltwater or freshwater canals
- · Red Tide was detected near Sanibel and Captiva
- Canals around the Palmetto Pine Golf Course have been cleaned up with the algicide and the freshwater clay

City Manager Hernandez inquired if the updates should be made at the regular meetings or at a COW meeting.

<u>Mayor Coviello</u> stated that once a month should be good, and if there are any issues, then add as needed.

<u>Councilmember Cosden</u> stated that this had been created on a weekly basis due to the Blue Green Algae breakouts of 2018. She agreed once a month was fine.

Follow Up Items for Council

None.

Appoint Council Members to City of Cape Coral and other Boards, Commissions, and Committees (Item carried over from 11/16/2020)

## **AHAC (Affordable Housing Advisory Committee)**

Discussion held regarding who wanted the liaison seat on AHAC which was held by Mayor Coviello until November 16th.

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Councilmember Nelson stated she would like to be on AHAC.

Councilmember Welsh moved, seconded by Councilmember Gunter, for Councilmember Nelson to serve on AHAC.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

#### **Audit Committee**

Discussion held regarding who wanted the voting member seat on the Audit Committee which was held by former Councilmember Stout and temporarily by Councilmember Havden.

<u>Councilmember Hayden</u> stated if there were no objections, he would like to serve on the Audit Committee.

Councilmember Nelson moved, seconded by Councilmember Cosden, for Councilmember Hayden to fill the seat on the Audit Committee.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

### **Budget Review Committee**

Discussion held regarding who wanted to be the liaison on the Budget Review Committee which was held by Councilmember Gunter.

Councilmember Gunter nominated Councilmember Hayden for the BRC position.

Councilmember Gunter moved, seconded by Councilmember Nelson, for Councilmember Hayden to fill the seat on the Budget Review Committee.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

#### **Charter School Governing Board**

<u>Councilmember Sheppard</u> stated he would like to serve on the Charter School Governing Board.

Councilmember Welsh moved, seconded by Councilmember Nelson, for Councilmember Sheppard to fill the seat on the Charter School Governing Board.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

### **Selection Advisory Committee**

<u>Councilmember Hayden</u> stated he would like to serve on the Selection Advisory Committee.

Councilmember Nelson moved, seconded by Councilmember Welsh, for Councilmember Hayden to fill the seat on the Selection Advisory Committee.

City Clerk Bruns announced that the SAC will have a meeting tomorrow at 1:30 p.m.

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#### **Youth Council**

Discussion held regarding who wanted to be the liaison on the Youth Council which is held by Councilmember Williams.

Councilmember Gunter moved, seconded by Councilmember Hayden, for Councilmember Williams to fill the seat on the Youth Council.

<u>Councilmember Cosden</u> recommended having an alternate on the Youth Council and volunteered to be that alternate, noting that she had attended a few meetings in Councilmember Williams' place.

Councilmember Gunter amended his motion to add Councilmember Cosden as the alternate to the Youth Council. Councilmember Hayden, the second, agreed.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

## **Transportation Advisory Commission (TAC)**

Discussion held regarding who wanted to be on the Transportation Advisory Commission. Currently, Mayor Coviello and Councilmembers Gunter and Williams serve on TAC with Councilmember Cosden as alternate. Temporarily filling the seats vacated by former Councilmembers Carioscia and Welsh are Councilmembers Sheppard and Welsh.

<u>Councilmember Welsh</u> stated with the time commitments of being on the TAC, it also includes the appointment to the MPO. He noted that he did not have the ability to commit to both of them, adding that he may have time next year or following year.

Councilmember Hayden stated he would like to serve on TAC.

Councilmember Nelson moved, seconded by Councilmember Welsh, for Councilmember Hayden to be appointed to the TAC.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

<u>Mayor Coviello</u> asked Councilmember Cosden if she wished to move up to a regular member from the alternate position.

<u>Councilmember Cosden</u> stated she would prefer to stay on as an Alternate due to her work schedule, unless the time of the meeting changed.

Councilmember Nelson moved, seconded by Councilmember Hayden, for Councilmember Sheppard to be appointed to the TAC.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

## CDBG (Community Development Block Grant)

Councilmember Welsh stated he would like to serve on the CDBG.

Councilmember Gunter moved, seconded by Councilmember Cosden, for Councilmember Welsh to fill the seat on CDBG (Community Development Block Grant).

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#### **Community Redevelopment Agency**

Discussion held regarding who wanted to be the liaison on the CRA (Community Redevelopment Agency) which is held by Councilmember Gunter.

Councilmember Gunter stated he wished to remain on the CRA.

Councilmember Nelson moved, seconded by Councilmember Hayden, for Councilmember Gunter to fill the seat on the CRA (Community Redevelopment Agency).

<u>Councilmember Welsh</u> announced that he had interest in the CRA since both of his businesses were in the CRA District. He opined that he could bring a business perspective to that board.

Councilmember Nelson inquired if there could be an alternate position.

Councilmember Welsh agreed to an alternate position.

Mayor Coviello agreed to create an alternate seat.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

<u>Mayor Coviello</u> asked for a motion to create an alternate spot for the CRA and to have Councilmember Weish fill that alternate seat.

Councilmember Nelson moved, seconded by Councilmember Gunter, for Councilmember Welsh to serve as the Alternate on the CRA (Community Redevelopment Agency).

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

## **Golf Course Advisory Board**

Discussion held regarding who wanted to be the liaison on the Golf Course Advisory Board which is held by Councilmember Nelson.

<u>Councilmember Nelson</u> inquired if it was an appropriate time to work with the City Attorney to see if there is a need for this board anymore. Based on the last COW meeting, it seemed like there was nothing for the Committee to decide until the City Manager has the assessment completed.

<u>Mayor Coviello</u> asked if anyone was interested in serving on the Golf Course Advisory Board while we go through this process. He stated that there still would be some recommendations from the management assessment being done with some input from that board through the Council liaison.

<u>Councilmember Hayden</u> stated he was interested in serving on the Golf Course Advisory Board.

Councilmember Nelson moved, seconded by Councilmember Gunter, for Councilmember Hayden to fill the seat on the Golf Course Advisory Board.

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#### **Planning and Zoning Commission**

Discussion held regarding who wanted to be the liaison on the Planning and Zoning Commission which is held by Councilmember Williams; meeting time is on the first Wednesday of the month at 9:00 a.m. in Council Chambers.

Councilmember Gunter moved, seconded by Councilmember Cosden, for Councilmember Sheppard to fill the seat on the Planning and Zoning Commission.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

## Coastal and Heartland National Estuary Partnership (CHNEP)

Discussion held regarding who wanted to be on the Coastal and Heartland National Estuary Partnership (CHNEP) which is held by Councilmember Cosden.

<u>Councilmember Cosden</u> explained the purpose of the CHNEP and that meetings are held quarterly on Thursdays. She noted that she would not be able to serve on the CHNEP this year.

<u>Councilmember Gunter</u> noted that the same person who serves on the CHNEP should also be on the Waterway Advisory Board.

<u>Mayor Coviello</u> asked who would be interested in serving on the CHNEP and the Waterway Advisory Board.

Councilmember Gunter moved, seconded by Councilmember Nelson, for Councilmember Sheppard to serve on the Coastal and Heartland National Estuary Partnership (CHNEP) and the Waterway Advisory Board.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

Florida League of Cities (voting delegate)
Florida League of Cities - Board of Directors (11th District Director)
Southwest Florida League of Cities

<u>Mayor Coviello</u> stated that Councilmember Williams currently serves on the Florida League of Cities (FLC). He noted that there were three spots that deal with the FLC: the Voting Delegate, the Board of Directors, and the Southwest Florida League of Cities (SWFLC). He explained that when he last spoke with the SWFLC he was told that the same person should most likely handle all three seats. He reviewed the recent seats that were vacated by some experienced Mayors who left for other positions.

Councilmember Welsh moved, seconded by Councilmember Nelson, for Mayor Coviello and Councilmember Gunter as alternate (on the Florida League of Cities voting delegate, the Board of Directors, and the Southwest Florida League of Cities).

Mayor Coviello and Councilmember Gunter agreed with the motion.

<u>Councilmember Gunter</u> discussed three important boards: Florida League of Mayors, Florida League of Cities, and the National League of Cities. He suggested that there should be a different member in each of those Committees. This would provide for Council to have a strong voice and leadership role in each of those Boards. He provided his background experience with serving on the various FLC Boards.

<u>Councilmember Cosden</u> inquired if Councilmember Gunter referred to the Board of Directors position, the voting delegate, or both.

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<u>Councilmember Gunter</u> responded that it was dealing with all three: Board of Directors, the FLC, and the Southwest Florida League of Cities should be held by one individual.

Discussion held regarding the purpose of the positions and voting at the conference; more than one person can attend the conference.

<u>Councilmember Gunter</u> stated that the City would be an automatic voting delegate as being the 8<sup>th</sup> largest City within the top 10 Cities.

City Clerk Bruns restated the motion was for Mayor Coviello to be on all three: Florida League of Cities, Florida League of Cities Board of Directors, and Southwest Florida League of Cities with the alternate as Councilmember Gunter.

<u>Mayor Coviello</u> asked Councilmember Gunter to take on the FLC voting delegate spot. Mayor Coviello stated he would do the Board of Directors and the Southwest Florida League of Cities.

Councilmember Gunter agreed.

Mayor Coviello asked for an amendment to the motion.

Councilmember Welsh amended his motion: Councilmember Gunter will be the voting delegate and Mayor Coviello as alternate; Mayor Coviello will do the Board of Directors and the Southwest Florida League of Cities with Councilmember Gunter as the alternate. Councilmember Nelson, the second, agreed.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

#### Florida League of Mayors

Councilmember Gunter moved, seconded by Councilmember Hayden, for Mayor Coviello to serve on the Florida League of Mayors.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

#### **Horizon Council**

<u>Councilmember Nelson</u> wished to remain on the Horizon Council but expressed an interest in having an alternate.

Councilmember Gunter moved, seconded by Councilmember Hayden, for Councilmember Nelson to serve on the Horizon Council.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

<u>Councilmember Hayden</u> stated he would like to serve as an alternate on the Horizon Council.

Councilmember Nelson moved, seconded by Councilmember Welsh, for Councilmember Hayden to serve as alternate on the Horizon Council.

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#### Lee County Human Services Council

Discussion held regarding who wanted to be on the Lee County Human Services Council which was held by former Councilmember Stout and temporarily filled by Councilmember Hayden.

<u>Councilmember Cosden</u> was interested in serving on the Lee County Human Services Council, possibly as an alternate.

Councilmember Gunter moved, seconded by Councilmember Nelson, for Councilmember Cosden to serve on the Lee County Human Services Council.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

## **Metropolitan Planning Organization (MPO)**

Discussion held regarding the members to be the same as the TAC as the following: Mayor Coviello, Councilmembers Sheppard, Gunter, Hayden, Williams, and Cosden as alternate.

Councilmember Nelson moved, seconded by Councilmember Cosden, for the following to be appointed to the Metropolitan Planning Organization: Mayor Coviello, Councilmembers Sheppard, Gunter, Hayden, and Williams as members with Councilmember Cosden as the alternate.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

#### **National League of Cities**

Discussion held regarding who wanted to be on the National League of Cities currently held by Councilmember Cosden and the alternate is Councilmember Nelson.

Councilmember Welsh expressed his interest in serving on the National League of Cities.

Councilmember Nelson moved, seconded by Councilmember Hayden, for Councilmember Welsh to serve on the National League of Cities and Councilmember Nelson to serve as alternate on the National League of Cities.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

## Planning and Zoning Commission (alternate)

<u>Councilmember Welsh</u> expressed an interest in being an alternate on the Planning and Zoning Commission.

Councilmember Nelson moved, seconded by Councilmember Gunter, for Councilmember Welsh to serve as alternate on the Planning and Zoning Commission.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

<u>Councilmember Welsh</u> suggested researching other cities to establish a Parks Advisory Committee. Councilmember Nelson provided the second.

<u>Councilmember Welsh</u> explained what could be discussed with this board: events, clubs, amenities, etc.

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#### Approval of Meeting Calendar - (Item carried over from 11/16/2020)

Discussion held regarding the options for the 2021 Meeting Calendar.

Councilmember Gunter moved, seconded by Councilmember Nelson, to approve the 2021 Meeting Calendar.

<u>Mayor Coviello</u> inquired about the individual Councilmember meetings with the City Manager on Mondays.

City Manager Hernandez suggested to divide the meetings between Monday and Tuesday to allow significant time to meeting with the Councilmembers before the Council meetings. His Administrative Assistant will work with the Council Office to work out the schedules. He stated that he would be available to meet after hours if needed.

City Attorney Menendez discussed the timeframe associated with the agenda and possible adjustments as they are identified in the rules.

<u>Mayor Coviello</u> stated that the agenda would be posted on Wednesday at 4:00 p.m. Council would have the backup to review over the weekend and meet with the City Manager on Monday or Tuesday.

City Attorney Menendez read into the record the procedures of deadlines on agenda preparation.

Mayor Coviello inquired if there were any changes to be made to the timeline.

City Clerk Bruns stated that she would work with the City Manager.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

#### **NEW BUSINESS**

None

### REPORTS OF THE MAYOR AND COUNCIL MEMBERS

Councilmember Gunter – Topics: Attended the Oasis Charter School Strategic Planning Workshop; Chief Newlan's retirement celebration; MPO meeting on November 20<sup>th</sup>; Oasis Charter School Stakeholders Meeting on Capital Improvements; on December 4<sup>th</sup> toured his District with the City Manager; on December 5<sup>th</sup> Chamber of Commerce Tree Lighting. He reminded Councilmember Sheppard to attend the Charter School Governing Board meeting on Tuesday at 5:30 p.m. Will also be attending the CTAC meeting this Wednesday. He had an opportunity a couple of months ago to speak with the City Attorney regarding the Sign Ordinance; there were some gray areas that need to be addressed that are not clarified in our Ordinance such as campaign signs. He requested a second to work with City Staff and the City Attorney's office on the Sign Ordinance. Councilmember Nelson provided the second.

Councilmember Hayden – Topics: Attended the Tree Lighting on Saturday and thanked the Chamber of Commerce for their work, as well as the Tabor Family for putting up a tree; Blue Star Memorial last week, gave thanks to the Garden Club of Cape Coral for their devotion of time, money, and energy; attended Chief Newlan's retirement party; next week Legislative Delegation Meeting with a new delegation, Representative Roach heads that delegation, Representative Giallombardo will make his first appearance, opportunity for Residents to hear about legislative agenda to be held in the Nursing Building at FSW.

<u>Councilmember Nelson</u> – Topics: Attended a District Tour with the City Manager, passed on traffic and bike lane recommendations to Traffic Engineer Corbett and looked forward to hearing back on those; will be presenting at the COW meeting this Wednesday along

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with other community leaders regarding the Homeless Task Force, meeting starts at 5:30 p.m.

<u>Councilmember Sheppard</u> – Topics: Will not be in town this week and requested to attend the meetings remotely by Microsoft Teams for the December 9, 2020 meetings.

## Consensus agreed with no objections.

<u>Councilmember Gunter</u> stated that he would attend the Charter School Governing Board meeting tomorrow if there were no objections and Councilmember Sheppard could start attending next month.

City Attorney Menendez stated the seat on the Charter School Governing Board was a voting member of the Board, and it would be appropriate to say that Councilmember Sheppard's term on that Board does not begin until the next meeting and that Council was extending Councilmember Gunter's term through this month.

Councilmember Hayden moved, seconded by Councilmember Nelson, to extend Councilmember Gunter's board spot on the Charter School Governing Board and that Councilmember Sheppard would move on the next meeting.

Council polled as follows: Gunter, Hayden, Nelson, Sheppard, Welsh, Cosden, and Coviello voted "aye." Seven "ayes." Motion carried 7-0.

<u>Councilmember Welsh</u> – Topics: Met with Interim Chief of Police Sizemore and got a tour from Deputy Chief McKenna of the Police Department's facility.

Councilmember Williams - Topics: Excused

Councilmember Cosden - Topics: No Report.

<u>Mayor Coviello</u> – Topics: Attended Blue Star Marker Memorial Service at Echo Park; congratulated Interim Chief of Police Sizemore for stepping up and taking that position.

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

City Attorney: Topics: No Report.

City Manager: Topics: No Report.

## TIME AND PLACE OF FUTURE MEETINGS

A Special Meeting was scheduled for Wednesday, December 9, 2020, at 4:30 p.m. in Council Chambers (Attorney-Client Session).

A Committee of the Whole Meeting was scheduled for Wednesday, December 9, 2020, at 5:30 p.m. in Council Chambers.

A Regular Meeting of the Cape Coral City Council was scheduled for Monday, December 14, 2020 at 4:30 p.m. in Council Chambers.

#### **MOTION TO ADJOURN**

There being no further business, the meeting adjourned at 6:53 p.m.

Submitted by,

Kimberly Bruns, CMC City Clerk



## AGENDA REQUEST FORM

CITY OF CAPE CORAL

ltem

Number: 7.B.

Meeting

**Item Type:** 

1/6/2021

Date:

**APPROVAL OF** 

MINUTES

## TITLE:

Special Meeting (Attorney Client Session) - December 9, 2020

## **REQUESTED ACTION:**

Approve or Deny

## SUMMARY EXPLANATION AND BACKGROUND:

Meeting minutes from the December 9, 2020 Special Meeting.

## **STRATEGIC PLAN ALIGNMENT:**

1. 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

## **RECOMMENDATIONS:**

Approval

## SOURCE OF ADDITIONAL INFORMATION:

Kimberly Bruns, City Clerk, 1-239-574-0417

## FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

n/a

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

### PREPARED BY:

Kimberly
Bruns

Division- Managerial
Department- City Clerk's
Department

## ATTACHMENTS:

**Description** Type

1. Special Meeting (Attorney Client Session) - December 9, 2020 Backup Material

## SUBJECT TO APPROVAL

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# MINUTES FOR THE SPECIAL MEETING OF THE CAPE CORAL CITY COUNCIL

Wednesday, December 9, 2020

Council Chambers

4:30 p.m.

Meeting called to order by Mayor Coviello at 4:32 p.m.

PLEDGE OF ALLEGIANCE - Mayor Coviello

Roll Call: Mayor Coviello, Councilmembers Cosden, Gunter, Hayden, Nelson, and Welsh were physically present. Councilmember Sheppard participated remotely via telephone. Councilmember Williams was excused.

<u>Mayor Coviello</u> explained that the permission for the appearance of Councilmember Sheppard via remote participation at today's meeting was received at Monday's Regular Council meeting (12/7/2020).

## **BUSINESS**

Attorney-Client Session - Discuss Settlement Strategies in the matter of City of Cape Coral v. Bateman, Case No. 20-3359

<u>Mayor Coviello</u> announced the timeframe for the meeting as approximately one hour and the attendees were as follows:

Dolores Menendez, City Attorney

Bob Shearman, Attorney at Law

Rob Hernandez, City Manager

Mayor Coviello

Councilmembers Cosden, Gunter, Hayden, Nelson, Welsh, and Sheppard remotely.

Also, in attendance was a Court Reporter from Fort Myers Court Reporting.

The Attorney-Client Session began at 4:38 p.m. and convened in Conference Room 220A.

City Council reconvened in Council Chambers at 6:15 p.m.

Mayor Coviello called the meeting back to order.

## TIME AND PLACE OF FUTURE MEETINGS

A Regular Meeting of the Cape Coral City Council was scheduled for Monday, December 14, 2020, at 4:30 p.m. in Council Chambers.

## MOTION TO ADJOURN

There being no further business, the meeting adjourned at 6:15 p.m.

Submitted by,

Kimberly Bruns, CMC City Clerk



## AGENDA REQUEST FORM

CITY OF CAPE CORAL

**Item** 

Number: 7.C.

Meeting

**Item Type:** 

1/6/2021

Date:

**APPROVAL OF** 

MINUTES

TITLE:

Regular Meeting - December 14, 2020

**REQUESTED ACTION:** 

Approve or Deny

**SUMMARY EXPLANATION AND BACKGROUND:** 

n/a

STRATEGIC PLAN ALIGNMENT:

1. 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

**RECOMMENDATIONS:** 

Approval

**SOURCE OF ADDITIONAL INFORMATION:** 

Kimberly Bruns, City Clerk, 1-239-574-0417

FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

n/a

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

PREPARED BY:

Kimberly
Bruns

Division- Managerial

Department- City Clerk's
Department

ATTACHMENTS:

**Description** Type

Regular Meeting - December 14, 2020
 Backup Material

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

December 14, 2020

Council Chambers

4:30 p.m.

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

INVOCATION/MOMENT OF SILENCE - Councilmember Hayden

PLEDGE OF ALLEGIANCE - Councilmember Hayden

**Roll Call:** Mayor Coviello, Councilmembers Cosden, Gunter, Hayden, Sheppard, and Welsh were present. Councilmembers Nelson and Williams were excused.

#### CHANGES TO AGENDA/ADOPTION OF AGENDA

Mayor Coviello asked if anyone had any changes to the agenda.

City Manager Hernandez requested to withdraw Item 9(A)(7) from the Consent Agenda and bring it back at a later time and pull Item 9(A)(14) (Resolution 281-20) for a comment.

Councilmember Welsh requested to discuss Item 9(A)(16) under the Consent Agenda as it was added today.

Mayor Coviello stated under Consent Agenda Item 9(A)(16) would be pulled for further discussion.

Councilmember Gunter requested to withdraw Resolutions 276-20 and 277-20 (Consent Items 9(A)(9) and 9(A)(10)) as both items were related to pending litigation cases; he recommended that Council have a discussion at a later time.

City Attorney Menendez clarified that Items 9(A)(9) and 9(A)(10) were being withdrawn by Councilmember Gunter and the City Manager requested to pull Item 9(A)(14) for further discussion.

Mayor Coviello confirmed that Items being withdrawn were 9(A)(7), 9(A)(9), and 9(A)(10), and the City Manager wanted an opportunity to discuss Item 9(A)(14) Resolution 281-20.

Councilmember Gunter moved, seconded by Councilmember Hayden, to adopt the agenda, as amended.

Council polled as follows: Hayden, Sheppard, Welsh, Cosden, Coviello, and Gunter voted "aye." Six "ayes." Motion carried 6-0.

## RECOGNITIONS/ACHIEVEMENTS

None.

**APPROVAL OF MINUTES** 

None.

**CITIZENS INPUT TIME** 

No speakers.

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#### **BUSINESS**

#### CONSENT AGENDA

- 1) Resolution 242-20 Approve the State Highway Lighting, Maintenance, and Compensation Agreement between the City of Cape Coral and the Florida Department of Transportation; Authorizing the City Manager or his designee to execute the Agreement; Department: Public Works; Dollar Value: N/A; (Fund: N/A)
- 2) Resolution 252-20 Approve the Memorandum of Understanding (MOU) between City and Department of Environmental Protection for modernization of Survey Datums with a cost divided over 3 years with \$190,000 in FY 2021, \$200,000 in FY 2022, and \$200,000 in FY 2023. Department: Public Works; Dollar Value: Funds to be divided between Transportation Capital and Stormwater Unassigned, Reserve Funds for a total cost of \$590,000.
- 3) Resolution 261-20 Approve Authorization and Execution of Utilities Hazard Mitigation Grant Program Agreement for Lift Station 120 Relocation and Generator Installation. Total Project Cost is \$854,449, the Federal Cost Share is \$640,836.75 Utilities Dept 25% match in the amount of \$213,612.25; Department: Utilities; (Water and Sewer Fund)
- 4) Resolution 268-20 Award Bid # BUT2070KR for the installation and testing of six test wells and three observation wells; and remediation services for up to six existing reverse osmosis (RO) wells to Layne Christensen Company, as the lowest responsive responsible bidder, in the amount of \$2,089.998 with a City controlled contingency of 10%, \$209,000, for a total amount of \$2,298,998 and authorize the City Manager or designee to execute the contract(s), purchase order(s), and any renewals; Department: Utilities; Dollar Value: \$2,298,998; (Water & Sewer Fund)
- 5) Resolution 269-20 Approve Renewal of the Mutual Aid Agreement (MAA) Between the City of Cape Coral o/b/o the Cape Coral Police Department and the Charlotte County Sheriff's Office and authorizing the Chief of Police to execute all necessary documents; Department: Police; Dollar Value: N/A; (Fund: N/A)
- 6) Resolution 270-20 Approve Renewal of the Voluntary Cooperation Mutual Aid Agreement (MAA) Between the Participating Agencies and the Florida Department of Law Enforcement to form the Fort Myers Regional Operations Center Child Abduction Response Team and to authorize the Chief of Police to execute all necessary documents; Department: Police; Dollar Value: N/A; (Fund: N/A)
- 7) WITHDRAWN: Resolution 274-20 Award Invitation to Bid #BPW2110AP Major Road Resurfacing FY2021 to Community Asphalt Corporation for asphalt resurfacing sections of three different major roadways totaling approximately 19 lane miles and other related work as the lowest responsive, responsible bidder, in the amount of \$1,798,000 with a 5% city controlled contingency of \$89,900 for a total of \$1,887,900 and authorize the City Manager or Designee to execute the contract, purchase orders and change orders; Department: Public Works; Dollar Value: \$1,887,900; (Transportation-Road Resurfacing Fund Water and Sewer Fund)
- 8) Resolution 275-20 Award Invitation to Bid #BPW2111AP Local Road Resurfacing FY2021 to Pavement Maintenance, LLC, for asphalt resurfacing of approximately 41 lane miles of local roads and other related work as the lowest responsive, responsible bidder, in the amount of \$2,513,877 with a 5% city controlled contingency of \$125,694 for a total project cost of \$2,639,571 and authorize the City Manager or Designee to execute the contract, purchase orders and change orders; Department: Public Works; Dollar Value: \$2,693,571; (Transportation-Road Resurfacing Fund/Water and Sewer Fund)

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- 9) WITHDRAWN: Resolution 276-20 Approval of Settlement Agreement for the eminent domain case of City of Cape Coral v. Calixto Blanco, et al., being Case Number 20-CA-002780 to resolve the acquisition of Festival Park Parcel #FP-070 (aka Lots 14 and 15, Block 3003, Cape Coral Unit 43 1014 NW 25th Street) for a total land settlement of \$50,000 plus statutory attorney fees of \$8,580 for a total of \$58,580, exclusive of expert costs. The City previously deposited into the Court Registry \$20,000; remaining funds due is \$38,580, Department: Financial Services / Real Estate Division; Dollar Value: \$38,580; (Parks Capital Project/GO Bond Fund)
- 10)WITHDRAWN: Resolution 277-20 Approval of Settlement Agreement for the eminent domain case of City of Cape Coral v. Calixto Blanco, et al., being Case Number 20-CA-002780 to resolve the acquisition of Festival Park Parcel #FP-196 (aka Lots 39 and 40, Block 3015, Cape Coral Unit 43 2608 NW 9th Place) for a total land settlement of \$45,000 plus statutory attorney fees of \$10,098 for a total of \$55,098, exclusive of expert costs. The City previously deposited into the Court Registry \$12,000; remaining funds due is \$43,098. Department: Financial Services / Real Estate Division; Dollar Value: \$43,098; (Parks Capital Project/GO Bond Fund)
- 11)Resolution 278-20 Acceptance of Florida Department of Transportation Highway Traffic Safety Funds to conduct impaired driving operations; Department: Police; Dollar Value \$71,000; No cash match: (Fund: N/A)
- 12) Resolution 279-20 Approve Donation of Tiki Hut for Outdoor Learning Center; Department: Parks and Recreation; Donation/Dollar Value: \$29,000; (Fund: N/A)
- 13)Resolution 280-20 Approve the Memorandum of Understanding (MOU) between Lee County and Cape Coral as a Supplemental to Resolution 5-19 Interlocal Agreement for Interconnection to Yellow Fever Creek to support Parks and Recreation GO Bond Community Park development; Department: Public Works; Dollar Value: Range between \$0.00 and \$196,568 dependent upon Lee County bid award; (Fund: GO Bond)
- 14) Resolution 281-20 COVID-19 Testing Agreement Between Curative, Inc., and the City of Cape Coral; Department: Fire; Dollar Value: N/A; (Fund: N/A)
- 15)ADDENDUM: Resolution 282-20 Approve Amended Interlocal Agreement between Lee County and Cape Coral for CARES Act Funding; Department: Finance; Dollar Value: This amendment increases our original grant by \$2,745,687
- 16) ADDENDUM: Resolution 283-20 Authorizing the City Manager to Receive, Review, and Accept or Reject the Donation of a Conservation Easement from Acorn Storage Properties, LLC, located Generally at the Northeast Corner of Van Buren Parkway and Burnt Store Road

Mayor Coviello stated that item 9(A)(14) was pulled at the City Manager's request. He asked if anyone wanted to pull any item. There were none.

Councilmember Gunter moved, seconded by Councilmember Hayden, to approve items 9(A)(1), 9(A)(2), 9(A)(3), 9(A)(4), 9(A)(5), 9(A)(6), 9(A)(8), 9(A)(11), 9(A)(12), 9(A)(13), 9(A)(14), and 9(A)(15) as presented.

Councilmember Welsh requested to pulled Item 9(A)(16).

Motion maker and second agreed to pull Item 9(A)(16) for discussion.

City Manager Hernandez discussed item 9(A)(14) regarding the efforts by Fire Chief Lamb and Staff to identify the ways for the City of Cape Coral to make COVID-19 testing convenient and accessible to the Residents.

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Fire Chief Lamb discussed the different factors toward streamlining the process for the testing sites. He added that any Resident, regardless of insurance or lack thereof, will be able to be tested at no cost. If we test more, we will find out who has the virus in our community in order to eliminate the spread of the virus.

Mayor Coviello discussed the CenturyLink testing site and test results process.

Fire Chief Lamb stated that the testing that the City would perform would provide results in one to two days.

Council polled as follows: Hayden, Sheppard, Welsh, Cosden, Coviello, and Gunter voted "aye." Six "ayes." Motion carried 6-0.

Councilmember Welsh inquired about item 9(A)(16) specifically to the purpose and any tax credits associated with the transaction.

City Manager Hernandez noted Staff was contacted late on Thursday by a property owner in the City who was interested in donating the rights to a waterway. The property owner is proposing to grant the City a conservation easement over one section on the Gator Slough Canal. He deferred the question about how much a tax deduction this would be to Michael Ilczyszyn.

Senior Public Works Manager Ilczyszyn displayed an aerial of the site and explained that that this land was an unplatted tract of 125 acres. The Gator Slough Waterway flows over it, encompassing about 14 acres of land. A conservation easement would protect that area in perpetuity for the City. Through discussions with the property owner, it has a reduction of the adjusted gross income and has a three- or five-year window if it were given to us. Our interest is to make sure that there is one contiguous body of water in perpetuity that is open for nature, citizens, and the flow of fresh water into Charlotte Harbor. Staff was able to work with the owner to accept the perpetual conservation easement with the right to purchase at a later date should they ever transfer the property.

Discussion held regarding deed restrictions and the process of donation.

Councilmember Welsh inquired about the amount of the tax credit.

Property Broker Andrews explained it would have to be appraised as part of the process. She noted the tax credit process deadline was December 30, 2020.

Councilmember Welsh moved, seconded by Councilmember Hayden, to approve item 9(A)(16), as presented.

Council polled as follows: Hayden, Sheppard, Welsh, Cosden, Coviello, and Gunter voted "aye." Six "ayes." Motion carried 6-0.

Mayor Coviello asked if there was a projected date to bring back Items 9(A)(9), Resolution 276-20 and 9(A)(10), Resolution 277-20.

City Attorney Menendez stated she did not have a projected date but would verify it with the Council Office. She would probably request it at the January 6<sup>th</sup> meeting, and it could be scheduled then.

Mayor Coviello hoped it could be scheduled this week.

<u>Councilmember Gunter</u> stated he would be leaving on Thursday to go out of town for the holidays. He mentioned he would have no problem meeting an hour earlier on January 6<sup>th</sup>.

Mayor Coviello agreed that 3:00 p.m. on January 6th would work.

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City Attorney Menendez stated that could probably be done; she would get the language from her Office in order to do the request by the end of today's meeting.

#### PERSONNEL ACTIONS

None.

#### PETITIONS TO COUNCIL

#### Petition to Council - Tim Trimble - Code Lien Refund Request

Mr. Trimble discussed the Oath of Office in the State of Florida, Article II Section 5(b) of the Florida Constitution which was displayed. He discussed the displayed Section 4. Homestead; exemptions. He also displayed his Homestead Exemption receipt for 2005. He explained his Petition to Council and requested that the City of Cape Coral assist him regarding a refund of \$5,000 that was paid several years ago regarding a code lien for parking a small trailer and parking a boat.

City Manager Hernandez explained this Petition to Council and that City Management recommended denial.

<u>Councilmember Cosden</u> understood from Mr. Trimble's Petition that it was against the Florida Constitution. She noted that in the Staff Review, it says Code liens may be filed on properties that have a Homestead Exemption. She asked for an explanation.

City Attorney Menendez stated having a Homestead Exemption from the Property Appraiser's Office is not what the Florida Constitution considers to be homestead property. Homestead Exemption with the Property Appraiser's Office gets you a Homestead Exemption on your ad valorem taxes. It does not mean that a lien cannot be placed on the property. Mr. Trimble had run up a tremendous amount of liens in the amount of \$241,000. She recalled that he and his wife had come in wanting to potentially refinance and could not do that with those liens on the property. It was beneficial for them to have it reduced to a more manageable amount. The City has long maintained that our main goal with Code Enforcement is not collection of the fines; it is gaining compliance. Mr. Trimble received benefit from reducing the liens to \$5,000, and he did not challenge the imposition of the liens.

Mayor Coviello noted that code liens may be filed on properties that have a Homestead Exemption which would only protect against foreclosure for the lien. He opined that Mr. Trimble was fortunate to have the liens reduced to only \$5,000.

Councilmember Gunter agreed. He noted that Mr. Trimble did not heed the Hearing Officer's warnings after 2 ½ years and kept that violation continuing. He recommended denial of this request.

Councilmember Gunter moved, seconded by Councilmember Hayden, to deny the request from the petitioner (Tim Trimble).

Council polled as follows: Hayden, Sheppard, Welsh, Cosden, Coviello, and Gunter voted "aye." Six "ayes." Motion carried 6-0.

## Petition to Council - Robert Denis - Authorize Use of Golf Cart on Paved Roadway

Mr. Denis understood that there is an Ordinance that existed within Cape Coral to allow for Golf Carts on certain roadways in approved neighborhoods. He stated it was to raise awareness for the possibility of coming across a Golf Cart on the roadway. He noted he learned that it is up to City Council to approve.

Councilmember Welsh stated an Ordinance would be required for a Golf Cart to be on the roadway. Within the State of Florida, there are low speed vehicles which allow for the use of Golf Carts but needs to have a windshield, seat belts, and turn signals, and can be

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operated on any roadway with a speed limit of 35 mph or less. He suggested looking into a street-legal Golf Cart. He cautioned that the approval of this may bring other petitions. He mentioned enforcement difficulties. He was against the use of Golf Carts.

Mr. Denis questioned if there were two classifications for Golf Carts, noting one was under 20 mph.

<u>Councilmember Welsh</u> noted that an Ordinance would be required for under 20 mph. There is a process to apply for the low speed vehicle permit. He noted there were great resources on the State's website.

Mayor Coviello stated this was much more of an issue not just confined to one neighborhood. He suggested having a workshop or a future Council meeting for discussion to address this topic City-wide. Photos were displayed of Golf Carts on Pelican and Cape Coral Parkway and bike paths in areas that are not approved. He voiced his concern about safety.

City Attorney Menendez stated she understood that Council may want to potentially repeal the Ordinance that allows for the designation of certain areas.

Mayor Coviello responded in the affirmative.

City Attorney Menendez noted that under the current Ordinance, a Petition to Council is treated like an application. If Mr. Denis is interested in continuing with having Council formally consider his request beyond what he hears today as part of the discussion, then Council would consider this with a Resolution to approve or disapprove a designated area.

Councilmember Gunter agreed that this was something that needed to be discussed Citywide as to whether or not to allow this. If so, criteria and parameters would need to be set. He discussed that the use of Golf Carts had come up in his District about 18 months ago. Instead of having several petitions possibly coming up to Council for each individual neighborhood, he opined that Council needed to look at this collectively as a City. He suggested to have this discussion at a future workshop.

<u>Councilmember Sheppard</u> agreed Council should look at this topic City-wide. He noted that some Residents in his District use Golf Carts. He did not have issues with it for neighborhood travel but not on major roads.

Traffic Engineer Corbett discussed the displayed aerial showing the existing designated neighborhoods for Golf Cart use:

- Existing Golf Cart Designated Neighborhood (established 2001) (southeast quadrant of Santa Barbara Boulevard and Hancock Bridge Parkway)
- Requested Golf Cart Designated Neighborhood (east of Viscaya and Del Prado in the southeast quadrant)
- Existing Golf Cart Designated Neighborhood 6.5 miles +/- of roadway 0.27 sq. mi.
   +/- (Saratoga Lake Park)
- There was a request in 2012-2013 to expand this area to include areas west of Santa Barbara Boulevard which was denied by the City Council at that time.
- Request Golf Cart Designated Neighborhood 2 miles +/- of roadway 0.6 sq. mi. +/-

<u>Councilmember Hayden</u> agreed that a more comprehensive discussion was needed at a later date to come up with a more uniform regulation. He noted the current request still needed to be resolved. It has already been established that it can be done in certain parts of the City.

Traffic Engineer Corbett mentioned that Staff from Public Works and the Police Department has reviewed this, and there is no technical safety concern why this could not be implemented. However, both departments generally do not recommend Golf Cart

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use on any public roadways to prevent any interaction between golf carts and vehicles, bicycles or pedestrians.

<u>Councilmember Cosden</u> stated that an Ordinance would need to be created to apply it City-wide.

City Attorney Menendez stated the current Ordinance complies with the State Statute. The City should be proactive in designating more areas for Golf Cart access if they want to support Golf Carts on more City roads. If the Council was interested in considering the Golf Cart petition, then a Resolution would need to be heard before Council.

Mayor Coviello stated that the topic of Golf Carts in residential neighborhoods should be presented at a COW meeting for discussion. There should be limits on major roads such as Santa Barbara and Cape Coral Parkway. A more in-depth discussion is needed on what the Resolution would include. He inquired about the protocol for dealing with violations.

Interim Chief of Police Sizemore stated that there would be a reactionary process. There is no proactive enforcement of Golf Cart driving.

Councilmember Gunter stated that he was also concerned with enforcement and teenage drivers. He asked the City Manager when this could be scheduled for a COW meeting.

City Manager Hernandez requested that Council amend their meeting calendar to have a COW meeting on a Wednesday in late March which would be the earliest unless other items are moved.

<u>Councilmember Gunter</u> inquired if the Petitioner would agree with having the topic discussed further when Council could analyze this at a COW meeting.

Mr. Denis agreed.

Councilmember Gunter asked the City Attorney if the petitioner would be okay with a continuance in this matter.

City Attorney Menendez stated if the petitioner was amenable to that, it would be fine.

Mr. Denis agreed and would be willing to participate.

Councilmember Gunter stated that safety was the main objective.

Mayor Coviello stated some framework was needed on what was allowed.

<u>Councilmember Sheppard</u> agreed it was a change that needs to happen. He questioned if a parameter was set for the neighborhood currently using Golf Carts. Could we allow the petitioner to operate his with the same parameters?

City Attorney Menendez explained that approval was needed for a new area to be designated. There will be a Resolution that will identify the area, and Council will vote. The current area that was designated a number of years ago followed this process.

City Manager Hernandez clarified that the next available date would be March 31, 2021; however, it could be held on February 24, 2021.

Mayor Coviello asked if the meeting date was already scheduled.

City Manager Hernandez believed it was not part of the approved calendar yet. He stated he would work with the Clerk and bring an item forward on January 6<sup>th</sup> to amend the Council meeting calendar to include either or both of these two dates.

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Mayor Coviello agreed for him to work with the Clerk to verify the date of the COW meeting. He noted there may be other topics that could be added for that meeting as well.

<u>Councilmember Welsh</u> inquired if Council would have to repeal the current Ordinance in the existing neighborhood that currently allows the Golf Carts.

City Attorney Menendez stated if this were to be repealed, it would depend on its nature, but it is likely that if Council was going to repeal the Ordinance, it would also be related to the existing neighborhood that has already been designated.

<u>Mayor Coviello</u> requested that the Police Department patrol the current neighborhood that allows Golf Carts and provide feedback at that COW meeting.

Interim Chief of Police Sizemore provided history on the prior approval. He agreed to have data for the Council as requested.

City Attorney Menendez explained that we could also look at the issue of creating a new Ordinance that repeals the existing Ordinance, but not affecting the current designated area.

Mayor Coviello thanked Mr. Denis for bringing this item to Council's attention which will be on a future agenda.

City Attorney Menendez stated it would be appropriate to have a motion to continue, but it does not need to be continued to a date certain.

Councilmember Gunter moved, seconded by Councilmember Sheppard, to continue this petition (from Robert Denis) and reach out to the petitioner once we know exactly which of the two dates that we are going to utilize and give him the opportunity to come back, if he would like, until after the City Council has had an opportunity to discuss this matter further at a COW meeting (in February/March 2021).

Council polled as follows: Hayden, Sheppard, Welsh, Cosden, Coviello, and Gunter voted "aye." Six "ayes." Motion carried 6-0.

APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

None.

#### ORDINANCES/RESOLUTIONS

**Public Hearings** 

NOTE: N/A

#### Ordinance 79-20 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance establishing the Stonewater Community Development District located within the municipal boundaries of the City of Cape Coral, containing approximately 184.82 acres, pursuant to Chapter 190, Florida Statutes; providing for the establishment of the boundaries for the Stonewater Community Development District; providing for the designation of the initial board members; providing for the District name; providing for statutory provisions governing the District. (Petitioner: DR Horton, Inc.)

City Clerk Bruns read the title of the Ordinance.

Planning Manager Pederson explained what this Ordinance would accomplish and displayed the following slides:

Ordinance 79-20 Stonewater CDD

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- Stonewater PDP
- Stonewater is an approved Planned Development Project
- What is a CDD? Community Development Project (2 slides)
- Background
- CDD Powers Section 190.012 F.S.
- Stonewater CDD
- Recommendation Staff recommends approval authorizing creation of the Stonewater CDD

Public Hearing Opened.

Wesley Haber, Attorney with the Law Firm of Hopping Green and Sams, authorized representative for DR Horton, appeared to discuss the CDD request. He pointed out that it was an independent unit of government distinguished from an HOA, subject to public record, the Sunshine Law, and Chapter 112 of the Code of Ethics. It has more power than an HOA and serves a different function in that it is largely an operation, maintenance, and finance tool for the landowner to develop a public infrastructure within a project. He noted that his office filed a petition with the City which established that the petitioner met all the criteria set forth in Chapter 190 of the Florida Statutes for the establishment of a community development district. He noted that they met the advertising requirements.

Public Hearing Closed.

Councilmember Gunter moved, seconded by Councilmember Cosden, to adopt Ordinance 79-20, as presented.

Councilmember Welsh inquired if this would ever change to an HOA once it is built out.

Mr. Haber stated they were perpetual entities. He explained that there are CDD's that get dissolved from time to time.

Council polled as follows: Hayden, Sheppard, Welsh, Cosden, Coviello, and Gunter voted "aye." Six "ayes." Motion carried 6-0.

#### Ordinance 86-20 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance declaring Lots 63 and 64, Block 1915, Unit 28, Cape Coral Subdivision (1302 SW 5<sup>th</sup> Avenue), as unusable municipal surplus real property not projected to be used for municipal purposes; authorizing the City Manager to exchange said municipal surplus property for real property described as Lots 5 and 6, Block 1916, Unit 28, Cape Coral Subdivision (1309 SW 6<sup>th</sup> Avenue); authorizing the conveyance of surplus real property described herein pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances; authorizing and directing the Mayor and City Clerk to execute a deed conveying the aforementioned surplus real property. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

Property Broker Andrews explained what this Ordinance would accomplish and displayed the following slides:

- Ord. 86-20 Exchange of Real Property
- In 2019, the City was contacted by the property owner's local representative to purchase the property at 1309 SW 6<sup>th</sup> Avenue
- This property is located within 100 feet of the BMX Eagle Nest (LE-27).
- The nest has been in this location since at least 1989.
- The eagles utilize the perch tree located along the north side of the site.
- Per the Eagle Ordinance, the City may prohibit development from taking place within 350 feet of an active bald eagle's nest in order to preserve critical eagle habitat.
- The City owns several parcels near the LE-27 nest site.

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- To preserve the critical eagle habitat at the LE-27 nest site, Staff negotiated an exchange of property with the owner for a nearby City site.
- Recommendation Approval of Ordinance 86-20
- Declare City property located at 1302 SW 5th Avenue as "unusable municipal surplus real property"
- Exchange City property for 1309 SW 6<sup>th</sup> Avenue, which is owned by Golden River Solo 401K, LLC

Public Hearing Opened.

No Speakers.

Public Hearing Closed.

Councilmember Welsh moved, seconded by Councilmember Cosden, to adopt Ordinance 86-20, as presented.

Councilmember Gunter inquired about the rings surrounding the property as indicated on the aerial picture in the presentation.

Property Broker Andrews explained the different radius from the eagle nest pursuant to the aerial picture. The first ring is at 150 feet (grey ring) that bisects the property. There is a 350-foot ring (secondary zone for the eagle nest). There is a 660 (blue) and 1,100 (black) foot ring.

<u>Councilmember Gunter</u> explained his reasons for not supporting the Ordinance due to the property being located within 350 feet radius of the eagle nest.

Property Broker Andrews explained that the City may prohibit the development of the site. In the past, when the Florida Fish and Wildlife Conservation Commission denies a person to build on the site, the City gets stuck purchasing the site.

DCD Director Cautero further explained that there are provisions in the Ordinance once you get past that 150 to 330 range. Staff has used management practices which adds to the cost of construction. There could be opportunities if someone developed within that radius based on a number of factors. What are the practices to be used if developing in that timeframe from May 1<sup>st</sup> to October 15<sup>th</sup>? What if you cannot develop within that 100 feet? If you go outside of that in the next band, the outer band is City, not Federal; City Council reaffirmed that about 18 months ago with an amendment to the Ordinance which was not approved.

Mayor Coviello requested to see the picture with the red ring which showed the perching site. He noted that the eagles like to perch away from the nest; it certainly would be within the 350 feet.

Property Broker Andrews believed that the perch tree was on the City's property with some overhang.

Councilmember Welsh inquired about when the landowner purchased the property.

Property Broker Andrews stated that the property was purchased in December 2018.

Councilmember Welsh stated that he was familiar with the eagle nest in District 5, and the nest was not a new one. The property owner who purchased this realized that they could not develop on it. He did not see any reason to oppose this Ordinance.

Council polled as follows: Hayden, Sheppard, Welsh, Cosden, and Coviello voted "aye." Gunter voted "nay." Five "ayes." One "nay." Motion carried 5-1.

Ordinance 94-20 Public Hearing

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#### WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance authorizes the issuance of not to exceed \$10,600,000 in principal amount of a Water and Sewer Revenue Bond of the City of Cape Coral, Florida to finance, on an interim basis, various costs and expenses relating to the design and planning for the water, wastewater and irrigation water utility capital improvements to be acquired, constructed and equipped within the North 1 assessment area. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

Interim Financial Services Director Phillips explained what this Ordinance would accomplish and displayed the following slides:

- · City of Cape Coral Bank Loan to Fund North 1 UEP Design
- North 1 Project Boundary
- City of Cape Coral Proposed Utilities Extension Revised FY 2018-2023
- Proposed Bank Loan
- · RFP for Bank Loan Results
- Timing

Public Hearing Opened.

No speakers.

Public Hearing Closed.

Councilmember Gunter moved, seconded by Councilmember Welsh, to adopt Ordinance 94-20, as presented.

Council polled as follows: Hayden, Sheppard, Welsh, Cosden, Coviello, and Gunter voted "aye." Six "ayes." Motion carried 6-0.

Recessed at 6:02 p.m. and reconvened at 6:15 p.m.

Resolution 264-20 Public Input Authorizes Issuance of Water and Sewer Revenue
Bonds not exceeding \$10,600,000 Principal Amount for the North 1 Assessment Area
WHAT THE RESOLUTION ACCOMPLISHES:

The resolution supplements Resolution 98-86, as previously amended and supplemented, which resolution, among other things, authorizes the issuance from time to time of City of Cape Coral, Florida Water and Sewer Revenue Bonds; authorizes the issuance by the City of not exceeding \$10,600,000 principal amount of a City of Cape Coral, Florida Water and Sewer Revenue Bond, Series 2020 in order to finance, on an interim basis, various costs and expenses relating to the design and planning for the water, wastewater and irrigation water utility capital improvements to be acquired, constructed and equipped within the North 1 assessment area; provides certain terms and details of such Series 2020 bond and authorizes a negotiated sale of said bond and the award of the bond pursuant to the proposal of PNC Bank, National Association; delegates certain authority to the mayor and other city officials with respect to the Series 2020 bond; and provides certain other provisions with respect to the Series 2020 bond. (Brought forward by City Management.)

City Clerk Bruns read the title of the Resolution.

Interim Financial Services Director Phillips explained what this Resolution would accomplish.

Public Hearing Opened.

No speakers.

Public Hearing Closed.

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Councilmember Cosden moved, seconded by Councilmember Gunter, to approve Resolution 264-20, as presented.

Council polled as follows: Hayden, Sheppard, Welsh, Cosden, Coviello, and Gunter voted "ave." Six "aves." Motion carried 6-0.

#### Ordinance 97-20 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance approves a Ground Lease Agreement between the City of Cape Coral and Lee County, Florida for the lease of a portion of the property owned by the City of Cape Coral located at 815 Nicholas Parkway for placement of communication-related ground equipment and generator; authorizes the Mayor to execute the Ground Lease Agreement; and attaches a copy of the ground lease agreement. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

Property Broker Andrews explained what this Ordinance would accomplish and displayed the following slides:

- 3 five-year extension terms
- · Aerial picture of the site

Public Hearing Opened.

No speakers.

Public Hearing Closed.

Councilmember Welsh moved, seconded by Councilmember Hayden, to adopt Ordinance 97-20, as presented.

Council polled as follows: Hayden, Sheppard, Welsh, Cosden, Coviello, and Gunter voted "ave." Six "ayes." Motion carried 6-0.

#### Introductions

#### Ordinance 83-20 Set Public Hearing for January 6, 2021

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending Ordinance 87-00, as amended by Ordinance 88-04, Ordinance 40-11, and Ordinance 13-19, which established the City of Cape Coral Investment Policy for Surplus Funds, by adopting an amended City of Cape Coral Investment Policy. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for January 6, 2021 in Council Chambers.

#### Ordinance 98-20 Set Public Hearing for January 6, 2021

WHAT THE ORDINANCE ACCOMPLISHES:

The Ordinance approves the sale of municipal surplus real property described as Lots 35 and 36, Block 5460, Unit 90, Cape Coral Subdivision pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances and authorizes and directs the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property located at 4122 NW 39th Lane to TSAVO Group, Inc. (Applicant: Brought forward by City Management)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for January 6, 2021 in Council Chambers.

Ordinance 99-20 Set Public Hearing for January 6, 2021

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#### WHAT THE ORDINANCE ACCOMPLISHES:

The Ordinance approves the sale of municipal surplus real property described as Lots 53 and 54, Block 5241, Unit 81, Cape Coral Subdivision pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances and authorizes and directs the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property located at 1432 Old Burnt Store Road North to TSAVO Group, Inc. (Applicant: Brought forward by City Management)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for January 6, 2021 in Council Chambers.

#### Ordinance 100-20 Set Public Hearing for January 6, 2021

WHAT THE ORDINANCE ACCOMPLISHES:

The Ordinance approves the sale of municipal surplus real property described as Lots 49 and 50, Block 5465, Unit 90, Cape Coral Subdivision pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances and authorizes and directs the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property located at 4111 NW 39th Street to TSAVO Group, Inc. (Applicant: Brought forward by City Management.)

City Clerk Bruns read the title of the Ordinance.

The public hearing was scheduled for January 6, 2021 in Council Chambers.

#### **UNFINISHED BUSINESS**

Follow Up Items for Council

None.

#### **NEW BUSINESS**

None.

#### REPORTS OF THE MAYOR AND COUNCIL MEMBERS

<u>Councilmember Hayden</u> – Topics: Attended the Grand Opening of Fire Station #2. He encouraged people to read an article in the News Press by Amy Bennett Williams about the 20-year history of the Everglades Restoration Plan.

Councilmember Nelson - Topics: Excused.

Councilmember Sheppard - Topics: No Report.

<u>Councilmember Welsh</u> – Topics: Attended Fire Station #2 Dedication. He expressed thanks to the City workers and City Manager Hernandez for raising money for the United Way Rise to the Challenge Campaign.

Councilmember Williams - Topics: Excused.

<u>Councilmember Sheppard</u> asked to be released from his appointment to the Charter School Governing Board (CSGB).

<u>Councilmember Cosden</u> stated that she served two years on the CSGB and noted that it was very time intensive. She suggested that Councilmember Welsh would be a good candidate for that Board.

Councilmember Welsh stated he would not have the time to serve on the Charter School Governing Board. He mentioned that he did take an alternate position with

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Councilmember Sheppard on Planning and Zoning and would be willing to take that one over for him.

<u>Councilmember Sheppard</u> stated he hoped that possibly Councilmember Gunter would be interested in taking the CSGB position.

<u>Councilmember Gunter</u> agreed to take over the Charter School Governing Board for one more year since they were in the middle of doing some capital improvement project analysis for the Charter School.

Councilmember Cosden moved, seconded by Councilmember Hayden, to release the appointment of Councilmember Sheppard from the Charter School Governing Board and appointed Councilmember Gunter for the Charter School Governing Board for the next year.

City Attorney Menendez clarified that it was not a liaison position but an actual voting member of the CSGB.

Council polled as follows: Hayden, Sheppard, Welsh, Cosden, Coviello, and Gunter voted "aye." Six "ayes." Motion carried 6-0.

Mayor Coviello asked Councilmember Sheppard if he wanted to release his appointment from the Planning and Zoning Commission.

<u>Councilmember Sheppard</u> stated he would remain on the Planning and Zoning Commission.

<u>Councilmember Cosden</u> – Topics: Attended the Grand Menorah Lighting yesterday at the Chabad Jewish Center Chanukah Festival.

<u>Councilmember Gunter</u> – Topics: Attended the Charter School Governing Board meeting last week and the CTAC meeting last week as well.

<u>Mayor Coviello</u> – Topics: Attended the CTAC meeting; Grand Menorah Lighting at the Chanukah Festival; this morning the Grand Opening and Ribbon Cutting at Fire Station #2.

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

City Attorney: Topics: As the Council is aware, the City is a party to an eminent domain litigation entitled City of Cape Coral v. Calixto Blanco et al, Case Number 20-CA-002780. Accordingly, pursuant to Section 286.011, subsection 8 F.S., she requested that the City Council convene in a closed Attorney Client Session to discuss settlement and litigation strategies in that case. If Council approves, the Session can be scheduled for Wednesday, January 6, 2021, at 3:00 p.m.

Consensus agreed, without objection, to schedule the Attorney-Client session.

City Manager: Topics: Wished everyone happy holidays

#### TIME AND PLACE OF FUTURE MEETINGS

An Attorney-Client Session Meeting of the Cape Coral City Council was scheduled for Wednesday, January 6, 2021, at 3:00 p.m. in Council Chambers.

A Regular Meeting of the Cape Coral City Council was scheduled for Wednesday, January 6, 2021, at 4:30 p.m. in Council Chambers.

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#### **MOTION TO ADJOURN**

There being no further business, the meeting adjourned at 6:34 p.m.

Submitted by,

Kimberly Bruns, CMC City Clerk



### AGENDA REQUEST FORM CITY OF CAPE CORAL

Item Number: A.(1)
Meeting Date: 1/6/2021

Item Type: CONSENT AGENDA

#### TITLE:

Resolution 274-20 Award Invitation to Bid #BPW2110AP Major Road Resurfacing FY2021 to Community Asphalt Corporation for asphalt resurfacing sections of three different major roadways totaling approximately 19 Iane miles and other related work as the lowest responsive, responsible bidder, in the amount of \$1,776,872 with a 5% city controlled contingency of \$88,844 for a total of \$1,865,716 and authorize the City Manager or Designee to execute the contract, purchase orders and change orders; Department: Public Works; Dollar Value: \$1,865,716; (Transportation-Road Resurfacing Fund /Water and Sewer Fund)

#### **REQUESTED ACTION:**

Approve or Deny

#### **SUMMARY EXPLANATION AND BACKGROUND:**

- 1. The FY2021 Major Road Resurfacing is for the asphalt resurfacing of approximately 19 miles of three major roadways.
- 2. On October 23, 2020, Invitation to Bid #BPW2110AP was issued for the Major Road Resurfacing FY2021 and 17 vendors obtained the bid documents.
- 3. On November 30, 2020, four (4) responses were received from, in alphabetical order: Ajax Paving Industries of Florida, LLC of North Venice, FL; Community Asphalt Corporation of Miami, FL; Pavement Maintenance, LLC of Fort Myers; FL; and Preferred Materials, Inc. of Tampa, FL.
- After evaluation, Staff recommends awarding a contract to Community Asphalt Corporation as the lowest responsive responsible bidder meeting the requirements and specifications outlined in the bid documents.
- 5. **UPDATED INFORMATION:** If approved, the contract is to be completed in 90 days for a contract amount of \$1,776,872 with a 5% city-controlled contingency of \$88,844 for a total of \$1,865,716.
- 6. The Department is requesting a 5% City Controlled Contingency. The expenditure of the contingency, if any, will be subject to approval of specific change orders by the Project manager, if justified, upon identified needs with an appropriate scope and cost to address specific needs.
- 7. This is a budgeted item.

#### STRATEGIC PLAN ALIGNMENT:

Yes

If Yes, Priority Goals Supported are listed below.

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

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

#### **RECOMMENDATIONS:**

Award Invitation to Bid #BPW2110AP Major Road Resurfacing FY2021 to Community Asphalt Corporation

#### **SOURCE OF ADDITIONAL INFORMATION:**

Paul Clinghan, Public Works Director

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

Funding information: Funding for the total Project including contingency- (Transportation Capital Projects/Utilities Capital Projects Fund)

- General Ledger #301-30302-563101-30 (Transportation-Resurfacing Projects/Roads, Curbs, Gutters) \$1,607,340 for resurfacing plus 5% City Controlled Contingency of \$80,367 for a total of \$1,687,707
- General Ledger #405-36401-562601-36; Project Ledger C364010020 (Utilities Department-Road Resurfacing/Improvements Other Than) \$190,660 for Manhole and Valve Adjustments/Replacements 5% City Controlled Contingency of \$9,533 for a total of \$200,193
- 1. Will this action result in a Budget Amendment?

#### PREPARED BY:

Wanda Roop Division- Procurement Department-Finance

#### ATTACHMENTS:

	Description	Туре
D	1. Department Memo	Backup Material
D	2. Revised Resolution 274-20	Backup Material
D	3. Major Road Resurfacing FY21 Location Map	Backup Material
D	4. Bid Tabulation BPW2110AP	Backup Material
D	5. Invitation to Bid - BPW2110AP	Backup Material

#### **MEMORANDUM**

### CITY OF CAPE CORAL DEPARTMENT OF PUBLIC WORKS

TO:

Rob Hernandez, City Manager

FROM:

Christopher Phillips, Interim Financial Services Director

Paul Clinghan, Public Works Director

DATE:

December 17, 2020

SUBJECT:

FY 2021 - Major Road Resurfacing Bid Recommendation

#### BACKGROUND:

Fiscal Year (FY) 2021 Major Road Resurfacing involves resurfacing sections of three different Major roads totaling approximately 19 lane miles and includes other related work such as milling, utilities adjustments, limited structural repair, and restriping. A location map of FY 2021 Major Road Resurfacing is attached.

#### RECOMMENDATION:

An Invitation to Bid was advertised and four (4) bids were submitted and opened on November 30, 2020. Based upon the bid opening results, the Public Works Department recommends awarding the FY 2021 Major Road Resurfacing contract to Community Asphalt Corp, the lowest responsible, responsive bidder. The contract includes a substantial completion time frame of sixty (60) days after the notice to proceed is issued.

Staff recommends awarding the contract for the submitted bid of \$1,776,872 for Major Road Resurfacing and related items. The contract price including a 5% City controlled contingency of \$88,844 is \$1,865,716.

If you have any questions regarding this request, please contact Hugo Delgado, Principal Engineer, Public Works at 239-242-3216 or hdelgado@capecoral.net.

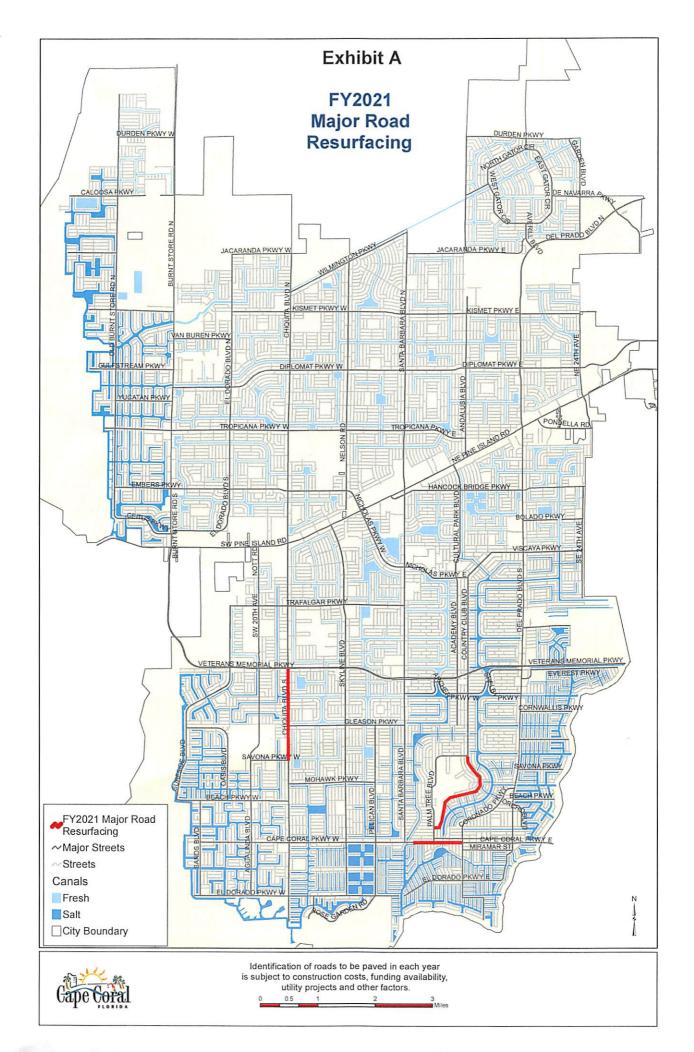
#### FUND AVAILABILITY:

Transportation: General Ledger 301-30302-563101-30 - \$1,586,212 plus 5% contingency for \$1,665,523; Utilities: General Ledger 405-36401-562601-36 - \$190,660 plus 5% contingency for \$200,193 for a total of \$1,776,872 plus 5% contingency for a total of \$1,865,716.

CP/WR/PC/SS:ip

Attachments: Major Road Resurfacing FY 2021 Location Map

c: Stephanie Smith, Design & Construction Manager Wanda Roop, Procurement Manager



#### City of Cape Coral

#### Bid # BPW2110AP Major Road Resurfacing FY2021

Bid Close Date: November 30, 2020

					stries of Florida, LLC. Venice, FL		The second of the second of the second	sphalt Corporation Myers, FL	Pavement Maintenance, LLC. Fort Myers, FL		H		Preferred Materials, Inc. Tampa, FL	
ltem#	Item Description	Quantity	Unit	Unit Price	Extended Price	П	Unit Price	Extended Price		Unit Price	Extended Price		Unit Price	Extended Price
1	Milling Existing Asphalt Pavement (0-2" Avg Depth)	184,500	SY	\$ 1.70	\$ 313,650.00	Ш	\$ 0.90	\$ 166,050.00		\$ 2.05	\$ 378,225.00		\$ 1.25	\$ 230,625.00
2	Structural Repair	500	SY	\$ 64.00	\$ 32,000.00		\$ 119.00	\$ 59,500.00		\$ 65.00	\$ 32,500.00		\$ 84.50	\$ 42,250.00
3	Asphalt Overlay Type SP-9.5	11,600	TN	\$ 93.50	\$ 1,084,600.00		\$ 85.90	\$ 996,440.00		\$ 90.10	\$ 1,045,160.00	П	\$ 118.50	\$ 1,374,600.00
4	Asphalt Testing	1	LS	\$ 25,400.00	\$ 25,400.00	П	\$ 114,000.00	\$ 114,000.00	П	\$ 33,975.60	\$ 33,975.60		\$ 20,700.00	\$ 20,700.00
5	Herbicide	1	LS	\$ 4,550.00	\$ 4,550.00	П	\$ 15,000.00	\$ 15,000.00	П	\$ 20,000.00	\$ 20,000.00		\$ 9,225.00	\$ 9,225.00
6	Sod	1,000	SY	\$ 2.70	\$ 2,700.00	П	\$ 5.60	\$ 5,600.00	П	\$ 2.65	\$ 2,650.00		\$ 6.70	\$ 6,700.00
7	6" Painted Pavement Markings, SOLID	125,100	LF	\$ 0.10	\$ 12,510.00	П	\$ 0.10	\$ 12,510.00	П	\$ 0.11	\$ 13,761.00		\$ 0.36	\$ 45,036.00
8	6" Painted Pavement Markings, SKIP	66,800	LF	\$ 0.10	\$ 6,680.00	П	\$ 0.10	\$ 6,680.00		\$ 0.11	\$ 7,348.00		\$ 0.13	\$ 8,684.00
9	6" Thermoplastic Pavement Markings, SOLID	16,500	LF	\$ 0.40	\$ 6,600.00	П	\$ 0.45	\$ 7,425.00	П	\$ 0.50	\$ 8,250.00		\$ 1.09	\$ 17,985.00
10	6" Thermoplastic Pavement Markings, SKIP	16,500	LF	\$ 0.40	\$ 6,600.00	П	\$ 0.45	\$ 7,425.00	П	\$ 0.50	\$ 8,250.00		\$ 0.38	\$ 6,270.00
11	Thermoplastic Standard Directional Arrow	125	EA	\$ 14.15	\$ 1,768.75	П	\$ 15.60	\$ 1,950.00	П	\$ 17.00	\$ 2,125.00		\$ 87.00	\$ 10,875.00
12	Thermoplastic "ONLY"	18	EA	\$ 18.85	\$ 339.30	П	\$ 20.80	\$ 374.40	П	\$ 22.50	\$ 405.00		\$ 231.00	\$ 4,158.00
13	Thermoplastic Message (other than "ONLY")	3	EA	\$ 37.70	\$ 113.10	П	\$ 41.60	\$ 124.80	П	\$ 44.80	\$ 134.40		\$ 244.00	\$ 732.00
14	RPM'S	2,260	EA	\$ 2.10	\$ 4,746.00	П	\$ 2.30	\$ 5,198.00	П	\$ 2.50	\$ 5,650.00		\$ 4.50	\$ 10,170.00
15	Valve Box Cover Level and Adjust	77	EA	\$ 667.00	\$ 51,359.00	П	\$ 640.00	\$ 49,280.00	П	\$ 650.00	\$ 50,050.00	П	\$ 609.00	\$ 46,893.00
16	Valve Box Replacement	50	EA	\$ 785.50	\$ 39,275.00	П	\$ 754.00	\$ 37,700.00	П	\$ 650.00	\$ 32,500.00		\$ 890.00	\$ 44,500.00
17	Manhole Cover Adjustment	72	EA	\$ 1,500.00	\$ 108,000.00	П	\$ 1,440.00	\$ 103,680.00	П	\$ 1,350.00	\$ 97,200.00		\$ 900.00	\$ 64,800.00
				SUBTOTAL #1	\$ 1,700,891.15	$\prod$	SUBTOTAL #1	\$ 1,588,937.20		SUBTOTAL #1	\$ 1,738,184.00		SUBTOTAL #1	\$ 1,944,203.00
18	Mobilization (Not to exceed 9% of Subtotal #1)	1	LS	\$ 124,250.00	\$ 124,250.00	H	\$ 143,004.35	\$ 143,004.35	H	\$ 151,400.00	\$ 151,400.00	Г	\$ 27,000.00	\$ 27,000.00
19	Maintenance of Traffic (Not to exceed 3% of Subtotal #1I)	1	LS	\$ 51,000.00	\$ 51,000.00	П	\$ 44,930.00	\$ 44,930.00	П	\$ 50,400.00	\$ 50,400.00		\$ 8,251.00	\$ 8,251.00
			•	SUBTOTAL #2	\$ 175,250.00	$\prod$	SUBTOTAL #2	\$ 187,934.35		SUBTOTAL #2	\$ 201,800.00		SUBTOTAL #2	\$ 35,251.00
21	Total Bid (Subtotal #1 + Subtotal #2)			TOTAL	\$ 1,876,141.15	H	TOTAL	\$ 1,776,871.55	Н	TOTAL	\$ 1,939,984.00	$\vdash$	TOTAL	\$ 1,979,454.00

Vendor submitted bid with mobilization fees higher than 9% (\$164,132.80) as specified in the bid. Vendor agreed to lower mobilization fee to be at 9%.

LOWEST RESPONSIVE RESPONSIBLE BIDDER

	Verification	••,						
	Spot Paving FY202	0				· · · · · · · · · · · · · · · · · · ·		
	BASE BID - OPTION	Λ						<del></del>
Item #	Item Description	Quantity	Unit	Ι 1	Jnit Price	Combination	-	
1	Milling Existing Asphalt Pavement (0-2" Avg Depth)	184,500		\$	0.90	Contractor price \$ 166,050.00	P	Illowable values
2	Structural Repair	500	SY	\$		\$ 59,500.00		
3	Asphalt Overlay Type SP-9.5	11,600	TN	\$	85.90			
4	Asphalt Testing	1	LS	\$	114,000.00			
5	Herbicide	1	LS	\$	· .	\$ 15,000.00		
6	Sod	1,000	SY	\$	5.60			
7	6" Painted Pavement Markings, SOLID	125,100	LF	\$		\$ 12,510.00		
8	6" Painted Pavement Markings, SKIP	66,800	LF	\$	0.10	\$ 6,680.00		
9	6" Thermoplastic Pavement Markings, SOLID	16,500	LF	\$	0.45	\$ 7,425.00		
10	6" Thermoplastic Pavement Markings, SKIP	16,500	LF	\$	0.45	\$ 7,425.00		
11	Thermoplastic Standard Directional Arrow	125	EA	\$	15.60	\$ 1,950.00		
12	Thermoplastic "ONLY"	18	EA	\$	20.80	\$ 374.40		
13	Thermoplastic Message (other than "ONLY")	3	EA	\$	41.60	\$ 124.80		
14	RPM'S	2,260	EA	\$	2.30	\$ 5,198.00		
15	Valve Box Cover Level and Adjust	77	EA	\$	640.00	\$ 49,280.00		
16	Valve Box Replacement	50	EA	\$	754.00	\$ 37,700.00		
17	Manhole Cover Adjustment	72	EA	\$	1,440.00	\$ 103,680.00		
	SUBTOTAL \$ 1,588,937.20							
BASE BID - OPTION B								
18	Mobilization (Not to exceed 9% of Base Bid A total)	1	LS	\$	143,004.35	\$ 143,004.35	\$	143,004.35
19	Maintenance of Traffic (Not to exceed 3% of Base Bid A total)	1	LS	\$	44,930.00	\$ 44,930.00	\$	47,668.12
					SUBTOTAL			
					TOTAL	\$ 1,776,871.55		

#### RESOLUTION 274 - 20

A RESOLUTION OF THE CITY OF CAPE CORAL AWARDING A BID FOR MAJOR ROAD RESURFACING FY2021 TO COMMUNITY ASPHALT CORPORATION; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT DOCUMENTS BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING FOR APPROVAL OF A CONTINGENCY AMOUNT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on October 23, 2020, INVITATION TO BID ITB-BPW2110AP was issued for Major Road Resurfacing FY2021 for asphalt resurfacing of approximately 19 miles of major roads in Cape Coral; and

WHEREAS, having received four bids, the City Manager recommends the award of the bid to Community Asphalt Corporation as the lowest qualified responsible and responsive bidder meeting the requirements and criteria set forth in the invitation to bid, in the amount of \$1,776,872, subject to a City-controlled contingency amount not to exceed five (5) percent.

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

Section 1. The City Council hereby awards the bid for Major Road Resurfacing FY2021 to Community Asphalt Corporation in the amount of \$1,776,872, subject to a City-controlled contingency amount not to exceed five (5) percent.

Section 2. The City Council hereby approves Contract CON-BPW2110AP between the City of Cape Coral and Community Asphalt Corporation for Major Road Resurfacing FY2021 and authorizes the City Manager or his designee to execute the Contract. A copy of the Contract is attached hereto as Exhibit A.

Section 3. The City Council hereby authorizes the City Manager or the City Manager's designee to enter into change orders for any work other than as contemplated in the contract documents with an appropriate scope and cost to address those needs, subject to payment of a City-controlled contingency amount not to exceed five (5) percent of the total amount of the contract.

Section 4. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL COUNCIL SESSION THIS D	L OF THE CITY OF CAPE CORAL AT ITS AY OF, 2021.	REGULAR
	JOE COVIELLO, MAYOR	
VOTE OF MAYOR AND COUNCILM	IEMBERS:	
COVIELLO GUNTER SHEPPARD HAYDEN	NELSON WELSH WILLIAMS COSDEN	
ATTESTED TO AND FILED IN MY (	OFFICE THIS DAY OF	, 2021.
	KIMBERLY BRUNS CITY CLERK	- 1

APPROVED AS TO FORM:

DOLORES D. MENENDEZ CITY ATTORNEY

res/Bid Award-Local Road-Community Asphalt

#### EXHIBIT A

# City of Cape Coral Major Road Resurfacing FY2021 Contract #BPW2110AP

THIS CONTRACT is made this day of	, 20
by and between the CITY OF CAPE CORAL, FLORIDA, hereinafter called "	'CITY", and
COMMUNITY ASPHALT CORP., located at 9675 NW 117th Ave, Suite 108, Miam	i, FL 33178,
doing business as a Florida corporation, hereinafter called "CONTRACTOR".	

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

- 1. The CONTRACTOR will provide Major Road Resurfacing FY2021 in accordance with the Contract Documents, as shown on Exhibit A, attached hereto and made a part hereof.
- 2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the services described in the Contract Documents. Time is of the essence in the performance of this Contract.
- 3. The CONTRACTOR will commence work as required by the CONTRACT DOCUMENTS within ten (10) calendar days after the receipt of the written Notice to Proceed.
- 4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS for a total price of One Million, Seven Hundred Seventy-Six Thousand, Eight Hundred Seventy-One dollars and Fifty-five Cents (\$1,776,871.55) as indicated on CONTRACTOR'S Official Bid Tabulation form, labeled as Exhibit B, attached hereto and made a part hereof.
- 5. The **term** of the contract to be awarded as a result of this bid shall be for ninety (90) calendar days for final completion, once the Notice to Proceed is issued.
- 6. The Term "Contract Documents" shall include this Contract, Addenda, Contractor's Bid except when it conflicts with any other contractual provision, the Notice to Proceed, Certificates, and the Bid Package number BPW2110AP prepared and issued by the City. In the event of conflict between any provision of any other document referenced herein as part of the contract and this Contract, the terms of this Contract shall control.
- 7. <u>Termination:</u> This Contract may be terminated by the CITY for its convenience upon thirty (30) calendar days prior written notice to the CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract. Such amount shall be paid by the CITY after inspection of the work to determine the extent of performance under this Contract, whether completed or in progress.
- 8. <u>Assignment:</u> This Contract may not be assigned except with the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.

- 9. <u>Disclosure:</u> The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the Contract.
- 10. <u>Administration of Contract:</u> The <u>Public Works Director</u>, or his representative, shall administer this Contract for the CITY.
- 11. Governing Law: The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, each party shall be responsible for its own reasonable costs and attorney's fees.
- 12. <u>Amendments:</u> No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties.
- 13. Payment Procedures: CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions included in the bid package. Applications for Payment will be processed by the OWNER as provided in the General Conditions included in the bid package.

Progress Payments: As long as progress on the Work is satisfactory according to the CONTRACTOR'S Work schedule, the OWNER shall make payments on account of the contract as follows:

On no later than the fifth day of every month the CONTRACTOR shall present to the OWNER an invoice covering the total quantities under each item of work that have been completed from the start of the job up to and including the last day of the preceding month, and the value of the work so completed is in accordance with the schedule of unit prices.

All such invoices are approximate only and are subject to corrections by the final estimate. Measures shall be in accordance with Paragraph 15.1 of the General Conditions included in the bid package. No later than thirty (30) days after submittal by the CONTRACTOR and approval by OWNER, the OWNER shall, after deducting previous payments made, pay the CONTRACTOR 90% of the amount of the invoice. The 10% retained percentage shall be held by the OWNER until final completion. When 50 percent of the contract sum specified in section 4 of this contract, together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in this contract is expended, thereafter the retainage shall be reduced to 5%.

Substantial Completion: The time at which the Work (or a specified part thereof) has

progressed to the point where, in the opinion of the OWNER'S Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work, refer to Substantial Completion thereof. The OWNER'S Engineer will issue a "Certificate of Substantial Completion" establishing the date of substantial completion.

Final Payment: Upon final completion and acceptance of the Work in accordance with Paragraph 15.7 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 15.7 of the General Conditions of the bid document.

14. <u>Contractor's Representations:</u> In order to induce CITY to enter into the Contract CONTRACTOR makes the following representations:

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

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

CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

CONTRACTOR has given CITY written notice of all conflicts, errors or discrepancies that have been discovered in the CONTRACT DOCUMENTS and the written resolution thereof by CITY is acceptable to CONTRACTOR.

- 15. <a href="Indemnity">Indemnity:</a> To the extent permitted by law (F.S. 768.28), the CONTRACTOR shall indemnify and hold harmless the CITY its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by CONTRACTOR in the performance of this Contract.
- 16. <u>Damage Liability:</u> The awarded CONTRACTOR shall be responsible for all claims filed for damage to private property, windows, screen enclosures, real estate signs, etc. Additionally, the CONTRACTOR shall be responsible for damage to all public property or utility property, fire hydrants, catch basins, guy wires telephone pedestals, etc. Copies of all damage claims shall be submitted to the Procurement Division.
- 17. <u>Liquidated Damages:</u> The CONTRACTOR agrees that liquidated damages in the amount of \$1,665.00 per calendar day for each calendar day that contract is not completed beyond the completion date required by the CONTRACT DOCUMENTS.

- 18. <u>Invalid Provision:</u> The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 19. Record Keeping: The CONTRACTOR shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting methods, and the CITY reserves the right to determine the record-keeping method in the event of non-conformity. These records shall be maintained for five (5) years after final payment has been made and shall be readily available to CITY personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.

The City intends to reuse all plans at some future time, in accordance with Section 287.055(11), Florida Statutes. There shall be no public notice requirement or utilization of the selection process when the city reuses the plans.

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

#### 21. Safety and OSHA Compliance:

- A. The Contractor shall comply in all respects with all Federal, State and Local safety and health regulations. Copies of the Federal regulations may be obtained from the U.S. Department of Labor, Occupation Safety and Health Administration (OSHA), Washington, DC 20210 or their regional offices.
- B. The Contractor shall comply in all respects with the applicable Workman's Compensation Laws.
- 22. <u>Insurance:</u> Unless otherwise specified, CONTRACTOR shall, at its own expense, carry and maintain the following minimum insurance coverage, as well as any insurance coverage required by law:
  - 1. Worker's Compensation:

a. State Statutory

b. Applicable Federal (e.g., Longshoremen's) Statutory

c. Employer's Liability \$3,000,000 Per Accident

2. Comprehensive General Liability (including Premises and/or -Operations; Independent Contractors' and Products and/or Completed Operations; Broad Form Property Damage and XCU Coverage):

a. Combined single limits for bodily injury and property damage:

\$3,000,000 Per Occurrence \$3,000,000 Annual Aggregate

b. Products and Completed Operations to be maintained for one year after final payment.

3. Contractual Liability:

a. Bodily Injury \$3,000,000 Per Occurrence
b. Property Damage \$3,000,000 Per Occurrence
\$3,000,000 Annual Aggregate

4. Automobile Liability:

a. Bodily Injury \$3,000,000 Each Person \$3,000,000 Per Occurrence

b. Property Damage \$3,000,000 Per Occurrence

CONTRACTOR shall require its subcontractors to provide for such benefits and carry and maintain the foregoing types of insurance at no expense to CITY. CITY shall be named as an "Additional Insured" under the CONTRACTOR'S General Liability Insurance Policy with respect to the services performed by the CONTRACTOR or by the CITY.

Prior to commencing any Work under this Agreement, CONTRACTOR shall submit to CITY a certificate or certificates of insurance evidencing that such benefits have been provided, and that such insurance is being carried and maintained. Such certificates shall stipulate that the insurance will not be cancelled or materially changed without thirty (30) calendar days prior written notice by certified mail to CITY and shall also specify the date such benefits and insurance expire. CONTRACTOR agrees that such benefits shall be provided and such insurance carried and maintained until the Work has been completed and accepted by CITY.

Such benefits and such coverage as are required herein, or in any other document to be considered a part hereof, shall not be deemed to limit Contractor's liability under this Agreement.

The City shall be named as "Additional Insured" and the contract number BPW2110AP shall be listed under the comment section.

- 23. <u>Unauthorized Aliens:</u> The employment of unauthorized aliens by any Contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-contractors used by the Contractor as well.
- 24. <u>Annual Appropriation Contingency</u>: Pursuant to FL Statute §166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Contract is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City if the City Council reduces or eliminates appropriations.
- 25. <u>Public Construction Bond:</u> Pursuant to Florida Statutes §255.05, any Contractor entering into a contract for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer

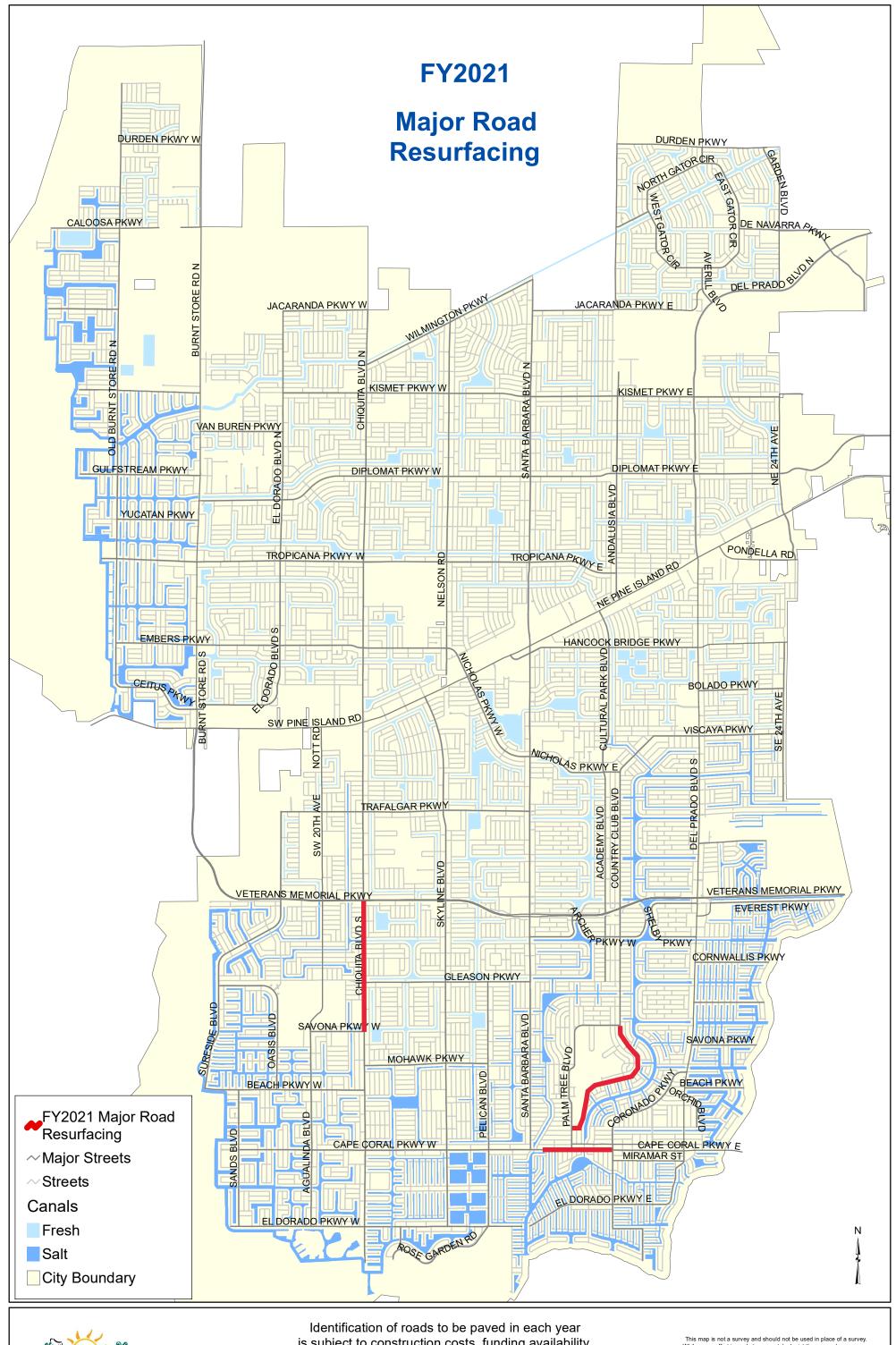
authorized to do business in this state as surety. The amount of the bond shall be 100% of the contract amount.

- 26. <u>Electronic Signatures:</u> The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.
- 27. <u>Counterparts:</u> This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument
- 28. <u>Entire Agreement:</u> This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials this Contract in **one** counterpart which shall be deemed an original on the date last signed as below written:

(CITY SEAL) ATTEST:	CITY OF CAPE CORAL:
Signature	Signature
Kimberly Bruns, CMC Name	Roberto Hernandez Name
City Clerk Title	City Manager Title
	Date
	For Dolores Menendez Date City Attorney
WITNESS CONTRACTOR:	CONTRACTOR:
Signature Elijasto	Community Asphalt Corp.  Signature
Sandra Elizondo	Manuel Aguiar
Typed Name	Typed Name
Estimaten Assestant	Corporate Vice President
Title	Title
12/21/2020	12/21/2020
Date	Date





is subject to construction costs, funding availability,

utility projects and other factors.

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 Public Works with any questions regarding this map. 9/17/19 S. Feldman for H. Delgado



#### OFFICIAL BID FORM City of Cape Coral Page 2 of 3

BID NUMBER: BPW2110AP BID DATE: November 30, 2020

BID TITLE: MAJOR ROAD RESURFACING FY2021

	OFFICIAL BID TAE	BULATION							
7	MAJOR ROAD RESURFA #BPW2110/								
Item#	tem #   Item Description   Quantity   Unit   Unit Price								
1	Milling Existing Asphalt Pavement (0-2" Avg Depth)	184,500	SY	\$ 0.90	\$	166,050.00			
2	Structural Repair	500	SY	\$ 119.00	\$	59,500.00			
3	Asphalt Overlay Type SP-9.5	11,600	TN	\$ 85.90	\$	996,440.00			
4	Asphalt Testing	1	LS	\$ 114,000.00	\$	114,000.00			
5	Herbicide	1	LS	\$ 15,000.00	\$	15,000.00			
6	Sod	1,000	SY	\$ 5.60	\$	5,600.00			
7	6" Painted Pavement Markings, SOLID	125,100	LF	\$ 0.10	\$	12,510.00			
8	6" Painted Pavement Markings, SKIP	66,800	LF	\$ 0.10	\$	6,680.00			
9	6" Thermoplastic Pavement Markings, SOLID	16,500	LF	\$ 0.45	\$	7,425.00			
10	6" Thermoplastic Pavement Markings, SKIP	16,500	LF	\$ 0.45	\$	7,425.00			
11	Thermoplastic Standard Directional Arrow	125	EA	\$ 15.60	\$	1,950.00			
12	Thermoplastic "ONLY"	18	EA	\$ 20.80	\$	374.40			
13	Thermoplastic Message (other than "ONLY")	3	EA	\$ 41.60	\$	124.80			
14	RPM'S	2,260	EA	\$ 2.30	\$	5,198.00			
15	Valve Box Cover Level and Adjust	77	EA	\$ 640.00	\$	49,280.00			
16	Valve Box Replacement	50	EA	\$ 754.00	\$	37,700.00			
17	Manhole Cover Adjustment	72	EA	\$ 1,440.00	\$	103,680.00			
				SUBTOTAL #1	L \$	1,588,937.20			
18	Mobilization (Not to exceed 9% of Subtotal #1)	1	LS	\$ 143,004.35	\$	143,004.35			
19	Maintenance of Traffic (Not to exceed 3% of Subtotal #11)	1	LS	\$ 44,930.00	\$	44,930.00			
				SUBTOTAL #2	\$	187,934.35			
21	Total Bid (Subtotal #1 + Subtotal #2)			TOTAL	\$	1,776,871.55			

It is the sole responsibility of the contractor to field verify all quantities prior to bidding. Any discrepancies are the contractor's responsibility to address. Please note under General Conditions, Section 1.5.1 in reference to question submittal requirements.

By Signing, you assume all risk regarding the quantities in your bid. You also agree to maintain the above Bid Price on all road segments.

DISCLAIMER: Formulas are not guaranteed for accuracy. It is the responsibility of the bidder to verify the correctness of the formulas. Also, if using this form as a part of your submitted bid, bidders must still submit the signed official proposal form, stating pricing attached.

> Submitted by Signature:

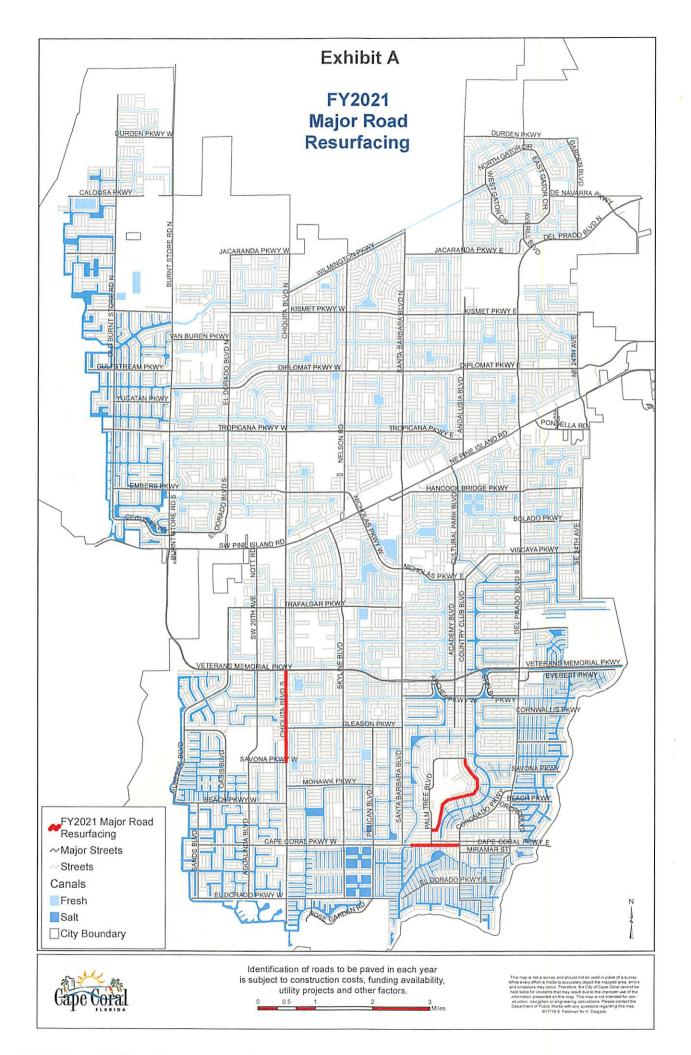
Name Printed:

Manuel Aguiar Corporate Vice President

Title: Company: Community Asphalt Corp. Date:

11/30/2020

THIS PAGE MUST BE COMPLETED AND SIGNED BY AN AUTHORIZED SIGNER AND RETURNED AS PART OF YOUR BID.



#### City of Cape Coral

#### Bid # BPW2110AP Major Road Resurfacing FY2021

Bid Close Date: November 30, 2020

					stries of Florida, LLC. Venice, FL		Community Asphalt Corporation Fort Myers, FL		Pavement Maintenance, LLC. Fort Myers, FL				Preferred Materials, Inc. Tampa, FL			
Item #	Item Description	Quantity	Unit	Unit Price	Extended Price		Unit Price	Extende	d Price	ι	Jnit Price	Extended Price		Unit Price	Extended Price	
1	Milling Existing Asphalt Pavement (0-2" Avg Depth)	184,500	SY	\$ 1.70	\$ 313,650.00		\$ 0.90	\$ 166	,050.00	\$	2.05	\$ 378,225.00	\$	1.25	\$ 230,625.00	
2	Structural Repair	500	SY	\$ 64.00	\$ 32,000.00		\$ 119.00	\$ 59	,500.00	\$	65.00	\$ 32,500.00	\$	84.50	\$ 42,250.00	
3	Asphalt Overlay Type SP-9.5	11,600	TN	\$ 93.50	\$ 1,084,600.00		\$ 85.90	\$ 996	,440.00	\$	90.10	\$ 1,045,160.00	\$	118.50	\$ 1,374,600.00	
4	Asphalt Testing	1	LS	\$ 25,400.00	\$ 25,400.00		\$ 114,000.00	\$ 114	,000.00	\$	33,975.60	\$ 33,975.60	\$	20,700.00	\$ 20,700.00	
5	Herbicide	1	LS	\$ 4,550.00	\$ 4,550.00		\$ 15,000.00	\$ 15	,000.00	\$	20,000.00	\$ 20,000.00	\$	9,225.00	\$ 9,225.00	
6	Sod	1,000	SY	\$ 2.70	\$ 2,700.00		\$ 5.60	\$ 5	,600.00	\$	2.65	\$ 2,650.00	\$	6.70	\$ 6,700.00	
7	6" Painted Pavement Markings, SOLID	125,100	LF	\$ 0.10	\$ 12,510.00		\$ 0.10	\$ 12	,510.00	\$	0.11	\$ 13,761.00	\$	0.36	\$ 45,036.00	
8	6" Painted Pavement Markings, SKIP	66,800	LF	\$ 0.10	\$ 6,680.00	1	\$ 0.10	\$ 6	,680.00	\$	0.11	\$ 7,348.00	\$	0.13	\$ 8,684.00	
9	6" Thermoplastic Pavement Markings, SOLID	16,500	LF	\$ 0.40	\$ 6,600.00		\$ 0.45	\$ 7	,425.00	\$	0.50	\$ 8,250.00	\$	1.09	\$ 17,985.00	
10	6" Thermoplastic Pavement Markings, SKIP	16,500	LF	\$ 0.40	\$ 6,600.00		\$ 0.45	\$ 7	,425.00	\$	0.50	\$ 8,250.00	\$	0.38	\$ 6,270.00	
11	Thermoplastic Standard Directional Arrow	125	EA	\$ 14.15	\$ 1,768.75		\$ 15.60	\$ 1	,950.00	\$	17.00	\$ 2,125.00	\$	87.00	\$ 10,875.00	
12	Thermoplastic "ONLY"	18	EA	\$ 18.85	\$ 339.30		\$ 20.80	\$	374.40	\$	22.50	\$ 405.00	\$	231.00	\$ 4,158.00	
13	Thermoplastic Message (other than "ONLY")	3	EA	\$ 37.70	\$ 113.10		\$ 41.60	\$	124.80	\$	44.80	\$ 134.40	\$	244.00	\$ 732.00	
14	RPM'S	2,260	EA	\$ 2.10	\$ 4,746.00		\$ 2.30	\$ 5	,198.00	\$	2.50	\$ 5,650.00	\$	4.50	\$ 10,170.00	
15	Valve Box Cover Level and Adjust	77	EA	\$ 667.00	\$ 51,359.00		\$ 640.00	\$ 49	,280.00	\$	650.00	\$ 50,050.00	\$	609.00	\$ 46,893.00	
16	Valve Box Replacement	50	EA	\$ 785.50	\$ 39,275.00		\$ 754.00	\$ 37	,700.00	\$	650.00	\$ 32,500.00	\$	890.00	\$ 44,500.00	
17	Manhole Cover Adjustment	72	EA	\$ 1,500.00	\$ 108,000.00		\$ 1,440.00	\$ 103	,680.00	\$	1,350.00	\$ 97,200.00	\$	900.00	\$ 64,800.00	
				SUBTOTAL #1	\$ 1,700,891.15		SUBTOTAL #1	\$ 1,588	,937.20	SI	UBTOTAL #1	\$ 1,738,184.00	S	SUBTOTAL #1	\$ 1,944,203.00	
18	Mobilization (Not to exceed 9% of Subtotal #1)	1	LS	\$ 124,250.00	\$ 124,250.00	$\dagger \dagger$	\$ 143,004.35	\$ 143	,004.35	\$	151,400.00	\$ 151,400.00	\$	27,000.00	\$ 27,000.00	
19	Maintenance of Traffic (Not to exceed 3% of Subtotal #1I)	1	LS	\$ 51,000.00	\$ 51,000.00	11	\$ 44,930.00	\$ 44	,930.00	\$	50,400.00	\$ 50,400.00	\$	8,251.00	\$ 8,251.00	
			ı	SUBTOTAL #2	\$ 175,250.00	Ħ	SUBTOTAL #2	\$ 187	,934.35	SI	UBTOTAL #2	\$ 201,800.00	5	SUBTOTAL #2	\$ 35,251.00	
21	Total Bid (Subtotal #1 + Subtotal #2)			TOTAL	\$ 1,876,141.15		TOTAL	\$ 1,776	,871.55		TOTAL	\$ 1,939,984.00		TOTAL	\$ 1,979,454.00	

Vendor submitted bid with mobilization fees higher than 9% (\$164,132.80) as specified in the bid. Vendor agreed to lower mobilization fee to be at 9%.

> LOWEST RESPONSIVE RESPONSIBLE BIDDER



CITY OF CAPE CORAL FINANCIAL SERVICES DEPARTMENT PO BOX 150027 CAPE CORAL, FL 33915-0027

# INVITATION TO BID MAJOR ROAD RESURFACING FY2021 BPW2110AP

BIDS ARE DUE IN PROCUREMENT BY: 1:00 PM ET ON November 30, 2020, Cape Coral City Hall, 1015 Cultural Park Blvd, Second Floor, Cape Coral, FL 33990.

NO QUESTIONS WILL BE ACCEPTED AFTER: 4:00 PM ET ON November 5, 2020, all questions must be submitted in writing to Alicia Pearce Smith at apearce@capecoral.net and received by stated time.

BIDS MUST BE DATE STAMPED AT THE OFFICE OF THE PROCUREMENT DIVISION NO LATER THAN THIRTY (30) MINUTES PRIOR TO THE SCHEDULED BID OPENING. <u>BIDS PRESENTED</u> <u>AFTER THAT TIME WILL BE REFUSED.</u>

BID OPENING: 1:00 PM ET ON November 30, 2020, Conference Room #220A

#### **PROCUREMENT CONTACT:**

Name: Alicia Pearce Smith

Title: Procurement Specialist

Phone: 239-574-0841

Email: apearce@capecoral.net

The outer packing of Courier Packages (FEDEX, UPS, ETC.) shall contain the "Sealed Bid Envelope Label". If the proper label is not on the courier's outer packaging the Bid/RFP may be sent back to the Vendor without being opened and/or considered for that project. The City is not responsible for late mail or courier service deliveries.



### STATEMENT OF NO PROPOSAL - NO BID

If you do not intend to bid on this commodity/service, please return only this page to:

City of Cape Coral, Procurement Division 1015 Cultural Park Boulevard Cape Coral, FL 33990

Email: <u>apearce@capecoral.net</u> Fax #: <u>239-242-5424</u>

We, the undersign	ned, decline to propo	se/bid on the r	equested commodity/service for:
Proposal/Bid #	BPW2110AP	Title:	MAJOR ROAD RESURFACING FY2021
We are not	able to respond to th	e Proposal/Inv	itation by the specified deadline.
Our Compa	ny does not offer this	product or ser	vice.
Our current	work schedule will n	ot permit us to	perform the required services.
Specificatio	ns are incomplete, or	the information	on is unclear (Please Explain Below).
Other (Plea	se Specify Below).		
Remarks:			
Company Name:_			Telephone:
Contact Name:			Title:
Phone #:		Email:	
Signature:			Date:
Note: Submitting to	his form will not affect	your Company's	standing in any way for any future proposals or bids

Rev: 05/25/2018



### **SEALED BID ENVELOPE LABEL**

Cut along the outer border and affix this label to your sealed solicitation envelope to identify it as a "Sealed Bid".

### PLEASE PRINT CLEARLY

Cape Coral	SEALED BID DOCUMENTS – DO NOT OPEN
BID #:	BPW2110AP
BID TITLE:	MAJOR ROAD RESURFACING FY2021
DATE DUE:	November 30, 2020
TIME DUE:	1:00 PM
SUBMITTED BY:	
	(Name of Company)
E-mail address	Telephone
Deliver to:	City of Cape Coral Finance Department – Procurement 1015 Cultural Park Blvd, 2 <sup>nd</sup> Floor Cape Coral, FL 33990

Note: Submissions received after the time and date above will not be accepted.



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#### CITY OF CAPE CORAL LEGAL NOTICE INVITATION TO BID

The City of Cape Coral, Florida will receive Bids for MAJOR ROAD RESURFACING FY2021, BPW2110AP. Detailed specifications and instructions for submitting a bid may be obtained: in person from the City of Cape Coral, Procurement Division, 1015 Cultural Park Blvd., Second Floor, Cape Coral, FL 33990; by telephone (239) 574-0831; online at <a href="https://www.demandstar.com">www.demandstar.com</a> or by mail request P.O. Box 150027, Cape Coral FL 33915 (recipient's account required for overnight mail).

Bids will be publicly opened at Cape Coral City Hall, 1015 Cultural Park Blvd., Second Floor, Cape Coral, Florida 33990.

BIDS DUE IN PROCUREMENT BY: 1:00 PM EST on November 30, 2020

BID OPENING TIME: 1:00 PM EST on November 30, 2020 in Conference Room #220A

**NOTE:** No questions will be accepted after <u>4:00 PM on November 5, 2020.</u> Submit all questions in writing to <u>apearce@capecoral.net</u>.

The Legal Entity Name of proposer must be provided on the proposal submittal and all proposal form documents that are being submitted for the proposed goods or services requested in this solicitation. The Legal Entity Name will be used when creating the proposed goods or services contract between the Awarded Firm and the City.

Pursuant to Florida State Statute 119.071 (2) Sealed bids, proposals or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

BIDS MUST BE DATE STAMPED AT THE OFFICE OF THE PROCUREMENT DIVISION NO LATER THAN THIRTY (30) MINUTES PRIOR TO THE SCHEDULED BID OPENING. BIDS PRESENTED AFTER THAT TIME WILL BE REFUSED. The time indicated on the date stamp machine located in the Procurement Division is considered the official time. It is the responsibility of the Vendor to ensure all Bids are received by the Procurement Division by the submission deadline. Procurement is not responsible for late mail or overnight deliveries.

All bids are to be submitted and addressed **ONLY** to PROCUREMENT DIVISION, ATTN: PROCUREMENT MANAGER. BIDS WILL NOT BE ACCEPTED AT ANY OTHER LOCATION.

#### PHYSICAL ADDRESS:

Cape Coral City Hall Finance/Procurement Division 1015 Cultural Park Blvd. 2<sup>nd</sup> Floor Cape Coral FL 33990

#### ENVELOPES MUST BE LABELED WITH THE "SEALED BID ENVELOPE LABEL" PROVIDED HEREIN.

The City reserves the right to reject any or all bids in whole or in part and to waive any irregularities or informalities when in the best interest of the citizens of the City of Cape Coral.

By Order of the City Manager Kimberly Bruns, City Clerk

Advertise: October 23, 2020



#### **BID DOCUMENTS**

THE CITY OF CAPE CORAL <u>REQUIRES</u> THE FOLLOWING DOCUMENTS TO BE RETURNED WITH ALL BIDS/PROPOSALS FOR A BID TO BE CONSIDERED "RESPONSIVE."

- 1. <u>COMPLETED AND SIGNED</u> Invitation to Bid/Bidder Acknowledgement (Attachment A)
- 2. COMPLETED AND SIGNED Official Bid Proposal Form (Attachment B)
- 3. COMPLETED AND SIGNED Sworn Statement of Public Entity Crimes Form (Attachment C)
- 4. SIGNED Acknowledgment of Insurance Requirements Form (Attachment D)
- 5. COMPLETED AND SIGNED Business Qualification Statement and Questionnaire (Attachment E)
- 6. <u>SIGNED</u> Drug Free Work Place Form (Attachment F)
- 7. COMPLETED AND SIGNED Bid Security Requirements Form (Attachment G)
- 8. <u>COMPLETED AND SIGNED</u> Trench Safety Form, if applicable (Attachment H)
- 9. COMPLETED AND SIGNED FORM 3A Interest in Competitive Bid Form (Attachment I)
- 10. SIGNED Non-Collusive Affidavit (Attachment J)
- 11. COMPLETED AND SIGNED Corporate Resolution Form (Attachment K)
- 12. COMPLETED AND SIGNED Scrutinized Companies Certification Form (Attachment L)
- 13. Letter from Surety providing bonding capacity including available and aggregate
- 14. Copy of License (s) Applicable for performance of work
- 15. Copies of Business Tax Receipts for last two (2) years, prior to bid submittal
- 16. Certificate of Insurance showing all coverages

A CONSTRUCTION BOND (PERFORMANCE AND PAYMENT BOND) IS REQUIRED FOR ALL PROJECTS OVER \$200,000 (Exhibit F) – Required to be submitted at contract execution.

NOTE: The filing of "NOTICE TO OWNER" statements are not required for Public Projects.

FAILURE TO RETURN ALL THE ABOVE REQUIRED ITEMS WITH A BID/PROPOSAL MAY RESULT IN YOUR BID BEING CONSIDERED NON-RESPONSIVE AND WILL NOT BE CONSIDERED FOR AWARD.

The City of Cape Coral provides items 1-12 above in all bid packages. If for any reason you did not receive these items in your bid package, OR if you obtained your package from anyone other than the City of Cape Coral Procurement Division, contact the Procurement Division at once at 239-574-0831 prior to the bid opening to obtain the necessary documents.

#### INTRODUCTION

In 1970, by referendum of the people of the City, a Council/City Manager form of government was adopted, and the City of Cape Coral was incorporated. The policy-making body of the City is a City Council composed of eight (8) members, seven (7) members elected at large on a nonpartisan basis from districts and the Mayor (the eighth member). A Mayor is elected at-large on a nonpartisan basis and has one (1) vote and has only budget line-item veto authority. All terms run for a four (4) year period with the Mayor and three (3) council members being elected at one election and two years later the remaining four (4) council members are elected. The City Council is responsible for all policymaking functions of the government and retains the services of a City Attorney, City Auditor and City Manager. The City Manager is responsible for all administration of the City. The City provides a comprehensive range of municipal services including general government, public safety, community development, public works, planning, utilities, and parks and recreation.

Cape Coral is a fast-growth City on Florida's Southwest Gulf Coast. Incorporated in 1970, Cape Coral currently has a population in excess of 183,000. A pre-platted community, Cape Coral could have about 360,000 residents at complete build-out. Cape Coral is the 9th largest city by population, and the 3rd largest by land mass in Florida. In 2017, the City was named: #1 Fastest Growing City in the US by Forbes Magazine; and the #1 Digital Cities Winner (population 125,000-249,999) by the Center for Digital Government; and the 5th Best City for Young Entrepreneurs by Money Rates. The City provides a sub-tropical lifestyle with thousands of waterfront residential properties on almost 400 miles of canals, approximately two thirds of which provide boaters with direct access to the Gulf of Mexico.



#### SCOPE OF WORK

Contractor to furnish all labor, materials, equipment and operations necessary to complete the following work for select structural repairs and resurfacing of major roadways throughout various locations in Cape Coral (see Exhibit A – Project Location Map).

In addition to other items as outlined in the specifications and bid documents, the asphalt concrete paving operations may consist, but shall not necessarily be limited to, all or part of the following:

- All maintenance of traffic.
- Notification to public safety departments of work within the right-of-way that would result in detours of emergency vehicles.
- Clipping and herbicide as necessary for paving preparation.
- Scraping material from edge of road to establish even pavement edge and provide drainage from the roadway surface to the adjacent swale drainage system.
- · Milling of existing roadway surface.
- Leveling or grading of existing roadway surface.
- Adjustment of existing utilities to match new pavement elevations and repair of existing utilities.
- Delivery of material to site (hauling).
- Application of prime and/or tack coat(s).
- · Roadway Structural Repairs.
- Superpave Type SP-9.5 asphalt Overlay.
- Replacement of any existing Striping, Markings, and RPM's.
- Street sweeping, as necessary, & final clean-up of job site and repair of any damage caused by paving activities.
- Sod placement

#### There will be no monthly asphalt or fuel adjustment allowances on this project.

SPECIAL NOTE: All documentation for project close-out must be submitted within 30 calendar days of final striping or by the end of the fiscal year, whichever is sooner.



### **TECHNICAL SPECIFICATIONS**

The asphalt concrete resurfacing program for Major roads shall consist of all or part of the following, but shall not necessarily be limited to the following:

#### 1. FIELD CHANGE REQUESTS

All changes to the scope of work that do not affect the contract price or contract time may be allowed. However, written authorization by the Project Manager and confirmation by the Contractor is required within 24 hours of the change. Email is an acceptable form of written notification.

#### 2. ADOPTED SPECIFICATIONS

The current edition as of the bid opening date of the Florida Department of Transportation (F.D.O.T.) Standard Specifications for Road and Bridge Construction are hereby adopted as the Technical Specifications for Resurfacing and construction, as amended herein. Superpave mixes shall be used for asphalt.

Should F.D.O.T. contract procedures conflict with the City of Cape Coral contract procedures in this contract document, the City of Cape Coral's procedures shall prevail.

In addition, unless otherwise shown on plans, required by the specifications, or directed by the Project Manager/Engineer, all workmanship and materials shall be in accordance with these specifications, the Manual of Uniform Traffic Control Devices, and the adopted City Engineering Design Standards.

#### 3. AUTHORITY AND DUTIES OF PROJECT MANAGER'S REPRESENTATIVE AND INSPECTORS

The City's Project Manager may appoint such representatives and/or inspectors as they desire. These personnel are authorized to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work and to the manufacture, preparation, or fabrication of the materials to be used. They are authorized to call to the attention of the Contractor any failure of the work or materials to meet the Contract Documents and have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Project Manager. The Project Manager will immediately notify the Contractor in writing (email is an acceptable form of written notification) of any such suspension of the work, stating in detail the reason(s) for the suspension. The presence of the inspector or other assistant in no way lessens the responsibility of the Contractor.

#### 4. GENERAL INSPECTION REQUIREMENTS

#### A. Cooperation by Contractor

Do not perform work or furnish materials without obtaining inspection by the City's Project Manager's Inspector or his representative. Furnish the Project Manager with every reasonable facility for ascertaining whether the work performed, and materials used are in accordance with the requirements and intent of the Contract Documents. If the Project Manager so requests at any time before final acceptance of the work, remove or uncover such portions of the finished work as directed. After examination, restore the uncovered portions of the work to the standard required by the Contract Documents. If the Project Manager determines that the work so exposed or examined is unacceptable, perform the uncovering or removal, and the replacing of the covering or making good of the parts removed, at no expense to the City. However, if the Project Manager determines that the work thus exposed or examined is acceptable, the City will pay for the uncovering or removing, and the replacing of the covering or making good of the parts removed.

### B. Failure to Reject Work During Construction

If, during or prior to construction operations, the Project Manager or their representatives and/or inspectors fails to reject defective work or materials, whether from lack of discovery of such defect or for any other reason, such initial failure to reject in no way prevents the later rejection when such defect is discovered or obligates the City to final acceptance. The City is not responsible for losses suffered due to any necessary removals or repairs of such defects.



### C. Failure to Remove and Renew Defective Materials and Work

If the Contractor fails or refuses to remove and renew any defective materials used or work performed, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of the Contract within the contract duration indicated in writing, the Project Manager has the authority to repair, remove, or renew the unacceptable or defective materials or work as necessary, all at the Contractor's expense. The City will obtain payment for any expense it incurs in making these repairs, removals, or renewals, that the Contractor fails or refuses to make, by deducting such expenses from any moneys due or which may become due the Contractor, or by charging such amounts against the Contract.

## 5. PRE-CONSTRUCTION PHOTOS AND VIDEO

Prior to project commencement, the Contractor shall provide a color audio-video recording of the entire construction area of the project to serve as a record of all existing site conditions. Video media shall be standard Digital Video Disc (DVD) format and shall produce bright, sharp, and clear pictures with accurate colors and shall be free from distortion, tearing, rolls, and any other form of picture imperfection. The audio portion of the recording shall produce the commentary of the camera operator with proper volume, clarity, and be free from distortion.

The Contractor will provide one copy of the pre-construction video to the City prior to construction and retain one copy in the Project files. The Contractor shall review the audio-video recordings for clarity and accuracy and shall make supplemental records of existing conditions if they are not clearly indicated.

No construction shall begin prior to review of the preconstruction video of the construction area by the City and the Contractor. Video recording shall be made not more than six weeks prior to commencement of construction. One copy of all recordings and written records shall be well maintained by the Contractor without any damage.

The Contractor may engage the services of a professional videographer. However, the color audio-video recordings shall be prepared by a responsible commercial firm or individual known to be skilled and regularly engaged in the business of preconstruction color audio-video documentation.

All video recordings shall contain coverage of all surface features located within the construction zone and shall include, but not be limited to: all roadways, roadway signage (type of sign to be noted in commentary), pavements, striping and pavement marking, driveways (zoom in and hold on driveway, from street to garage), sidewalks, mailboxes, raised pavement markings, residential lawns and landscaping, shrubbery and fences. Of particular concern shall be the existence of any faults, fractures, defects, etc. Taped coverage shall be limited to one side of the site, street, easement or right of way at any one time. Tape coverage shall include all surface conditions located within the zone of influence of construction supported by appropriate audio description including the location relative to construction stations. Panning, zoom-in and zoom-out rates shall be sufficiently controlled to maintain a clear view of the object.

All video recordings shall, by electronic means, display continuously and simultaneously, the date and time of recording. The video recording shall be generated with the actual taping date and time as transparent digital information. The date information shall contain the month, day and year.

Each tape shall begin with an audio description including the recorded date, name of recording party, project name and be followed by the general location, i.e., viewing side and direction of progress. The audio track shall consist of an original live recording. The recording shall assist in viewer orientation and in any needed identification, differentiation, clarification, or objective description of the features being shown in the video portion of the recording, including location relative to construction stations. The audio recording shall be free from any conversations between the camera operator and any other production technicians.

Video Identification: All video media shall be permanently labeled and shall be properly identified by number and project name and location.

Video Logs: Each video shall have a log of that video's contents. The log shall describe the various segments of coverage contained on the video in terms of the names of the streets or easements, coverage beginning and end, directions of coverage, video unit counter numbers, and date.



The Contractor shall provide an index listing, in order by video number, each video number and a brief description of coverage contained on that video, including engineering station numbers.

All recordings shall be performed during times of good visibility. No recording shall be done during period of significant precipitation, mist or fog. The recording shall only be done when sufficient sunlight is present to properly illuminate the subject, and to produce bright, sharp video recordings of those subjects. No taping shall be performed when more than 10% of the area to be taped contains debris or obstructions unless otherwise authorized by the City.

#### 6. MOBILIZATION AND SEQUENCING

Perform preparatory work and operations in mobilizing for beginning work on the project, including, but not limited to, those operations necessary for the movement of personnel, equipment, supplies, and incidentals to the project site. Include the costs of bonds and any required insurance and any other preconstruction expense necessary for the start of the work, excluding the cost of construction materials. The combined costs for work such as all Mobilizations and Maintenance of Traffic (MOT) is 12% for this project, Not-to-Exceed (NTE) 9% for all Mobilizations.

Mobilization shall be paid as one Lump Sum for the contract divided into the project duration as a percentage.

## 7. MAINTENANCE OF TRAFFIC (MOT)

- A. Maintain all traffic within the limits of the project for the duration of the construction period, including any temporary suspensions of the work.
- B. If a road closure is required, the Contractor must construct and maintain detours. All road closures must be approved by the City Project Manager or his/her representative at least 72 hours prior to occurring. Contractor is required to provide an acceptable Maintenance of Traffic Control Plan that provides details and detour routes for existing traffic; these plans must be reviewed and approved prior to any road closure.
- C. All lane closures must not exceed 2 miles in total length (including taper, buffer and work zone) in any given direction.
- D. Provide facilities for access to all residences and businesses along the project corridor. Contractor must notify residents and businesses at least 48 hours in advance if access to local roads or homes will be limited.
- E. Furnish, install and maintain traffic control and safety devices during construction in accordance with the requirements of FDOT specifications under the direction of a qualified Traffic Control Supervisor. Traffic Control Supervisor must keep a copy of credentials available at all times. The City reserves the right to verify qualifications at any time. Provide any other special requirements for safe and expeditious movement of traffic specified. MOT includes all facilities, devices and operations as required for safety and convenience of the public within the work zone.
- F. Do not obstruct or create a hazard to any traffic during the performance of the work. Repair any damage to existing pavement open to traffic.
- G. Police Department Assistance shall be required as described in Section 32 at the Contractor's expense.

The combined costs for work such as Mobilization and Maintenance of Traffic (MOT) is not to exceed 12% for this project, NTE 3% for MOT.

Maintenance of Traffic shall be paid as one Lump Sum for the contract divided into the project duration as a percentage.

### 8. EROSION CONTROL

Contractor shall provide and install all Best Management Practices (BMP's) per Florida Department of Environmental Protection National Pollutant Discharge Elimination System standards in all areas of land disturbing activities to prevent sediment transport into storm sewer system or adjacent water bodies. BMP's shall be installed in areas (but not limited to) of new inlets and pipe installations, sod placement, etc. BMP's



include silt fence, silt fence inlet protection, curb inlet protection, etc. All erosion control costs are incidental to other contract items.

#### 9. LIMITS OF WORK

The contractor is responsible for coordination of the inspection and installation of all work. No work will be considered complete until inspected and accepted by the City's inspector.

- The intersection of Chiquita Blvd S. with Veterans Memorial Pkwy. shall be paved up to the southernmost edge of the eastbound lane of Veterans Memorial. Pkwy.
- The intersection of Chiquita Blvd S. with Savona Pkwy W. shall be paved up to the existing joint at the north side of Chiquita Blvd S.
- Intersections of Chiquita Blvd S. with local roads shall be paved up to the P.C. or at an existing joint.
- The intersection of Country Club Blvd. with Wildwood Pkwy shall be paved up to the existing joint at the south side of Country Club Blvd.
- The intersection of Country Club Blvd. with Palm Tree Blvd. shall be paved up to the existing joint at the east side of Country Club Blvd.
- Intersections of Country Club Blvd. with local roads shall be paved up to the P.C. or at an existing joint.
- The intersection of Cape Coral Pkwy E. with Santa Barbara Blvd. shall be paved up to the existing joint at the east side of SE 1st Pl.
- The intersection of Cape Coral Pkwy E. with Coronado Pkwy. shall be paved up to the existing joint at the west side of Cape Coral Pkwy E.
- Intersections of Cape Coral Pkwy E. with local roads shall be paved up to the P.C. or at an existing joint.

Changes are possible due to field adjustments and City discretion.

## 10. HERBICIDE APPLICATION, CLIPPING & BROOMING

Prior to paving, any material the remaining after milling shall be completely removed by power broom and/or burning method from the roadway surface and removed from the site. This includes the removal of grass and vegetation from the edge of pavement where necessary. The road surface needs to be free of all dirt and dead organic material. This work is incidental to the contract.

Herbicide will be required on all roads in this contract and shall be applied in accordance to manufacturer's recommendations prior to paving or as directed by the City Project Manager or City Inspector. Use products found on the following website, www.flpesticide.us/, approved by the Florida Department of Agriculture for the State of Florida. The use of restricted products is prohibited. Do not use any products in the sulfonylurea family of chemicals. Herbicide application by broadcast spraying is not allowed. Procure any necessary licenses, pay all charges and fees, and give all notices necessary for lawful performance of the work. Ensure that all employees applying insecticides and herbicides possess a current Florida Department of Agriculture Commercial Applicator license with the categories of licensure in Right-of-Way Pest Control and Aquatic Pest Control. Provide a copy of current certificates upon request, to the Project Manager.

Herbicide Application shall be paid as one Lump Sum for the contract.

#### 11. MILLING

Remove existing asphalt concrete pavement by milling to improve the rideability and cross slope of the finished pavement, to lower the finished grade adjacent to existing curbing, driveways, prior to resurfacing, or to completely remove existing pavement. Milling shall be completed to ensure edge of pavement is flush to all existing driveways, curbs, and adjoining roadways.

Milling may extend for the full width of the roadway, it may be limited to the outer edges of the existing roadway, or it may be a combination. The City Project Manager or Paving Inspector will determine whether or not, and to what extent the roadway will be milled. Milling shall be to 2" average depth, as directed by City inspector based on road condition. Temporary asphalt shall be placed in all places with a different elevation of 1" or more in where traffic exists.



Contractor will retain milled material and will be fully responsible for the hauling and disposal of all milled material. Milling shall not take place prior to three (3) calendar days of proposed paving of the road. Contractor shall take all measures necessary to pave the road as soon as possible after milling.

No milled surface shall be left open to vehicular traffic for a period greater than three (3) consecutive calendar days. For each day after the three (3) day period that the milled surface is left open to vehicular traffic, the Contractor will be assessed liquidated damages in the amount of one thousand five hundred dollars (\$1,500.00) per day. In the event that the occurrence is due to natural disaster beyond the Contractors control the amount will not be assessed. Payment to the City of such sums may become payable under the provisions of this article and shall be made by identifying the said sums as a credit item on the Contractors final pay estimate.

#### 12. TACK COATS

Apply bituminous <u>non-tracking</u> tack coats on previously prepared bases and on existing pavement surfaces. Unless otherwise approved by the City's Project Manager, use an emulsified asphalt <u>non-tracking</u> tack coat that is listed on the Florida Department of Transportation's Approved Product List (APL), meeting the requirements of Section 916 related to trackless tack coat. Tack coats shall meet and be in accordance with the requirements of the current edition of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, unless otherwise approved by the City's Project Manager.

The Contractor shall be responsible for either cleaning tracked tack, prime, or asphalt or shall extend the area being paved at their cost per detail F-5 (see Exhibit D) if there is tracking on to asphalt that is to remain.

Please see link for APL:

https://fdotwp1.dot.state.fl.us/ApprovedProductList/Specifications

#### 13. ASPHALT PAVEMENT GENERAL CONSTRUCTION REQUIREMENTS

A. Weather Limitations

Refer to 330-3.1 of Florida Department of Transportation (F.D.O.T.) Standard Specifications

**B.** Limitations of Laying Operations

**General:** Refer to 330-3.2.1 of Florida Department of Transportation (F.D.O.T.) Standard Specifications **Ambient Air Temperature:** Refer to 330-3.2.2 of Florida Department of Transportation (F.D.O.T.) Standard Specifications

C. Mix Temperature:

Refer to 330-6.1.3 of Florida Department of Transportation (F.D.O.T.) Standard Specifications

D. Transportation of the Mixture:

Refer to 320-7 of Florida Department of Transportation (F.D.O.T.) Standard Specifications. *Cover each load at all times.* 

#### 14. STRUCTURAL REPAIRS

This work will consist of removing the existing pavement and lime rock base, down to a depth of 9" with the use of a milling machine unless an alternative is approved by the City. The Contractor will be responsible for hauling, storage, and disposal of this excavated material. The excavation will be filled with three (3) three-inch (3") layers (9" total) of Type B-12.5 or SP-12.5 Superpave asphalt material to match the existing grade or as instructed by City inspector. Included in the Contractor's unit prices for each phase of this project are the costs for site preparation, excavation, compaction, material, clean up, prime, tack, asphalt, and all ancillary items necessary for structural repairs. Site preparation includes the removal and replacement, if necessary, at the Contractor's expense of grass and vegetation from the edge of pavement, where necessary. Sod shall be replaced with sod to match the surrounding area. Areas of structural repair will be identified by City Inspector.



### 15. ASPHALT OVERLAY TYPE SP-9.5

This section specifies the basic equipment and construction requirements for hot mix asphalt pavements and bases. Establish and maintain a quality control system that assures that all materials, products and completed construction submitted for acceptance meet Contract requirements. The work specified in this section consists of Superpave Type SP-9.5 Asphalt Overlay of variable thickness of 2" average in two layers on any existing asphalt pavement designated to be overlaid, thickness shall be determined based on road condition by City inspector. The City reserves the right to adjust thickness in the field based on field conditions. Asphalt material to match the existing longitudinal grade. Cross slopes shall be per contract specifications, maintaining a 2% slope, unless otherwise directed by the City's Project Manager. No adjacent intersections will be overlaid unless otherwise directed by the City's Project Manager.

Included in the tonnage price are the preparation, cleanup, tack, and other items necessary for paving and resurfacing. Apply bituminous prime coats and bituminous tack coats on previously prepared bases and on existing pavement surfaces. Tack coat must be a liquid, **non-track tack**. Mix designs shall be emailed to the Project Manager for approval. The weight of the mixture shall be determined from batch weights, truck scale weight or other methods approved by the Project Manager. Delivery tickets, in duplicate, signed by a sworn weigher, shall accompany each load of material to the project site. One copy of the delivery ticket shall be retained by the Contractor and one copy shall be delivered to the Engineering Inspector. The total number of tons reflected in one set of all delivery tickets collected by the Inspector shall be the measured pay quantity. Any tickets not provided prior to invoice date shall have that ticket's tonnage deducted from monthly estimate.

#### 16. RESPONSIBILITY REGARDING EXISTING UTILITIES AND STRUCTURES

The existence and location of underground utilities (if any) are not guaranteed and shall be investigated and verified in the field by the Contractor before starting work. Excavation in the vicinity of existing structures and utilities shall be carefully done by hand. The Contractor shall be held responsible for any damage to, and for maintenance and protection of existing utilities and structures.

### 17. TESTING

All testing shall be the responsibility of the Contractor. A Quality Control Plan shall be certified by a Florida Professional Engineer in writing (signed and sealed) and submitted to the City for approval prior to construction. If materials used do not meet minimum specifications, they shall be removed and replaced at the Contractor's expense. All tests, including sampling, shall be performed by an independent laboratory subject to the Project Manager's approval. Asphaltic tests shall include sieve analysis, asphalt content, air voids, unit weight, and inplace densities. The project manager or inspector reserves the right to request additional testing at their discretion at the Contractor's expense. In areas where leveling over existing soil cement base will occur, the Contractor will be responsible for testing the suitability of the base material to remain in place.

Asphaltic tests shall be taken as directed by the current edition of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction. Test results shall be emailed within five (5) calendar days to the Project Manager for approval.

Testing shall be paid as one Lump Sum for the contract.

#### 18. TRANSVERSE and BUTT JOINTS

#### A. Transverse Joints

All transverse joints shall be constructed in a manner in which provides a smooth ingress and egress between asphalt mats. Joints shall be constructed with tapered ends that are 50:1 (2%) maximum slope. Joints are to be compacted with same compactive efforts as made on entire asphalt mat. Transverse joints are not to be used for periods longer than 72 hours in duration. Joints left in place longer than 72 hours, the Contractor will be assessed liquidated damages in the amount of one thousand dollars (\$1,000) per day. In the event that the occurrence is due to natural disaster beyond the contractors control the amount will not be assessed. Payment to the City of such sums may become payable under the



provisions of this section and shall be made by identifying the said sums as a credit item on the Contractors final pay estimate.

Once paving resumes, the transverse joint shall be removed by mechanically saw cut to reveal a clean straight edge. The cut shall be a minimum distance of ten feet (10') wide, as measured from the edge of the thin edge of the joint.

#### **B.** Butt Joints

The use of such joints shall be considered and approved on a case by case basis by the City's Project Manager and/or his representative. Butt joints are not permitted in areas where vehicular traffic may cross the joint. When permitted, construction of butt joints shall consist of raking, shoveling, and removing the mix that is located downstream of the selected joint location. The mix that is in place upstream of the joint is not to be disturbed. Compaction of the mix on the upstream side of the joint is accomplished in normal fashion. The area adjacent to the joint shall be immediately compacted. Compaction of the joint requires the use of runoff boards. Runoff boards are to be placed next to the joint. The thickness of the boards should be approximately equal to the compacted thickness of the layer being placed. In addition, the boards must be wide and long enough to support the full size of a roller. At the time of paving joining to this joint, an area ten feet (10') wide shall be mechanically cut to reveal a clean straight edge.

## 19. LEVELING

If leveling is required, dependent on road condition identified by the City inspector, the Contractor shall lay a minimum of a 50# leveling course (of Superpave Type SP-9.5 asphalt) to be topped with a minimum 75# wearing surface (125# Total), or as instructed by City inspector. The City reserves the right to adjust leveling in the field based on field conditions. Payment for all related leveling work and surface course shall be based on tonnage laid down and be included/paid for in the tonnage (Asphalt Overlay Type SP-9.5).

#### 20. STRIPING, PAVEMENT MARKINGS, AND REFLECTIVE PAVEMENT MARKERS (RPM'S)

All traffic striping, bike lanes, stop bars, crosswalks, symbols, words, arrows, other pavement markings, including RPMs shall be furnished and installed where they were pre-existing and in accordance with the MUTCD standards, applicable FDOT index and the FDOT Specifications, except amended herein. No changes to pavement markings will be made without the approval of the City of Cape Coral Traffic Engineer.

Where pavement markings exist, they shall be replaced as follows:

- All markings shall be applied at least twice in all locations following the existing stripe, symbol, and word layout regardless of whether or not paint or thermoplastic is applied.
- If necessary, for safety the Contractor shall stripe the milled surface and/or the first asphalt lift.
- The first application of all markings on the final lift asphalt (including words and symbols) shall be applied immediately after paving and shall be in paint with glass beads. This will be considered incidental to the final striping and shall not be measured or paid.
- The final application shall be thermoplastic for all words and symbols regardless of location and for all markings in intersections per attached detail. \* Otherwise, final applications shall be Paint. \*Attached detail denotes limits of thermoplastic striping at intersections for each leg, the limits shall be the beginning of the longest lane taper for that leg (see Exhibit D).
- Standard pavement marking stripes shall be 6" wide. (See below)
- Payment of item will be the same regardless of required color.
- RPM's shall be replaced as required by the applicable FDOT index 706-001.

RPMs shall be paid for on an EACH basis, installed, and shall include replacing all pre-existing and necessary traffic-related RPMs as well as all impacted fire hydrant markers (blue).

NOTE: It is possible that the Contractor will encounter one or more green devices resembling a standard RPM attached to a sanitary manhole lid. DO NOT REMOVE THE GREEN RPM. DO NOT LIFT THE MANHOLE LID. The device is an antenna, and the manhole has a sensor in it. Disturbing it will send a false alarm to the Utilities Department. Any and all damage will be charged to the Contractor.



6" Painted Pavement Markings, SOLID and 6" Thermoplastic Pavement Markings, SOLID shall be paid for on actual length of stripe applied and be paid for as LINEAR FOOT when it is the final application. Wider striping shall be paid for using the Linear Foot price times the correct multiple of 6" such as a typical stop bar 24" wide shall be paid at the Linear Foot Cost X 4. Double striping (two parallel 6" stripes) shall be at the Linear Foot Price X 2. Gores, chevrons, and similar markings shall be paid for as 6" Thermoplastic Pavement Markings, SOLID multiplied appropriately for widths greater than 6".

6" Painted Pavement Markings, SKIP and 6" Thermoplastic Pavement Markings, SKIP shall be paid as length from the beginning of the first skip to the end of the last skip for each skip line striped in the 10' stripe, 30' gap pattern and will be paid for as LINEAR FOOT of skip line when it is the final application. (Other skip line frequencies will be paid for as SOLID for the actual length of stripe applied.)

All words and symbols shall be paid for on an EACH basis when it is the final application at the price bid, and the final application shall be thermoplastic. All words and symbols other than the bike lane marking shall be <a href="extruded thermoplastic">extruded thermoplastic</a>. Thermoplastic Standard Directional Arrows are paid as one bid unit regardless of the number of "points" or directions. Thermoplastic Messages (other than "ONLY") such as "STOP AHEAD" and "SCHOOL" will be paid per complete message as one complete bid unit. Thermoplastic "ONLY" is a separate bid item. Payment for all words and symbols shall only be made after the final application and acceptance.

For each day past the given timeframes, the Contractor will be assessed liquidated damages in the amount of two thousand five hundred dollars (\$2,500) per day.

### 21. SOD

All sod shall match existing adjacent sod type including but not limited to St. Augustine for all improved properties. Bahia sod shall be used for all unimproved lots. The Contractor shall install 24 inches (24") of sod along the edge of pavement, adjacent to resurfacing and milled shoulder/drop off areas or as directed by City inspector. Sod shall be laid straight and parallel with the edge of pavement. The Contractor shall roll the sod and be responsible for two waterings (via a water truck) as directed by the City. **No sod shall be installed higher than the edge of the pavement.** The exact location of sod will be as directed by the City. The Contractor shall be responsible for repairing any erosion before sod is laid.

#### 22. VALVE BOX LEVEL AND ADJUST

The work in this article will conform to Utilities Detail W-210 – See Exhibit B.

All utilities and related structures requiring leveling and/or adjustment shall be leveled and/or adjusted by the Contractor at the unit price bid. The Contractor shall be responsible for leveling and/or adjusting all valve boxes to match **new/proposed** asphalt surfaces without sacrificing proper vertical alignment of the roadway. Valve box cover leveling/adjusting may be completed **before or after** paving operations are complete at the discretion of the Contractor. The Contractor shall arrange his schedule to allow adequate time for such leveling and/or adjustments. All valve box cover leveling and/or adjustments shall be completed within thirty (30) days after paving is complete unless otherwise directed by Project Manager. The Contractor shall confirm, prior to milling operations that proposed milling does not negatively affect any existing utilities. City Utilities Department will supply valve box ring if the existing is damaged and cannot be reused. If necessary, Contractor shall arrange his schedule to allow for adequate time to pick up all rings from City Utilities Department.

All work necessary to adjust and/or level water, reuse, or sewer valves, including cutting and removing a 24" X 24" section of pavement, cleaning valve box of soil and debris. The valve box casting shall be aligned so that the casting is centered over the operating nut. The edge line of the concrete collar shall be parallel to the centerline of the roadway and shall include a brass valve tag provided by city. The Contractor shall be responsible for the disposal of concrete, asphalt, debris, and other items as part of the work. Work includes providing MOT devices during construction and curing.

Payment for this item shall be per each.



### 23. VALVE BOX REPLACEMENT

The work in this article will conform to Utilities Detail W-210 – See Exhibit B.

All utilities and related structures requiring replacement shall be replaced by the Contractor at the unit price bid. The Contractor shall be responsible for replacing all valve boxes to match **new/proposed** asphalt surfaces without sacrificing proper vertical alignment of the roadway. Valve box cover replacements may be completed **before or after** paving operations are complete at the discretion of the Contractor. The Contractor shall arrange his schedule to allow adequate time for such replacements. All valve box replacements shall be completed within thirty (30) days after paving is complete unless otherwise directed by Project Manager. The Contractor shall confirm, prior to milling operations that proposed milling does not negatively affect any existing utilities. City Utilities Department will supply all valve box components where the existing valve box is damaged and cannot be reused. This shall be at no cost to the Contractor unless the Contractor caused the damage. Any utility found to be damaged or deficient in any way shall be reported immediately to the City Inspector or Project Manager. If necessary, Contractor shall arrange his schedule to allow for adequate time to pick up of necessary components from City Utilities Department.

All work necessary to replace, adjust and level water, reuse, or sewer valves to include cut and remove a 24" X 24" section of pavement, clean valve box of soil and debris. Replace valve box casting if necessary (provided by city), insert C-900 pipe riser if needed. The valve box casting shall be aligned so that the casting is centered over the operating nut. The edge line of the concrete collar shall be parallel to the centerline of the roadway and shall include an optional brass valve tag, if provided by City. The contractor will be required to remove all existing debris, even if the contractor did not cause the debris to be present. This ensures that the valve box is properly centered over the operating nut on the valve and verifies that the valve box is not damaged. Adjusting the grade and replacing the concrete pad without clearing and removing the debris could result in rejection of the work. This statement supersedes #1 on the W-210 Detail, which references debris removal. Contractor shall be responsible for the disposal of concrete, asphalt, debris, and other items as part of the work. Work includes providing MOT devices during construction and curing. The Contractor shall be responsible for the disposal of concrete, asphalt, debris, and other items as part of the work. Work includes providing MOT devices during construction and curing.

Payment for this item shall be per each.

#### 24. MANHOLE RING AND COVER ADJUSTMENT AND REPAIR

The work in this article will conform to Utilities Detail S-285A - See Exhibit C.

All utilities and related structures requiring adjustment and/or repair shall be adjusted by the Contractor at the unit price bid. The Contractor shall be responsible for all manhole adjustments to match **new/proposed** asphalt surfaces without sacrificing proper vertical alignment of the roadway. All manhole adjustments and/or repair shall be completed **prior** to the commencement of any paving operations. The Contractor shall arrange his schedule to allow adequate time for such adjustments and/or repair. Temporary asphalt shall be placed around all manholes within one (1) week after adjustments and/or repair. Barrels shall be installed immediately following completion of manhole adjustment and/or repair and maintained until final paving is complete around each manhole. The Project Manager reserves the right to direct specific adjustments and/or repair to be made after paving. The Contractor shall confirm, prior to milling operations that proposed milling does not negatively affect any existing utilities. City Utilities Department will supply approved composite manhole adjustment rings. If necessary, Contractor shall arrange his schedule to allow for adequate time to pick up all composite manhole adjustment rings, and if necessary, manhole ring and covers, from City Utilities Department. Any utility found to be damaged or deficient in any way shall be reported immediately to the City Inspector or Project Manager.

All work necessary to remove, replace if necessary (provided by city), adjust, level, and secure sanitary sewer manhole ring and cover assembly in asphalt pavement. Cut and remove a square section of pavement no less than 8" larger than the diameter of the ring. The casting shall be aligned so that it is centered over the chimney, set to grade using approved (supplied by city) adjusting rings (no brick adjustments will be permitted), secure, apply 2" concrete collar, and seal inside of the chimney and adjusting rings with city approved cementitious material. The Contractor must take care that no loose material or debris falls into the manhole. Work includes



disposal of concrete, asphalt, debris, and other items as part of the work. Work includes providing MOT devices during construction and curing.

Payment for this item shall be per each.

#### 25. CORRECTION OF WORK PAYMENT

#### A. DEDUCTION FOR UNCORRECTED WORK

All work and material, as well as all processes of manufacturer, and methods of construction, are subject to approval of the City's Project Manager who shall be the final judge of the quality and suitability of the work. All materials, processes of manufacturer, and methods of construction shall be suitable for the purposes for which they are used. Should they fail to meet the City's Project Manager's approval, the Contractor at his own expense shall remove and reconstruct them. Rejected material shall immediately be removed from the site. The Contractor shall have a competent superintendent (serving in the capacity as a Contractor Project Manager) on the project at all times whenever the Contractor's crew, or work crews of other parties authorized by the City Project Manager, are engaged in any activity whatsoever associated with this project. Should the Contractor fail to comply with the above condition, the City's Project Manager shall, at his discretion deduct from the Contractor's partial monthly payment estimate, sufficient monies to account for the City's loss of adequate project management and superintendent, not as a penalty, but as liquidated damages for services not rendered. The Contractor shall assign a full-time superintendent to routinely and constantly supervise, manage, plan, monitor, schedule and control the construction operations on behalf of the Contractor. The City Engineer/Project Manager reserves the right to request a different superintendent at his/her discretion. An equipment operator or laborer will not be considered as a full-time superintendent.

#### **B. GUARANTEE**

The Contractor shall warrant all materials furnished and work performed for a period of one year from the date of written acceptance by the City or by the date on the substantial completion letter. The making and acceptance of final payment shall not waive any claim for faulty work appearing after final payment or for failure to adhere strictly to the Construction Documents. If any part of the project is guaranteed for a longer period, such longer period shall prevail. Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment or workmanship for one year from the date of final completion and acceptance by the City.

### 26. BIDDING AND PAYMENT NOTE

The Contractor shall carefully review the project to familiarize himself with the project and calculate his own quantities. The quantities estimated represent only approximate amounts and may not represent actual quantities required to complete the ascribed project. The actual as-built quantities of work shall be computed by the City Project Manager/Engineer on the basis of field measurements taken by the City's paving inspector and confirmed by the Contractor. The Contractor shall not receive payment for material that is not used on site.

#### 27. MEASUREMENT OF QUANTITIES

The estimated quantities necessary for this contract will be computed by the City's Project Manager on the basis of measurements taken by the City's Paving Inspector and confirmed by the Contractor. The Contractor shall confirm all measurements and assumptions and include all necessary materials to complete the project as included in the contract documents in the project bid. These measurements, confirmed by the Contractor, shall be final and binding.

### 28. CLEAN UP AND RESTORATION

**GENERAL:** Upon completion of the street resurfacing and before acceptance and payment the Contractor shall restore all public and private property which was damaged during the execution of the work. Restoration is meant to include grading and stabilizing the shoulders to match the new edge of pavement using materials consistent with what existed prior to construction. This shall be understood to include the use of sod or seed and mulch to replace existing grass that has been damaged. Foreign material, such as asphalt chunks, tack



material, and dead vegetation, shall be removed from any spoil used to fill and dress shoulders after completion of paving. Vacant lots and swales used for staging shall be free of debris, trash, and if needed, regrading and reseeded at the Contractor's expense.

#### A. DRIVEWAYS

All driveways must be swept daily of all debris related to the paving process.

#### **B. PILES**

All piles of materials or waste products piled on vacant lots must be completely removed and disposed of at the Contractor's expense.

#### C. DAMAGE

Any damage to driveways, sprinkler systems, or landscaping will be evaluated by the City's paving inspector and the Contractor. If the Contractor is found to be at fault, all repairs, and/or reimbursements to the homeowner must be completed within 2 weeks of discovery. Damage to mailboxes must be repaired or replaced within 24 hours of discovery or notification. In the event of damage causing repair/replacement, the Contractor will be responsible for obtaining quotes for repair/replacement. The Contractor will be responsible for the homeowner signing a release upon repair, replacement or reimbursement. The City will not be responsible for any damages caused by the Contractor. Failure to complete repairs in this timeframe will result in the assessment of liquidated damages of two thousand (\$2,000.00) dollars per occurrence.

#### D. VACANT LOTS

It is the responsibility of the Contractor to receive all permissions and applicable insurances whether it is on private or public land to store any machinery on any vacant lots throughout the duration of this project. It is also the responsibility of the Contractor to obtain any necessary permits and permission to use the vacant lots. The lots must be restored to their prior condition before the Contractor leaves that road segment to begin the next road segment. Copies of authorizations and/or permits shall be provided to the City's Project Manager.

#### 29. SCHEDULE

The Contractor must submit a schedule in calendar format on a bi-weekly basis. Schedules will be e-mailed to the Project Manager. The schedules shall indicate which days the Contractor anticipates doing major components of the program including placing traffic control, milling, adjustments, structural repair, and paving, and on which roadways. The work over the bridges shall be coordinated with the City's Project Manager.

#### 30. PURSUIT OF WORK

The Contractor shall actively pursue the completion of the work awarded within the contract. No time extensions nor weather days shall be permitted if more than one quarter of the contract time resulted in no work or no Contractor presence in which active construction activities were completed.

### 31. HOLIDAY AND WEEKEND WORK

If work is authorized by the City Project Manager on holidays and weekends, the Contractor shall notify the City Project Manager seventy- two (72) hours in advance of the time and date on which the Contractor or any of the subcontractors propose to perform during such time periods to afford the City Project Manager ample time to effectively schedule inspection personnel in accordance with the Contractor's timetable. This applies to day work and night work during holidays and weekends. Night work is not anticipated and would not be allowed without City approval.

The City observes the following holidays: New Year's Day, Martin Luther King Jr., President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and the day after, and Christmas Day.



## 32. POLICE DEPARTMENT ASSISTANCE

A Police Department or Sheriff's Department Off-Duty Detail shall not be specifically required for work on this contract if the Contractor demonstrates adequate traffic control can be achieved using standard FDOT approved Traffic Control. However, if the City Project Manager deems Police Assistance is necessary, this shall be provided and shall be at the contractor's expense. If the Cape Coral Police Department is used, they must be notified three (3) business days in advance of this work or emergency rates will apply.

#### 33. PUBLIC NOTIFICATION

Contractor must obtain, furnish, program, and maintain two (2) variable message signs to be placed by Contractor at Contractors cost at specific locations to be determined by the City's Project Manager varying throughout the length of the contract. These variable message signs are intended to provide advance warning for forthcoming delays caused by the project and shall therefore be placed at a given location at least one (1) week prior to milling and remain in working order until moved by Contractor to a subsequent area, at a schedule to be determined by the City's Project Manager. Each variable message sign must be capable of displaying at least two (2) different messages with three (3) lines of text each and meet FDOT standards.

City will provide special signs, posts & ballasts to be placed by the Contractor at locations determined by the City's Project Manager or Inspector. These signs will be relocated by the Contractor as the paving operation moves.

The City will, at their discretion, distribute door hangers to any improved properties requiring special notification of unusual conditions resulting from this project. The City's Project Manager will notify the Contractor of the locations where door hangers will be used, and the Contractor must provide ten (10) days' notice so door hangars can be hung at least three (3) to seven (7) days prior to the work being performed. These notices will explain the project and advise the homeowners that any damage to sprinkler heads placed along the edge of pavement are their responsibility to repair. Damage to sprinklers caused by the Contractor driving onto improved properties, or over existing sprinkler heads, will be the Contractor's responsibility to repair at the Contractor's own cost within 2 weeks of discovery/notification as stated in Section 29 Subsection C above.

#### 34. RIGHT-OF-WAY PERMIT

The contractor selected for this work will be required to acquire a City Right-of Way permit. The \$99 fee for this permit will be waived. Right-of Way permit applications can be acquired through Public Works, Jim Depatie at jdepatie@capecoral.net. Maintenance of traffic (MOT) plan is needed to complete this work and the plan must accompany the contractor's Right-of-Way permit application, for review by the City's Traffic Engineering section. No MOT plan will be reviewed unless prepared by a certified MOT "intermediate level" or higher technician/individual and meets all the ROW instructions and requirements.

#### 35. MANDATORY PRE-CONSTRUCTION MEETING

The Contractor shall cooperate and coordinate with the City to schedule and administer the mandatory preconstruction meeting no later than fourteen (14) days after date of Notice to Proceed. The meeting shall be scheduled at the convenience of all parties. The City reserves the right to request periodic progress meetings throughout the duration of the project. The Contractor shall make physical arrangements for meetings at a location convenient to all parties designated by the City. Representatives of Contractor, subcontractors, and suppliers attending meetings shall be qualified and authorized to act on behalf of the entity each represents. The City will attend meetings to ascertain that the Work is expedited consistent with Contract Documents and construction schedules. The Contractor shall record the preconstruction meeting and each progress meeting in its entirety and shall provide the City with a regular cassette copy of such recording, having good quality and clarity, and a typed transcript of the minutes of the meeting.



### **ARTICLE 1 - GENERAL CONDITIONS**

### 1.1 DEFINITIONS

- 1.1.1 **ARCHITECT/ENGINEERING (A/E)** for this ITB shall hereafter refer to City and/or City's Engineering staff.
- 1.1.2 **Addenda** are written, or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements of the Contract Documents.
- 1.1.3 **Agreement**: The written contract between Owner and Contractor covering the work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- 1.1.4 **Bid:** The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.
- 1.1.5 **City:** Shall be understood as referring to the City of Cape Coral, Florida.
- 1.1.6 Change Order: Document recommended by A/E (which is signed by Contractor and/or Owner and authorizes an addition, deletion or revision in the work, or an adjustment in the Contract Price or the Contract Time.
- 1.1.7 Contract Documents are the agreement, Addenda, Contractor's Bid, except when it conflicts with any other contractual provision, the Notice to Proceed, the Bonds, this Bid Package, these General Conditions, the Specification and Drawings, any Special Conditions, together with all Written Amendments, Change Orders, Work Change Directives or Field Orders.
- 1.1.8 **Contract Price** is the monies payable by the City to the Contractor for completion of the work in accordance with the Contract Documents as stated in the Agreement.
- 1.1.9 **Contract Time** is the number of days or the dates stated in the Agreement.
- 1.1.10 **Contractor:** Shall be understood as referring to the individual, corporation, or partnership whose name appears on the Contract.
- 1.1.11 **Effective Date of the Agreement** is the date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed by the last of the two parties.
- 1.1.12 Wherever in the Contract Documents the word "Owner" is used it shall be understood as referring to the City. Wherever the word "Contractor" is used it shall be understood as referring to the individual, corporation or partnership whose name appears on the Contract. Wherever in the Contract the word "A/E or Contract Administrator" is used it shall be understood as referring to the A/E or Contract Administrator of the Owner, acting personally or through any assistants duly authorized in writing for such by the Owner.
- 1.1.13 Contractor shall receive a written **Notice to Proceed** along with a Purchase Order.
- 1.1.14 The term "Subcontractor" as employed herein, includes only those that have a direct contract with the Contractor and it includes one who furnishes material worked to a



special design according to the plans and specifications of this work, but does not include one who merely furnishes material not so worked.

## 1.2 INVITATION TO BID

- 1.2.1 **NOTICE IS HEREBY GIVEN** that the City of Cape Coral, Florida is advertising for sealed bids. The Invitation to Bid, Official Bid Form, Bidder Information, Instructions to Bidders, General Conditions, Special Conditions, Specifications, Addenda and/or any other pertinent document form a part of this bid and by reference are made a part thereof.
- 1.2.2 In the event of any conflict between this Invitation to Bid and City of Cape Coral Ordinance, the provisions of the Ordinance shall prevail.
- 1.2.3 Bids not submitted on the attached Official Bid Form shall be rejected. All bids are subject to the conditions specified herein. Those, which do not comply with these conditions, are subject to rejection.
- 1.2.4 A complete set of the bidding documents are included in this Invitation to Bid document and may be obtained from the City as noted in the Legal Notice.
- 1.2.5 City and/or A/E in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the work and do not confer a license or grant for any other use.

### 1.3 BID PROPOSAL FORM

- 1.3.1 The Bid Proposal Form is attached hereto; additional copies may be obtained from City. (Attachment B)
- 1.3.2 The Bid Proposal Form must be completed in ink or by typewriter. The total price bid for the work shall be the sum of the lump sum prices bid and the unit prices multiples by appropriate estimated quantities for the individual items and shall be stated in figures on the appropriate place on the Bid Form. In the event there is a discrepancy on the Bid Tabulation Form due to the unit price extension or additions, the corrected extension and additions shall be used to determine the project bid amount. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- 1.3.3 Bids by corporations must be executed in the corporate name by a duly authorized corporate officer. The president or a vice-president, and the corporate seal must be affixed and attested to.
- 1.3.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the officiate address of the partnership must be shown below the signature.
- 1.3.5 All names must be typed or printed below the signature.
- 1.3.6 The Bid shall contain an acknowledgement of receipt of all addenda (the numbers of which shall be filled in on the Bid Proposal Form).



- 1.3.7 The address to which communications regarding the Bid are to be directed must be shown.
- 1.3.8 Failure to execute Bid Proposal Form in its entirety may result in rejection of bid.

### 1.4 SUBMISSION OF BIDS

- 1.4.1 Bids must be in a sealed envelope, and the outside of the envelope must contain the "Sealed Bid Envelope Label", which is included in the bid documents.
- 1.4.2 All pages of the Official Bid Proposal Form MUST be completed, signed and returned with Bid. The Official Bid Form must contain a manual signature of an authorized representative. Bid must be typed or printed in ink. Use of erasable ink is not permitted. All corrections made by bidder to his/her bid price must be initialed. Failure to sign your bid proposal may result in rejection of your bid.
- 1.4.3 Failure to return or sign all the required items with a bid/proposal may result in rejection of your bid.
- 1.4.4 All requested forms should be submitted whether applicable or not. Mark form N/A if not applicable.
- 1.4.5 One (1) original bid, one (1) copies and one (1) readable/reproducible disk (CD) or flash drive completely duplicating the original bid **MUST** be submitted to the Procurement Division at the date and time noted herein. Failure to not submit the required number of original, copies, and CD or flash drive may result in refusal of bid.
- 1.4.6 Bids shall be submitted to the Procurement Division and date stamped no later than thirty (30) minutes prior to the scheduled bid opening as indicated on the attached legal notice or as changed by addendum. Failure to be on time will result in refusal of bid. The time indicated on the date stamp machine in the Procurement Division is considered the official time.
- 1.4.7 Complete the enclosed Bid Preparation Checklist.

### 1.5 QUALIFICATIONS OF BIDDERS

- 1.5.1 To demonstrate qualifications to perform the work, each Bidder must submit a completed Business Qualification Questionnaire, which includes two (2) tables. (Attachment E)
- 1.5.2 Only one proposal from an individual, firm or partnership, or corporation under the same or different names will be considered. Should it appear to the City that any Bidder is interested in more than one proposal for the work contemplated, all proposals in which such Bidder is interested will be rejected. Should there be any reasonable grounds for the City to believe that a collusion or combination exists between Bidders, all proposals may be rejected and all such Bidders or participants in such combination or collusion will be disqualified from any future bidding for the same project.
- 1.5.3 The City reserves the right before recommending any award to inspect the facilities and organization or to take any other action necessary to determine ability to perform in accordance with the specifications, terms, and conditions.



- 1.5.4 The City of Cape Coral will determine whether the evidence of ability to perform is satisfactory and will make awards only when such evidence is deemed satisfactory and reserves the right to reject bids where evidence is submitted, or investigation and evaluation, indicates inability of the bidder to perform.
- 1.5.5 It is required that the Contractor hold a valid General Contractors license through the State of Florida or have a local Competency License and also registered in the City of Cape Coral.
- 1.5.6 The awarded Contractor will submit a list of its Subcontractors prior to a Notice to Proceed will be given. The City has the right to reject any proposed Subcontractors. The City requires that the subcontractor(s) have a minimum of 5 years of general construction experience suitable to their field. The Contractor is required to provide references regarding any Subcontractors.

## 1.6 EXAMINATION OF BIDDING DOCUMENTS AND SITE

- 1.6.1 Before submitting a Bid each bidder must (a) examine the Bidding Documents thoroughly, (b) visit the site to familiarize himself with local conditions that may in any manner affect cost, progress, or performance of the Work, (c) familiarize himself with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work; and (d) study and carefully correlate observations with the Bidding Documents.
- 1.6.2 Reference is made to the Special Conditions (if applicable) for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or conditions otherwise affecting cost, progress or performance of the Work which have been relied upon by A/E in preparing the Drawings and Specifications. City will make copies of such reports available to any Bidder requesting them. These reports are not guaranteed as to accuracy. For his bid each Bidder will, at his own expense, make such additional investigations and tests as the Bidder may deem necessary to determine his Bid for performance of the Work in accordance with the time, price and other terms and conditions of the Bidding Documents.
- 1.6.3 The lands upon which the Work is to be performed, rights-of-way for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Special Conditions (if applicable), General Conditions or Drawings.
- 1.6.4 The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of this paragraph 1.6 and that the Bidding Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

#### 1.7 INTERPRETATIONS/QUESTIONS

1.7.1 All questions about the meaning or intent of the Bidding Documents shall be submitted in writing to the attention of Alicia Pearce Smith, Procurement Specialist, P.O. Box 150027, Cape Coral, Florida 33915-50027; by e-mail apearce@capecoral.net, or fax to (239) 574-0837 by 4:00 PM. EST, November 5, 2020. Technical questions will be forwarded to the appropriate department by the Procurement Manager.



1.7.2 Interpretations of the Bid or additional information as to its requirements, where necessary, shall be communicated to all prospective bidders by written addendum only. It shall be the responsibility of each Firm, prior to submitting the proposal, to contact the Procurement Division to determine if addenda were issued and to make such addenda a part of the proposal.

Failure to acknowledge receipt of addendum may result in bid rejection. <u>NO ADDENDA WILL BE ISSUED WITHIN FIVE (5) BUSINESS DAYS PRIOR TO THE SUBMISSION DEADLINE, UNLESS AN ADDENDUM HAS BEEN ISSUED EXTENDING THE DEADLINE.</u>

## 1.8 BID SECURITY

Bid security shall be in the amount of 5% of the total base bid or amount identified in the bid documents in section 1.8. The bid security and the Bid Security Requirements Form, which is included, <u>must</u> be completed and returned with the bid. (Attachment G)

## 1.9 MODIFICATION AND/OR WITHDRAWAL OF BIDS PRIOR TO BID OPENING

- 1.9.1 Mistakes discovered before the Bids are opened may be modified or withdrawn by sealed written notice of the modification or withdrawal received in the office designated in the Invitation for Bids, prior to the time set for the Bid opening.
- 1.9.2 Errors in the extension of unit prices stated in a bid or errors in multiplication, division, addition, or subtraction in a bid may be corrected by the Procurement Manager prior to award. In such cases, the unit prices that were bid shall not be changed.

### 1.10 OPENING OF BIDS

- 1.10.1 Bids are to be submitted in accordance with the instructions provided herein. Per Florida State Statute 255.0518, the names of bidder and price submitted will be read aloud and recorded.
- 1.10.2 Pursuant to Florida State Statute 119.071(2), sealed bids, proposals or replies received by an agency pursuant to a competitive solicitation are exempt from s.119.071(1) and s.24(a), Art. I of the State Constitution until such time as the agency provides notice of intended decision or until thirty (30) days after opening the bids, proposals, or final replies, whichever is earlier.

## 1.11 <u>WITHDRAWAL OF BIDS AFTER BID OPENING</u>

After bids are opened, corrections or modifications to bids are not permitted, but a bidder may be permitted to withdraw an erroneous bid, prior to the bid award by City Council, if the following is established:

- 1.11.1 That the bidder acted in good faith in submitting the bid;
- 1.11.2 That in preparing the bid there was an error of such magnitude that enforcement of the bid would work severe hardship upon the bidder;



- 1.11.3 That the error was not the result of gross negligence or willful inattention on the part of the bidder;
- 1.11.4 That the error was discovered and communicated to the City within twenty-four (24) hours of bid opening, along with a request for permission to withdraw the bid; and
- 1.11.5 The bidder submits documentation and an explanation of how the bidding error was made.

## 1.12 BID PROTEST PROCEDURE

Protests must be filed in accordance with Article VII Division 1 Section 2-150 of the City of Cape Coral Ordinance – See Exhibit E.

## 1.13 BIDS TO REMAIN EFFECTIVE

Bids shall be effective for one hundred and twenty (120) days from Bid Opening Date, and thereafter if accepted by the City for the term designated in this bid.

## 1.14 AWARD OF CONTRACT

- 1.14.1 The City reserves the right to reject any and all Bids, to waive any and all informalities and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, nonresponsive or conditional bids.
- 1.14.2 The Successful Bidder will be awarded the amount indicated in the Official Bid Proposal Form noted "Total Bid Amount". In evaluating Bids, the City shall consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and alternates and unit prices, if requested, in the Bid forms.
- 1.14.3 City may conduct such investigations as deemed necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidders to do the Work in accordance with the Contract Documents to the City's satisfaction within the prescribed time. City reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to the City's satisfaction.
- 1.14.4 The Contract shall be awarded to the lowest responsive and responsible Bidder who meets terms, conditions, and specifications of the Bid Documents.

## 1.15 CONTRACT TIME

The number of calendar days after the stipulated date of commencement in the Notice to **Proceed** within which, or the date by which, the Work is to be completed (the Contract Time) is set forth in the Official Bid Proposal Form and will be included in the Agreement.

The contract duration is 90 calendar days from commencement date indicated in the Notice to Proceed.

# 1.16 WORK HOURS

1.16.1 Regular working hours are defined as up to eight (8) hours per day, Monday through Friday, beginning no earlier than 7:00 AM and ending no later than 7:00 PM, excluding



City recognized holidays. The City observes the following holidays: New Year's Day, Martin Luther King Jr., President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and the day after, and Christmas Day.

1.16.2 Whenever the Contractor is performing any part of the Work, with the exception of equipment maintenance and cleanup, City's representation and/or inspection will be required. Requests to work other than regular working hours, as herein defined, must be submitted to the City's designated representative for approval, at least 72 hours prior to any proposed weekend work or extended work weeks. This is required to give the City ample time to arrange for representation and/or inspection during those periods. Periodic unscheduled overtime on weekdays may be permitted provided two hours minimum notice is provided to the City's designated representative.

### 1.17 LIQUIDATED DAMAGES

The work to be performed under this Agreement may be subject to liquidated damages as identified herein. The Contract time will commence on the day indicated in the Notice to Proceed. A formal Notice to Proceed shall be issued within thirty (30) days after the Effective Date of the Agreement. Liquidated damages will be assessed as identified herein.

## 1.18 PUBLIC ENTITY CRIMES

- 1.18.1 **Convicted Vendors.** A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list:
  - submitting a bid on a contract to provide any goods or services to a public entity;
  - submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;
  - submitting bids on leases of real property to a public entity;
  - being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and
  - transacting business with any public entity in excess of the Category Two threshold amount (\$35,000) provided in section 287.017 of the Florida Statutes.

Please submit Sworn Statement on Public Entity Crimes – See Attachment C.

- 1.18.2 **Discriminatory Vendors.** An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:
  - submit a bid on a contract to provide any goods or services to a public entity;
  - submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
  - submit bids on leases of real property to a public entity;
  - be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or
  - transact business with any public entity.



### 1.19 VENDOR REGISTRATION

In accordance with Article VII Division 1 Section 2-148 of the City of Cape Coral Ordinance prior to award, a vendor must complete the vendor registration process. Registration can be done online from the City of Cape Coral website, <a href="www.capecoral.net">www.capecoral.net</a>. Once on the website, under "I WANT TO," click on "Register" then "City Vendor." That will take you to the "Vendor Portal" page from where you may register online or print out the Vendor Registration Forms.

## 1.20 TAX EXEMPTION

The City of Cape Coral, Florida as a political subdivision of the State of Florida, is exempt from the payment of Florida sales tax to its vendors under Chapter 212, Florida Statutes. The awarded vendor will be provided a copy of the City of Cape Coral's Certificate of Exemption (85-8012589883C-5) upon request.

## 1.21 PERMITS, LICENSES AND REGULATIONS

The awarded bidder shall comply with all Federal, State, and Local laws, rules and regulations.

Permits and licenses necessary for the performance of this work shall be secured and paid for by the awarded vendor(s) prior to execution of the contract or purchase order. Prior to starting any work within the City Right-of-Ways, a Right-of-Way permit and a Maintenance of Traffic, "MOT" Plan must be acquired by contacting the Public Works Department, Construction Inspector at (239) 242-3295. Owner shall notify the contractor of permits required and reimburse contractor for the applicable fees. Any City permits and fees not disclosed but found to be required, can be billed separately.

If the Bidder has a valid state certified contractor's license, they are required to register with the City of Cape Coral, Licensing/Business Tax Division (239-574-0726) in order to work in Cape Coral. If the Bidder currently possesses a state certified contractor's license, **a City Competency License** is also required.

If the Bidder has a permanent business location within the City of Cape Coral (including branch offices and storage or warehouse facilities), then a **City Certificate of Use and Business Tax Receipt** are required. If the Bidder has a permanent business location within the City of Cape Coral (including branch offices and storage or warehouse facilities), then a City occupation license is required.

It is required that each Bidder submit with their Bid copies of their occupational and/or competency licenses. If the Bidder does not hold a current license with the City of Cape Coral, the Bidder is required to register with the Licensing Division of the Department of Community Development upon contract award.

Failure to provide evidence of any required occupational or competency licenses may be cause for rejection of Bid.

A complete list of Permits fees can be obtained from the Department of Community Development located at Cape Coral City Hall or on the web: <a href="http://www.capecoral.net/Government/ProjectandBuildingInformation/BuildingDivision/PermitFees/taBid/544/language/en-US/Default.aspx">http://www.capecoral.net/Government/ProjectandBuildingInformation/BuildingDivision/PermitFees/taBid/544/language/en-US/Default.aspx</a>.

Specific information on licensing requirements may be obtained by calling (239) 574-0430.



It is required that each bidder submit with their bid copies of their occupational and/or competency licenses. If the bidder does not hold a current license with the City of Cape Coral, the bidder is required to register with the Licensing Division of the Department of Community Development upon contract award.

Failure to provide evidence of any required occupational or competency licenses may be cause for rejection of bid.

## 1.22 LOBBYING

- 1.22.1 All firms and their agents who intend to, or have, submitted bids or responses for this project are hereby placed on formal notice that neither City Council Members, candidates for City Council, members of the Selection Advisory Committee (SAC), nor any employee of the City of Cape Coral are to be lobbied either individually or collectively concerning this project.
- 1.22.2 Contact should only be made through regularly scheduled Council meetings, or meetings scheduled through the Procurement Division, which are for the purposes of obtaining additional or clarifying information.
- 1.22.3 Any action, to include dinner or lunch invitations, by a submitting firm that may be interpreted as being within the purview of this requirement shall result in the immediate disqualification from further consideration in this project.

### 1.23 PUBLIC RECORDS

Pursuant to Florida Statute §287.02 (1) (c), this contract may be unilaterally cancelled by the City if the Contractor refuses to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with the contract, unless the records are exempt from disclosure.

### 1.24 RECORD KEEPING

- 1.24.1 The awarded bidder shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City of Cape Coral reserves the right to determining the record-keeping method in the event of a non-conformity. If a Public Construction Bond is required records shall be maintained for ten (10) years, after final payment has been made and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.
- 1.24.2 Records of the Contractor's personnel, sub-contractor, consultant, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.
- 1.24.3 Contractor shall keep full and detailed accounts and financial records pertaining to the provision of the services for the City. Prior to commencing work, Contractor shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Contractor on the Project. Contractor shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.



1.24.4 The failure of the Contactor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the City shall enforce the Default in accordance with the provisions set forth in Article 16.

## 1.25 SUBSTITUTE MATERIAL AND EQUIPMENT

The Contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or equal" item of material or equipment may be furnished or used by Contractor is acceptable to A/E, application for such acceptance will not be considered by A/E until after the "effective date of the Agreement." The procedure for submittal of any such application by Contractor and consideration by A/E is set forth in paragraphs 9.4 and 9.5.

## 1.26 PUBLIC CONSTRUCTION AND OTHER BONDS

- 1.26.1 When the successful bidder delivers the executed Agreement to City, it shall be accompanied by the required Public Construction/Security Bond (See Exhibit F as a sample). The Bond shall be an amount at least equal to the Contract Price as security for the performance and payment of all Contractors' obligations under the Agreement. The contractor shall be required to record the bond in the public records of the County where the improvement is located and post a copy of the bond in a prominent location at the work site.
- 1.26.2 The successful bidder shall furnish City with a Public Construction Bond executed by an acceptable surety company on the form provided with the Bid Documents.
- 1.26.3 To be acceptable to the City as surety on bonds, surety shall comply with the following provisions to be provided in bid package:
  - (a) Surety must be licensed to do business in Florida and shall comply with all provisions of Florida State Statutes;
  - (b) Surety must have been in business and have a record of successful, continuous operation for at least five (5) years;
  - (c) Attorneys-in-fact who sign bid bonds or supply contract bonds must file with such bond a certified copy of their power of attorney to sign such bond;
  - (d) Agents of Surety Companies must list their name, address, and telephone number on all bonds;
  - (e) Surety shall have the following minimum rating:
    - 1. Best's Financial Rating of A-XII.
    - 2. Best's Policyholder's Rating of "A" which signifies "excellent based on good underwriting, economic liabilities, net resources for unusual stock, and sound investment.
- 1.26.4 The bond shall remain in effect during the guarantee period.



- 1.26.5 All bonds must be executed under the corporate seal of the surety and countersigned on the part of the surety by a qualified resident agent of the company or any attorney-in-fact with proof of power attached to the bond.
- 1.26.6 If the surety ceases to meet any of the requirements of paragraph 1.26.3, Contractor shall within ten (10) days substitute another Bond and Surety. Both must be acceptable to City.
- 1.26.7 Failure to execute the agreement and provide the Public Construction Bond within ten (10) calendar days from the date of the notification of the award shall be just cause for the City to annul and void the award and declare forfeiture of the proposal guarantee (Bid Bond) or good faith deposit in liquidation of all damages sustained by Owner. An award may then be made, at the City's discretion, to the next lowest responsible Bidder or the work may be re-advertised and re-bid.

## 1.27 SIGNING OF AGREEMENT

When Owner issues a Notice of Intent to Award to the Successful Bidder, the Owner will request the successful bidder to provide a signed agreement (using blue ink), which has been partially signed by Owner staff. Once the intent to award has been approved by City Council, authorized Owner staff will complete the signing of the contract documents. The contract will then become fully executed. Owner will deliver one fully executed agreement to the Successful Bidder. Within fifteen (15) calendar days thereafter, the awarded Bidder shall deliver the Certificate of Insurance providing coverage as outlined in the bid documents, with the Owner being named as additional insured, original payment and performance bonds (when applicable) that have been recorded in Lee County Clerk of Courts, and any additional documentation required to be delivered by the Contract Documents to Owner. No work is to begin on the project, prior to issuance of the Notice to Proceed and issuance of a fully executed Purchase Order.

A Pre-construction meeting may be scheduled after all Contract Documents are reviewed.

### 1.28 UNAUTHORIZED ALIENS

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

## 1.29 DRUG FREE WORKPLACE

The City of Cape Coral is a drug free workplace. Submit the Drug Free Workplace Certification with your bid. (Attachment F)

## 1.30 FORM 3A - INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS

Submit Form 3A Interest in Competitive Bid for Public Business. (Attachment I)

### 1.31 NON-COLLUSIVE AFFIDAVIT

Submit the Non-Collusive Affidavit. (Attachment J)



### 1.32 CORPORATE RESOLUTION

The corporate resolution form is utilized to provide names of individuals that are legally authorized to execute agreements on behalf of the corporation, company, partnership, joint venture or entity. This may include signing of bid documents, contracts, forms, and agreements. The corporate resolution form includes the name of individuals, with their signatures and their official title with the entity submitting a bid or proposal.

Proposers must provide either the corporate resolution form or the company's official letterhead, indicating the authority of the individuals who may sign and legally bind the company in proposals, bids, contracts, and agreements. The authorized individuals name(s) should be shown on the corporate resolution or letterhead with their typewritten name, their official title and actual signatures shown beside their name. The document should be signed and dated by an authorized agent of the company. The document should include the company's official address and phone number. If the primary qualifying agent is not the owner, an officer, a member, a joint venture managing partner, etc., describe the relationship to the company and provide proof of such relationship and/or license use agreement.

Submit the Corporate Resolution Form. (Attachment K)

## 1.33 AUTHORITY TO PIGGYBACK

It is hereby made a precondition of any bid and part of these specifications that the submission of any bid in response to this request constitutes a bid made under the same conditions, for the same price, and for the same effective period as this bid, to any other governmental entity.

## 1.34 ANNUAL APPROPRIATION

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

### 1.35 CANCELLATION

- 1.35.1 The resulting contract may be cancelled at any time during the period by the City of Cape Coral upon giving thirty (30) days written notice to the contractor. Contract can be cancelled for the following:
  - A. For any reason.
  - B. Non-performance or substandard performance on the part of the contractor.
  - C. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period.

### 1.36 SCRUTINIZED COMPANIES

Pursuant to 287.135 Florida Statute, 215.4725 and 215.473, companies contracting with public agencies are prohibited from contracting for goods or services that appear on the Scrutinized Companies List.

Submit a completed Scrutinized Companies Form. (Attachment L)



## 1.37 TRENCH SAFETY

Submit a completed Trench Safety Form. (Attachment H)

### 1.38 FINANCIAL DOCUMENTS

Accompanying the proposal submittal, <u>but in a separate sealed envelope</u>, Prime Firm is to provide one copy of:

- a) Last three (3) consecutive years U.S. GAAP financial statements, independently audited or independently compiled by a Certified Public Accountant; and
  - The audited or compiled financial statements must contain a detailed balance sheet, detailed income statement, statement of cash flow, and notes to the financial statements. Financial Reports should include the auditing firms' opinion or opinion of the firm compiling the reports that they are free from material misstatement and that they are prepared in accordance with accounting principles generally accepted in the United States of America.

All Financial documents, outlined above, are required to be submitted in a sealed envelope and should also be included with the electronic copy of the proposal on a CD, DVD, or USB flash drive. Proposals that are received without the proper financial documents may be deemed non-responsive.

### ARTICLE 2 - PRELIMINARY MATTERS

## 2.1 **COPIES OF DOCUMENTS**

- 2.1.1 Owner shall furnish to Contractor requested copies (up to ten) of the Contract Documents for the execution of the Work. Additional copies will be furnished at the cost of reproduction.
- 2.1.2 Before starting work Contractor shall carefully study Contract Documents and verify information shown. Contractor shall notify A/E immediately of any errors, conflicts or discrepancies discovered in Contract Documents. Contractor shall obtain a written clarification from A/E before proceeding with any work affected thereby; however, Contractor shall not be liable to Owner or A/E for failure to report any errors, conflicts or discrepancies, unless Contractor knew or reasonably should have known thereof.
- 2.1.3 Within ten (10) days after Effective Date of Agreement, Contractor shall submit to A/E:
  - 2.1.3.1 Preliminary schedule for starting and completing various stages of Work.
  - 2.1.3.2 Preliminary schedule of required Shop Drawings and any other required submittals.
  - 2.1.3.3 A Preliminary schedule of values is to be agreed on by the Owner. The Contractor is to present the values for all the work in sufficient detail to serve as the basis for progress payments.



# ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

- 3.1 The Contract Documents comprise the entire agreement between Owner and Contractor regarding the work. The Contract Documents will be interpreted in accordance with the law of the place of the Project.
- 3.2 Reference to standards, specifications, manuals or codes of any technical society, organization or association or Laws or Regulations of any governmental entity, shall mean the latest standard, specifications, manuals or codes, Laws or Regulations in effect at the issue date of the solicitation.
- 3.3 If the Contractor discovers any conflict, error or discrepancy in the Contract Documents and any provision of any Law or Regulation, or of any standard, specification, manual or code, Contractor shall report it to A/E in writing immediately. Contractor shall not proceed with work affected thereby until conflict, error or discrepancy is resolved.
- 3.4 Contract Documents may be amended as provided for in Articles 11, 12, and 13.
- 3.5 Contractor or other person or organization performing or furnishing any of the work shall not have any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies thereof) prepared by or bearing the seal of A/E or A/E's Consultant, and shall not reuse any of those documents without written consent of Owner and A/E.

## ARTICLE 4 - ORDER OF PRECEDENCE

- 4.1 In resolving conflicts, errors or discrepancies, the order of precedence of the contract documents is as follows:
  - Change Orders/Work Change Directives
  - 2. Standard Form of Agreement
  - 3. Addenda
  - 4. Specifications

- 5. General Conditions
- 6. Drawings
- 7. Figure Dimensions
- 8. Scale Dimensions

## ARTICLE 5 – AVAILABILITY OF LAND; PHYSICAL CONDITIONS; REFERENCE POINTS

5.1 Availability of Lands: Owner shall furnish, as indicated in the Contract Documents, the lands upon which the work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of Contractor. Upon reasonable written request, Owner shall furnish Contractor with a correct statement of record legal title and legal description of the lands upon which the work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. Owner shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which Contractor will have to comply in performing the work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. If Contractor and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in Owner's furnishing these lands, rights-of-way or easements, Contractor may make a claim therefore as provided in Articles 11, 12 and 13. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.



- 5.2 **Physical Conditions**: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by A/E in preparing the Contract Documents.
- 5.3 **Limited Reliance by Contractor Authorized; Technical Data:** Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner, A/E or any of A/E's Consultants with respect to:
  - 5.3.1 the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto, or
  - 5.3.2 other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or
  - 5.3.3 any Contractor interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.
- 5.4 **Notice of Differing Subsurface or Physical Conditions**: If Contractor believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:
  - 5.4.1 is of such nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in subparagraphs 5.3.1 and 5.3.2 is materially inaccurate; or
  - 5.4.2 is of such a nature as to require a change in the Contract Documents; or
  - 5.4.3 differs materially from that shown or indicated in the Contract Documents; or
  - 5.4.4 is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then
  - 5.4.5 Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any work in connection therewith (except in an emergency), notify the Owner and A/E in writing about such condition. Contractor shall not further disturb such conditions or perform any work in connection therewith until receipt of written order to do so.
- 5.5 **A/E's Review**: A/E will promptly review the pertinent conditions, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto and advise Owner in writing (with a copy to Contractor) of A/E's findings and conclusions.
- 5.6 **Possible Contract Documents Change**: If A/E concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 5.4, a Work Change Directive or a Change Order will be issued.
- 5.7 **Possible Price and Time Adjustments**: An equitable adjustment in the Contract Price or in the Contract Time, or both, may be allowed to the extent that the existence of such revealed



condition causes an increase or decrease in Contractor's cost or time required for performance of the work; subject to the following:

- 5.7.1 such condition must meet any one or more of the categories described in subparagraphs 5.4.1 through 5.4.4, inclusive;
- 5.7.2 a change in the Contract Documents pursuant to paragraph 5.6 will not be an automatic authorization of nor entitlement to any such adjustment;
- 5.7.3 with respect to work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 10.8 and 12.8;
- Contractor shall not be entitled to any adjustment in the Contract Price or Times if 5.7.4 Contractor knew of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Price and Contract Times by submission of a bid or becoming bound under a negotiated contract; or such conditions could reasonably have been discovered as a result of any pre-contractual examination, investigation, exploration, test or study of the site; or Contractor failed to give written notice within the time as required by paragraph 5.7. If Owner and Contractor are unable to agree on any such equitable adjustment in the Contract Price or Contract Time, a claim may be made as provided for in Articles 12 and 13. However, Owner, A/E and A/E's Consultants shall not be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor connection with any other project anticipated project.

# 5.8 Physical Conditions – Underground Facilities:

- 5.8.1 Shown or indicated: The information and data shown or indicated in the Contact Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to Owner or A/E by the owners of such Underground Facilities or by others. Owner and A/E shall not be responsible for the accuracy or completeness of any such information or data. The cost of the following will be included in the Contract Price and Contractor shall have full responsibility for (i) reviewing all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction and (iv) safety and protection of all such Underground Facilities as provided in subparagraph 7.14.1 and repairing any damage resulting from the work.
- 5.8.2 Not shown or indicated: If an Underground Facility is uncovered which was not shown in the Contract Documents, Contractor shall promptly after becoming aware and before further disturbing conditions affected thereby or performing any work in connection therewith, identify the owner of such Underground Facility and give written notice to that owner and to Owner and A/E. A/E will review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If A/E concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued. Contractor shall be responsible for the safety and protection of such Underground Facility as provided in subparagraph 7.14.1. Contractor shall be allowed an increase in the Contract Price or Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that



was not shown in the Contract Documents and the Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated.

- 5.8.3 If Owner and Contractor are unable to agree to any such adjustment in Contract Price or Contract Time, Contractor may make a claim as provided in Articles 11, 12 and 13. However, Owner, A/E and A/E's Consultants shall not be liable to Contractor for any claims, costs, losses or damages incurred or sustained by Contractor in connection with any other project or anticipated project.
- Reference Points: Owner shall provide Architectural/Engineering surveys to establish reference points for construction which in A/E's judgment are necessary for Contractor to proceed with the work. Contractor shall be responsible for laying out the work, shall protect and preserve the established reference points and shall make no changes without the prior written approval of Owner. Contract shall report to A/E whenever any reference point is lost, destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

## 5.10 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:

- 5.10.1 Owner shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered at the site which was not indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of work and which may present a substantial danger to persons or property exposed in connection with the work at the site. Owner shall not be responsible for any such materials brought to the site by Contractor or anyone else the Contractor is responsible for.
- 5.10.2 Contractor shall immediately stop all work in connection with such hazardous conditions and notify Owner and A/E (and thereafter confirm such notice in writing). Owner shall promptly consult with A/E concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Contractor shall not be required to resume work in connection with such condition until after Owner has obtained any required permits related thereto and delivered to Contractor special written notice: (i) specifying that such condition and any affected area is or has been rendered safe to resume work, or (ii) specifying any special conditions under which such work may be resumed safely.
- 5.10.3 If after receipt of such special written notice Contractor does not agree to resume work based on a reasonable belief it is unsafe or does not agree to resume work under such special conditions, then Owner may order such portion of work that is in connection with such hazardous condition to be deleted from the work. If Owner and Contractor cannot agree as to the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of deleting such portion of the work, then either party may make a claim as provided in Articles 11 and 12. Owner may have such deleted portion performed by Owner's own forces or others in accordance with Article 8.
- 5.10.4 To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, A/E, A/E's Consultants and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition provided that any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible



property (other than the work itself), including the loss of use resulting therefrom, and nothing in this subparagraph 5.10.4 shall obligate Owner to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

# **ARTICLE 6 - INSURANCE**

- 6.1 **Contractor's Liability Insurance**: Contractor shall purchase and maintain, from a company or companies licensed to do business in the state of Florida, such liability and other insurance as indicated in Paragraph 6.5.
- 6.2 Property Insurance: Contractor shall purchase and maintain property insurance upon the work at the site to the full insurable value thereof (subject to such deductible amounts as may be required by Law). This insurance shall include the interests of Owner, Contractor, Subcontractors, A/E and A/E's Consultants in the work, all of whom shall be listed as insured or additional insured parties, shall insure against perils of fire and extended coverage, shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including, but not limited to fees and charges of A/Es, architects, attorneys and other professionals). If not covered under the "all risk" insurance, Contractor shall purchase and maintain similar property insurance on portions of the work stored on and off the site or in transit when such portions of the work are to be included in an Application for Payment. The policies of insurance required to be purchased and maintained by Contractor shall contain a provision that the coverage afforded will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to Owner.
- 6.3 **Endorsement**: All policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by Contractor in accordance with paragraph 6.1 and 6.2 will contain a provision or endorsement that the coverage afforded will not be cancelled or materially changed or renewal refused until at least thirty (30) days prior written notice has been given to Owner and A/E by certified mail.
- Waiver of Rights: Owner and Contractor intend that all policies will protect Owner, Contractor, Subcontractors, and all other persons and entities be listed as insured or additional insured in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights against each other for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the work; and, in addition waive all such rights against Subcontractors, A/E, A/E's Consultants and all other persons or entities. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance otherwise payable under any policy so issued.
- Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen (15) days after the occurrence of loss to Owner's exercise of this power. If such objection is made, Owner shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement is reached, Owner shall settle the loss with the insurers and, if required in writing by any party in interest, Owner shall give bond for the proper performance of such duties.



The insurance required by the paragraph above shall be written for not less than the following as determined by the Owner and as indicated below:

- A. Worker's Compensation: Coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$3,000,000 each accident.
- B. Comprehensive General Liability: Shall have minimum limits of \$3,000,000 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations, Independent Contractors and Products and/or Completed Operations, Broad Form Property Damage, XCU Coverage, and a Contractual Liability Endorsement
- C. Business Auto Policy: Shall have minimum limits of \$3,000,000 per occurrence. Combined Single Limit for Bodily Injury and Property Damage Liability. This shall include owned vehicles, hired and non-owned vehicles, and employees' non-ownership.
- If Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by Contractor in accordance with this Article 6 on the basis of its not complying with the Contract Documents, Owner will notify Contractor in writing thereof of the date of delivery of such certificates to Owner. Contractor shall provide such additional information in respect of insurance provided by him as Owner may reasonably request.

### **NOTE FOR ALL INSURANCE TYPES:**

The State of Florida has a no-fault automobile insurance requirement. The Contractor shall be certain coverage is provided which conforms to any specific stipulations in the law.

- The Contractor shall require their Insurance Carrier to add the Owner as additional insured under the Contractor's General Liability Insurance Policy with respect to the services performed by the Contractor or by the Owner.
- In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued thirty (30) days prior to said expiration.
- The policy shall provide a thirty (30) day notification clause in the event of cancellation or modification to the policy.
- Unless otherwise specified, it shall be the responsibility of the Contractor to ensure that all subcontractors comply with the indicated insurance requirements identified above.
- All certificates of insurance must be on file with and approved by the entity before the commencement of any work activities.

The Contractor shall furnish one copy each of Certificate of Insurance herein, which shall specifically set forth evidence of all coverage required. The Contractor shall furnish the Owner copies of any endorsements that are subsequently issued amending coverage or limits.

Please submit the Acknowledgement of Insurance Form (Attachment D) with the bid.



The City of Cape Coral shall be named on the COI as additional insured with the Project Name and Number listed.

#### ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

- 7.1 **Supervision and Superintendence**: Contractor shall supervise, inspect and direct the work competently and efficiently to perform the work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated by the Contract Documents. Contractor shall be responsible to see that completed work complies with the Contract Documents. Contractor shall at all times have a competent superintendent on-site, who shall not be replaced without written notice to Owner and A/E except under extraordinary circumstances. The Superintendent will be the Contractor's representative and shall have authority to act on behalf of the Contractor. All communication to the superintendent shall be as binding as if given to Contractor.
- Labor, Materials & Equipment: Contractor shall provide competent, suitably qualified personnel to survey, lay out and construct the work as required by the Contract Documents. Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the work. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of the Owner. If required by A/E, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the Supplier. All like materials and equipment such as concrete, handrails, etc., furnished by Contractor shall be made by the same manufacturer.
- 7.3 **Progress Schedule**: Contractor shall adhere to the progress schedule established in accordance with subparagraph 2.1.3 as it may be adjusted from time to time. Contractor shall submit to A/E for acceptance proposed adjustments in the progress schedule that will not change the Contract Time or milestones. Proposed adjustments in the progress schedule that will change Contract Time shall be submitted in accordance with the requirements of paragraph 13.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 13.
- Substitutes and "Or-Equal" Items: Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other suppliers may be accepted by A/E. Contractor shall submit sufficient information to allow A/E, in A/E's sole discretion, to determine that the "or-equal or substitute item is acceptable. All data to be provided by Contractor in support of any proposed "or-equal" or substitute item will be at Contractor's expense. Contractor shall disclose any impacts on time or costs derived from the equal or better substitutions.



- 7.5 **Substitute Construction Methods or Procedures**: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to A/E. Contractor shall submit sufficient information to allow A/E, in A/E's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents.
- 7.6 **A/E's Evaluation**: A/E will be allowed a reasonable time to evaluate each proposal or submittal made pursuant to paragraphs 7.4 and 7.5. A/E will be the sole judge of acceptability as evidenced by an approved Change Order or approved shop drawing. No "or-equal" or substitute will be ordered, installed or utilized without A/E's prior written acceptance. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. A/E will record time required by A/E and A/E's Consultants in evaluating substitutes proposed or submitted by Contractor and in making changes in the Contract Documents occasioned thereby. Whether or not A/E accepts a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of the A/E and A/E's Consultants for evaluating each such proposed substitute item.

# 7.7 Concerning Subcontractors, Suppliers and Others:

- 7.7.1 Contractor shall not employ any Subcontractor, Supplier or other person or organization against whom Owner or A/E may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the work against whom Contractor has reasonable objection.
- 7.7.2 Contractor shall be fully responsible to Owner and A/E for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create any obligation on the part of Owner or A/E to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other persons or organization except as may otherwise be required by Laws and Regulations.
- 7.7.3 Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the work. Contractor shall require all Subcontractors, Suppliers and other persons or organizations to communicate with the A/E through Contractor.
- 7.7.4 All work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and A/E. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 6.2, the agreement between the Contractor and Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, A/E, A/E's Consultants and all other additional insiders for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain.



- 7.8 **Patent Fees and Royalties**: Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the work or the incorporation in the work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the work or resulting from the incorporation in the work of any invention, design, process, product or device not specified in the Contract Documents.
- 7.9 **Permits**: Contractor shall obtain all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining permits and licenses. Where applicable, Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the work.
- 7.10 Laws and Regulations: Contractor shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the work. If Contractor performs any work knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under paragraph 3.3.
- 7.11 **Taxes**: Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the work.

### 7.12 Use of Premises:

- 7.12.1 Contractor shall confine construction equipment, the storage of material and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the work. Should any claim be made by any such owner or occupant because of the performance of the work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, A/E, A/E's Consultant and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against Owner, A/E or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the work.
- 7.12.2 During the progress of the work, Contractor shall keep the premises free from accumulation of waste materials, rubbish and other debris resulting from the work. At completion of the work Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the site clean and ready for



occupancy by Owner at contract completion of work. Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

7.12.3 Upon award of the contract, the Contractor shall submit "Publicly Owned Vacant Site Identification" (Exhibit H) to the Project Manager prior to the Notice to Proceed.

#### 7.13 Record Documents:

Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to A/E for reference. Upon completion of the work, these record documents, Samples and Shop Drawings will be delivered to A/E for Owner. The sum five (5%) percent or as specified herein may be assessed from final payment until delivery of these documents. Drawings shall include location of all underground utilities uncovered during construction.

## 7.14 Safety, Protection and OSHA Compliance:

- 7.14.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury of loss to all persons on the work site or who may be affected by the work, all the work and materials and equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.
- 7.14.2 Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to above caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or A/E or A/E's Consultants or anyone employed by any of them). Contractor's duties and responsibilities for safety and protection of the work shall continue until Owner has accepted the Work as per paragraph 15.7.
- 7.14.3 The Contractor shall comply in all respects with all Federal, State and Local safety and health regulations. Copies of the Federal regulations may be obtained from the U.S. Department of Labor, Occupation Safety and Health Administration (OSHA), Washington, DC 20210 or their regional offices.
- 7.14.4 The contractor shall comply in all respects with the applicable Workman's Compensation Laws.



- 7.14.5 Contractor shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws and Regulations.
- 7.14.6 In emergencies affecting the safety or protection of persons or the work or property at the site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury or loss. Contractor shall give A/E prompt written notice if Contractor believes that any significant changes in the work or variations from the Contract Documents have been caused thereby. If A/E determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change order will be issued to document the consequences of such action.

## 7.15 **Shop Drawings and Samples**:

Contractor shall submit Shop Drawings to A/E for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.1.3). Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data. Contractor shall also submit Samples to A/E for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample shall be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which it is intended.

# 7.16 **Continuing the Work**:

Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with Owner. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted in paragraph 15.6 or as Owner and Contractor may otherwise agree in writing.

### 7.17 Contractor's General Warranty and Guarantee:

Contractor Warrants and guarantees to Owner, A/E and A/E's Consultants that all work will be in accordance with the Contract Documents and will not be defective. Contractor's warranty and guarantee hereunder excludes defects or damage caused by normal wear and tear or abuse, modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or Suppliers. Warranty of workmanship shall be warranted for one (1) year from completion of the job.

## 7.18 **Guarantee:**

The Contractor shall warrant all materials furnished and work performed for a period of one year from the date of written acceptance by the City or by the date on the substantial completion letter. The making and acceptance of final payment shall not waive any claim for faulty work appearing after final payment or for failure to adhere strictly to the Construction Documents. If any part of the project is guaranteed for a longer period, such longer period shall prevail. Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting



from the use of inferior materials, equipment or workmanship for one year from the date of final completion and acceptance by the City.

### 7.19 **Survival of Obligations**:

All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of Work and termination or completion of the Agreement.

### ARTICLE 8 – OTHER WORK

#### 8.1 Related Work at Site:

- 8.1.1 Owner may perform other work related to the Project at the site by Owner's own forces or let other direct contracts therefore which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then written notice thereof will be given to Contractor prior to starting any such work. Contractor may make claim therefore as provided in Articles 12 and 13 if Contractor believes that such performance will involve additional expense to Contractor or requires additional time and the parties are unable to agree as to the amount or extent thereof.
- 8.1.2 Contractor shall afford each other contractor proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the work with theirs. Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting and patching of the work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the A/E and the others whose work will be affected.
- 8.1.3 If the proper execution or results of any part of Contractor's work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to A/E in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's work. Contractor's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Contractor's work except for latent or non-apparent defects and deficiencies in such other work.
- 8.1.4 If Owner contracts with others for performance of other work on the Project at the site, the following will be set forth: the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors, the specific matters to be covered by such authority and responsibility and the extent of such authority and responsibility. Unless otherwise provided in the Contract Documents, Owner shall have sole authority and responsibility in respect of such coordination.



### **ARTICLE 9 – OWNER'S RESPONSIBILITIES**

- 9.1 Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor.
- 9.2 Owner shall furnish the data required of Owner under the Contract Documents promptly and shall make payments to Contractor promptly when they are due as provided in subparagraph 15.4.1 and paragraph 15.7.
- 9.3 Owner's duties in respect of providing lands and easements and providing Architecture/Engineering surveys to establish reference points are set forth in paragraphs 5.1 and 5.9. Paragraph 5.2 refers to Owner's drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by A/E in preparing the Contract Documents.
- 9.4 Owner is obligated to execute Change Orders as indicated in paragraph 11.1.
- 9.5 Owner's responsibility in respect of certain inspections, tests and approvals is set forth in subparagraph 14.3.2.
- 9.6 In connection with Owner's right to stop work or suspend work, see paragraphs 14.5 and 16.1. Paragraph 16.2 deals with Owner's right to terminate services of Contractor under certain circumstances.
- 9.7 The Owner shall not supervise, direct or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the work. Owner will not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.
- 9.8 Owner's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 5.10.1.
- 9.9 All potential Contractors must follow NPDES (National Pollutant Discharge Elimination System) requirements for construction sites as stated in Title 40 of the Code of Federal Regulations.

### ARTICLE 10 - A/E'S STATUS DURING CONSTRUCTION

- 10.1 **Owner's Representative**: A/E will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of A/E as Owner's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of Owner and A/E.
- 10.2 **Visits to Site**: A/E will make visits to the site at intervals appropriate to the various stages of construction as A/E deems necessary in order to observe the progress that has been made and the quality of the Contractor's work. Based on information obtained during such visits and observations, A/E will determine, in general, if the work is proceeding in accordance with the Contract Documents. A/E will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. On the basis of such visits and observations, A/E will keep Owner informed of the progress of the work and will endeavor to guard Owner against defective work. A/E will not supervise, direct, control or have authority



over or be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the work.

- 10.3 **Project Representative**: Owner will furnish a Resident Project Representative to assist A/E in providing more continuous observation of the work.
- 10.4 Clarifications and Interpretations: A/E will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as A/E may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications or interpretations shall be binding on Owner and Contractor. If Owner or Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Time and the parties are unable to agree to the amount or extent thereof, if any, Owner or Contractor may make a written claim therefore as provided in Articles 12 and 13.
- 10.5 **Authorized Variations in Work**: A/E may authorize minor variations in the work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor who shall perform the work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or the Contract Time and the parties are unable to agree as to the amount or extent thereof, Owner or Contractor may make a written claim therefore as provided in Articles 12 and 13.
- 10.6 **Rejecting Defective Work**: A/E will have authority to disapprove or reject work which A/E believes to be defective, or A/E believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. A/E will also have authority to require special inspection or testing of the work as provided in paragraph 14.3 whether or not work is fabricated, installed or completed.
- 10.7 **Shop Drawings, Change Orders and Payments**: In connection with A/E's authority as to Shop Drawings and Samples, see paragraph 7.15. In connection with A/E's authority as to Change Orders, see Articles 11, 12 and 13. In connection with A/E's authority as to Applications for Payment, see Article 15.
- 10.8 **Determination for Unit Prices**: A/E will determine the actual quantities and classifications of Unit Price Work performed by Contractor. A/E will review with Contractor the A/E's preliminary determinations on such matters before rendering a written decision thereon.
- 10.9 **Decisions on Disputes**: The Owner will be the final interpreter of all disputes between A/E and Contractor.

#### ARTICLE 11 – CHANGES IN THE WORK

11.1 Without invalidating the Agreement and without notice to any Surety, Owner may, at any time or from time to time, order additions, deletions or revisions in the work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change



- Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents.
- 11.2 If Owner and Contractor are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Time that should be allowed as a result of a Work Change Directive, a claim may be made therefore as provided in Articles 12 and 13.
- 11.3 Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.4 except in the case of an emergency as provided in paragraph 7.14.6 or in the case of uncovering work as provided in paragraph 14.4.
- 11.4 If notice of any change affecting the general scope of the work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility, and the amount of each applicable Bond will be adjusted accordingly.
- 11.5 Contractor is required to notify Owner of any changes in the work within five (5) working days of said change. Owner will be the final interpreter of all disputes between A/E and Contractor.

#### ARTICLE 12 - CHANGE OF CONTRACT PRICE

- 12.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at Contractor's expense without change in the Contract Price.
- 12.2 The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to A/E promptly (but in no event later than thirty (30) days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty (60) days after the start of such occurrence or event and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event.
- 12.3 The term Cost of the Work means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 12.4.
  - 12.3.1 Payroll costs for employees in the direct employ of the Contractor in the performance of the work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full-time on the work shall be apportioned on the basis of their time spent on the work. The expenses of performing work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.



- 12.3.2 Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and Suppliers field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discount shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
- 12.3.3 Payments made by Contractor to the Subcontractors for work performed or furnished. If required by Owner, Contractor shall obtain competitive bids from Subcontractors acceptable to Owner and deliver such bids to Owner who will determine which bids, if any, will be accepted. If any Subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work as provided in paragraphs 12.3, 12.4, 12.5 and 12.6.
- 12.3.4 Costs of special consultants employed for services specifically related to the work.
- 12.3.5 Supplemental costs including the following:
  - 12.3.5.1 The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees connected with the work.
  - 12.3.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remain the property of Contractor.
  - 12.3.5.3 Rentals of all construction equipment and machinery and parts thereof, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work. Owner and A/E to review and agree with Contractor on rental agreement and rates.
  - 12.3.5.4 Sales, consumer, use or similar taxes related to the work, and for which Contractor is liable.
  - 12.3.5.5 Deposits lost for causes other than negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - 12.3.5.6 Losses and damages caused by damage to the work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance and furnishing of the work, provided they have resulted from causes other than the negligence of Contractor, Subcontractor, or anyone directly or indirectly employed by them.
  - 12.3.5.7 The cost of utilities, fuel and sanitary facilities at the site.



- 12.3.5.8 Minor expenses such as long-distance telephone calls, telephone service at the site and similar petty cash items in connection with the work.
- 12.3.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the work.
- 12.4 The term Cost of the Work shall not include any of the following:
  - 12.4.1 Payroll costs and other compensation of Contractor's officers, executives, principals, general manager, A/Es, architects, estimators and other personnel employed by Contractor not specifically included in the agreed upon schedule of job classifications referred to in paragraph 12.3.1.
  - 12.4.2 Expenses of Contractor's principal and branch offices other than Contractor's office at the site.
  - 12.4.3 Any part of Contractor's capital expenses including interest on Contractor's capital employed for the work and charges against Contractor for delinquent payments.
  - 12.4.4 Cost of premiums for all Bonds and for all insurance (except cost of premiums covered by subparagraph 12.3.5.9 above).
  - 12.4.5 Costs due to the negligence of Contractor, Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts they may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.
  - 12.4.6 Other overhead or general expenses of any kind and the cost of any item not specifically and expressly included in paragraph 12.3.
- 12.5 The Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:
  - 12.5.1 A mutually acceptable fixed fee; or
  - 12.5.2 If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - 12.5.2.1 For costs incurred under paragraphs 12.3.1 and 12.3.2, Contractor's total fee shall be fifteen (15) percent;
    - 12.5.2.2 For costs incurred under paragraph 12.3.3, Contractor's fee shall be five (5) percent.
- 12.6 Whenever the cost of any work is to be determined pursuant to paragraphs 12.3 and 12.4, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to A/E and itemized cost breakdown together with supporting data.
- 12.7 Cash Allowances: It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents. Prior to final payment, an appropriate Change



- Order will be issued to reflect actual amounts due Contractor on account of work covered by allowances, and the Contract Price shall be correspondingly adjusted.
- 12.8 Unit Price Work: Where the Contract Documents provide that all or part of the work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the established quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids.

### **ARTICLE 13 - CHANGE OF CONTRACT TIME**

- 13.1 The Contract Time may only be changed by a Change Order or Written Amendment. Any claim for an adjustment of the Contract Time shall be based on written notice delivered by the party making the claim to the other party and to A/E promptly (but in no event later than thirty (30) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty (60) days after such occurrence and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined in accordance with paragraph 10.9. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 13.1.
- 13.2 All time limits stated in the Contract Documents are of the essence of the Agreement.
- 13.3 Where Contractor is prevented from completing part of the work within the Contract Time due to a delay beyond the control of Contractor, the Contract Time will be extended in an amount equal to the time lost if claim is made therefore as provided in paragraph 13.1. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.
- 13.4 In no event shall Owner be liable to Contractor, Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from delays caused by or within the control of Contractor, or delays beyond both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 8.1.
- 13.5 In addition to the liquidated damages covered elsewhere in the Contract Documents, the Owner reserves the right to recover liquidated damages in the amounts specified below for work not completed within the time limits as follows:
  - 13.5.1 Any work not completed beyond the completion date indicated in the contract: \$1,665 per calendar day.
  - 13.5.2 Temporary repairs of traffic signals or detection loops not completed within six (6) hours from initial interruption of service: <u>\$N/A</u> per calendar day.
  - 13.5.3 Permanent repairs of traffic signals or detection loops not completed within seventy-two (72) hours from initial interruption of service: \$N/A per calendar day.



- 13.5.4 Any work within the limits of intersection thirty (30) days from initiating construction in the intersection: \$N/A per calendar day.
- 13.5.5 The Owner reserves the right to affect repairs itself as required to remedy any deficiencies in accordance with Article 14.
- 13.5.6 The Owner shall reduce progress and/or final payment in amounts specified above for liquidated damages in accordance with Article 15.

# ARTICLE 14 – TESTS & INSPECTIONS: CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

- 14.1 **Notice of Defects**: Prompt notice of all defective work of which Owner or A/E have actual knowledge will be given to Contractor. All defective work may be rejected, corrected or accepted as provided in this Article 14.
- 14.2 Access to Work: Owner, A/E, A/E's Consultants, other representatives and personnel of Owner, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the work at reasonable times for their observation, inspecting and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's site safety procedures and programs so that they may comply therewith as applicable.

### 14.3 **Tests and Inspections**:

- 14.3.1 Contractor shall give A/E timely notice of readiness of the work for all required inspections, tests, or approvals, and shall cooperate with inspection and testing personnel.
- 14.3.2 Contractor shall employ and pay for the services of an independent testing laboratory to perform inspections, tests or appurtenances required by the Contract Documents.
- 14.3.3 If Laws or Regulations of any public body having jurisdiction require any work or part thereof specifically be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish A/E the required certificates of inspection, or approval. Contractor shall also be responsible for arranging and obtaining and shall pay all cost in connection with any inspections, tests or approvals required for Owner's and A/E's acceptance of materials or equipment to be incorporated in the work, or of material, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof.
- 14.3.4 If any work (or work of others) that is to be inspected, tested or approved is covered by Contractor without written concurrence of A/E, it must, if requested by A/E, be uncovered for observation. Uncovering work shall be at Contractor's expense unless Contractor has given A/E timely notice of intention to cover the same and A/E has not acted with reasonable promptness in response to such notice.
- 14.4 **Uncovering Work**: If A/E considers it necessary or advisable that covered work be observed by A/E or inspected or tested by others, Contractor, at A/E's request, shall uncover, expose or otherwise make available for observation, inspection or testing as A/E may require, that portion



of work in question, furnishing all necessary labor, material and equipment. If it is found that such work is defective, Contractor shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Article 12. If, however, such work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both; and if the parties are unable to agree as to the amount or extent thereof, Contractor may make a claim therefore as provided in Articles 12 and 13.

- 14.5 **Owner May Stop the Work**: If the work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the work in such a way that the completed work will conform to the Contract Document, Owner may order Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any surety or other party.
- 14.6 **Correction or Removal of Defective Work**: If required by A/E, Contractor shall promptly, as directed, either correct all defective work, whether or not fabricated, installed or completed, or, if the work has been rejected by A/E, remove it from the site and replace it with work that is not defective. Contractor shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- 14.7 **Correction Period**: If within one year after date of completion or such longer time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any work is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions: correct such defective work, or, if it has been rejected by Owner, remove it from the site and replace it with work that is not defective and satisfactorily correct or remove and replace any damage to other work or the work of others resulting therefrom. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective work corrected or the rejected work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
  - 14.7.1 In special circumstances where a particular item of equipment is placed in continuous service before completion of all the work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.
  - 14.7.2 Where defective work (and damage to other work resulting therefrom) has been corrected, removed or replaced under this paragraph 14.7, the correction period hereunder with respect to such work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- 14.8 Acceptance of Defective Work: If, instead of requiring correction or removal and replacement of defective work, Owner (and, prior to A/E's recommendation of final payment) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such defective work. If any such acceptance



occurs prior to A/E's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the work; and Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may make a claim therefore as provided in Article 12. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor.

14.9 Owner May Correct Defective Work: If Contractor fails within a reasonable time after written notice from A/E to correct defective work as required in accordance with paragraph 14.6, or if Contractor fails to perform the work in accordance with the Contract Documents, or if the Contractor fails to comply with any other provisions of the Contract Documents, Owner may, after seven (7) days' written notice to Contractor, correct and remedy any such deficiency. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the site, take possession of all or part of the work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the work all materials and equipment stored at the site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors and A/E and A/E's Consultants access to the site to enable Owner to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by Owner in exercising such rights and remedies will be charged against Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the work; the Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may make such claim therefore as provided in Article 12. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective work. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

### ARTICLE 15 - PAYMENTS TO CONTRACTOR AND COMPLETION

- 15.1 **Schedule of Values**: The schedule of values established as provided in paragraph 2.1.3 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to A/E. Progress payments on account of Unit Price Work will be based on the number of units completed.
- 15.2 Application for Progress Payments: At least twenty (20) days before the date established for each progress payment (but not more than once a month), Contractor shall submit to A/E for review an Application for Payment filled out and signed by Contractor covering the work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. The Contractor shall furnish evidence that payment received on the basis of materials and equipment not incorporated and suitably



stored, has in fact been paid to the respective supplier(s) within fifteen (15) days of payment by Owner. Failure to provide such evidence of payment shall result in the withdrawal of previous approval(s) and removal of the related equipment from the next submitted Application for Payment.

- 15.3 **Contractor's Warranty of Title**: Contractor warrants and guarantees that title to all work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.
  - 15.3.1 No materials or supplies for the work shall be purchased by Contractor or Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims and encumbrances.
  - 15.3.2 Purchase of equipment by Contractor for State or Local ownership.
  - 15.3.3 The CONTRACTOR shall indemnify and hold harmless the OWNER, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by CONTRACTOR in the performance of this Contract.

### 15.4 Review of Payment Requests or Invoices:

- 15.4.1 Owner will, within twenty-five (25) business days after receipt of each payment request or invoice from Contractor, either indicate a recommendation of payment to Contractor, or return the payment request or invoice to Contractor indicating in writing the Owner's reasons for refusing payment and the action of the Contractor necessary to make the payment request or invoice proper.
- 15.4.2 In the case of acceptance of the payment request or invoice, the amount accepted will (subject to the provisions of the last sentence of paragraph 15.7) be paid within twenty-five (25) business days after the date on which the payment request or invoice is stamped received by Owner.
- 15.4.3 In the case of rejection of the payment request or invoice, Contractor may make the necessary corrections and resubmit the payment request or invoice. If the Contractor submits a corrected payment request or invoice which corrects the deficiency specified in writing by the Owner, the corrected payment request or invoice must be paid or rejected by Owner within ten (10) business days after the corrected payment request or invoice is stamped received by Owner.
- 15.4.4 Owner's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner, that to the best of Owner's knowledge, information and belief; the work has progressed to the point indicated, the quality of work is generally in accordance with the Contract Documents and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Owner's responsibility to observe the work.
- 15.4.5 Owner's recommendation of any payment, including final payment, shall not mean Owner is responsible for Contractor's means, methods, techniques, sequences or



procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of work, or for any failure of Contractor to perform or furnish work in accordance with the Contract Documents.

- 15.4.6 A/E may refuse to recommend the whole or any part of any payment if, in A/E's opinion, it would be incorrect to make the representations to Owner referred to in subparagraph 15.4.2. A/E may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in A/E's opinion to protect Owner from loss because; the work is defective, or completed work has been damaged requiring correction or replacement, the Contract Price has been reduced by Written Amendment or Change Order, Owner has been required to correct defective work or complete work in accordance with paragraph 14.9, or A/E has actual knowledge of the occurrence of any of the events enumerated in paragraph 16.2. The A/E may refuse to recommend payment, or the Owner may refuse to make payment for up to an amount equal to twenty-five (25) percent of the per lineal foot price of storm drain and exfiltration trench if restoration or trench repair has not been completed in accordance with the Contract Documents.
- 15.4.7 Owner may refuse to make payment of the full amount recommended by A/E because; claims have been made against Owner on account of Contractor's performance or furnishing of the work, liens have been filed in connection with the work, there are other items entitling Owner to a set-off against the amount recommended or Owner has actual knowledge of the occurrence of any of the events enumerated in subparagraph 15.4.4 or paragraph 16.2.
- 15.5 **Final Inspection**: Upon written notice from Contractor that the entire work or an agreed portion thereof is complete, A/E will make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such work or remedy such deficiencies.
- 15.6 **Final Application for Payment**: After the Contractor has completed all such corrections to the satisfaction of A/E and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents, Contractor may make application for final payment following the procedure for progress payments. The Final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, consent of surety, if any, to final payment, and complete and legally effective releases or waivers of all Liens arising out of or filed in connection with the work. If any Subcontractor or Supplier fails to furnish such a release, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.
- 15.7 **Final Payment and Acceptance**: If, on the basis of A/E's observation of the work during construction and final inspection, and A/E's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, A/E is satisfied that the work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, A/E will, within twenty (20) business days after receipt of the final Application for Payment, indicate in writing A/E's recommendation of payment and present the Application to Owner for payment. A/E will also give written notice to Owner and Contractor that work is acceptable subject to the provisions of paragraph 15.9. Otherwise, A/E will return the



Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. Twenty-five (25) days after presentation to Owner of the Application, the amount recommended by A/E will become due and will be paid by Owner to Contractor.

- 15.8 If, through no fault of Contractor, contract completion of the work is significantly delayed and if A/E so confirms, Owner shall, upon receipt of Contractor's final Application for Payment and recommendation of A/E, and without terminating the Agreement, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance to be held by Owner for work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 1.26, the written consent of the surety to the payment of the balance due for that portion of work fully completed and accepted shall be submitted by Contractor to A/E with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- 15.9 **Waiver of Claims**: The making and acceptance of final payment will constitute a waiver of all claims by Owner against Contractor, except claims arising from unsettled Liens, from defective work appearing after final inspection pursuant to paragraph 15.5, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents and a waiver of all claims by Contractor against Owner other than those previously made in writing and still unsettled.

### ARTICLE 16 - SUSPENSION OF WORK AND TERMINATION

- 16.1 **Owner May Suspend Work**: At any time and without cause, Owner may suspend the work or any portion thereof for a period of not more than ninety (90) days by notice in writing to Contractor and A/E which will fix the date on which work will be resumed. Contractor shall resume work on the date so fixed. Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Time, or both, directly attributable to any such suspension if Contractor makes an approved claim therefore as provided in Articles 12 and 13.
- 16.2 Owner May Terminate upon the occurrence of any one or more of the following events: Contractor persistently fails to perform the work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the schedule established under paragraph 2.1.3 as adjusted from time to time pursuant to paragraph 7.3), Contractor disregards Laws and Regulations of any public body having jurisdiction, Contractor disregards the authority of A/E or Contractor otherwise violates in any substantial way any provisions of the Contract Documents.
- 16.3 Owner may, after giving Contractor (and the surety, if any,) seven (7) days written notice and to the extent permitted by Laws and Regulations, terminate the services of Contractor, exclude Contractor from the site and take possession of the work and of all Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the work all materials and equipment stored at the site or for which Owner has paid Contractor but which are stored elsewhere, and finish the work as Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by Owner arising out of or resulting from completing the work such excess will be paid to Contractor. If such claims, costs, losses and damages exceed such



- unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses and damages incurred by Owner will be reviewed by A/E as to their reasonableness and when so approved by A/E incorporated in a Change Order.
- 16.4 When Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- 16.5 Upon seven (7) days' written notice to Contractor and A/E, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Agreement. In such case, Contractor shall be paid (without duplication of any items):
  - 16.5.1 for completed and acceptable work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work;
  - 16.5.2 for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted work, plus fair and reasonable sums for overhead and profit on such expenses;
  - 16.5.3 for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and
  - 16.5.4 for reasonable expenses directly attributable to termination. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.
- Contractor May Stop Work or Terminate: If, through no act or fault of Contractor, the Work is 16.6 suspended for a period of more than ninety (90) days by Owner or under an order of court or other public authority, or A/E fails to act on any Application for Payment within thirty (30) days after it is submitted or Owner fails for thirty (30) days to pay Contractor any sum finally determined to be due, the Contractor may, upon seven (7) days written notice to Owner and A/E, and provided Owner and A/E do not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment on the same terms as provided in paragraph 16.5. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if A/E has failed to act on an Application for Payment within thirty (30) days after it is submitted, or Owner has failed for thirty (30) days to pay Contractor any sum finally determined to be due, Contractor may upon seven (7) days written notice to Owner and A/E stop the work until payment of all such amounts due Contractor, including interest thereon. The provisions of paragraph 16.6 are not intended to preclude Contractor from making claim under Articles 12 and 13 for an increase in Contract Price or Contract Time or otherwise for expenses or damage directly attributable to Contractor's stopping work as permitted by this paragraph.

### **ARTICLE 17 – MISCELLANEOUS**

17.1 **Giving Notice**: Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered



at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

- 17.2 **Computation of Times**: When any period of time is referred to in the Contract Documents by days, it will be computed to include the first and the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.
- 17.3 **Notice of Claim**: Should Owner or Contractor suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of the paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.
- 17.4 **Cumulative Remedies**: The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by paragraphs 7.8, 7.12, 7.17, 7.18, 14.1, 14.7, 14.8, 14.9, 15.3 and 16.2 and all of the rights and remedies available to Owner and A/E thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.
- 17.5 **Professional Fees and Court Costs Included**: Whenever reference is made to "claims, costs, losses and damages," it shall include in each case, but not be limited to, all fees and charges of A/E's, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.
- Address: Both the address given in the Bid Form upon which this Agreement is founded, and Contractor's office at or near the site of the work are hereby designated as places to either of which notices, letters and other communications to Contractor shall be certified, mailed or delivered. The delivering at the above-named place, or depositing in a postpaid wrapper directed to the first named place, in any post office box regularly maintained by the post office, of any notice, letter or other communication to Contractor shall be deemed sufficient service thereof upon Contractor; and the date of said service shall be the date of such delivery or mailing. The first named address may be changed at any time by an instrument in writing, executed and acknowledged by Contractor, and delivered to Owner and A/E. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter or other communication upon the Contractor personally.

### **ARTICLE 18 – SPECIAL RESPONSIBILITIES**

Burrowing Owls are classified as "**Threatened**" and are protected under the Florida Administrative Code, and the Migratory Bird Treaty Act. In accordance with a study made by the Florida Fish and Wildlife Conservation Commission, the City of Cape Coral is mandating that appropriate protective techniques must be initiated.



- 18.1 It is hereby acknowledged and accepted by all contractors that the Burrowing Owls are protected by State and Federal law. Any malicious harassing of an owl, causing injury or death, or unlawful taking of their nesting sites can result in a fine up to five thousand (\$5,000) dollars and/or imprisonment to the contractor.
- 18.2 Therefore, the contractor shall through the execution of his/her contract, acknowledge that they have been made aware of applicable laws concerning Burrowing Owls and their burrow.
- 18.3 The proper methods for identifying and protecting owls and burrows are as follows:
  - 18.3.1 Pre-inspection of the project limits prior to the commencement of construction and staking each owls nest so as to prevent destruction during the construction operations; and the contractor, to the best of his ability, shall be required to submit the list of all owls' nests to the A/E. Nests should be staked and roped off with a minimum ten (10) foot radius buffer. This buffer shall be increased to thirty-three (33) feet from Feb 15<sup>th</sup> July 10<sup>th</sup>.
  - 18.3.2 The Contractor shall do no construction within a ten (10) foot radius of each nest, identified by four (4) stakes, between July 11<sup>th</sup> and February 14<sup>th</sup> or within a thirty-three (33) foot radius between February 15<sup>th</sup> and July 10<sup>th</sup>. Stakes shall be 1" x 2" x 36" above ground level, topped by red surveying ribbon supplied by the Contractor. Stakes should be placed in a square pattern ten (10) feet from the burrow entrance July 11<sup>th</sup> February 14<sup>th</sup> and thirty-three (33) feet from the burrow entrance February 15<sup>th</sup> July 10<sup>th</sup>.
  - 18.3.3 The Contractor shall accept full responsibility for the actions of his employees and subcontractors to ensure that all laws protecting the owls are adhered to. It shall be clearly understood by each Contractor that City staff will monitor their activities and will take action if a burrow is maliciously/unlawfully destroyed, or if injury/death occurs as a direct result of his actions.
  - 18.3.4. By submitting a bid, it is hereby acknowledged and accepted by each bidder that the Burrowing Owls are protected by these laws and that they have been informed by the City of the laws concerning Burrowing Owls and their burrows. The City's Department of Community Development use white PVC stakes for marking owl burrows and the Contractors are to exercise caution when around these areas.

By submitting a bid for these services, it is hereby acknowledged and accepted by each Bidder that **Gopher Tortoises** are protected by State Laws which prohibit the destruction of Gopher Tortoise and their burrows. Destruction of Gopher Tortoise and their burrows will be reported to State authorities. The City marks the burrows with a single white PVC stake. The Contractor should be on careful watch for any unmarked burrows/nest and maintain a minimum twenty-five (25) feet buffer from the burrow/nest. Unit 35 (District 4), Unit 37 (District 6) and Unit 51 (District 7) have heavy Gopher Tortoise Population. Gopher Tortoises are typically active after two (2) p.m. and due care should be taken by the awarded Contractor(s) during that time.

**Bald Eagles** - Be advised that specific areas of this project may lie within a protective zone of a Bald Eagle nesting site, which are protected by Federal and State laws.

The Contractor shall accept full responsibility for the actions of their employees and subcontractors to ensure that all laws protecting the Burrowing Owls, Gopher Tortoise and Bald Eagles are adhered to. It shall be clearly understood by each Contractor that City staff will monitor their activities and will take action.



#### ARTICLE 19 - DIRECT PURCHASE PROCEDURE

The City of Cape Coral is exempt from State of Florida sales tax on materials it purchases. On the basis of this exemption the City can purchase materials and furnish them to Contractor and its Subcontractors thereby reducing the overall cost of the Project. The process used to ensure the responsibility for materials stays with the contractor installing the items while saving the City the amount of sales tax normally included in the price of construction is called the Direct Purchase Procedure.

In general, Contractor's Subcontractors will include the price of all materials including sales tax in each of the unit priced items indicated in the plans and specifications. The Subcontractor will take proposals for the materials from the vendors of Contractor's choice. The vendors will include sales tax in their proposal as if this were a typical commercial purchase and those costs will be included in the bid prices the Subcontractor submits in Contractor's bid. After a Work Authorization with a requisition cost over fifteen thousand dollars (\$15,000) including the specific items to be purchased is issued to Contractor and the Subcontractor is subsequently awarded by the Contractor, the City will be provided with 1) the name of the vendor, 2) a list of the materials to be purchased, and 3) the delivery schedule for the items.

The Subcontractor and Contractor will also provide any other information or forms that the City would require to issue the purchase order for the material. The City will place the purchase order for the material less the amount of State of Florida sales tax. After the material is delivered, Contractor and the Subcontractor will credit the City for the price of the materials plus the amount of the sales tax which would have normally been paid, from the amounts due for the Work performed.

The City of Cape Coral reserves the right to require Contractor to assign some or all of its subcontractor's bids or agreements for purchase of materials from these suppliers to City of Cape Coral. The Contractor shall work with the City of Cape Coral to develop a mutually satisfactory Direct Purchase program to allow for such purchases of materials for the Project by the City of Cape Coral.

### **ARTICLE 20 - LOCAL VENDOR PREFERENCE**

In accordance with Article VII Division 1 Sections 2-144(a) (10) of the City of Cape Coral Ordinance prior to award, a vendor who desires to be considered for local preference in a bid must submit sufficient information with its bid or proposal to allow consideration, including copies of paid business tax receipts showing two (2) full years in advance of the bid.

### **ARTICLE 21 - COMPLIANCE WITH LAWS**

If made applicable by the use of Federal Grant funds in the Project, or any other requirement as set out below, Proposers and any Sub-contractors included as part of project teams shall comply with the following enactments, rules, regulations, orders, and statutes:

21.1 Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub-grantees).



- 21.2 Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3).
- 21.3 Davis-Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation).
- 21.4 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 701 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and sub-grantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).
- 21.5 All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7606), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and sub-grants of amounts in excess of \$100,000).
- 21.6 Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163.89 Stat. 871).

End of Section



### **BID PREPARATION CHECKLIST**

The Bid Preparation Checklist is a guide to assist the Bidder in verifying the completeness of their response. The Bid Preparation Checklist does not relieve the Bidder of the responsibility of ensuring that <u>all requirements</u> of this solicitation are included with submittal of their response. Check off each of the following as you comply:

	Read the entire Invitation to Bid document
	Complete the Bidder Preparation Checklist
	Complete and Sign Invitation to Bid/Bidder Acknowledgement (Attachment A)
	Complete and Sign Official Bid Proposal Form (Attachment B)  This bid contains <b>three (3)</b> pages for the Official Bid Proposal. All pages <u>MUST</u> be completed returned and the form signed where indicated. Failure to return <b>ALL</b> pages of the bid proposal may result in rejection of your bid. Failure to sign your bid proposal may result in rejection of your bid.
	If addenda were issued, please acknowledge on this form.
	Complete and Sign Sworn Statement on Public Entity Crimes (Attachment C)
	Sign Acknowledgement of Insurance Requirements Form (Attachment D)
	Complete and Sign Business Qualification Statement and Questionnaire (Attachment E)
	Complete and Sign Drug Free Workplace Form (Attachment F)
	Complete and Sign Bid Security Requirements Form. If this form does not apply, mark as N/A (Attachment G)
	Complete and Sign Trench Safety Form (Attachment H)
	Complete and Sign (if applicable) Form 3A Interest in Competitive Bid. If this form does not apply mark as N/A (Attachment I)
	Sign Non-Collusive Affidavit (Attachment J)
	Complete and Sign Corporation Resolution Form (Attachment K)
<del></del>	Complete and Sign Scrutinized Companies Certification Form (Attachment L)
	Letter from Surety providing bonding capacity – including available and aggregate
	Copies of License (s) – Applicable for performance of work
	Business Tax Receipts for the last two (2) years, prior to bid submittal
	Original Official Bid Proposal, one (1) copies, and one (1) readable/reproducible disk (CD) or flash drive completely duplicating the original.

The <u>outer packaging</u> of bid document shall be labeled with the "Sealed Bid Document" label provided in this bid package. The documents mentioned on this page must be provided. Failure to provide or properly execute these items/documents may result in your bid being considered non-responsive and, if so, may be rejected and not considered for award.



CITY OF CAPE CORAL INVITATION TO BID - BIDDER ACKNOWLEDGEMENT				
BIDS DUE NO LATER THAN: 1:00 2020	PM on November 30,	BID NO. BPW2110AP		
BIDS WILL BE OPENED: 1:00 PM	on November 30, 2020			
AGENCY MAILING DATE October 23, 2020	BID TITLE  MAJOR ROAD RESURFACIN	G FY2021		
FEDERAL EMPLOYER IDENTIFICATION Cape Coral may collect your Social identification and verification; credit tracking, benefit processing and tax numeric identifier and may be used for	Security Number for one or moworthiness; billing and payment; reporting. Social Security Number	ore of the following purposes: data collection, reconciliation,		
VENDOR NAME				
VENDOR MAILING ADDRESS				
CITY, STATE & ZIP				
TELEPHONE NUMBER		FAX NUMBER		
TOLL FREE NUMBER				
E-MAIL ADDRESS				
Non-Collusion: I certify that this bid is any corporation, firm or person submin all respects fair and without collust certify that I am authorized to sign to requirements. In submitting a bid to this accepted, the bidder will convey, so interest in and all causes of action it most states and the State of Florida for price or acquired by the City of Cape Corporation.	itting a bid for the same materials, sion or fraud. I agree to abide this bid for the bidder and that the he City of Cape Coral, the bidder ell, assign or transfer to the City of any now or hereafter acquire under the fixing relating to the particular corroll. At the City's discretion, such a	supplies, or equipment, and is by all conditions of this bid and bidder is in compliance with all offers and agrees that if the bid f Cape Coral all rights, title and the Anti-trust laws of the United amodities or services purchased assignment shall be made and		
Signature:				
Date:				



# OFFICIAL BID FORM City of Cape Coral Page 1 of 3

BID NUMBER: BPW2110AP BID DATE: November 30, 2020

**BID TITLE: MAJOR ROAD RESURFACING FY2021** 

Addendum #:\_\_\_\_\_\_Date:\_\_\_\_

The Undersigned having read, reviewed and accepted the terms, conditions, and specifications issued by <u>CITY OF CAPE CORAL</u>, hereby proposes to provide the goods or services as specified and described in the bid documents for the price(s) listed therein, and included as part of this official bid form.

The Undersigned declares that the statements and representations made in this bid are true in every respect and that the said bid is in all respects fair and made without collusion or fraud, and that no member of the City Council or any other agent or employee of the City, directly or indirectly, is interested in this bid proposal or in any profits expected to accrue therefrom.

The Undersigned acknowledges receipt of the following addenda, and the cost, if any, of such revisions has been included in the price of the bid.

Addendum #:Date	):
	FOR ONE HUNDRED TWENTY DAYS (120) DAYS FROM REAFTER IF ACCEPTED BY THE CITY FOR THE TERM
FEIN NUMBER	
NAME OF BUSINESS	NAME (PRINTED)
MAILING ADDRESS	TITLE
CITY, STATE, ZIP CODE	SIGNATURE
PHONE NUMBER	DATE
EMAIL ADDRESS	_
FAX NUMBER	<u> </u>



### OFFICIAL BID FORM City of Cape Coral Page 2 of 3

BID NUMBER: BPW2110AP BID DATE: November 30, 2020

BID TITLE: MAJOR ROAD RESURFACING FY2021

	OFFICIAL BID TAB	ULATION						
	MAJOR ROAD RESURFA #BPW2110A							
tem#	Item Description	Quantity	Unit	Unit Price	Extended Price			
1	Milling Existing Asphalt Pavement (0-2" Avg Depth)	184,500	SY	\$	\$			
2	Structural Repair 500 SY \$							
3	Asphalt Overlay Type SP-9.5	\$						
4	Asphalt Testing	\$						
5	Herbicide	1	LS	\$	\$			
6	Sod	1,000	SY	\$	\$			
7	6" Painted Pavement Markings, SOLID	125,100	LF	\$	\$			
8	6" Painted Pavement Markings, SKIP	66,800	LF	\$	\$			
9	6" Thermoplastic Pavement Markings, SOLID	16,500	LF	\$	\$			
10	6" Thermoplastic Pavement Markings, SKIP	16,500	LF	\$	\$			
11	Thermoplastic Standard Directional Arrow	125	EA	\$	\$			
12	Thermoplastic "ONLY"	18	EA	\$	\$			
13	Thermoplastic Message (other than "ONLY")	3	EA	\$	\$			
14	RPM'S	2,260	EA	\$	\$			
15					\$			
16	16 Valve Box Replacement 50 EA \$			\$	\$			
17	Manhole Cover Adjustment	72	EA	\$	\$			
SUBTOTAL #1 \$								
18	Mobilization (Not to exceed 9% of Subtotal #1)	1	LS	\$	\$			
19			\$					
	<u>'</u>	<u> </u>		SUBTOTAL #2	\$			
21	Total Bid (Subtotal #1 + Subtotal #2)			TOTAL	\$			
ntrac quire	sole responsibility of the contractor to field verify all quantities tor's responsibility to address. Please note under General Condments.  ing, you assume all risk regarding the quantities in your bid. Youts.	litions , Section	1.5.1	in reference to	question submittal			
rmula	IMER: Formulas are not guaranteed for accuracy. It is the respor as. Also, if using this form as a part of your submitted bid, bidde pricing attached.	•		•				
		Submitted by	_					
		Signature:						
Name Printed: Title:								
		iiue.						
		Company:						



### OFFICIAL BID FORM City of Cape Coral Page 3 of 3

REMARKS BY BIDDER If there are any deviations, they MUST be listed below, otherwis space is required, attach another sheet to this Bid Proposal. If n interpreted as meaning NO DEVIATIONS.	

AWARD: The City Council reserves the right to waive minor variations to specifications, informalities, irregularities and technicalities in any bids; to reject any and all bids in whole or in part with or without cause, and/or to accept bids that in its judgment will be in the best interest of the City. Following complete investigation of each bid received by the City, the City Council reserves the right to make awards on a multiple, lump sum, or individual item basis or in combination as shall best serve the interest of the City. The City reserves the right to negotiate additional related services.

1.

This awarn statement is submitted



### ATTACHMENT C

# SWORN STATEMENT ON PUBLIC ENTITY CRIMES UNDER SECTION 287.133(3)(a) FLORIDA STATUTES

This form must be signed and sworn to in the presence of a notary public or other officer authorized to administer oaths.

	(Print name of the public entity)	
by		
	(Print individual's name and title)	
for		
	(Print name of entity submitting sworn statement)	
whose busine	ess address is	

If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement on an attached sheet (required as per IRS Form W-9). (Social Security Number required for one or more of the following purposes: identification and verification; credit worthiness; billing and payment; data collection, reconciliation, tracking, benefit processing and tax reporting. Social Security Numbers are also used as a unique numeric identifier and may be used for such purposes.

- 2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, and bid or contract for goods or services to be provided to any public entity or agency or political subdivision or any other state or of the Unites States, and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
- 3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
- 4. I understand that "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
  - 1. A predecessor or successor of a person convicted of a public entity crime, or:
  - 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those offices, directors, executives, partners, shareholders, employees, members and agents who are active in the management of the affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not fair market value under an arm's length agreement, shall be a facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.



# SWORN STATEMENT ON PUBLIC ENTITY CRIMES UNDER SECTION 287.133(3)(a) FLORIDA STATUTES

My Cor	mmission Expires: (NOTARY PUBLIC)
	(Name of individual signing) iter first being sworn by me, affixed his/her signature in the space provided above on this day, 20
PERS	ONALLY APPEARED BEFORE ME, the undersigned authority,
STATE COUNT	
	(Date)
	(Signature)
PUBLIC THAT T ALSO U A CON	ERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE CENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IS FILED. JNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO ITRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDATES, FOR CATEGORY TWO OR ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM
	The entity submitting this sworn statement, or one or more of its officers, directors, executives partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been subsequent <b>proceeding</b> before a Hearing Officer of the State of Florida, Division of Administrative Hearing and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)
	The entity submitting this sworn statement, or one or more of the officers, directors, executives partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity have been charged with and <b>convicted</b> of a public entity crime subsequent to July 1, 1989.
	Neither the entity submitted this sworn statement, nor any officers, directors, executives, partners shareholders, employees, members, and agents who are active in management of an entity nor affiliate of the entity have been charged with and <b>convicted</b> of a public entity crime subsequent to July 1, 1989.
6.	Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting those sworn statements. ( <i>Please indicate which statement applies</i> .)
5.	I understand that a "person" as defined in Paragraph 287.133(1)(c), <u>Florida Statutes</u> , means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees members, and agents who are active in management of the entity.



### **ACKNOWLEDGEMENT OF INSURANCE REQUIREMENTS**

<u>Insurance:</u> The following insurance will be required by the CITY OF CAPE CORAL. Any questions regarding the insurance requirements should be directed to the Risk Manager, (239) 574-0529.

<u>Workers' Compensation:</u> Coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$3,000,000 each accident.

<u>Comprehensive General Liability:</u> Shall have minimum limits of \$3,000,000 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations, Independent Contractors and Products and/or Completed Operations, Broad Form Property Damage, XCU Coverage, and a Contractual Liability Endorsement.

**Business Auto Policy:** Shall have minimum limits of \$3,000,000 per occurrence. Combined Single Limit for Bodily Injury and Property Damage Liability. This shall include owned vehicles, hired and non-owned vehicles, and employees' non-ownership.

<u>Certificate of Insurance:</u> The City of Cape Coral is to be specifically included as an additional insured on the General Liability. This does not pertain to Workers' Compensation.

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

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

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

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

Statement of Offeror:
We understand the requirements requested and agree to fully comply.
OFFEROR'S NAME AND TITLE
AUTHORIZED SIGNATURE
DATE



Page 1 of 8

# BUSINESS QUALIFICATION QUESTIONNAIRE THIS FORM MUST BE SUBMITTED AND SIGNED WITH BID PACKAGE

Business must be legal in the State of Florida prior to bidding the type of work required by this project. SUBMITTED BY: Name of Bidder Street or PO Box City, State & Zip Code Phone ( ) Individual ( ) Partnership ( ) Corporation ( ) Joint Venture The undersigned guarantees the truth and accuracy of all statements and all answers to guestions hereinafter made. 1. Person to Contact:\_\_\_\_\_\_Title:\_\_\_\_\_ Telephone Number: 2. How many years has your organization been in business as a General Contractor under your present name? Year established: 3. Under what other names has your organization operated? 4. List below the names, titles and addresses of officers, owners and partners:

5. Prepare a list as indicated on Table I – <u>Completed Projects</u> (attached) of the last five (5) projects of this type your organization has completed.



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6.	Prepare a list as indicated on Table II – <u>Current Projects</u> (attached) of projects of this type that your organization is currently engaged in.
7.	Have you ever failed to complete any work awarded to you?
	When?
	Where?
	Why?
8.	BONDING INFORMATION:
	Surety Company:
	Address:
	Address:
	Surety Agent or Underwriting Contact:
	License Number:
	Address:
	County:
	Contact Name:
	Phone:
	Phone:
	Email Address:
	Aggregate Bonding Capacity:
	Available Bonding Capacity as of date of this submittal:
	Aggregate Bonding Capacity:

Available Bonding Capacity as of date of this submittal:



# **ATTACHMENT E**

Page 3 of 8

# Please attach a letter from surety as evidence of bonding capacity.

Have Bid, Performance or Payment Bond claims ever been any project, within the past ten (10) years?	made to a Surety for this Contractor or
☐ YES ☐ NO	
If YES, include as an Attachment, details describing the making the claim, and the resolution of claim. If the ansletter from the Surety Company stating the referenced period.	swer is NO, attach as an Attachment a
In the past ten (10) years, has any Surety company refuse project?	ed to bond the Contractor on any
☐ YES ☐ NO	
If YES, include as an Attachment, details specifying the name and address of the Surety Company that refused	
In the past ten (10) years, has any Surety company refus subsidiaries on any project?	ed to bond the Contractor's parent or
☐ YES ☐ NO	
If YES, include as an Attachment, details specifying the the name and address of the Surety Company that refu	
9. Enclose a sample Certificate of Insurance.	
10. Provide registration, permits, and licensing information, and c	opies, if applicable.
State Certification No:	Date:
City Competency Certificate No:	Date:
City Occupational License No:	Date:
11. List types of work normally performed by your own forces:	



Page 4 of 8

12. Submit no less than three financial references:				
13. Accompanying the proposal submittal, <u>but</u> one copy of:	in a separate sealed e	envelope, Prime Firm is to provide		
<ul> <li>A) Last three (3) consecutive years U.S. GAAP financial statements, independently audited or independently compiled by a Certified Public Accountant; and</li> <li>The audited or compiled financial statements must contain a detailed balance sheet, detailed income statement, statement of cash flow, and notes to the financial statements. Financial Reports should include the auditing firms' opinion or opinion of the firm compiling the reports that they are free from material misstatement and that they are prepared in accordance with accounting principles generally accepted in the United States of America.</li> </ul>				
All Financial documents, outlined above, should also be included with the electronic Proposals that are received without the responsive.	copy of the proposal of	on a CD, DVD, or USB flash drive.		
	Ву:			
Witness:	Title:			
	Date:			
Sworn to and subscribed before me this	day of	20		
Notary Public	N	ly Commission Expires		

NOTE: IF A JOINT VENTURE, EACH CONTRACTOR MEMBER SHALL COMPLETE AN INDIVIDUAL CONTRACTORS QUALIFICATION QUESTIONNAIRE FORM.



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# TABLE I – <u>COMPLETED</u> PROJECTS (Reference Document)

PROJECT TITLE & LOCATION	YOUR CONTRACT AMOUNT	CONTRACTOR OR SUB	REQUIRED COMPLETION DATE	ACTUAL COMPLETION DATE	NAME, ADDRESS, PHONE #, & Email

Please note this document must be completed in its entirety. Any missing or omitted information may result in a non-responsive bid and your proposal may be disqualified. This Document will also be used as a reference document and the City will verify references.



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# TABLE II – <u>CURRENT</u> PROJECTS (Reference Document)

PROJECT TITLE & LOCATION	YOUR CONTRACT AMOUNT	CONTRACTOR OR SUB	REQUIRED COMPLETION DATE	ESTIMATED COMPLETION DATE	NAME, ADDRESS, PHONE #, & Email

Please note this document must be completed in its entirety. Any missing or omitted information may result in a non-responsive bid and your proposal may be disqualified. This Document will also be used as a reference document and the City will verify references.



Page 7 of 8

### SUBCONTRACTOR LISTING

List all proposed subcontractors to be used for this project regardless of racial or gender grouping or dollar value of work to be performed. The City has the right to reject subcontractors that do not meet the City requirements. If you are claiming minority status it is required to attach the State of Florida issued certification showing minority status. Subcontractors must meet all Licensing, Insurance and Bonds requirements where applicable.

### IF NOT USING SUBCONTRACTORS, PLEASE INDICATE AS SUCH.

Please note this document must be completed in its entirety.

Firm Name, Address, and Telephone Number	Description of Work to be Performed (Be Specific)	Estimated Dollar Value of Work	MBE/WBE
		\$	
		\$	
		\$	
		\$	



Page 8 of 8

# CONTRACTOR'S SELF-PERFORMED WORK EVALUATION FORM

1	Total Estimated Project Cost (from bid form)	\$
2	Total Work Performed by Subcontractors listed on	\$
	"Subcontractor Listing Form"	
3	Value of Work Proposed to be Self-Performed by	\$
	Contractor, (line 1 minus line 2)	
4	Percentage of "Project Cost" (line 1) Proposed to Be	
	Self-Performed by Contractor (line 3 divided by line 1	%
	as a percentage (%)	



### DRUG FREE WORKPLACE CERTIFICATION

In order for the City of Cape Coral to continue as a drug-free workplace, a business shall:

- Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3. Give each employee engaged in providing the commodities or contractual services that are under bid/proposal a copy of the statement specified in subsection (1).
- 4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid/proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Company Name (please print)	Authorized Signature	
 Date		



### **BID SECURITY REQUIREMENTS FORM** ☐ If N/A, check box and return with bid documents

Each person or entity submitting a sealed bid is required to post bid security in an amount listed below. The security shall be payable to the City of Cape Coral and may be in the form of a bid bond, cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or security of a type listed in Part II of Chapter 625. Florida Statutes.

The bid security of each bidder will be held by the city during the bid evaluation period. After the bid is formally awarded by City Council, the unsuccessful bidders who posted security other than a bid bond will have their security returned to them no later than ten (10) days after the bid award.

The bid security of the successful bidder will be held by the City until such time as the bidder executes the written contract with the City. If the bidder fails or refuses to execute the contract in accordance with the bid documents or fails or refuses to provide any other instruments required by the bid specifications (i.e. performance bond. insurance, etc.), the bid security shall be forfeited to the City.

Bids shall be unconditionally accepted and may not be altered or corrected by the bidder. Erroneous bids may be withdrawn only with permission of City Council and subject to the restrictions contained in Section 2-144(a) (9) of the City Code. If a bidder requests to withdraw his or her bid without meeting the requirements of Section 2-144(a) (9) of the City Code and/or without City Council approval, the City may retain the bid security or take action against any bid bond which is posted as security.

The Bidder agrees to the bid security requirements as	listed above.
BID #	DATE
Attached hereto is a bid security in the form of a	
(Security Type: Bond, Cashier's Check, Etc.)	for the sum of
Dollars \$	
FIRM NAME:	
ADDRESS:	
Signature	Name (Printed)
Official Title	
Authorized under the laws of the State of submit this bid and perform all services and/or contract documents.	and authorized by the law furnish materials and equipment required under the

to



#### **ATTACHMENT H**

#### TRENCH SAFETY ACT COMPLIANCE FORM

Bidder acknowledges that included in the various items of the proposal and in the Total Bid Price are costs for complying with Florida Trench Safety Act, Chapter 553 – Building Construction Standards, Part III, Florida State Statute, Section 553.60 through 553.64 (herein called the "Act") and all requirements to meet the Florida State standards applicable to this construction project in regards to trench safety standards, during all phases of the work, if awarded the bid/contract, and will ensure that all subcontractors will also comply with the Act.

The bidder will consider the geotechnical information available for the City, from its own sources and all other relevant information in its design of the trench safety system that it will employ on this project. The bidder acknowledges that the City is not obligated to provide such information, that bidder is not to rely solely on such information, if provided, and that bidder is solely responsible for the selection of the data on which they rely upon in designing said safety system, as well as for the system itself.

The Bidder must complete and submit the Trench Safety Act Compliance form. The bidder acknowledges that included in the Total Price in the Bid Form are costs for complying with the Florida Trench Safety Act. The cost will be as shown below.

The bidder must comply with the trenching and excavation requirements of OSHA for Safety and Health Regulations for Construction.

Acceptance of the bid to which this certification and disclosure applies in no way represents that the City or representatives have evaluated or determined that the costs, shown below are adequate to comply with the applicable trench safety requirements, nor does it in anyway relieve the undersigned of their sole responsibility for complying with all applicable safety requirements.

	Trench Safety Measure	Units of Measure (LF)	Unit (Quantity)	Unit Cost	Extended Cost
A.				\$	_ \$
В.				_ \$	\$
C.				_ \$	\$
D.				_ \$	\$
				TOTAL:	\$
PRINTED CO	MPANY NAME		_		
SIGNATURE	OF AUTHORIZED	REPRESENT	ATIVE		
TYPED NAME	OF AUTHORIZE	D REPRESEN	TATIVE	_	
DATE					



#### **ATTACHMENT I**

#### FORM 3A - INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS ☐ If N/A, check box and return with bid documents

LAST NAME - FIRS	T NAME - MIDDLE INITIAL	OFFICE POSITION HELD	
MAILING ADDRESS		AGENCY	
CITY COUNTY	ZIP	ADDRESS OF AGENCY	
WHO MILET FILE THIS STATEMENT			

Sections 112.313(3) and 112.313(7), Florida Statutes, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, Florida Statutes and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers, Candidates and Employees" for more details on these prohibitions. However, Section 112.313(12), Florida Statutes, provides certain limited exemptions to the above-referenced prohibitions, including one where the business is awarded under a system of sealed, competitive bidding; the public official has exerted no influence on bid negotiations or specifications; and where disclosure is made, prior to or at the time of the submission of the bid, of the official's or his spouse's or child's interest and the nature of the intended business. This form has been promulgated by the Commission on Ethics for such disclosure, if and when applicable to a public officer or

INTÉREST IN COMPETITIVE BID FOR PUBLIC BUSINESS (Required by 112.313(12)(b), Fla. Stat.)

The competitive bid to which this statement applies has been/will be (strike one) submitted to the following government agency:		
2. The person submitting the bid is: NAME:	POSITION:	
3. The business entity with which the person submitting the bid is associ	ciated is:	
4. My relationship to the person or business entity submitting the bid is	as follows:	
5. The nature of the business intended to the transacted in the event the	at this bid is awarded is as follows	:
a. The realty, goods and/or services to be supplied specifically include	de:	
b. The realty, goods and/or services will be supplied for the following	period of time:	
c. Will the contract be subject to renewal without further competitive	bidding?YesNo.	If so, how often?
6. Additional comments:		
7. SIGNATURE	DATE SIGNED	DATE FILED

#### **FILING INSTRUCTIONS**

If you are a state officer or employee required to disclose the information above, please file this form with the Commission on Ethics, P.O. Drawer 15709, Tallahassee, Florida 32317-5709; physical address: 3600 Maclay Blvd. South, Suite 201, Tallahassee, FL 32312. If you are an officer or employee of a political subdivision of this state and are subject to this disclosure, please file the statement with the Supervisor of Elections of the county in which the agency in which you are serving has its principal office.

NOTICE: UNDER THE PROVISIONS OF FLORIDA STATUTES #112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.00

CE FORM 3A - REV. 12/09



#### **ATTACHMENT J**

#### **NON-COLLUSIVE AFFIDAVIT**

State of
County of
(Bidder, if the bidder is an individual; Partner, if the bidder is a partnership; Officer, if the bidder is a corporation)
(Company Name)
STATE OF COUNTY OF
The foregoing instrument was acknowledged before me this day of, 20 by (name and title of corporate
officer) of
(name of corporation), a (state of place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me of the produced (type of identification) as identification.
(Signature line for notary public)
(Name of notary type, printed or stamped)
(Title or rank)
My commission expires:
(Serial number if any)



#### **ATTACHMENT K**

#### **CORPORATE RESOLUTION**

Ι,	, Secretary of					
	, а о	corporation orga	nized and exi	isting under t	he laws of the	State of
	_, hereby certify th	nat at a meeting o	f the Board of D	irectors of the	Corporation duly	called and
held on		_, 20, at wh	ich a quorum	was present a	and acting throug	ghout, the
following resolutions	s were adopted an	d are now in full f	orce and effect:	:		
RESOLVE	O that the following	ı individuals of thi	is corporation a	re authorized t	o execute on bel	nalf of this
corporation a Bio	l and Agreemer	nt to City of	Cape Coral,	Florida for	the construction	າ of the
		(Projec	ct Name)		······································	
I further cer	tify that the names	of the officers of	this corporation	n and any othe	r persons authori	zed to act
under this resolution	າ and their official ເ	signatures are as	follows:			
NAME	Ē	OFFICIAL	TITLE	OFFICI	AL SIGNATURE	
						_
	,		,			_
	<u>,</u>		<u>,</u>			_
	,	-				_
	,		,			_
Corporation address	s					
Corporation phone	number					
IN WITNE	SS WHEREOF, I h	ave hereunto sub	oscribed my nar	ne as Secretar	v and affixed the	seal of the
corporation this			•		,	
SECRETARY:		D	ATE:			
	(Signature)					



#### ATTACHMENT L

#### SCRUTINIZED COMPANIES CERTIFICATION FORM

Pursuant to 287.135 Florida Statute, 215.4725 and 215.473, companies contracting with public agencies are prohibited from contracting for goods or services, that appear on the Scrutinized Companies List. This form is to certify that the "Vendor/Company Name" below hereby swears or affirms that as of the signature date below that "Vendor/Company Name" is not listed on a Scrutinized Companies list. By authorized signature (authorized to enter into binding agreements), representative from this company, further affirms the following:

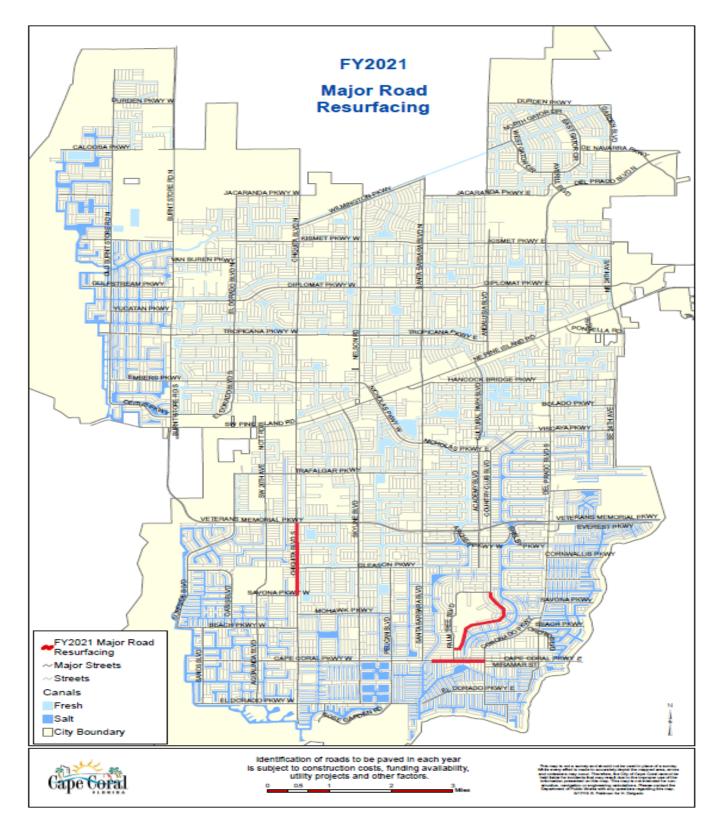
- 1. This "Vendor/Company Name" is not participating in a boycott of Israel such that company is not refusing to deal, is not terminating business activities, or taking any other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israel controlled territories, in a discriminatory manner.
- 2. This "Vendor/Company Name" does not appear on the Scrutinized Companies with Activities on Sudan List, where the State Board of Administration (<a href="http://www.sbafla.com/">http://www.sbafla.com/</a>) has established and maintains the following criteria:
  - a. Have a material business relationship with the government of Sudan or a government-created project involving oil related, mineral extraction, or power general activities, or
  - b. Have a material business relationship involving the supply of military equipment, or
  - c. Impart mineral benefit to disadvantaged citizens that are typically located in the geographic Periphery of Sudan, or
  - d. Have been complicit in the genocidal campaign in Dufar.
- 3. This "Vendor/Company Name" does not appear on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List where the State Board of Administration (<a href="http://www.sbafla.com/">http://www.sbafla.com/</a>) has established the following criteria:
  - a. Have a material business relationship with the government of Iran or a governmental-created project involving oil related or mineral extraction activities, or
  - b. Have made material investments with the effect of significantly enhancing Iran's petroleum sector.
- 4. The "Vendor/Company Name" is not engaged in business operations in Cuba or Syria.
- 5. The company identified below in the section entitled "Vendor/Company Name" understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. "Vendor/Company Name" further understands that any contract with an agency for goods or services may be terminated at the option of the agency if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and/or with business operations in Cuba or Syria.

Vendor/Company Name:
Street Address:
City / State / Zip Code:
Vendor/Company Telephone Number:
Email Address:
Vendor FEIN:
Authorized Signature:
Printed Name/Title:
Date of Signature:



#### **EXHIBIT A**

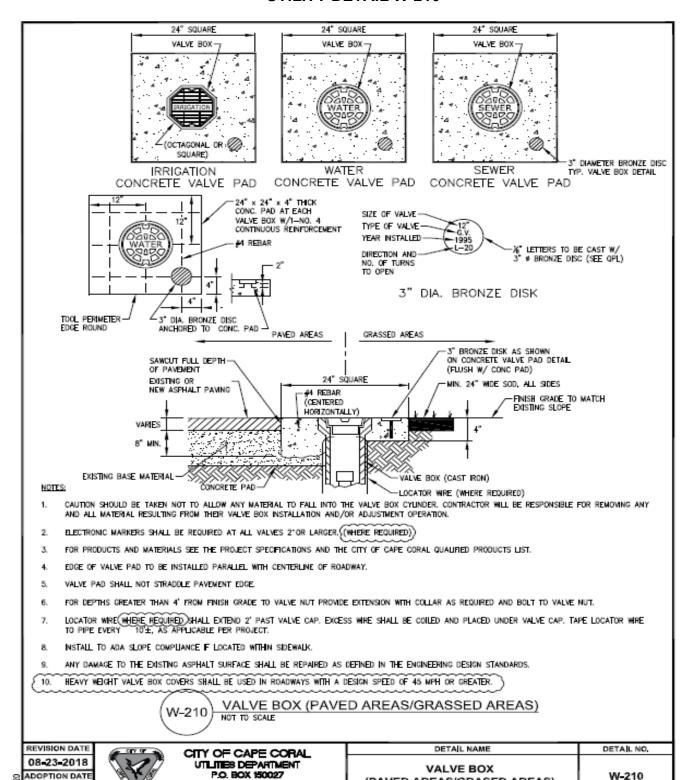
#### PROJECT LOCATION MAP





#### **EXHIBIT B**

#### **UTILITY DETAIL W-210**



CAPE CORAL, FLORIDA 33915-0027

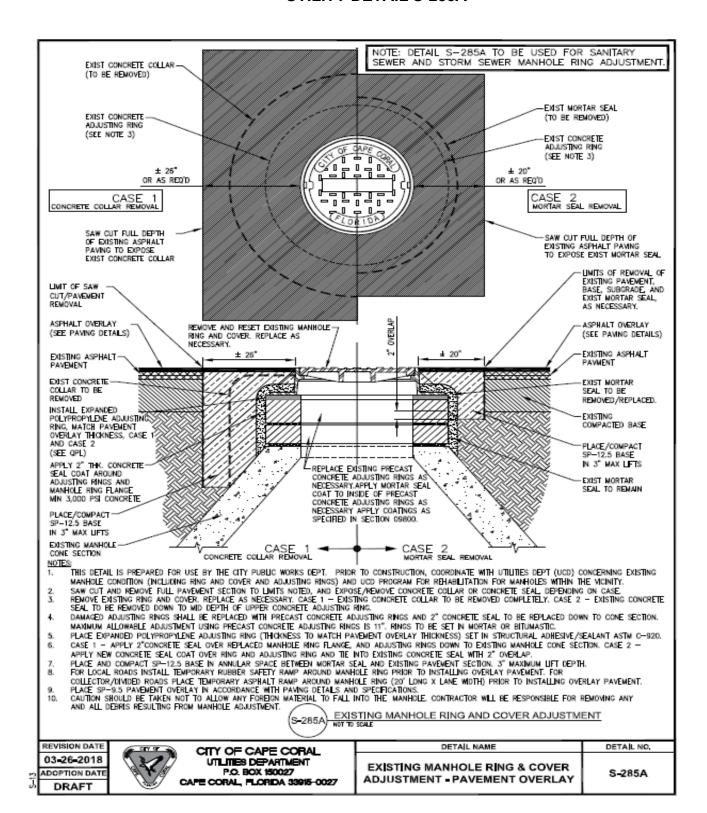
DRAFT

(PAVED AREAS/GRASED AREAS)



#### **EXHIBIT C**

#### **UTILITY DETAIL S-285A**

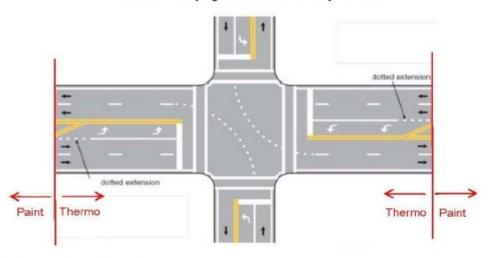




#### **EXHIBIT D**

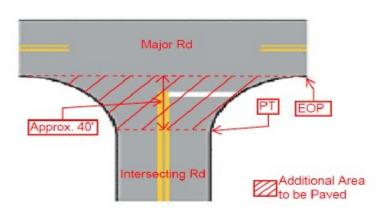
#### **DETAIL F-5**

#### Intersection Striping Material Detail for Major Roads



<sup>\*</sup> Striping Details vary for each intersection

#### Intersection Paving Detail Requirements for Major Roads





#### **EXHIBIT E**

#### PROTEST PROCEDURES

- 1. **Right to Protest**. Any person or firm who is affected adversely by the CITY's decision or intended decision may protest to the City Council.
- 2. **Time Limits and Form of Protest**. A protest with respect to an <u>Invitation for Bid or Request for Proposal</u> shall be submitted in writing to the Procurement Manager prior to the opening of bids or the closing date of proposals.

A written notice of intent to protest an <u>intended bid award</u> shall be filed with the City Procurement Manager within five (5) business days (excluding Saturdays, Sundays, and Legal Holidays) after the date of mailing of the notice of intent to award the contract.

A written notice of intent to protest the <u>ranking of proposals</u> submitted in response to a request for proposals shall be filed with the Procurement Manager within five business days (excluding Saturdays, Sundays and legal holidays) after the date of mailing of the notice of ranking by the SAC or by the City Manager or designee. Only those persons or firms who have been submitted a bid/proposal or who have been interviewed and ranked shall be permitted to file a protest.

A formal written protest shall be filed within ten (10) calendar days after the filing of the <u>initial written notice of intent to protest</u> and shall be delivered in a manner that requires a signature by a representative of the City. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest within the time limits prescribed herein shall constitute a waiver of the right to protest. Upon the filing of a formal written protest the contractor or vendor shall post a bond, payable to the City of Cape Coral, in an amount equal to five percent of the total bid or estimated contract amount, or five thousand dollars (\$5,000.00), whichever is less. The bond shall be conditioned upon the payment of all costs which may be adjudged against the protesting contractor or vendor in the event the protest is resolved adversely to the protester. An Irrevocable Letter of Credit or other form of approved security, payable to the CITY, will be accepted. Failure to submit a bond simultaneously with the formal written protest shall invalidate the protest and the CITY may proceed to award the contract as if the protest had never been filed.

- 3. Hearing. If the subject of a protest is not resolved by mutual agreement within seven (7) calendar days after receipt of a formal written protest, the matter may, at the option of the City Council, be referred to a hearing officer or administrative law judge who shall conduct a hearing within 15 calendar days of receipt of the formal written protest. The hearing officer or administrative law judge shall render a recommended order within 30 calendar days after the hearing. The recommended order shall be scheduled on the next Council agenda for final action. If Council so elects; the protest may be heard directly by the City Council.
- 4. **Stay of Action**. Upon receipt of a formal written protest which has been timely filed, the CITY shall stop the bid solicitation, RFP process or the contract award process until the subject of the protest is resolved either informally or by formal City Council action, unless the City manager sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation or RFP process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.
- 5. Decision: Entitlement to Costs. If a protest is sustained and it is determined that the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to recover from the CITY the reasonable costs incurred in connection with preparing its bid but shall not be entitled to recover lost profits or attorney's fees. The decision shall be final and conclusive as to the CITY unless an appeal is filed, or an action is filed in court within ten days of the date of the decision of Council.



#### **EXHIBIT F**

#### **PUBLIC CONSTRUCTION BOND**

(IF PROJECT IS \$200,000 OR GREATER) - SAMPLE -

В١	<b>THIS BOND</b> , We, as
PF	RINCIPAL and, a corporation, as
Sl of	JRETY, are bound to the CITY OF CAPE CORAL, FLORIDA, hereinafter called "OWNER," in the sum
•	yment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly d severally.
TH	IE CONDITION OF THIS BOND is that if PRINCIPAL:
1.	Performs the contract dated
2.	Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying PRINCIPAL with labor, materials, or supplies, used directly or indirectly by PRINCIPAL in the prosecution of the work provided for in the contract; and
3.	Pays OWNER all losses, damages, expenses, costs and attorney's fees, including appellate proceedings, that OWNER sustains because of a default by PRINCIPAL under the contract; and
4.	Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.
5.	Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitations in Section 255,05(2), Florida Statutes
	y changes in or under the contract documents and compliance or noncompliance with any formalities nnected with the contract or the changes does not affect SURETY's obligation under this bond.
Th	is is a Public Construction Bond and in addition to the protection provided to the OWNER it provides a

CLAIMANT, as defined in Florida Statutes Section 255.05(1), whose claim derives directly or indirectly from the providing of labor, materials or supplies in the prosecution of the work provided for in the contract, with certain rights. Section 255.05(2), Florida Statutes, also imposes certain NOTICE REQUIREMENTS and TIME LIMITATIONS on the CLAIMANT as a condition for recovery under this Bond.

**The PRINCIPAL**, before commencing the work under the contract, is required by Florida Statutes, Section 255.05(1)(a) to have this Bond fully executed and recorded in the Public Records of Lee County, Florida, and delivered to the OWNER.



**IN WITNESS WHEREOF** the PRINCIPAL and SURETY, by their authorized representatives, have affixed their signatures and seals.

DATED ON	
(Type Name of Principal)	
(Type Address)	
By: President or Vice President	
(Type Name of Bonding Company)	Local Agent/Attorney in Fact for Bonding Company
Address	Address
Phone Number	Phone Number
By:As Attorney in Fact	THORE HAMES

7.

THIS CONTRACT is made this day of

CAPE CORAL, FLORIDA, hereinafter called "CITY", and

Contract, the terms of this Contract shall control.



#### **EXHIBIT G**

# SAMPLE CONTRACT CITY OF CAPE CORAL CONTRACT #CON-BPW2110AP MAJOR ROAD RESURFACING FY2021

\_,20\_\_ by and between the CITY OF

, located at

	, hereinafter called "CONTRACTOR".
WITNE	ESSETH: For and in consideration of the payments and agreements mentioned hereinafter:
1.	The CONTRACTOR <b>will provide</b> <u>Major Road Resurfacing FY21</u> in accordance with the Contract Documents.
2.	The CONTRACTOR <b>will furnish</b> all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the services described in the Contract Documents. Time is of the essence in the performance of this Contract.
3.	The CONTRACTOR <b>will commence</b> work as required by the CONTRACT DOCUMENTS within ten (10) calendar days after the receipt of the written Notice to Proceed.
4.	The <b>term</b> of the contract to be awarded as a result of this bid shall be from the date of final contract execution through
5.	The CONTRACTOR <b>agrees</b> to perform all of the WORK described in the CONTRACT DOCUMENTS for a total price of \$ as listed in Exhibit A during the term of the contract.
6.	This Contract <b>may be terminated</b> for convenience by either party upon thirty (30) days prior written notice to either party. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract. Such amount shall be paid by the CITY after inspection of the work to determine the extent of performance under this Contract, whether completed or in progress.

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

The Term "Contract Documents" shall include this Contract, Addenda, Contractor's Bid except when it conflicts with any other contractual provision, the Notice to Proceed, Certificates, and the Bid Package number BPW2111AP prepared and issued by the City. In the event of conflict between any provision of any other document referenced herein as part of the contract and this



- 9. The Term "Contract Documents" means and includes the following:
  - A. Bid Specifications prepared and issued by the CITY;
  - B. Submitted Response of CONTRACTOR to the CITY, except when it conflicts with any contractual provision; and
  - C. This contract as well as all other documents attached hereto and/or referenced herein.

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

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

#### 10. Record Keeping

The awarded bidder shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City of Cape Coral reserves the right to determine the record-keeping method in the event of non-conformity. If a Public Construction Bond is required records shall be maintained for ten (10) years, after final payment has been made and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.

Records of the Contractor's personnel, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

Contractor shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Contractor shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Contractor on the Project. Contractor shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

#### 11. Public Records

Pursuant to Florida Statute §287.058 (1) (c), this contract may be unilaterally cancelled by the City if the Contractor, refuses to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this contract, unless the records are exempt from disclosure.

12. **Assignment:** This agreement may not be assigned except with the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.



- 13. <u>Disclosure:</u> The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or CONTRACTOR, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission percentage, gift, or other compensation contingent upon or resulting from the award or making of the agreement.
- 14. <u>Unauthorized Aliens:</u> The employment of unauthorized aliens by any Contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-contractors used by the Contractor as well.
- 15. <u>Administration of Contract:</u> The <u>Public Works Director</u>, or his representative, shall administer this agreement for the CITY.
- 16. Governing Law: The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, each party shall be responsible to pay for its own reasonable costs and attorney fees.
- 17. <u>Amendments:</u> No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties.
- 18. <a href="Payments:">Payments:</a> CITY shall make payment and CONTRACTOR shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice unless, within a fifteen (15) day period, CITY notifies CONTRACTOR in writing of its objection to the amount of such invoice, together with CITY'S determination of the proper amount of such invoice. CITY shall pay any undisputed portion of such invoice within such thirty (30) day period. If CITY shall give such notice to the CONTRACTOR within such fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, CITY shall promptly pay the CONTRACTOR the amount so determined, less any amounts previously paid by CITY with respect to such invoice. In the event it is determined that CITY has overpaid such invoice, the CONTRACTOR shall promptly refund to the CITY the amount of such overpayment.
- 19. <u>Indemnity:</u> The CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or Intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by CONTRACTOR in the performance of this Contract.



- 20. <u>Invalid Provision:</u> The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 21. <u>Insurance:</u> Unless otherwise specified, CONTRACTOR shall, at its own expense, carry and maintain the following minimum insurance coverage, as well as any insurance coverage required by law:
  - a. Worker's Compensation Insurance with limits that comply with statutory requirements and Employer's Liability Insurance with a lower limit of \$3,000,000 per occurrence, including, without limitation, coverage for Occupational Diseases, to provide for the payment of benefits to its employees employed on or in connections with the work covered by this Agreement and/or to their dependents.
  - b. Broad Form Commercial General Liability Insurance (on an occurrence basis) with a minimum combined single limit for Bodily Injury, including Death, of \$3,000,000 per occurrence and for Property Damage of at least \$3,000,000 per occurrence.
  - c. Business Auto Liability Insurance with minimum Bodily Injury and Death Limit per accident of \$3,000,000 and a minimum Property Damage Limit per accident of \$3,000,000.
  - d. CONTRACTOR shall require its subcontractors to provide for such benefits and carry and maintain the foregoing types of insurance at no expense to the CITY. CITY shall be named as an "Additional Insured" under the CONTRACTORS General Liability Insurance Policy with respect to the services performed by the CONTRACTOR or by the OWNER.
  - e. Prior to commencing any Work under this Agreement, CONTRACTOR shall submit to the CITY a certificate or certificates of insurance evidencing that such benefits have been provided and that such insurance is being carried and maintained. Such certificates shall stipulate that the insurance will not be cancelled or materially changed without thirty (30) days prior written notice by certified mail to the CITY and shall also specify the date such benefits and insurance expire. CONTRACTOR agrees that such benefits shall be provided, and such insurance carried and maintained until the Work has been completed and accepted by the CITY.
  - f. Such benefits and such coverage as are required herein, or in any other document to be considered a part hereof, shall not be deemed to limit CONTRACTORS liability under this agreement.



- 22. <u>Electronic Signatures:</u> The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed version of an original signature or electronically scanned and transmitted versions (e.g. via pdf) of an original signature.
- 23. <u>Counterparts:</u> This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.
- 22. <u>Entire Agreement:</u> This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.)



IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials this Contract in <u>one</u> counterparts which shall be deemed an original on the date last signed as below written:

ATTEST:	CITY:
	City of Cape Coral, Florida
Signature:	Signature:
Typed Name: Kimberly Bruns, CMC	Typed Name: Roberto Hernandez
Title: City Clerk	Title: <u>City Manager</u>
	Date:
	CITY LEGAL REVIEW:
	Dolores Menendez Date City Attorney
WITNESS CONTRACTOR:	CONTRACTOR:
	Company:
Signature:	Signature:
Typed Name:	Typed Name:
Title:	Title:
	Date:



#### **EXHIBIT H**

#### PUBLICALLY OWNED VACANT SITE IDENTIFICATION

The intent of this form is to identify proposed use by a Contractor of a publicly owned vacant site(s). <u>This form DOES NOT provide authorization of the use of any publicly owned vacant site(s) by a Contractor.</u>

It is the responsibility of the contractor to obtain any necessary permits, all permissions to utilize site(s) and applicable insurances, whether it is on private or public land, to store any equipment or material on any vacant sites throughout the duration of this project. If the Contractor intends to use a City owned site(s) for equipment and/or material storage and/or staging, a Permissive Use License Agreement (PULA) must be executed prior to construction start. It is the Contractor's responsibility to contact the City's Real Estate Division to gain authorization to use the proposed site(s). All sites, either public or private, must be restored to their prior condition before the contractor leaves that road segment to begin the next road segment. Copies of authorizations and permits for use of public or private sites shall be provided to the City's Project Manager.

The Contractor has identified the following site(s) for use during the proposed project. The Contractor shall attach additional pages as necessary to include all proposed sites. Include the Lot(s) or Tract, Block, Subdivision, Unit, Plat Book number, and Page(s) as recorded in the Public Records of Lee County, Florida for all proposed sites intended for use.

Lot / Tract:	
Block:	
Subdivision:	
Unit:	
Plat Book:	
Page(s):	
Lot / Tract:	
Block:	
Subdivision:	_
Unit:	
Plat Book:	
Page(s):	through



### AGENDA REQUEST FORM

CITY OF CAPE CORAL

Item Number: A.(2)
Meeting Date: 1/6/2021

Item Type: CONSENT AGENDA

#### TITLE:

Resolution 1-21 Approve a Sole and Single Source to Hach Company for the purchase of Hach laboratory water quality sampling equipment, including parts for repair and maintenance. Items that will be purchased include, but not limited to pH meters, composite samplers, chlorine analyzers, suspended solids sensors, turbidimeters, dissolved oxygen sensors, multi-parameter spectrophotometer and lab sample reagents for Fiscal Year 2021 and Fiscal Year 2022, not to exceed budgetary limits and authorize the City Manager or Designee to execute the purchase orders. Department: Utilities. Combined Total Dollar Amount: \$340,000 (Water & Sewer Fund – FY2021 \$170,000 and FY2022 \$170,000).

#### **REQUESTED ACTION:**

Approve or Deny

#### SUMMARY EXPLANATION AND BACKGROUND:

- 1. The Utilities Department has a combined inventory of \$275,000 of Hach Instruments currently in operation. Utilities staff rely on Hach instruments for water quality monitoring at the treatment plants and in the field. Many of the Hach instruments are used to monitor real-time data that alerts staff to potential treatment issues that could cause regulatory violations. The real-time monitoring allows staff to make treatment adjustments to avoid potential issues and non-compliance with state and federal regulations.
- 2. Staff recommends the purchase of direct product replacements due to compatibility with current existing product installation configurations. The purchase/installation of any variation from Hach equipment would require a retrofit of additional related components to the supporting sub-systems. These supporting systems include: valves, regulators, line supply wiring, control system panels, monitor wiring and would result in significant additional cost to change products. Additionally, changing products may result in downtime to critical systems that monitor and control water and sewer treatment systems.
- 3. Maintaining uniformity of Hach instruments has proven cost-effective by maintaining a minimal amount of spare parts and has reduced the need for additional training of maintenance personnel.
- 4. Hach Company is the sole and authorized manufacturer and direct distributor for the purchase and repair of Hach products.
- 5. Purchase and repairs for fiscal year 2021 and 2022 are estimated at \$170,000 respectively; for a combined two year total of \$340,000.
- 6. This procurement is governed by the City of Cape Coral Code of Ordinances, Article VII, Section 2-144 (c) (2) (a) and (b) which states that a purchase can be categorized as a single source under a condition in which (a) "There are multiple distributors of the item, however, the manufacturer may have designated exclusive territorial sales boundaries; or (b) when the purchase of an item or service results in a "best value" in that research has shown that the use of another brand or

- service would not be reasonable and would cause undue hardship to the city, would cause the city to incur additional expense, or would require modification to a present system or process.
- 7. Section 2-144 (c)(1)(b) states that a purchase can be categorized as a sole source purchase under a condition in which "The item or service retains a copyright or patent and is only available from the manufacturer or developer"

#### STRATEGIC PLAN ALIGNMENT:

1. 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

#### **RECOMMENDATIONS:**

Staff recommends approval of the Sole and Single Source to Hach Company.

#### **SOURCE OF ADDITIONAL INFORMATION:**

Jeff Pearson, Utilities Director, 1-239-574-0709

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

Funding Information:

Budgeted item FY21 Water & Sewer Fund \$170,000

FY22 is based upon approval of annual appropriation estimated at \$170,000.

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

#### PREPARED BY:

Roop

Wanda Divisio

Division- Procurement Department- Finance

ATTACHMENTS:

**Description** Type

1. Department Memo2. Resolution 1-21Backup MaterialBackup Material

#### MEMORANDUM

### CITY OF CAPE CORAL UTILITIES DEPARTMENT

TO:

Rob Hernandez, City Manager

Christopher Phillips, Financial Director Wanda Roop, Procurement Manager

FROM:

Jeff Pearson, Utilities Director

Patrick Long, Water Reclamation/Manager

Andy Fenske, Water Production Manager Wayne Boler, Acting Utilities Collection and Distribution Manage

DATE:

November 2, 2020

SUBJECT:

Sole Source for Hach Products

The Utilities Divisions of Water Reclamation, Water Production, and Utilities Collection and Distribution (UCD) are requesting a combined two (2) year annual single source approval spending authorization for purchases from the Hach Company totaling up to \$170,000.00 for fiscal year (FY) 2021 and \$170,000 for (FY) 2022, not to exceed budgetary limits. Hach is the sole source provider of the following in-line, handheld and laboratory Hach equipment as well as all parts for repair and maintenance:

- pH meters
- Composite Samplers
- Chlorine analyzers
- Suspended Solids Sensor
- Ammonia sensors

- Turbidimeters
- Dissolved Oxygen Sensor
- Multi-parameter spectrophotometer
- Reagents

The Water Reclamation and Water Production Facilities have a combined inventory of \$275,000 of Hach Instruments with UCD relying on handheld units in the field. The Utility facilities rely on Hach instruments for automation monitoring and regulatory control of treatment processes. Many of the Hach instruments are used to monitor real-time data that alerts staff to potential treatment issues that could cause regulatory violations. This real-time monitoring allows staff to make treatment adjustments to avoid potential issues.

Based on the significant inventory of installed and utilized Hach equipment in the Utilities Department, it is recommended to continue to purchase these items from them as they are direct replacements and are compatible with current existing installation configurations. The purchase/installation of any variation from the Hach equipment would require a retrofit of additional related components to the supporting subsystems such as: valves, regulators,

City Manager, Finance Director, and Procurement Manager -- Hach Products November 2, 2020 Page 2 of 2

line supply wiring, control systems, and monitor wiring. This would result in significant additional cost and unnecessary added downtime to critical components that could interrupt wastewater collection and treatment, and drinking water production and distribution. Although other similar products may be offered, use of this alternate equipment would require extensive retrofitting of the treatment systems every time a different brand was procured. Retrofitting would also require the need for engineering services and additional training requirements for operations and maintenance personnel.

These funds are budgeted and available in each Division. Water Reclamation: 36015, 36016, 36018, Water Production: 36011, 36012 and UCD: 36013 for accounts 546102 (Equipment Repair & Maintenance), 552116 (Small Equipment Purchase), 552199 (Other Operating Materials & Supplies), and 564101 (Equipment).

JP/PL:jmf (Sole Source for Hach Products for use by Water Reclamation, Water Production, and Utilities Collection and Distribution)

#### **RESOLUTION 1-21**

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING THE SINGLE AND SOLE SOURCE PURCHASE OF HACH INSTRUMENTS AND PARTS FOR REPAIR AND MAINTENANCE FROM HACH COMPANY; PROVIDING FOR THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO EXECUTE THE PURCHASE ORDERS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Water Production, Water Reclamation, and Utilities Collection and Distribution Divisions of the Utilities Department currently utilize a variety of Hach brand instruments in the field and for automation monitoring and regulatory control of treatment processes; and

WHEREAS, the Water Production, Water Reclamation, and Utilities Collection and Distribution Divisions are requesting approval for the purchase of Hach handheld and laboratory equipment such as pH meters, composite samplers, chlorine analyzers, suspended solids sensors, turbidimeters, dissolved oxygen sensor, multi-parameter spectrophotometer, and reagents, as well as parts for repair and maintenance, in the amount of \$170,000 for Fiscal Year 2021 and in the amount of \$170,000 for Fiscal Year 2022 from Hach Company; and

WHEREAS, maintaining uniformity of equipment utilized by the Utilities Department has proven cost-effective by minimizing the need for significant retrofitting, allowing for a minimal inventory of spare parts, and reducing the need for additional training of maintenance personnel; and

WHEREAS, Section 2-144(c) of the City of Cape Coral Code of Ordinances authorizes the City to award contracts without competition upon the determination of the Procurement Manager that there is only one source for the required supply, service or construction item; and

WHEREAS, the Procurement Manager has determined that there is only one source for the purchase of the requested items for the Utilities Department; and

WHEREAS, the Procurement Manager has determined that the purchase of Hach brand equipment can be categorized as a single source purchase as specified in Section 2-144(c)(2)(b), as it results in a "best value," in that research has shown that the use of another brand or service would not be reasonable and would cause undue hardship to the city, would cause the city to incur additional expense, or would require modification to a present system or process; and

WHEREAS, the Procurement Manager has determined that the purchase of Hach brand equipment can also be categorized as a sole source purchase as specified in Section 2-144(c)(1)(b), because the goods and services are available only through the manufacturer, Hach Company; and

WHEREAS, the City Manager recommends the approval of the single and sole source purchase of Hach handheld and laboratory equipment such as pH meters, composite samplers, chlorine analyzers, suspended solids sensors, turbidimeters, dissolved oxygen sensor, multi-parameter spectrophotometer, and reagents, as well as parts for repair and maintenance, from Hach Company as the exclusive authorized representative for Hach brand instrument products, for Fiscal Years 2021 and 2022 for an estimated combined total amount of \$340,000, not to exceed budgetary limits.

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

Section 1. The City Council hereby approves the single and sole source purchase of Hach handheld and laboratory equipment such as pH meters, composite samplers, chlorine analyzers, suspended solids sensors, turbidimeters, dissolved oxygen sensor, multi-parameter spectrophotometer, and reagents, as well as parts for repair and maintenance, from Hach Company as the exclusive authorized representative for Hach brand instrument products, for Fiscal Years 2021 and 2022 for an estimated combined total amount of \$340,000, not to exceed budgetary limits and authorizes the City Manager or his designee to execute the purchase orders.

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

ADOPTED BY THE CITY COUNCIL OF THE C COUNCIL SESSION THIS DAY OF	
	JOE COVIELLO, MAYOR
VOTE OF MAYOR AND COUNCILMEMBERS:	
COVIELLO GUNTER SHEPPARD HAYDEN	NELSON WELSH WILLIAMS COSDEN
ATTESTED TO AND FILED IN MY OFFICE T 2021.	THIS, DAY OF,
	KIMBERLY BRUNS CITY CLERK
APPROVED AS TO FORM:	
DOLORES D. MENENDEZ CITY ATTORNEY res/Single & Sole Source-Hach Company	



### AGENDA REQUEST FORM CITY OF CAPE CORAL

Item Number: A.(3)
Meeting Date: 1/6/2021

Item Type: CONSENT AGENDA

#### TITLE:

Resolution 2-21 Approve the sole and single source to Xylem Water Solution USA, Inc. and Tom Evans Environmental. Inc. for the purchase and repair of Flygt and Ebara Pumps, respectively, for fiscal year 2021 through 2023, not to exceed budgetary limits and authorize the City Manager or Designee to execute the purchase orders. Department: Utilities. Combined Dollar Amount: \$2,235,000 (Water & Sewer Fund – FY-21 \$730,000, FY-22 \$745,000, and FY-23 \$760,000)

#### **REQUESTED ACTION:**

Approve or Deny

#### SUMMARY EXPLANATION AND BACKGROUND:

- 1. The Water Reclamation Division maintains 310 active lift stations with more than 90% equipped with Flygt brand pumps, the remainder are equipped with Ebara brand pumps.
- 2. Flygt and Ebara pumps are the only two pump manufacturers that meet the City's stringent lift station pump specifications.
- 3. Water Reclamation Facilities have been utilizing Flygt pumps to replace alternate manufacturer failed pumps. Flygt pumps are extremely reliable and are able to handle the head pressure exerted in sewer force mains. Maintaining uniformity of Flygt pumps within the lift station system has proven cost-effective by maintaining a minimal number of spare pumps and parts and reduces the need for additional training of maintenance personnel.
- 4. Xylem Water Solutions USA, Inc. is the only authorized vendor for Flygt products and is the only authorized service repair and warranty organization in the State of Florida (East of the Apalachicola River).
- 5. Tom Evans Environmental, Inc. is the only authorized municipal distributor for Ebara Fluid Handling in Southwest Florida, including Cape Coral.
- 6. Purchase and Repairs for Fiscal year 2021 is estimated at \$730,000 (Purchase new pumps \$430,000 and Repairs \$300,000); Purchase and Repairs for fiscal year 2022 is estimated at \$745,000.00. (Purchase new pumps \$445,000 and Repairs \$300,000); Purchase and Repairs for fiscal year 2023 is estimated at \$760,000.00. (Purchase new pumps \$460,000 and Repairs \$300,000) for a combined three fiscal year total of \$2,235,000.
- 7. This procurement is governed by the City of Cape Coral Article VII, Section 2-144 (c)(2)(a) (b) which states that a purchase can be categorized as a Single Sole purchase under a condition in which "There are multiple distributors of the item, however, the manufacturer may have designated exclusive territorial sales boundaries; or (b) when the purchase of an item or service results in a "best value" in that research has shown that the use of another brand or service would not be reasonable and would cause undue hardship to the city, would cause the city to incur additional expense, or would require modification to a present system or process.

- 8. It's also governed by Section 2-144 (c)(1)(b) which states that a purchase can be categorized as a Sole Source purchase under a condition in which "The item or service retains a copyright or patent and is only available from the manufacturer or developer".
- 9. The City Manager or designee shall have the authority to execute purchase orders provided the purchase order(s) does not exceed the current budget level during any one fiscal year period.

#### STRATEGIC PLAN ALIGNMENT:

1. Is this a Strategic Decision?

Yes

If Yes, Priority Goals Supported are listed below.

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

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

#### **RECOMMENDATIONS:**

Staff recommends approval of the Sole and Single Source to Xylem Water Solution USA, Inc. and Tom Evans Environmental. Inc. for purchase of wastewater lift station pumps.

#### SOURCE OF ADDITIONAL INFORMATION:

Jeff Pearson, Utilities Director

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

**Funding Information:** 

Budgeted item in FY-21 in the Water and Sewer Fund \$730,000 FY-22 and FY-23 are based on the approved annual appropriation which is estimated to be \$745,000 and \$760,000 respectively.

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

#### PREPARED BY:

Wanda Roop Division- Procurement Department-Finance

#### ATTACHMENTS:

	Description	Туре
D	1. Department Memo	Backup Material
D	2. Resolution 2-21	Backup Material
D	3. Xylem Water Solution USA, Inc - Sole Source Letter (Flygt Pumps)	Backup Material
ם	4. Tom Evans Environmental. Inc Sole Source letter (Ebara Pumps)	Backup Material

#### **MEMORANDUM**

### CITY OF CAPE CORAL UTILITIES DEPARTMENT

TO:

Rob Hernandez, City Manager

Christopher Phillips, Acting Financial Director

Wanda Roop, Procurement Manager

FROM:

Jeff Pearson, Utilities Director

Patrick Long, Water Reclamation/Manager Ww

DATE:

November 12, 2020

SUBJECT:

Open Purchase Orders for Xylem Water Solutions U.S.A. & Tom Evans

Environmental, Inc

The Utilities Water Reclamation Division is requesting the approval of an open Purchase Order (PO) based on projected spending not to exceed budgetary limits (as detailed below) for repairs and purchases of Flygt and Ebara pumps required for the operation of the City's Collection System sanitary lift stations, Water Reclamation Facilities lift stations, automatic backwash filters and miscellaneous equipment (Divisions 36014, 36015, 36016). The projected combined total for Fiscal Year (FY) 21 will be \$730,000.00 (\$300,000.00 for repair pumps and \$430,000.00 for purchase of new pumps), the projected combined total for FY22 will be \$745,000.00 (\$300,000.00 to repair pumps and \$445,000.00 for purchase of new pumps) and the projected combined total for FY23 will be \$760,000 (\$300,000 to repair pumps and \$460,000 for purchase of new pumps).

Total capital outlay for all lift station Flygt and Ebara pumps in service is approximately \$5.5 million dollars. Yearly estimates of the cost of pump repairs and replacement pumps needed for the subsequent fiscal year, based upon historical data and planned City/Utility expansion projects, are determined and budgeted. An additional cost factor included in each year is spare parts inventory. There are several dozen sizes of submersible pumps with different horsepower (hp) ratings, discharge sizes, impeller sizes, electrical phase (single phase or 3 phase) and electrical ratings (i.e. 208, 240, or 480 volt). Prices for these new lift station pumps range from \$5,375.00 to \$62,262.00 and have delivery lead times varying from one (1) week to three (3) months.

Xylem Water Solutions U.S.A., Inc. is the sole source authorized vendor to sell and provide repair services for Flygt brand pumps to the City of Cape Coral, and Tom Evans Environmental, Inc. is the sole source authorized vendor to sell and provide repair services for Ebara brand pumps to the City of Cape Coral.

Currently, the City has in excess of 310 active lift stations in operation, with more than 90% of them equipped with Flygt brand pumps; the remainder of capital/small equipment sized pumps at or over \$5,000 are equipped with Ebara brand pumps. The Utility

Open Purchase Orders Xylem Water Solutions U.S.A. & Tom Evans Environmental, Inc November 12, 2020 Page Two

Extension Program (UEP) for area north 1 is currently in design; once completed, there will be 320 total active lift stations with a combination of Flygt and Ebara pumps that will be placed into service throughout the City of Cape Coral. Flygt and Ebara pumps are the only two pump manufacturers specified as an acceptable equivalent to the current City of Cape Coral Utility Extension Standards.

This request is to sole source purchase spare/replacement Flygt pumps and service for lift stations which have Flygt pumps currently installed and to use sole source purchase spare/replacement Ebara pumps and service for lift stations which have Ebara pumps currently installed to also include pump related accessories and related electrical panel parts and components.

Research and due diligence continue to be used to evaluate whether other pump manufacturers should be considered to create more competitive pricing without losing reliability and performance. However, the UEP continues to specify Flygt and Ebara as the only two pump manufacturers as acceptable equivalent to the current City of Cape Coral Utility Extension Standards.

Maintaining uniformity of pumps within the Water Reclamation Division has proven to be cost effective by minimizing the need for additional spare pumps and parts. Pump repairs and troubleshooting predominantly from one or two pump manufacturers facilitates less training required for lift station maintenance personnel. Also, it reduces the amount of stock on hand. Having more than two manufacturers of pumps in the system would also create an increased amount of cost for spare/replacement parts inventory.

The request for purchase of new pumps and repair service on new and existing Flygt and Ebara pumps/replacement parts is critical to sustain the proper operation of the Collection System Lift Stations and Water Reclamation Facilities without failure; in part, maintaining reliable service of the wastewater/reclamation systems to protect the environment, health and welfare of the public, and avoid raw sewage/facility spills that could cause possible violations and penalties from the Florida Department of Environmental Protection (FDEP).

The Water Reclamation Division has been using Flygt and Ebara pumps in City operated lift stations and at Water Reclamation Facilities for over 30 years with excellent historical reliability. The service and reliability of these pumps has provided dependable operation of the City of Cape Coral's gravity sewer lift stations and certain Water Reclamation process equipment components.

Funds are budgeted and available in each Division, Water Reclamation: 36014, 36015 and 36016 for accounts 546102 (Equipment Repair and Maintenance), and 564101 (Equipment).

JP/PL:jf (Open Purchase Orders for Xylem Water Solutions U.S.A. & Tom Evans Environmental, Inc)

C: Tim Festa, Maintenance Supervisor

#### **RESOLUTION 2-21**

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING THE SINGLE AND SOLE SOURCE PURCHASE AND REPAIR OF FLYGT PUMPS FROM XYLEM WATERS SOLUTIONS, U.S.A., INC., AND THE SINGLE SOURCE PURCHASE OF EBARA PUMPS FROM TOM EVANS ENVIRONMENTAL, INC.; PROVIDING FOR THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO EXECUTE THE PURCHASE ORDERS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Water Reclamation Facilities currently operate in excess of 310 active lift stations with more than 90 percent equipped with Flygt brand pumps and the remainder equipped with Ebara brand pumps; and

WHEREAS, the completion of the Utility Extension Program for the North 1 area will increase the number of active lift stations to 320; and

WHEREAS, maintaining uniformity of pumps within the lift stations has proven cost-effective by minimizing the need for spare pumps and parts and the amount of stock kept on-hand and by reducing the need for training required for lift station maintenance personnel; and

WHEREAS, Section 2-144(c) of the City of Cape Coral Code of Ordinances authorizes the City to award contracts without competition upon the determination of the Procurement Manager that there is only one source for the required supply, service or construction item; and

WHEREAS, the Procurement Manager has determined that there is only one source for each of the pump types required for the City's lift stations; and

WHEREAS, the Procurement Manager has determined that the purchase of the Flygt pumps can be categorized as a single source purchase as specified in Section 2-144(c)(2)(b), as it results in a "best value," in that research has shown that the use of another brand or service would not be reasonable and would cause undue hardship to the city, would cause the city to incur additional expense, or would require modification to a present system or process; and

WHEREAS, the Procurement Manager has determined that the purchase of Flygt brand pumps can also be categorized as a sole source purchase as specified in Section 2-144(c)(1)(b), because the item retains a copyright or patent and is available only from Xylem Water Solutions, U.S.A., Inc.; and

WHEREAS, the Procurement Manager has determined that the purchase of the Ebara pumps can be categorized as a single source purchase as specified in Section 2-144(c)(2), as it results in a "best value," in that research has shown that the use of another brand or service would not be reasonable and would cause undue hardship to the city, would cause the city to incur additional expense, or would require modification to a present system or process, and because Tom Evans Environmental, Inc., is the exclusive authorized distributor for Ebara Fluid Handling Products in Florida and is the exclusive authorized distributor for cast iron submersible pumps and parts in southeast Florida; and

WHEREAS, the City Manager recommends the approval of the single and sole source purchase and repair of Flygt pumps from Xylem Water Solutions, U.S.A., Inc., and the single source purchase and repair of Ebara pumps from Toms Evans Environmental, Inc., for Fiscal Years 2021, 2022 and 2023, for an estimated combined total amount of \$2,235,000, not to exceed budgetary limits.

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

Section 1. The City Council hereby approves the single source purchase of Flygt pumps from Xylem Water Solutions, U.S.A., Inc., and the single and sole source purchase of Ebara pumps from Tom Evans Environmental, Inc., for Fiscal Years 2021, 2022 and 2023 for an estimated combined total amount of \$2,235,000, not to exceed budgetary limits and authorizes the City Manager or his designee to execute the purchase orders.

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

ADOPTED BY THE CITY COUNCIL OF THE COUNCIL SESSION THIS DAY OF				
	JOE COVIELLO, MAYOR			
VOTE OF MAYOR AND COUNCILMEMBERS:				
COVIELLO GUNTER SHEPPARD HAYDEN	NELSON WELSH WILLIAMS COSDEN			
ATTESTED TO AND FILED IN MY OFFICE THIS DAY OF				
	KIMBERLY BRUNS CITY CLERK			
APPROVED AS TO FORM:				
DOLORES D. MENENDEZ CITY ATTORNEY res/Sole Source- Xylem Water Solution USA, Inc.				



Chris Stewart Branch Manager

Xylem Water Solutions, U.S.A., Inc. Flygt Products 5771 Country Lakes Drive Ft. Myers, Fl 33905 Tel 239-693-5226 Fax 239-693-1485

Date:

October 1st, 2020 -September 30th, 2021

To:

City of Cape Coral

Attn:

Procurement Division

From:

Christopher Stewart

Subject:

FLYGT PRODUCTS - SALES & SERVICE

Please be advised that Xylem Water Solutions U.S.A, Inc. is the only authorized vendor for Flygt Products and is the only authorized service repair and warranty organization in the State of Florida; (East of the Apalachicola River). Our staff is properly trained to provide you with original equipment spare parts and repair & warranty service.

Xylem Water Solutions U.S.A, Inc. (formerly ITT Water & Wastewater) is the sole sales point for Florida from one of our facilities in Apopka, Jupiter (formerly West Palm) or Ft. Myers.

F1.YGT products are manufactured in our facility in Southern Sweden and distributed by our directed offices in Florida listed above. The 4901 Mix Flush Valve FLYGT P/N 5565101 is a proprietary FLYGT product.

Thank you for your interest in FLYGT Products. Please feel free to contact me if you have any questions regarding distribution or any other matters

Sincerely,

Xylem Water Solutions U.S.A, Inc.

Christopher Glewart

Christopher Stewart

a xylem brand



### EBARA Pumps Americas Corporation

Corporate Headquarters 1651 Cedar Line Drive, Rock Hill, South Carolina 29730 USA Tel: (803) 327-5005 Fax: (803) 327-5097 www.pumpsebara.com

October 16, 2020

City of Cape Coral Water Reclamation - Collections 1740 Everest Parkway Cape Coral, FL 33904 Attn: Mr. Tim Festa

RE: Ebara Pump Distributor & Pricing Ebara Single Source Letter

Dear Mr. Festa:

This letter is written to confirm that the authorized single source distributor for Ebara Pumps Americas Corporation products in Southwest Florida for the Municipal Market is Tom Evans Environmental. Inc.

Tom Evans Environmental, Inc. is the only authorized distributor for Ebara Pumps Americas Corporation products including the stainless steel series pumps and parts along with our cast iron submersible pumps and parts and service in Southwest Florida (Including Cape Coral, FL) for the Municipal Market. Please contact their office for information on price and availability or technical assistance with Ebara Pumps Americas Corporation products. You may contact them by phone, fax, email or US mail at the address provided below:

Tom Evans Environmental, Inc. 3200 Flightline Drive, Suite 302 Lakeland, Florida 33811 305-588-6761 m www.tomevans.com
Mr. Tom Evans te@tomevans.com

Please do not hesitate to call my office if you have any questions or need further assistance.

Sincerely,

Michael J. Kanren

Michael (). Kahren

Southeast Regional Sales Manager EBARA Pumps Americas Corporation

Standard Pump Division 1651 Cedar Line Dr Rock Hill,SC 29730 Main: (803) 327-5005

Direct: (803) 325-9678 mkahren@pumpsebara.com

CC:

File



### AGENDA REQUEST FORM

CITY OF CAPE CORAL

Item Number: A.(4)
Meeting Date: 1/6/2021

Item Type: CONSENT AGENDA

#### TITLE:

Resolution 4-21 Approving Impact Fee Deferral Agreements between the City of Cape Coral and Habitat for Humanity of Lee and Hendry Counties; Department: Community Development; Dollar Value: \$39,680.62; Fund: N/A

#### **REQUESTED ACTION:**

Approve or Deny

#### **SUMMARY EXPLANATION AND BACKGROUND:**

In June 2018, the City Council adopted Ordinance 36-18. This ordinance created an impact fee deferral program for qualified not-for-profit agencies participating in the City's housing programs. The ordinance requires Developer Agreements with the developer for each individual properties. The resolution approves seven (7) deferral agreements and authorizes the City Manager to approve said agreements.

#### STRATEGIC PLAN ALIGNMENT:

1. Is this a Strategic Decision?	
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	No

#### **RECOMMENDATIONS:**

City Management recommends approval.

#### **SOURCE OF ADDITIONAL INFORMATION:**

Vince Cautero, DCD Director, 1-239-574-0600 Amy Yearsley, Housing Coordinator 1-239-573-3182

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

Future collection of the revenues upon sale of home.

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

#### PREPARED BY:

Amy Yearsley	Division- Planning	Department- Community Development
rearsiey	•	. Development

ATTACHMENTS:

**Description** Type

#### **RESOLUTION 4-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING AFFORDABLE HOUSING IMPACT DEFERRAL DEVELOPER AGREEMENTS BETWEEN THE CITY OF CAPE CORAL AND HABITAT FOR HUMANITY OF LEE AND HENDRY COUNTIES FOR MULTIPLE PROPERTIES; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE OWNER AGREEMENTS UPON SALE OF SAID PROPERTIES TO ELIGIBLE BUYERS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 18, 2018, the City Council adopted Ordinance 36-18, establishing the Single-Family Impact Fee Deferral Pilot Program; and

WHEREAS, in accordance with Ordinance 36-18, Habitat for Humanity of Lee and Hendry Counties has applied for deferral of impact fees on seven homes; and

WHEREAS, Ordinance 36-18 requires the execution of an Impact Fee Deferral Developer Agreement for each property that receives a deferral; and

WHEREAS, Ordinance 36-18 requires the execution of an Impact Fee Deferral Owners Agreement for each property upon sale to an eligible buyer.

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

Section 1. The City Council hereby approves the Affordable Housing Impact Fee Developer Agreements between the City of Cape Coral and Habitat for Humanity of Lee and Hendry Counties. The Developer Agreements are attached hereto and incorporated herein by reference.

Section 2. The City Council authorizes the Mayor to execute the Affordable Housing Impact Fee Deferral Developer Agreements attached hereto.

Section 3. The City Council authorizes the City Manager or his designee to execute Impact Fee Deferral Owner Agreements upon sale of the subject properties to eligible buyers.

Section 4. This Resolution shall take effect immediately upon its adoption.

	OF THE CITY OF CAPE CORAL CITY COUNCIL AT ITS, 2021.
REGULAR SESSION IIIIS	
	JOE COVIELLO, MAYOR
VOTE OF MAYOR AND COUN	CILMEMBERS:
COVIELLO GUNTER SHEPPARD HAYDEN	WELSH
ATTESTED TO AND FILED IN	MY OFFICE THIS DAY OF, 2021.
	KIMBERLY BRUNS CITY CLERK

APPROVED AS TO FORM:

DOLORES MENENDEZ CITY ATTORNEY

Res/Affordable Housing Impact Fee Deferral Agreements

47
Prepared by:
City of Cape Coral
Department of Community Development
P.O. Box 150027
Cape Coral, Florida 33915

## AFFORDABLE HOUSING IMPACT FEE DEFERRAL DEVELOPER AGREEMENT

THIS AFFORDABLE HOUSING IMPACT FEE DEFERRAL DEVELOPER AGREEMENT ("Agreement") is made and entered into on this 18 day of November 2020 by and between Habitat for Humanity of Lee and Hendry Counties, Inc. ("Developer"), a Florida Non-profit Corporation and the City of Cape Coral ("City"), a Florida Municipal Corporation.

#### RECITALS

WHEREAS, Developer is the owner of that certain real property in the City of Cape Coral, County of Lee, State of Florida, as more particularly described in the attached Exhibit "A" (the "Property"); and

WHEREAS, Developer intends to apply for building permits on the "Property"; and WHEREAS, upon the issuance of the Building Permits, certain impact fees are due and payable pursuant to the City of Cape Coral Code of Ordinances The applicable impact fees to the Building Permits are more particularly described in Exhibit "B" attached; and

WHEREAS, pursuant to the City of Cape Coral Code of Ordinances the City may defer the payment of certain impact fees for development of affordable housing if the Developer satisfies all requirements of Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, within the Code of Ordinances; and

WHEREAS, Developer intends to construct affordable housing on the Property; and

WHEREAS, the deferral of the impact fees is contingent on the sale of the property to an income eligible buyer ("Buyer") within 180 days of the issuance of the Certificate of Occupancy.

#### NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. All of the above recitals are true and correct and are fully incorporated into this Agreement by reference and made a part hereof.
- 2. City agrees to defer collection of the payment of the impact fees identified in Exhibit "B" from the Developer upon the Developer satisfying all the requirements contained in Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, and this Agreement.
- 3. If the dwelling unit is not sold to an eligible buyer within the 180-day period, then

the deferred impact fee is considered in default as of the date that the fee would have been due without the deferral; and the developer shall pay all the impact fees, including delinquency fees and interest dating back to the date that the fees would have been assessed but for the deferral.

- 4. The Developer acknowledges that prior to the sale to an eligible buyer, the eligible buyer shall execute an Owner's Impact Fee Deferral Agreement with the City, in a form approved by the City, and provide associated lien documents, pursuant to Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, of the Code of Ordinances.
- 5. If the dwelling unit is sold to an eligible buyer within the 180-day period, and the Owner's Impact Fee Deferral Agreement and associated lien documents are executed, the Developer shall be released of any obligations under this Agreement relating to the Property.
- 6. This Agreement shall be recorded in the Official Records of Lee County. The Developer shall the bear the costs of such recording.
- 7. The person executing this Agreement on behalf of the Developer hereby acknowledges he or she has been granted the authority to bind the Developer and agrees to hold the City harmless if it is later determined that such authority did not exist.
- 8. Severability. If any section, phrase, sentence or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and all other provisions shall remain effective and binding on the Developer.
- 9. Notice. Any notices desired or required to be given under this Agreement shall be in writing and shall either be personally delivered or shall be sent by mail, postage prepaid, to the Developer at the following addresses:

#### CITY OF CAPE CORAL

City of Cape Coral Department of Community Development PO Box 150027 Cape Coral, Florida 33915-0027

#### **DEVELOPER**

Habitat for Humanity of Lee and Hendry Counties, Inc. 1288 North Tamiami Trail North Fort Myers, Florida 33903

- 10. Authority to Monitor. The Developer hereto acknowledges that the City of Cape Coral or its designee, shall have the authority to monitor and enforce the Developer's obligations hereunder.
- 11. Indemnify. The Developer hereby agree to protect, defend, indemnify and hold City of Cape Coral and its officers, employees, and agents harmless from and against any and all claims, penalties, damages, losses and expenses, professional fees, including,

without limitation, reasonable attorney's fees and all costs of litigation and judgments arising out of any claim, willful misconduct or negligent act, error or omission, or liability of any kind made by the Developer, their agents or employees, arising out of or incidental to the performance of this Agreement.

- 12. Modification. This Agreement shall be modified or amended only by the written Agreement of both parties.
- 13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue shall be in Lee County, Florida.
- 14. Effective Date. This Agreement shall be effective upon the date of approval by the City.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officials, on the date above first written.

WITNESSES:	DEVELOPER
Lecho William	By:
Print name: <u>Jackie Williams</u>	Print name: Rick Mercer
- Oli	Title: <u>President</u>
Print name: <u>Olivia Thomas</u>	
	CITY OF CAPE CORAL, FLORIDA
ATTEST:	By: Joe Coviello, Mayor
Kimberly Bruns, City Clerk	
	LEGAL REVIEW:
	City Attorney's Office

# Exhibit "A" Property Description

### **Property Description**

Lots 7 and 8, Block 4177, Unit 59, CAPE CORAL, a subdivision according to the plat thereof recorded in Plat Book 19, Page 140 to 153, inclusive, in the Public Records of Lee County, Florida.

Address: 13 NW 38th Pl Cape Coral FL 33993

Parcel ID Number: 07-44-23-C4-04177.0070

# Exhibit "B" List of Deferred Impact Fees

### **Impact Fees**

Fire/Rescue Impact Fee: \$574.96

ALS Impact Fee: \$35.15

Parks/Recreation Impact Fee: \$1,115.00

Police Protection Impact Fee: \$596.55

Road Impact Fee: \$3,347.00

Total Impact Fees: \$5,668.66

47
Prepared by:
City of Cape Coral
Department of Community Development
P.O. Box 150027
Cape Coral, Florida 33915

## AFFORDABLE HOUSING IMPACT FEE DEFERRAL DEVELOPER AGREEMENT

THIS AFFORDABLE HOUSING IMPACT FEE DEFERRAL DEVELOPER AGREEMENT ("Agreement") is made and entered into on this 18th day of November. 2020 by and between Habitat for Humanity of Lee and Hendry Counties, Inc. ("Developer"), a Florida Non-profit Corporation and the City of Cape Coral ("City"), a Florida Municipal Corporation.

#### RECITALS

WHEREAS, Developer is the owner of that certain real property in the City of Cape Coral, County of Lee, State of Florida, as more particularly described in the attached Exhibit "A" (the "Property"); and

WHEREAS, Developer intends to apply for building permits on the "Property"; and WHEREAS, upon the issuance of the Building Permits, certain impact fees are due and payable pursuant to the City of Cape Coral Code of Ordinances The applicable impact fees to the Building Permits are more particularly described in Exhibit "B" attached; and

WHEREAS, pursuant to the City of Cape Coral Code of Ordinances the City may defer the payment of certain impact fees for development of affordable housing if the Developer satisfies all requirements of Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, within the Code of Ordinances; and

WHEREAS, Developer intends to construct affordable housing on the Property; and

WHEREAS, the deferral of the impact fees is contingent on the sale of the property to an income eligible buyer ("Buyer") within 180 days of the issuance of the Certificate of Occupancy.

#### NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. All of the above recitals are true and correct and are fully incorporated into this Agreement by reference and made a part hereof.
- 2. City agrees to defer collection of the payment of the impact fees identified in Exhibit "B" from the Developer upon the Developer satisfying all the requirements contained in Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, and this Agreement.
- 3. If the dwelling unit is not sold to an eligible buyer within the 180-day period, then

the deferred impact fee is considered in default as of the date that the fee would have been due without the deferral; and the developer shall pay all the impact fees, including delinquency fees and interest dating back to the date that the fees would have been assessed but for the deferral.

- 4. The Developer acknowledges that prior to the sale to an eligible buyer, the eligible buyer shall execute an Owner's Impact Fee Deferral Agreement with the City, in a form approved by the City, and provide associated lien documents, pursuant to Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, of the Code of Ordinances.
- 5. If the dwelling unit is sold to an eligible buyer within the 180-day period, and the Owner's Impact Fee Deferral Agreement and associated lien documents are executed, the Developer shall be released of any obligations under this Agreement relating to the Property.
- 6. This Agreement shall be recorded in the Official Records of Lee County. The Developer shall the bear the costs of such recording.
- 7. The person executing this Agreement on behalf of the Developer hereby acknowledges he or she has been granted the authority to bind the Developer and agrees to hold the City harmless if it is later determined that such authority did not exist.
- 8. Severability. If any section, phrase, sentence or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and all other provisions shall remain effective and binding on the Developer.
- 9. Notice. Any notices desired or required to be given under this Agreement shall be in writing and shall either be personally delivered or shall be sent by mail, postage prepaid, to the Developer at the following addresses:

#### CITY OF CAPE CORAL

City of Cape Coral Department of Community Development PO Box 150027 Cape Coral, Florida 33915-0027

#### **DEVELOPER**

Habitat for Humanity of Lee and Hendry Counties, Inc. 1288 North Tamiami Trail North Fort Myers, Florida 33903

- 10. Authority to Monitor. The Developer hereto acknowledges that the City of Cape Coral or its designee, shall have the authority to monitor and enforce the Developer's obligations hereunder.
- 11. Indemnify. The Developer hereby agree to protect, defend, indemnify and hold City of Cape Coral and its officers, employees, and agents harmless from and against any and all claims, penalties, damages, losses and expenses, professional fees, including,

without limitation, reasonable attorney's fees and all costs of litigation and judgments arising out of any claim, willful misconduct or negligent act, error or omission, or liability of any kind made by the Developer, their agents or employees, arising out of or incidental to the performance of this Agreement.

- 12. Modification. This Agreement shall be modified or amended only by the written Agreement of both parties.
- 13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue shall be in Lee County, Florida.
- 14. Effective Date. This Agreement shall be effective upon the date of approval by the City.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officials, on the date above first written.

WITNESSES:	DEVELOPER
Jacker Williams	By: July
Print name: <u>Jackie Williams</u>	Print name: <u>Rick Mercer</u>
<u>Ou</u>	Title: <u>President</u>
Print name: Olivia Thomas	
	CITY OF CAPE CORAL, FLORIDA
	By:
ATTEST:	4 .**
Kimberly Bruns, City Clerk	
	LEGAL REVIEW:
	City Attorney's Office

# Exhibit "A" Property Description

### **Property Description**

Lots 15 and 16, Block 2781, Unit 40, CAPE CORAL, a subdivision according to the plat thereof recorded in Plat Book 17, Pages 81 to 97, inclusive, in the Public Records of Lee County, Florida.

Address: 104 NW 29th Ter Cape Coral FL 33993

Parcel ID Number: 26-43-23-C2-02781.0150

# Exhibit "B" List of Deferred Impact Fees

### Impact Fees

Fire/Rescue Impact Fee:	\$574.96
ALS Impact Fee:	\$35.15
Parks/Recreation Impact Fee:	\$1,115.00
Police Protection Impact Fee:	\$596.55
Road Impact Fee:	\$3,347.00
Total Impact Fees:	\$5,668.66

**(** 

47
Prepared by:
City of Cape Coral
Department of Community Development
P.O. Box 150027
Cape Coral, Florida 33915

## AFFORDABLE HOUSING IMPACT FEE DEFERRAL DEVELOPER AGREEMENT

THIS AFFORDABLE HOUSING IMPACT FEE DEFERRAL DEVELOPER AGREEMENT ("Agreement") is made and entered into on this standard day of November, 2020 by and between Habitat for Humanity of Lee and Hendry Counties, Inc. ("Developer"), a Florida Non-profit Corporation and the City of Cape Coral ("City"), a Florida Municipal Corporation.

#### RECITALS

WHEREAS, Developer is the owner of that certain real property in the City of Cape Coral, County of Lee, State of Florida, as more particularly described in the attached Exhibit "A" (the "Property"); and

WHEREAS, Developer intends to apply for building permits on the "Property"; and WHEREAS, upon the issuance of the Building Permits, certain impact fees are due and payable pursuant to the City of Cape Coral Code of Ordinances The applicable impact fees to the Building Permits are more particularly described in Exhibit "B" attached; and

WHEREAS, pursuant to the City of Cape Coral Code of Ordinances the City may defer the payment of certain impact fees for development of affordable housing if the Developer satisfies all requirements of Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, within the Code of Ordinances; and

WHEREAS, Developer intends to construct affordable housing on the Property; and

WHEREAS, the deferral of the impact fees is contingent on the sale of the property to an income eligible buyer ("Buyer") within 180 days of the issuance of the Certificate of Occupancy.

#### NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. All of the above recitals are true and correct and are fully incorporated into this Agreement by reference and made a part hereof.
- 2. City agrees to defer collection of the payment of the impact fees identified in Exhibit "B" from the Developer upon the Developer satisfying all the requirements contained in Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, and this Agreement.
- 3. If the dwelling unit is not sold to an eligible buyer within the 180-day period, then

the deferred impact fee is considered in default as of the date that the fee would have been due without the deferral; and the developer shall pay all the impact fees, including delinquency fees and interest dating back to the date that the fees would have been assessed but for the deferral.

- 4. The Developer acknowledges that prior to the sale to an eligible buyer, the eligible buyer shall execute an Owner's Impact Fee Deferral Agreement with the City, in a form approved by the City, and provide associated lien documents, pursuant to Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, of the Code of Ordinances.
- 5. If the dwelling unit is sold to an eligible buyer within the 180-day period, and the Owner's Impact Fee Deferral Agreement and associated lien documents are executed, the Developer shall be released of any obligations under this Agreement relating to the Property.
- 6. This Agreement shall be recorded in the Official Records of Lee County. The Developer shall the bear the costs of such recording.
- 7. The person executing this Agreement on behalf of the Developer hereby acknowledges he or she has been granted the authority to bind the Developer and agrees to hold the City harmless if it is later determined that such authority did not exist.
- 8. Severability. If any section, phrase, sentence or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and all other provisions shall remain effective and binding on the Developer.
- 9. Notice. Any notices desired or required to be given under this Agreement shall be in writing and shall either be personally delivered or shall be sent by mail, postage prepaid, to the Developer at the following addresses:

#### CITY OF CAPE CORAL

City of Cape Coral Department of Community Development PO Box 150027 Cape Coral, Florida 33915-0027

#### **DEVELOPER**

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Habitat for Humanity of Lee and Hendry Counties, Inc. 1288 North Tamiami Trail North Fort Myers, Florida 33903

- 10. Authority to Monitor. The Developer hereto acknowledges that the City of Cape Coral or its designee, shall have the authority to monitor and enforce the Developer's obligations hereunder.
- 11. Indemnify. The Developer hereby agree to protect, defend, indemnify and hold City of Cape Coral and its officers, employees, and agents harmless from and against any and all claims, penalties, damages, losses and expenses, professional fees, including,

without limitation, reasonable attorney's fees and all costs of litigation and judgments arising out of any claim, willful misconduct or negligent act, error or omission, or liability of any kind made by the Developer, their agents or employees, arising out of or incidental to the performance of this Agreement.

- 12. Modification. This Agreement shall be modified or amended only by the written Agreement of both parties.
- 13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue shall be in Lee County, Florida.
- 14. Effective Date. This Agreement shall be effective upon the date of approval by the City.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officials, on the date above first written.

WITNESSES!	DEVELOPER
faction Williams	By: Xuuy
Print name: <u>Jackie Williams</u>	Print name: <u>Rick Mercer</u>
01	Title: <u>President</u>
Print name: Olivia Thomas	
	CITY OF CAPE CORAL, FLORIDA
ATTEST:	By:
Kimberly Bruns, City Clerk	
	LEGAL REVIEW:
	City Attorney's Office

# Exhibit "A" Property Description

### **Property Description**

Lots 47 and 48, Block 3968, Unit 55, CAPE CORAL, a subdivision according to the plat thereof recorded in Plat Book 19, Page 92 to 106, inclusive, in the Public Records of Lee County, Florida.

Address: 310 NW 24th PI Cape coral FL 33993

Parcel ID Number: 08-44-23-C3-03968.0470

# Exhibit "B" List of Deferred Impact Fees

### Impact Fees

Fire/Rescue Impact Fee:	\$574.96
ALS Impact Fee:	\$35.15
Parks/Recreation Impact Fee:	\$1,115.00
Police Protection Impact Fee:	\$596.55
Road Impact Fee:	\$3,347.00
Total Impact Fees:	\$5,668.66

...

47
Prepared by:
City of Cape Coral
Department of Community Development
P.O. Box 150027
Cape Coral, Florida 33915

## AFFORDABLE HOUSING IMPACT FEE DEFERRAL DEVELOPER AGREEMENT

THIS AFFORDABLE HOUSING IMPACT FEE DEFERRAL DEVELOPER AGREEMENT ("Agreement") is made and entered into on this 18th day of Novembor. 2020 by and between Habitat for Humanity of Lee and Hendry Counties, Inc. ("Developer"), a Florida Non-profit Corporation and the City of Cape Coral ("City"), a Florida Municipal Corporation.

#### RECITALS

WHEREAS, Developer is the owner of that certain real property in the City of Cape Coral, County of Lee, State of Florida, as more particularly described in the attached Exhibit "A" (the "Property"); and

WHEREAS, Developer intends to apply for building permits on the "Property"; and

WHEREAS, upon the issuance of the Building Permits, certain impact fees are due and payable pursuant to the City of Cape Coral Code of Ordinances The applicable impact fees to the Building Permits are more particularly described in Exhibit "B" attached; and

WHEREAS, pursuant to the City of Cape Coral Code of Ordinances the City may defer the payment of certain impact fees for development of affordable housing if the Developer satisfies all requirements of Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, within the Code of Ordinances; and

WHEREAS, Developer intends to construct affordable housing on the Property; and

WHEREAS, the deferral of the impact fees is contingent on the sale of the property to an income eligible buyer ("Buyer") within 180 days of the issuance of the Certificate of Occupancy.

#### NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. All of the above recitals are true and correct and are fully incorporated into this Agreement by reference and made a part hereof.
- 2. City agrees to defer collection of the payment of the impact fees identified in Exhibit "B" from the Developer upon the Developer satisfying all the requirements contained in Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, and this Agreement.
- 3. If the dwelling unit is not sold to an eligible buyer within the 180-day period, then

the deferred impact fee is considered in default as of the date that the fee would have been due without the deferral; and the developer shall pay all the impact fees, including delinquency fees and interest dating back to the date that the fees would have been assessed but for the deferral.

- 4. The Developer acknowledges that prior to the sale to an eligible buyer, the eligible buyer shall execute an Owner's Impact Fee Deferral Agreement with the City, in a form approved by the City, and provide associated lien documents, pursuant to Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, of the Code of Ordinances.
- 5. If the dwelling unit is sold to an eligible buyer within the 180-day period, and the Owner's Impact Fee Deferral Agreement and associated lien documents are executed, the Developer shall be released of any obligations under this Agreement relating to the Property.
- 6. This Agreement shall be recorded in the Official Records of Lee County. The Developer shall the bear the costs of such recording.
- 7. The person executing this Agreement on behalf of the Developer hereby acknowledges he or she has been granted the authority to bind the Developer and agrees to hold the City harmless if it is later determined that such authority did not exist.
- 8. Severability. If any section, phrase, sentence or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and all other provisions shall remain effective and binding on the Developer.
- 9. Notice. Any notices desired or required to be given under this Agreement shall be in writing and shall either be personally delivered or shall be sent by mail, postage prepaid, to the Developer at the following addresses:

#### CITY OF CAPE CORAL

City of Cape Coral
Department of Community Development
PO Box 150027
Cape Coral, Florida 33915-0027

#### **DEVELOPER**

Habitat for Humanity of Lee and Hendry Counties, Inc. 1288 North Tamiami Trail North Fort Myers, Florida 33903

- 10. Authority to Monitor. The Developer hereto acknowledges that the City of Cape Coral or its designee, shall have the authority to monitor and enforce the Developer's obligations hereunder.
- 11. Indemnify. The Developer hereby agree to protect, defend, indemnify and hold City of Cape Coral and its officers, employees, and agents harmless from and against any and all claims, penalties, damages, losses and expenses, professional fees, including,

without limitation, reasonable attorney's fees and all costs of litigation and judgments arising out of any claim, willful misconduct or negligent act, error or omission, or liability of any kind made by the Developer, their agents or employees, arising out of or incidental to the performance of this Agreement.

- 12. Modification. This Agreement shall be modified or amended only by the written Agreement of both parties.
- 13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue shall be in Lee County, Florida.
- 14. Effective Date. This Agreement shall be effective upon the date of approval by the City.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officials, on the date above first written.

WITNESSES:	DEVELOPER
Sackin Wellians	By:
Print name: <u>Jackie Williams</u>	Print name: <u>Rick Mercer</u>
On	Title: <u>President</u>
Print name: Olivia Thomas	
	CITY OF CAPE CORAL, FLORIDA
ATTEST:	By: Joe Coviello, Mayor
Kimberly Bruns, City Clerk	
	LEGAL REVIEW:
	City Attorney's Office

# Exhibit "A" Property Description

### **Property Description**

Lots 42 and 43, Block 2834, Unit 40, CAPE CORAL, a subdivision according to the plat thereof recorded in Plat Book 17, Page 81 to 97, inclusive, in the Public Records of Lee County, Florida.

Address: 509 NW 32<sup>nd</sup> St Cape Coral FL 33993

Parcel ID Number: 23-43-23-C4-02834.0420

# Exhibit "B" List of Deferred Impact Fees

### Impact Fees

Fire/Rescue Impact Fee: \$574.96

ALS Impact Fee: \$35.15

Parks/Recreation Impact Fee: \$1,115.00

Police Protection Impact Fee: \$596.55

Road Impact Fee: \$3,347.00

Total Impact Fees: \$5,668.66

47
Prepared by:
City of Cape Coral
Department of Community Development
P.O. Box 150027
Cape Coral, Florida 33915

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THIS AFFORDABLE HOUSING IMPACT FEE DEFERRAL DEVELOPER AGREEMENT ("Agreement") is made and entered into on this 18th day of November, 2020 by and between Habitat for Humanity of Lee and Hendry Counties, Inc. ("Developer"), a Florida Non-profit Corporation and the City of Cape Coral ("City"), a Florida Municipal Corporation.

#### RECITALS

WHEREAS, Developer is the owner of that certain real property in the City of Cape Coral, County of Lee, State of Florida, as more particularly described in the attached Exhibit "A" (the "Property"); and

WHEREAS, Developer intends to apply for building permits on the "Property"; and WHEREAS, upon the issuance of the Building Permits, certain impact fees are due and payable pursuant to the City of Cape Coral Code of Ordinances The applicable impact fees to the Building Permits are more particularly described in Exhibit "B" attached; and

WHEREAS, pursuant to the City of Cape Coral Code of Ordinances the City may defer the payment of certain impact fees for development of affordable housing if the Developer satisfies all requirements of Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, within the Code of Ordinances; and

WHEREAS, Developer intends to construct affordable housing on the Property; and

WHEREAS, the deferral of the impact fees is contingent on the sale of the property to an income eligible buyer ("Buyer") within 180 days of the issuance of the Certificate of Occupancy.

#### NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. All of the above recitals are true and correct and are fully incorporated into this Agreement by reference and made a part hereof.
- 2. City agrees to defer collection of the payment of the impact fees identified in Exhibit "B" from the Developer upon the Developer satisfying all the requirements contained in Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, and this Agreement.
- 3. If the dwelling unit is not sold to an eligible buyer within the 180-day period, then

the deferred impact fee is considered in default as of the date that the fee would have been due without the deferral; and the developer shall pay all the impact fees, including delinquency fees and interest dating back to the date that the fees would have been assessed but for the deferral.

- 4. The Developer acknowledges that prior to the sale to an eligible buyer, the eligible buyer shall execute an Owner's Impact Fee Deferral Agreement with the City, in a form approved by the City, and provide associated lien documents, pursuant to Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, of the Code of Ordinances.
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- 7. The person executing this Agreement on behalf of the Developer hereby acknowledges he or she has been granted the authority to bind the Developer and agrees to hold the City harmless if it is later determined that such authority did not exist.
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- 9. Notice. Any notices desired or required to be given under this Agreement shall be in writing and shall either be personally delivered or shall be sent by mail, postage prepaid, to the Developer at the following addresses:

#### CITY OF CAPE CORAL

City of Cape Coral Department of Community Development PO Box 150027 Cape Coral, Florida 33915-0027

#### DEVELOPER

Habitat for Humanity of Lee and Hendry Counties, Inc. 1288 North Tamiami Trail North Fort Myers, Florida 33903

- 10. Authority to Monitor. The Developer hereto acknowledges that the City of Cape Coral or its designee, shall have the authority to monitor and enforce the Developer's obligations hereunder.
- 11. Indemnify. The Developer hereby agree to protect, defend, indemnify and hold City of Cape Coral and its officers, employees, and agents harmless from and against any and all claims, penalties, damages, losses and expenses, professional fees, including,

without limitation, reasonable attorney's fees and all costs of litigation and judgments arising out of any claim, willful misconduct or negligent act, error or omission, or liability of any kind made by the Developer, their agents or employees, arising out of or incidental to the performance of this Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officials, on the date above first written.

WITNESSES:	DEVELOPER
Jacke Williams	By:
Print name: <u>Jackie Williams</u>	Print name: <u>Rick Mercer</u>
Olm	Title: <u>President</u>
Print name: Olivia Thomas	
	CITY OF CAPE CORAL, FLORIDA
ATTEST:	By: Joe Coviello, Mayor
Kimberly Bruns, City Clerk	
	LEGAL REVIEW:
	City Attorney's Office

# Exhibit "A" Property Description

### **Property Description**

Lots 8 and 9, Block 3899, Unit 53, CAPE CORAL, a subdivision according to the plat thereof recorded in Plat Book 19, Pages 64 to 78, inclusive, in the Public Records of Lee County, Florida.

Address: 2300 NW 18th Ter Cape Coral FL 33993

Parcel ID Number: 33-43-23-C4-03899.0080

# Exhibit "B" List of Deferred Impact Fees

### Impact Fees

Fire/Rescue Impact Fee: \$574.96

ALS Impact Fee: \$35.15

Parks/Recreation Impact Fee: \$1,115.00

Police Protection Impact Fee: \$596.55

Road Impact Fee: \$3,347.00

Total Impact Fees: \$5,668.66

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Prepared by:
City of Cape Coral
Department of Community Development
P.O. Box 150027
Cape Coral, Florida 33915

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#### RECITALS

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WHEREAS, pursuant to the City of Cape Coral Code of Ordinances the City may defer the payment of certain impact fees for development of affordable housing if the Developer satisfies all requirements of Chapter 2, Article II, Division 9, the Affordable Housing Impact Fee Deferral Pilot Program, within the Code of Ordinances; and

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WITNESSES:	DEVELOPER
Sector William	By:
Print name: <u>Jackie Williams</u>	Print name: <u>Rick Mercer</u>
Print name: Olivia Thomas	Title: <u>President</u>
	CITY OF CAPE CORAL, FLORIDA
ATTEST:	By: Joe Coviello, Mayor
Kimberly Bruns, City Clerk	
	LEGAL REVIEW:
	City Attorney's Office

# Exhibit "A" Property Description

### **Property Description**

Lots 5 and 6, Block 3973, Unit 55, CAPE CORAL, a subdivision according to the plat thereof recorded in Plat Book 19, Page 92 to 106, inclusive, in the Public Records of Lee County, Florida.

Address: 2902 NW Embers Ter Cape Coral FL 33993

Parcel ID Number: 08-44-23-C4-03973.0050

# Exhibit "B" List of Deferred Impact Fees

### **Impact Fees**

Fire/Rescue Impact Fee: \$574.96

ALS Impact Fee: \$35.15

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Total Impact Fees: \$5,668.66

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WITNESSES:	DEVELOPER
Lacked Williams	By:
Print name: <u>Jackie Williams</u>	Print name: <u>Rick Mercer</u>
<u>Ou</u>	Title: <u>President</u>
Print name: Olivia Thomas	
	CITY OF CAPE CORAL, FLORIDA
ATTEST:	By:
Kimberly Bruns, City Clerk	
	LEGAL REVIEW:
	City Attorney's Office

# Exhibit "A" Property Description

### **Property Description**

Lots 40 and 41, Block 5115, Unit 80, CAPE CORAL, a subdivision according to the plat thereof recorded in Plat Book 22, Page 140 to 159, inclusive, in the Public Records of Lee County, Florida.

Address: 2904 NW 19th Ave Cape Coral FL 33993

Parcel ID Number: 28-43-23-C4-05115.0400

# Exhibit "B" List of Deferred Impact Fees

### Impact Fees

Fire/Rescue Impact Fee:	\$574.96
ALS Impact Fee:	\$35.15
Parks/Recreation Impact Fee:	\$1,115.00
Police Protection Impact Fee:	\$596.55
Road Impact Fee:	\$3,347.00
Total Impact Fees:	\$5,668.66



## AGENDA REQUEST FORM CITY OF CAPE CORAL

Item Number: A.(5)
Meeting Date: 1/6/2021

com Type: CONSENT A

Item Type: CONSENT AGENDA

#### TITLE:

Resolution 5-21 Approve the Contract with Douglas S. Lee, MD for Medical Director Services in the amount of \$55,500 for the first year and a 3% cost escalation for future years; The term of the contract is for five years starting on February 12, 2021 thru February 11, 2026; And authorize the City Manager or Designee to execute the agreement, renewals and amendments. This procurement is exempt from competitive solicitation per the City of Cape Coral Procurement Ordinance exemption, Section 2-141 (12) Health services involving examination, diagnosis, treatment, prevention, medical consultation or administration; Department: Fire; Estimated Annual Dollar Value: \$55,500; (General Fund – escalation up to 3% on future years)

#### **REQUESTED ACTION:**

Approve or Deny

#### SUMMARY EXPLANATION AND BACKGROUND:

- Douglas S. Lee, MD currently provides the services of a Medical Director for the Fire Department which is an essential component of the Cape Coral Fire Department Certificate of Public Convenience and Necessity for Rescue Service. Per State of Florida State Statute 401.265, Basic Life Support (BLS) or Advanced Life Support (ALS) service must employ or contract with a Medical Director.
- The services provided by the Medical Director include training, supervising and accepting direct responsibility of the medical performance of the City's First Responders, Emergency Medical Technicians and Paramedics. The Medical Director will oversee the City's Fire Department and Police Department.
- 3. If approved, the term of the contract is for five years, starting on February 12, 2021, thru February 11, 2026. Services will be in the amount of \$55,500 for the first year and a 3% cost escalation for future years
- 4. Health Services is a service exempt from competitive solicitation per the City of Cape Coral Procurement Ordinance, Article VII, Section 2-141 (12) Health services involving examination, diagnosis, treatment, prevention, medical consultation or administration

#### STRATEGIC PLAN ALIGNMENT:

1. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below.

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

**ELEMENT E:** INCREASE QUALITY OF LIFE FOR OUR CITIZENS BY DELIVERING

#### PROGRAMS AND SERVICES THAT FOSTER A SAFE COMMUNITY

#### **RECOMMENDATIONS:**

Staff recommend approval of the Contract with Dr. Douglas S. Lee, MD

#### **SOURCE OF ADDITIONAL INFORMATION:**

Ryan Lamb, Fire Chief rlamb@capecoral.net 242-3601

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

This is a budgeted item

Funding Information: These funds are budgeted under Emergency Medical Services / EMS Other Professional Services 22030 531399. Future years are based on annual appropriation.

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

#### PREPARED BY:

Wanda Roop Division- Procurement Department-Finance

#### ATTACHMENTS:

**Description** Type

1. Resolution 5-21 Resolution

#### **RESOLUTION 5-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING THE CONTRACT WITH DR. DOUGLAS S. LEE, MD FOR MEDICAL DIRECTOR SERVICES; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Dr. Douglas S. Lee, MD currently provides the services of a Medical Director for the Cape Coral Fire Department; and

WHEREAS, Chapter 401.265 of Florida Statutes, requires Basic Life Support (BLS) or Advanced Life Support (ALS) services must employ or contract with a medical director; and

WHEREAS, the services provided by the Medical Director include training, supervising and accepting direct responsibility of the medical performance of the City's First Responders, Emergency Medical Technicians and Paramedics for the City's Fire Department and Police Department; and

WHEREAS, the term of the contract is effective from February 12, 2021 through February 11, 2026; and

WHEREAS, Section 2-141 of the City of Cape Coral Code of Ordinances exempts Health Services from competitive solicitation; and

WHEREAS, the City Manager finds that it is in the best interest of the City to enter into the Contract for Medical Director Services and recommends approval of the Contract with Dr. Douglas S. Lee, MD in the amount of \$55,000 for the first year with a 3% cost of living increase for future years.

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

Section 1. The City Council hereby approves the Contract between the City of Cape Coral and Dr. Douglas S. Lee, MD for Medical Director Services in the amount of \$55,000, for the first year, with a 3% cost of living increase for future years. A copy of the Contract is attached hereto as Exhibit 1.

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

		OF THE CITY OF CAPE CO Y OF, 20	
		JOE COVIELLO	D, MAYOR
VOTE OF MAYO	OR AND COUNCILMI	EMBERS:	
COVIELLO GUNTER SHEPPARD HAYDEN		NELSON WELSH WILLIAMS COSDEN	
ATTESTED TO 2 2021.	and filed in my o	OFFICE THIS DAY	OF
		KIMBERLY BRU CITY CLERK	UNS, CMC

APPROVED AS TO FORM:

DOLORES D. MENENDEZ CITY ATTORNEY

res/Approve Contract-Dr. Douglas S. Lee MD

#### EXHIBIT 1

#### MEDICAL DIRECTOR SERVICES

THIS CONTRACT is made this	day of,	2021 by	and	between	the	City	of	Cape
Coral, Florida, hereinafter called "City",	and Douglas S. Lee, M	D, hereinat	fter c	alled "Cor	nsult	ant".		

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

- 1. The Consultant will provide Medical Director Services for the City of Cape Coral Fire Department and for the City of Cape Coral Police Department in accordance with the Contract Documents.
- 2. The Consultant will furnish all of the services necessary for the completion of the services described in the Contract Documents. Time is of the essence in the performance of this Contract.
- 3. The Term "Contract Documents" shall include this Contract, Addenda, Contractor's Proposal, except when it conflicts with any other contractual provision, Certificates. In the event of conflict between any provision of any other document referenced herein as part of the contract and this Contract, the terms of this Contract shall control.
- 4. The Consultant agrees to perform all of the work described in the Contract Documents per fee schedule as outlined in "Exhibit A", attached hereto and made a part hereof.
- 5. The term of this contract shall be from February 12, 2021 through February 11, 2026.
- 6. This Contract may be terminated by the City for its convenience upon thirty (30) days prior written notice to the Consultant. This contract may be terminated by the Consultant by providing a ninety (90) day prior written notice to City.
  - In the event of termination, the Consultant shall be paid for work performed to the day of such termination.
- 7. <u>Assignment:</u> This Contract may not be assigned except with the written consent of the City, and if so assigned, shall extend and be binding upon the successors and assigns of the Consultant.
- 8. <u>Disclosure:</u> The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the Contract.
- 9. <u>Administration of Contract:</u> The Fire Chief, or his designated representative, shall administer this Contract for the City.
- 10. Governing Law: The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida.

In the event of any litigation arising out of this Contract, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees.

- 11. <u>Amendments:</u> No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties.
- 12. <u>Consultant's Representations:</u> In order to induce City to enter into the Contract, Consultant makes the following representations:
  - Consultant has been familiarized with the Contract Documents and the nature and extent of the work required to be performed, locality, local conditions, and Federal, State, and Local laws, ordinances, rules and regulations that in any manner may affect costs, progress or performance of the work.
- 13. <u>Indemnity:</u> To the extent permitted by law (F.S. 768.28), the Consultant shall indemnify and hold harmless the City its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Consultant and any persons employed or utilized by Consultant in the performance of this Contract.
- 14. <u>Invalid Provision:</u> The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 15. <u>Project Records</u>: The Consultant shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting methods, and the City reserves the right to determine the record-keeping method in the event of non-conformity. These records shall be maintained for five (5) years after final payment has been made and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.
- Annual Appropriation: Pursuant to FL Statute §166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Contract is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City if the City Council reduces or eliminates appropriations.
- 17. <u>Unauthorized Aliens:</u> The employment of unauthorized aliens by any Consultant is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Consultant knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-consultants used by the Consultant as well.
- 18. <u>Entire Agreement:</u> This Contract constitutes the entire agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.
- 19. <u>Electronic Signatures</u>: The parties acknowledge and agree that this Contract may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.
- 20. <u>Counterparts</u>: This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

- 21. <u>Insurance</u>: The Consultant as a contracted agent for the City would be covered under the City of Cape Coral Florida Municipal Insurance Trust (FMIT), which is currently applicable. Coverage does not apply to liability arising from the Consultant's activity outside of the course and scope of duties for the City of Cape Coral.
- 22. <u>Benefits</u>: The parties agree that the Consultant shall not be eligible to receive any of the benefits which may be available to regular City employees, including but not limited to medical insurance, life insurance, disability insurance, paid holidays, leave time and/or tuition reimbursement. In addition, the parties agree that the Consultant shall not receive pension benefit, which is generally available to regular City employees and shall not be eligible to participate in the General Employees' Retirement Plan.

(this section intentionally left blank)

#### **Medical Director Services**

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials this Contract which shall be deemed an original on the date last signed as below written:

WITNESS CITY:		CITY:	
		City of Cape (	Coral, Florida
Signature:		Signature:	
Typed Name: Kimberly 8	Bruns, CMC	Typed Name:	Roberto Hernandez
Title: City Clerk		Title:	City Manager
		Date:	
		CITY LEGAL  Dolores Men  City Attorney	12 16 2020 endez Date
		CONTRACTO	DR:
		Douglas S. Le	e, MD
		Signature:	12
		Typed Name:	Douglas S Lee, MD
		Title:M	edical Director
		Date:	

#### **EXHIBIT A**

# MEDICAL DIRECTOR SERVICES

#### DOUGLAS S. LEE, MD

1635 Gordon River Lane Naples, FL 34104 (646)-391-5600 October 15, 2020

Douglas S. Lee, MD DUGLEE@HOTMAIL.COM

## **Table of Contents**

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Proposer's Qualifications and Experience	5
Cost Proposal	10

#### MEDICAL DIRECTOR SERVICES

Douglas S. Lee, MD 1635 Gordon River Lane Naples, FL 34104

I believe that the role of the EMS Medical Director is to provide the framework to ensure that quality medical care is provided to the public, regardless of patients' socioeconomic backgrounds, time of day, or nature of emergency. I feel that the best way to achieve this goal is through continuous paramedic training that involves both clinical experiences, as well as didactic instruction to reinforce the fundamentals of prehospital medical care. In addition, a rigorous QA system must be maintained as a feedback mechanism to assure that the medics are adhering to protocols that safeguard public safety. To maximize the utilization of the resources of the local fire and police departments, the EMS medical director must be able to integrate both BLS and ALS protocols to their utmost efficiency.

I will continue to work closely with the EMS Fire Battalion Chief to establish the general patient care-related activities of the agency. This will include ongoing education and training exercises, policy development, quality improvement protocols, liaison encounters between the different agencies, and any corrective actions that may arise related to patient care interactions. I will refine the current standard operating procedures (SOPs), training curriculums and protocols. I support advancing the medical capabilities of the department to serve the community in the setting of the current pandemic. I will maintain close collaboration with Lee County EMS as well as the Cape Coral Police Department in all aspects of public safety. Future areas of interest include excited delirium, airway management in trauma, advanced practice paramedicine, and the implementation of COVID-19 testing for the local residents.

#### MEDICAL DIRECTOR SERVICES

Douglas S. Lee, MD 1635 Gordon River Lane Naples, FL 34104

I am a practicing Emergency Physician who is residency trained in Emergency Medicine with additional fellowship training in emergency ultrasound. I completed my undergraduate studies at the University of Pennsylvania and received my medical degree at the University of Medicine and Dentistry of New Jersey. I underwent my residency training at the Mount Sinai School of Medicine in New York where I served as the Chief Resident in Emergency Medicine. I have taught the oral board review course for the American Academy of Emergency Medicine and served on the board of directors for the Florida Chapter of the American Academy of Emergency Medicine. I have held Clinical Assistant Professorships at Nova Southeastern University as well as Florida State University. I am currently the Associate Medical Director of Collier EMS, Medical Director of Cape Coral Fire, Clinical Medical Director at Lee Health Coconut Point and an attending physician in Emergency Medicine in the Lee Memorial Health System. I am actively involved in teaching, and have given lectures to physicians, students, nurses, and paramedics, both nationally, and internationally.

#### DOUGLAS S. LEE, MD

1635 Gordon River Lane Naples, FL 34104 Telephone: (646)-391-5600

E-mail: duglee@hotmail.com

#### **EMPLOYMENT**

December 2018 -

Present

Clinical Medical Director, Lee Health Coconut Point Emergency

Department Estero, FL

January 2016-

Present

Medical Director, Cape Coral Fire Department

Cape Coral, FL

October 2007 -

Present

Attending Physician, Emergency Medicine

Lee Health Ft. Myers, FL

March 2008 – Present Associate Medical Director, Collier County EMS

Collier County, FL

October 2005 -April 2008 Attending Physician, Emergency Medicine

Naples Community Hospital

Naples, FL

September 2004 -October 2005 Attending Physician, Emergency Medicine

Simi Valley Hospital Simi Valley, CA

July 2003 – July 2004 Attending Physician, Emergency Medicine Department of Emergency Medicine

North Shore University Hospital

Manhasset, NY

ACADEMIC APPOINTMENTS

February 2013-

Clinical Assistant Professor, Department of Family Medicine

Florida State University

Ft. Myers, FL

**FELLOWSHIP** 

Present

July 2003 – June 2004 Fellow, Division of Emergency Ultrasound Department of Emergency Medicine

North Shore University Hospital

Manhasset, NY

RESIDENCY

June 2002 -Chief Resident, Emergency Medicine July 2003

Mount Sinai School of Medicine

New York, NY

June 2000 -Resident, Emergency Medicine July 2003 Mount Sinai School of Medicine

New York, NY

INTERNSHIP

June 1999 -Intern, Emergency Medicine

July 2000 St. Luke's-Roosevelt Hospital Center

New York, NY

**EDUCATION** 

1995 - 1999Doctor of Medicine

UMDNJ - New Jersey Medical School

Newark, NJ

1991 - 1995 Bachelor of Arts in Biochemistry, with Honors

University of Pennsylvania

Philadelphia, PA

LICENSURE AND CERTIFICATION

December 2014 Fellow, American College of Emergency Medicine

Fellow, American Academy of Emergency Medicine

Hawaii State Medical License

ATLS Re-certification May 2016

April 2009 American Registry for Diagnostic Medical Sonography

November 2005 Florida State Medical License

October 2004 Board Certification in Emergency Medicine, American Board of

**Emergency Medicine** 

May 2000 ACEP Emergency Ultrasound Course Certification

ACLS, ATLS, PALS, NALS Certification

HONORS/AWARDS

October 2002 Recipient, Roche Pharm \$5000 Unrestricted Educational Grant for ID

Lecture Series, Dept. of Emergency Medicine, Mount Sinai School of

Medicine

Recipient, \$25,000 Award for Outstanding Lifesaving Service Allocated September 2002

to the Mount Sinai Department of Emergency Medicine Education Fund

June 2002 Outstanding House Staff Teacher Nomination, selected by the medical

students of the Mount Sinai School of Medicine

October 2001 Mount Sinai Department of Emergency Medicine Research Grant for

Triage Research in Amsterdam, The Netherlands

December 2001 Residency Service Award, Dept. of Emergency Medicine, Mount Sinai

School of Medicine

**PUBLICATIONS** 

**Abstracts** 

May 2002 Barsky CL, Rojas M, Lee DS, Bickell N. Time Matters: Risk of

Appendiceal Rupture in Emergency Department Patients (abstract).

Academic Emergency Medicine. 2002; 9:381

May 2000 Lee DS, Shih RD, Axtell S, Ishmail M, Jaker M. Methemoglobinemia in

Smoke Inhalation Victims (abstract). Academic Emergency Medicine.

2000; 7 (5):497.

On-Line Book Chapters

December 2000 Lee DS, Richardson L. Heat Cramps. eMedicine Journal [serial online].

2001. Available at http://www.emedicine.com/aaem/topic240.htm.

December 2000 Lee DS, Olmedo R. Iron Poisoning. eMedicine Journal [serial online].

2001. Available at http://www.emedicine.com/aaem/topic275.htm.

July 2000 Weekes A, Lee DS. Cocaine Addiction. eMedicine Journal [serial

online]. 2000. Available at http://www.emedicine.com/ped/topic2666.htm.

January 2000 Lee DS, Bania T. Toxicity, Mushrooms - Amatoxin. eMedicine Journal

[serial online]. 2000. Available at

http://www.emedicine.com/ped/topic76.htm.

Original Research

July 1999 Lee DS, Shih RD. Methemoglobinemia in Smoke Inhalation Victims

(manuscript). Research in Division of Emergency Medicine, University Hospital, UMDNJ – NJ Medical School. IRB Approved April 1999. (in

progress)

**PRESENTATIONS** 

International Presentations

October 2001 Grand Rounds – Departments of Emergency Medicine and Surgery.

Onze Lieve Vrowes Gasthius Hospital, Amsterdam, The Netherlands

"Current Advances in Emergency Medicine Training"

October 2001 Grand Rounds – Department of Emergency Medicine. St. Elisabeth

Hospital, Tilburg, The Netherlands

"GI Decontamination in the Poisoned Patient"

October 2001 Department of Emergency Medicine, Landspitalinn Hospital, Reykjavik,

Iceland

"Emergency Medicine Training in the United States"

#### **National Presentations**

May 2003 Society for Academic Emergency Medicine Annual Meeting, Boston, MA.

Preparing for the Chief Resident Year (lecture)

May 2000 Society for Academic Emergency Medicine Annual Meeting, San

Francisco, CA. Methemoglobin in Smoke Inhalation Victims (poster)

#### Regional Presentations

August 2003 North Shore – Forest Hills Faculty Conference, Forest Hills, NY.

Hepatobiliary Ultrasound

April 2003 New York Metropolitan Emergency Medicine Chief Resident Retreat,

New York, NY. Difficult Situations Faced as Chief Resident...and How

They Were Resolved

May 2001 Emergency Medicine and Trauma Surgery Conference – Elmhurst

Hospital Center, NY

"Diagnosis of Traumatic Pericardial Tamponade"

STEMI Committee Lee Memorial Health System

#### HOSPITAL AND DEPARTMENTAL SERVICES

2011-Heseni	o i Livii continuitee, Lee Mchonai i icaith oystoni
2009-Present	Pharmacy & Therapeutics Committee, Lee Memorial Health System
2006-2007	Chair, Quality Committee, Emergency Physicians of Naples

2004-2005 Physician Well-being Committee, Simi Valley Hospital

2002-2003 Quality Initiatives Committee, Mount Sinai School of Medicine

2002-2003 Triage Committee, Dept. of Emergency Medicine, Mount Sinai School of

Medicine

2002-2003 Customer Service Committee, Dept. of Emergency Medicine, Mount

Sinai School of Medicine

#### **TEACHING EXPERIENCE**

2011 Procent

April 2006-2012 Lecturer, NOVA Southeastern University, PA program, Ft. Myers, FL

April 2006 Lecturer, International College Physician's Assistant Program, Naples,

FL

May 2006 Lecturer, International College Physician's Assistant Program, Naples,

FL

April 2006 Instructor, AAEM Oral Board Review Course, Orlando, FL

May 2004 Instructor, Connecticut Hospital Association Emergency Ultrasound

Course

November 2003	Instructor, Elmhurst Hospital Emergency Department Introduction to Emergency Ultrasound Course
July 2002	Group Instructor, Introduction to Emergency Medicine, First-Year Medical Student Course, Mount Sinai School of Medicine
July 2001-2003	Resident Director, Medical Student Emergency Wound Care Course

## **Cost Proposal**

Medical Director Services

Douglas S. Lee, MD 1635 Gordon River Lane Naples, FL 34104

Annual cost of services for Cape Coral Fire/EMS Medical Direction

Base cost: \$55,000

Reimbursement for Continuing Medical Education: \$500

Annual Total Cost for the First Year: \$55,500

Cost of Living Adjustment of 3% per year

Term of agreement: 5 years

## Cape Coral Fire Medical Director Scope of Work

Approve the level of prehospital care rendered locally by Department personnel

Active involvement in the training and continuing education of Department personnel under his medical direction

Active involvement in the performance review of Department personnel under his direct supervision with development of remediation plan, as necessary

Develop, implement and revise protocols and/or standing delegation orders governing prehospital care and medical aspects of patient triage

Function as the primary liaison between the Department and the local medical community, including medical directors from other agencies

Develop and implement the Department's medical response to any changing needs of the community

Medical Director will be licensed in the state of Florida as an M.D., board-certified in Emergency Medicine with demonstrated experience in pre-hospital care.

Medical Director will supervise and accept direct responsibility for the medical performance of the First Responder, Emergency Medical Technician (EMT's) and Paramedics of Basic Life Support and Advanced Life Support (BLS, ALS) functioning for the emergency medical service system in the City of Cape Coral.

Perform all services required pursuant to Chapter 401, Florida Statutes, the applicable rules of any governmental agency implementing said Chapter and any duties upon written notice from the Florida Department of Health and that such additional duties are required of the Medical Director or upon notice from the City that such additional duties have been established by the Department of Health.

Develop medically correct standing orders and/or protocols in conjunction with Lee County EMS, which permit specified ALS procedures when communication cannot be established with a supervising physician and when any delay in patient care would have potential life or limb threatening consequences.

Develop and implement a patient care quality assurance system to assess the medical performance of Paramedics and EMT's. Provide audit performance of system personnel by use of a prompt review of run reports. Provide direct observation, comparison, or performance standards for drugs (including security procedures in compliance with chapter 499 F.S and Chapter 893 F.S).

Specify medication substitutions in writing.

Notify the department in writing when the use of telemetry is not necessary

Assume responsibility for training EMT/Paramedics in the use of automatic or semi-automatic defibrillators, supraglottic airway devices, endotracheal intubation, intravenous and intraosseous equipment and techniques.

Ensure that all personnel performing as EMT's and Paramedics for the emergency medical service provider are trained in the use of trauma scorecard methodology as provided in Rule 64J-2.000 and Rule 64J-2.005, as they may be amended from time to time.

Develop trauma transport protocols for submission to the Fire Department for approval.

Develop stroke transport protocols for submission to the Fire Department for approval.

Submit to the Fire Department, within 30 days, any deviation from the department or agency approved trauma transport protocols, including a copy of the run report and a written explanation regarding the deviation.

Participate as crew member of an ALS vehicle for a minimum of 10 hours per year of continuing medical education related to pre-hospital care or teaching or a combination of both.

The EMS Training Center shall by contract require such Medical Director to be available for classroom teaching or review of student performance and participate in direct contact time with ALS providers for a minimum of 10 hours per year.

Establish a quality assurance process to provide for quality assurance review of all Emergency Medical Technicians and Paramedics operating under the supervision of the Medical Director.

Medical Director shall document facts if there is reasonable belief that conduct by an EMT or Paramedic may constitute one or more grounds for discipline as provided by F.S. 401.11, he shall document facts and other information related to the alleged violation. The Medical Director shall report to the Florida Department of Health any EMT or Paramedic whom the Medical Director reasonably believes to have acted in a manner which might constitute grounds for disciplinary action.

If the Medical Director, in good faith, gives oral or written instruction to certified emergency medical personnel for the provisions of emergency care and provide emergency medical care and treatment for the purpose of F.S. 768.13(2).

Provide medical direction for the Cape Coral Police Department (CCPD). This includes:

- The development of a Tactical Medical Team in the Fire Department.
- Approval of medications, including, but not limited to Naloxone.



## AGENDA REQUEST FORM CITY OF CAPE CORAL

Item Number: A.(6)
Meeting Date: 1/6/2021

Item Type: CONSENT AGENDA

#### TITLE:

Resolution 8-21 Acceptance of Drug Recognition Expert (DRE) Call Out Subcontract Agreement, to conduct DRE evaluations on an overtime basis; Department: Police; Dollar Value: \$8,000; No cash match; (Fund: N/A)

#### **REQUESTED ACTION:**

Approve or Deny

#### **SUMMARY EXPLANATION AND BACKGROUND:**

- 1. Funding is provided by the Florida Department of Transportation managed by the University of North Florida, Institute of Police Technology and Management.
- 2. Funding is available from the date the contract is executed to September 30, 2021.
- 3. Funds will be used to conduct Drug Recognition Expert (DRE) evaluations on a call-out overtime basis.
- 4. No matching funds are required.
- 5. The Police Department may request an increase in funds during the contract period, if funds are needed and available.
- 6. The Police Department is requesting approval for the City Manager to execute the current and any future award documents during the funding period.
- 7. Award documents will be presented to the City Manager for signature.

#### STRATEGIC PLAN ALIGNMENT:

1. 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

#### **RECOMMENDATIONS:**

The Police Department is recommending approval and execution of this funding.

#### SOURCE OF ADDITIONAL INFORMATION:

Anthony Sizemore, Interim Police Chief; asizemor@capecoral.net; 239-574-0623

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

- 1. Funding is provided by the Florida Department of Transportation managed by the University of North Florida, Institute of Police Technology and Management.
- 2. \$8,000 is being awarded on a reimbursable basis.
- 3. There is no match required.
- 4. Upon the acceptance of the award, a new account string will be set up using a designated GL specific to DRE grant funding.

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

#### PREPARED BY:

Shannon Northorp Division- Administration Department- Police

#### ATTACHMENTS:

**Description** Type

1. Resolution 8-21 Resolution

#### **RESOLUTION 8-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING THE FLORIDA DEPARTMENT OF TRANSPORTATION SUB-GRANT AWARD IN THE AMOUNT OF \$8,000 FOR THE DRUG RECOGNITION EXPERT (DRE) CALL-OUT PROJECT; AUTHORIZING THE CITY MANAGER AND CHIEF OF POLICE TO EXECUTE ALL DOCUMENTS RELATED TO THIS GRANT AWARD; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation (DOT) made available subgrant funds provided by the Institute of Police Technology and Management; and

WHEREAS, the sub-grant reimburses law enforcement agencies under DOT Project Number M5X-2021-00104; and

WHEREAS, the City of Cape Coral has been awarded \$8,000 for the purpose of reimbursement of overtime costs incurred for the performance of qualified drug influence evaluations related to possible violations of Florida Statute 316.193, Driving Under the Influence; and

WHEREAS, the City Council desires to authorize the City Manager and Chief of Police to execute any required documentation in order to authorize the reimbursement of \$8,000 for the DRE Call-out Project.

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

Section 1. The City Council hereby approves the sub-grant award from the State of Florida Department of Transportation (DOT) in the amount of \$8,000 as reimbursement for overtime costs incurred for the performance of qualified drug influence evaluations related to possible violations of Florida Statute 316.193, Driving Under the Influence, under the Cape Coral Drug Recognition Expert (DRE) Call-out Project. A copy of the sub-grant award is attached hereto as Exhibit 1.

Section 2. The City Council hereby authorizes the City Manager and Chief of Police to execute any documents required to authorize the reimbursement of \$8,000 for the Cape Coral Drug Recognition Expert (DRE) Call-out Project.

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

ADOPTED BY THE CITY COUNCIL OF THE COUNCIL SESSION THIS DAY OF	E CITY OF CAPE CORAL AT ITS REGULAR, 2021.
	JOE COVIELLO, MAYOR
VOTE OF MAYOR AND COUNCILMEMBERS:	
COVIELLO GUNTER SHEPPARD HAYDEN	NELSON WELSH WILLIAMS COSDEN
ATTESTED TO AND FILED IN MY OFFICE T	HIS, 2021.
	KIMBERLY BRUNS CITY CLERK

APPROVED AS TO FORM:

DOLORES D. MENEN CITY ATTORNEY

Res\Grant - FDOT DRE Call-Out



RON DESANTIS GOVERNOR 605 Suwannee Street Tallahassee, FL 32399-0450 KEVIN J. THIBAULT, P.E. SECRETARY

December 16, 2020

Carol Jolly
DRE Coordinator
Institute of Police Technology and Management
12000 Alumni Drive
Jacksonville, FL 32224

RE: Project Name: Drug Recognition Expert (DRE) Call-out

Project Number: M5X-2021-00104 DOT Contract Number: G1Q35

Dear Ms. Jolly:

We have reviewed the draft subcontract agreement with the Cape Coral Police Department not to exceed \$8,000.00 is hereby approved. The agency will be reimbursed for the following benefit costs as part of the "fully burdened" rate:

- FICA 7.65%
- Retirement 13.29%
- Workers Comp 3.43%
- Shift Differential \$1.00/Hour Flat Rate
- Special Assignment Amount Varies by Officer

The subcontract agreement will be effective the date the last party signs the agreement, and only those charges incurred from that date will be eligible for reimbursement.

Please send us a copy of the executed subcontract after it has been signed. We will not be able to process invoices for the services under this subcontract until we receive a copy of the executed subcontract. A copy of this letter and the executed subcontract will be a part of your permanent project file.

If you have any questions or need assistance, please contact your Program Manager Ernie Bradley at (850) 414-4116 or via email at <a href="mailto:Ernie.Bradley@dot.state.fl.us">Ernie.Bradley@dot.state.fl.us</a>.

Sincerely,

DocuSigned by:

Chris Craig

Chris Craig, CPM, FCCM Traffic Safety Administrator

CC/eb
Enclosures

cc: Contract File Financial File



### **Institute of Police Technology and Management**

University of North Florida 12000 Alumni Drive | Jacksonville, Florida 32224 Phone: (904) 620-4786 | Fax: (904) 620-2453 www.iptm.org

December 14, 2020

Mr. Chris Craig Department of Transportation 605 Suwannee Street, MS 53 Tallahassee, FL 32399

RE: Project # **M5X 2021-00104** 

Contract # G1Q35

Drug Recognition Expert (DRE) Call-Out

Dear Mr. Craig:

IPTM is requesting contract approval under the above-mentioned sub-grant program. This request will allow us to reimburse overtime expenses for Drug Recognition Experts conducting investigations for driving under the influence.

Please review and approve the attached agreement for reimbursement under this subcontract. The contractor is Cape Coral Police Department, and amount to be reimbursed will not exceed \$8,000.00.

If you have any questions, please contact me.

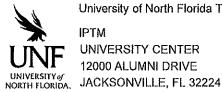
Sincerely,

Carol Jolly

Florida DRE Coordinator

Carol Yall

**Enclosure** 



University of North Florida Training & Services Institute **IPTM** UNIVERSITY CENTER 12000 ALUMNI DRIVE

PURCHASE ORDER			
Purchase Order No.	202102250		
Vendor ID	11927		
12/10/2020	Page 1		

VENDOR	

CAPE CORAL POLICE DEPARTMENT **ATTN: SHANNON NORTHROP** 1100 CULTURAL PARK BLVD. CAPE CORAL, FL 33990

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SHIP TO	
University of North Florida Training & Services Institute	

**UNIVERSITY CENTER** 12000 ALUMNI DRIVE **JACKSONVILLE, FL 32224** 

**Attention: KEVIN ROOP** Phone: (904) 620-4786

Ship Via	FOB	Terms		PO Date	Buyer
				12/10/2020	
			Departm	ent	Confirm To
			IPTM		

Material is subject to IPTM inspection and approval within a reasonable time after delivery. IPTM/UNF reserves the right to cancel this order if delivery is not made as specified and/or under the terms and conditions stated herein.

Line No.	Product ID	Vendor Part Number	Required	Unit	G 4:	Extended Price
Description		Promised	Unit Price	Quantity	rrice	
agreemen	Description  Rognition Expert (DRE) Call-Out Rost. Scope of work outlined in attaches, 2000.00. Final invoice due 10/8/200	ed specifications. Total cost not to	Promised	Unit Price  LOT . \$8,000.000	Quantity I	\$8,000.00
					Total	\$8,000.00

Authorized Signature 1	Authorized Signature 2

## DRUG RECOGNITION EXPERT CALL-OUT OVERTIME REIMBURSEMENT CONTRACT SPECIFICATIONS

#### **Contract Cost**

Total not to exceed \$ 8,000.00

#### **Period of Performance**

Date of execution to September 30, 2021

#### **Purpose and Scope**

To reimburse Florida law enforcement agencies for the overtime costs incurred for the performance and immediate documentation of qualified drug influence evaluations related to possible violations of Florida Statute 316.193, Driving Under the Influence.

#### **Agency Requirements**

The agency may be reimbursed for the actual, fully burdened overtime costs incurred for qualified drug influence evaluations performed on overtime status by certified Drug Recognition Experts (DREs) employed by the agency.

A qualified drug influence evaluation shall be one that is:

- Conducted by a certified Drug Recognition Expert (DRE) employed by the agency at the time of the evaluation
- Conducted on overtime status
- Conducted in compliance with accepted DRE protocols

For each qualified drug influence evaluation for which overtime reimbursement is requested, the DRE is required to:

- Report the evaluation to the Florida DRE Coordinator by submitting an Overtime Call-out Notification Form (form # DRE002) and a copy of the fully completed Drug Influence Evaluation face sheet
- Enter the evaluation into the DRE National Database

Only overtime costs directly associated with the response to, performance of, and documentation of drug influence evaluations as a result of possible violations of Florida Statute 316.193, Driving Under the Influence, are eligible for reimbursement.

P.O.# 202102250 / ACCT #21-AGP-06-801

Page 3 of 5

The agency will NOT be reimbursed for unallowable costs, including but not limited to the following:

- Work hours that occurred outside of the contract's period of performance
- Regular work hours (straight time)
- Work hours for the which the agency is reimbursed through other funding sources, including a subgrant or other state or federally funds
- Work hours of personnel that do not possess an active certification as a Drug Recognition Expert (DRE) at the time of the occurrence
- Work hours related to depositions, court appearances, or other legal proceedings
- Work hours related to DRE program administration or training
- Work hours related to prisoner transport, crash investigations, or other law enforcement
  activities that are not directly associated with the response to, performance of, and
  documentation of drug influence evaluations as a result of possible violations of Florida Statute
  316.193, Driving Under the Influence
- Costs that are in excess of the remaining funding available under this agreement
- Transportation, materials or other expense costs

#### **Compensation and Invoicing**

The agency must submit invoices to IPTM requesting reimbursement of qualified overtime costs. One all-inclusive invoice per pay period is preferred; however, if not submitted on a pay period basis, invoices must be submitted at least monthly for months in which qualified, reimbursable overtime activities took place.

Invoices shall be submitted on Form # DRE003, which must be physically signed or digitally signed using an acceptable electronic signature method (DocuSign, Adobe e-sign, etc.). Each invoice shall be accompanied by the following documentation:

- Relevant Overtime Call-Out Notification Form(s) for each included evaluation
- Drug Influence Evaluation face sheet(s) for each included evaluation
- Payroll or other documentation that verifies the DRE was on overtime status for at least the number of hours charged on the invoice and displays the actual overtime costs incurred

Invoices and required documentation may be mailed, shipped, or emailed to the following address:

Carol Jolly
Institute of Police Technology and Management
12000 Alumni Drive
Jacksonville, FL 32224

DRE@iptm.org

The overtime pay rate for personnel shall be based on the actual cost per employee in accordance with the agency's payroll policy. Each agency shall comply with Fair Labor Standards Act (FLSA) requirements and thresholds for overtime accrual and payment and its own policies and procedures, insofar as those policies apply uniformly to both federally financed and other activities of the agency, as required by 2 CFR 200.403(c). Additional hours may be called overtime, call-out, off duty, extra, additional, etc.

P.O.# 202102250 / ACCT #21-AGP-06-801

Page **4** of **5** 

As part of the "fully burdened" overtime costs, the agency can be reimbursed for the additional benefit costs paid on the overtime worked. These benefit costs must be additional costs incurred specifically as a result of the overtime being reimbursed. Prorated portions of leave accrual, health/life insurance, uniform allowance, vehicle usage, salary incentive, and other standard benefits cannot be reimbursed as they are not additional costs incurred specifically as a result of the overtime worked.

The agency will be reimbursed for the following benefit costs as part of the "fully burdened" rate:

FICA 7.65 % Retirement 13.29 % Workers Comp 3.43 %

Shift differential \$1.00/hour flat rate

Special assignment Amount varies by officer

#### A final invoice must be received by October 8, 2021 or payment will be forfeited.

#### **Designated Signatory Authority**

I hereby delegate authority to the following individual(s) to sign, certify, and issue invoices for reimbursement under this agreement:

NAME	TITLE		
Shannon Northorp	Grant Coordinator/Writer		

#### **Agreement Expiration and Termination**

The Drug Recognition Expert Overtime Call-Out Reimbursement Agreement will expire on September 30, 2021 or when the total funding available in the agreement has been exhausted, whichever comes first.

By written notice to the agency, IPTM may terminate this agreement prior to the above listed expiration if the agency fails to comply with the terms, conditions, or requirements of this agreement, the applicable sections of Part V: Acceptance and Agreement of Project # M5X-2021-00104, any other FDOT subgrant project awarded to the agency, or the evaluation and reporting protocols of Florida's Drug Evaluation and Classification Program.

This agreement shall be effective on the date that the last party signs below.

University of North Florida Training & Services Institute, Inc. d/b/a Institute of Police Technology and Management		
Vince Smyth, Associate Vice President	Date	
City of Cape Coral obo Cape Coral Police D€		
Authorized Representative	 Date	

CONTRACTUAL SERVICES AGREEMENT
REVIEWED AND APPROVED
DocuSigned by:

Chris Craig

12/16/20

TRAFFIC SAFETY ADMINISTRATOR DATE

## DRE Call-Out Overtime Reimbursement Agreement: Appendix FY2021 - Subcontract Agreement Required Federal Clauses, Per Part V

- i. The parties to this subcontract shall be bound by all applicable sections of Part V: Acceptance and Agreement of Project # M5X-2021-00104, FDOT Contract #G1Q35. A final invoice must be received by October 8, 2021 or payment will be forfeited.
- ii. **Buy American Act.** The Buy America Act prohibits the use of Federal highway safety grant funds to purchase any manufactured product or software/information technology systems whose unit purchase price is \$5,000 or more, including motor vehicles, that is not produced in the United States. NHTSA may waive those requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.
- iii. **Certification Regarding Federal Lobbying.** The subcontractor certifies, to the best of his or her knowledge and belief, that:
  - 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iv. **Cooperation with the Inspector General.** It is the duty of every subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this subgrant agreement. Chapter 20.055(5), F.S.
- v. **DBE Assurance**. The subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant or contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of USDOT-assisted contracts. Failure by the consultant or contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Subrecipient or the Department deems appropriate.
- vi. **E-Verify**. Any subcontractors performing work or providing services pursuant to the subgrant agreement are required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

- vii. **Nondiscrimination**. During the performance of this subcontract, the Subcontractor agrees:
  - To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time
  - 2. Not to participate directly or indirectly in the discrimination prohibited by any Federal nondiscrimination law or regulation, as set forth in appendix B of 49 CFR part 2l and herein
  - 3. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the FDOT State Safety Office, USDOT or NHTSA
  - 4. That, in event a Subcontractor fails to comply with any nondiscrimination provisions in this subgrant, the Subrecipient will have the right to impose such subgrant sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the Subcontractor under the contract/agreement until the Subcontractor complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part.
- viii. Clean Air Act and Federal Water Pollution Control Act. Subcontracts for amounts in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- ix. Integrity Certification. The Subcontractor certifies that neither it nor its contractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency. This certification is a material representation of fact upon which the Department is relying in entering this Agreement. If it is later determined that the Subcontractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. The Subcontractor shall provide to the Department immediate written notice if at any time the Subcontractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- x. Contract Work Hours and Safety Standards Act. All subcontracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

#### FY2021 - Subcontract Agreement Required Federal Clauses, Per Part V

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

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

xii. **Policy on Banning Text Messaging While Driving Act**. In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, subrecipients are encouraged to:

Adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official business or when performing any work on behalf of the subrecipient agency and/or the Government.

Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting and driving.

Insert the substance of this section, including this sentence, in all sub-agreement/subcontracts funded with the subaward provided under this Agreement that are \$15,000 or more.

xiii. **Human Trafficking**. The Subcontractor agrees that it and its employees that perform any work on the subcontract shall not, during the term of this Agreement, engage in trafficking in persons, procure a commercial sex act, or use forced labor in the performance of work on the subcontract.



## AGENDA REQUEST FORM

CITY OF CAPE CORAL

Item Number: A.(7)
Meeting Date: 1/6/2021

Item Type: CONSENT AGENDA

#### TITLE:

Resolution 11-21 Approval of Stipulated Order of Taking and Final Judgment for the eminent domain case of City of Cape Coral v. Joel Torres, et al., being Case Number 20-CA-005902 to resolve the acquisition of Festival Park Parcels #FP-128 and FP-129 (aka Lots 25 and 26, Block 3013, and Lots 27 and 28, Block 3013, both in Cape Coral Unit 43 – 1206 & 1210 NW 25th Terrace) for a total settlement cost of \$20,000 per parcel, inclusive of fees and costs; Department: Financial Services / Real Estate Division; Dollar Value: \$40,000; (Parks Capital Project/GO Bond Fund)

#### **REQUESTED ACTION:**

Approve or Deny

#### **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 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.
- 2. Currently, the City owns 507 of the 517 parcels required for Festival Park. However, the City still needs to resolve compensation on 39 parcels with the majority of the property owners represented by counsel. The subject of this Stipulated Order of Taking and Final Judgment is for two 2-lot off-water parcels located within the designated Festival Park area.
- 3. With the 2018 GO Bond approval, City Staff notified property owners within the Festival Park area of the City's desire to complete its acquisitions within the park. On July 22, 2019 City Council adopted a Resolution of Necessity for each site (Res. 203-19 and 204-19) authorizing Staff to make an unconditional offer to purchase each property in the amount of \$14,400. The property owners did not accept the City's offer and the City filed an eminent domain action.
- 4. The property owners hired an attorney to represent them and initially requested payment of \$28,000 per parcel plus fees and costs. After negotiations with the attorney, the property owners have agreed to accept a final settlement of \$20,000 per parcel inclusive of attorney fees and costs. When considering the costs of a trial and additional expert fees this settlement is deemed reasonable.
- 5. Staff recommends approval of the Stipulated Order of Taking and Final Judgment to resolve the acquisition of Festival Park Parcels #FP-128 and FP-129 for a settlement cost of \$20,000 per parcel inclusive of attorney fees and costs, reflecting a total settlement cost of \$40,000.

#### STRATEGIC PLAN ALIGNMENT:

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.

#### **RECOMMENDATIONS:**

Recommend approval of the Stipulated Order of Taking and Final Judgment to resolve the acquisition of Festival Park Parcels #FP-128 and FP-129.

#### **SOURCE OF ADDITIONAL INFORMATION:**

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

Kerry Runyon, Parks & Recreation Director Parks and Recreation 239-573-3110

Chris Phillips, Interim Financial Services Director Financial Services 239-574-0435

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

Department: Financial Services / Real Estate Division; Dollar Value \$40,000; (Parks Capital Project/GO Bond Fund)

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

#### PREPARED BY:

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

#### ATTACHMENTS:

	Description	Туре
D	1. Resolution 11-21	Resolution
D	2. PA Sheet - Blk 3013, Lots 25 and 26 - FP-128	Backup Material
D	3. PA Sheet - Blk 3013, Lots 27 and 28 - FP-129	Backup Material
D	4. Location Map - FP#128 & FP#129	Backup Material
	5. Remaining Festival Park Parcels	Backup Material

#### **RESOLUTION 11-21**

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING A STIPULATED ORDER OF TAKING AND FINAL JUDGMENT AS TO PARCELS FP-128 AND FP-129 IN THE EMINENT DOMAIN ACTION CAPTIONED "CITY OF CAPE CORAL V. JOEL TORRES, ET AL.," CASE NO. 20-CA-005902, PARCEL NO. FP-128 AND PARCEL NO. FP-129; PROPERTIES LOCATED AT 1210 NW 25<sup>TH</sup> TERRACE AND 1206 NW 25<sup>TH</sup> TERRACE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 22, 2019, City Council adopted Resolution 203-19 and Resolution 204-19, declaring a reasonable necessity to acquire properties identified as Lots 25 and 26, Block 3013, Unit 43, Cape Coral Subdivision, located at 1210 NW 25<sup>th</sup> Terrace and Lots 27 and 28, Block 3013, Unit 43, Cape Coral Subdivision, located at 1206 NW 25<sup>th</sup> Terrace, for the purpose of completing the development of Festival Park; and

WHEREAS, because the property owners did not accept the City's offer, the City filed an eminent domain action, Case No. 20-CA-005902; and

WHEREAS, in an effort to settle the case, the City proposed a settlement offer of \$40,000 for full payment of Parcel No. 128 and Parcel No. 129 and any and all attorney's fees and costs; and

WHEREAS, the property owners, by and through counsel, have accepted the City's offer and executed the attached Stipulated Order of Taking and Final Judgment; and

WHEREAS, Chapter 73 of the Florida Statutes requires the condemning authority to pay the property owner's attorney fees and reasonable costs, which are included in the settlement amount of \$40,000; and

WHEREAS, City staff recommends approval of the Stipulated Order of Taking and Final Judgment as to Parcels FP-128 and FP-129 in the matter of City of Cape Coral v. Joel Torres, et al, Case No. 20-CA-005902, Parcel No. 128 and Parcel No. 129, attached hereto and incorporated herein by reference, to acquire Festival Park Parcel FP-128 and Festival Park Parcel FP-129.

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

Section 1. City Council hereby approves the Stipulated Order of Taking and Final Judgment in the matter of City of Cape Coral v. Joel Torres, et al, Case No. 20-CA-005902, as to Parcel No. 128 and Parcel No. 129, attached hereto and incorporated herein by reference, which provides for payment by the City of \$40,000 for full payment of Parcel No. 128 and Parcel No. 129 and any and all attorney's fees and costs, to acquire Lots 25 and 26, Block 3013, Unit 43, Cape Coral Subdivision, located at 1210 NW 25th Terrace, Festival Park Parcel #FP-128 and Lots 27 and 28, Block 3013, Unit 43, Cape Coral Subdivision, located at 1206 NW 25th Terrace, Festival Park Parcel #FP-129.

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

		F THE CITY OF CAPE ( OF, 2	CORAL AT ITS REGULAR 021.
		JOE COVIELLO	O, MAYOR
VOTE OF MAYO	OR AND COUNCILMEN	MBERS:	
COVIELLO GUNTER SHEPPARD HAYDEN		NELSON WELSH WILLIAMS COSDEN	

2021.	OFFICE THIS DAY OF
	KIMBERLY BRUNS
	CITY CLERK
APPROVED AS TO FORM:	

DOLORES D. MENENDEZ
CITY ATTORNEY
res/Stipulated Order of Taking & Final Judgment-Vestival Park B3013 L25-28

#### IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA Civil Action

CITY OF CAPE CORAL, a Florida municipal corporation,

Case No.:

20-CA-5902

Assigned to: Judge Shenko

Petitioner,

Parcel Nos.: FP-128

٧.

FP-129

JOEL TORRES, et. al.,

Respondents.

#### STIPULATION FOR ENTRY OF FINAL JUDMENT AS TO PARCEL FP-128 AND PARCEL FP-129

Petitioner, CITY OF CAPE CORAL, and Defendants, JOEL TORRES and LETECIA VALLE, by and through their undersigned counsel, hereby stipulate and agree as follows:

- 1. Defendants have agreed to accept as full compensation the total sum of FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00), inclusive of all attorney's fees and costs, for the property identified as Parcel FP-128 and Parcel FP-129.
- 2. The City agrees that city staff will submit the settlement with a recommendation of approval to the City Council at a regularly scheduled meeting in January 2021, said approval by the City Council being a condition precedent to this settlement and the enforcement of the terms of this Stipulation.
- 3. Petitioner has agreed to continue the hearing on Petitioner's application for an Order of Taking to a date subsequent to the consideration of final approval of the settlement by the City Council.

- 4. Petitioner and Defendants agree that upon approval of this proposed settlement by the City Council a Stipulated Order of Taking and Final Judgment in the form attached as Exhibit "A" shall be immediately submitted to the Court for approval and execution.
- 5. Defendants agree to be bound by the terms of this Stipulation until and unless the City Council votes to deny the approval of this Stipulation and associated Stipulated Order of

Date:

Jay R. Tome, Esq.

Florida Bar Number: 769400 The Tome Law Firm, P.A.

Taking and Final Judgment.

6840 Griffin Road Davie, Florida 33314 (305) 809-8099 - Telephone chelsea@rossmanlegal.com

tomelaw@outlook.com
Attorney for Defendants

Joel Torres and Leticia Valle

Date:

John Wi. LeRoux, Esq.

Florida Bar Number: 0773166 Law Offices of John M. LeRoux 3090 Charles Ave., Suite 200 Clearwater, Florida 33761

(727) 712-1137 – Telephone (727) 712-9465 - Facsimile

John@jmleroux.com pleadings@jmleroux.com Anthony V. Policastro

FBN 0937932

Policastro Law Group

28100 US Highway 19 N., Suite 311

Clearwater, FL 33761 Phone: (727) 475-1988 tony@policastrolaw.com eric@policastrolaw.com Steven D. Griffin

Assistant City Attorney
City of Cape Coral

FBN 140589

P.O. Box 150027

Cape Coral, FL 33915-0027

Phone: (239) 574-0408 sgriffin@capecoral.net cyoung@capecoral.net *Attorneys for Petitioner* 

# IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA Civil Action

CITY OF CAPE CORAL, a Florida municipal corporation,

Case No.: 20-CA-5902

Assigned to: Judge Shenko

Petitioner,

Parcel Nos.: FP-128

v. FP-129

JOEL TORRES, et. al.,

Respondents.

#### STIPULATED ORDER OF TAKING AND FINAL JUDGMENT AS TO PARCELS FP-128 AND FP-129

THIS CAUSE having come upon the Stipulation of the Petitioner, CITY OF CAPE CORAL, and the Defendants, JOEL TORRES and LETICIA VALLE, and it appearing to the Court that proper notice was first given to all the Defendants, and to all persons having or claiming any equity, lien, title, or other interest in or to the real property described in the Petition, and the Court finding that the compensation to be paid by the Petitioner for the land taken is full, just and reasonable for all parties concerned, and it appearing to the Court that the parties were authorized to enter into such Stipulation, and the Court being fully advised in the premises, it is ORDERED AND ADJUDGED:

- 1. That this Court has jurisdiction of this action, of the subject property, and of the parties in this cause pursuant to Chapters 73 and 74 of the Florida Statutes.
- 2. That the pleadings in this cause are sufficient and the Petitioner is properly exercising its delegated authority.

- 3. That the Declaration of Taking (estimate of value) filed in this cause by the Petitioner was made in good faith and based upon a valid appraisal.
- 4. That the acquisition of Parcels FP-128 and FP-128 (the Property) by the CITY OF CAPE CORAL is necessary for the uses and purposes set forth in the Petition filed herein.
- 5. That within twenty (20) days of the date of entry of this Stipulated Order of Taking and Final Judgment, the Petitioner, CITY OF CAPE CORAL, shall deposit into the Registry of the Court the sum of **FORTY THOUSAND AND NO/100 DOLLARS** (\$40,000.00) to satisfy this judgment.
- 6. The Lee County Tax Collector is entitled to payment of the current ad valorem taxes (pro-rated from January 1st of the current year through the date of deposit) and any delinquent ad valorem taxes levied upon the properties to be taken hereunder, with such taxes to be assessed against the owner(s) and paid over to the Lee County Tax Collector before disbursement of the Court Registry's deposit by the Clerk of Courts. Upon deposit of the good faith estimate of value by the City of Cape Coral, the Clerk is directed to pay from the deposit to the Lee County Tax Collector current (pro-rated from January 1 of the current year through the date of deposit) ad valorem taxes and any delinquent ad valorem taxes levied upon the property taken. Upon payment, this suit shall stand dismissed as to the Lee County Tax Collector as to Parcels FP-128 and FP-129.
- 7. Upon receipt of the deposit required herein and payment to the Tax Collector of any ad valorem rata taxes due on the property, the Clerk of the Court shall forthwith issue a check in the amount of **FORTY THOUSAND AND NO/100 DOLLARS** (\$40,000.00), less the amount of any ad valorem taxes paid, payable to Joel Torres and Leticia Valle, and mail said check to Jay R. Tome, Esq., 6840 Griffin Rd., Davie, FL 33314.

8. That upon the payment of the deposit required hereinabove into the Registry of this Court, that all right, title and interest in Parcel FP-128 and Parcel FP-129, more particularly described in Exhibit "A" attached hereto, shall vest in the CITY OF CAPE CORAL.

9. The Court retains jurisdiction to enforce the terms of this	Judgment.
--	-----------

DONE AND ORDERED in Lee County, Fort Myers, Florida, this \_\_\_\_\_ day of \_\_\_\_\_\_, 2020.

Honorable James Shenko Circuit Judge

Copies to: See attached Service List

#### **EXHIBIT "A"**

#### PARCEL FP-128

Lots 25 and 26, 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.

1210 NW 25th Terrace, Cape Coral, FL 33993 Property Appraisers I.D. STRAP: 274323C4030130250

#### PARCEL FP- 129

Lots 27 and 28, 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.

1206 NW 25th Terrace, Cape Coral, FL 33993 Property Appraisers I.D. STRAP: 274323C4030130270

# CITY OF CAPE CORAL v. TORRES, et. al SERVICE LIST

#### PARCEL FP-128 and PARCEL FP-129

Joel Torres and Leticia Valle c/o Jay R. Tome, Esq. The Tome Law Firm, P.A. 6840 Griffin Road Davie, FL 33314 chelsea@rossmanlegal.com tomelaw@outlook.com

#### PARCEL FP-130

Carolyn F. Phillips, deceased c/o Kenneth R. Jones, Esq. Hahn, Loeser & Parks, LLP 2400 First Street, Suite 300 Fort Myers, FL 33901 kjones@hahnlaw.com jstone@hahnlaw.com

#### PARCEL FP-145

The Kingdom Trust Company, FBO Pamela Fine #9230823279 Serve: Charles "Bo" Ives, Registered Agent 1105 State Route 121 North, Suite B Murray, KY 42071

#### **AS TO ALL PARCELS**

Lee County Tax Collector c/o Luis E. Rivera, II, Esq. 1404 Dean St., Suite 300 Fort Myers, FL 33901 luis.rivera@gray-robinson.com anne.migliore@gray-robinson.com jodi.payne@gray-robinson.com

#### **STIPULATION**

Petitioner, CITY OF CAPE CORAL, and Defendants, JOEL TORRES and LETICIA VALLE, by and through their undersigned counsel, do hereby stipulate and agree to the entry of the foregoing Stipulated Order of Taking and Final Judgment as to Parcel FP-128 and Parcel FP-129.

DATE DATE

Jay R. Tome, Esq.
Florida Bar Number: 769400
The Tome Law Firm, P.A.
6840 Griffin Road
Davie, Florida 33314
(305) 809-8099 - Telephone
chelsea@rossmanlegal.com
tomelaw@outlook.com
Attorney for Defendants

Joel Torres and Leticia Valle

John M. LeRoux, Esq. Florida Bar Number: 0773166 Law Offices of John M. LeRoux 3090 Charles Ave., Suite 200 Clearwater, Florida 33761 (727) 712-1137 – Telephone (727) 712-9465 - Facsimile John@imleroux.com pleadings@imleroux.com Anthony V. Policastro FBN 0937932 Policastro Law Group 28100 US Highway 19 N., Suite 311 Clearwater, FL 33761 Phone: (727) 475-1988 tony@policastrolaw.com eric@policastrolaw.com Steven D. Griffin Assistant City Attorney City of Cape Coral FBN 140589 P.O. Box 150027 Cape Coral, FL 33915-0027 Phone: (239) 574-0408 sgriffin@capecoral.net cyoung@capecoral.net Attorneys for Petitioner



Tax Year 2020

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



+	Exemptions
+	
+	Taxing Authorities
+	Sales / Transactions
+	Parcel Numbering History
+	Location Information
+	Solid Waste (Garbage) Roll Data
+	Flood and Storm Information
+	Address History



### **Appraisal Details (2020 Tax Roll)**



### **Appraisal Details (Current Working Values)**

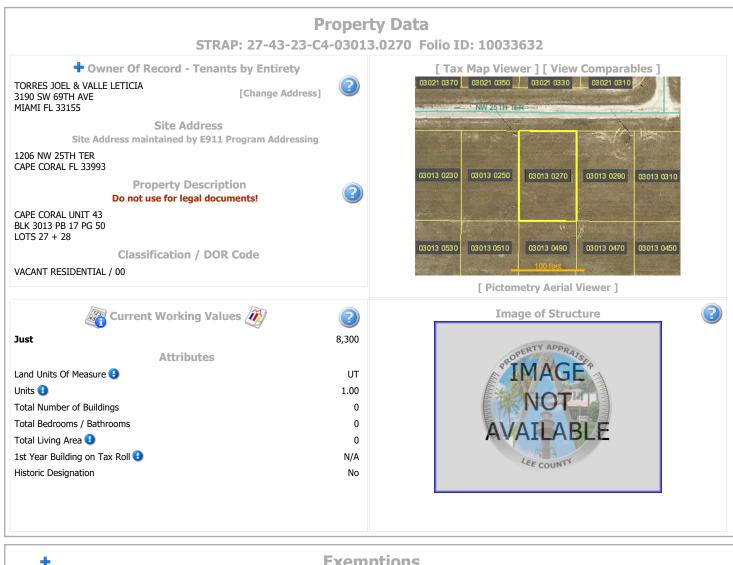
Previous Parcel Number Next
Parcel Number New Query
Search Results Home

TRIM (proposed tax) Notices are available for the following tax years [ 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 ]



Tax Year 2020

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



+	Exemptions
+	
+	Taxing Authorities
+	Sales / Transactions
+	Parcel Numbering History    Output  Description:
+	Location Information
+	Solid Waste (Garbage) Roll Data
+	Flood and Storm Information
+	Address History



#### **Appraisal Details (2020 Tax Roll)**



### **Appraisal Details (Current Working Values)**

Previous Parcel Number Next
Parcel Number New Query
Search Results Home

TRIM (proposed tax) Notices are available for the following tax years [ 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 ]

#### LOCATION MAP - FESTIVAL PARK PARCELS #FP-128 & #FP-129



# **Remaining Festival Park Parcels to Settle**

Site Address	Block	Lots	Strap	Project ID	City's Appraised Value
912 NW 25th Street	3003	3 and 4	274323C3030030030	FP-065	\$20,000
1014 NW 25th Street	3003	14 and 15	274323C3030030140	FP-070	\$20,000
1018 NW 25th Street	3003	16 and 17	274323C3030030160	FP-071	\$20,000
1022 NW 25th Street	3003	18 and 19	274323C3030030180	FP-072	\$20,000
1106 NW 25th Street	3003	29 and 30	274323C3030030290	FP-077	\$20,000
1110 NW 25th Street	3003	31 and 32	274323C3030030310	FP-078	\$20,000
1126 NW 25th Street	3003	39 and 40	274323C4030030390	FP-082	\$20,000
1130 NW 25th Street	3003	41 and 42	274323C4030030410	FP-083	\$20,000
1210 NW 25th Street	3003	47 and 48	274323C4030030470	FP-086	\$20,000
1214 NW 25th Street	3003	49 and 50	274323C4030030490	FP-087	\$20,000
1222 NW 25th Street	3003	53 and 54	274323C4030030530	FP-089	\$20,000
1226 NW 25th Street	3003	55 and 56	274323C4030030550	FP-090	\$20,000
1300 NW 25th Street	3003	67 and 68	274323C4030030670	FP-096	\$300,000
1304 NW 25th Street	3003	69 and 70	274323C4030030690	FP-517	\$27,500
1246 NW 25th Terrace	3013	7 and 8	274323C4030130070	FP-119	\$12,000
1214 NW 25th Terrace	3013	23 and 24	274323C4030130230	FP-127	\$12,000
1309 NW 25th Street	3013	75 and 76	274323C4030130750	FP-153	\$12,000

# **Remaining Festival Park Parcels to Settle**

Site Address	Block	Lots	Strap	Project ID	City's Appraised Value
1110 NW 25th Terrace	3014	1 and 2	274323C3030140010	FP-154	\$12,000
1014 NW 25th Terrace	3014	18 and 19	274323C3030140180	FP-162	\$12,000
1010 NW 25th Terrace	3014	20 and 21	274323C3030140200	FP-163	\$12,000
1025 NW 25th Street	3014	37 and 38	274323C3030140370	FP-171	\$12,000
2608 NW 9th Place	3015	39 and 40	274323C3030150390	FP-196	\$12,000
2512 NW 9th Place	3015	55 and 56	274323C3030150550	FP-204	\$12,000
2609 NW 11th Court	3019	12 and 13	274323C3030190120	FP-258	\$12,000
1218 NW 26th Street	3021	21 and 22	274323C4030210210	FP-304	\$12,000
1209 NW 25th Terrace	3021	35 and 36	274323C4030210350	FP-311	\$12,000
1213 NW 25th Terrace	3021	37 and 38	274323C4030210370	FP-312	\$12,000
1301 NW 26th Street	3022	55 and 56	274323C4030220550	FP-351	\$12,000
1309 NW 26th Street	3022	59 and 60	274323C4030220590	FP-353	\$12,000
1256 Wilmington Parkway	3025	17 and 18	274323C4030250170	FP-380	\$12,000
1125 NW 27th Street	3025	58 and 59	274323C1030250580	FP-399	\$12,000
1207 NW 27th Street	3025	64 and 65	274323C1030250640	FP-402	\$12,000
1239 NW 27th Street	3025	80 and 81	274323C4030250800	FP-409	\$12,000
1301 NW 27th Street	3025	91 and 92	274323C4030250910	FP-414	\$12,000

# **Remaining Festival Park Parcels to Settle**

Site Address	Block	Lots	Strap	Project ID	City's Appraised Value
1403 NW 27th Street	3025	101 and 102	274323C4030251010	FP-419	\$12,000
1511 Wilmington Parkway	3028	1 and 2	274323C4030280010	FP-470	\$13,000
1251 Wilmington Parkway	3028	36 and 37	274323C4030280360	FP-486	\$12,500
1247 Wilmington Parkway	3028	38 and 39	274323C1030280380	FP-487	\$12,500
1231 Wilmington Parkway	3028	46, 47 and 48	274323C1030280460	FP-491	\$14,000
1516 Wilmington Parkway	3009	1 and 2	274323C4030090010	FP-099	\$13,000
1512 Wilmington Parkway	3009	3 and 4	274323C4030090030	FP-100	\$12,000
1418 Wilmington Parkway	3009	16 and 17	274323C4030090160	FP-106	\$12,000
1423 NW 27th Street	3009	20 and 21	274323C4030090200	FP-108	\$12,000
1429 NW 27th Street	3009	22, 23 and 24	274323C4030090220	FP-109	\$14,000
1210 NW 25th Terrace	3013	25 and 26	274323C4030130250	FP-128	\$12,000
1206 NW 25th Terrace	3013	27 and 28	274323C4030130270	FP-129	\$12,000
1202 NW 25th Terrace	3013	29 and 30	274323C4030130290	FP-130	\$12,000
1227 NW 25th Street	3013	59 and 60	274323C4030130590	FP-145	\$12,000
1239 Wilmington Parkway	3028	42 and 43	274323C1030280420	FP-489	\$12,500



# AGENDA REQUEST FORM

CITY OF CAPE CORAL

Item Number: A.(8)
Meeting Date: 1/6/2021

Item Type: CONSENT AGENDA

#### TITLE:

Resolution 12-21 Approval of, and authorization for the City Manager to execute License Agreements with Meta at Cape Harbour Community Association, Inc., LDC Cape Harbour Holdings, LLC and SHM Cape Harbour, LLC for the temporary use of portions of their ownerships within Cape Harbour for event parking, participant registration and activities, spectators and vendors attending the Tour de Cape community event on January 22nd through January 24th 2021. Department: Financial Services / Real Estate Division; Dollar Value: N/A (Fund: N/A)

#### **REQUESTED ACTION:**

Approve or Deny

#### **SUMMARY EXPLANATION AND BACKGROUND:**

- 1. The City's Park and Recreation Department is hosting the 30<sup>th</sup> Annual Tour de Cape community event on January 22<sup>nd</sup> through January 24<sup>th</sup>.
- 2. The event activities begin and close at the Cape Harbour development. Staff has requested temporary use of portions of the property owners' properties to host the activities and event.
- 3. The term of each License begins on January 19<sup>th</sup> and terminates on January 26<sup>th</sup> to allow for set up and break down of the event. The License Agreements will allow event parking, participant registration and activities, spectators and vendors attending the Tour de Cape event on site at no charge to the City.
- 4. Staff recommends approval of, and authorization for the City Manager to execute License Agreements with Meta at Cape Harbour Community Association, Inc., LDC Cape Harbour Holdings, LLC and SHM Cape Harbour, LLC for the temporary use of portions of their ownerships within Cape Harbour for event parking, participant registration and activities, spectators and vendors attending the Tour de Cape community event on January 22<sup>nd</sup> through January 24<sup>th</sup> 2020.

#### STRATEGIC PLAN ALIGNMENT:

1. 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

#### **RECOMMENDATIONS:**

Recommend approval of, and authorization for the City Manager to execute License Agreements with the three property owners within Cape Harbour for the Tour de Cape community event.

#### **SOURCE OF ADDITIONAL INFORMATION:**

Todd King, Special Events Supervisor Parks and Recreation 239-573-3121

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

Kerry Runyon, Parks & Recreation Director Parks and Recreation 239-573-3110

# FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS: N/A

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

#### PREPARED BY:

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

#### ATTACHMENTS:

	Description	Туре
ם	Resolution 12-21 with signed agreements by     Meta at Cape Harbour	Backup Material
ם	2. PA Sheet - Tracts C4 & C5 Meta at Cape Harbour	Backup Material
ם	3. PA Sheet - Tracts C3 & C2 Meta at Cape Harbour	Backup Material
D	4. PA Sheet - Tract E - Right of Way	Backup Material
ם	5. PA Sheet - Tract G - Right of Way	Backup Material
ם	6. Location Map - Cape Harbour Sites for Tour de Cape	Backup Material

#### **RESOLUTION 12-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING THE LICENSE AGREEMENTS BETWEEN META AT CAPE HARBOUR COMMUNITY ASSOCIATION, INC., LDC CAPE HARBOUR HOLDINGS, LLC, AND SHM CAPE HARBOUR, LLC, AND THE CITY OF CAPE CORAL FOR THE TEMPORARY USE BY THE CITY OF PORTIONS OF PROPERTY LOCATED WITHIN CAPE HARBOUR FOR THE TOUR DE CAPE COMMUNITY EVENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City's Parks and Recreation Department is hosting the 30<sup>th</sup> Annual Tour de Cape community event on January 22, 2021 through January 24, 2021, at Cape Harbour; and

WHEREAS, staff has requested temporary use of portions of property owned by Meta at Cape Harbour Community Association, Inc., LDC Cape Harbour Holdings, LLC, and SHM Cape Harbour, LLC, located within Cape Harbour for event parking, participant registration and activities, spectator viewing, and vendors on site from January 22, 2021, through January 24, 2021, to allow for set-up and break-down for the event; and

WHEREAS, City staff recommends entering into License Agreements with Meta at Cape Harbour Community Association, Inc., LDC Cape Harbour Holdings, LLC, and SHM Cape Harbour, LLC, for the temporary use of a portion of property located within Cape Harbour for the Tour de Cape community event on January 22, 2021 through January 24, 2021.

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 License Agreements between Meta at Cape Harbour Community Association, Inc., LDC Cape Harbour Holdings, LLC, and SHM Cape Harbour, LLC, and the City of Cape Coral for the temporary use of a portion of property located within Cape Harbour for the Tour de Cape community event on January 22, 2021 through January 24, 2021. Copies of the agreements are attached hereto as Exhibits 1, 2, and 3.

Section 2. The City Council hereby authorizes the City Manager or his designee to execute the License Agreements.

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

	JNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR DAY OF, 2021.
	JOE COVIELLO, MAYOR
VOTE OF MAYOR AND COU	NCILMEMBERS:
COVIELLO	NELSON
GUNTER	WELSH
SHEPPARD	WILLIAMS
HAYDEN	COSDEN
	N MY OFFICE THIS DAY OF,
2021.	
	KIMBERLY BRUNS
	CITY CLERK

APPROVED AS TO FORM:

DOLORES D. MENENDEZ CITY ATTORNEY

res/License Agreements-Tour de Cape

## EXHIBIT 1

#### **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT made and entered into this \_\_\_\_\_ day of January, 2021 by Meta at Cape Harbour Community Association, Inc., a Florida not-for-profit corporation, hereinafter referred to as "Licensor", and the City of Cape Coral, a Florida municipal corporation, hereinafter referred to as "Licensee".

WHEREAS, Licensee desires to utilize certain real properties located in Cape Coral, Lee County, Florida described on Exhibit "A" attached hereto, owned by Meta at Cape Harbour Community Association, Inc.; and

WHEREAS, the Licensor desires to grant a License to Licensee to use the properties for purposes set forth hereinafter under the terms and conditions set forth hereinafter for the Tour de Cape community event in January 2021.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do hereby agree as follows:

- 1. The above recitals are true and correct.
- 2. Licensor grants to Licensee the right to use the properties described in Exhibit "A" for a community function, known as the Tour de Cape, offered by the City of Cape Coral on January 22nd through January 24th, 2021.
- 3. The term of this License shall begin on January 19, 2021 and shall terminate on January 26, 2021.
- 4. Licensor grants Licensee the right to use the properties for ingress and egress for event participant participation, however, as a condition precedent to Licensee using the properties and holding the event on the properties, Licensee will provide a

Certificate of Coverage. The Licensee, the City of Cape Coral, is self-insured and carries General Liability insurance. Nothing in this agreement shall be construed as consent for the City of Cape Coral to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

- 5. Licensee indemnifies Licensor from any and all claims, demands, losses, suits, actions of any kind or nature, arising out of the use of the properties by Licensee or any events being held on the properties by Licensee. Nothing in this agreement shall be construed as consent for the City of Cape Coral to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.
- 6. This agreement shall be governed by the laws of the State of Florida and may not be modified absent written documentation executed by the parties.

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, the parties have hereunto affixed their hand and seal on the date and year first written above.

Signed, Sealed and Delivered in presence of:	LICENSEE: City of Cape Coral, a Florida municipal corporation
Witness	By: Roberto Hernandez, City Manager
Witness	
State ofFlorida	
County of Lee	
The foregoing instrument was ack 2021 by Roberto Hernandez, City Manag corporation, who is personally known to m	nowledged before me this day of January, er of the City of Cape Coral, a Florida municipal ne and who did not take an oath.
(SEAL)	Notary Public
AS TO FORM:	
WE & Seith	
Brian Bartos, Assistant City Attorney	

LICENSOR: Meta at Cape Harbour Community Association, Inc., a Florida not-forprofit corporation

Witness STEPHEN M 6516K Witness GARRY K. WISTEL

By: Jane Kirkman, President

State of F4

County of Lee

ADRIANA C. FRANCESCHINI
Commission # GG 262817
Expires October 3, 2022
Bonded Thru Troy Fals Insurance 600-583-7019

Notary Public

(SEAL)

#### **EXHIBIT A**

Tracts "E" and "G", Meta at Cape Harbour, according to the plat thereof, as recorded in Plat Book 71, Pages 74 through 80, of the Public Records of Lee County, Florida.

AKA: Strap #21-45-23-C2-0040E.00CE and

Strap #21-45-23-C2-0040G.00CE

# EXHIBIT 2

#### LICENSE AGREEMENT

THIS LICENSE AGREEMENT made and entered into this \_\_\_\_\_ day of January, 2021 by LDC Cape Harbour Holdings, LLC, a Florida limited liability company, hereinafter referred to as "Licensors", and the City of Cape Coral, a Florida municipal corporation, hereinafter referred to as "Licensee".

WHEREAS, Licensee desires to utilize certain real properties located in Cape Coral, Lee County, Florida described on Exhibit "A" attached hereto, owned by LDC Cape Harbour Holdings, LLC; and

WHEREAS, the Licensors desire to grant a License to Licensee to use the properties for purposes set forth hereinafter under the terms and conditions set forth hereinafter for the Tour de Cape community event in January 2021.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do hereby agree as follows:

- 1. The above recitals are true and correct.
- 2. Licensors grant to Licensee the right to use the properties described in Exhibit "A" for a community function, known as the Tour de Cape, offered by the City of Cape Coral on January 22nd through January 24th, 2021.
- 3. The term of this License shall begin on January 19, 2021 and shall terminate on January 26, 2021.
- 4. Licensors grant Licensee the right to use the properties for event participant registration, participant breakfast areas, event parking and vendor display areas, however, as a condition precedent to Licensee using the properties and holding the event

on the properties, Licensee will provide a Certificate of Coverage. The Licensee, the City of Cape Coral, is self-insured and carries General Liability insurance. Nothing in this agreement shall be construed as consent for the City of Cape Coral to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

- 5. Licensee indemnifies Licensors from any and all claims, demands, losses, suits, actions of any kind or nature, arising out of the use of the properties by Licensee or any events being held on the properties by Licensee. Nothing in this agreement shall be construed as consent for the City of Cape Coral to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.
- 6. This agreement shall be governed by the laws of the State of Florida and may not be modified absent written documentation executed by the parties.

ij

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, the parties have hereunto affixed their hand and seal on the date and year first written above.

Signed, Sealed and Delivered in presence of:	LICENSEE: City of Cape Coral, a Florida municipal corporation
Witness	By: Roberto Hernandez, City Manager
Witness	
State of Florida  County of Lee	
The foregoing instrument was ack	nowledged before me this day of January, ter of the City of Cape Coral, a Florida municipal
corporation, who is personally known to it	ic and who did not take an easin
(SEAL)	Notary Public
AS TO FORM:	
Brian Bartos, Assistant City Attorney	

LDC Cape Harbour Holdings, LLC, a Florida limited liability company Witness Vice President Title: Florida State of Miam-Dade County of The foregoing instrument was acknowledged before me this 1+ day becember \_\_\_\_, 20\_20 by Virginia Cepero, Vice President of LDC Cape Harbour Holdings, LLC, a Florida limited liability company on behalf of the company, who is personally known to me or who has produced and who did not take an oath. (type of identification) (SEAL) CLARA L. DIAZ Notary Public - State of Florida Commission # GG 351643 ELARA L. BYAZ My Comm. Expires Oct 30, 2023 talary Public : State Bonded through National Notary Assn.

LICENSOR:

Commission ± 66 35 16
My Comm. Expires Oct 30
Bonded through National Notar

#### EXHIBIT A

Tracts C-4 and C-5, Block 7005, Meta At Cape Harbour, according to the plat thereof, as recorded in Plat Book 71, Page 74, in the Public Records of Lee County, Florida.

AKA: Strap #21-45-23-C2-004C4.0000

# EXHIBIT 3

#### LICENSE AGREEMENT

THIS LICENSE AGREEMENT made and entered into this \_\_\_\_\_ day of January, 2020 by SHM Cape Harbour, LLC, a Delaware limited liability company hereinafter referred to as "Licensor", and the City of Cape Coral, a Florida municipal corporation, hereinafter referred to as "Licensee".

WHEREAS, Licensee desires to utilize certain real properties located in Cape Coral, Lee County, Florida described on Exhibit "A" attached hereto, owned by SHM Cape Harbour, LLC; and

WHEREAS, the Licensor desires to grant a License to Licensee to use the property for purposes set forth hereinafter under the terms and conditions set forth hereinafter for the Tour de Cape community event in January 2021.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do hereby agree as follows:

- 1. The above recitals are true and correct.
- 2. Licensor grants to Licensee the right to use the property described in Exhibit "A" for a community function, known as the Tour de Cape, offered by the City of Cape Coral on January 22nd through January 24th, 2021.
- 3. The term of this License shall begin on January 19, 2021 and shall terminate on January 26, 2021.
- 4. Licensor grants Licensee the right to use the property for event participant registration, participant breakfast areas, event parking and vendor display areas,

however, as a condition precedent to Licensee using the property and holding the event on the property, Licensee will provide a Certificate of Coverage. The Licensee, the City of Cape Coral, is self-insured and carries General Liability insurance. Nothing in this agreement shall be construed as consent for the City of Cape Coral to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

- 5. Licensee indemnifies Licensor from any and all claims, demands, losses, suits, actions of any kind or nature, arising out of the use of the property by Licensee or any events being held on the property by Licensee. Nothing in this agreement shall be construed as consent for the City of Cape Coral to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.
- 6. This agreement shall be governed by the laws of the State of Florida and may not be modified absent written documentation executed by the parties.

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, the parties have hereunto affixed their hand and seal on the date and year first written above.

Signed, Sealed and Delivered in presence of:	LICENSEE: City of Cape Coral, a Florida municipal corporation					
Witness	By: Roberto Hernandez, City Manager					
Witness						
State of Florida						
County of <u>Lee</u>						
The foregoing instrument was acknowledged before me this day of January, 2021 by Roberto Hernandez, City Manager of the City of Cape Coral, a Florida municipal corporation, who is personally known to me and who did not take an oath.						
(SEAL) N	otary Public					
AS TO FORM:						

LICENSOR: SHM Cape Harbour, LLC, a Delaware limited liability company

BY: Safe Harbor Marinas, LLC, a Delaware limited liability company, as its Member

GALLY K. WHIEL

State of Ha County of Lee

The foregoing instrument was acknowledged before me this 28th, day of Dicember, 2020 by Jane Kirkman. of Safe Harbor Marinas, LLC, a Delaware limited liability company, the Member of SHM Cape Harbour, LLC, a Delaware limited liability company on behalf of the companies, who is personally known to me or who has produced (type of identification) and who did not take an oath.

ADRIANA C. FRANCESCHINI Commission # GG 262817 Expires October 3, 2022 Bonded Thru Troy Fale Insurance 800-389-7019

Adriana C. Francisch (SEAL)

**Notary Public** 

#### **EXHIBIT A**

The common area portions of Tract C-2 and Tract C-3, Block 7005, Meta at Cape Harbour Subdivision, as recorded in Plat Book 71, Pages 74 through 80, inclusive of the Public Records of Lee County, Florida.

AKA: 5781 & 5793 Cape Harbour Drive, Cape Coral, Florida



#### **Property Data**

STRAP: 21-45-23-C2-004C4.0000 Folio ID: 10471385



LDC CAPE HARBOUR HOLDINGS LLC 550 BILTMORE WAY STE 1110 CORAL GABLES FL 33134

**Site Address** 

ACCESS UNDETERMINED CAPE CORAL FL

Property Description Do not use for legal documents!

META AT CAPE HAROUR PB 71 PGS 7480 TRACTS C-4 + C-5

**Classification / DOR Code** 

VACANT COMMERCIAL / 10



[ Pictometry Aerial Viewer ]





3,615,509 As Of 07/14/2019 Just **Attributes** Land Units Of Measure (1) Multiple - see Appraisal Details

Multiple - see Appraisal Details Total Number of Buildings 0 Total Bedrooms / Bathrooms 0 Total Living Area 🕕 0 1st Year Building on Tax Roll 😉 N/A Historic Designation No



♦ Photo Date January of 2019 
■ View other photos Last Inspection Date: 01/22/2019

**Exemptions** 



Values (2019 Tax Roll)



#### **Taxing Authorities**

# Sales / Transactions Output Description Description

	odies / Hallsactions				
Sale Price	Date	OR Number	Туре	Description	Vacant/Improved
4,555,200.00	02/27/2019	2019000047599	01	Sales qualified and included for sales ratio analysis Transfers qualified as arm's length because of examination of the deed or other instrument transferring ownership of real property	V
7,887,771.00	05/07/2015	2015000106347	05	Sales qualified but excluded from sales ratio analysis  Arm's length transaction transferring multiple parcels with multiple parcel identification numbers	V
				There are 2 additional parcel(s) with this document (may have been split after the transaction date)	

				<u>21-45-23-C2-004C3.0000</u> <u>21-45-23-C2-004R5.0000</u>			
100.00	02/14/2003	3849/2932	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V		
4,870,000.00	09/13/2002	<u>3731/3815</u>	02	Sales qualified but excluded from sales ratio analysis Qualified (Multiple STRAP # / 06-09I)	V		
1,684,400.00	01/14/2000	3210/4187	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V		
18,079,600.00	06/30/1999	3141/497	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V		
100.00	04/25/1990	2145/3463	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	I		
+			E	Building/Construction Permit Data			
+	+ Parcel Numbering History						
+	+ Location Information						
+	+ Solid Waste (Garbage) Roll Data						
+	+ Flood and Storm Information						
+	+ Address History						
+	+ Appraisal Details (2019 Tax Roll)						
+	+ Appraisal Details (Current Working Values)						

Previous Parcel Number Next
Parcel Number New Query
Search Results Home

TRIM (proposed tax) Notices are available for the following tax years [ 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 ]



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

#### **Property Data**

STRAP: 21-45-23-C2-004C3.0000 Folio ID: 10471392



SHM CAPE HARBOUR LLC 14785 PRESTON RD DALLAS TX 75254

**Site Address** 

5781/5793 CAPE HARBOUR DR CAPE CORAL FL 33914

Property Description
Do not use for legal documents!

META AT CAPE HARBOUR PB 71 PGS 74-80 TRACTS C-3 + C-2

LESS OR 4703/3579 + 2006-314572 + 2012000193560 + CONDO

**Classification / DOR Code** 

AIRPORTS, TERMINALS, PIERS / 20



[ Pictometry Aerial Viewer ]





Last Inspection Date: 02/01/2017

#### Exemptions

Values (2019 Tax Roll) 🥡

#### Taxing Authorities

#### Sales / Transactions • **OR Number** Description Vacant/Improved **Sale Price Date** Type Sales qualified but excluded from sales ratio analysis Arm's length transaction transferring multiple parcels with multiple parcel identification numbers There are 5 additional parcel(s) with this document (may have been split after the transaction 13,000,000.00 01/06/2017 <u>2017000005787</u> I date). date)... 21-45-23-C2-004C1.0000 21-45-23-C2-004C3.0020 21-45-23-C2-004C3.0030 21-45-23-C2-004R1.LK00 21-45-23-C2-004R5.0000 7,887,771.00 05/07/2015 <u>2015000106347</u> 05 Sales qualified but excluded from sales ratio analysis I

				Arm's length transaction transferring multiple parcels with multiple parcel identification numbers  There are 2 additional parcel(s) with this document (may have been split after the transaction date)  21-45-23-C2-004C4.0000 21-45-23-C2-004R5.0000				
100.00	02/14/2003	3849/2932	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V			
4,870,000.00	09/13/2002	<u>3731/3815</u>	02	Sales qualified but excluded from sales ratio analysis Qualified (Multiple STRAP # / 06-09I)	V			
100.00	05/05/2000	<u>3252/4225</u>	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V			
1,684,400.00	01/14/2000	3210/4187	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V			
18,079,600.00	06/30/1999	3141/497	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V			
100.00	04/25/1990	2145/3463	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	I			
+	Building/Construction Permit Data							
+	Parcel Numbering History    Output  Description:							
+	Location Information							
+	Solid Waste (Garbage) Roll Data							
+	Flood and Storm Information							
+	Address History							
+	Appraisal Details (2019 Tax Roll)							
+	Appraisal Details (Current Working Values)							

Previous Parcel Number Next
Parcel Number New Query
Search Results Home

TRIM (proposed tax) Notices are available for the following tax years [ 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 ]



#### **Property Data**

STRAP: 21-45-23-C2-0040E.00CE Folio ID: 10471381



c/o REALMARK MGMT SERVICES 5793 CAPE HARBOUR DR STE 116 CAPE CORAL FL 33914

**Site Address** 

RIGHT OF WAY CAPE CORAL FL

Property Description
Do not use for legal documents!

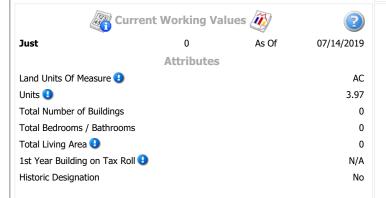
META AT CAPE HAROUR PB 71 PGS 7480 TRACT E

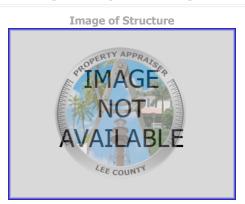
**Classification / DOR Code** 

RIGHT-OF-WAY / 94



[ Pictometry Aerial Viewer ]





#### +

#### **Exemptions**

Walues (2019 Tax Roll)



+

#### **Taxing Authorities**

Sales / Transactions 9					
Sale Price	Date	<b>OR Number</b>	Туре	Description	Vacant/Improved
100.00	10/04/2002	3746/3668	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V
1,684,400.00	01/14/2000	3210/4187	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V
18,079,600.00	06/30/1999	3141/497	04	Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07)	V
100.00	11/15/1988	2032/1977	04	Sales disqualified as a result of examination of the deed	V

	Disqualified (Multiple STRAP # - 01,03,04,07)
+	Building/Construction Permit Data
+	Parcel Numbering History 9
+	Location Information
+	Solid Waste (Garbage) Roll Data
+	Flood and Storm Information
+	Address History
+	Appraisal Details (2019 Tax Roll)
+	Appraisal Details (Current Working Values)

Previous Parcel Number Next
Parcel Number New Query
Search Results Home

TRIM (proposed tax) Notices are available for the following tax years [ 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 ]



#### **Property Data**

STRAP: 21-45-23-C2-0040G.00CE Folio ID: 10471388

♣ Owner Of Record - Sole Owner

META AT CAPE HARBOUR COMM ASSN

c/o REALMARK MGMT SERVICES

5793 CAPE HARBOUR DR STE 116

**Site Address** 

RIGHT OF WAY CAPE CORAL FL

CAPE CORAL FL 33914

Property Description Do not use for legal documents!

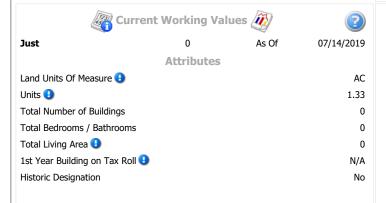
META AT CAPE HARBOUR PB 71 PGS 7480 TRACT G

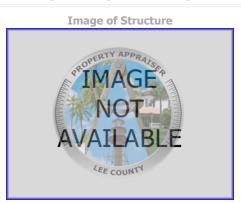
Classification / DOR Code

RIGHT-OF-WAY / 94



[ Pictometry Aerial Viewer ]





+

#### **Exemptions**

4

Walues (2019 Tax Roll)

**Taxing Authorities** 

Sales / Transactions • Sale Price Date **OR Number** Type **Description** Vacant/Improved Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07) 100.00 10/04/2002 3746/3668 04 Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07) 1,684,400.00 01/14/2000 3210/4187 04 Sales disqualified as a result of examination of the deed Disqualified (Multiple STRAP # - 01,03,04,07) 18,079,600.00 06/30/1999 3141/497 04 100.00 04/25/1990 2145/3463 Sales disqualified as a result of examination of the deed

	Disqualified (Multiple STRAP # - 01,03,04,07)
+	Building/Construction Permit Data
+	Parcel Numbering History 9
+	Location Information
+	Solid Waste (Garbage) Roll Data
+	Flood and Storm Information
+	Address History
+	Appraisal Details (2019 Tax Roll)
+	Appraisal Details (Current Working Values)

Previous Parcel Number Next
Parcel Number New Query
Search Results Home

TRIM (proposed tax) Notices are available for the following tax years [ 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 ]





## AGENDA REQUEST FORM

CITY OF CAPE CORAL

Item

Number:

B.(1)

Meeting

Date:

1/6/2021

Item Type:

PERSONNEL ACTIONS

#### TITLE:

Resolution 10-21 Authorizing the addition of one FTE Housing Intake Specialist Department: Community Development

#### **REQUESTED ACTION:**

Approve or Deny

#### SUMMARY EXPLANATION AND BACKGROUND:

The Housing Section of the Planning Division is currently staffed with two full-time equivalent(FTE) positions - the Housing Coordinator and a Senior Planner. These two positions manage the state and federal housing and community development grant programs.

The Housing Intake Specialist will serve as a third staff member who will be "public facing" and will interact with residents applying for these programs. In the past this function was handled by a not-for-profit, however, the agency that handled these applications closed in November 2020. The Housing Intake Specialist position is needed to ensure the proper qualification of participants in the City's housing programs, specifically the Utility Expansion Grant Connection Grant Program and COVID-19 related housing assistance. These programs are critical to our most vulnerable residents and are extremely time sensitive as they tie directly to the existing Utility Extension Program and the COVID-19 pandemic. This is a highly specialized position that requires knowledge of state and federal housing program regulations and the 24 CFR Part 5 housing income qualification process.

#### STRATEGIC PLAN ALIGNMENT:

1. 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

#### **RECOMMENDATIONS:**

Approval

#### **SOURCE OF ADDITIONAL INFORMATION:**

Amy Yearsley, Housing Coordinator Vincent Cautero, Community Development Director

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

Position will not result in a budget amendment. Position will be fully funded by Community Development Block Grant (CDBG) Administrative funds and not General Revenue.

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

PREPARED BY:

Amy Yearsley Division- Planning Department- Community Development

ATTACHMENTS:

Description Type

1. Revised Resolution 10-21 Backup Material

#### **RESOLUTION 10-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING THE CREATION OF A NEW POSITION CLASSIFICATION OF "HOUSING INTAKE SPECIALIST" AT PAY GRADE NB105 AND AUTHORIZING THE ADDITION OF ONE REGULAR FULL-TIME POSITION IN THE DEPARTMENT OF COMMUNITY DEVELOPMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Department of Community Development (DCD) currently manages state and federal housing and community development grant programs; and

WHEREAS, due to the closing of a not-for-profit agency, DCD desires to create a Housing Intake Specialist position to ensure proper qualification of participants applying for housing programs; and

WHEREAS, the Housing Intake Specialist position will include duties and responsibilities necessary to meet the needs of the department; and

WHEREAS, Section 2-36.4 of the Code of Ordinances provides for the creation of a new classification upon the determination that the duties and responsibilities of a position are not appropriately described in any existing classification, provided that City Council first approves the creation of the classification and assignment of the pay grade; and

WHERAS, a job description for the "Housing Intake Specialist" has been developed and is attached hereto as Exhibit A; and

WHEREAS, Section 2-36.4 requires City Council to approve the addition of regular full-time positions within a classification, and to increase the number of regular full-time positions per department; and

WHEREAS, the City Manager recommends the creation of a new position classification of "Housing Intake Specialist" at Pay Grade NB105 and the addition of one regular full-time position in the Department of Community Development.

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

Section 1. Pursuant to Section 2-36.4 of the City of Cape Coral Code of Ordinances, the City Council hereby approves the creation of the position of "Housing Intake Specialist" at pay grade NB105 and authorizes the addition of one regular full-time position in the Department of Community Development. A copy of the job description is attached hereto as Exhibit A.

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

				ORAL AT ITS REGUL	AR
COUNCIL SESSI	on this	DAY OF	, 2	2021.	
			JOE CO	VIELLO, MAYOR	
			-		
VOTE OF MAYO	OR AND COU	NCILMEMBERS:	:		
COVIELLO			NELSON		
GUNTER			WELSH		
SHEPPARD			WILLIAMS		
HAYDEN		_	COSDEN		

ATTESTED TO AND FILED IN MY OFFICE THIS	DAY OF	, 2021.
ti ti		
	KIMBERLY BRUNS CITY CLERK	8
APPROVED AS TO FORM:		

DOLORES D. MENENDEZ

DOLORES D. MENENDEZ

CITY ATTORNEY

res/Positions-Create Housing Intake Specialist

#### EXHIBIT A



### Housing Intake Specialist

Class Code: Pay Grade: NB105

CITY OF CAPE CORAL Established Date: December 14, 2020 Revision Date: December 14, 2020 Bargaining Unit: NON-BARGAINING

#### SALARY RANGE

\$19.89 - \$31.81 Hourly \$41,371.20 - \$66,164.80 Annual

#### **GENERAL STATEMENT OF JOB:**

SAFETY SENSITIVE: No

FINGERPRINTING REQUIRED: Yes

The purpose of this class within the organization is to determine client eligibility for state of federal grant funding and distribute benefits to the public in an efficient, timely and courteous manner.

This class works under general supervision, independently developing work methods and sequences.

Responsibilities and Reporting During an Emergency Situation: If assigned, employees in this classification will be required to report and carry out duties as directed for the duration of an emergency. Depending on the nature of the emergency, this may require working around the clock for several days on short notice.

#### SPECIFIC DUTIES AND RESPONSIBILITIES:

The intent of this job description is to provide a representative summary of the major duties and responsibilities performed by incumbents of this job. Incumbents may be requested to perform job-related tasks other than those specifically presented in this description.

- Determines client eligibility for state of federal grant funding and distributes benefits to the public in an efficient, timely and courteous manner.
- Performs intake screening with clients; enters personal/client data into the computer; reviews and processes applications; determines eligibility for programs by applying local, state, and federal policies.

- Conducts in-person interviews and telephone screenings; summarizes information; recommends determinations of eligibility based on submitted information and makes appropriate referrals.
- Reviews applications for accuracy and collects data; analyzes and reviews documents submitted; advises applicants when more information is needed to determine eligibility; notifies clients of the status of their application; sends letters of determination.
- Calculates household income and assets; conducts income verification.
- Explains housing programs to clients; answers telephone and email inquiries and records
  phone call logs; makes referrals to outside resources and coordinates with outside
  agencies.
- Compiles case files; prepares files for closing; reviews and closes cases for 2nd party review; reviews difficult cases with supervisor to determine eligibility of case.
- Performs related work as assigned.

#### **MINIMUM QUALIFICATIONS:**

#### **Education and Experience**

- · High school diploma/GED.
- Two (2) years of experience in human services, housing counseling, or closely related.

#### **Licenses or Certifications**

None.

#### OTHER JOB REQUIREMENTS

None.

#### PREFERRED QUALIFICATIONS

- Knowledge of 24 CFR Part 5 HUD Income Qualification Process.
- HUD Certified Housing Counselor.
- Bilingual Spanish.

## ADDITIONAL MINIMUM QUALIFICATIONS REQUIRED: KNOWLEDGE, SKILLS, AND ABILITIES:

#### Knowledge of:

- Customer service principles and techniques.
- Federal, state, and local regulations, guidelines, and procedures regarding various affordable housing programs such as the State Housing Initiatives Partnership Program (SHIP) and Community Development Block Grant (CDBG).

- Modern office methods, practices, and equipment Computer programs (i.e., Microsoft Word, Excel, PowerPoint).
- · Available community resources and services.

#### Skill in:

- Written, verbal, electronic, and visual communications for effective expression and clarity.
- The operation of various computer or other electronic devices and applications, to include database software, Microsoft Office Word and Excel and Outlook.
- Excellent communication skills
- · Listening.
- Organization, attention to detail, prioritization, and time management.
- Accuracy of information in data input and task performance.
- Filing.

#### Ability to:

- Relate to people beyond giving and receiving instructions, to include applying consistent courtesy and tact in considerable public contact and/or confrontational situations.
- Establish and maintain working relationships with supervisor, City Council, boards, committee members and other departments.
- Be adaptable to performing under frequent deadlines and/or in response to emergencies.
- Apply courtesy and tact in confrontational situations.
- Apply sound judgment and interpretation.
- Perform tasks independently with minimal supervision and review.
- Maintain confidentiality of information.
- Utilize office equipment including computers, scanners, facsimile machines and copiers.
- Exercise judgment and make decisions in accordance with established departmental policies and procedures.

#### **MINIMUM STANDARDS REQUIRED:**

#### WORK ENVIRONMENT/ CONDITIONS

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Tasks are performed in a common office environment.

#### PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The position involves *light physical demands*, such as exerting up to 20 lbs. of force occasionally, and/or up to 10 lbs. of force frequently, and/or a negligible amount of force constantly to move objects. Tasks may require prolonged periods of visual concentration and require moderate levels of eye/hand/foot coordination.

Requires the ability to speak, hear (perceive sound) and/or signal people to convey and exchange information; differentiate between colors or shades of color; read a variety of materials, at times complex; apply principles of rational problem-solving; record and deliver information, explain procedures, issue and follow oral and written instructions; and communicate effectively and efficiently in Standard English as primary language while performing job functions.



## AGENDA REQUEST FORM

CITY OF CAPE CORAL

Item

Number:

Meeting

1/6/2021

Date:

**PERSONNEL** 

Item Type: ACTIONS

B.(2)

#### TITLE:

Resolution 13-21 Approving extension of the agreement with Fraternal Order of Police (Officers and Sergeants) bargaining units concerning sick leave related to COVID-19; Department: Human Resources

#### **REQUESTED ACTION:**

Approve or Deny

#### **SUMMARY EXPLANATION AND BACKGROUND:**

The resolution approves extension of the original additional 80 hours of sick leave for the Fraternal Order of Police (Lieutenants and Officers and Seargeants), provided by the city as approved on April 6, 2020 related to the COVID-19 pandemic following the FFCRA guidelines, retroactive from January 1, 2021 through June 30, 2021.

#### STRATEGIC PLAN ALIGNMENT:

1. 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?

#### **RECOMMENDATIONS:**

#### SOURCE OF ADDITIONAL INFORMATION:

Lisa Sonego, Human Resources Director, 239-574-0528

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

Continuation of existing program.

1. Will this action result in a Budget Amendment?

#### PREPARED BY:

Gabrielle Division- Admin Department- Human Resources

#### ATTACHMENTS:

Description Type

1. Resolution 13-21

Resolution

#### **RESOLUTION 13-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL EXTENDING PAID SICK LEAVE RELATED TO THE COVID-19 PANDEMIC FOR FRATERNAL ORDER OF POLICE (REPRESENTING THE OFFICERS AND SERGEANTS, OF CAPE CORAL LODGE #33) AS SET FORTH IN THE AGREEMENT ATTACHED HERETO; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order 20-52 declaring a state of emergency for the entire state of Florida due to the Novel Coronavirus Disease 2019 (COVID-19), which is a severe acute respiratory illness; and

WHEREAS, on April 6, 2020, City Council adopted Resolution 92-20 providing 80 hours of paid sick leave related to COVID-19 in addition to the 80 hours available under the Family First Coronavirus Response Act (FFCRA); and

WHEREAS, the FFCRA provided 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19, but expired December 31, 2020; and

WHEREAS, the City desires to extend use of the original 80 hours of paid sick leave previously granted through Resolution 92-20, to the Fraternal Order of Police (Representing the Officers and Sergeants, of Cape Coral Lodge #33) who meet certain criteria, retroactively from January 1, 2021 through June 30, 2021.

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

Section 1. The City Council hereby extends use of the original 80 hours of paid sick leave related to the COVID-19 pandemic previously granted through Resolution 92-20, for Fraternal Order of Police (Representing the Officers and Sergeants, of Cape Coral Lodge #33) retroactively from January 1, 2021 through June 30, 2021.

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

	TY COUNCIL OF THE C		L AT ITS REGULAR
		JOE COVIELLO, MA	YOR
VOTE OF MAYOR AN	D COUNCILMEMBERS:		
CLUEDD LDD		NELSON WELSH WILLIAMS COSDEN	
ATTESTED TO AND F 2021.	FILED IN MY OFFICE TH	HIS DAY OF	
		KIMBERLY BRUNS CITY CLERK	

APPROVED AS TO FORM:

DOLORES D. MENENDEZ

CITY ATTORNEY

res/Union-Police Officers & Sergeants Extend COVID pay

## AGREEMENT BETWEEN THE CITY OF CAPE CORAL ("CITY") AND THE FRATERNAL ORDER OF POLICE LODGE #33 ("UNION") REPRESENTING POLICE OFFICERS AND POLICE SERGEANTS

WHEREAS, the City and Union are parties to a Collective Bargaining Agreement ("CBA") that is in effect from October 1, 2019 through September 30, 2022; and

WHEREAS, Article 12, Section 1 - Hours of Work, Overtime Pay and Compensatory Leave, mandates that a quarterly payment shall be made for compensatory time accumulated in excess of fifty (50) hours at the end of each fiscal quarter; and

WHEREAS, on March 9, 2020, the Governor of the State of Florida declared a State of Emergency due to the outbreak of Novel Coronavirus Disease 2019 (COVID-19); and

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, the Family First Coronavirus Response Act (FFRCA) provides 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19; and

WHEREAS, it is in the mutual interest of the City and the Union for City Council to be able to adopt measures that will limit the spread of COVID-19; and

WHEREAS, the unique effect of a pandemic on employees work and pay was not considered during negotiations of the CBA; and

WHEREAS, it is in the mutual interest of the City and the Union not to require police officers and sergeants to utilize their comp time during this time of uncertainty; and

WHEREAS, the Union understands that the City Manager will be proposing an ordinance amendment setting forth provisions concerning emergency pay in the event any other pandemic or COVID-19 outbreak occurs; and

WHEREAS, the Union is in support of the adoption of an ordinance providing regulation of emergency pay for pandemics or any future COVID-19 outbreaks.

NOW, THEREFORE, THE CITY AND THE UNION AGREE AS FOLLOWS.

Articles 12 and 15 of the CBA are hereby amended to reflect as below:

#### Article 12

#### Section 1 - Hours of Work, Overtime Pay and Compensatory Leave

Employees shall be paid for all hours worked. Overtime pay and compensatory leave shall be calculated on a fourteen (14) calendar day work cycle of eighty (80) hours in accordance with the Fair Labor Standards Act. The workweek will begin on Saturday and end on Friday. Once begun, the workweek shall not be altered solely to avoid the payment of overtime. Employees who are covered by this agreement shall receive no less than 7 days' notice prior to any change to their normal work hours. Management reserves the right to provide less than 7 days' notice prior to any change to an Employee's normal work hours if exigent circumstances, such as a natural disaster or other unforeseen event, should require an immediate change.

Employees shall have the option of accepting compensatory time off for overtime worked. If compensatory time is accepted by the employee, it shall be paid at time and one half the overtime hours worked. Accrued compensatory time off shall not exceed seventy (70) hours during any fiscal quarter. A quarterly payment shall be made for compensatory time accumulated in excess of fifty (50) hours at the end of each fiscal quarter. The aforesaid limit on the accrual of compensatory time and the mandatory quarterly payment is suspended as of March 24, 2020 until September 1, 2020. Any compensatory time in excess of fifty (50) hours will be paid out in the second pay period in September prior to the effect of any negotiated rate changes or step increases.

#### **ARTICLE 15**

#### Leave

\*\*\*\*

#### Section 6. COVID-19 PAID SICK LEAVE

Employees who qualify under the FFCRA for 80 hours of paid sick leave shall receive an additional 80 hours of paid sick leave under the same terms and conditions as set forth in the FFCRA if the employee is unable to work due to a need for leave because the employee:

- 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2. has been advised by a health care provider to self-quarantine related to COVID-19;
- 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);

5. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

#### In Witness Whereof

The parties hereto have caused	their names to	be subscribed here	eto by their	duly authorized
officers or representative this	20 h day of	april	, 2020.	

Representing Cape Coral Fraternal Order of Police Lodge #33

Paul Blanchard

President, FOP Lodge #33

Rob Goff Vice President FOP Lodge #33 City of Cape Coral, Florida

Joe Coviello

Mayor

John Szerlag

City Manager

Lisa Sonego

Human Resources Director

Attest:

Kimberly Bruns

City Clerk

Legal Review

Gail G. Prosser

City Attorney

#### RESOLUTION 92 - 20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING AND RATIFYING AN AGREEMENT BETWEEN THE CITY AND THE FRATERNAL ORDER OF POLICE (REPRESENTING THE OFFICERS AND SERGEANTS, OF CAPE CORAL LODGE #33) TO AMEND ARTICLE 12 "HOURS OF WORK, OVERTIME PAY AND COMPENSATORY LEAVE" AND ARTICLE 15 "LEAVE" OF THE COLLECTIVE BARGAINING AGREEMENT TO PROVIDE FOR SUSPENSION OF COMPENSATORY TIME PROVISIONS, AND FOR ADDITIONAL SICK LEAVE RELATED TO THE COVID-19 PANDEMIC; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Officers and Sergeants bargaining unit of the Fraternal Order of Police, Cape Coral Lodge #33, previously entered into a contract which contains provisions concerning compensatory time accrual; and

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order 20-52 declaring a state of emergency for the entire state of Florida due to the Novel Coronavirus Disease 2019 (COVID-19), which is a severe acute respiratory illness; and

WHEREAS, the Officers and Sergeants bargaining unit have been provided for ratification an Agreement amending Article 12 of the Collective Bargaining Agreement to provide for suspension of the limit of accrued compensatory time and mandatory quarterly payments until September 1, 2020; and

WHEREAS, the Agreement also provides for 80 hours of paid sick leave at the employee's regular rate of pay pursuant to the Family First Coronavirus Response Act (FFRCA), and

WHEREAS, the City desires to provide an additional 80 hours of paid sick leave based on certain circumstances set forth in the Agreement; and

WHEREAS, the Agreement will take effect upon ratification and execution by the Officers and Sergeants bargaining unit of the Fraternal Order of Police, Cape Coral Lodge #33 and the City; and

WHEREAS, the City Manager recommends that City Council approve and ratify the attached Agreement with the Officers and Sergeants bargaining unit of the Fraternal Order of Police, Cape Coral Lodge #33.

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

Section 1. The City Council hereby approves and ratifies the Agreement with the Officers and Sergeants bargaining unit of the Fraternal Order of Police, Cape Coral Lodge #33 amending Articles 12 and 15 of the Collective Bargaining Agreement to provide for suspension of compensatory time requirements and for additional sick leave related to the COVID-19 pandemic. 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 \_\_\_\_\_\_\_\_, 2020.

IOÉ <del>COV</del>IELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO GUNTER CARIOSCIA STOUT NELSON WELSH WILLIAMS COSDEN

age age 
> KIMBERLY BRUNS, CMC CITY CLERK

CITICIAN

APPROVED AS TO FORM:

DOLORES D. MENENDEZ

CITY ATTORNEY

res/Union-Police O&S COVID pay

## AGREEMENT BETWEEN THE CITY OF CAPE CORAL ("CITY") AND THE FRATERNAL ORDER OF POLICE LODGE #33 ("UNION") REPRESENTING POLICE OFFICERS AND POLICE SERGEANTS

WHEREAS, the City and Union are parties to a Collective Bargaining Agreement ("CBA") that is in effect from October 1, 2019 through September 30, 2022; and

WHEREAS, Article 12, Section 1 - Hours of Work, Overtime Pay and Compensatory Leave, mandates that a quarterly payment shall be made for compensatory time accumulated in excess of fifty (50) hours at the end of each fiscal quarter; and

WHEREAS, on March 9, 2020, the Governor of the State of Florida declared a State of Emergency due to the outbreak of Novel Coronavirus Disease 2019 (COVID-19); and

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, the Family First Coronavirus Response Act (FFRCA) provides 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19; and

WHEREAS, it is in the mutual interest of the City and the Union for City Council to be able to adopt measures that will limit the spread of COVID-19; and

WHEREAS, the unique effect of a pandemic on employees work and pay was not considered during negotiations of the CBA; and

WHEREAS, it is in the mutual interest of the City and the Union not to require police officers and sergeants to utilize their comp time during this time of uncertainty; and

WHEREAS, the Union understands that the City Manager will be proposing an ordinance amendment setting forth provisions concerning emergency pay in the event any other pandemic or COVID-19 outbreak occurs; and

WHEREAS, the Union is in support of the adoption of an ordinance providing regulation of emergency pay for pandemics or any future COVID-19 outbreaks.

NOW, THEREFORE, THE CITY AND THE UNION AGREE AS FOLLOWS.

Articles 12 and 15 of the CBA are hereby amended to reflect as below:

#### Article 12

#### Section 1 - Hours of Work, Overtime Pay and Compensatory Leave

Employees shall be paid for all hours worked. Overtime pay and compensatory leave shall be calculated on a fourteen (14) calendar day work cycle of eighty (80) hours in accordance with the Fair Labor Standards Act. The workweek will begin on Saturday and end on Friday. Once begun, the workweek shall not be altered solely to avoid the payment of overtime. Employees who are covered by this agreement shall receive no less than 7 days' notice prior to any change to their normal work hours. Management reserves the right to provide less than 7 days' notice prior to any change to an Employee's normal work hours if exigent circumstances, such as a natural disaster or other unforeseen event, should require an immediate change.

Employees shall have the option of accepting compensatory time off for overtime worked. If compensatory time is accepted by the employee, it shall be paid at time and one half the overtime hours worked. Accrued compensatory time off shall not exceed seventy (70) hours during any fiscal quarter. A quarterly payment shall be made for compensatory time accumulated in excess of fifty (50) hours at the end of each fiscal quarter. The aforesaid limit on the accrual of compensatory time and the mandatory quarterly payment is suspended as of March 24, 2020 until September 1, 2020. Any compensatory time in excess of fifty (50) hours will be paid out in the second pay period in September prior to the effect of any negotiated rate changes or step increases.

#### **ARTICLE 15**

#### Leave

\*\*\*\*

#### Section 6. COVID-19 PAID SICK LEAVE

Employees who qualify under the FFCRA for 80 hours of paid sick leave shall receive an additional 80 hours of paid sick leave under the same terms and conditions as set forth in the FFCRA if the employee is unable to work due to a need for leave because the employee:

- 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2. has been advised by a health care provider to self-quarantine related to COVID-19;
- 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);

5. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

#### In Witness Whereof

The parties hereto have caused	their names to	be subscribed here	eto by their	duly authorized
officers or representative this	20 h day of	april	, 2020.	

Representing Cape Coral Fraternal Order of Police Lodge #33

Paul Blanchard

President, FOP Lodge #33

Rob Goff Vice President FOP Lodge #33 City of Cape Coral, Florida

Joe Coviello

Mayor

John Szerlag

City Manager

Lisa Sonego

Human Resources Director

Attest:

Kimberly Bruns

City Clerk

Legal Review

Gail G. Prosser

City Attorney



## AGENDA REQUEST FORM

CITY OF CAPE CORAL

Item

Number:

Item Type:

B.(3)

Meeting Date:

1/6/2021

- 4.0.

**PERSONNEL** 

**ACTIONS** 

#### TITLE:

Resolution 14-21 Approving extension of the agreement with Fraternal Order of Police (Lieutenants) bargaining unit concerning sick leave related to COVID-19; Department: Human Resources

#### REQUESTED ACTION:

Approve or Deny

#### **SUMMARY EXPLANATION AND BACKGROUND:**

The resolution approves extension of the original additional 80 hours of sick leave for the Fraternal Order of Police (Lieutenants), provided by the city as approved on April 6, 2020 related to the COVID-19 pandemic following the FFCRA guidelines, retroactive from January 1, 2021 through June 30, 2021.

#### STRATEGIC PLAN ALIGNMENT:

1. 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?

#### **RECOMMENDATIONS:**

#### SOURCE OF ADDITIONAL INFORMATION:

Lisa Sonego, Human Resources Director, 239-574-0528

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

Continuation of existing program.

1. Will this action result in a Budget Amendment?

#### PREPARED BY:

Gabrielle Division- Admin Department- Human Resources

#### ATTACHMENTS:

Description

Type

1. Resolution 14-21

Resolution

2. Resolution 93-20

Backup Material

#### **RESOLUTION 14-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL EXTENDING PAID SICK LEAVE RELATED TO THE COVID-19 PANDEMIC FOR FRATERNAL ORDER OF POLICE (REPRESENTING THE LIEUTENANTS, OF CAPE CORAL LODGE #33) AS SET FORTH IN THE AGREEMENT ATTACHED HERETO; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order 20-52 declaring a state of emergency for the entire state of Florida due to the Novel Coronavirus Disease 2019 (COVID-19), which is a severe acute respiratory illness; and

WHEREAS, on April 6, 2020, City Council adopted Resolution 93-20 providing 80 hours of paid sick leave related to COVID-19 in addition to the 80 hours available under the Family First Coronavirus Response Act (FFCRA), and

WHEREAS, the FFCRA provided 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19, but expired December 31, 2020; and

WHEREAS, the City desires to extend use of the original 80 hours of paid sick leave previously granted through Resolution 93-20, to the Fraternal Order of Police (Representing the Lieutenants, of Cape Coral Lodge #33) who meet certain criteria, retroactively from January 1, 2021 through June 30, 2021.

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

Section 1. The City Council hereby extends use of the original 80 hours of paid sick leave related to the COVID-19 pandemic previously granted through Resolution 93-20, for Fraternal Order of Police (Representing the Lieutenants, of Cape Coral Lodge #33) retroactively from January 1, 2021 through June 30, 2021.

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

ADOPTED BY THE CITY COUNCIL OF THE COUNCIL SESSION THIS DAY OF	
	JOE COVIELLO, MAYOR
VOTE OF MAYOR AND COUNCILMEMBERS	•
COVIELLO GUNTER SHEPPARD HAYDEN	NELSON WELSH WILLIAMS COSDEN
ATTESTED TO AND FILED IN MY OFFICE T 2021.	THIS, DAY OF,
	KIMBERLY BRUNS CITY CLERK

APPROVED AS TO FORM:

DOLORES D. MENENDEZ

CITY ATTORNEY

res/Union-Police Lieutenants Extend COVID pay

# MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF CAPE CORAL AND FRATERNAL ORDER OF POLICE LODGE #33

(Representing the Lieutenants)

WHEREAS, the City and Union are parties to a Collective Bargaining Agreement ("CBA") that is in effect from October 1, 2019 through September 30, 2022; and

WHEREAS, Article 11, Section 1, Hours of Work, Overtime Pay and Compensatory Leave, mandates that a quarterly payment shall be made for compensatory time accumulated in excess of fifty (50) hours at the end of each fiscal quarter; and

WHEREAS, on March 9, 2020, the Governor of the State of Florida declared a State of Emergency due to the outbreak of Novel Coronavirus Disease 2019 (COVID-19); and

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, the Family First Coronavirus Response Act (FFRCA) provides 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19; and

WHEREAS, it is in the mutual interest of the City and the Union for City Council to be able to adopt measures that will limit the spread of COVID-19; and

WHEREAS, the unique effect of a pandemic on employees work and pay was not considered during negotiations of the CBA; and

WHEREAS, it is in the mutual interest of the City and the Union not to require police lieutenants to utilize their comp time during this time of uncertainty; and

WHEREAS, the Union understands that the City Manager will be proposing an ordinance amendment setting forth provisions concerning emergency pay in the event any other pandemic or COVID-19 outbreak occurs; and

WHEREAS, the Union is in support of the adoption of an ordinance providing regulation of emergency pay for pandemics or any future COVID-19 outbreaks.

NOW, THEREFORE, THE CITY AND THE UNION AGREES AS FOLLOWS.

Articles 13 and 11 of the CBA are hereby amended to reflect as below:

#### **ARTICLE 13**

#### Leave

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#### Section 6 - COVID-19 PAID SICK LEAVE

Employees who qualify under the FFCRA for 80 hours of paid sick leave shall receive an additional 80 hours of paid sick leave under the same terms and conditions as set forth in the FFCRA if the employee is unable to work due to a need for leave because the employee:

- 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2. has been advised by a health care provider to self-quarantine related to COVID-19;
- 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- 5. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

### Article 11 **Hours of Work, Overtime Pay and Compensatory Leave**

#### Section 1 - Hours of Work, Overtime Pay and Compensatory Leave

Employees shall be paid for all hours worked. Overtime pay and compensatory leave shall be calculated on a fourteen (14) calendar day work cycle of eighty (80) hours in accordance with the Fair Labor Standards Act. The workweek will begin on Saturday and end on Friday. Once begun, the workweek shall not be altered solely to avoid the payment of overtime. Employees who are covered by this agreement shall receive no less than 7 days' notice prior to any change to their normal work hours. Management reserves the right to provide less than 7 days' notice prior to any change to an Employee's normal work hours if exigent circumstances, such as a natural disaster or other unforeseen event, should require an immediate change.

Employees shall have the option of accepting compensatory time off for overtime worked. If compensatory time is accepted by the employee it shall be paid at time and one half the overtime hours worked. Accrued compensatory time off shall not exceed seventy (70) hours during any

fiscal quarter. A quarterly payment shall be made for compensatory time accumulated in excess of fifty (50) hours at the end of each fiscal quarter. The aforesaid limit on the accrual of compensatory time and the mandatory quarterly payment is suspended as of March 24, 2020 until September 1, 2020. Any compensatory time in excess of fifty (50) hours will be paid out in the second pay period in September prior to the effect of any negotiated rate changes or step increases.

#### In Witness Whereof

The parties hereto have caused their names to be subscribed hereto by their duly authorized officers or representatives this 16 day of april

Representing Cape Coral Fraternal Order of Police Lodge #33

Paul Blanchard

President, FOP Lodge #33

Vice President, FOP Lodge 33

Dina Cox

Lieutenants Chair, FOP Lodge 33

City of Cape Coral (Florida)

Joe Covieth

Mayor

City Manager

Lisa Sonego

Human Resources Director

Attest:

Kimberly Bruns

City Clerk

Legal Review:

Gail G. Prosser

Assistant City Attorney

#### **RESOLUTION 93 - 20**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING AND RATIFYING AN AGREEMENT BETWEEN THE CITY AND THE FRATERNAL ORDER OF POLICE (REPRESENTING THE LIEUTENANTS, OF CAPE CORAL LODGE #33) TO AMEND ARTICLE 13 "LEAVE" AND ARTICLE 11 "HOURS OF WORK, OVERTIME PAY AND COMPENSATORY LEAVE" OF THE COLLECTIVE BARGAINING AGREEMENT TO PROVIDE FOR SUSPENSION OF COMPENSATORY TIME PROVISIONS, AND FOR ADDITIONAL SICK LEAVE RELATED TO THE COVID-19 PANDEMIC; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Lieutenants bargaining unit of the Fraternal Order of Police, Cape Coral Lodge #33, previously entered into a contract which contains provisions concerning compensatory time accrual; and

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order 20-52 declaring a state of emergency for the entire state of Florida due to the Novel Coronavirus Disease 2019 (COVID-19), which is a severe acute respiratory illness; and

WHEREAS, the Lieutenants bargaining unit have been provided for ratification an Agreement amending Article 11 of the Collective Bargaining Agreement to provide for suspension of the limit of accrued compensatory time and mandatory quarterly payments until September 1, 2020; and

WHEREAS, the Agreement also provides for 80 hours of paid sick leave at the employee's regular rate of pay pursuant to the Family First Coronavirus Response Act (FFCRA), and

WHEREAS, the City desires to provide an additional 80 hours of paid sick leave based on certain circumstances set forth in the Agreement; and

WHEREAS, the Agreement will take effect upon ratification and execution by the Lieutenants bargaining unit of the Fraternal Order of Police, Cape Coral Lodge #33 and the City; and

WHEREAS, the City Manager recommends that City Council approve and ratify the attached Agreement with the Lieutenants bargaining unit of the Fraternal Order of Police, Cape Coral Lodge #33.

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

Section 1. The City Council hereby approves and ratifies the Agreement with the Lieutenants bargaining unit of the Fraternal Order of Police, Cape Coral Lodge #33 amending Articles 13 and 11 of the Collective Bargaining Agreement to provide for suspension of compensatory time requirements and for additional sick leave related to the COVID-19 pandemic. 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 LOW DAY OF ADDILL, 2020.

OE COVIDE O. MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO GUNTER CARIOSCIA STOUT aye aye aye NELSON WELSH WILLIAMS COSDEN

aye aye

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ATTESTED	TO AND FILED	IN MY OFFI	CE THIS	_ /	DAY OF _	anne	
2020.							

KIMBERLY BRUNS, CMC
CITY CLERK

APPROVED AS TO FORM:

DOLORES D. MENENDEZ

CITY ATTORNEY

res/Union-Police Lieutenants COVII py

## MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF CAPE CORAL AND FRATERNAL ORDER OF POLICE LODGE #33

(Representing the Lieutenants)

WHEREAS, the City and Union are parties to a Collective Bargaining Agreement ("CBA") that is in effect from October 1, 2019 through September 30, 2022; and

WHEREAS, Article 11, Section 1, Hours of Work, Overtime Pay and Compensatory Leave, mandates that a quarterly payment shall be made for compensatory time accumulated in excess of fifty (50) hours at the end of each fiscal quarter; and

WHEREAS, on March 9, 2020, the Governor of the State of Florida declared a State of Emergency due to the outbreak of Novel Coronavirus Disease 2019 (COVID-19); and

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, the Family First Coronavirus Response Act (FFRCA) provides 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19; and

WHEREAS, it is in the mutual interest of the City and the Union for City Council to be able to adopt measures that will limit the spread of COVID-19; and

WHEREAS, the unique effect of a pandemic on employees work and pay was not considered during negotiations of the CBA; and

WHEREAS, it is in the mutual interest of the City and the Union not to require police lieutenants to utilize their comp time during this time of uncertainty; and

WHEREAS, the Union understands that the City Manager will be proposing an ordinance amendment setting forth provisions concerning emergency pay in the event any other pandemic or COVID-19 outbreak occurs; and

WHEREAS, the Union is in support of the adoption of an ordinance providing regulation of emergency pay for pandemics or any future COVID-19 outbreaks.

NOW, THEREFORE, THE CITY AND THE UNION AGREES AS FOLLOWS.

Articles 13 and 11 of the CBA are hereby amended to reflect as below:

### **ARTICLE 13**

# Leave

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# Section 6 - COVID-19 PAID SICK LEAVE

Employees who qualify under the FFCRA for 80 hours of paid sick leave shall receive an additional 80 hours of paid sick leave under the same terms and conditions as set forth in the FFCRA if the employee is unable to work due to a need for leave because the employee:

- 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2. has been advised by a health care provider to self-quarantine related to COVID-19;
- 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- 5. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

# Article 11 **Hours of Work, Overtime Pay and Compensatory Leave**

# Section 1 - Hours of Work, Overtime Pay and Compensatory Leave

Employees shall be paid for all hours worked. Overtime pay and compensatory leave shall be calculated on a fourteen (14) calendar day work cycle of eighty (80) hours in accordance with the Fair Labor Standards Act. The workweek will begin on Saturday and end on Friday. Once begun, the workweek shall not be altered solely to avoid the payment of overtime. Employees who are covered by this agreement shall receive no less than 7 days' notice prior to any change to their normal work hours. Management reserves the right to provide less than 7 days' notice prior to any change to an Employee's normal work hours if exigent circumstances, such as a natural disaster or other unforeseen event, should require an immediate change.

Employees shall have the option of accepting compensatory time off for overtime worked. If compensatory time is accepted by the employee it shall be paid at time and one half the overtime hours worked. Accrued compensatory time off shall not exceed seventy (70) hours during any

fiscal quarter. A quarterly payment shall be made for compensatory time accumulated in excess of fifty (50) hours at the end of each fiscal quarter. The aforesaid limit on the accrual of compensatory time and the mandatory quarterly payment is suspended as of March 24, 2020 until September 1, 2020. Any compensatory time in excess of fifty (50) hours will be paid out in the second pay period in September prior to the effect of any negotiated rate changes or step increases.

# In Witness Whereof

The parties hereto have caused their names to be subscribed hereto by their duly authorized officers or representatives this 16 day of april

Representing Cape Coral Fraternal Order of Police Lodge #33

Paul Blanchard

President, FOP Lodge #33

Vice President, FOP Lodge 33

Dina Cox

Lieutenants Chair, FOP Lodge 33

City of Cape Coral (Florida)

Joe Covieth

Mayor

City Manager

Lisa Sonego

Human Resources Director

Attest:

Kimberly Bruns

City Clerk

Legal Review:

Gail G. Prosser

Assistant City Attorney



# AGENDA REQUEST FORM

CITY OF CAPE CORAL

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Number:

B.(4)

Meeting Date:

1/6/2021

Item Type:

**PERSONNEL** 

**ACTIONS** 

#### TITLE:

Resolution 15-21 Approving extension of the Agreement with the Fire Supervisory and Rank and File bargaining units concerning sick leave related to COVID-19; Department: Human Resources

# **REQUESTED ACTION:**

Approve or Deny

#### SUMMARY EXPLANATION AND BACKGROUND:

The resolution approves extension of the original additional 80 hours of sick leave for the Cape Coral Professional Fire Fighters Local 2424 of the International Association of Fire Fighters (representing the Supervisory and Rank and File units), provided by the city as approved on April 6, 2020 related to the COVID-19 pandemic following the FFCRA guidelines, retroactive from January 1, 2021 through June 30, 2021.

### STRATEGIC PLAN ALIGNMENT:

1. 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?

# **RECOMMENDATIONS:**

# SOURCE OF ADDITIONAL INFORMATION:

Lisa Sonego, Human Resources Director, 239-574-0528

# FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

Continuation of existing program.

1. Will this action result in a Budget Amendment?

#### PREPARED BY:

Gabrielle Division- Admin Department- Human Resources

### ATTACHMENTS:

Description

□ 1. Resolution 15-21

□ 2. Resolution 94-20

Backup Material

# **RESOLUTION 15-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL EXTENDING PAID SICK LEAVE RELATED TO THE COVID-19 PANDEMIC FOR THE CAPE CORAL PROFESSIONAL FIRE FIGHTERS LOCAL 2424 OF THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (REPRESENTING THE SUPERVISORY AND RANK AND FILE UNITS) AS SET FORTH IN THE AGREEMENT ATTACHED HERETO; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order 20-52 declaring a state of emergency for the entire state of Florida due to the Novel Coronavirus Disease 2019 (COVID-19), which is a severe acute respiratory illness; and

WHEREAS, on April 6, 2020, City Council adopted Resolution 94-20 providing 80 hours of paid sick leave for non-shift 40 hour per week employees, and 112 hours of paid sick leave for shift employees who work 48 hours per week, related to COVID-19 in addition to the 80 hours available under the Family First Coronavirus Response Act (FFCRA), and

WHEREAS, the FFCRA provided 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19, but expired December 31, 2020; and

WHEREAS, the City desires to extend use of the original 80 hours of paid sick leave for non-shift 40 hour per week employees, and 112 hours of paid sick leave for shift employees who work 48 hours per week, previously granted through Resolution 94-20, to the Cape Coral Professional Fire Fighters Local 2424 of the International Association of Fire Fighters (Representing the Supervisory and Rank and File Units) who meet certain criteria, retroactively from January 1, 2021 through June 30, 2021.

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

Section 1. The City Council hereby extends use of the original 80 hours of paid sick leave for non-shift 40 hour per week employees, and 112 hours of paid sick leave for shift employees who work 48 hours per week, related to the COVID-19 pandemic previously granted through Resolution 94-20, for the Cape Coral Professional Fire Fighters Local 2424 of the International Association of Fire Fighters (Representing the Supervisory and Rank and File Units) retroactively from January 1, 2021 through June 30, 2021.

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

ADOPTED BY THE CITY COUNCIL COUNCIL SESSION THIS D	OF THE CITY OF CAPE CORAL AT ITS REGULAR AY OF, 2021.
	JOE COVIELLO, MAYOR
VOTE OF MAYOR AND COUNCILM	IEMBERS:
COVIELLO GUNTER SHEPPARD HAYDEN	NELSON WELSH WILLIAMS COSDEN
ATTESTED TO AND FILED IN MY 0 2021.	OFFICE THIS DAY OF,
	KIMBERLY BRUNS CITY CLERK

APPROVED AS TO FORM:

DOLORES D. MENENDEZ CITY ATTORNEY

res/Union-Fire Extend COVID pay

# MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF CAPE CORAL AND

# THE CAPE CORAL PROFESSIONAL FIRE FIGHTERS LOCAL 2424 OF THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (Representing the "Supervisory and Rank & File Bargaining Units)

WHEREAS, the City and Union are parties to a Collective Bargaining Agreement ("CBA") that is in effect from October 1, 2018 through September 30, 2021; and

WHEREAS, Article 11, Overtime, Section 3, Other Overtime Situations, provides that employees who work during an "emergency" shall be compensated for the time worked during said emergency at two times their normal rate of pay.

WHEREAS, on March 9, 2020, the Governor of the State of Florida declared a State of Emergency due to the outbreak of Novel Coronavirus Disease 2019 (COVID-19);

WHEREAS, COVID-19 is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, it is in the mutual interest of the City and the Union for City Council to be able to adopt measures that will limit the spread of COVID-19; and

WHEREAS, the unique effect of a pandemic on employees work and pay was not considered during negotiations of the CBA;

WHEREAS, the City and the Union are in agreement that the Union shall participate in the City's sponsored health insurance plan.

## NOW THEREFORE:

1. Article 11 of the CBA is hereby amended to reflect as below:

# Article 11 Overtime

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# Section 3 – Other Overtime Situations

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(e) City Emergencies: In case of extreme or pending emergencies, the Fire Chief may waive the established procedures referenced in Article 11 - Overtime. If employees, whether on emergency stand-by or not, are called in to work during an emergency declared by City Council or City Manager they shall receive two (2) times their base rate of pay for the actual amount of time on duty during the duration of said emergency, rounded off forward to the nearest one-quarter (1/4) hour. "Emergency" shall not include the COVID-19 and future medical pandemics for the

purpose of this Article.

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2. Article 16 of the CBA is hereby amended to reflect as below:

# Article 16 Leave

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Section 4 – Use of Leave

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# 6) - COVID-19 PAID SICK LEAVE

Employees who qualify under the Families First Coronavirus Response Act (FFCRA) for 80 hours of paid sick leave shall receive an additional 80 hours of paid sick leave (112 hours of paid sick leave for shift, which amount is reflective of the additional hours worked per week by shift) under the same terms and conditions as set forth in the FFCRA if the employee is unable to work due to a need for leave because the employee:

- 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2. has been advised by a health care provider to self-quarantine related to COVID-19;
- 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- 5. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.
- 3. Article 18 of the CBA is hereby amended as of January 1<sup>st</sup>, 2021 to reflect as below:

### Article 18

#### Health Insurance

# Section 1 - Health & Welfare Benefits for Active Employees

- (a) The City shall bear the cost of health, life, accidental health plan options under the and dismemberment (AD&D) benefits for each current employee.
- (b) The City agrees to extend the City's sponsored health insurance plan to all employees covered under this agreement on January 1, 2021.

- (c) The employee shall be responsible for paying 100% of the health insurance premium for any dependent coverage elected.
- (d) The amount provided to members participating in the City's "Health Insurance Opt-out" program shall be the same as provided to all other employees of the City with the cost borne by the City.
- (e) Dependent Premiums Upon ratification of this agreement, the City agrees to provide pretax payroll deductions for employees of the bargaining unit that have spouse or dependent family members on their health insurance plans.

# In Witness Whereof

The parties hereto have caused their names to be subscribed hereto by their duly authorized officers or representatives this 16 day of 4201,2020

Cape Coral Professional Fire Fighters, Local 2424 of the I.A.F.F. representing Supervisory and Rank & File

Mark Muerth

President, IAFF Local 2424

Dave Arnold

Vice President, IAFF Local 2424

Joe Glaser

Vice President, IAFF Local 2424

City of Cape Coral (Florida)

Joe Coviello

Mayor

A. John Sze lag

City Manager

Lisa Sonego

Human Resources Director

Attest:

Kimberly Bruns

City Clerk

Legal Review:

Gail G. Prosser

Assistant City Attorney

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING AND RATIFYING AN AGREEMENT BETWEEN THE CITY AND THE CAPE CORAL PROFESSIONAL FIRE FIGHTERS LOCAL 2424 OF THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (REPRESENTING THE SUPERVISORY AND RANK AND FILE UNITS) TO AMEND ARTICLE 11 "OVERTIME" TO CLARIFY EMERGENCY PAY, ARTICLE 16 "LEAVE" TO PROVIDE FOR ADDITIONAL SICK LEAVE RELATED TO THE COVID-19 PANDEMIC, AND ARTICLE 18 "HEALTH INSURANCE" TO PROVIDE THAT THE CITY WILL EXTEND HEALTH INSURANCE BEGINNING JANUARY 1, 2021; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order 20-52 declaring a state of emergency for the entire state of Florida due to the Novel Coronavirus Disease 2019 (COVID-19), which is a severe acute respiratory illness; and

WHEREAS, the Supervisory and Rank and File bargaining units of the Cape Coral Professional Fire Fighters Local 2424 of the International Association of Fire Fighters have been provided for ratification an Agreement amending Article 11, "Overtime" of the Collective Bargaining Agreement to provide clarification that the COVID-19 and future medical pandemics are not included in Emergency Pay; and

WHEREAS, the Agreement provides for 80 hours of paid sick leave at the employee's regular rate of pay pursuant to the Family First Coronavirus Response Act (FFCRA), and

WHEREAS, the City desires to provide an additional 80 hours of paid sick leave for non-shift 40 hour per week employees, and 112 hours of paid sick leave for shift employees who work 48 hours per week based on certain circumstances set forth in the Agreement; and

WHEREAS, the Agreement also amends Article 18 "Health Insurance" to provide that the City will extend health insurance coverage beginning January 1, 2021 to employees in the Supervisory and Rank and File bargaining units of the Cape Coral Professional Fire Fighters Local 2424 of the International Association of Fire Fighters with premiums paid by the City, and their dependents at no cost to the City; and

WHEREAS, the Agreement will take effect upon ratification and execution by the Supervisory and Rank and File bargaining units of the Cape Coral Professional Fire Fighters Local 2424 of the International Association of Fire Fighters and the City; and

WHEREAS, the City Manager recommends that City Council approve and ratify the attached Agreement with the Supervisory and Rank and File bargaining units of the Cape Coral Professional Fire Fighters Local 2424 of the International Association of Fire Fighters.

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

Section 1. The City Council hereby approves and ratifies the Agreement with the Supervisory and Rank and File bargaining units of the Cape Coral Professional Fire Fighters Local 2424 of the International Association of Fire Fighters amending Article 11 "Overtime" to clarify Emergency Pay, Article 16 "Leave" to provide for additional sick leave related to the COVID-19 pandemic, and Article 18 "Health Insurance" to provide that the City will extend health insurance beginning January 1, 2021. 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 10 DAY OF 12020.

IOE COVIELLO, MAYOR

# VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	aye	NELSON	aue_
GUNTER	nay	WELSH	alse
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STOUT	alle	COSDEN	alge
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2020.			
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		Kernbula I	Sum
		KIMBERLY BRUNS	, CMC
		CITY CLERK	,

DOLORES D. MENENDEZ CITY ATTORNEY res/Union-Fire COVID pay

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# MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF CAPE CORAL AND

# THE CAPE CORAL PROFESSIONAL FIRE FIGHTERS LOCAL 2424 OF THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (Representing the "Supervisory and Rank & File Bargaining Units)

WHEREAS, the City and Union are parties to a Collective Bargaining Agreement ("CBA") that is in effect from October 1, 2018 through September 30, 2021; and

WHEREAS, Article 11, Overtime, Section 3, Other Overtime Situations, provides that employees who work during an "emergency" shall be compensated for the time worked during said emergency at two times their normal rate of pay.

WHEREAS, on March 9, 2020, the Governor of the State of Florida declared a State of Emergency due to the outbreak of Novel Coronavirus Disease 2019 (COVID-19);

WHEREAS, COVID-19 is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, it is in the mutual interest of the City and the Union for City Council to be able to adopt measures that will limit the spread of COVID-19; and

WHEREAS, the unique effect of a pandemic on employees work and pay was not considered during negotiations of the CBA;

WHEREAS, the City and the Union are in agreement that the Union shall participate in the City's sponsored health insurance plan.

## NOW THEREFORE:

1. Article 11 of the CBA is hereby amended to reflect as below:

# Article 11 Overtime

\*\*\*\*

# Section 3 – Other Overtime Situations

\*\*\*\*

(e) City Emergencies: In case of extreme or pending emergencies, the Fire Chief may waive the established procedures referenced in Article 11 - Overtime. If employees, whether on emergency stand-by or not, are called in to work during an emergency declared by City Council or City Manager they shall receive two (2) times their base rate of pay for the actual amount of time on duty during the duration of said emergency, rounded off forward to the nearest one-quarter (1/4) hour. "Emergency" shall not include the COVID-19 and future medical pandemics for the

purpose of this Article.

\*\*\*\*

2. Article 16 of the CBA is hereby amended to reflect as below:

# Article 16 Leave

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Section 4 – Use of Leave

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# 6) - COVID-19 PAID SICK LEAVE

Employees who qualify under the Families First Coronavirus Response Act (FFCRA) for 80 hours of paid sick leave shall receive an additional 80 hours of paid sick leave (112 hours of paid sick leave for shift, which amount is reflective of the additional hours worked per week by shift) under the same terms and conditions as set forth in the FFCRA if the employee is unable to work due to a need for leave because the employee:

- 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2. has been advised by a health care provider to self-quarantine related to COVID-19;
- 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- 5. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.
- 3. Article 18 of the CBA is hereby amended as of January 1<sup>st</sup>, 2021 to reflect as below:

### Article 18

#### Health Insurance

# Section 1 - Health & Welfare Benefits for Active Employees

- (a) The City shall bear the cost of health, life, accidental health plan options under the and dismemberment (AD&D) benefits for each current employee.
- (b) The City agrees to extend the City's sponsored health insurance plan to all employees covered under this agreement on January 1, 2021.

- (c) The employee shall be responsible for paying 100% of the health insurance premium for any dependent coverage elected.
- (d) The amount provided to members participating in the City's "Health Insurance Opt-out" program shall be the same as provided to all other employees of the City with the cost borne by the City.
- (e) Dependent Premiums Upon ratification of this agreement, the City agrees to provide pretax payroll deductions for employees of the bargaining unit that have spouse or dependent family members on their health insurance plans.

# In Witness Whereof

The parties hereto have caused their names to be subscribed hereto by their duly authorized officers or representatives this 16 day of 4201,2020

Cape Coral Professional Fire Fighters, Local 2424 of the I.A.F.F. representing Supervisory and Rank & File

Mark Muerth

President, IAFF Local 2424

Dave Arnold

Vice President, IAFF Local 2424

Joe Glaser

Vice President, IAFF Local 2424

City of Cape Coral (Florida)

Joe Coviello

Mayor

A. John Sze lag

City Manager

Lisa Sonego

Human Resources Director

Attest:

Kimberly Bruns

City Clerk

Legal Review:

Gail G. Prosser

Assistant City Attorney



# AGENDA REQUEST FORM

CITY OF CAPE CORAL

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Number:

B.(5)

Meeting Date:

1/6/2021

Item Type:

PERSONNEL ACTIONS

#### TITLE:

Resolution 16-21 Approving extension of the Agreement with the Professional, Supervisory, White Collar and Blue Collar bargaining units concerning sick leave related to COVID-19; Department: Human Resources

#### **REQUESTED ACTION:**

Approve or Deny

### **SUMMARY EXPLANATION AND BACKGROUND:**

The resolution approves extension of the original additional 80 hours of sick leave for the International Union of Painters and Allied Trades, AFL-CIO Local 2301 (representing the Professional, Supervisory, White Collar, and Blue Collar Units), provided by the city as approved on April 6, 2020 related to the COVID-19 pandemic following the FFCRA guidelines, retroactive from January 1, 2021 through June 30, 2021.

#### STRATEGIC PLAN ALIGNMENT:

1. 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?

# **RECOMMENDATIONS:**

#### SOURCE OF ADDITIONAL INFORMATION:

Lisa Sonego, Human Resources Director, 239-574-0528

# FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

Continuation of existing program.

1. Will this action result in a Budget Amendment?

# PREPARED BY:

Gabrielle Lovejoy Division- Admin Department- Human Resources

# ATTACHMENTS:

Description Type

1. Resolution 16-21 Resolution

# **RESOLUTION 16-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL EXTENDING PAID SICK LEAVE RELATED TO THE COVID-19 PANDEMIC FOR THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL-CIO LOCAL 2301 (REPRESENTING THE PROFESSIONAL, SUPERVISORY, WHITE COLLAR, AND BLUE COLLAR UNITS) AS SET FORTH IN THE AGREEMENT ATTACHED HERETO; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order 20-52 declaring a state of emergency for the entire state of Florida due to the Novel Coronavirus Disease 2019 (COVID-19), which is a severe acute respiratory illness; and

WHEREAS, on April 6, 2020, City Council adopted Resolution 95-20 providing 80 hours of paid sick leave related to COVID-19 in addition to the 80 hours available under the Family First Coronavirus Response Act (FFCRA); and

WHEREAS, the FFCRA provided 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19, but expired December 31, 2020; and

WHEREAS, the City desires to extend use of the original 80 hours of paid sick leave previously granted through Resolution 95-20 to the International Union of Painters and Allied Trades, AFL-CIO Local 2301 (Representing the Professional, Supervisory, White Collar and Blue Collar Units) who meet certain criteria, retroactively from January 1, 2021 through June 30, 2021.

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

Section 1. The City Council hereby extends use of the original 80 hours of paid sick leave related to the COVID-19 pandemic previously granted through Resolution 95-20, for the International Union of Painters and Allied Trades, AFL-CIO Local 2301 (Representing the Professional, Supervisory, White Collar and Blue Collar Units) retroactively from January 1, 2021 through June 30, 2021.

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

ADOPTED BY THE CITY COUNC COUNCIL SESSION THIS	IL OF THE CITY OF CAPE CORAL AT ITS REGULAR DAY OF, 2021.
	JOE COVIELLO, MAYOR
VOTE OF MAYOR AND COUNCIL	LMEMBERS:
COVIELLO GUNTER SHEPPARD HAYDEN	NELSON WELSH WILLIAMS COSDEN
ATTESTED TO AND FILED IN M 2021.	Y OFFICE THIS DAY OF,
	KIMBERLY BRUNS CITY CLERK

APPROVED AS TO FORM:

DOLORES D. MENENDEZ CITY ATTORNEY

res/Union-General Extend COVID pay

# MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF CAPE CORAL AND

# INTERNATIONAL UNION OF

PAINTERS AND ALLIED TRADES, AFL-CIO, LOCAL 2301

(Representing the "Professional" "Supervisory", "White Collar" and "Blue Collar" Units)

WHEREAS, the City and Union are parties to a Collective Bargaining Agreement ("CBA") that is in effect from October 1, 2018 through September 30, 2021; and

WHEREAS, Article 9, Overtime Pay and Compensatory Leave, Section 4, Emergency Pay, provides that non-exempt employees who work during an "emergency" shall be compensated for the time worked during said emergency at two times their normal rate of pay; and

WHEREAS, on March 9, 2020, the Governor of the State of Florida declared a State of Emergency due to the outbreak of Novel Coronavirus Disease 2019 (COVID-19); and

WHEREAS, COVID-19 is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, the Family First Coronavirus Response Act (FFRCA) provides 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19; and

WHEREAS, it is in the mutual interest of the City and the Union for City Council to be able to adopt measures that will limit the spread of COVID-19; and

WHEREAS, the unique effect of a pandemic on employees work and pay was not considered during negotiations of the CBA.

NOW THEREFORE, ARTICLE 9 AND ARTICLE 11 OF THE CBA ARE HEREBY AMENDED TO REFLECT AS BELOW:

# Article 9 Overtime Pay and Compensatory Leave

# Section 1 - Normal Rate

"Normal rate" is defined as an employee's base straight-time rate of pay per hour with no additional hourly premiums included.

# Section 2 - Regular Rate

"Regular rate" is defined in accordance with the Fair Labor Standards Act 29 U.S.C. 201-219. "Regular rate" is the hourly rate (normal rate plus hourly premiums) paid to the employee for the normal, non-overtime workweek. The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked in that workweek for which such compensation was paid.

# Section 3 - Overtime Pay

For employees who are non-exempt, one and one-half (1-1/2) times an employee's regular rate shall be paid for all hours worked in excess of forty (40) hours in a workweek. Any hours for which pay is received shall be considered "hours worked" in calculating overtime pay. An employee's work schedule shall not be changed solely to avoid the payment of overtime pay.

# Section 4 - Emergency Pay

The intent of this Section is to set up special compensation provisions for employees who work during an "emergency." "Emergency" shall include, but not be limited to, natural disasters such as hurricanes, flood, storms, etc. as declared by City Council or its designee. "Emergency" shall also include any period of time during which the City Council or its designee has suspended normal working hours of the City. "Emergency" shall not include the COVID-19 and future medical pandemics for the purpose of this Article.

Non-exempt employees who are required to work during an emergency will be compensated for the time worked during said emergency at two times their normal rate of pay. Non-exempt employees who are not requested to work during emergencies shall be compensated for their regularly scheduled hours during the time of the emergency. All hours worked during the emergency will be counted towards determining the total hours worked in a workweek. All hours worked in excess of forty (40) hours during a workweek that contained an emergency shall be paid at one and one-half (1-1/2) times the employee's regular rate.

Exempt employees who are not requested to work during emergencies shall be compensated for their normal forty (40) hour work.

When City Hall is closed during a declared emergency, exempt employees who are requested to work during the declared emergency shall earn additional compensation for the first eight (8) hours worked per day. Additional compensation is pay in the amount of two times the normal rate of pay and is in lieu of the normal rate of pay. The additional compensation may only be earned on Monday through Friday. The maximum amount of additional compensation earned on any single calendar day during the declared emergency is eight (8) hours.

The maximum amount of additional compensation permitted to be earned per declared emergency when City Hall is closed is twenty-four (24) hours. For all hours worked when an employee is not eligible for additional compensation, exempt employees shall be paid their normal rate of pay.

Any compensation beyond the employee's regular wages that is owed to an employee for work performed during a declared city emergency shall be paid as soon as practicable but in no event shall the payment be delayed for more than two (2) pay periods.

# **ARTICLE 11**

#### Leave

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# Section 8. COVID-19 PAID SICK LEAVE

Employees who qualify under the FFCRA for 80 hours of paid sick leave shall receive an additional 80 hours of paid sick leave under the same terms and conditions as set forth in the FFCRA if the employee is unable to work due to a need for leave because the employee:

- 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2. has been advised by a health care provider to self-quarantine related to COVID-19;
- 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- 5. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

# In Witness Whereof

The parties hereto have caused their names to be subscribed hereto by their duly authorized officers or representatives this <u>Ilb day of Quit</u>, 2020

Local Union 2301 International Unit of Painters and Allied Trades, AFL-CIO

Richard Jones President, Local 2301 City of Cape Coral (Florida)

Joe Coviello

Mayor

A. John Sterlag City Manager

Lisa Sonego

Human Resources Director

Attest:

Kimberly Bruns

City Clerk

Legal Review:

Gail G. Prosser

Assistant City Attorney

# **RESOLUTION 95 - 20**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING AND RATIFYING AN AGREEMENT BETWEEN THE CITY AND THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL-CIO LOCAL 2301 (REPRESENTING THE PROFESSIONAL, SUPERVISORY, WHITE COLLAR, AND BLUE COLLAR UNITS) TO AMEND ARTICLE 9 TO CLARIFY EMERGENCY PAY, AND ARTICLE 11 TO PROVIDE FOR ADDITIONAL SICK LEAVE RELATED TO THE COVID-19 PANDEMIC; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order 20-52 declaring a state of emergency for the entire state of Florida due to the Novel Coronavirus Disease 2019 (COVID-19), which is a severe acute respiratory illness; and

WHEREAS, the Professional, Supervisory, White Collar, and Blue Collar bargaining units of the International Union of Painters and Allied Trades, AFL-CIO, Local 2301 have been provided for ratification an Agreement amending Article 9 of the Collective Bargaining Agreement to provide clarification that the COVID-19 and future medical pandemics are not included in Emergency Pay; and

WHEREAS, the Agreement also provides for 80 hours of paid sick leave at the employee's regular rate of pay pursuant to the Family First Coronavirus Response Act (FFCRA), and

WHEREAS, the City desires to provide an additional 80 hours of paid sick leave based on certain circumstances set forth in the Agreement; and

WHEREAS, the Agreement will take effect upon ratification and execution by the Professional, Supervisory, White Collar, and Blue Collar bargaining units of the International Union of Painters and Allied Trades, AFL-CIO, Local 2301 and the City; and

WHEREAS, the City Manager recommends that City Council approve and ratify the attached Agreement with the Professional, Supervisory, White Collar, and Blue Collar bargaining units of the International Union of Painters and Allied Trades, AFL-CIO, Local 2301.

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

Section 1. The City Council hereby approves and ratifies the Agreement with the Professional, Supervisory, White Collar, and Blue Collar bargaining units of the International Union of Painters and Allied Trades, AFL-CIO, Local 2301 amending Article 9 to clarify Emergency Pay and Article 11 to provide for additional sick leave related to the COVID-19 pandemic. A copy of the Agreement is attached hereto as Exhibit A.

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

JOE COVI**LLO,** MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO GUNTER CARIOSCIA STOUT NELSON WELSH WILLIAMS COSDEN

age

ATTESTED TO AND FILED IN MY OFFICE THIS 7 DAY OF 4 DAY OF 4

KIMBERLY BRUNS, CMC

CITY CLERK

APPROVED AS TO FORM:

DOLORES D. MENENDEZ

CITY ATTORNEY

res/Union-General COVID pay

# MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF CAPE CORAL AND

# INTERNATIONAL UNION OF

PAINTERS AND ALLIED TRADES, AFL-CIO, LOCAL 2301

(Representing the "Professional" "Supervisory", "White Collar" and "Blue Collar" Units)

WHEREAS, the City and Union are parties to a Collective Bargaining Agreement ("CBA") that is in effect from October 1, 2018 through September 30, 2021; and

WHEREAS, Article 9, Overtime Pay and Compensatory Leave, Section 4, Emergency Pay, provides that non-exempt employees who work during an "emergency" shall be compensated for the time worked during said emergency at two times their normal rate of pay; and

WHEREAS, on March 9, 2020, the Governor of the State of Florida declared a State of Emergency due to the outbreak of Novel Coronavirus Disease 2019 (COVID-19); and

WHEREAS, COVID-19 is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, the Family First Coronavirus Response Act (FFRCA) provides 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19; and

WHEREAS, it is in the mutual interest of the City and the Union for City Council to be able to adopt measures that will limit the spread of COVID-19; and

WHEREAS, the unique effect of a pandemic on employees work and pay was not considered during negotiations of the CBA.

NOW THEREFORE, ARTICLE 9 AND ARTICLE 11 OF THE CBA ARE HEREBY AMENDED TO REFLECT AS BELOW:

# Article 9 Overtime Pay and Compensatory Leave

# Section 1 - Normal Rate

"Normal rate" is defined as an employee's base straight-time rate of pay per hour with no additional hourly premiums included.

# Section 2 - Regular Rate

"Regular rate" is defined in accordance with the Fair Labor Standards Act 29 U.S.C. 201-219. "Regular rate" is the hourly rate (normal rate plus hourly premiums) paid to the employee for the normal, non-overtime workweek. The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked in that workweek for which such compensation was paid.

# Section 3 - Overtime Pay

For employees who are non-exempt, one and one-half (1-1/2) times an employee's regular rate shall be paid for all hours worked in excess of forty (40) hours in a workweek. Any hours for which pay is received shall be considered "hours worked" in calculating overtime pay. An employee's work schedule shall not be changed solely to avoid the payment of overtime pay.

# Section 4 - Emergency Pay

The intent of this Section is to set up special compensation provisions for employees who work during an "emergency." "Emergency" shall include, but not be limited to, natural disasters such as hurricanes, flood, storms, etc. as declared by City Council or its designee. "Emergency" shall also include any period of time during which the City Council or its designee has suspended normal working hours of the City. "Emergency" shall not include the COVID-19 and future medical pandemics for the purpose of this Article.

Non-exempt employees who are required to work during an emergency will be compensated for the time worked during said emergency at two times their normal rate of pay. Non-exempt employees who are not requested to work during emergencies shall be compensated for their regularly scheduled hours during the time of the emergency. All hours worked during the emergency will be counted towards determining the total hours worked in a workweek. All hours worked in excess of forty (40) hours during a workweek that contained an emergency shall be paid at one and one-half (1-1/2) times the employee's regular rate.

Exempt employees who are not requested to work during emergencies shall be compensated for their normal forty (40) hour work.

When City Hall is closed during a declared emergency, exempt employees who are requested to work during the declared emergency shall earn additional compensation for the first eight (8) hours worked per day. Additional compensation is pay in the amount of two times the normal rate of pay and is in lieu of the normal rate of pay. The additional compensation may only be earned on Monday through Friday. The maximum amount of additional compensation earned on any single calendar day during the declared emergency is eight (8) hours.

The maximum amount of additional compensation permitted to be earned per declared emergency when City Hall is closed is twenty-four (24) hours. For all hours worked when an employee is not eligible for additional compensation, exempt employees shall be paid their normal rate of pay.

Any compensation beyond the employee's regular wages that is owed to an employee for work performed during a declared city emergency shall be paid as soon as practicable but in no event shall the payment be delayed for more than two (2) pay periods.

# **ARTICLE 11**

#### Leave

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# Section 8. COVID-19 PAID SICK LEAVE

Employees who qualify under the FFCRA for 80 hours of paid sick leave shall receive an additional 80 hours of paid sick leave under the same terms and conditions as set forth in the FFCRA if the employee is unable to work due to a need for leave because the employee:

- 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2. has been advised by a health care provider to self-quarantine related to COVID-19;
- 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- 5. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

# In Witness Whereof

The parties hereto have caused their names to be subscribed hereto by their duly authorized officers or representatives this <u>Ilb day of Quit</u>, 2020

Local Union 2301 International Unit of Painters and Allied Trades, AFL-CIO

Richard Jones President, Local 2301 City of Cape Coral (Florida)

Joe Coviello

Mayor

A. John Sterlag City Manager

Lisa Sonego

Human Resources Director

Attest:

Kimberly Bruns

City Clerk

Legal Review:

Gail G. Prosser

Assistant City Attorney



# AGENDA REQUEST FORM

CITY OF CAPE CORAL

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Number:

B.(6)

Meeting Date:

1/6/2021

- -----

**PERSONNEL** 

Item Type: ACTIONS

#### TITLE:

Resolution 17-21 Approves the extension of Paid Sick Leave Related to the COVID-19 Pandemic for Non-bargaining Employees; Department: Human Resources

# **REQUESTED ACTION:**

Approve or Deny

#### SUMMARY EXPLANATION AND BACKGROUND:

The resolution approves an extension of the original additional 80 hours of sick leave for non-bargaining employees, provided by the city as approved on April 6, 2020 related to the COVID-19 pandemic following the FFCRA guidelines, retroactive from January 1, 2021 through June 30, 2021.

### STRATEGIC PLAN ALIGNMENT:

1. 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?

# **RECOMMENDATIONS:**

# SOURCE OF ADDITIONAL INFORMATION:

Lisa Sonego, Human Resources Director, 239-574-0528

# FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

Continuation of existing program.

1. Will this action result in a Budget Amendment?

#### PREPARED BY:

Gabrielle Division- Admin Department- Human Resources

# ATTACHMENTS:

DescriptionType□1. Resolution 17-21Resolution□2. Resolution 96-20Backup Material

### **RESOLUTION 17-21**

A RESOLUTION OF THE CITY OF CAPE CORAL EXTENDING PAID SICK LEAVE RELATED TO THE COVID-19 PANDEMIC FOR NON-BARGAINING UNIT EMPLOYEES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 9, 2020, the Governor of the State of Florida declared a State of Emergency due to the outbreak of Novel Coronavirus Disease 2019 (COVID-19); and

WHEREAS, on April 6, 2020, City Council adopted Resolution 96-20 providing 80 hours of paid sick leave related to COVID-19 for non-bargaining unit employees in addition to the 80 hours available under the Family First Coronavirus Response Act (FFCRA); and

WHEREAS, the FFCRA provided 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19, but expired December 31, 2020; and

WHEREAS, the City desires to extend use of the original 80 hours of paid sick leave previously granted through Resolution 96-20, to non-bargaining unit employees who meet certain criteria, retroactively from January 1, 2021 through June 30, 2021.

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

SECTION 1. The City Council hereby approves use of the original 80 hours of paid sick leave previously granted through Resolution 96-20, to non-bargaining unit employees retroactively from January 1, 2021 through June 30, 2021 as follows:

# COVID-19 Paid Sick Leave

Employees who would have qualified under the FFCRA for 80 hours of paid sick leave shall receive an additional 80 hours of paid sick leave under the same terms and conditions as set forth in the FFCRA if the employee is unable to work due to a need for leave because the employee:

- 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2. has been advised by a health care provider to self-quarantine related to COVID-19;
- 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- 5. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

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

ADOPTED BY THE CITY COUN			TS REGULAR
COUNCIL SESSION THIS	DAY OF	, 2021.	
	JOE (	COVIELLO, MAYOR	

VOTE OF MAYOR AND COUNCILMEMBERS:			
COVIELLO GUNTER SHEPPARD HAYDEN	NELSON WELSH WILLIAMS COSDEN		
ATTESTED TO AND FILED IN MY OFFICE THIS DAY OF2021.			
	KIMBERLY BRUNS CITY CLERK		
APPROVED AS TO FORM:			
DOLORES D. MENENDEZ CITY ATTORNEY res/Non-union Employees-Extend COVID-19 Sick Leave			

# RESOLUTION 96 - 20

A RESOLUTION OF THE CITY OF CAPE CORAL PROVIDING FOR PAID SICK LEAVE RELATED TO THE COVID-19 PANDEMIC FOR NON-BARGAINING UNIT EMPLOYEES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 9, 2020, the Governor of the State of Florida declared a State of Emergency due to the outbreak of Novel Coronavirus Disease 2019 (COVID-19); and

WHEREAS, COVID-19 is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, the Family First Coronavirus Response Act (FFRCA) provides 80 hours of paid sick leave at the employee's regular rate of pay to full time employees who need to take leave for certain specified reasons related to COVID-19; and

WHEREAS, the City desires to provide an additional 80 hours of paid sick leave to non-bargaining unit employees who meet certain criteria.

SECTION 1. The City Council hereby approves the provision of paid sick leave related to the COVID-19 pandemic to non-bargaining unit employees as follows:

# COVID-19 Paid Sick Leave

Employees who qualify under the FFCRA for 80 hours of paid sick leave shall receive an additional 80 hours of paid sick leave under the same terms and conditions as set forth in the FFCRA if the employee is unable to work due to a need for leave because the employee:

- 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- 2. has been advised by a health care provider to self-quarantine related to COVID-19;
- 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
- 5. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

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

JOE CO<del>VIELLO,</del> MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO GUNTER CARIOSCIA STOUT NELSON WELSH WILLIAMS COSDEN

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ATTESTED TO AND FILED IN MY OFFICE	ETHIS 7 DAY OF April
2020.	
	Kimbeda Brus
	KIMBERLY BRUNS, CMC
	CITY CLERK

APPROVED AS TO FORM:

DOLORES D. MENENDEZ
CITY ATTORNEY
res/Non-union Employees-COVID-19



# AGENDA REQUEST FORM CITY OF CAPE CORAL

Item
Number: A.

Meeting

1/6/2021

Date:

ORDINANCES/RESOLUTIONS -

Type: Public Hearings

TITLE:

Resolution 9-21 Public Input

### **REQUESTED ACTION:**

Approve or Deny

### SUMMARY EXPLANATION AND BACKGROUND:

Resolution 9-21 Approval will authorizing an amendment to the 2019-2020 One Year Action Plan for the Community Development Block Grant (CDBG) Entitlement Program and the 2015-2019 Consolidated Plan for the Community Development Block Grant Program

The CARES-Act made available additional Community Development Block Grant (CDBG) and Housing Opportunities for Persons with AIDS/HIV (HOPWA) funding. The City has received notification that it will receive an additional \$808,604 in CDBG-CV funds bringing the total allocation to \$1,422,596. The CDBG-CV funds must be used in accordance with CDBG regulations specifically to benefit the needs of low- and moderate-income persons impacted by the Covid-19 and implement CDBG eligible activities. However, HUD has allowed for some waivers to some CDBG regulations as part of the CARESAct. The use of the CDBG-CV funds will require an amendment to the City's CDBG Annual Action Plan which requires City Council action. The amendments to these plans are set forth in documents attached to the resolution and include proposed activities to address the COVID-19 pandemic programs include: food and utility assistance, rent/mortgage assistance, and child care assistance.

### STRATEGIC PLAN ALIGNMENT:

1. 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

### **RECOMMENDATIONS:**

City Management recommends Approval.

# SOURCE OF ADDITIONAL INFORMATION:

Vince Cautero, DCD Director, 1-239-574-0600 Amy Yearsley, Housing Coordinator, 1-239-573-3182

# FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

The City received an additional allocation of \$808,605 in CDBG-CV funds from US Department of HUD. This brings the total allocation for this grant to \$1,442,597.

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

PREPARED BY:

Amy Yearsley Division- Planning Department- Community Development

ATTACHMENTS:

Description Type

**1**. Resolution 9-21 Resolution

2. Response to inquiry by Council Member Backup Material

### **RESOLUTION 9-21**

A RESOLUTION AUTHORIZING AMENDMENTS TO THE 2019-2020 ONE YEAR ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ENTITLEMENT PROGRAM AND THE 2015-2019 CONSOLIDATED PLAN FOR COMMUNITY DEVELOPMENT **BLOCK GRANT** PROGRAM: AUTHORIZING AND DIRECTING THE CITY MANAGER OR HIS DESIGNEE TO PREPARE AND SUBMIT THE AMENDMENTS TO THE US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ALL AGREEMENTS AND DOCUMENTS NECESSARY FOR SUBMISSION OF THE AMENDMENTS AND THE USE OF SUCH FUNDS; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE SUBRECIPIENT AGREEMENTS UPON APPROVAL BY THE US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Coronavirus Aid, Relief, and Economic Security Action (CARES-Act), Public Law 116-136 approved additional Community Development Block Grant (CDBG-CV) for US Department of Housing and Urban Development Entitlement Communities; and

WHEREAS, Resolution 69-15 approved the 2015 Consolidated Plan for the Community Development Block Grant Program (CDBG); and

WHEREAS, Resolution 21-19, approved a substantial amendment to the 2015 Consolidated Plan for the Community Development Block Grant Program (CDBG); and

WHEREAS, Resolution 244-19 approved the 2019 Community Development Block Grant (CDBG) One Year Action Plan; and

WHEREAS, Resolution 109-20 approved a Substantial Amendment to the 2015 Consolidated Plan for the Community Development Block Grant Program (CDBG) and the 2019 Community Development Block Grant (CDBG) One Year Action Plan to allocate \$633,992 in CDBG-CV funding to projects and activities; and

WHEREAS, the City has received notification that it will receive an additional \$808,605 in CDBG-CV funds; and

WHEREAS, the City must amend these plans to allow for additional eligible projects and activities in response to the COVID-19 pandemic; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security Action (CARES-Act), Public Law 116-136 waives the 30-day public comment period for amendments to CDBG Action Plans and allows for a 7-day public comment period; and

WHEREAS, the City has followed procedures consistent with the CARES-Act and the City of Cape Coral CDBG Citizen Participation Plan to amend the respective approved plans.

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

Section 1. The City Council for the City of Cape Coral hereby authorizes the amendments to the 2015-2019 CDBG Consolidated Plan, the 2019 One Year CDBG Action Plan and the City of Cape Coral Citizen Participation Plan that are attached hereto as Exhibit 1.

Section 2. The City Council authorizes and directs the City Manager or his Designee to prepare all required materials necessary for the submission of the amendments to the U.S. Department of Housing and Urban Development.

Section 3. The City Council authorizes the City Manager or his designee to execute all agreements and documents necessary for submission of the amendments and the use of such funds.

Section 4. The City Council authorizes the City Manager or his designee to execute Subrecipient Agreements upon approval by the US Department of Housing and Urban Development.		
Section 5. 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, 2021.		
JOE COVIELLO, MAYOR		
VOTE OF MAYOR AND COUNCILMEMBERS:		
COVIELLO NELSON GUNTER WELSH SHEPPARD WILLIAMS HAYDEN COSDEN		
ATTESTED TO AND FILED IN MY OFFICE THIS DAY OF, 2021.		
KIMBERLY BRUNS CITY CLERK		
APPROVED AS TO FORM:		
DOLORES MENENDEZ CITY ATTORNEY Res/CDBG		

## EXHIBIT 1



## Substantial Amendment CDBG-CV



City of Cape Coral

Substantial Amendment 2021 – CDBG-CV

(3) Allocation

Resolution

Public Comment Version 1.0

## Background/Summary

The City of Cape Coral is an entitlement recipient of federal funds from the US Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) Program. In 2008 (under the 2008/2009 CDBG Action Plan) the City was awarded \$7,065,484 in Neighborhood Stabilization Program One funds. In 2010 (under the 2010/2011 CDBG Action Plan) the City was awarded \$3,048,210 in Neighborhood Stabilization Program Three funds. For the PY 2019/2020 the City received \$1,009,644 in CDBG Entitlement Funds. In 2020, the City was awarded \$633,992 in CDBG-CV funding in response to the COVID-19 pandemic. In September 2020, the City was awarded \$808,604 the third round of CDBG-CV bring the City's total CDBG-CV allocation to \$1,442,596.

In accordance with 24 CFR 91.505 and public comment waivers granted by HUD under the CARES-Act, the City of Cape Coral is submitting a substantial amendment proposing the projects/activities in response to the COVID-19 global pandemic and the supplemental CDBG-CV Funding.

Federal regulations require that the grantee provide citizens with reasonable notice of and an opportunity to comment on any substantial amendment to the Plan in accordance with 245 CFR 91.10 and public noticing waivers granted by HUD. A detailed summary of the proposed changes has been outlined throughout this amendment.

#### Substantial Amendment

#### 2015 Consolidated Plan

The 2015 Consolidated Plan identified six (6) goals for the period of the Consolidated Plan. In 2019, the housing goal was revised. This revised goal included three activities: gap financing for low income homebuyers for existing and new homes, acquisition/rehabilitation of single-family homes, and down payment assistance to low income buyers in accordance with CDBG regulations. The "Affordable Housing" Goal is being revised to add mortgage assistance and increase the funded amount and indicators

SP 45 Goals Summary 91.215(a) (4) will be revised as follows:

#### **GOAL SUMMARY**

Sort Order	Goal Name	Start Year	End Year	Category	Needs Addressed	Funding	Goal Outcome Indicator
2	Affordable	2015	2019	Affordable	Increase	CDBG:	Homeowner
	Housing			Housing	Access to	\$1,500,000	Housing Added:
					Affordable	CDBG-	40
					Housing	CV:	Household
						\$993,605	Housing Units
							Subsidy
							Payments
							Rental/Mortgage:
							118

#### **GOAL DESCRIPTION**

2	Goal Name	Affordable Housing
	Goal Description	Activities include gap financing for low moderate-income households purchasing new or existing housing, the acquisition/rehabilitation of single-family homes for
		sale to low moderate income households, and down payment assistance to low income buyers in accordance with CDBG regulations. Subsidy rental/mortgage assistance will be provided under public service category to low-income renters.

#### Substantial Amendment

#### Program Year 2019 CDBG Action Plan

The CDBG PY 2019 Action Plan is being amended to include the following activities that will be funded by CDBG-CV funding. Subrecipients will generally be limited to existing CDBG subrecipients and CDBG recipients in other to ensure compliance with federal regulations. New subrecipients will be providing CDBG-CV services to both Lee County and/or the City of Fort Myers. Allocation amounts are estimated, and further allocation amounts may be reallocated amongst these planned activities without further amendments to the Action Plan. New activities and projects proposed for CDBG-CV outside of those listed below will require a new substantial amendment.

#### NEW GOAL SUMMARY

Sort Order	Goal Name	Start Year	End Year	Category	Needs Addressed	Funding	Goal Outcome Indicator
2	Affordable Housing	2015	2019	Affordable Housing	Increase Access to Affordable Housing	CDBG: \$1,500,000 CDBG- CV: \$993,605	Homeowner Housing Added: 40 Household Housing Units Subsidy Payments
							Rental/Mortgage: 118

### NEW GOAL DESCRIPTION

2	Goal Name	Affordable Housing
	Goal	Activities include gap financing for low moderate-income households purchasing
	Description	new or existing housing, the acquisition/rehabilitation of single-family homes for
		sale to low moderate income households, and down payment assistance to low
		income buyers in accordance with CDBG regulations. Subsidy rental assistance will
		be provided under public service category to low-income renters/homeowners.

### PROJECTS SUMMARY

14	PROJECT NAME	Administration
	TARGET AREA	City of Cape Coral
	GOAL SUPPORTED	Program Administration
	NEEDS ADDRESSED	N/A
	FUNDING	CDBG-CV \$131,992
	DESCRIPTION	Project will address administrative needs associated with administering the CDBG-program
	TARGET DATE	7/1/2020
	ESTIMATE THE	N/A
	NUMBER AND TYPE	
	OF FAMILIES THAT	
	WILL BENEFIT FROM	
	THE PROPOSED	
	ACTIVITIES	
	LOCATION	1015 Cultural Park Blvd, Cape Coral, FL 33990
	DESCRIPTION	
	PLANNED ACTIVITIES	Administration CDBG-CV

16	PROJECT NAME	Public Services Subsidence Payments
	TARGET AREA	City of Cape Coral
	GOAL SUPPORTED	Public Services – Affordable Housing
	NEEDS ADDRESSED	Homeless Prevention
	FUNDING	CDBG-CV \$993,605
	DESCRIPTION	Project will comprise of one activity
	TARGET DATE	7/1/2020

ESTIMATE THE NUMBER AND TYPE OF FAMILIES THAT WILL BENEFIT FROM THE PROPOSED ACTIVITIES	118
LOCATION DESCRIPTION	This is a scattered site project. Properties will be located throughout the City of Cape Coral.
PLANNED ACTIVITIES	Subsidy Payments up to 6 months assistance for rent/mortgage to clients.

17	PROJECT NAME	Public Services - Food
	TARGET AREA	City of Cape Coral
	GOAL SUPPORTED	Public Services
	NEEDS ADDRESSED	Increase access to public service activities
	FUNDING	CDBG-CV \$75,000
	DESCRIPTION	Project will comprise of two new or expanded service activities – Food
		Pantry and Cape Coral Mobile Food Pantry
	TARGET DATE	7/1/2020
	ESTIMATE THE	4,000
	NUMBER AND TYPE	
	OF FAMILIES THAT	
	WILL BENEFIT FROM	
	THE PROPOSED	
	ACTIVITIES	
	LOCATION	This is a scattered site project. Properties will be located throughout the
	DESCRIPTION	City of Cape Coral.
	PLANNED ACTIVITIES	Cape Coral Caring Center Food Pantry
		Community Cooperative Mobile Food Pantries Cape Coral

18	PROJECT NAME	Public Services – Utility Payments
	TARGET AREA	City of Cape Coral
	GOAL SUPPORTED	Public Services
	NEEDS ADDRESSED	Increase access to public service activities
	FUNDING	CDBG \$136,999
	DESCRIPTION	Project will comprise of one expanded service activity - Utility Assistance.
	TARGET DATE	7/1/2020
	ESTIMATE THE	57
	NUMBER AND TYPE	
	OF FAMILIES THAT	
	WILL BENEFIT FROM	
	THE PROPOSED	
	ACTIVITIES	
	LOCATION	This is a scattered site project. Properties will be located throughout the
	DESCRIPTION	City of Cape Coral.
	PLANNED ACTIVITIES	Community Cooperative – Utility Assistance

## Summary Table

Project	Original	Round 2	Total
Administration	\$31,992.00	\$100,000.00	\$131,992.00
Economic Development	\$100,000.00	\$ -	\$100,000.00
Utility	\$86,999.00	\$50,000.00	\$136,999.00
Food	\$50,000.00	\$25,000.00	\$75,000.00
Rent/Mortgage	\$360,000.00	\$633,605.00	\$993,605.00
Transportation	\$5,000.00	\$(5,000.00)	\$ -
Child Care	\$ -	\$5,000.00	\$ 5,000.00
	633,991.00	\$808,605.00	\$ 1,442,596.00

#### Public Comment Period

Federal regulations require for the City provide the public with reasonable notice of and an opportunity to comment on any substantial amendments in accordance with 24 CFR 91.19. The seven-day comment period will commence on December 30, 2020 and end on January 6, 2021. The public may view the document at the Department of Community Development, City Hall, 1015 Cultural Park Blvd, Cape Coral, FL 33990, between the house of 7:30 AM and 3:30 PM – Monday through Friday. In addition, the substantial amendment has been posted on the City's website at <a href="https://www.capecoral.net">www.capecoral.net</a>.

The public is encouraged to comment upon the proposed substantial amendment by submitting written comments to the Department of Community Development at PO Box 150027, Cape Coral, FL 33915-0027 or to <a href="mailto:ayearsle@capecoral.net">ayearsle@capecoral.net</a>. The City Council will consider the amendment at the Wednesday, January 6, 2021 City Council Meeting in City Council Chambers City Hall, 1015 Cultural Park Blvd, Cape Coral, FL 33990 at 4:30 PM. Interested parties are encouraged to submit comments virtually.

The City of Cape Coral must consider any comments or views of residents, agencies, or other interested parties received in writing or orally at public hearings in preparation of the final amendment. A summary of these comments has been included as Exhibit B.

## Exhibit A — Affidavit of Publication

## Exhibit B — Public Comment Received

From: Vincent Cautero < <a href="mailto:vcautero@capecoral.net">vcautero@capecoral.net</a>>

Sent: Monday, January 4, 2021 10:05 AM

To: Rob Hernandez < robhernandez@capecoral.net >

Subject: FW: CDBG Funding

Rob,

The information requested is found below.

Amy plans to include the table below in her presentation Wednesday, which shows CDBG-CV expenses. Please know that CDBG-CV funding was de-prioritized because of CRF/CARES Act funding that had an earlier expenditure deadline (December 30, 2020). With our CRF/CARES Act funding fully expended now we anticipate these program funds to be moving quickly and be expended prior to their September 30 deadline. CRF/Cares ACT funding expenses totaled \$1,041,847.07 in rent/mortgage assistance.

Project	Original	Expended	Balance
Administration	\$31,992.00	\$0.00	\$31,992.00
Economic Development*	\$100,000.00	\$1,563.00	\$98,437.00
Utility	\$86,999.00	\$47,757.00	\$39,242.00
Food	\$50,000.00	\$7,036.00	\$42,964.00
Rent/Mortgage*	\$360,000.00	\$0.00	\$360,000.00
Transportation**	\$5,000.00	\$0.00	\$5,000.00
	633,991.00	\$56,356.00	\$ 577,635.00
*Start 2021 after CRF/CARES ACT Funds			
**Declined Contract			

Regards, Vince

Vincent A. Cautero, AICP
Community Development Director
City of Cape Coral
239-574-0600
vcautero@capecoral.net



NOTE: Under Florida law, written communications, including email addresses to or from City Employees and Officials regarding City business, are considered public records and will be made available to the public and media upon request, unless there is a legislatively created exemption which makes it confidential.



## AGENDA REQUEST FORM CITY OF CAPE

CITY OF CAPE CORAL Item Number: A.

Meeting

Date:

1/6/2021

Item

ORDINANCES/RESOLUTIONS -

Type: Public Hearings

#### TITLE:

Ordinance 54-20 (TXT 20-0007) Final Public Hearing

#### **REQUESTED ACTION:**

Approve or Deny

#### SUMMARY EXPLANATION AND BACKGROUND:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending Policy 1.15 of the Future Land Use Element to remove the Judd Creek Sub-District.

#### STRATEGIC PLAN ALIGNMENT:

1. 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

#### **RECOMMENDATIONS:**

<u>Planning & Zoning Commission Recommendation:</u> At their August 5, 2020 Regular Meeting, the Planning and Zoning Commission voted unanimously to recommend approval of Ordinance 54-20.

**DCD Department Recommendation:** Approval.

#### **SOURCE OF ADDITIONAL INFORMATION:**

Vince Cautero, DCD Director, 1-239-574-0600 Wyatt Daltry, Planning Team Coordinator, 1-239-573-3160

### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

n/a

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

#### PREPARED BY:

Division- Department-City Attorney

#### ATTACHMENTS:

**Description** Type

- 1. Ordinance 54-20 (TXT 20-0007)2. Staff Presentation Final Public Hearing

Ordinance Backup Material

#### ORDINANCE 54 - 20

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING POLICY 1.15 OF THE FUTURE LAND USE ELEMENT TO REMOVE THE JUDD CREEK SUB-DISTRICT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

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

The amendment to Policy 1.15 of the Future Land Use Element removes the Judd Creek Sub-District. The amendment to the Future Land Use Element is described in Exhibit A, attached hereto and incorporated herein by reference.

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

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

	HE COUNCIL OF THE C		ORAL AT ITS REGULAR
		JOE COVIELLO	D, MAYOR
VOTE OF MAYOR	R AND COUNCILMEMBER	S:	
COVIELLO GUNTER CARIOSCIA STOUT		NELSON WELSH WILLIAMS COSDEN	
ATTESTED TO A 2020.	AND FILED IN MY OFFIC	E THIS D	DAY OF
	*	KIMBERLY BR CITY CLERK	UNS

APPROVED AS TO FORM:

BRIAN R. BARTOS

ASSISTANT CITY ATTORNEY

Comp Plan Amendment-Remove Judd Creek Sub-District

#### **FUTURE LAND USE ELEMENT**

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

OBJECTIVE 1: Managing Future Growth and Development: The City of Cape Coral will manage future growth and land development by adopting, implementing, and enforcing new regulatory vehicles. All land development regulations called for in this Plan shall be adopted and implemented in accordance with the provisions of S. 163.3202, Florida Statutes. The short-term planning timeframe shall be established as up to the year 2025, while the long-term planning horizon shall be the year 2035.

<u>Policy 1.1:</u> The City will consider the impacts of climate change and sea level rise when determining the appropriate future land use map classification for property within the City of Cape Coral.

• • •

<u>Policy 1.15:</u> Land development regulations adopted to implement this comprehensive plan will be based on, and will be consistent with, the standards for uses and densities/intensities as described in the following future land use classifications. Table 1 shows the zoning districts which are consistent with and implement the respective future land use map classifications. In no case shall maximum densities allowable by the following classifications conflict with Policy 4.3.3 of the Conservation and Coastal Management Element regulating density of development within the Coastal High Hazard Area.

..

p. Sub-Districts: In addition to the regulations listed above, the City of Cape Coral also has sub-districts, as a means to efficiently regulate development in particular areas of interest. These sub-districts include:

#### **Tyson Shores Sub-District**

Within the Tyson Shores Sub-District, development shall be limited to a maximum of 115 dwelling units. All property within the Tyson Shores Sub-District shall be entitled to a proportional share of the 115 dwelling units; however, the development rights may be transferred among any properties within the Tyson Shores Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Development Code and other provisions of this Plan. This limitation may be amended when central water and sewer service is

available to serve the site.

#### **Judd Creek Sub-District**

Within the Judd Creek Sub District, development shall not exceed 16 dwelling units per acre on lands with a future land use map designation of Multi Family. The number of residential dwelling units cannot exceed 1,170 units. Non residential intensity on lands with a future land use map designation of Pine Island Road District shall not exceed 250,000 square feet of gross leasable floor area. All lands within the Judd Creek Sub District with a future land use map designation of Pine Island Road District shall be entitled to a proportional share of the 250,000 square feet of gross leasable floor area; however, the development rights may be transferred among any properties within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District through mutual agreement of the affected property owners, as long as the intensity is consistent with all Land Development Code and other provisions of this Plan. These limitations may be amended in the event that roadway network improvements are made that would allow development beyond these limitations without degradation of roadway level of service below the adopted level of service.

#### Paradise Preserve Sub-District

Within the Paradise Preserve Sub-District, development shall be limited to a maximum of 420 dwelling units. All property within the Paradise Preserve Sub-District shall be entitled to a proportional share of the 420 dwelling units; however, the development rights may be transferred among any properties within the Paradise Preserve Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Development Code and other provisions of this Plan.

. . .



Ordinance 54-20/TXT20-0007

Judd Creek Sub-District

January 6, 2021 Council Meeting



## Purpose

**Applicant: City of Cape Coral** 

Request: To delete the Judd Creek Sub-District from Policy 1.15.p, Future Land Use Element of the Comprehensive Plan

Purpose: To remove restrictions within the Judd Creek Sub-District from areas presently mapped as the Judd Creek Sub-District



# DWINGSH-PROMY KIRMET DOWY W.\_ KIEWET PICWY E GULFETREAM DIONY VICATAN PROPY TRAFALDAR PHWY EVEREST PKWY MOHAWK PKWY S

Location of Judd Creek Sub-District



## Background

In 2003, the City of Cape Coral annexed the Judd Creek area into Cape Coral

At the time of annexation and subsequent FLUMA, the then-Department of Community Affairs insisted that Cape Coral place restrictions below the maximum development possible due to concurrency issues on SR 78 (Pine Island Road)

The Judd Creek Sub-District presently limits development to 1,170 dwelling units and 250,000 square feet of commercial area

With Pine Island Road improvements undertaken in 2015-2016, the concurrency issues were removed



## Background

This amendment was transmitted to the state and regional agencies in September 2020

No objections or recommendations from these agencies were received

Per Florida Statutes, comprehensive plan text amendments and largescale map amendments must be presented to the governing body (e.g. City Council) twice, once for transmittal and once for adoption, to become effective



## Conclusion

The proposed change involves a simple deletion of the Judd Creek Sub-District which further simplifies development within the Pine Island Road District (PIRD)

With the removal of concurrency issues along Pine Island Road, the purpose behind having the Judd Creek Sub-District has been eliminated

**Staff recommends Adoption** 

On August 5, 2020, the Planning and Zoning Commission voted unanimously (7-0) to recommend transmittal of this ordinance.



# THANK YOU





## AGENDA REQUEST FORM CITY OF CAPE CORAL

Item
Number: A.

Meeting

1/6/2021

Date:

ORDINANCES/RESOLUTIONS -

Type: Public Hearings

TITLE:

Ordinance 83-20 Public Hearing

#### **REQUESTED ACTION:**

Approve or Deny

#### **SUMMARY EXPLANATION AND BACKGROUND:**

An ordinance amending Ordinance 87-00, as amended by Ordinance 88-04, Ordinance 40-11, and Ordinance 13-19, which established the City of Cape Coral Investment Policy for Surplus Funds, by adopting an amended City of Cape Coral Investment Policy.

#### STRATEGIC PLAN ALIGNMENT:

1. 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 B:** ENHANCE FINANCIAL SUSTAINABILITY DURING ALL ECONOMIC TIMES

#### **RECOMMENDATIONS:**

#### SOURCE OF ADDITIONAL INFORMATION:

Chris Phillips, Interim Financial Services Director, 1-239-574-0435 Nicole Reitler, Senior Accounting Manager, 1-239-242-3276

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

n/a

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

#### PREPARED BY:

Suzanne Lopez, Senior Administrative Specialist Division- Accounting Department- Financial Services

#### ATTACHMENTS:

**Description** Type

1. Ordinance 83-20
 Ordinance

- 2. Cape Coral Investment Policy Redline Draft
- 3. Cape Coral Investment Policy Presentation

Backup Material

Backup Material

#### ORDINANCE 83 - 20

AN ORDINANCE OF THE CITY OF CAPE CORAL, FLORIDA, AMENDING ORDINANCE 87-00, AS AMENDED BY ORDINANCE 88-04, ORDINANCE 40-11, AND ORDINANCE 13-19, WHICH ESTABLISHED THE CITY OF CAPE CORAL INVESTMENT POLICY FOR SURPLUS FUNDS, BY ADOPTING AN AMENDED CITY OF CAPE CORAL INVESTMENT POLICY; A COPY OF THE AMENDED POLICY IS ATTACHED HERETO AND INCORPORATED HEREIN; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

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

SECTION 1. The City of Cape Coral hereby adopts the amended investment policy attached hereto, identified as Exhibit A and incorporated herein as if fully set forth in this ordinance.

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.

SESSION THIS DAY		_				
	JOE COVIELLO, MAYOR	JOE COVIELLO, MAYOR				
VOTE OF MAYOR AND CO	NCILMEMBERS:					
COVIELLO GUNTER CARIOSCIA STOUT	NELSON WELSH WILLIAMS COSDEN					
ATTESTED TO AND FILE 2020.	IN MY OFFICE THIS DAY OF					
	KIMBERLY BRUNS CITY CLERK					

APPROVED AS TO FORM:

DOLORES D. MENENDEZ CITY ATTORNEY

ord/AmendInvestmentPolicy



## **INVESTMENT POLICY**

ADOPTED OCTOBER 19, 2020

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ATTACHMENT A: Glossary of Cash and Investment Management Terms

ATTACHMENT B: Investment Pool/Fund Questionnaire ATTACHMENT C: Charter School Authority Investment Policy

#### **Investment Policy**

#### The City of Cape Coral, Florida

#### I. PURPOSE

The purpose of this policy is to set forth the investment objectives and parameters and to designate authority for the management of public funds of the City of Cape Coral, Florida (hereinafter "City"). These policies are designed to ensure the prudent management of public funds, the availability of operating and capital funds when needed, and an investment return competitive with comparable funds and financial market indices.

#### II. SCOPE

In accordance with Section 218.415, Florida Statutes, this investment policy applies to all cash and investments held or controlled by the City with the exception of Pension Funds and funds related to the issuance of debt where there are other existing policies or indentures in effect for such funds. Funds held by state agencies (e.g., Department of Revenue) are not subject to the provisions of this policy.

#### III. INVESTMENT OBJECTIVES

#### Safety of Principal

The foremost objective of this investment program is the safety of the principal of those funds within the portfolios. Investment transactions shall seek to keep capital losses at a minimum, whether they are from securities defaults or erosion of market value. To attain this objective, diversification is required in order that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.

#### Maintenance of Liquidity

The portfolios shall be managed in such a manner that funds are available to meet reasonably anticipated cash flow requirements in an orderly manner. Periodical cash flow analyses will be completed in order to ensure that the portfolios are positioned to provide sufficient liquidity.

#### Return on Investment

Investment portfolios shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of least importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed.

#### IV. DELEGATION OF AUTHORITY

In accordance with the Charter of the City of Cape Coral, the responsibility for providing oversight and direction in regard to the management of the investment program resides with the City Manager. The daily management responsibility for all City funds in the investment program and investment transactions is delegated to the Financial Services Director, or designee. The Financial Services Director shall maintain written procedures for the operation of the investment portfolio and a system of internal accounting and administrative controls to regulate the activities of employees. The City may employ an Investment Advisor to assist in managing some of the City's portfolios. Such Investment Advisor must be registered under the Investment Advisors Act of 1940.

If an Investment Advisor is retained, the Investment Advisor will assist the Financial Services Director or designee with the following:

- Modifications to the investment policy
- Discretionary and/or non-discretionary investment management
- Investment recommendations and monitoring
- Conducting investment activities

- Preparing a comprehensive set of reports designed to keep the Financial Services Director or designee fully informed of all investment transactions and current status of the investment portfolio
- Monitoring compliance with the District Investment Policy
- City Investment Committee meetings on a quarterly basis or as needed

#### V. STANDARDS OF PRUDENCE

The standard of prudence to be used by investment officials shall be the "Prudent Person" standard and shall be applied in the context of managing the overall investment program. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for individual security's credit risk or market price changes, provided deviations from expectation are reported to the City Manager in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy. The "Prudent Person" rule states the following:

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived from the investment.

While the standard of prudence to be used by investment officials who are officers or employees is the "Prudent Person" standard, any person or firm hired or retained to invest, monitor, or advise concerning these assets shall be held to the higher standard of "Prudent Expert". The standard shall be that in investing and reinvesting moneys and in acquiring, retaining, managing, and disposing of investments of these funds, the Investment Advisor shall exercise: the judgment, care, skill, prudence, and diligence under the circumstances then prevailing, which persons of prudence, discretion, and intelligence, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the funds, so as to minimize the risk, considering the probable income as well as the probable safety of their capital.

#### VI. ETHICS AND CONFLICTS OF INTEREST

Employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Also, employees involved in the investment process shall disclose to the City Manager and the Mayor any material financial interests in financial institutions that conduct business with the City, and they shall further disclose any material personal financial/investment positions that could be related to the performance of the City's investment program.

#### VII. INTERNAL CONTROLS AND INVESTMENT PROCEDURES

The Financial Services Director shall establish a system of internal controls and operational procedures that are in writing and made a part of the City's operational procedures. The internal controls should be designed to prevent losses of funds, which might arise from fraud, employee error, and misrepresentation by third parties, or imprudent actions by employees. The written procedures should include reference to safekeeping, repurchase agreements, the separation of transaction authority from accounting and record keeping, wire transfer agreements, banking service contracts and collateralization. No person may engage in an investment transaction except as authorized under the terms of this policy.

Independent auditors as a normal part of the annual financial audit to the City shall conduct a review of the system of internal controls to ensure compliance with policies and procedures.

#### VIII. CONTINUING EDUCATION

The Financial Services Director, the Deputy Financial Services Director, and other City staff that have responsibilities within the City's treasury and investment program shall annually complete 8 hours of continuing education in subjects or courses of study related to investment practices and products in accordance with Florida Statute 218.415.

#### IX. AUTHORIZED INVESTMENT INSTITUTIONS AND DEALERS

Authorized City staff and Investment Advisors shall only purchase securities from financial institutions, which are qualified as public depositories by the Chief Financial Officer of the State of Florida; institutions designated as "Primary Securities Dealers" by the Federal Reserve Bank of New York, direct issuers of commercial paper and bankers' acceptances or approved non-primary securities dealers.

All approved non-primary securities dealers must qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule). The City's investment advisor will provide the Financial Services Director a list of approved brokers annually or as requested. For all transactions executed by the City's Financial Services Director or Designee, the approved broker must provide the following information prior to executing investment trades with the City:

- 1. Annual financial statement, as well as most recent quarterly statement.
- 2. Regulatory history, through either the Office of the Comptroller of the Currency for dealer banks, or the NASD for securities firms.
- 3. Statement of any pending lawsuits materially affecting the firm's business.

Authorized City staff and Investment Advisors shall only enter into repurchase agreements with financial institutions that are state qualified public depositories and primary securities dealers as designated by the Federal Reserve Bank of New York.

#### X. MATURITY AND LIQUIDITY REQUIREMENTS

The Financial Services Director or designee shall determine the approximate amount of funds required to meet the day-to-day expenditure needs of the City. In order to have an available source of funds to meet unexpected cash requirements, approximately two months operating expenses will be invested in appropriate short-term securities, i.e. fully collateralized repurchase agreements, interest in time deposits, savings accounts or money market funds. The balance of the City's funds will be available for investment according to the guidelines incorporated within this policy.

Investments of bond reserves, construction funds, and other non-operating funds ("core funds") shall have a term appropriate to the need for funds and in accordance with debt covenants, but in no event shall exceed five (5) years, and the weighted average maturity will be limited to a period of less than three years.

The maturities of the underlying securities of a repurchase agreement will follow the requirements of the Master Repurchase Agreement.

#### XI. COMPETITIVE SELECTION OF INVESTMENT INSTRUMENTS

After the Financial Services Director, or Designee, or the Investment Advisor, has determined the approximate maturity date based on cash flow needs and market conditions and has analyzed and selected one or more optimal types of investments, a minimum of three (3) qualified banks and/or approved broker/dealers must be contacted and asked to provide bids/offers on securities unless multiple bids are not feasible or appropriate based on market conditions. Bids will be held in confidence until the bid best deemed to meet the investment objectives is determined and selected.

However, if obtaining bids/offers are not feasible and appropriate, securities may be purchased utilizing the comparison to current market price method on an exception basis. Acceptable current market price providers include, but are not limited to:

- 1. Bloomberg Information Systems
- 2. Wall Street Journal or a comparable nationally recognized financial publication providing daily market pricing.
- 3. Daily market pricing provided by the City's custodian or their correspondent institutions

The Financial Services Director, the Deputy Financial Services Director, and/or the Investment Advisor shall utilize the competitive bid process to select the securities to be purchased or sold. Selection by comparison to a current market price, as indicated above, shall only be utilized when, in judgment of the Financial Services Director, the Deputy Financial Services Director, and/or the Investment Advisor, competitive bidding would inhibit the selection process.

Examples of when this method may be used include:

- 1. When time constraints due to unusual circumstances preclude the use of the competitive bidding process
- 2. When no active market exists for the issue being traded due to the age or depth of the issue
- 3. When a security is unique to a single dealer, for example, a private placement
- 4. When the transaction involves new issues or issues in the "when issued" market

Overnight sweep repurchase agreements will not be bid but may be placed with the City's depository bank relating to the demand account for which the repurchase agreement was purchased.

#### XII. AUTHORIZED INVESTMENTS AND PORTFOLIO COMPOSITION

Investments should be made subject to the cash flow needs and such cash flows are subject to revisions as market conditions and the City's needs change. However, when the invested funds are needed in whole or in part for the purpose originally intended or for more optimal investments, the Financial Services Director, or the Deputy Financial Services Director may sell, or direct the Investment Advisor to sell the investment at the then-prevailing market price and place the proceeds into the proper account at the City's custodian.

The following are the investment requirements and allocation limits on security types, issuers, and maturities as established by the City. The Financial Services Director or the Deputy Financial Services Director shall have the option to further restrict investment percentages from time to time based on market conditions, risk, and diversification investment strategies. The percentage allocations requirements for investment types and issuers are calculated based on the original cost of each investment. Investments not listed in this policy are prohibited.

Authorized Investment- Sector Type	Minimum Rating Requirement	Maturity Limits	Maximum Allocation	Individual Issuer Limit
Cash and Cash Equivalents	N/A	NA	100%	N/A
Florida PRIME Fund	AAAm	NA	60%	N/A
United States Government Securities	N/A	5 Years	100%	N/A
United States Government Agencies	AAA	5 Years	50%	25%
Federal Instrumentalities (United States Government Sponsored Enterprises "GSE")*	AA	5 Years	80%	25%
Interest Bearing Time Deposit or Savings Accounts	N/A	1 Year	10%	5%
Repurchase Agreements**	N/A	90 Days	25%	10%
Commercial Paper***	Highest two ratings by two NRSROs****	270 Days	35%	10%
Bankers' Acceptances	Highest two ratings by two NRSROs****	180 Days	25%	10%
State and/or Local Government Taxable and/or Tax-Exempt Debt	Single "A" category by two NRSROs****	5 Years	20%	5%
Registered Investment Companies (Money Market Mutual Funds)	AAAm	N/A	25%	10%
Intergovernmental Investment Pools	AAAm	N/A	60%	60%
Corporate Notes***	Single "A" category by any two NRSROs****	5 Years	35%	5%
Mortgage Backed Securities "MBS"*	AAA	5 Years	20%	15%
Asset-Backed Securities (ABS)***	Double "A" category by any two NRSROs****	5 Years	20%	5%
Bond Funds	Double "A" category by any two NRSROs****	N/A	25%	10%

<sup>\*</sup>The combined maximum amount of available funds invested in Federal Instrumentalities and mortgage-backed securities will not exceed eighty percent (80%).

<sup>\*\*</sup>Securities authorized for collateral are negotiable direct obligations of the United States Government, Government Agencies, and Federal Instrumentalities with maturities under five (5) years and must have a market value for the principal and accrued interest of 102 percent of the value and for the term of the repurchase agreement.

<sup>\*\*\*</sup>The maximum amount of corporate investments will not exceed forty percent (40%). Therefore, the combination of Section (G) Commercial Paper, Section (L) Corporate Notes, Section (N) Asset Backed Securities shall not exceed forty percent (40%). Corporate Notes are limited to 15% per industry.

\*\*\*\*National Recognized Statistical Rating Organization (NRSRO).

#### A. The Florida PRIME

#### 1. Investment Authorization

City may invest in the Florida PRIME. Any investment with the Florida PRIME will be evaluated with the same criteria as Money Market Mutual Funds, detailed in section J.

#### 2. Portfolio Composition

A maximum of forty (60%) of available funds may be invested in the Florida PRIME.

#### 3. Rating Requirements

The Florida PRIME shall be rated "AAAm by Standard & Poor's or the equivalent by another rating agency.

#### 4. Due Diligence Requirements

A thorough investigation of the Florida PRIME is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Investment Advisor that will contain a list of due diligence considerations that deal with the major aspects of any investment pool/fund. A current prospectus or equivalent documentation, including an Investment Policy, Financial Statements, and Portfolio Holdings must be obtained.

#### B. United States Government Securities

#### 1. Purchase Authorization

The City may invest in negotiable direct obligations, or obligations the principal and interest of which are unconditionally guaranteed by the United States Government. Such securities will include, but not be limited to the following:

Cash Management Bills

Treasury Securities – State and Local Government Series ("SLGS")

Treasury Bills

**Treasury Notes** 

Treasury Bonds

**Treasury Strips** 

#### 2. Portfolio Composition

A maximum of 100% of available funds may be invested in the United States Government Securities.

#### 3. Maturity Limitations

The maximum length to maturity of any direct investment in the United States Government Securities is five (5) years from the date of purchase.

#### C. United States Government Agencies

#### 1. Purchase Authorization

The City may invest in bonds, debentures, notes or callables issued or guaranteed by United States Government agencies, provided such obligations are backed by the full faith and credit of the United States Government. Such securities will include, but not be limited to the following:

Government National Mortgage Association

Direct obligations and mortgage pass through securities

United States Export – Import Bank

-Direct obligations or fully guaranteed certificates of beneficial ownership

#### 2. Portfolio Composition

A maximum of 50% of available funds may be invested in United States Government agencies.

#### 3. Limits on Individual Issuers

A maximum of 25% of available funds may be invested in individual United States Government agencies.

#### 4. Maturity Limitations

The maximum length to maturity for an investment in any United States Government agency security is five (5) years from the date of purchase.

#### D. Federal Instrumentalities (United States Government sponsored agencies)

#### 1. Purchase Authorization

The City may invest in bonds, debentures, notes or callables issued or guaranteed by United States Government sponsored agencies (Federal Instrumentalities) which are non-full faith and credit agencies limited to the following:

Federal Farm Credit Bank (FFCB)

Federal Home Loan Bank or its district banks (FHLB)

Federal National Mortgage Association (FNMA)

Federal Agricultural Mortgage Corporation (Farmer Mac)

Federal Home Loan Mortgage Corporation (Freddie-Macs) including Federal -

Home Loan Mortgage Corporation participation certificates

#### 2. Portfolio Composition

A maximum of 80% of available funds may be invested in Federal Instrumentalities.

#### 3. Limits on Individual Issuers

A maximum of 25% of available funds may be invested in any one issuer.

#### 4. Maturity Limitations

The maximum length to maturity for an investment in any Federal Instrumentality security is five (5) years from the date of purchase.

#### E. Interest Bearing Time Deposit or Saving Accounts

#### 1. Purchase Authorization

The City may invest in non-negotiable interest bearing time certificates of deposit or savings accounts in banks organized under the laws of this state and/or in national banks organized under the laws of the United States and doing business and situated in the State of Florida, provided that any such deposits are secured by the Florida Security for Public Deposits Act, Chapter 280, Florida Statutes. Additionally, the bank shall not be listed with any recognized credit watch information service.

#### 2. Portfolio Composition

A maximum of 10% of available funds may be invested in non-negotiable interest bearing time certificates of deposit.

#### 3. Limits on Individual Issuers

A maximum of 5% of available funds may be deposited with any one issuer.

#### 4. Maturity Limitations

The maximum maturity on any certificate shall be no greater than one (1) year from the date of purchase.

#### F. Repurchase Agreements

#### 1. Purchase Authorization

- a. The City may invest in repurchase agreements composed of only those investments based on the requirements set forth by the City's Master Repurchase Agreement. All firms are required to sign the Master Repurchase Agreement prior to the execution of a repurchase agreement transaction.
- b. A third party custodian with whom the City has a current custodial agreement shall hold the collateral for all repurchase agreements with a term longer than one (1) business day. A clearly marked receipt that shows evidence of ownership must be supplied to the Financial Services Director and retained.
- c. Securities authorized for collateral are negotiable direct obligations of the United States Government, Government Agencies, and Federal Instrumentalities with maturities under five (5) years and must have a market value for the principal and accrued interest of 102 percent of the value and for the term of the repurchase agreement. Immaterial short-term deviations from 102 percent requirement are permissible only upon the approval of the Financial Services Director.

#### 2. Portfolio Composition

A maximum of 25% of available funds may be invested in repurchase agreements excluding one (1) business day agreements and overnight sweep agreements.

#### 3. Limits on Individual Issuers

A maximum of 10% of available funds may be invested with any one institution.

#### 4. Limits on Maturities

The maximum length to maturity of any repurchase agreement is 90 days from the date of purchase.

#### G. Commercial Paper

#### 1. Purchase Authorization

The City may invest in commercial paper of any company organized and operating in the United States that is rated, at the time of purchase, "Prime-1" by Moody's and "A-1" by Standard & Poor's (prime commercial paper).

#### 2. Portfolio Composition

A maximum of 35% of available funds may be directly invested in prime commercial paper.

#### 3. Limits on Individual Issuers

A maximum of 10% of available funds may be invested with any one issuer.

#### 4. Maturity Limitations

The maximum length to maturity for prime commercial paper shall be 270 days from the date of purchase.

#### H. Bankers' Acceptances

#### 1. Purchase Authorization

The City may invest in Bankers' Acceptances issued by a domestic bank or a federally chartered domestic office of a foreign bank, which is eligible for purchase by the Federal Reserve System, at the time of purchase, the short-term paper is rated, at a minimum, "P-1" by Moody's Investors Services and "A-1" Standard & Poor's.

#### 2. Portfolio Composition

A maximum of 25% of available funds may be directly invested in Bankers' Acceptances

#### 3. Limits on Individual Issuers

A maximum of 10% of available funds may be invested with any one issuer.

#### 4. Maturity Limitations

The maximum length to maturity for Bankers' Acceptances shall be 180 days from the date of purchase.

#### I. State and/or Local Government Taxable and/or Tax-Exempt Debt

#### 1. Purchase Authorization

The City may invest in state and/or local government taxable and/or tax-exempt debt, general obligation and/or revenue bonds, rated at least a minimum "Aa" category by Moody's and a minimum long term debt rating of "AA" category by Standard & Poor's for long-term debt, or rated at least "VMIG2" by Moody's or "A-2" by Standard & Poor's for short-term debt.

#### 2. Portfolio Composition

A maximum of 20% of available funds may be invested in taxable and tax-exempt debts.

#### 3. Limits on Individual Issuers

A maximum of 5% of available funds may be invested with any one issuer.

#### 4. Maturity Limitations

A maximum length to maturity for an investment in any state or local government debt security is five (5) years from the date of purchase.

#### 5. Maturity Limitations for Variable Rate Demand Obligations

A maximum length to maturity for an investment in any state or local government debt security is the shorter of put or tender date, where the put or tender does not expire for the life of the security, or final maturity.

#### J. Registered Investment Companies (Mutual Funds)

#### 1. Investment Authorization

The City may invest in shares in open-end, no-load provided such funds are registered under the Federal Investment Company Act of 1940 and operated in accordance with 17 C.F.R. § 270.2a-7. In addition, the Financial Services Director may invest in other types of mutual funds provided such funds are registered under the Federal Investment Company Act of 1940, invested exclusively in the securities specifically permitted under this investment policy, and are similarly diversified.

#### 2. Portfolio Composition

A maximum of 25% of available funds may be invested in mutual funds.

#### 3. Limits of Individual Issuers

A maximum of 10% of available funds may be invested with any one non-SEC Rule 2a-7 investment mutual fund.

#### 4. Rating Requirements

The mutual funds shall be rated "AAAm" by Standard & Poor's or the equivalent by another rating agency at time of purchase.

#### 5. Due Diligence Requirements

A thorough review of any investment mutual fund is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Financial Services Director that will contain a list of questions that covers the major aspects of any investment pool/fund.

# K. Intergovernmental Investment Pools

#### 1. Investment Authorization

The City may invest in intergovernmental investment pools that are authorized pursuant to the Florida Inter-local Cooperation Act, as provided in Section 163.01, Florida Statutes and provided that said funds contain no derivatives.

# 2. Portfolio Composition

A maximum of 60% of available funds may be invested in intergovernmental investment pools.

#### 3. Rating Requirements

The investment pool shall be rated "AAAm" by Standard & Poor's or the equivalent by another rating agency at time of purchase.

# 4. Due Diligence Requirements

A thorough review of any investment pool/fund is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Financial Services Director that will contain a list of questions that covers the major aspects of any investment pool/fund.

# L. Corporate Notes

#### 1. Purchase Authorization

The City may invest in corporate notes issued by corporations organized and operating within the United States or by depository institutions licensed by the United States that have a minimum long term debt rating of "A" category by Standard & Poor's, or the equivalent by another rating agency at the time of purchase.

# 2. Portfolio Composition

A maximum of 35% of available funds may be directly invested in corporate notes.

#### 3. Limits on Individual Issuers

A maximum of 5% of available funds may be invested with any one issuer.

#### 4. Maturity Limitations

The maximum length to maturity for corporate notes shall be 5 years from the date of purchase.

# M. Mortgage-Backed Securities (MBS)

# 1. Purchase Authorization

The City may invest in mortgage-backed securities (MBS) which are based on mortgages that are guaranteed by a government agency or GSE for payment of principal and a guarantee of timely payment.

# 2. Portfolio Composition

A maximum of 20% of available funds may be invested in MBS.

# 3. Limits of Individual Issuers

A maximum of 15% of available funds may be invested with any one MBS.

# 4. Maturity Limitations

A maximum length to maturity for an investment in any MBS is five (5) years based on the weighted average life of the security.

The maturity of mortgage-backed securities shall be considered the date corresponding to its average life. This date reflects the point at which an investor will have received back half of the original principal (face) amount. The average life may be different from the stated legal maturity included in a security's description.

# N. Asset-Backed Securities (ABS)

#### 1. Purchase Authorization

The City may invest in asset-backed securities (ABS) which are bonds or notes backed by financial assets.

# 2. Portfolio Composition

A maximum of 20% of available funds may be invested in ABS.

# 3. Limits of Individual Issuers

A maximum of 5% of available funds may be invested with any one ABS.

# 4. Maturity Limitations

A maximum length to maturity for an investment in any ABS is five (5) years from the date of purchase.

The maturity of asset-backed securities shall be considered the date corresponding to its average life. This date reflects the point at which an investor will have received back half of the original principal (face) amount. The average life may be different from the stated legal maturity included in a security's description.

# 5. Rating Requirements

ABS shall be Double-A rated or better by Standard & Poor's, or the equivalent by another rating agency at time of purchase.

#### O. Bond Funds

#### 1. Purchase Authorization

The Financial Services Director may invest in bond funds.

#### 2. Portfolio Composition

A maximum of 25% of available funds may be invested in bond funds.

# 3. Limits of Individual Issuers

A maximum of 10% of available funds may be invested with any one bond fund.

# 4. Rating Requirements

Bond funds shall be Double-A rated or better by Standard & Poor's, or the equivalent by another rating agency.

# XIII. DERIVATIVES AND REVERSE REPURCHASE AGREEMENTS

Investment in any derivative products or the use of reverse repurchase agreements requires specific City Council approval prior to their use. If the City Council approves the use of derivative products, the Financial Services Director shall develop sufficient understanding of the derivative products and have the expertise to manage them. A "derivative" is defined as a financial instrument the value of which depends on, or is derived from, the value of one or more underlying assets or indices or asset values. If the City Council approves the use of reverse repurchase agreements or other forms of leverage, the investment shall be limited to transactions in which the proceeds are intended to provide liquidity and for which the Financial Services Director has sufficient resources and expertise to manage them.

#### XIV. PERFORMANCE MEASUREMENTS

In order to assist in the evaluation of the portfolio's performance, the City will use performance benchmarks for short-term and long-term portfolios. The use of benchmarks will allow the City to measure its returns against other investors in the same markets.

- 1. For the short-term portfolio (less than 12 months maturity), the S&P Rated GIP Index will be used as a benchmark as compared to the portfolios' net book value rate of return for current operating funds.
  - Investment performance of funds designated as core funds and other non-operating funds that have a long-term (greater than 12 months maturity) investment horizon will be compared to an index comprised of U. S. Treasury or Government securities. The appropriate index will have a duration and asset mix that approximates the portfolios and will be utilized as a benchmark to be compared to the portfolio's total rate of return. Examples of an appropriate index are as follows: the Merrill Lynch 1-3 Year Government & Corporate AA Index and/or the Merrill Lynch 1-5 Year Government & Corporate AA Index.
- 2. Investment advisors will report performance on both book value and total rate of return basis and compare results to the above-stated benchmarks for all actively managed portfolios. Investment advisors will report on book value for passively managed portfolios.

#### XV. REPORTING

The Financial Services Director shall provide the Investment Committee with quarterly investment reports. Schedules in the quarterly report should include the following:

- 1. A listing of individual securities held at the end of the reporting period
- 2. Percentage of available funds represented by each investment type
- 3. Coupon, discount or earning rate
- 4. Average life or duration and final maturity of all investments
- 5. Par value and market value

On an annual basis, the Financial Services Director shall provide to the City Council a written report on all invested funds. The annual report shall provide all, but not limited to, the following: a complete list of all invested funds, name or type of security in which the funds are invested, the amount invested, the maturity date, income earned, the book value, the market value and the yield on each investment.

The annual report will show performance on both a book value and total rate of return basis and will compare the results to the above-stated performance benchmarks. All investments shall be reported at fair value per GASB standards. Investment reports shall be available to the public.

# XVI. THIRD-PARTY CUSTODIAL AGREEMENTS

Securities, with the exception of certificates of deposits, shall be held with a third party custodian; and all securities purchased by, and all collateral obtained by; the City should be properly designated as an asset of the City. The securities must be held in an account separate and apart from the assets of the financial institution. A third party custodian is defined as any bank depository chartered by the Federal Government, the State of Florida, or any other state or territory of the United States which has a branch or principal place of business in the State of Florida as defined in Section 658.12, Florida Statutes, or by a national association organized and existing under the laws of the United States which is authorized to accept and execute trusts and which is doing business in the State of Florida. Certificates of deposits will be placed in the provider's safekeeping department for the term of the deposit.

The custodian shall accept transaction instructions only from those persons who have been duly authorized by the Financial Services Director and which authorization has been provided, in writing, to the custodian. Only a duly authorized person shall be permitted to in whole or in part withdraw securities from the custodian.

The custodian shall provide the Financial Services Director with safekeeping receipts that provide detailed information on the securities held by the custodian. Security transactions between a broker/dealer and the custodian involving the purchase or sale of securities by transfer of money or securities must be made on a "delivery vs. payment" basis, if applicable, to ensure that the custodian will have the security or money, as appropriate, in hand at the conclusion of the transaction. Securities held as collateral shall be held free and clear of any liens.

# XVII. INVESTMENT POLICY ADOPTION

The investment policy shall be adopted by a City ordinance. The Investment Committee shall review the policy annually and the City Council shall approve any modification made thereto.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF CAPE CORAL ON MMMM DD, YYYY

# Attachment A Glossary of Cash and Investment Management Terms

**Accrued Interest.** Interest earned but which has not yet been paid or received.

Agency. See "Federal Agency Securities."

Ask Price. Price at which a broker/dealer offers to sell a security to an investor, also known as "offered price."

**Asset Backed Securities (ABS).** A fixed-income security backed by notes or receivables against assets other than real estate. Generally issued by special purpose companies that "own" the assets and issue the ABS. Examples include securities backed by auto loans, credit card receivables, home equity loans, manufactured housing loans, farm equipment loans and aircraft leases.

**Average Life.** The average length of time that an issue of serial bonds and/or term bonds with a mandatory sinking fund feature is expected to be outstanding.

Bankers' Acceptance (BA's). A draft or bill of exchange drawn upon and accepted by a bank. Frequently used to finance shipping of international goods. Used as a short-term credit instrument, bankers' acceptances are traded at a discount from face value as a money market instrument in the secondary market on the basis of the credit quality of the guaranteeing bank.

Basis Point. One hundredth of one percent, or 0.01%. Thus 1% equals 100 basis points.

**Bearer Security.** A security whose ownership is determined by the holder of the physical security. Typically, there is no registration on the issuer's books. Title to bearer securities is transferred by delivery of the physical security or certificate. Also known as "physical securities."

Benchmark Bills: In November 1999, FNMA introduced its Benchmark Bills program, a short-term debt securities issuance program to supplement its existing discount note program. The program includes a schedule of larger, weekly issues in three- and six-month maturities and biweekly issues in one-year for Benchmark Bills. Each issue is brought to market via a Dutch (single price) auction. FNMA conducts a weekly auction for each Benchmark Bill maturity and accepts both competitive and non-competitive bids through a web based auction system. This program is in addition to the variety of other discount note maturities, with rates posted on a daily basis, which FNMA offers. FNMA's Benchmark Bills are unsecured general obligations that are issued in book- entry form through the Federal Reserve Banks. There are no periodic payments of interest on Benchmark Bills, which are sold at a discount from the principal amount and payable at par at maturity. Issues under the Benchmark program constitute the same credit standing as other FNMA discount notes; they simply add organization and liquidity to the short-term Agency discount note market.

Benchmark Notes/Bonds: Benchmark Notes and Bonds are a series of FNMA "bullet" maturities (non-callable) issued according to a pre-announced calendar. Under its Benchmark Notes/Bonds program, 2, 3, 5, 10 and 30- year maturities are issued each quarter. Each Benchmark Notes new issue has a minimum size of \$4 billion, 30- year new issues having a minimum size of \$1 billion, with re-openings based on investor demand to further enhance liquidity. The amount of non-callable issuance has allowed FNMA to build a yield curve in Benchmark Notes and Bonds in maturities ranging from 2 to 30 years. The liquidity emanating from these large size issues has facilitated favorable financing opportunities through the development of a liquid overnight and term repo market. Issues under the Benchmark program constitute the same credit standing as other FNMA issues; they simply add organization and liquidity to the intermediate- and long-term Agency market.

**Benchmark.** A market index used as a comparative basis for measuring the performance of an investment portfolio. A performance benchmark should represent a close correlation to investment guidelines, risk tolerance and duration of the actual portfolio's investments.

**Bid Price.** Price at which a broker/dealer offers to purchase a security from an investor.

**Bond Market Association (BMA).** The bond market trade association representing the largest securities markets in the world. In addition to publishing a Master Repurchase Agreement, widely accepted as the industry standard

document for Repurchase Agreements, the BMA also recommends bond market closures and early closes due to holidays.

**Bond.** Financial obligation for which the issuer promises to pay the bondholder (the purchaser or owner of the bond) a specified stream of future cash flows, including periodic interest payments and a principal repayment.

**Book Entry Securities.** Securities that are recorded in a customer's account electronically through one of the financial markets electronic delivery and custody systems, such as the Fed Securities wire, DTC and PTC (as opposed to bearer or physical securities). The trend is toward a certificate-free society in order to cut down on paperwork and to diminish investors' concerns about the certificates themselves. The vast majority of securities are now book entry securities.

**Book Value.** The value at which a debt security is reflected on the holder's records at any point in time. Book value is also called "amortized cost" as it represents the original cost of an investment adjusted for amortization of premium or accretion of discount. Also called "carrying value." Book value can vary over time as an investment approaches maturity and differs from "market value" in that it is not affected by changes in market interest rates.

**Broker/Dealer.** A person or firm transacting securities business with customers. A "broker" acts as an agent between buyers and sellers and receives a commission for these services. A "dealer" buys and sells financial assets from its own portfolio. A dealer takes risk by owning inventory of securities, whereas a broker merely matches up buyers and sellers. See also "Primary Dealer."

Bullet Notes/Bonds. Notes or bonds that have a single maturity date and are non-callable.

Call Date. Date at which a call option may be or is exercised.

**Call Option.** The right, but not the obligation, of an issuer of a security to redeem a security at a specified value and at a specified date or dates prior to its stated maturity date. Most fixed-income calls are a par, but can be at any previously established price. Securities issued with a call provision typically carry a higher yield than similar securities issued without a call feature. There are three primary types of call options (1) European - one-time calls, (2) Bermudan - periodically on a predetermined schedule (quarterly, semi-annual, annual), and (3) American - continuously callable at any time on or after the call date. There is usually a notice period of at least 5 business days prior to a call date.

**Callable Bonds/Notes.** Securities, which contain an imbedded call option giving the issuer, the right to redeem the securities prior to maturity at a predetermined price and time.

**Certificate of Deposit (CD).** Bank obligation issued by a financial institution generally offering a fixed rate of return (coupon) for a specified period of time (maturity). Can be as long as 10 years to maturity, but most CDs purchased by public agencies are one year and under.

**Collateral.** Investment securities or other property that a borrower pledges to secure repayment of a loan, secure deposits of public monies, or provide security for a repurchase agreement.

**Collateralization.** Process by which a borrower pledges securities, property, or other deposits for securing the repayment of a loan and/or security.

Collateralized Mortgage Obligation (CMO). A security that pools together mortgages and separates them into short, medium, and long-term positions (called tranches). Tranches are set up to pay different rates of interest depending upon their maturity. Interest payments are usually paid monthly. In "plain vanilla" CMOs, principal is not paid on a tranche until all shorter tranches have been paid off. This system provides interest and principal in a more predictable manner. A single pool of mortgages can be carved up into numerous tranches each with its own payment and risk characteristics.

**Commercial Paper.** Short term unsecured promissory note issued by a company or financial institution. Issued at a discount and matures for par or face value. Usually a maximum maturity of 270 days and given a short-term debt rating by one or more NRSROs.

**Convexity.** A measure of a bond's price sensitivity to changing interest rates. A high convexity indicates greater sensitivity of a bond's price to interest rate changes.

**Corporate Note.** A debt instrument issued by a corporation with a maturity of greater than one year and less than ten years.

**Counterparty.** The other party in a two-party financial transaction. "Counterparty risk" refers to the risk that the other party, to a transaction, will fail in its related obligations. For example, the bank or broker/dealer in a repurchase agreement.

Coupon Rate. Annual rate of interest on a debt security, expressed as a percentage of the bond's face value.

**Current Yield.** Annual rate of return on a bond based on its price. Calculated as (coupon rate / price), but does not accurately reflect a bond's true yield level.

**Custody.** Safekeeping services offered by a bank, financial institution or trust company, referred to as the "custodian." Service normally includes the holding and reporting of the customer's securities, the collection and disbursement of income, securities settlement and market values.

**Dealer.** A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

**Delivery Versus Payment (DVP).** Settlement procedure in which securities are delivered versus payment of cash, but only after cash has been received. Most security transactions, including those through the Fed Securities Wire system and DTC, are done DVP as a protection for both the buyer and seller of securities.

**Depository Trust Company (DTC).** A firm through which members can use a computer to arrange for securities to be delivered to other members without physical delivery of certificates. A member of the Federal Reserve System and owned mostly by the New York Stock Exchange, the Depository Trust Company uses computerized debit and credit entries. Most corporate securities, commercial paper, CDs and BAs clear through DTC.

**Derivatives.** For hedging purposes, common derivatives are options, futures, swaps and swaptions. All Collateralized Mortgage Obligations ("CMOs") are derivatives. (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, or (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities or commodities).

**Derivative Security.** Financial instrument created from, or whose value depends upon, one or more underlying assets or indexes of asset values.

**Designated Bond.** FFCB's regularly issued, liquid, non-callable securities that generally have a 2 or 3 year original maturity. New issues of Designated Bonds are \$1 billion or larger. Re-openings of existing Designated Bond issues are generally a minimum of \$100 million. Designated Bonds are offered through a syndicate of two to six dealers. Twice each month the Funding Corporation announces its intention to issue a new Designated Bond, reopen an existing issue, or to not issue or reopen a Designated Bond. Issues under the Designated Bond program constitute the same credit standing as other FFCB issues; they simply add organization and liquidity to the intermediate- and long-term Agency market.

**Discount Notes.** Unsecured general obligations issued by Federal Agencies at a discount. Discount notes mature at par and can range in maturity from overnight to one year. Very large primary (new issue) and secondary markets.

**Discount Rate.** Rate charged by the system of Federal Reserve Banks on overnight loans to member banks. Changes to this rate are administered by the Federal Reserve and closely mirror changes to the "fed funds rate."

**Discount Securities.** Non-interest-bearing money market instruments that are issued at discount and redeemed at maturity for full face value. Examples include U.S. Treasury Bills, Federal Agency Discount Notes, Bankers' Acceptances and Commercial Paper.

**Discount.** The amount by which a bond or other financial instrument sells below its face value. See also "Premium."

**Diversification.** Dividing investment funds among a variety of security types, maturities, industries and issuers offering potentially independent returns.

**Dollar Price.** A bond's cost expressed as a percentage of its face value. For example, a bond quoted at a dollar price of 95 ½, would have a principal cost of \$955 per \$1,000 of face value.

Duff & Phelps. One of several NRSROs that provide credit ratings on corporate and bank debt issues.

**Duration.** The weighted average maturity of a security's or portfolio's cash flows, where the present values of the cash flows serve as the weights. The greater the duration of a security/portfolio, the greater its percentage price volatility with respect to changes in interest rates. Used as a measure of risk and a key tool for managing a portfolio versus a benchmark and for hedging risk. There are also different kinds of duration used for different purposes (e.g. MacAuley Duration, Modified Duration).

Fannie Mae. See "Federal National Mortgage Association."

**Fed Money Wire.** A computerized communications system that connects the Federal Reserve System with its member banks, certain U. S. Treasury offices, and the Washington D.C. office of the Commodity Credit Corporation. The Fed Money Wire is the book entry system used to transfer cash balances between banks for themselves and for customer accounts.

**Fed Securities Wire.** A computerized communications system that facilitates book entry transfer of securities between banks, brokers and customer accounts, used primarily for settlement of U.S. Treasury and Federal Agency securities.

Fed. See "Federal Reserve System."

**Federal Agency Security.** A debt instrument issued by one of the Federal Agencies. Federal Agencies are considered second in credit quality and liquidity only to U.S. Treasuries.

**Federal Agency.** Government sponsored/owned entity created by the U.S. Congress, generally for the purpose of acting as a financial intermediary by borrowing in the marketplace and directing proceeds to specific areas of the economy considered to otherwise have restricted access to credit markets. The largest Federal Agencies are GNMA, FNMA, FHLMC, FHLB, FFCB, SLMA, and TVA.

**Federal Deposit Insurance Corporation (FDIC).** Federal agency that insures deposits at commercial banks, currently to a limit of \$250,000 per depositor per bank.

Federal Farm Credit Bank (FFCB). One of the large Federal Agencies. A government sponsored enterprise (GSE) system that is a network of cooperatively owned lending institutions that provides credit services to farmers, agricultural cooperatives and rural utilities. The FFCBs act as financial intermediaries that borrow money in the capital markets and use the proceeds to make loans and provide other assistance to farmers and farm-affiliated businesses. Consists of the consolidated operations of the Banks for Cooperatives, Federal Intermediate Credit Banks, and Federal Land Banks. Frequent issuer of discount notes, agency notes and callable agency securities. FFCB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and agricultural industry. Also, issues notes under its "designated note" program.

**Federal Funds (Fed Funds).** Funds placed in Federal Reserve Banks by depository institutions in excess of current reserve requirements, and frequently loaned or borrowed on an overnight basis between depository institutions.

**Federal Funds Rate (Fed Funds Rate).** The interest rate charged by a depository institution lending Federal Funds to another depository institution. The Federal Reserve influences this rate by establishing a "target" Fed Funds rate associated with the Fed's management of monetary policy.

Federal Home Loan Bank System (FHLB). One of the large Federal Agencies. A government sponsored enterprise (GSE) system, consisting of wholesale banks (currently twelve district banks) owned by their member banks, which provides correspondent banking services and credit to various financial institutions, financed by the issuance of securities. The principal purpose of the FHLB is to add liquidity to the mortgage markets. Although FHLB does

not directly fund mortgages, it provides a stable supply of credit to thrift institutions that make new mortgage loans. FHLB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes and callable agency securities. Also, issues notes under its "global note" and "TAP" programs.

Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac"). One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides stability and assistance to the secondary market for home mortgages by purchasing first mortgages and participation interests financed by the sale of debt and guaranteed mortgage backed securities. FHLMC debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities and MBS. Also, issues notes under its "reference note" program.

Federal National Mortgage Association (FNMA or "Fannie Mae"). One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides liquidity to the residential mortgage market by purchasing mortgage loans from lenders, financed by the issuance of debt securities and MBS (pools of mortgages packaged together as a security). FNMA debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities and MBS. Also, issues notes under its "benchmark note" program.

Federal Reserve Bank. One of the 12 distinct banks of the Federal Reserve System.

Federal Reserve System (the Fed). The independent central bank system of the United States that establishes and conducts the nation's monetary policy. This is accomplished in three major ways: (1) raising or lowering bank reserve requirements, (2) raising or lowering the target Fed Funds Rate and Discount Rate, and (3) in open market operations by buying and selling government securities. The Federal Reserve System is made up of twelve Federal Reserve District Banks, their branches, and many national and state banks throughout the nation. It is headed by the seven member Board of Governors known as the "Federal Reserve Board" and headed by its Chairman.

**Fiscal Agent/Paying Agent.** A bank or trust company that acts, under a trust agreement with a corporation or municipality, in the capacity of general treasurer. The agent performs such duties as making coupon payments, paying rents, redeeming bonds, and handling taxes relating to the issuance of bonds.

**Fitch Investors Service, Inc.** One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

**Floating Rate Security (FRN or "floater").** A bond with an interest rate that is adjusted according to changes in an interest rate or index. Differs from variable-rate debt in that the changes to the rate take place immediately when the index changes, rather than on a predetermined schedule. See also "Variable Rate Security."

Freddie Mac. See "Federal Home Loan Mortgage Corporation".

Ginnie Mae. See "Government National Mortgage Association".

**Global Notes:** Notes designed to qualify for immediate trading in both the domestic U.S. capital market and in foreign markets around the globe. Usually large issues that are sold to investors worldwide and therefore have excellent liquidity. Despite their global sales, global notes sold in the U.S. are typically denominated in U.S. dollars.

Government National Mortgage Association (GNMA or "Ginnie Mae"). One of the large Federal Agencies. Government-owned Federal Agency that acquires, packages, and resells mortgages and mortgage purchase commitments in the form of mortgage-backed securities. Largest issuer of mortgage pass-through securities. GNMA debt is guaranteed by the full faith and credit of the U.S. government (one of the few agencies that are actually full faith and credit of the U.S.).

**Government Securities.** An obligation of the U.S. government, backed by the full faith and credit of the government. These securities are regarded as the highest quality of investment securities available in the U.S. securities market. See "Treasury Bills, Notes, Bonds, and SLGS."

Government Sponsored Enterprise (GSE). Privately owned entity subject to federal regulation and supervision, created by the U.S. Congress to reduce the cost of capital for certain borrowing sectors of the economy such as students, farmers, and homeowners. GSEs carry the implicit backing of the U.S. Government, but they are not direct obligations of the U.S. Government. For this reason, these securities will offer a yield premium over U.S. Treasuries. Some consider GSEs to be stealth recipients of corporate welfare. Examples of GSEs include: FHLB, FHLMC, FNMA and SLMA.

**Government Sponsored Enterprise Security.** A security issued by a Government Sponsored Enterprise. Considered Federal Agency Securities.

**Index.** A compilation of statistical data that tracks changes in the economy or in financial markets.

**Interest-Only (IO) STRIP.** A security based solely on the interest payments from the bond. After the principal has been repaid, interest payments stop and the value of the security falls to nothing. Therefore, IOs are considered risky investments. Usually associated with mortgage-backed securities.

**Internal Controls.** An internal control structure ensures that the assets of the entity are protected from loss, theft, or misuse. The internal control structure is designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that 1) the cost of a control should not exceed the benefits likely to be derived and 2) the valuation of costs and benefits requires estimates and judgments by management. Internal controls should address the following points:

- 1. **Control of collusion** Collusion is a situation where two or more employees are working in conjunction to defraud their employer.
- 2. **Separation of transaction authority from accounting and record keeping** By separating the person who authorizes or performs the transaction from the people who record or otherwise account for the transaction, a separation of duties is achieved.
- 3. **Custodial safekeeping** Securities purchased from any bank or dealer including appropriate collateral (as defined by state law) shall be placed with an independent third party for custodial safekeeping.
- 4. Avoidance of physical delivery securities Book-entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.
- 5. Clear delegation of authority to subordinate staff members Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
- 6. Written confirmation of transactions for investments and wire transfers Due to the potential for error and improprieties arising from telephone and electronic transactions, all transactions should be supported by written communications and approved by the appropriate person. Written communications may be via fax if on letterhead and if the safekeeping institution has a list of authorized signatures.
- 7. **Development of a wire transfer agreement with the lead bank and third-party custodian** The designated official should ensure that an agreement will be entered into and will address the following points: controls, security provisions, and responsibilities of each party making and receiving wire transfers.

**Inverse Floater.** A floating rate security structured in such a way that it reacts inversely to the direction of interest rates. Considered risky as their value moves in the opposite direction of normal fixed-income investments and whose interest rate can fall to zero.

**Investment Advisor.** A company that provides professional advice managing portfolios, investment recommendations and/or research in exchange for a management fee.

**Investment Adviser Act of 1940.** Federal legislation that sets the standards by which investment companies, such as mutual funds, are regulated in the areas of advertising, promotion, performance reporting requirements, and securities valuations.

**Investment Grade.** Bonds considered suitable for preservation of invested capital; bonds rated a minimum of Baa3 by Moody's, BBB- by Standard & Poor's, or BBB- by Fitch. Although "BBB" rated bonds are considered investment grade, most public agencies cannot invest in securities rated below "A."

**Liquidity.** Relative ease of converting an asset into cash without significant loss of value. Also, a relative measure of cash and near-cash items in a portfolio of assets. Also, a term describing the marketability of a money market security correlating to the narrowness of the spread between the bids and ask prices.

**Local Government Investment Pool (LGIP).** An investment by local governments in which their money is pooled as a method for managing local funds, (i.e., Florida State Board of Administration's Florida Prime Fund).

Long-Term Core Investment Program. Funds that are not needed within a one year period.

**Market Value.** The fair market value of a security or commodity. The price at which a willing buyer and seller would pay for a security.

**Mark-to-market.** Adjusting the value of an asset to its market value, reflecting in the process unrealized gains or losses.

Master Repurchase Agreement. A widely accepted standard agreement form published by the Bond Market Association (BMA) that is used to govern and document Repurchase Agreements and protect the interest of parties in a repo transaction.

Maturity Date. Date on which principal payment of a financial obligation is to be paid.

Medium Term Notes (MTN's). Used frequently to refer to corporate notes of medium maturity (5-years and under). Technically, any debt security issued by a corporate or depository institution with a maturity from 1 to 10 years and issued under an MTN shelf registration. Usually issued in smaller issues with varying coupons and maturities, and underwritten by a variety of broker/dealers (as opposed to large corporate deals issued and underwritten all at once in large size and with a fixed coupon and maturity).

**Money Market.** The market in which short-term debt instruments (bills, commercial paper, bankers' acceptance, etc.) are issued and traded.

Money Market Mutual Fund (MMF). A type of mutual fund that invests solely in money market instruments, such as: U.S. Treasury bills, commercial paper, bankers' acceptances, and repurchase agreements. Money market mutual funds are registered with the SEC under the Investment Company Act of 1940 and are subject "rule 2a-7" which significantly limits average maturity and credit quality of holdings. MMF's are managed to maintain a stable net asset value (NAV) of \$1.00. Many MMFs carry ratings by a NRSRO.

**Moody's Investors Service.** One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

Mortgage Backed Securities (MBS). Mortgage-backed securities represent an ownership interest in a pool of mortgage loans made by financial institutions, such as savings and loans, commercial banks, or mortgage companies, to finance the borrower's purchase of a home or other real estate. The majority of MBS are issued and/or guaranteed by GNMA, FNMA and FHLMC. There are a variety of MBS structures, some of which can be very risky and complicated. All MBS have reinvestment risk as actual principal and interest payments are dependent on the payment of the underlying mortgages which can be prepaid by mortgage holders to refinance and lower rates or simply because the underlying property was sold.

**Mortgage** Pass-Through Securities. A pool of residential mortgage loans with the interest and principal distributed to investors on a pro-rata basis. Largest issuer is GNMA.

**Municipal Note/Bond.** A debt instrument issued by a state or local government unit or public agency. The vast majority of municipals are exempt from state and federal income tax, although some non-qualified issues are taxable.

**Mutual Fund.** Portfolio of securities professionally managed by a registered investment company that issues shares to investors. Many different types of mutual funds exist (bond, equity, money fund); all except money market funds operate on a variable net asset value (NAV).

**National Association of Securities Dealers (NASD).** Organization of brokers and dealers who trade securities in the United States, supervised by the SEC, and which provides regulatory exams for industry participants.

**Negotiable Certificate of Deposit (Negotiable CD).** Large denomination CDs (\$100,000 and larger) that are issued in bearer form and can be traded in the secondary market.

**Net Asset Value.** The market value of one share of an investment company, such as a mutual fund. This figure is calculated by totaling a fund's assets which includes securities, cash, and any accrued earnings, subtracting this from the fund's liabilities and dividing this total by the number of shares outstanding. This is calculated once a day based on the closing price for each security in the fund's portfolio. (See below.)

[(Total assets) - (Liabilities)]/(Number of shares outstanding)

**NRSRO.** A "Nationally Recognized Statistical Rating Organization." A designated rating organization that the SEC has deemed a strong national presence in the U.S. NRSROs provide credit ratings on corporate and bank debt issues. Only ratings of a NRSRO may be used for the regulatory purposes of rating. Includes Moody's, S&P, Fitch and Duff & Phelps.

Offered Price. See also "Ask Price."

**Open Market Operations.** Federal Reserve monetary policy tactic entailing the purchase or sale of government securities in the open market by the Federal Reserve System from and to primary dealers in order to influence the money supply, credit conditions, and interest rates.

Par Value. Face value stated value or maturity value of a security.

Physical Delivery. Delivery of readily available underlying assets at contract maturity.

Portfolio. Collection of securities and investments held by an investor.

**Premium.** The amount by which a bond or other financial instrument sells above its face value. See also Discount."

**Primary Dealer.** Any of a group of designated government securities dealers designated by to the Federal Reserve Bank of New York. Primary dealers can buy and sell government securities directly with the Fed. Primary dealers also submit daily reports of market activity and security positions held to the Fed and are subject to its informal oversight. Primary dealers are considered the largest players in the U.S. Treasury securities market.

Prime Paper. Commercial paper of high quality. Highest rated paper is A-1+/A-1 by S&P and P-1 by Moody's.

**Principal.** Face value of a financial instrument on which interest accrues. May be less than par value if some principal has been repaid or retired. For a transaction, principal is par value times price and includes any premium or discount.

**Prudent Investor Standard.** Standard that requires that when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. More stringent than the "prudent person" standard as it implies a level of knowledge commensurate with the responsibility at hand.

Qualified Public Depository - Per Florida Statute 280, means any bank, saving bank or savings association that:

- 1. Is organized and exists under the laws of the United States, the laws of this state or any other state or territory of the United States;
- 2. Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.
- 3. Has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss.1811 seq.
- 4. Meets all requirements of F.S. 280
- 5. Has been designed by the Treasurer as a qualified public depository.

Range Note. A type of structured note that accrues interest daily at a set coupon rate that is tied to an index. Most range notes have two coupon levels; a higher accrual rate for the period the index is within a designated range, the lower accrual rate for the period that the index falls outside the designated range. This lower rate may be zero and may result in zero earnings.

**Rate of Return.** Amount of income received from an investment, expressed as a percentage of the amount invested.

Realized Gains (Losses). The difference between the sale price of an investment and its book value. Gains/losses are "realized" when the security is actually sold, as compared to "unrealized" gains/losses which are based on current market value. See "Unrealized Gains (Losses)."

Reference Bills: FHLMC's short-term debt program created to supplement its existing discount note program by offering issues from one month through one year, auctioned on a weekly or on an alternating four-week basis (depending upon maturity) offered in sizeable volumes (\$1 billion and up) on a cycle of regular, standardized issuance. Globally sponsored and distributed, Reference Bill issues are intended to encourage active trading and market-making and facilitate the development of a term repo market. The program was designed to offer predictable supply, pricing transparency and liquidity, thereby providing alternatives to U.S. Treasury bills. FHLMC's Reference Bills are unsecured general corporate obligations. This program supplements the corporation's existing discount note program. Issues under the Reference program constitute the same credit standing as other FHLMC discount notes; they simply add organization and liquidity to the short-term Agency discount note market.

**Reference Notes:** FHLMC's intermediate-term debt program with issuances of 2, 3, 5, 10 and 30-year maturities. Initial issuances range from \$2 - \$6 billion with re-openings ranging \$1 - \$4 billion.

The notes are high-quality bullet structures securities that pay interest semiannually. Issues under the Reference program constitute the same credit standing as other FHLMC notes; they simply add organization and liquidity to the intermediate- and long-term Agency market.

Repurchase Agreement (Repo). A short-term investment vehicle where an investor agrees to buy securities from a counterparty and simultaneously agrees to resell the securities back to the counterparty at an agreed upon time and for an agreed upon price. The difference between the purchase price and the sale price represents interest earned on the agreement. In effect, it represents a collateralized loan to the investor, where the securities are the collateral. Can be DVP, where securities are delivered to the investor's custodial bank, or "tri-party" where the securities are delivered to a third party intermediary. Any type of security can be used as "collateral," but only some types provide the investor with special bankruptcy protection under the law. Repos should be undertaken only when an appropriate BMA approved master repurchase agreement is in place.

Reverse Repurchase Agreement (Reverse Repo). A repo from the point of view of the original seller of securities. Used by dealers to finance their inventory of securities by essentially borrowing at short-term rates. Can also be used to leverage a portfolio and in this sense, can be considered risky if used improperly.

**Safekeeping.** Service offered for a fee, usually by financial institutions, for the holding of securities and other valuables. Safekeeping is a component of custody services.

Secondary Market. Markets for the purchase and sale of any previously issued financial instrument.

**Securities Lending.** An arrangement between and investor and a custody bank that allows the custody bank to "loan" the investors investment holdings, reinvest the proceeds in permitted investments, and shares any profits with the investor. Should be governed by a securities lending agreement. Can increase the risk of a portfolio in that the investor takes on the default risk on the reinvestment at the discretion of the custodian.

**Sinking Fund.** A separate accumulation of cash or investments (including earnings on investments) in a fund in accordance with the terms of a trust agreement or indenture, funded by periodic deposits by the issuer (or other entity responsible for debt service), for the purpose of assuring timely availability of moneys for payment of debt service. Usually used in connection with term bonds.

**Spread.** The difference between the price of a security and similar maturity U.S. Treasury investments, expressed in percentage terms or basis points. A spread can also be the absolute difference in yield between two securities. The securities can be in different markets or within the same securities market between different credits, sectors, or other relevant factors.

Standard & Poor's. One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

STRIPS (Separate Trading of Registered Interest and Principal of Securities). Acronym applied to U.S. Treasury securities that have had their coupons and principal repayments separated into individual zero-coupon Treasury securities. The same technique and "strips" description can be applied to non-Treasury securities (e.g. FNMA strips).

**Structured Notes.** Notes that have imbedded into their structure options such as step-up coupons or derivative-based returns.

**Swap.** Trading one asset for another.

TAP Notes: Federal Agency notes issued under the FHLB TAP program. Launched in 6/99 as a refinement to the FHLB bullet bond auction process. In a break from the FHLB's traditional practice of bringing numerous small issues to market with similar maturities, the TAP Issue Program uses the four most common maturities and reopens them up regularly through a competitive auction. These maturities (2, 3, 5 and 10 year) will remain open for the calendar quarter, after which they will be closed and a new series of TAP issues will be opened to replace them. This reduces the number of separate bullet bonds issued, but generates enhanced awareness and liquidity in the marketplace through increased issue size and secondary market volume.

Tennessee Valley Authority (TVA). One of the large Federal Agencies. A wholly owned corporation of the United States government that was established in 1933 to develop the resources of the Tennessee Valley region in order to strengthen the regional and national economy and the national defense. Power operations are separated from non-power operations. TVA securities represent obligations of TVA, payable solely from TVA's net power proceeds, and are neither obligations of nor guaranteed by the United States. TVA is currently authorized to issue debt up to \$30 billion. Under this authorization, TVA may also obtain advances from the U.S. Treasury of up to \$150 million. Frequent issuer of discount notes, agency notes and callable agency securities.

**Total Return.** Investment performance measured over a period of time that includes coupon interest, interest on interest, and both realized and unrealized gains or losses. Total return includes, therefore, any market value appreciation/depreciation on investments held at period end.

**Treasuries.** Collective term used to describe debt instruments backed by the U.S. Government and issued through the U.S. Department of the Treasury. Includes Treasury bills, Treasury notes, and Treasury bonds. Also a benchmark term used as a basis by which the yields of non-Treasury securities are compared (e.g., "trading at 50 basis points over Treasuries").

**Treasury Bills (T-Bills).** Short-term direct obligations of the United States Government issued with an original term of one year or less. Treasury bills are sold at a discount from face value and do not pay interest before maturity. The difference between the purchase price of the bill and the maturity value is the interest earned on the bill. Currently, the U.S. Treasury issues 4-week, 13-week and 26-week T-Bills

**Treasury Bonds.** Long-term interest-bearing debt securities backed by the U.S. Government and issued with maturities of ten years and longer by the U.S. Department of the Treasury. The Treasury stopped issuing Treasury Bonds in August 2001.

**Treasury Notes.** Intermediate interest-bearing debt securities backed by the U.S. Government and issued with maturities ranging from one to ten years by the U.S. Department of the Treasury. The Treasury currently issues,2-year, 5-year and 10-year Treasury Notes.

**Trustee.** A bank designated by an issuer of securities as the custodian of funds and official representative of bondholders. Trustees are appointed to insure compliance with the bond documents and to represent bondholders in enforcing their contract with the issuer.

**Uniform Net Capital Rule.** SEC regulation 15C3-1 that outlines the minimum net capital ratio (ratio of indebtedness to net liquid capital) of member firms and non-member broker/dealers.

**Unrealized Gains (Losses).** The difference between the market value of an investment and its book value. Gains/losses are "realized" when the security is actually sold, as compared to "unrealized" gains/losses which are based on current market value. See also "Realized Gains (Losses)."

Variable-Rate Security. A bond that bears interest at a rate that varies over time based on a specified schedule of adjustment (e.g., daily, weekly, monthly, semi-annually or annually). See also "Floating Rate Note."

Weighted Average Maturity (or just "Average Maturity"). The average maturity of all securities and investments of a portfolio, determined by multiplying the par or principal value of each security or investment by its maturity (days or years), summing the products, and dividing the sum by the total principal value of the portfolio. A simple measure of risk of a fixed-income portfolio.

Weighted Average Maturity to Call. The average maturity of all securities and investments of a portfolio, adjusted to substitute the first call date per security for maturity date for those securities with call provisions.

**Yield Curve.** A graphic depiction of yields on like securities in relation to remaining maturities spread over a time line. The traditional yield curve depicts yields on U.S. Treasuries, although yield curves exist for Federal Agencies and various credit quality corporates as well. Yield curves can be positively sloped (normal) where longer-term investments have higher yields, or "inverted" (uncommon) where longer-term investments have lower yields than shorter ones.

**Yield to Call (YTC).** Same as "Yield to Maturity," except the return is measured to the first call date rather than the maturity date. Yield to call can be significantly higher or lower than a security's yield to maturity.

**Yield to Maturity (YTM).** Calculated return on an investment, assuming all cash flows from the security are reinvested at the same original yield. Can be higher or lower than the coupon rate depending on market rates and whether the security was purchased at a premium or discount. There are different conventions for calculating YTM for various types of securities.

**Yield.** There are numerous methods of yield determination. In this glossary, see also "Current Yield," "YieldCurve," "Yield to Call" and "Yield to Maturity."

# Attachment B Investment Pool/Fund Questionnaire

- 1. A description of eligible investment securities, and a written statement of investment policy and objectives.
- 2. A description of interest calculations and how it is distributed, and how gains and losses are treated.
- 3. A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.
- 4. A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.
- 5. A schedule for receiving statements and portfolio listings.
- 6. Are reserves, retained earnings, etc. utilized by the pool/fund?
- 7. A fee schedule, and when and how is it assessed.
- 8. Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?

# Attachment C Charter School Investment Policy Attached as a reference



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# Investment Policy <u>Cape Coral Charter School Authority</u>

# I. PURPOSE

The purpose of this policy is to set forth the investment objectives and parameters for the management of public funds of the Cape Coral Charter School Authority (hereinafter "Charter School"). These policies are designed to ensure the prudent management of public funds, the availability of operating and capital funds when needed, and an investment return competitive with comparable funds and financial market indices.

#### II. SCOPE

In accordance with Section 218.415, Florida Statutes, this investment policy applies to all cash and investments held or controlled by the Charter School.

# III. INVESTMENT OBJECTIVES

# Safety of Principal

The foremost objective of this investment program is the safety of the principal of those funds within the portfolios. Investment transactions shall seek to keep capital losses at a minimum, whether they are from securities defaults or erosion of market value. To attain this objective, diversification is required in order that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.

# Maintenance of Liquidity

The portfolios shall be managed in such a manner that funds are available to meet reasonably anticipated cash flow requirements in an orderly manner. Periodical cash flow analyses will be completed in order to ensure that the portfolios are positioned to provide sufficient liquidity.

# Return on Investment

Investment portfolios shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of least importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed.

# IV. DELEGATION OF AUTHORITY

The responsibility for providing oversight and direction in regard to the management of the investment program resides with the Charter School Superintendent (Superintendent). The daily management responsibility for all funds in the investment program and investment transactions is delegated to the City of Cape Coral's Financial Services Director (Financial Services Director). The Financial Services Director shall maintain written procedures for the operation of the investment portfolio and a system of internal accounting and administrative controls to regulate the activities of employees. The Charter School may employ an Investment Advisor to assist in managing some of the Charter School's portfolios. Such Investment Advisor must be registered under the Investment Advisors Act of 1940.

#### V. STANDARDS OF PRUDENCE

The standard of prudence to be used by investment officials shall be the "Prudent Person" standard and shall be applied in the context of managing the overall investment program. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for individual security's credit risk or market price changes, provided deviations from expectation are reported to the City Manager in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy. The "Prudent Person" rule states the following:

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived from the investment.

While the standard of prudence to be used by investment officials who are officers or employees is the "Prudent Person" standard, any person or firm hired or retained to invest, monitor, or advise concerning these assets shall be held to the higher standard of "Prudent Expert". The standard shall be that in investing and reinvesting moneys and in acquiring, retaining, managing, and disposing of investments of these funds, the Investment Advisor shall exercise: the judgment, care, skill, prudence, and diligence under the circumstances then prevailing, which persons of prudence, discretion, and intelligence, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the funds, so as to minimize the risk, considering the probable income as well as the probable safety of their capital.

#### VI. ETHICS AND CONFLICTS OF INTEREST

Employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Also, employees involved in the investment process shall disclose to the Superintendent and the Charter School Authority Board any material financial interests in financial institutions that conduct business with the Charter School, and they shall further disclose any material personal financial/investment positions that could be related to the performance of the Charter School's investment program.

# VII. INTERNAL CONTROLS AND INVESTMENT PROCEDURES

The Financial Services Director shall establish a system of internal controls and operational procedures that are in writing and made a part of the Charter School's operational procedures. The internal controls should be designed to prevent losses of funds, which might arise from fraud, employee error, and misrepresentation by third parties, or imprudent actions by employees. The written procedures should include reference to safekeeping, repurchase agreements, the separation of transaction authority from accounting and recordkeeping, wire transfer agreements, banking service contracts and collateralization. No person may engage in an investment transaction except as authorized under the terms of this policy.

Independent auditors as a normal part of the annual financial audit to the Charter School shall conduct a review of the system of internal controls to ensure compliance with policies and procedures.

# VIII. CONTINUING EDUCATION

The City of Cape Coral Financial Services Director, Deputy Financial Services Director, and other appropriate staff shall annually complete 8 hours of continuing education in subjects or courses of study related to investment practices and products in accordance with Florida Statute 218.415.

# IX. AUTHORIZED INVESTMENT INSTITUTIONS AND DEALERS

Authorized Charter School staff shall only purchase securities from financial institutions, which are qualified as public depositories by the Chief Financial Officer of the State of Florida; institutions designated as "Primary Dealers" by the Federal Reserve Bank of New York, direct issuers of commercial paper and bankers' acceptances or approved non-primary securities dealers.

The Charter School's Investment Advisor(s) shall utilize and maintain its own list of approved primary and non-primary dealers.

All approved non-primary securities dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule) must provide the following information prior to executing investment

trades with the Charter School:

- 1. Annual financial statement, as well as most recent quarterly statement.
- 2. Regulatory history, through either the Office of the Comptroller of the Currency for dealer banks, or the FINRA for securities firms.
- 3. Statement of any pending lawsuits materially affecting the firm's business.

Authorized Charter School staff shall only enter into repurchase agreements with financial institutions that are state qualified public depositories and primary dealers as designated by the Federal Reserve Bank of New York.

#### X. MATURITY AND LIQUIDITY REQUIREMENTS

To the extent possible, an attempt will be made to match investment maturities with known cash needs and anticipated cash flow requirements. Investments of current operating funds shall have maturities of no longer than twenty-four (24) months.

#### XI. COMPETITIVE SELECTION OF INVESTMENT INSTRUMENTS

After the Financial Services Director, or Designee, or the Investment Advisor, has determined the approximate maturity date based on cash flow needs and market conditions and has analyzed and selected one or more optimal types of investments, a minimum of three (3) qualified banks and/or approved broker/dealers must be contacted and asked to provide bids/offers on securities unless multiple bids are not feasible or appropriate based on market conditions. Bids will be held in confidence until the bid best deemed to meet the investment objectives is determined and selected.

However, if obtaining bids/offers are not feasible and appropriate, securities may be purchased utilizing the comparison to current market price method on an exception basis. Acceptable current market price providers include, but are not limited to:

- 1. Telerate Information System
- 2. Bloomberg Information Systems
- 3. Wall Street Journal or a comparable nationally recognized financial publication providing daily market pricing.
- 4. Daily market pricing provided by the City's custodian or their correspondent institutions

The Financial Services Director, the Deputy Financial Services Director, and/or the Investment Advisor shall utilize the competitive bid process to select the securities to be purchased or sold. Selection by comparison to a current market price, as indicated above, shall only be utilized when, in judgment of the Financial Services Director, the Deputy Financial Services Director, and/or the Investment Advisor, competitive bidding would inhibit the selection process.

Examples of when this method may be used include:

- 1. When time constraints due to unusual circumstances preclude the use of the competitive bidding process
- 2. When no active market exists for the issue being traded due to the age or depth of the issue
- 3. When a security is unique to a single dealer, for example, a private placement
- 4. When the transaction involves new issues or issues in the "when issued" market
- 5. Overnight sweep repurchase agreements will not be bid, but may be placed with the City's depository bank relating to the demand account for which the repurchase agreement was purchased.

# XII. AUTHORIZED INVESTMENTS AND PORTFOLIO COMPOSITION

Investments should be made subject to the cash flow needs and such cash flows are subject to revisions as

market conditions and the Charter School's needs change. However, when the invested funds are needed in whole or in part for the purpose originally intended or for more optimal investments, the Financial Services Director or Deputy Financial Services Director may sell the investment at the then-prevailing market price and place the proceeds into the proper account at the Charter School's custodian.

The following are the investment requirements and allocation limits on security types, issuers, and maturities as established by the Charter School. The Financial Services Director or the Deputy Financial Services Director shall have the option to further restrict investment percentages from time to time based on market conditions, risk, and diversification investment strategies. The percentage allocations requirements for investment types and issuers are calculated based on the original cost of each investment. Investments not listed in this policy are prohibited.

Security Type	Minimum Rating Requirement	Maturity Limits	Maximum Allocation Limit	Maximum Issuer Limit
Florida PRIME	AAAm	N/A	75%	N/A
United States Government Securities	N/A	2 Years	100%	N/A
United States Government Agencies (full	N/A	2 Years	50%	25%
faith and credit of the United States				
Government)				
Federal Instrumentalities (United States	AAA	2 Years	75%	25%
Government Sponsored Enterprises ("GSE")				
which are non-full faith and credit).*				
Non-Negotiable Interest Bearing Checking or	AAA	1 Years	100%	N/A
Savings Accounts				
Commercial Paper	P-1/A-1	270 Days	25%	15%
Bankers' Acceptances	P-1/A-1	180 Days	25%	15%
Registered Investment Companies (Money	AAAm	N/A	100%	N/A
Market Mutual Funds)				
Intergovernmental Investment Pool	AAAm	N/A	75%	N/A

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#### A. The Florida PRIME

#### 5. Investment Authorization

City may invest in the Florida PRIME. Any investment with the Florida PRIME will be evaluated with the same criteria as Money Market Mutual Funds, detailed in section J.

#### 6. Portfolio Composition

A maximum of seventy-five (75%) of available funds may be invested in the Florida PRIME.

# 7. Rating Requirements

The Florida PRIME shall be rated "AAAm by Standard & Poor's or the equivalent by another rating agency.

# 8. Due Diligence Requirements

A thorough investigation of the Florida PRIME is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Investment Advisor that will contain a list of due diligence considerations that deal with the major aspects of any investment pool/fund. A current prospectus or equivalent documentation, including an Investment Policy, Financial Statements, and Portfolio Holdings must be obtained.

#### B. United States Government Securities

#### 1. Purchase Authorization

The City may invest in negotiable direct obligations, or obligations the principal and interest of which are unconditionally guaranteed by the United States Government. Such securities will include, but not be limited to the following:

Cash Management Bills

Treasury Securities – State and Local Government Series ("SLGS")

Treasury Bills

**Treasury Notes** 

Treasury Bonds

**Treasury Strips** 

# 2. Portfolio Composition

A maximum of 100% of available funds may be invested in the United States Government Securities.

#### 3. Maturity Limitations

The maximum length to maturity of any direct investment in the United States Government Securities is two (2) years from the date of purchase.

# C. United States Government Agencies

#### 1. Purchase Authorization

The City may invest in bonds, debentures, notes or callables issued or guaranteed by United States Government agencies, provided such obligations are backed by the full faith and credit of the United States Government. Such securities will include, but not be limited to the following:

Government National Mortgage Association

Direct obligations and mortgage pass through securities

United States Export – Import Bank

-Direct obligations or fully guaranteed certificates of beneficial ownership

Farmer Home Administration

-Certificates of beneficial ownership

Federal Financing Bank

-Discount notes, notes and bonds

Federal Housing Administration Debentures

General Services Administration

United States Maritime Administration Guaranteed

-Title XI Financing

New Communities Debentures

-United States Government guaranteed debentures

United States Public Housing Notes and Bonds

-United States Government guaranteed public housing notes and bonds

United States Department of Housing and Urban Development

-Project notes and local authority bonds

# 2. Portfolio Composition

A maximum of 50% of available funds may be invested in United States Government agencies.

#### 3. Limits on Individual Issuers

A maximum of 25% of available funds may be invested in individual United States Government agencies.

# 4. Maturity Limitations

The maximum length to maturity for an investment in any United States Government agency security is two (2) years from the date of purchase.

# D. Federal Instrumentalities (United States Government sponsored agencies)

#### 1. Purchase Authorization

The City may invest in bonds, debentures, notes or callables issued or guaranteed by United States Government sponsored agencies (Federal Instrumentalities) which are non-full faith and credit agencies limited to the following:

Federal Farm Credit Bank (FFCB)

Federal Home Loan Bank or its district banks (FHLB)

Federal National Mortgage Association (FNMA)

Federal Agricultural Mortgage Corporation (Farmer Mac)

Federal Home Loan Mortgage Corporation (Freddie-Macs) including Federal -

Home Loan Mortgage Corporation participation certificates

# 2. Portfolio Composition

A maximum of 75% of available funds may be invested in Federal Instrumentalities.

# 3. Limits on Individual Issuers

A maximum of 25% of available funds may be invested in any one issuer.

#### 4. Maturity Limitations

The maximum length to maturity for an investment in any Federal Instrumentality security is two (2) years from the date of purchase.

#### E. Commercial Paper

# 1. Purchase Authorization

The City may invest in commercial paper of any company organized and operating in the United States that is rated, at the time of purchase, "Prime-1" by Moody's and "A-1" by Standard & Poor's (prime commercial paper). If the commercial paper is backed by a letter of credit ("LOC"), the long-term debt of the LOC provider must be rated "A" or better by at least two nationally recognized rating agencies.

# 2. Portfolio Composition

A maximum of 25% of available funds may be directly invested in prime commercial paper.

# 3. Limits on Individual Issuers

A maximum of 15% of available funds may be invested with any one issuer.

# 4. Maturity Limitations

The maximum length to maturity for prime commercial paper shall be 270 days from the date of purchase.

# F. Bankers' Acceptances

#### 1. Purchase Authorization

The City may invest in Bankers' Acceptances issued by a domestic bank or a federally chartered domestic office of a foreign bank, which is eligible for purchase by the Federal Reserve System, at the time of purchase, the short-term paper is rated, at a minimum, "P-1" by Moody's Investors Services and "A-1" Standard & Poor's.

# 2. Portfolio Composition

A maximum of 25% of available funds may be directly invested in Bankers' Acceptances

#### 3. Limits on Individual Issuers

A maximum of 15% of available funds may be invested with any one issuer.

# 4. Maturity Limitations

The maximum length to maturity for Bankers' Acceptances shall be 180 days from the date of purchase.

# G. Registered Investment Companies (Mutual Funds)

# 1. Investment Authorization

The City may invest in shares in open-end, no-load provided such funds are registered under the Federal Investment Company Act of 1940 and operated in accordance with 17 C.F.R. § 270.2a-7. In addition, the Financial Services Director may invest in other types of mutual funds provided such funds are registered under the Federal Investment Company Act of 1940, invested exclusively in the securities specifically permitted under this investment policy, and are similarly diversified.

# 2. Portfolio Composition

A maximum of 100% of available funds may be invested in mutual funds.

# 3. Rating Requirements

The mutual funds shall be rated "AAAm" by Standard & Poor's or the equivalent by another rating agency.

# 4. Due Diligence Requirements

A thorough review of any investment mutual fund is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Financial Services Director that will contain a list of questions that covers the major aspects of any investment pool/fund.

# H. Intergovernmental Investment Pools

#### 1. Investment Authorization

The City may invest in intergovernmental investment pools that are authorized pursuant to the Florida Inter-local Cooperation Act, as provided in Section 163.01, Florida Statutes and provided that said funds contain no derivatives.

# 2. Portfolio Composition

A maximum of 75% of available funds may be invested in intergovernmental investment pools.

# 3. Rating Requirements

The investment pool shall be rated "AAAm" by Standard & Poor's or the equivalent by another rating agency.

# 4. Due Diligence Requirements

A thorough review of any investment pool/fund is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Financial Services Director that will contain a list of questions that covers the major aspects of any investment pool/fund.

# XIII. DERIVATIVES AND REVERSE REPURCHASE AGREEMENTS

Investment in any derivative products or the use of reverse repurchase agreements requires specific Charter School Authority Board approval prior to their use. If the Charter School Authority Board approves the use of derivative products, the City of Cape Coral Financial Services Director shall develop sufficient understanding of the derivative products and have the expertise to manage them. A "derivative" is defined as a financial instrument the value of which depends on, or is derived from, the value of one or more underlying assets or indices or asset values. If the Charter School Authority Board approves the use of reverse repurchase agreements or other forms of leverage, the investment shall be limited to transactions in which the proceeds are intended to provide liquidity and for which the City of Cape Coral Financial Services Director has sufficient resources and expertise to manage them.

# XIV. PERFORMANCE MEASUREMENTS

In order to assist in the evaluation of the portfolio's performance, the Charter School will use performance benchmark for the short-term portfolio. The use of benchmark will allow the Charter School to measure its returns against other investors in the same markets.

A. For the short-term portfolio (less than 24 months maturity), an appropriate benchmark will have a duration and asset mix that approximates the portfolio and will be utilized as a benchmark, such as the S&P Rated GIP Index, to be compared to the portfolio's net book value rate of return.

# XV. REPORTING

The Financial Services Director shall provide the Charter School Superintendent with annually investment reports which shall then be distributed to the Charter School Authority Board. Schedules in the annually report should include the following:

- A. A listing of individual securities held at the end of the reporting period
- B. Percentage of available funds represented by each investment type
- C. Coupon, discount or earning rate
- D. Average life or duration and final maturity of all investments
- E. Par value and market value

On an annual basis, the Financial Services Director shall provide to the Charter School Superintendent a written report on all invested funds which shall then be distributed to the Charter Authority Board. The annual report shall provide all, but not limited to, the following: a complete list of all invested funds, name or type of security in which the funds are invested, the amount invested, the maturity date, income earned, the book value, the market value and the yield on each investment.

The annual report will show performance on both a book value and total rate of return basis and will compare the results to the above-stated performance benchmarks. All investments shall be reported at fair

value per GASB standards. The audited annual financial statement meets this requirement. This report shall be available to the public.

# XVI. THIRD-PARTY CUSTODIAL AGREEMENTS

Securities, with the exception of certificates of deposits, shall be held with a third party custodian; and all securities purchased by, and all collateral obtained by; the Charter School should be properly designated as an asset of the Charter School. The securities must be held in an account separate and apart from the assets of the financial institution. A third party custodian is defined as any bank depository chartered by the Federal Government, the State of Florida, or any other state or territory of the United States which has a branch or principal place of business in the State of Florida as defined in Section 658.12, Florida Statutes, or by a national association organized and existing under the laws of the United States which is authorized to accept and execute trusts and which is doing business in the State of Florida. Certificates of deposits will be placed in the provider's safekeeping department for the term of the deposit.

The custodian shall accept transaction instructions only from those persons who have been duly authorized by the Financial Services Director and which authorization has been provided, in writing, to the custodian. Only a duly authorized person shall be permitted to in whole or in part withdraw securities from the custodian.

The custodian shall provide the Financial Services Director with safekeeping receipts that provide detailed information on the securities held by the custodian. Security transactions between a broker/dealer and the custodian involving the purchase or sale of securities by transfer of money or securities must be made on a "delivery vs. payment" basis, if applicable, to ensure that the custodian will have the security or money, as appropriate, in hand at the conclusion of the transaction. Securities held as collateral shall be held free and clear of any liens.

Board

# XVII. INVESTMENT POLICY ADOPTION

The investment policy shall be adopted by a Charter School ordinance. The City of Cape Coral Financial Services Director shall review the policy annually and the Charter School Authority Board shall approve any modification made thereto.

APPROVED AND ADOPTED BY THE CAPE CORAL CHARTER SCHOOL AUTHORITY BOARD ON November 14, 2017

\_\_\_\_

, Secretary to the Charter School

Kathleen Faul-Evans

APPROVED

NOV 1 4 2017

CITY OF CAPE CORAL CHARTER SCHOOL AUTHORITY

# Attachment A <u>Glossary of Cash and Investment Management Terms</u>

Accrued Interest. Interest earned but which has not yet been paid or received.

Agency. See "Federal Agency Securities."

Ask Price. Price at which a broker/dealer offers to sell a security to an investor, also known as "offered price."

Asset Backed Securities (ABS). A fixed-income security backed by notes or receivables against assets other than real estate. Generally issued by special purpose companies that "own" the assets and issue the ABS. Examples include securities backed by auto loans, credit card receivables, home equity loans, manufactured housing loans, farm equipment loans and aircraft leases.

**Average Life.** The average length of time that an issue of serial bonds and/or term bonds with a mandatory sinking fund feature is expected to be outstanding.

Bankers' Acceptance (BA's). A draft or bill of exchange drawn upon and accepted by a bank. Frequently used to finance shipping of international goods. Used as a short-term credit instrument, bankers' acceptances are traded at a discount from face value as a money market instrument in the secondary market on the basis of the credit quality of the guaranteeing bank.

Basis Point. One hundredth of one percent, or 0.01%. Thus 1% equals 100 basis points.

**Bearer Security.** A security whose ownership is determined by the holder of the physical security. Typically, there is no registration on the issuer's books. Title to bearer securities is transferred by delivery of the physical security or certificate. Also known as "physical securities."

Benchmark Bills: In November 1999, FNMA introduced its Benchmark Bills program, a short-term debt securities issuance program to supplement its existing discount note program. The program includes a schedule of larger, weekly issues in three- and six-month maturities and biweekly issues in one-year for Benchmark Bills. Each issue is brought to market via a Dutch (single price) auction. FNMA conducts a weekly auction for each Benchmark Bill maturity and accepts both competitive and non-competitive bids through a web based auction system. This program is in addition to the variety of other discount note maturities, with rates posted on a daily basis, which FNMA offers. FNMA's Benchmark Bills are unsecured general obligations that are issued in book- entry form through the Federal Reserve Banks. There are no periodic payments of interest on Benchmark Bills, which are sold at a discount from the principal amount and payable at par at maturity. Issues under the Benchmark program constitute the same credit standing as other FNMA discount notes; they simply add organization and liquidity to the short-term Agency discount note market.

Benchmark Notes/Bonds: Benchmark Notes and Bonds are a series of FNMA "bullet" maturities (non-callable) issued according to a pre-announced calendar. Under its Benchmark Notes/Bonds program, 2, 3, 5, 10 and 30- year maturities are issued each quarter. Each Benchmark Notes new issue has a minimum size of \$4 billion, 30- year new issues having a minimum size of \$1 billion, with re-openings based on investor demand to further enhance liquidity. The amount of non-callable issuance has allowed FNMA to build a yield curve in Benchmark Notes and Bonds in maturities ranging from 2 to 30 years. The liquidity emanating from these large size issues has facilitated favorable financing opportunities through the development of a liquid overnight and term repo market. Issues under the Benchmark program constitute the same credit standing as other FNMA issues; they simply add organization and liquidity to the intermediate- and long-term Agency market.

**Benchmark.** A market index used as a comparative basis for measuring the performance of an investment portfolio. A performance benchmark should represent a close correlation to investment guidelines, risk tolerance and duration of the actual portfolio's investments.

**Bid Price.** Price at which a broker/dealer offers to purchase a security from an investor.

Bond Market Association (BMA). The bond market trade association representing the largest securities markets

in the world. In addition to publishing a Master Repurchase Agreement, widely accepted as the industry standard document for Repurchase Agreements, the BMA also recommends bond market closures and early closes due to holidays.

**Bond.** Financial obligation for which the issuer promises to pay the bondholder (the purchaser or owner of the bond) a specified stream of future cash flows, including periodic interest payments and a principal repayment.

**Book Entry Securities.** Securities that are recorded in a customer's account electronically through one of the financial markets electronic delivery and custody systems, such as the Fed Securities wire, DTC and PTC (as opposed to bearer or physical securities). The trend is toward a certificate-free society in order to cut down on paperwork and to diminish investors' concerns about the certificates themselves. The vast majority of securities are now book entry securities.

**Book Value.** The value at which a debt security is reflected on the holder's records at any point in time. Book value is also called "amortized cost" as it represents the original cost of an investment adjusted for amortization of premium or accretion of discount. Also called "carrying value." Book value can vary over time as an investment approaches maturity and differs from "market value" in that it is not affected by changes in market interest rates.

**Broker/Dealer.** A person or firm transacting securities business with customers. A "broker" acts as an agent between buyers and sellers, and receives a commission for these services. A "dealer" buys and sells financial assets from its own portfolio. A dealer takes risk by owning inventory of securities, whereas a broker merely matches up buyers and sellers. See also "Primary Dealer."

Bullet Notes/Bonds. Notes or bonds that have a single maturity date and are non-callable.

Call Date. Date at which a call option may be or is exercised.

Call Option. The right, but not the obligation, of an issuer of a security to redeem a security at a specified value and at a specified date or dates prior to its stated maturity date. Most fixed-income calls are a par, but can be at any previously established price. Securities issued with a call provision typically carry a higher yield than similar securities issued without a call feature. There are three primary types of call options (1) European - one-time calls, (2) Bermudan - periodically on a predetermined schedule (quarterly, semi-annual, annual), and (3) American - continuously callable at any time on or after the call date. There is usually a notice period of at least 5 business days prior to a call date.

**Callable Bonds/Notes.** Securities, which contain an imbedded call option giving the issuer, the right to redeem the securities prior to maturity at a predetermined price and time.

Certificate of Deposit (CD). Bank obligation issued by a financial institution generally offering a fixed rate of return (coupon) for a specified period of time (maturity). Can be as long as 10 years to maturity, but most CDs purchased by public agencies are one year and under.

**Collateral.** Investment securities or other property that a borrower pledges to secure repayment of a loan, secure deposits of public monies, or provide security for a repurchase agreement.

**Collateralization.** Process by which a borrower pledges securities, property, or other deposits for securing the repayment of a loan and/or security.

Collateralized Mortgage Obligation (CMO). A security that pools together mortgages and separates them into short, medium, and long-term positions (called tranches). Tranches are set up to pay different rates of interest depending upon their maturity. Interest payments are usually paid monthly. In "plain vanilla" CMOs, principal is not paid on a tranche until all shorter tranches have been paid off. This system provides interest and principal in a more predictable manner. A single pool of mortgages can be carved up into numerous tranches each with its own payment and risk characteristics.

Commercial Paper. Short term unsecured promissory note issued by a company or financial institution. Issued

at a discount and matures for par or face value. Usually a maximum maturity of 270 days and given a short-term debt rating by one or more NRSROs.

**Convexity.** A measure of a bond's price sensitivity to changing interest rates. A high convexity indicates greater sensitivity of a bond's price to interest rate changes.

**Corporate Note.** A debt instrument issued by a corporation with a maturity of greater than one year and less than ten years.

**Counterparty.** The other party in a two-party financial transaction. "Counterparty risk" refers to the risk that the other party, to a transaction, will fail in its related obligations. For example, the bank or broker/dealer in a repurchase agreement.

Coupon Rate. Annual rate of interest on a debt security, expressed as a percentage of the bond's face value.

**Current Yield.** Annual rate of return on a bond based on its price. Calculated as (coupon rate / price), but does <u>not</u> accurately reflect a bond's true yield level.

**Custody.** Safekeeping services offered by a bank, financial institution or trust company, referred to as the "custodian." Service normally includes the holding and reporting of the customer's securities, the collection and disbursement of income, securities settlement and market values.

**Dealer.** A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

**Delivery Versus Payment (DVP).** Settlement procedure in which securities are delivered versus payment of cash, but only after cash has been received. Most security transactions, including those through the Fed Securities Wire system and DTC, are done DVP as a protection for both the buyer and seller of securities.

Depository Trust Company (DTC). A firm through which members can use a computer to arrange for securities to be delivered to other members without physical delivery of certificates. A member of the Federal Reserve System and owned mostly by the New York Stock Exchange, the Depository Trust Company uses computerized debit and credit entries. Most corporate securities, commercial paper, CDs and BAs clear through DTC.

**Derivatives.** For hedging purposes, common derivatives are options, futures, swaps and swaptions. All Collateralized Mortgage Obligations ("CMOs") are derivatives. (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, or (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities or commodities).

**Derivative Security.** Financial instrument created from, or whose value depends upon, one or more underlying assets or indexes of asset values.

**Designated Bond.** FFCB's regularly issued, liquid, non-callable securities that generally have a 2 or 3 year original maturity. New issues of Designated Bonds are \$1 billion or larger. Re-openings of existing Designated Bond issues are generally a minimum of \$100 million. Designated Bonds are offered through a syndicate of two to six dealers. Twice each month the Funding Corporation announces its intention to issue a new Designated Bond, reopen an existing issue, or to not issue or reopen a Designated Bond. Issues under the Designated Bond program constitute the same credit standing as other FFCB issues; they simply add organization and liquidity to the intermediate- and long-term Agency market.

**Discount Notes.** Unsecured general obligations issued by Federal Agencies at a discount. Discount notes mature at par and can range in maturity from overnight to one year. Very large primary (new issue) and secondary markets.

**Discount Rate.** Rate charged by the system of Federal Reserve Banks on overnight loans to member banks. Changes to this rate are administered by the Federal Reserve and closely mirror changes to the "fed funds rate."

Discount Securities. Non-interest-bearing money market instruments that are issued at discount and redeemed

at maturity for full face value. Examples include: U.S. Treasury Bills, Federal Agency Discount Notes, Bankers' Acceptances and Commercial Paper.

**Discount.** The amount by which a bond or other financial instrument sells below its face value. See also "Premium."

**Diversification.** Dividing investment funds among a variety of security types, maturities, industries and issuers offering potentially independent returns.

**Dollar Price.** A bond's cost expressed as a percentage of its face value. For example, a bond quoted at a dollar price of 95 ½, would have a principal cost of \$955 per \$1,000 of face value.

Duff & Phelps. One of several NRSROs that provide credit ratings on corporate and bank debt issues.

**Duration.** The weighted average maturity of a security's or portfolio's cash flows, where the present values of the cash flows serve as the weights. The greater the duration of a security/portfolio, the greater its percentage price volatility with respect to changes in interest rates. Used as a measure of risk and a key tool for managing a portfolio versus a benchmark and for hedging risk. There are also different kinds of duration used for different purposes (e.g. MacAuley Duration, Modified Duration).

Fannie Mae. See "Federal National Mortgage Association."

**Fed Money Wire.** A computerized communications system that connects the Federal Reserve System with its member banks, certain U. S. Treasury offices, and the Washington D.C. office of the Commodity Credit Corporation. The Fed Money Wire is the book entry system used to transfer cash balances between banks for themselves and for customer accounts.

**Fed Securities Wire.** A computerized communications system that facilitates book entry transfer of securities between banks, brokers and customer accounts, used primarily for settlement of U.S. Treasury and Federal Agency securities.

Fed. See "Federal Reserve System."

**Federal Agency Security.** A debt instrument issued by one of the Federal Agencies. Federal Agencies are considered second in credit quality and liquidity only to U.S. Treasuries.

**Federal Agency.** Government sponsored/owned entity created by the U.S. Congress, generally for the purpose of acting as a financial intermediary by borrowing in the marketplace and directing proceeds to specific areas of the economy considered to otherwise have restricted access to credit markets. The largest Federal Agencies are GNMA, FNMA, FHLMC, FHLB, FFCB, SLMA, and TVA.

**Federal Deposit Insurance Corporation (FDIC).** Federal agency that insures deposits at commercial banks, currently to a limit of \$250,000 per depositor per bank.

Federal Farm Credit Bank (FFCB). One of the large Federal Agencies. A government sponsored enterprise (GSE) system that is a network of cooperatively-owned lending institutions that provides credit services to farmers, agricultural cooperatives and rural utilities. The FFCBs act as financial intermediaries that borrow money in the capital markets and use the proceeds to make loans and provide other assistance to farmers and farm-affiliated businesses. Consists of the consolidated operations of the Banks for Cooperatives, Federal Intermediate Credit Banks, and Federal Land Banks. Frequent issuer of discount notes, agency notes and callable agency securities. FFCB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and agricultural industry. Also issues notes under its "designated note" program.

**Federal Funds (Fed Funds).** Funds placed in Federal Reserve Banks by depository institutions in excess of current reserve requirements, and frequently loaned or borrowed on an overnight basis between depository institutions.

**Federal Funds Rate (Fed Funds Rate).** The interest rate charged by a depository institution lending Federal Funds to another depository institution. The Federal Reserve influences this rate by establishing a "target" Fed Funds rate associated with the Fed's management of monetary policy.

Federal Home Loan Bank System (FHLB). One of the large Federal Agencies. A government sponsored enterprise (GSE) system, consisting of wholesale banks (currently twelve district banks) owned by their member banks, which provides correspondent banking services and credit to various financial institutions, financed by the issuance of securities. The principal purpose of the FHLB is to add liquidity to the mortgage markets. Although FHLB does not directly fund mortgages, it provides a stable supply of credit to thrift institutions that make new mortgage loans. FHLB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes and callable agency securities. Also issues notes under its "global note" and "TAP" programs.

Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac"). One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides stability and assistance to the secondary market for home mortgages by purchasing first mortgages and participation interests financed by the sale of debt and guaranteed mortgage backed securities. FHLMC debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities and MBS. Also, issues notes under its "reference note" program.

Federal National Mortgage Association (FNMA or "Fannie Mae"). One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides liquidity to the residential mortgage market by purchasing mortgage loans from lenders, financed by the issuance of debt securities and MBS (pools of mortgages packaged together as a security). FNMA debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities and MBS. Also issues notes under its "benchmark note" program.

Federal Reserve Bank. One of the 12 distinct banks of the Federal Reserve System.

Federal Reserve System (the Fed). The independent central bank system of the United States that establishes and conducts the nation's monetary policy. This is accomplished in three major ways: (1) raising or lowering bank reserve requirements, (2) raising or lowering the target Fed Funds Rate and Discount Rate, and (3) in open market operations by buying and selling government securities. The Federal Reserve System is made up of twelve Federal Reserve District Banks, their branches, and many national and state banks throughout the nation. It is headed by the seven member Board of Governors known as the "Federal Reserve Board" and headed by its Chairman.

**Fiscal Agent/Paying Agent.** A bank or trust company that acts, under a trust agreement with a corporation or municipality, in the capacity of general treasurer. The agent performs such duties as making coupon payments, paying rents, redeeming bonds, and handling taxes relating to the issuance of bonds.

**Fitch Investors Service, Inc.** One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

Floating Rate Security (FRN or "floater"). A bond with an interest rate that is adjusted according to changes in an interest rate or index. Differs from variable-rate debt in that the changes to the rate take place immediately when the index changes, rather than on a predetermined schedule. See also "Variable Rate Security."

Freddie Mac. See "Federal Home Loan Mortgage Corporation".

Ginnie Mae. See "Government National Mortgage Association".

**Global Notes:** Notes designed to qualify for immediate trading in both the domestic U.S. capital market and in foreign markets around the globe. Usually large issues that are sold to investors worldwide and therefore

have excellent liquidity. Despite their global sales, global notes sold in the U.S. are typically denominated in U.S. dollars.

Government National Mortgage Association (GNMA or "Ginnie Mae"). One of the large Federal Agencies. Government-owned Federal Agency that acquires, packages, and resells mortgages and mortgage purchase commitments in the form of mortgage-backed securities. Largest issuer of mortgage pass-through securities. GNMA debt is guaranteed by the full faith and credit of the U.S. government (one of the few agencies that are actually full faith and credit of the U.S.).

**Government Securities.** An obligation of the U.S. government, backed by the full faith and credit of the government. These securities are regarded as the highest quality of investment securities available in the U.S. securities market. See "Treasury Bills, Notes, Bonds, and SLGS."

**Government Sponsored Enterprise (GSE).** Privately owned entity subject to federal regulation and supervision, created by the U.S. Congress to reduce the cost of capital for certain borrowing sectors of the economy such as students, farmers, and homeowners. GSEs carry the implicit backing of the U.S. Government, but they are not direct obligations of the U.S. Government. For this reason, these securities will offer a yield premium over U.S. Treasuries. Some consider GSEs to be stealth recipients of corporate welfare. Examples of GSEs include: FHLB, FHLMC, FNMA and SLMA.

**Government Sponsored Enterprise Security.** A security issued by a Government Sponsored Enterprise. Considered Federal Agency Securities.

**Index.** A compilation of statistical data that tracks changes in the economy or in financial markets.

**Interest-Only (IO) STRIP.** A security based solely on the interest payments from the bond. After the principal has been repaid, interest payments stop and the value of the security falls to nothing. Therefore, IOs are considered risky investments. Usually associated with mortgage-backed securities.

**Internal Controls.** An internal control structure ensures that the assets of the entity are protected from loss, theft, or misuse. The internal control structure is designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that 1) the cost of a control should not exceed the benefits likely to be derived and 2) the valuation of costs and benefits requires estimates and judgments by management. Internal controls should address the following points:

- 1. **Control of collusion** Collusion is a situation where two or more employees are working in conjunction to defraud their employer.
- 2. **Separation of transaction authority from accounting and record keeping** By separating the person who authorizes or performs the transaction from the people who record or otherwise account for the transaction, a separation of duties is achieved.
- 3. **Custodial safekeeping** Securities purchased from any bank or dealer including appropriate collateral (as defined by state law) shall be placed with an independent third party for custodial safekeeping.
- 4. Avoidance of physical delivery securities Book-entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.
- 5. Clear delegation of authority to subordinate staff members Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
- 6. Written confirmation of transactions for investments and wire transfers Due to the potential for

error and improprieties arising from telephone and electronic transactions, all transactions should be supported by written communications and approved by the appropriate person. Written communications may be via fax if on letterhead and if the safekeeping institution has a list of authorized signatures.

7. **Development of a wire transfer agreement with the lead bank and third-party custodian** - The designated official should ensure that an agreement will be entered into and will address the following points: controls, security provisions, and responsibilities of each party making and receiving wire transfers.

**Inverse Floater.** A floating rate security structured in such a way that it reacts inversely to the direction of interest rates. Considered risky as their value moves in the opposite direction of normal fixed-income investments and whose interest rate can fall to zero.

**Investment Advisor.** A company that provides professional advice managing portfolios, investment recommendations and/or research in exchange for a management fee.

**Investment Adviser Act of 1940.** Federal legislation that sets the standards by which investment companies, such as mutual funds, are regulated in the areas of advertising, promotion, performance reporting requirements, and securities valuations.

**Investment Grade.** Bonds considered suitable for preservation of invested capital; bonds rated a minimum of Baa3 by Moody's, BBB- by Standard & Poor's, or BBB- by Fitch. Although "BBB" rated bonds are considered investment grade, most public agencies cannot invest in securities rated below "A."

**Liquidity.** Relative ease of converting an asset into cash without significant loss of value. Also, a relative measure of cash and near-cash items in a portfolio of assets. Also, a term describing the marketability of a money market security correlating to the narrowness of the spread between the bids and ask prices.

**Local Government Investment Pool (LGIP).** An investment by local governments in which their money is pooled as a method for managing local funds, (i.e., Florida State Board of Administration's Florida Prime Fund).

Long-Term Core Investment Program. Funds that are not needed within a one year period.

**Market Value.** The fair market value of a security or commodity. The price at which a willing buyer and seller would pay for a security.

**Mark-to-market.** Adjusting the value of an asset to its market value, reflecting in the process unrealized gains or losses.

**Master Repurchase Agreement.** A widely accepted standard agreement form published by the Bond Market Association (BMA) that is used to govern and document Repurchase Agreements and protect the interest of parties in a repo transaction.

Maturity Date. Date on which principal payment of a financial obligation is to be paid.

Medium Term Notes (MTN's). Used frequently to refer to corporate notes of medium maturity (5-years and under). Technically, any debt security issued by a corporate or depository institution with a maturity from 1 to 10 years and issued under an MTN shelf registration. Usually issued in smaller issues with varying coupons and maturities, and underwritten by a variety of broker/dealers (as opposed to large corporate deals issued and underwritten all at once in large size and with a fixed coupon and maturity).

**Money Market.** The market in which short-term debt instruments (bills, commercial paper, bankers' acceptance, etc.) are issued and traded.

Money Market Mutual Fund (MMF). A type of mutual fund that invests solely in money market instruments, such as: U.S. Treasury bills, commercial paper, bankers' acceptances, and repurchase agreements. Money market mutual funds are registered with the SEC under the Investment Company Act of 1940 and are subject "rule 2a-

7" which significantly limits average maturity and credit quality of holdings. MMF's are managed to maintain a stable net asset value (NAV) of \$1.00. Many MMFs carry ratings by a NRSRO.

**Moody's Investors Service.** One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

Mortgage Backed Securities (MBS). Mortgage-backed securities represent an ownership interest in a pool of mortgage loans made by financial institutions, such as savings and loans, commercial banks, or mortgage companies, to finance the borrower's purchase of a home or other real estate. The majority of MBS are issued and/or guaranteed by GNMA, FNMA and FHLMC. There are a variety of MBS structures, some of which can be very risky and complicated. All MBS have reinvestment risk as actual principal and interest payments are dependent on the payment of the underlying mortgages which can be prepaid by mortgage holders to refinance and lower rates or simply because the underlying property was sold.

**Mortgage Pass-Through Securities.** A pool of residential mortgage loans with the interest and principal distributed to investors on a pro-rata basis. Largest issuer is GNMA.

**Municipal Note/Bond.** A debt instrument issued by a state or local government unit or public agency. The vast majority of municipals are exempt from state and federal income tax, although some non-qualified issues are taxable.

**Mutual Fund.** Portfolio of securities professionally managed by a registered investment company that issues shares to investors. Many different types of mutual funds exist (bond, equity, money fund); all except money market funds operate on a variable net asset value (NAV).

**National Association of Securities Dealers (NASD).** Organization of brokers and dealers who trade securities in the United States, supervised by the SEC, and which provides regulatory exams for industry participants.

**Negotiable Certificate of Deposit (Negotiable CD).** Large denomination CDs (\$100,000 and larger) that are issued in bearer form and can be traded in the secondary market.

**Net Asset Value.** The market value of one share of an investment company, such as a mutual fund. This figure is calculated by totaling a fund's assets which includes securities, cash, and any accrued earnings, subtracting this from the fund's liabilities and dividing this total by the number of shares outstanding. This is calculated once a day based on the closing price for each security in the fund's portfolio. (See below.)

[(Total assets) - (Liabilities)]/(Number of shares outstanding)

**NRSRO.** A "Nationally Recognized Statistical Rating Organization." A designated rating organization that the SEC has deemed a strong national presence in the U.S. NRSROs provide credit ratings on corporate and bank debt issues. Only ratings of a NRSRO may be used for the regulatory purposes of rating. Includes Moody's, S&P, Fitch and Duff & Phelps.

Offered Price. See also "Ask Price."

**Open Market Operations.** Federal Reserve monetary policy tactic entailing the purchase or sale of government securities in the open market by the Federal Reserve System from and to primary dealers in order to influence the money supply, credit conditions, and interest rates.

**Par Value.** Face value, stated value or maturity value of a security.

Physical Delivery. Delivery of readily available underlying assets at contract maturity.

**Portfolio.** Collection of securities and investments held by an investor.

**Premium.** The amount by which a bond or other financial instrument sells above its face value. See also Discount."

**Primary Dealer.** Any of a group of designated government securities dealers designated by to the Federal Reserve Bank of New York. Primary dealers can buy and sell government securities directly with the Fed. Primary dealers also submit daily reports of market activity and security positions held to the Fed and are subject to its informal oversight. Primary dealers are considered the largest players in the U.S. Treasury securities market.

Prime Paper. Commercial paper of high quality. Highest rated paper is A-1+/A-1 by S&P and P-1 by Moody's.

**Principal.** Face value of a financial instrument on which interest accrues. May be less than par value if some principal has been repaid or retired. For a transaction, principal is par value times price and includes any premium or discount.

**Prudent Investor Standard.** Standard that requires that when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. More stringent than the "prudent person" standard as it implies a level of knowledge commensurate with the responsibility at hand.

Qualified Public Depository - Per Florida Statute 280, means any bank, saving bank or savings association that:

- 1. Is organized and exists under the laws of the United States, the laws of this state or any other state or territory of the United States;
- 2. Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.
- 3. Has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss.1811 seq.
- 4. Meets all requirements of F.S. 280
- 5. Has been designed by the Treasurer as a qualified public depository.

**Range Note.** A type of structured note that accrues interest daily at a set coupon rate that is tied to an index. Most range notes have two coupon levels; a higher accrual rate for the period the index is within a designated range, the lower accrual rate for the period that the index falls outside the designated range. This lower rate may be zero and may result in zero earnings.

Rate of Return. Amount of income received from an investment, expressed as a percentage of the amount invested.

**Realized Gains (Losses).** The difference between the sale price of an investment and its book value. Gains/losses are "realized" when the security is actually sold, as compared to "unrealized" gains/losses which are based on current market value. See "Unrealized Gains (Losses)."

Reference Bills: FHLMC's short-term debt program created to supplement its existing discount note program by offering issues from one month through one year, auctioned on a weekly or on an alternating four-week basis (depending upon maturity) offered in sizeable volumes (\$1 billion and up) on a cycle of regular, standardized issuance. Globally sponsored and distributed, Reference Bill issues are intended to encourage active trading and market-making and facilitate the development of a term repo market. The program was designed to offer predictable supply, pricing transparency and liquidity, thereby providing alternatives to U.S. Treasury bills. FHLMC's Reference Bills are unsecured general corporate obligations. This program supplements the corporation's existing discount note program. Issues under the Reference program constitute the same credit standing as other FHLMC discount notes; they simply add organization and liquidity to the short-term Agency discount note market.

**Reference Notes:** FHLMC's intermediate-term debt program with issuances of 2, 3, 5, 10 and 30-year maturities. Initial issuances range from \$2 - \$6 billion with re-openings ranging \$1 - \$4 billion.

The notes are high-quality bullet structures securities that pay interest semiannually. Issues under the Reference program constitute the same credit standing as other FHLMC notes; they simply add organization and liquidity to the intermediate- and long-term Agency market.

Repurchase Agreement (Repo). A short-term investment vehicle where an investor agrees to buy securities from a counterparty and simultaneously agrees to resell the securities back to the counterparty at an agreed upon time and for an agreed upon price. The difference between the purchase price and the sale price represents interest earned on the agreement. In effect, it represents a collateralized loan to the investor, where the securities are the collateral. Can be DVP, where securities are delivered to the investor's custodial bank, or "tri-party" where the securities are delivered to a third party intermediary. Any type of security can be used as "collateral," but only some types provide the investor with special bankruptcy protection under the law. Repos should be undertaken only when an appropriate BMA approved master repurchase agreement is in place.

**Reverse Repurchase Agreement (Reverse Repo).** A repo from the point of view of the original seller of securities. Used by dealers to finance their inventory of securities by essentially borrowing at short-term rates. Can also be used to leverage a portfolio and in this sense, can be considered risky if used improperly.

**Safekeeping.** Service offered for a fee, usually by financial institutions, for the holding of securities and other valuables. Safekeeping is a component of custody services.

Secondary Market. Markets for the purchase and sale of any previously issued financial instrument.

**Securities Lending.** An arrangement between and investor and a custody bank that allows the custody bank to "loan" the investors investment holdings, reinvest the proceeds in permitted investments, and shares any profits with the investor. Should be governed by a securities lending agreement. Can increase the risk of a portfolio in that the investor takes on the default risk on the reinvestment at the discretion of the custodian.

**Sinking Fund.** A separate accumulation of cash or investments (including earnings on investments) in a fund in accordance with the terms of a trust agreement or indenture, funded by periodic deposits by the issuer (or other entity responsible for debt service), for the purpose of assuring timely availability of moneys for payment of debt service. Usually used in connection with term bonds.

**Spread.** The difference between the price of a security and similar maturity U.S. Treasury investments, expressed in percentage terms or basis points. A spread can also be the absolute difference in yield between two securities. The securities can be in different markets or within the same securities market between different credits, sectors, or other relevant factors.

Standard & Poor's. One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

STRIPS (Separate Trading of Registered Interest and Principal of Securities). Acronym applied to U.S. Treasury securities that have had their coupons and principal repayments separated into individual zero-coupon Treasury securities. The same technique and "strips" description can be applied to non-Treasury securities (e.g. FNMA strips).

**Structured Notes.** Notes that have imbedded into their structure options such as step-up coupons or derivative-based returns.

**Swap.** Trading one asset for another.

**TAP Notes:** Federal Agency notes issued under the FHLB TAP program. Launched in 6/99 as a refinement to the FHLB bullet bond auction process. In a break from the FHLB's traditional practice of bringing numerous small issues to market with similar maturities, the TAP Issue Program uses the four most common maturities and reopens them up regularly through a competitive auction. These maturities (2, 3, 5 and 10 year) will remain open for the calendar quarter, after which they will be closed and a new series of TAP issues will be opened to replace them. This reduces the number of separate bullet bonds issued, but generates enhanced awareness and liquidity

in the marketplace through increased issue size and secondary market volume.

Tennessee Valley Authority (TVA). One of the large Federal Agencies. A wholly owned corporation of the United States government that was established in 1933 to develop the resources of the Tennessee Valley region in order to strengthen the regional and national economy and the national defense. Power operations are separated from non-power operations. TVA securities represent obligations of TVA, payable solely from TVA's net power proceeds, and are neither obligations of nor guaranteed by the United States. TVA is currently authorized to issue debt up to \$30 billion. Under this authorization, TVA may also obtain advances from the U.S. Treasury of up to \$150 million. Frequent issuer of discount notes, agency notes and callable agency securities.

**Total Return.** Investment performance measured over a period of time that includes coupon interest, interest on interest, and both realized and unrealized gains or losses. Total return includes, therefore, any market value appreciation/depreciation on investments held at period end.

**Treasuries.** Collective term used to describe debt instruments backed by the U.S. Government and issued through the U.S. Department of the Treasury. Includes Treasury bills, Treasury notes, and Treasury bonds. Also a benchmark term used as a basis by which the yields of non-Treasury securities are compared (e.g., "trading at 50 basis points over Treasuries").

**Treasury Bills (T-Bills).** Short-term direct obligations of the United States Government issued with an original term of one year or less. Treasury bills are sold at a discount from face value and do not pay interest before maturity. The difference between the purchase price of the bill and the maturity value is the interest earned on the bill. Currently, the U.S. Treasury issues 4-week, 13-week and 26-week T-Bills

**Treasury Bonds.** Long-term interest-bearing debt securities backed by the U.S. Government and issued with maturities of ten years and longer by the U.S. Department of the Treasury. The Treasury stopped issuing Treasury Bonds in August 2001.

**Treasury Notes.** Intermediate interest-bearing debt securities backed by the U.S. Government and issued with maturities ranging from one to ten years by the U.S. Department of the Treasury. The Treasury currently issues,2-year, 5-year and 10-year Treasury Notes.

**Trustee.** A bank designated by an issuer of securities as the custodian of funds and official representative of bondholders. Trustees are appointed to insure compliance with the bond documents and to represent bondholders in enforcing their contract with the issuer.

**Uniform Net Capital Rule.** SEC regulation 15C3-1 that outlines the minimum net capital ratio (ratio of indebtedness to net liquid capital) of member firms and non-member broker/dealers.

**Unrealized Gains (Losses).** The difference between the market value of an investment and its book value. Gains/losses are "realized" when the security is actually sold, as compared to "unrealized" gains/losses which are based on current market value. See also "Realized Gains (Losses)."

**Variable-Rate Security.** A bond that bears interest at a rate that varies over time based on a specified schedule of adjustment (e.g., daily, weekly, monthly, semi-annually or annually). See also "Floating Rate Note."

Weighted Average Maturity (or just "Average Maturity"). The average maturity of all securities and investments of a portfolio, determined by multiplying the par or principal value of each security or investment by its maturity (days or years), summing the products, and dividing the sum by the total principal value of the portfolio. A simple measure of risk of a fixed-income portfolio.

Weighted Average Maturity to Call. The average maturity of all securities and investments of a portfolio, adjusted to substitute the first call date per security for maturity date for those securities with call provisions.

Yield Curve. A graphic depiction of yields on like securities in relation to remaining maturities spread over a time line. The traditional yield curve depicts yields on U.S. Treasuries, although yield curves exist for Federal Agencies and various credit quality corporates as well. Yield curves can be positively sloped (normal) where longer-term investments have higher yields, or "inverted" (uncommon) where longer-term investments

have lower yields than shorter ones.

**Yield to Call (YTC).** Same as "Yield to Maturity," except the return is measured to the first call date rather than the maturity date. Yield to call can be significantly higher or lower than a security's yield to maturity.

**Yield to Maturity (YTM).** Calculated return on an investment, assuming all cash flows from the security are reinvested at the same original yield. Can be higher or lower than the coupon rate depending on market rates and whether the security was purchased at a premium or discount. There are different conventions for calculating YTM for various types of securities.

**Yield.** There are numerous methods of yield determination. In this glossary, see also "Current Yield," "YieldCurve," "Yield to Call" and "Yield to Maturity."

# Attachment B Investment Pool/Fund Questionnaire

- 1. A description of eligible investment securities, and a written statement of investment policy and objectives.
- 2. A description of interest calculations and how it is distributed, and how gains and losses are treated.
- 3. A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.
- 4. A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.
- 5. A schedule for receiving statements and portfolio listings.
- 6. Are reserves, retained earnings, etc. utilized by the pool/fund?
- 7. A fee schedule, and when and how is it assessed.
- 8. Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?



# **INVESTMENT POLICY**

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ATTACHMENT A: Glossary of Cash and Investment Management Terms

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# **Investment Policy**

# The City of Cape Coral, Florida

## PURPOSE

The purpose of this policy is to set forth the investment objectives and parameters and to designate authority for the management of public funds of the City of Cape Coral, Florida (hereinafter "City"). These policies are designed to ensure the prudent management of public funds, the availability of operating and capital funds when needed, and an investment return competitive with comparable funds and financial market indices.

# II. SCOPE

In accordance with Section 218.415, Florida Statutes, this investment policy applies to all cash and investments held or controlled by the City with the exception of Pension Funds and funds related to the issuance of debt where there are other existing policies or indentures in effect for such funds. Funds held by state agencies (e.g., Department of Revenue) are not subject to the provisions of this policy.

# III. INVESTMENT OBJECTIVES

# Safety of Principal

The foremost objective of this investment program is the safety of the principal of those funds within the portfolios. Investment transactions shall seek to keep capital losses at a minimum, whether they are from securities defaults or erosion of market value. To attain this objective, diversification is required in order that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.

# Maintenance of Liquidity

The portfolios shall be managed in such a manner that funds are available to meet reasonably anticipated cash flow requirements in an orderly manner. Periodical cash flow analyses will be completed in order to ensure that the portfolios are positioned to provide sufficient liquidity.

# Return on Investment

Investment portfolios shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of least importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed.

# IV. DELEGATION OF AUTHORITY

In accordance with the Charter of the City of Cape Coral, the responsibility for providing oversight and direction in regard to the management of the investment program resides with the City Manager. The daily management responsibility for all City funds in the investment program and investment transactions is delegated to the Financial Services Director, or designee. The Financial Services Director shall maintain written procedures for the operation of the investment portfolio and a system of internal accounting and administrative controls to regulate the activities of employees. The City may employ an Investment Advisor to assist in managing some of the City's portfolios. Such Investment Advisor must be registered under the Investment Advisors Act of 1940.

If an Investment Advisor is retained, the Investment Advisor will assist the Financial Services Director or designee with the following:

- Modifications to the investment policy
- Discretionary and/or non-discretionary investment management
- Investment recommendations and monitoring

- Conducting investment activities
- Preparing a comprehensive set of reports designed to keep the Financial Services Director or designee fully informed of all investment transactions and current status of the investment portfolio
- Monitoring compliance with the District Investment Policy
- City Investment Committee meetings on a quarterly basis or as needed

#### V. STANDARDS OF PRUDENCE

The standard of prudence to be used by investment officials shall be the "Prudent Person" standard and shall be applied in the context of managing the overall investment program. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for individual security's credit risk or market price changes, provided deviations from expectation are reported to the City Manager in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy. The "Prudent Person" rule states the following:

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived from the investment.

While the standard of prudence to be used by investment officials who are officers or employees is the "Prudent Person" standard, any person or firm hired or retained to invest, monitor, or advise concerning these assets shall be held to the higher standard of "Prudent Expert". The standard shall be that in investing and reinvesting moneys and in acquiring, retaining, managing, and disposing of investments of these funds, the Investment Advisor shall exercise: the judgment, care, skill, prudence, and diligence under the circumstances then prevailing, which persons of prudence, discretion, and intelligence, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the funds, so as to minimize the risk, considering the probable income as well as the probable safety of their capital.

# VI. ETHICS AND CONFLICTS OF INTEREST

Employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Also, employees involved in the investment process shall disclose to the City Manager and the Mayor any material financial interests in financial institutions that conduct business with the City, and they shall further disclose any material personal financial/investment positions that could be related to the performance of the City's investment program.

# VII. INTERNAL CONTROLS AND INVESTMENT PROCEDURES

The Financial Services Director shall establish a system of internal controls and operational procedures that are in writing and made a part of the City's operational procedures. The internal controls should be designed to prevent losses of funds, which might arise from fraud, employee error, and misrepresentation by third parties, or imprudent actions by employees. The written procedures should include reference to safekeeping, repurchase agreements, the separation of transaction authority from accounting and record keeping, wire transfer agreements, banking service contracts and collateralization. No person may engage in an investment transaction except as authorized under the terms of this policy.

Independent auditors as a normal part of the annual financial audit to the City shall conduct a review of the system of internal controls to ensure compliance with policies and procedures.

# VIII. CONTINUING EDUCATION

The Financial Services Director, the Deputy Financial Services Director, and other City staff that have responsibilities within the City's treasury and investment program shall annually complete 8 hours of continuing education in subjects or courses of study related to investment practices and products in accordance with Florida Statute 218.415.

# IX. AUTHORIZED INVESTMENT INSTITUTIONS AND DEALERS

Authorized City staff and Investment Advisors shall only purchase securities from financial institutions, which are qualified as public depositories by the Chief Financial Officer of the State of Florida; institutions designated as "Primary Securities Dealers" by the Federal Reserve Bank of New York, direct issuers of commercial paper and bankers' acceptances or approved non-primary securities dealers.

All approved non-primary securities dealers must qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule). The City's investment advisor will provide the Financial Services Director a list of approved brokers annually or as requested. For all transactions executed by the City's Financial Services Director or Designee, the approved broker must provide the following information prior to executing investment trades with the City:

- 1. Annual financial statement, as well as most recent quarterly statement.
- 2. Regulatory history, through either the Office of the Comptroller of the Currency for dealer banks, or the NASD for securities firms.
- 3. Statement of any pending lawsuits materially affecting the firm's business.

Authorized City staff and Investment Advisors shall only enter into repurchase agreements with financial institutions that are state qualified public depositories and primary securities dealers as designated by the Federal Reserve Bank of New York.

## X. MATURITY AND LIQUIDITY REQUIREMENTS

The Financial Services Director or designee shall determine the approximate amount of funds required to meet the day-to-day expenditure needs of the City. In order to have an available source of funds to meet unexpected cash requirements, approximately two months operating expenses will be invested in appropriate short-term securities, i.e. fully-collateralized repurchase agreements, interest in time deposits, savings accounts or money market funds. The balance of the City's funds will be available for investment according to the guidelines incorporated within this policy.

Investments of bond reserves, construction funds, and other non-operating funds ("core funds") shall have a term appropriate to the need for funds and in accordance with debt covenants, but in no event shall exceed five (5) years, and the weighted average maturity will be limited to a period of less than three years.

The maturities of the underlying securities of a repurchase agreement will follow the requirements of the Master Repurchase Agreement.

# XI. COMPETITIVE SELECTION OF INVESTMENT INSTRUMENTS

After the Financial Services Director, or Designee, or the Investment Advisor, has determined the approximate maturity date based on cash flow needs and market conditions and has analyzed and selected one or more optimal types of investments, a minimum of three (3) qualified banks and/or approved broker/dealers must be contacted and asked to provide bids/offers on securities unless multiple bids are not feasible or appropriate based on market conditions. Bids will be held in confidence until the bid best deemed to meet the investment objectives is determined and selected.

However, if obtaining bids/offers are not feasible and appropriate, securities may be purchased utilizing the comparison to current market price method on an exception basis. Acceptable current market price providers include, but are not limited to:

- 1. Bloomberg Information Systems
- 2. Wall Street Journal or a comparable nationally recognized financial publication providing daily market pricing
- 3. Daily market pricing provided by the City's custodian or their correspondent institutions

The Financial Services Director, the Deputy Financial Services Director, and/or the Investment Advisor shall utilize the competitive bid process to select the securities to be purchased or sold. Selection by comparison to a current market price, as indicated above, shall only be utilized when, in judgment of the Financial Services Director, the Deputy Financial Services Director, and/or the Investment Advisor, competitive bidding would inhibit the selection process.

Examples of when this method may be used include:

- 1. When time constraints due to unusual circumstances preclude the use of the competitive bidding process
- 2. When no active market exists for the issue being traded due to the age or depth of the issue
- 3. When a security is unique to a single dealer, for example, a private placement
- 4. When the transaction involves new issues or issues in the "when issued" market

Overnight sweep repurchase agreements will not be bid, but may be placed with the City's depository bank relating to the demand account for which the repurchase agreement was purchased.

# XII. AUTHORIZED INVESTMENTS AND PORTFOLIO COMPOSITION

Investments should be made subject to the cash flow needs and such cash flows are subject to revisions as market conditions and the City's needs change. However, when the invested funds are needed in whole or in part for the purpose originally intended or for more optimal investments, the Financial Services Director, or the Deputy Financial Services Director may sell, or direct the Investment Advisor to sell the investment at the then-prevailing market price and place the proceeds into the proper account at the City's custodian.

The following are the investment requirements and allocation limits on security types, issuers, and maturities as established by the City. The Financial Services Director or the Deputy Financial Services Director shall have the option to further restrict investment percentages from time to time based on market conditions, risk, and diversification investment strategies. The percentage allocations requirements for investment types and issuers are calculated based on the original cost of each investment. Investments not listed in this policy are prohibited.

Authorized Investment- Sector Type	Minimum Rating Requirement	Maturity Limits	Maximum Allocation	Individual Issuer Limit
Cash and Cash Equivalents	N/A	NA	100%	N/A
Florida PRIME Fund	AAAm	NA	60%	N/A
United States Government Securities	N/A	5 Years	100%	N/A
United States Government Agencies	AAA	5 Years	50%	25%
Federal Instrumentalities (United States Government Sponsored Enterprises "GSE")*	АА	5 Years	80%	25%
Interest Bearing Time Deposit or Savings Accounts	N/A	1 Year	10%	5%
Repurchase Agreements**	N/A	90 Days	25%	10%
Commercial Paper***	Highest two ratings by two NRSROs****	270 Days	35%	10%
Bankers' Acceptances	Highest two ratings by two NRSROs****	180 Days	25%	10%
State and/or Local Government Taxable and/or Tax-Exempt Debt	Single "A" category by two NRSROs****	5 Years	20%	5%
Registered Investment Companies (Money Market Mutual Funds)	AAAm	N/A	25%	10%
Intergovernmental Investment Pools	AAAm	N/A	-60%	60%
Corporate Notes***	Single "A" category by any two NRSROs****	5 Years	35%	5%
Mortgage Backed Securities "MBS"*	AAA	5 Years	20%	15%
Asset-Backed Securities (ABS)***	Double "A" category by any two NRSROs****	5 Years	20%	5%
Bond Funds	Double "A" category by any two NRSROs****	N/A	25%	10%

<sup>\*</sup>The combined maximum amount of available funds invested in Federal Instrumentalities and mortgage-backed securities will not exceed eighty percent (80%).

<sup>\*\*</sup>Securities authorized for collateral are negotiable direct obligations of the United States Government, Government Agencies, and Federal Instrumentalities

with maturities under five (5) years and must have a market value for the principal and accrued interest of 102 percent of the value and for the term of the repurchase agreement.

\*\*\*The maximum amount of corporate investments will not exceed forty percent (40%). Therefore, the combination of Section (G) Commercial Paper, Section (L) Corporate Notes, Section (N) Asset Backed Securities shall not exceed forty percent (40%). Corporate Notes are limited to 15% per industry.

\*\*\*\*National Recognized Statistical Rating Organization (NRSRO).

#### A. The Florida PRIME

#### 1. Investment Authorization

City may invest in the Florida PRIME. Any investment with the Florida PRIME will be evaluated with the same criteria as Money Market Mutual Funds, detailed in section J.

# 2. Portfolio Composition

A maximum of forty (60%) of available funds may be invested in the Florida PRIME.

# 3. Rating Requirements

The Florida PRIME shall be rated "AAAm by Standard & Poor's or the equivalent by another rating agency.

# 4. Due Diligence Requirements

A thorough investigation of the Florida PRIME is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Investment Advisor that will contain a list of due diligence considerations that deal with the major aspects of any investment pool/fund. A current prospectus or equivalent documentation, including an Investment Policy, Financial Statements, and Portfolio Holdings must be obtained.

#### B. United States Government Securities

# 1. Purchase Authorization

The City may invest in negotiable direct obligations, or obligations the principal and interest of which are unconditionally guaranteed by the United States Government. Such securities will include, but not be limited to the following:

Cash Management Bills

Treasury Securities – State and Local Government Series ("SLGS")

Treasury Bills

**Treasury Notes** 

Treasury Bonds

**Treasury Strips** 

# 2. Portfolio Composition

A maximum of 100% of available funds may be invested in the United States Government Securities.

# 3. Maturity Limitations

The maximum length to maturity of any direct investment in the United States Government Securities is five (5) years from the date of purchase.

# C. United States Government Agencies

#### 1. Purchase Authorization

The City may invest in bonds, debentures, notes or callables issued or guaranteed by United States Government agencies, provided such obligations are backed by the full faith and credit of the United States Government. Such securities will include, but not be limited to the following:

- Government National Mortgage Association
- Direct obligations and mortgage pass through securities
- United States Export Import Bank
- Direct obligations or fully guaranteed certificates of beneficial ownership

# 2. Portfolio Composition

A maximum of 50% of available funds may be invested in United States Government agencies.

#### 3. Limits on Individual Issuers

A maximum of 25% of available funds may be invested in individual United States Government agencies.

# 4. Maturity Limitations

The maximum length to maturity for an investment in any United States Government agency security is five (5) years from the date of purchase.

# D. Federal Instrumentalities (United States Government sponsored agencies)

# 1. Purchase Authorization

The City may invest in bonds, debentures, notes or callables issued or guaranteed by United States Government sponsored agencies (Federal Instrumentalities) which are non-full faith and credit agencies limited to the following:

Federal Farm Credit Bank (FFCB)

Federal Home Loan Bank or its district banks (FHLB)

Federal National Mortgage Association (FNMA)

Federal Agricultural Mortgage Corporation (Farmer Mac)

Federal Home Loan Mortgage Corporation (Freddie-Macs) including Federal -

Home Loan Mortgage Corporation participation certificates

#### 2. Portfolio Composition

A maximum of 80% of available funds may be invested in Federal Instrumentalities.

## 3. Limits on Individual Issuers

A maximum of 25% of available funds may be invested in any one issuer.

#### 4. Maturity Limitations

The maximum length to maturity for an investment in any Federal Instrumentality security is five (5) years from the date of purchase.

# E. Interest Bearing Time Deposit or Saving Accounts

# 1. Purchase Authorization

The City may invest in non-negotiable interest bearing time certificates of deposit or savings accounts in banks organized under the laws of this state and/or in national banks organized under the laws of the United States and doing business and situated in the State of Florida, provided that any such deposits are secured by the Florida Security for Public Deposits Act, Chapter 280, Florida Statutes. Additionally, the bank shall not be listed with any recognized credit watch information service.

## 2. Portfolio Composition

A maximum of 10% of available funds may be invested in non-negotiable interest bearing time certificates of deposit.

### 3. Limits on Individual Issuers

A maximum of 5% of available funds may be deposited with any one issuer.

# 4. Maturity Limitations

The maximum maturity on any certificate shall be no greater than one (1) year from the date of purchase.

# F. Repurchase Agreements

### 1. Purchase Authorization

- a. The City may invest in repurchase agreements composed of only those investments based on the requirements set forth by the City's Master Repurchase Agreement. All firms are required to sign the Master Repurchase Agreement prior to the execution of a repurchase agreement transaction.
- b. A third party custodian with whom the City has a current custodial agreement shall hold the collateral for all repurchase agreements with a term longer than one (1) business day. A clearly marked receipt that shows evidence of ownership must be supplied to the Financial Services Director and retained.
- c. Securities authorized for collateral are negotiable direct obligations of the United States Government, Government Agencies, and Federal Instrumentalities with maturities under five (5) years and must have a market value for the principal and accrued interest of 102 percent of the value and for the term of the repurchase agreement. Immaterial short-term deviations from 102 percent requirement are permissible only upon the approval of the Financial Services Director.

#### 2. Portfolio Composition

A maximum of 25% of available funds may be invested in repurchase agreements excluding one (1) business day agreements and overnight sweep agreements.

#### 3. Limits on Individual Issuers

A maximum of 10% of available funds may be invested with any one institution.

# 4. Limits on Maturities

The maximum length to maturity of any repurchase agreement is 90 days from the date of purchase.

# G. Commercial Paper

# 1. Purchase Authorization

The City may invest in commercial paper of any company organized and operating in the United States that is rated, at the time of purchase, "Prime-1" by Moody's and "A-1" by Standard & Poor's (prime commercial paper).

# 2. Portfolio Composition

A maximum of 35% of available funds may be directly invested in prime commercial paper.

# 3. Limits on Individual Issuers

A maximum of 10% of available funds may be invested with any one issuer.

# 4. Maturity Limitations

The maximum length to maturity for prime commercial paper shall be 270 days from the date of purchase.

# H. Bankers' Acceptances

### 1. Purchase Authorization

The City may invest in Bankers' Acceptances issued by a domestic bank or a federally chartered domestic office of a foreign bank, which is eligible for purchase by the Federal Reserve System, at the time of purchase, the short-termer is rated, at a minimum, "P-1" by Moody's Investors Services and "A-1" Standard & Poor's.

# 2. Portfolio Composition

A maximum of 25% of available funds may be directly invested in Bankers' Acceptances.

#### 3. Limits on Individual Issuers

A maximum of 10% of available funds may be invested with any one issuer.

# 4. Maturity Limitations

The maximum length to maturity for Bankers' Acceptances shall be 180 days from the date of purchase.

# I. State and/or Local Government Taxable and/or Tax-Exempt Debt

#### 1. Purchase Authorization

The City may invest in state and/or local government taxable and/or tax-exempt debt, general obligation and/or revenue bonds, rated at least a minimum "Aa" category by Moody's and a minimum long term debt rating of "AA" category by Standard & Poor's for long-term debt, or rated at least "VMIG2" by Moody's or "A-2" by Standard & Poor's for short-term debt.

#### 2. Portfolio Composition

A maximum of 20% of available funds may be invested in taxable and tax-exempt debts.

# 3. Limits on Individual Issuers

A maximum of 5% of available funds may be invested with any one issuer.

# 4. Maturity Limitations

A maximum length to maturity for an investment in any state or local government debt security is five (5) years from the date of purchase.

# 5. Maturity Limitations for Variable Rate Demand Obligations

A maximum length to maturity for an investment in any state or local government debt security is the shorter of put or tender date, where the put or tender does not expire for the life of the security, or final maturity.

# J. Registered Investment Companies (Mutual Funds)

# 1. Investment Authorization

The City may invest in shares in open-end, no-load provided such funds are registered under the Federal Investment Company Act of 1940 and operated in accordance with 17 C.F.R. § 270.2a-7. In addition, the Financial Services Director may invest in other types of mutual funds provided such funds are registered under the Federal Investment Company Act of 1940, invested exclusively in the securities specifically permitted under this investment policy, and are similarly diversified.

# 2. Portfolio Composition

A maximum of 25% of available funds may be invested in mutual funds.

#### 3. Limits of Individual Issuers

A maximum of 10% of available funds may be invested with any one non-SEC Rule 2a-7 investment mutual fund.

#### 4. Rating Requirements

The mutual funds shall be rated "AAAm" by Standard & Poor's or the equivalent by another rating agency at time of purchase.

# 5. Due Diligence Requirements

A thorough review of any investment mutual fund is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Financial Services Director that will contain a list of questions that covers the major aspects of any investment pool/fund.

# K. Intergovernmental Investment Pools

#### 1. Investment Authorization

The City may invest in intergovernmental investment pools that are authorized pursuant to the Florida Inter-local Cooperation Act, as provided in Section 163.01, Florida Statutes and provided that said funds contain no derivatives.

### 2. Portfolio Composition

A maximum of 60% of available funds may be invested in intergovernmental investment pools.

#### 3. Rating Requirements

The investment pool shall be rated "AAAm" by Standard & Poor's or the equivalent by another rating agency at time of purchase.

# 4. Due Diligence Requirements

A thorough review of any investment pool/fund is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Financial Services Director that will contain a list of questions that covers the major aspects of any investment pool/fund.

# L. Corporate Notes

# 1. Purchase Authorization

The City may invest in corporate notes issued by corporations organized and operating within the United States or by depository institutions licensed by the United States that have a minimum long term debt rating of "A" category by Standard & Poor's, or the equivalent by another rating agency at the time of purchase.

# 2. Portfolio Composition

A maximum of 35% of available funds may be directly invested in corporate notes.

#### 3. Limits on Individual Issuers

A maximum of 5% of available funds may be invested with any one issuer.

# 4. Maturity Limitations

The maximum length to maturity for corporate notes shall be 5 years from the date of purchase.

# M. Mortgage-Backed Securities (MBS)

# 1. Purchase Authorization

The City may invest in mortgage-backed securities (MBS) which are based on mortgages that are guaranteed by a government agency or GSE for payment of principal and a guarantee of timely payment.

### 2. Portfolio Composition

A maximum of 20% of available funds may be invested in MBS.

#### 3. Limits of Individual Issuers

A maximum of 15% of available funds may be invested with any one MBS.

# 4. Maturity Limitations

A maximum length to maturity for an investment in any MBS is five (5) years based on the weighted average life of the security.

The maturity of mortgage-backed securities shall be considered the date corresponding to its average life. This date reflects the point at which an investor will have received back half of the original principal (face) amount. The average life may be different from the stated legal maturity included in a security's description.

# N. Asset-Backed Securities (ABS)

#### 1. Purchase Authorization

The City may invest in asset-backed securities (ABS) which are bonds or notes backed by financial assets.

# 2. Portfolio Composition

A maximum of 20% of available funds may be invested in ABS.

# 3. Limits of Individual Issuers

A maximum of 5% of available funds may be invested with any one ABS.

# 4. Maturity Limitations

A maximum length to maturity for an investment in any ABS is five (5) years from the date of purchase.

The maturity of asset-backed securities shall be considered the date corresponding to its average life. This date reflects the point at which an investor will have received back half of the original principal (face) amount. The average life may be different from the stated legal maturity included in a security's description.

# 5. Rating Requirements

ABS shall be Double-A rated or better by Standard & Poor's, or the equivalent by another rating agency at time of purchase.

# O. Bond Funds

# 1. Purchase Authorization

The Financial Services Director may invest in bond funds.

# 2. Portfolio Composition

A maximum of 25% of available funds may be invested in bond funds.

# 3. Limits of Individual Issuers

A maximum of 10% of available funds may be invested with any one bond fund.

# 4. Rating Requirements

Bond funds shall be Double-A rated or better by Standard & Poor's, or the equivalent by another rating agency at the time of purchase.

# XIII. DERIVATIVES AND REVERSE REPURCHASE AGREEMENTS

Investment in any derivative products or the use of reverse repurchase agreements requires specific City Council approval prior to their use. If the City Council approves the use of derivative products, the Financial

Services Director shall develop sufficient understanding of the derivative products and have the expertise to manage them. A "derivative" is defined as a financial instrument the value of which depends on, or is derived from, the value of one or more underlying assets or indices or asset values. If the City Council approves the use of reverse repurchase agreements or other forms of leverage, the investment shall be limited to transactions in which the proceeds are intended to provide liquidity and for which the Financial Services Director has sufficient resources and expertise to manage them.

# XIV. PERFORMANCE MEASUREMENTS

In order to assist in the evaluation of the portfolio's performance, the City will use performance benchmarks for short-term and long-term portfolios. The use of benchmarks will allow the City to measure its returns against other investors in the same markets.

- 1. For the short-term portfolio (less than 12 months maturity), the S&P Rated GIP Index will be used as a benchmark as compared to the portfolios' net book value rate of return for current operating funds.
  - Investment performance of funds designated as core funds and other non-operating funds that have a long-term (greater than 12 months maturity) investment horizon will be compared to an index comprised of U. S. Treasury or Government securities. The appropriate index will have a duration and asset mix that approximates the portfolios and will be utilized as a benchmark to be compared to the portfolio's total rate of return. Examples of an appropriate index are as follows: the Merrill Lynch 1-3 Year Government & Corporate AA Index and/or the Merrill Lynch 1-5 Year Government & Corporate AA Index.
- 2. Investment advisors will report performance on both book value and total rate of return basis and compare results to the above-stated benchmarks for all actively managed portfolios. Investment advisors will report on book value for passively managed portfolios.

#### XV. REPORTING

The Financial Services Director shall provide the Investment Committee with quarterly investment reports. Schedules in the quarterly report should include the following:

- 1. A listing of individual securities held at the end of the reporting period
- 2. Percentage of available funds represented by each investment type
- 3. Coupon, discount or earning rate
- 4. Average life or duration and final maturity of all investments
- 5. Par value and market value

On an annual basis, the Financial Services Director shall provide to the City Council a written report on all invested funds. The annual report shall provide all, but not limited to, the following: a complete list of all invested funds, name or type of security in which the funds are invested, the amount invested, the maturity date, income earned, the book value, the market value and the yield on each investment.

The annual report will show performance on both a book value and total rate of return basis and will compare the results to the above-stated performance benchmarks. All investments shall be reported at fair value per GASB standards. Investment reports shall be available to the public.

# XVI. THIRD-PARTY CUSTODIAL AGREEMENTS

Securities, with the exception of certificates of deposits, shall be held with a third-party custodian; and all securities purchased by, and all collateral obtained by; the City should be properly designated as an asset of the City. The securities must be held in an account separate and apart from the assets of the financial institution. A third-party custodian is defined as any bank depository chartered by the Federal Government, the State of Florida, or any other state or territory of the United States which has a branch

or principal place of business in the State of Florida as defined in Section 658.12, Florida Statutes, or by a national association organized and existing under the laws of the United States which is authorized to accept and execute trusts and which is doing business in the State of Florida. Certificates of deposits will be placed in the provider's safekeeping department for the term of the deposit.

The custodian shall accept transaction instructions only from those persons who have been duly authorized by the Financial Services Director and which authorization has been provided, in writing, to the custodian. Only a duly authorized person shall be permitted to in whole or in part withdraw securities from the custodian.

The custodian shall provide the Financial Services Director with safekeeping receipts that provide detailed information on the securities held by the custodian. Security transactions between a broker/dealer and the custodian involving the purchase or sale of securities by transfer of money or securities must be made on a "delivery vs. payment" basis, if applicable, to ensure that the custodian will have the security or money, as appropriate, in hand at the conclusion of the transaction. Securities held as collateral shall be held free and clear of any liens.

#### XVII. INVESTMENT POLICY ADOPTION

The investment policy shall be adopted by a City ordinance. The Investment Committee shall review the policy annually and the City Council shall approve any modification made thereto.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF CAPE CORAL ON MMMM DD, YYYY

# Attachment A Glossary of Cash and Investment Management Terms

**Accrued Interest.** Interest earned but which has not yet been paid or received.

Agency. See "Federal Agency Securities."

Ask Price. Price at which a broker/dealer offers to sell a security to an investor, also known as "offered price."

Asset Backed Securities (ABS). A fixed-income security backed by notes or receivables against assets other than real estate. Generally issued by special purpose companies that "own" the assets and issue the ABS. Examples include securities backed by auto loans, credit card receivables, home equity loans, manufactured housing loans, farm equipment loans and aircraft leases.

**Average Life.** The average length of time that an issue of serial bonds and/or term bonds with a mandatory sinking fund feature is expected to be outstanding.

Bankers' Acceptance (BA's). A draft or bill of exchange drawn upon and accepted by a bank. Frequently used to finance shipping of international goods. Used as a short-term credit instrument, bankers' acceptances are traded at a discount from face value as a money market instrument in the secondary market on the basis of the credit quality of the guaranteeing bank.

Basis Point. One hundredth of one percent, or 0.01%. Thus 1% equals 100 basis points.

**Bearer Security.** A security whose ownership is determined by the holder of the physical security. Typically, there is no registration on the issuer's books. Title to bearer securities is transferred by delivery of the physical security or certificate. Also known as "physical securities."

Benchmark Bills: In November 1999, FNMA introduced its Benchmark Bills program, a short-term debt securities issuance program to supplement its existing discount note program. The program includes a schedule of larger, weekly issues in three- and six-month maturities and biweekly issues in one-year for Benchmark Bills. Each issue is brought to market via a Dutch (single price) auction. FNMA conducts a weekly auction for each Benchmark Bill maturity and accepts both competitive and non-competitive bids through a web based auction system. This program is in addition to the variety of other discount note maturities, with rates posted on a daily basis, which FNMA offers. FNMA's Benchmark Bills are unsecured general obligations that are issued in book- entry form through the Federal Reserve Banks. There are no periodic payments of interest on Benchmark Bills, which are sold at a discount from the principal amount and payable at par at maturity. Issues under the Benchmark program constitute the same credit standing as other FNMA discount notes; they simply add organization and liquidity to the short-term Agency discount note market.

Benchmark Notes/Bonds: Benchmark Notes and Bonds are a series of FNMA "bullet" maturities (non-callable) issued according to a pre-announced calendar. Under its Benchmark Notes/Bonds program, 2, 3, 5, 10 and 30- year maturities are issued each quarter. Each Benchmark Notes new issue has a minimum size of \$4 billion, 30- year new issues having a minimum size of \$1 billion, with re-openings based on investor demand to further enhance liquidity. The amount of non-callable issuance has allowed FNMA to build a yield curve in Benchmark Notes and Bonds in maturities ranging from 2 to 30 years. The liquidity emanating from these large size issues has facilitated favorable financing opportunities through the development of a liquid overnight and term repo market. Issues under the Benchmark program constitute the same credit standing as other FNMA issues; they simply add organization and liquidity to the intermediate- and long-term Agency market.

**Benchmark.** A market index used as a comparative basis for measuring the performance of an investment portfolio. A performance benchmark should represent a close correlation to investment guidelines, risk tolerance and duration of the actual portfolio's investments.

Bid Price. Price at which a broker/dealer offers to purchase a security from an investor.

Bond Market Association (BMA). The bond market trade association representing the largest securities markets

in the world. In addition to publishing a Master Repurchase Agreement, widely accepted as the industry standard document for Repurchase Agreements, the BMA also recommends bond market closures and early closes due to holidays.

**Bond.** Financial obligation for which the issuer promises to pay the bondholder (the purchaser or owner of the bond) a specified stream of future cash flows, including periodic interest payments and a principal repayment.

**Book Entry Securities.** Securities that are recorded in a customer's account electronically through one of the financial markets electronic delivery and custody systems, such as the Fed Securities wire, DTC and PTC (as opposed to bearer or physical securities). The trend is toward a certificate-free society in order to cut down on paperwork and to diminish investors' concerns about the certificates themselves. The vast majority of securities are now book entry securities.

**Book Value.** The value at which a debt security is reflected on the holder's records at any point in time. Book value is also called "amortized cost" as it represents the original cost of an investment adjusted for amortization of premium or accretion of discount. Also called "carrying value." Book value can vary over time as an investment approaches maturity and differs from "market value" in that it is not affected by changes in market interest rates.

**Broker/Dealer.** A person or firm transacting securities business with customers. A "broker" acts as an agent between buyers and sellers, and receives a commission for these services. A "dealer" buys and sells financial assets from its own portfolio. A dealer takes risk by owning inventory of securities, whereas a broker merely matches up buyers and sellers. See also "Primary Dealer."

**Bullet Notes/Bonds.** Notes or bonds that have a single maturity date and are non-callable.

Call Date. Date at which a call option may be or is exercised.

Call Option. The right, but not the obligation, of an issuer of a security to redeem a security at a specified value and at a specified date or dates prior to its stated maturity date. Most fixed-income calls are a par, but can be at any previously established price. Securities issued with a call provision typically carry a higher yield than similar securities issued without a call feature. There are three primary types of call options (1) European - one-time calls, (2) Bermudan - periodically on a predetermined schedule (quarterly, semi-annual, annual), and (3) American - continuously callable at any time on or after the call date. There is usually a notice period of at least 5 business days prior to a call date.

**Callable Bonds/Notes.** Securities, which contain an imbedded call option giving the issuer, the right to redeem the securities prior to maturity at a predetermined price and time.

Certificate of Deposit (CD). Bank obligation issued by a financial institution generally offering a fixed rate of return (coupon) for a specified period of time (maturity). Can be as long as 10 years to maturity, but most CDs purchased by public agencies are one year and under.

**Collateral.** Investment securities or other property that a borrower pledges to secure repayment of a loan, secure deposits of public monies, or provide security for a repurchase agreement.

**Collateralization.** Process by which a borrower pledges securities, property, or other deposits for securing the repayment of a loan and/or security.

Collateralized Mortgage Obligation (CMO). A security that pools together mortgages and separates them into short, medium, and long-term positions (called tranches). Tranches are set up to pay different rates of interest depending upon their maturity. Interest payments are usually paid monthly. In "plain vanilla" CMOs, principal is not paid on a tranche until all shorter tranches have been paid off. This system provides interest and principal in a more predictable manner. A single pool of mortgages can be carved up into numerous tranches each with its own payment and risk characteristics.

**Commercial Paper.** Short term unsecured promissory note issued by a company or financial institution. Issued at a discount and matures for par or face value. Usually a maximum maturity of 270 days and given a short-term debt rating by one or more NRSROs.

**Convexity.** A measure of a bond's price sensitivity to changing interest rates. A high convexity indicates greater sensitivity of a bond's price to interest rate changes.

**Corporate Note.** A debt instrument issued by a corporation with a maturity of greater than one year and less than ten years.

**Counterparty.** The other party in a two-party financial transaction. "Counterparty risk" refers to the risk that the other party, to a transaction, will fail in its related obligations. For example, the bank or broker/dealer in a repurchase agreement.

Coupon Rate. Annual rate of interest on a debt security, expressed as a percentage of the bond's face value.

**Current Yield.** Annual rate of return on a bond based on its price. Calculated as (coupon rate / price), but does not accurately reflect a bond's true yield level.

**Custody.** Safekeeping services offered by a bank, financial institution or trust company, referred to as the "custodian." Service normally includes the holding and reporting of the customer's securities, the collection and disbursement of income, securities settlement and market values.

**Dealer.** A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

**Delivery Versus Payment (DVP).** Settlement procedure in which securities are delivered versus payment of cash, but only after cash has been received. Most security transactions, including those through the Fed Securities Wire system and DTC, are done DVP as a protection for both the buyer and seller of securities.

**Depository Trust Company (DTC).** A firm through which members can use a computer to arrange for securities to be delivered to other members without physical delivery of certificates. A member of the Federal Reserve System and owned mostly by the New York Stock Exchange, the Depository Trust Company uses computerized debit and credit entries. Most corporate securities, commercial paper, CDs and BAs clear through DTC.

**Derivatives.** For hedging purposes, common derivatives are options, futures, swaps and swaptions. All Collateralized Mortgage Obligations ("CMOs") are derivatives. (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, or (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities or commodities).

**Derivative Security.** Financial instrument created from, or whose value depends upon, one or more underlying assets or indexes of asset values.

**Designated Bond.** FFCB's regularly issued, liquid, non-callable securities that generally have a 2 or 3 year original maturity. New issues of Designated Bonds are \$1 billion or larger. Re-openings of existing Designated Bond issues are generally a minimum of \$100 million. Designated Bonds are offered through a syndicate of two to six dealers. Twice each month the Funding Corporation announces its intention to issue a new Designated Bond, reopen an existing issue, or to not issue or reopen a Designated Bond. Issues under the Designated Bond program constitute the same credit standing as other FFCB issues; they simply add organization and liquidity to the intermediate- and long-term Agency market.

**Discount Notes.** Unsecured general obligations issued by Federal Agencies at a discount. Discount notes mature at par and can range in maturity from overnight to one year. Very large primary (new issue) and secondary markets.

**Discount Rate.** Rate charged by the system of Federal Reserve Banks on overnight loans to member banks. Changes to this rate are administered by the Federal Reserve and closely mirror changes to the "fed funds rate."

**Discount Securities.** Non-interest-bearing money market instruments that are issued at discount and redeemed at maturity for full face value. Examples include: U.S. Treasury Bills, Federal Agency Discount Notes, Bankers' Acceptances and Commercial Paper.

**Discount.** The amount by which a bond or other financial instrument sells below its face value. See also "Premium."

**Diversification.** Dividing investment funds among a variety of security types, maturities, industries and issuers offering potentially independent returns.

**Dollar Price.** A bond's cost expressed as a percentage of its face value. For example, a bond quoted at a dollar price of 95 ½, would have a principal cost of \$955 per \$1,000 of face value.

**Duff & Phelps.** One of several NRSROs that provide credit ratings on corporate and bank debt issues.

**Duration.** The weighted average maturity of a security's or portfolio's cash flows, where the present values of the cash flows serve as the weights. The greater the duration of a security/portfolio, the greater its percentage price volatility with respect to changes in interest rates. Used as a measure of risk and a key tool for managing a portfolio versus a benchmark and for hedging risk. There are also different kinds of duration used for different purposes (e.g. MacAuley Duration, Modified Duration).

Fannie Mae. See "Federal National Mortgage Association."

**Fed Money Wire.** A computerized communications system that connects the Federal Reserve System with its member banks, certain U. S. Treasury offices, and the Washington D.C. office of the Commodity Credit Corporation. The Fed Money Wire is the book entry system used to transfer cash balances between banks for themselves and for customer accounts.

**Fed Securities Wire.** A computerized communications system that facilitates book entry transfer of securities between banks, brokers and customer accounts, used primarily for settlement of U.S. Treasury and Federal Agency securities.

Fed. See "Federal Reserve System."

**Federal Agency Security.** A debt instrument issued by one of the Federal Agencies. Federal Agencies are considered second in credit quality and liquidity only to U.S. Treasuries.

**Federal Agency.** Government sponsored/owned entity created by the U.S. Congress, generally for the purpose of acting as a financial intermediary by borrowing in the marketplace and directing proceeds to specific areas of the economy considered to otherwise have restricted access to credit markets. The largest Federal Agencies are GNMA, FNMA, FHLMC, FHLB, FFCB, SLMA, and TVA.

**Federal Deposit Insurance Corporation (FDIC).** Federal agency that insures deposits at commercial banks, currently to a limit of \$250,000 per depositor per bank.

Federal Farm Credit Bank (FFCB). One of the large Federal Agencies. A government sponsored enterprise (GSE) system that is a network of cooperatively-owned lending institutions that provides credit services to farmers, agricultural cooperatives and rural utilities. The FFCBs act as financial intermediaries that borrow money in the capital markets and use the proceeds to make loans and provide other assistance to farmers and farm-affiliated businesses. Consists of the consolidated operations of the Banks for Cooperatives, Federal Intermediate Credit Banks, and Federal Land Banks. Frequent issuer of discount notes, agency notes and callable agency securities. FFCB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and agricultural industry. Also, issues notes under its "designated note" program.

**Federal Funds (Fed Funds).** Funds placed in Federal Reserve Banks by depository institutions in excess of current reserve requirements, and frequently loaned or borrowed on an overnight basis between depository institutions.

**Federal Funds Rate (Fed Funds Rate).** The interest rate charged by a depository institution lending Federal Funds to another depository institution. The Federal Reserve influences this rate by establishing a "target"

Fed Funds rate associated with the Fed's management of monetary policy.

Federal Home Loan Bank System (FHLB). One of the large Federal Agencies. A government sponsored enterprise (GSE) system, consisting of wholesale banks (currently twelve district banks) owned by their member banks, which provides correspondent banking services and credit to various financial institutions, financed by the issuance of securities. The principal purpose of the FHLB is to add liquidity to the mortgage markets. Although FHLB does not directly fund mortgages, it provides a stable supply of credit to thrift institutions that make new mortgage loans. FHLB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes and callable agency securities. Also, issues notes under its "global note" and "TAP" programs.

Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac"). One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides stability and assistance to the secondary market for home mortgages by purchasing first mortgages and participation interests financed by the sale of debt and guaranteed mortgage backed securities. FHLMC debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities and MBS. Also, issues notes under its "reference note" program.

Federal National Mortgage Association (FNMA or "Fannie Mae"). One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides liquidity to the residential mortgage market by purchasing mortgage loans from lenders, financed by the issuance of debt securities and MBS (pools of mortgages packaged together as a security). FNMA debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities and MBS. Also, issues notes under its "benchmark note" program.

Federal Reserve Bank. One of the 12 distinct banks of the Federal Reserve System.

Federal Reserve System (the Fed). The independent central bank system of the United States that establishes and conducts the nation's monetary policy. This is accomplished in three major ways: (1) raising or lowering bank reserve requirements, (2) raising or lowering the target Fed Funds Rate and Discount Rate, and (3) in open market operations by buying and selling government securities. The Federal Reserve System is made up of twelve Federal Reserve District Banks, their branches, and many national and state banks throughout the nation. It is headed by the seven member Board of Governors known as the "Federal Reserve Board" and headed by its Chairman.

**Fiscal Agent/Paying Agent.** A bank or trust company that acts, under a trust agreement with a corporation or municipality, in the capacity of general treasurer. The agent performs such duties as making coupon payments, paying rents, redeeming bonds, and handling taxes relating to the issuance of bonds.

**Fitch Investors Service, Inc.** One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

Floating Rate Security (FRN or "floater"). A bond with an interest rate that is adjusted according to changes in an interest rate or index. Differs from variable-rate debt in that the changes to the rate take place immediately when the index changes, rather than on a predetermined schedule. See also "Variable Rate Security."

Freddie Mac. See "Federal Home Loan Mortgage Corporation".

Ginnie Mae. See "Government National Mortgage Association".

**Global Notes:** Notes designed to qualify for immediate trading in both the domestic U.S. capital market and in foreign markets around the globe. Usually large issues that are sold to investors worldwide and therefore have excellent liquidity. Despite their global sales, global notes sold in the U.S. are typically denominated in U.S. dollars.

Government National Mortgage Association (GNMA or "Ginnie Mae"). One of the large Federal Agencies. Government-owned Federal Agency that acquires, packages, and resells mortgages and mortgage purchase commitments in the form of mortgage-backed securities. Largest issuer of mortgage pass-through securities. GNMA debt is guaranteed by the full faith and credit of the U.S. government (one of the few agencies that are actually full faith and credit of the U.S.).

**Government Securities.** An obligation of the U.S. government, backed by the full faith and credit of the government. These securities are regarded as the highest quality of investment securities available in the U.S. securities market. See "Treasury Bills, Notes, Bonds, and SLGS."

**Government Sponsored Enterprise (GSE).** Privately owned entity subject to federal regulation and supervision, created by the U.S. Congress to reduce the cost of capital for certain borrowing sectors of the economy such as students, farmers, and homeowners. GSEs carry the implicit backing of the U.S. Government, but they are not direct obligations of the U.S. Government. For this reason, these securities will offer a yield premium over U.S. Treasuries. Some consider GSEs to be stealth recipients of corporate welfare. Examples of GSEs include: FHLB, FHLMC, FNMA and SLMA.

**Government Sponsored Enterprise Security.** A security issued by a Government Sponsored Enterprise. Considered Federal Agency Securities.

Index. A compilation of statistical data that tracks changes in the economy or in financial markets.

**Interest-Only (IO) STRIP.** A security based solely on the interest payments from the bond. After the principal has been repaid, interest payments stop and the value of the security falls to nothing. Therefore, IOs are considered risky investments. Usually associated with mortgage-backed securities.

**Internal Controls.** An internal control structure ensures that the assets of the entity are protected from loss, theft, or misuse. The internal control structure is designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that 1) the cost of a control should not exceed the benefits likely to be derived and 2) the valuation of costs and benefits requires estimates and judgments by management. Internal controls should address the following points:

- 1. **Control of collusion** Collusion is a situation where two or more employees are working in conjunction to defraud their employer.
- 2. **Separation of transaction authority from accounting and record keeping** By separating the person who authorizes or performs the transaction from the people who record or otherwise account for the transaction, a separation of duties is achieved.
- 3. **Custodial safekeeping** Securities purchased from any bank or dealer including appropriate collateral (as defined by state law) shall be placed with an independent third party for custodial safekeeping.
- 4. Avoidance of physical delivery securities Book-entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.
- 5. Clear delegation of authority to subordinate staff members Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
- 6. Written confirmation of transactions for investments and wire transfers Due to the potential for error and improprieties arising from telephone and electronic transactions, all transactions should be supported by written communications and approved by the appropriate person. Written communications may be via fax if on letterhead and if the safekeeping institution has a list of authorized signatures.

7. **Development of a wire transfer agreement with the lead bank and third-party custodian** - The designated official should ensure that an agreement will be entered into and will address the following points: controls, security provisions, and responsibilities of each party making and receiving wire transfers.

**Inverse Floater.** A floating rate security structured in such a way that it reacts inversely to the direction of interest rates. Considered risky as their value moves in the opposite direction of normal fixed-income investments and whose interest rate can fall to zero.

**Investment Advisor.** A company that provides professional advice managing portfolios, investment recommendations and/or research in exchange for a management fee.

**Investment Adviser Act of 1940.** Federal legislation that sets the standards by which investment companies, such as mutual funds, are regulated in the areas of advertising, promotion, performance reporting requirements, and securities valuations.

**Investment Grade.** Bonds considered suitable for preservation of invested capital; bonds rated a minimum of Baa3 by Moody's, BBB- by Standard & Poor's, or BBB- by Fitch. Although "BBB" rated bonds are considered investment grade, most public agencies cannot invest in securities rated below "A."

**Liquidity.** Relative ease of converting an asset into cash without significant loss of value. Also, a relative measure of cash and near-cash items in a portfolio of assets. Also, a term describing the marketability of a money market security correlating to the narrowness of the spread between the bids and ask prices.

**Local Government Investment Pool (LGIP).** An investment by local governments in which their money is pooled as a method for managing local funds, (i.e., Florida State Board of Administration's Florida Prime Fund).

Long-Term Core Investment Program. Funds that are not needed within a one year period.

**Market Value.** The fair market value of a security or commodity. The price at which a willing buyer and seller would pay for a security.

**Mark-to-market.** Adjusting the value of an asset to its market value, reflecting in the process unrealized gains or losses.

**Master Repurchase Agreement.** A widely accepted standard agreement form published by the Bond Market Association (BMA) that is used to govern and document Repurchase Agreements and protect the interest of parties in a repo transaction.

Maturity Date. Date on which principal payment of a financial obligation is to be paid.

Medium Term Notes (MTN's). Used frequently to refer to corporate notes of medium maturity (5-years and under). Technically, any debt security issued by a corporate or depository institution with a maturity from 1 to 10 years and issued under an MTN shelf registration. Usually issued in smaller issues with varying coupons and maturities, and underwritten by a variety of broker/dealers (as opposed to large corporate deals issued and underwritten all at once in large size and with a fixed coupon and maturity).

**Money Market.** The market in which short-term debt instruments (bills, commercial paper, bankers' acceptance, etc.) are issued and traded.

Money Market Mutual Fund (MMF). A type of mutual fund that invests solely in money market instruments, such as: U.S. Treasury bills, commercial paper, bankers' acceptances, and repurchase agreements. Money market mutual funds are registered with the SEC under the Investment Company Act of 1940 and are subject "rule 2a-7" which significantly limits average maturity and credit quality of holdings. MMF's are managed to maintain a stable net asset value (NAV) of \$1.00. Many MMFs carry ratings by a NRSRO.

**Moody's Investors Service.** One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

Mortgage Backed Securities (MBS). Mortgage-backed securities represent an ownership interest in a pool of

mortgage loans made by financial institutions, such as savings and loans, commercial banks, or mortgage companies, to finance the borrower's purchase of a home or other real estate. The majority of MBS are issued and/or guaranteed by GNMA, FNMA and FHLMC. There are a variety of MBS structures, some of which can be very risky and complicated. All MBS have reinvestment risk as actual principal and interest payments are dependent on the payment of the underlying mortgages which can be prepaid by mortgage holders to refinance and lower rates or simply because the underlying property was sold.

**Mortgage** Pass-Through Securities. A pool of residential mortgage loans with the interest and principal distributed to investors on a pro-rata basis. Largest issuer is GNMA.

**Municipal Note/Bond.** A debt instrument issued by a state or local government unit or public agency. The vast majority of municipals are exempt from state and federal income tax, although some non-qualified issues are taxable.

**Mutual Fund.** Portfolio of securities professionally managed by a registered investment company that issues shares to investors. Many different types of mutual funds exist (bond, equity, money fund); all except money market funds operate on a variable net asset value (NAV).

**National Association of Securities Dealers (NASD).** Organization of brokers and dealers who trade securities in the United States, supervised by the SEC, and which provides regulatory exams for industry participants.

**Negotiable Certificate of Deposit (Negotiable CD).** Large denomination CDs (\$100,000 and larger) that are issued in bearer form and can be traded in the secondary market.

**Net Asset Value.** The market value of one share of an investment company, such as a mutual fund. This figure is calculated by totaling a fund's assets which includes securities, cash, and any accrued earnings, subtracting this from the fund's liabilities and dividing this total by the number of shares outstanding. This is calculated once a day based on the closing price for each security in the fund's portfolio. (See below.)

[(Total assets) - (Liabilities)]/(Number of shares outstanding)

**NRSRO.** A "Nationally Recognized Statistical Rating Organization." A designated rating organization that the SEC has deemed a strong national presence in the U.S. NRSROs provide credit ratings on corporate and bank debt issues. Only ratings of a NRSRO may be used for the regulatory purposes of rating. Includes Moody's, S&P, Fitch and Duff & Phelps.

Offered Price. See also "Ask Price."

**Open Market Operations.** Federal Reserve monetary policy tactic entailing the purchase or sale of government securities in the open market by the Federal Reserve System from and to primary dealers in order to influence the money supply, credit conditions, and interest rates.

Par Value. Face value, stated value or maturity value of a security.

**Physical Delivery.** Delivery of readily available underlying assets at contract maturity.

**Portfolio.** Collection of securities and investments held by an investor.

**Premium.** The amount by which a bond or other financial instrument sells above its face value. See also Discount."

**Primary Dealer.** Any of a group of designated government securities dealers designated by to the Federal Reserve Bank of New York. Primary dealers can buy and sell government securities directly with the Fed. Primary dealers also submit daily reports of market activity and security positions held to the Fed and are subject to its informal oversight. Primary dealers are considered the largest players in the U.S. Treasury securities market.

**Prime Paper.** Commercial paper of high quality. Highest rated paper is A-1+/A-1 by S&P and P-1 by Moody's.

Principal. Face value of a financial instrument on which interest accrues. May be less than par value if some

principal has been repaid or retired. For a transaction, principal is par value times price and includes any premium or discount.

**Prudent Investor Standard.** Standard that requires that when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. More stringent than the "prudent person" standard as it implies a level of knowledge commensurate with the responsibility at hand.

Qualified Public Depository - Per Florida Statute 280, means any bank, saving bank or savings association that:

- 1. Is organized and exists under the laws of the United States, the laws of this state or any other state or territory of the United States;
- 2. Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.
- 3. Has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss.1811 seq.
- 4. Meets all requirements of F.S. 280
- 5. Has been designed by the Treasurer as a qualified public depository.

**Range Note.** A type of structured note that accrues interest daily at a set coupon rate that is tied to an index. Most range notes have two coupon levels; a higher accrual rate for the period the index is within a designated range, the lower accrual rate for the period that the index falls outside the designated range. This lower rate may be zero and may result in zero earnings.

**Rate of Return.** Amount of income received from an investment, expressed as a percentage of the amount invested.

Realized Gains (Losses). The difference between the sale price of an investment and its book value. Gains/losses are "realized" when the security is actually sold, as compared to "unrealized" gains/losses which are based on current market value. See "Unrealized Gains (Losses)."

Reference Bills: FHLMC's short-term debt program created to supplement its existing discount note program by offering issues from one month through one year, auctioned on a weekly or on an alternating four-week basis (depending upon maturity) offered in sizeable volumes (\$1 billion and up) on a cycle of regular, standardized issuance. Globally sponsored and distributed, Reference Bill issues are intended to encourage active trading and market-making and facilitate the development of a term repo market. The program was designed to offer predictable supply, pricing transparency and liquidity, thereby providing alternatives to U.S. Treasury bills. FHLMC's Reference Bills are unsecured general corporate obligations. This program supplements the corporation's existing discount note program. Issues under the Reference program constitute the same credit standing as other FHLMC discount notes; they simply add organization and liquidity to the short-term Agency discount note market.

**Reference Notes:** FHLMC's intermediate-term debt program with issuances of 2, 3, 5, 10 and 30-year maturities. Initial issuances range from \$2 - \$6 billion with re-openings ranging \$1 - \$4 billion.

The notes are high-quality bullet structures securities that pay interest semiannually. Issues under the Reference program constitute the same credit standing as other FHLMC notes; they simply add organization and liquidity to the intermediate- and long-term Agency market.

Repurchase Agreement (Repo). A short-term investment vehicle where an investor agrees to buy securities from a counterparty and simultaneously agrees to resell the securities back to the counterparty at an agreed

upon time and for an agreed upon price. The difference between the purchase price and the sale price represents interest earned on the agreement. In effect, it represents a collateralized loan to the investor, where the securities are the collateral. Can be DVP, where securities are delivered to the investor's custodial bank, or "tri-party" where the securities are delivered to a third party intermediary. Any type of security can be used as "collateral," but only some types provide the investor with special bankruptcy protection under the law. Repos should be undertaken only when an appropriate BMA approved master repurchase agreement is in place.

**Reverse Repurchase Agreement (Reverse Repo).** A repo from the point of view of the original seller of securities. Used by dealers to finance their inventory of securities by essentially borrowing at short-term rates. Can also be used to leverage a portfolio and in this sense, can be considered risky if used improperly.

**Safekeeping.** Service offered for a fee, usually by financial institutions, for the holding of securities and other valuables. Safekeeping is a component of custody services.

Secondary Market. Markets for the purchase and sale of any previously issued financial instrument.

**Securities Lending.** An arrangement between and investor and a custody bank that allows the custody bank to "loan" the investors investment holdings, reinvest the proceeds in permitted investments, and shares any profits with the investor. Should be governed by a securities lending agreement. Can increase the risk of a portfolio in that the investor takes on the default risk on the reinvestment at the discretion of the custodian.

**Sinking Fund.** A separate accumulation of cash or investments (including earnings on investments) in a fund in accordance with the terms of a trust agreement or indenture, funded by periodic deposits by the issuer (or other entity responsible for debt service), for the purpose of assuring timely availability of moneys for payment of debt service. Usually used in connection with term bonds.

**Spread.** The difference between the price of a security and similar maturity U.S. Treasury investments, expressed in percentage terms or basis points. A spread can also be the absolute difference in yield between two securities. The securities can be in different markets or within the same securities market between different credits, sectors, or other relevant factors.

Standard & Poor's. One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

STRIPS (Separate Trading of Registered Interest and Principal of Securities). Acronym applied to U.S. Treasury securities that have had their coupons and principal repayments separated into individual zero-coupon Treasury securities. The same technique and "strips" description can be applied to non-Treasury securities (e.g. FNMA strips).

**Structured Notes.** Notes that have imbedded into their structure options such as step-up coupons or derivative-based returns.

Swap. Trading one asset for another.

**TAP Notes:** Federal Agency notes issued under the FHLB TAP program. Launched in 6/99 as a refinement to the FHLB bullet bond auction process. In a break from the FHLB's traditional practice of bringing numerous small issues to market with similar maturities, the TAP Issue Program uses the four most common maturities and reopens them up regularly through a competitive auction. These maturities (2, 3, 5 and 10 year) will remain open for the calendar quarter, after which they will be closed and a new series of TAP issues will be opened to replace them. This reduces the number of separate bullet bonds issued, but generates enhanced awareness and liquidity in the marketplace through increased issue size and secondary market volume.

Tennessee Valley Authority (TVA). One of the large Federal Agencies. A wholly owned corporation of the United States government that was established in 1933 to develop the resources of the Tennessee Valley region in order to strengthen the regional and national economy and the national defense. Power operations are separated from non-power operations. TVA securities represent obligations of TVA, payable solely from TVA's net power proceeds, and are neither obligations of nor guaranteed by the United States. TVA is currently authorized to issue debt up to \$30 billion. Under this authorization, TVA may also obtain advances from the U.S.

Treasury of up to \$150 million. Frequent issuer of discount notes, agency notes and callable agency securities.

**Total Return.** Investment performance measured over a period of time that includes coupon interest, interest on interest, and both realized and unrealized gains or losses. Total return includes, therefore, any market value appreciation/depreciation on investments held at period end.

**Treasuries.** Collective term used to describe debt instruments backed by the U.S. Government and issued through the U.S. Department of the Treasury. Includes Treasury bills, Treasury notes, and Treasury bonds. Also a benchmark term used as a basis by which the yields of non-Treasury securities are compared (e.g., "trading at 50 basis points over Treasuries").

**Treasury Bills (T-Bills).** Short-term direct obligations of the United States Government issued with an original term of one year or less. Treasury bills are sold at a discount from face value and do not pay interest before maturity. The difference between the purchase price of the bill and the maturity value is the interest earned on the bill. Currently, the U.S. Treasury issues 4-week, 13-week and 26-week T-Bills

**Treasury Bonds.** Long-term interest-bearing debt securities backed by the U.S. Government and issued with maturities of ten years and longer by the U.S. Department of the Treasury. The Treasury stopped issuing Treasury Bonds in August 2001.

**Treasury Notes.** Intermediate interest-bearing debt securities backed by the U.S. Government and issued with maturities ranging from one to ten years by the U.S. Department of the Treasury. The Treasury currently issues,2-year, 5-year and 10-year Treasury Notes.

**Trustee.** A bank designated by an issuer of securities as the custodian of funds and official representative of bondholders. Trustees are appointed to insure compliance with the bond documents and to represent bondholders in enforcing their contract with the issuer.

**Uniform Net Capital Rule.** SEC regulation 15C3-1 that outlines the minimum net capital ratio (ratio of indebtedness to net liquid capital) of member firms and non-member broker/dealers.

**Unrealized Gains (Losses).** The difference between the market value of an investment and its book value. Gains/losses are "realized" when the security is actually sold, as compared to "unrealized" gains/losses which are based on current market value. See also "Realized Gains (Losses)."

**Variable-Rate Security.** A bond that bears interest at a rate that varies over time based on a specified schedule of adjustment (e.g., daily, weekly, monthly, semi-annually or annually). See also "Floating Rate Note."

Weighted Average Maturity (or just "Average Maturity"). The average maturity of all securities and investments of a portfolio, determined by multiplying the par or principal value of each security or investment by its maturity (days or years), summing the products, and dividing the sum by the total principal value of the portfolio. A simple measure of risk of a fixed-income portfolio.

Weighted Average Maturity to Call. The average maturity of all securities and investments of a portfolio, adjusted to substitute the first call date per security for maturity date for those securities with call provisions.

Yield Curve. A graphic depiction of yields on like securities in relation to remaining maturities spread over a time line. The traditional yield curve depicts yields on U.S. Treasuries, although yield curves exist for Federal Agencies and various credit quality corporates as well. Yield curves can be positively sloped (normal) where longer-term investments have higher yields, or "inverted" (uncommon) where longer-term investments have lower yields than shorter ones.

**Yield to Call (YTC).** Same as "Yield to Maturity," except the return is measured to the first call date rather than the maturity date. Yield to call can be significantly higher or lower than a security's yield to maturity.

Yield to Maturity (YTM). Calculated return on an investment, assuming all cash flows from the security are reinvested at the same original yield. Can be higher or lower than the coupon rate depending on market rates and whether the security was purchased at a premium or discount. There are different conventions for

calculating YTM for various types of securities.

**Yield.** There are numerous methods of yield determination. In this glossary, see also "Current Yield," "YieldCurve," "Yield to Call" and "Yield to Maturity."

# Attachment B Investment Pool/Fund Questionnaire

- 1. A description of eligible investment securities, and a written statement of investment policy and objectives.
- 2. A description of interest calculations and how it is distributed, and how gains and losses are treated.
- 3. A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.
- 4. A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.
- 5. A schedule for receiving statements and portfolio listings.
- 6. Are reserves, retained earnings, etc. utilized by the pool/fund?
- 7. A fee schedule, and when and how is it assessed.
- 8. Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?

# Attachment C Charter School Investment Policy Attached as a reference



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# Investment Policy <u>Cape Coral Charter School Authority</u>

# I. PURPOSE

The purpose of this policy is to set forth the investment objectives and parameters for the management of public funds of the Cape Coral Charter School Authority (hereinafter "Charter School"). These policies are designed to ensure the prudent management of public funds, the availability of operating and capital funds when needed, and an investment return competitive with comparable funds and financial market indices.

#### II. SCOPE

In accordance with Section 218.415, Florida Statutes, this investment policy applies to all cash and investments held or controlled by the Charter School.

# III. INVESTMENT OBJECTIVES

# Safety of Principal

The foremost objective of this investment program is the safety of the principal of those funds within the portfolios. Investment transactions shall seek to keep capital losses at a minimum, whether they are from securities defaults or erosion of market value. To attain this objective, diversification is required in order that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.

# Maintenance of Liquidity

The portfolios shall be managed in such a manner that funds are available to meet reasonably anticipated cash flow requirements in an orderly manner. Periodical cash flow analyses will be completed in order to ensure that the portfolios are positioned to provide sufficient liquidity.

# Return on Investment

Investment portfolios shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of least importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed.

# IV. DELEGATION OF AUTHORITY

The responsibility for providing oversight and direction in regard to the management of the investment program resides with the Charter School Superintendent (Superintendent). The daily management responsibility for all funds in the investment program and investment transactions is delegated to the City of Cape Coral's Financial Services Director (Financial Services Director). The Financial Services Director shall maintain written procedures for the operation of the investment portfolio and a system of internal accounting and administrative controls to regulate the activities of employees. The Charter School may employ an Investment Advisor to assist in managing some of the Charter School's portfolios. Such Investment Advisor must be registered under the Investment Advisors Act of 1940.

# V. STANDARDS OF PRUDENCE

The standard of prudence to be used by investment officials shall be the "Prudent Person" standard and shall be applied in the context of managing the overall investment program. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for individual security's credit risk or market price changes, provided deviations from expectation are reported to the City Manager in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy. The "Prudent Person" rule states the following:

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived from the investment.

While the standard of prudence to be used by investment officials who are officers or employees is the "Prudent Person" standard, any person or firm hired or retained to invest, monitor, or advise concerning these assets shall be held to the higher standard of "Prudent Expert". The standard shall be that in investing and reinvesting moneys and in acquiring, retaining, managing, and disposing of investments of these funds, the Investment Advisor shall exercise: the judgment, care, skill, prudence, and diligence under the circumstances then prevailing, which persons of prudence, discretion, and intelligence, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the funds, so as to minimize the risk, considering the probable income as well as the probable safety of their capital.

#### VI. ETHICS AND CONFLICTS OF INTEREST

Employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Also, employees involved in the investment process shall disclose to the Superintendent and the Charter School Authority Board any material financial interests in financial institutions that conduct business with the Charter School, and they shall further disclose any material personal financial/investment positions that could be related to the performance of the Charter School's investment program.

#### VII. INTERNAL CONTROLS AND INVESTMENT PROCEDURES

The Financial Services Director shall establish a system of internal controls and operational procedures that are in writing and made a part of the Charter School's operational procedures. The internal controls should be designed to prevent losses of funds, which might arise from fraud, employee error, and misrepresentation by third parties, or imprudent actions by employees. The written procedures should include reference to safekeeping, repurchase agreements, the separation of transaction authority from accounting and recordkeeping, wire transfer agreements, banking service contracts and collateralization. No person may engage in an investment transaction except as authorized under the terms of this policy.

Independent auditors as a normal part of the annual financial audit to the Charter School shall conduct a review of the system of internal controls to ensure compliance with policies and procedures.

#### VIII. CONTINUING EDUCATION

The City of Cape Coral Financial Services Director, Deputy Financial Services Director, and other appropriate staff shall annually complete 8 hours of continuing education in subjects or courses of study related to investment practices and products in accordance with Florida Statute 218.415.

#### IX. AUTHORIZED INVESTMENT INSTITUTIONS AND DEALERS

Authorized Charter School staff shall only purchase securities from financial institutions, which are qualified as public depositories by the Chief Financial Officer of the State of Florida; institutions designated as "Primary Dealers" by the Federal Reserve Bank of New York, direct issuers of commercial paper and bankers' acceptances or approved non-primary securities dealers.

The Charter School's Investment Advisor(s) shall utilize and maintain its own list of approved primary and non-primary dealers.

All approved non-primary securities dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule) must provide the following information prior to executing investment

trades with the Charter School:

- 1. Annual financial statement, as well as most recent quarterly statement.
- 2. Regulatory history, through either the Office of the Comptroller of the Currency for dealer banks, or the FINRA for securities firms.
- 3. Statement of any pending lawsuits materially affecting the firm's business.

Authorized Charter School staff shall only enter into repurchase agreements with financial institutions that are state qualified public depositories and primary dealers as designated by the Federal Reserve Bank of New York.

#### X. MATURITY AND LIQUIDITY REQUIREMENTS

To the extent possible, an attempt will be made to match investment maturities with known cash needs and anticipated cash flow requirements. Investments of current operating funds shall have maturities of no longer than twenty-four (24) months.

#### XI. COMPETITIVE SELECTION OF INVESTMENT INSTRUMENTS

After the Financial Services Director, or Designee, or the Investment Advisor, has determined the approximate maturity date based on cash flow needs and market conditions and has analyzed and selected one or more optimal types of investments, a minimum of three (3) qualified banks and/or approved broker/dealers must be contacted and asked to provide bids/offers on securities unless multiple bids are not feasible or appropriate based on market conditions. Bids will be held in confidence until the bid best deemed to meet the investment objectives is determined and selected.

However, if obtaining bids/offers are not feasible and appropriate, securities may be purchased utilizing the comparison to current market price method on an exception basis. Acceptable current market price providers include, but are not limited to:

- 1. Telerate Information System
- 2. Bloomberg Information Systems
- 3. Wall Street Journal or a comparable nationally recognized financial publication providing daily market pricing.
- 4. Daily market pricing provided by the City's custodian or their correspondent institutions

The Financial Services Director, the Deputy Financial Services Director, and/or the Investment Advisor shall utilize the competitive bid process to select the securities to be purchased or sold. Selection by comparison to a current market price, as indicated above, shall only be utilized when, in judgment of the Financial Services Director, the Deputy Financial Services Director, and/or the Investment Advisor, competitive bidding would inhibit the selection process.

Examples of when this method may be used include:

- 1. When time constraints due to unusual circumstances preclude the use of the competitive bidding process
- 2. When no active market exists for the issue being traded due to the age or depth of the issue
- 3. When a security is unique to a single dealer, for example, a private placement
- 4. When the transaction involves new issues or issues in the "when issued" market
- 5. Overnight sweep repurchase agreements will not be bid, but may be placed with the City's depository bank relating to the demand account for which the repurchase agreement was purchased.

#### XII. AUTHORIZED INVESTMENTS AND PORTFOLIO COMPOSITION

Investments should be made subject to the cash flow needs and such cash flows are subject to revisions as

market conditions and the Charter School's needs change. However, when the invested funds are needed in whole or in part for the purpose originally intended or for more optimal investments, the Financial Services Director or Deputy Financial Services Director may sell the investment at the then-prevailing market price and place the proceeds into the proper account at the Charter School's custodian.

The following are the investment requirements and allocation limits on security types, issuers, and maturities as established by the Charter School. The Financial Services Director or the Deputy Financial Services Director shall have the option to further restrict investment percentages from time to time based on market conditions, risk, and diversification investment strategies. The percentage allocations requirements for investment types and issuers are calculated based on the original cost of each investment. Investments not listed in this policy are prohibited.

Security Type	Minimum Rating Requirement	Maturity Limits	Maximum Allocation Limit	Maximum Issuer Limit
Florida PRIME	AAAm	N/A	75%	N/A
United States Government Securities	N/A	2 Years	100%	N/A
United States Government Agencies (full	N/A	2 Years	50%	25%
faith and credit of the United States				
Government)				
Federal Instrumentalities (United States	AAA	2 Years	75%	25%
Government Sponsored Enterprises ("GSE")				
which are non-full faith and credit).*				
Non-Negotiable Interest Bearing Checking or	AAA	1 Years	100%	N/A
Savings Accounts				
Commercial Paper	P-1/A-1	270 Days	25%	15%
Bankers' Acceptances	P-1/A-1	180 Days	25%	15%
Registered Investment Companies (Money	AAAm	N/A	100%	N/A
Market Mutual Funds)				
Intergovernmental Investment Pool	AAAm	N/A	75%	N/A

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#### A. The Florida PRIME

#### 5. Investment Authorization

City may invest in the Florida PRIME. Any investment with the Florida PRIME will be evaluated with the same criteria as Money Market Mutual Funds, detailed in section J.

#### 6. Portfolio Composition

A maximum of seventy-five (75%) of available funds may be invested in the Florida PRIME.

#### 7. Rating Requirements

The Florida PRIME shall be rated "AAAm by Standard & Poor's or the equivalent by another rating agency.

#### 8. Due Diligence Requirements

A thorough investigation of the Florida PRIME is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Investment Advisor that will contain a list of due diligence considerations that deal with the major aspects of any investment pool/fund. A current prospectus or equivalent documentation, including an Investment Policy, Financial Statements, and Portfolio Holdings must be obtained.

#### B. United States Government Securities

#### 1. Purchase Authorization

The City may invest in negotiable direct obligations, or obligations the principal and interest of which are unconditionally guaranteed by the United States Government. Such securities will include, but not be limited to the following:

Cash Management Bills

Treasury Securities – State and Local Government Series ("SLGS")

Treasury Bills

**Treasury Notes** 

**Treasury Bonds** 

Treasury Strips

#### 2. Portfolio Composition

A maximum of 100% of available funds may be invested in the United States Government Securities.

#### 3. Maturity Limitations

The maximum length to maturity of any direct investment in the United States Government Securities is two (2) years from the date of purchase.

#### C. United States Government Agencies

#### 1. Purchase Authorization

The City may invest in bonds, debentures, notes or callables issued or guaranteed by United States Government agencies, provided such obligations are backed by the full faith and credit of the United States Government. Such securities will include, but not be limited to the following:

Government National Mortgage Association

Direct obligations and mortgage pass through securities

United States Export – Import Bank

-Direct obligations or fully guaranteed certificates of beneficial ownership

Farmer Home Administration

-Certificates of beneficial ownership

Federal Financing Bank

-Discount notes, notes and bonds

Federal Housing Administration Debentures

General Services Administration

United States Maritime Administration Guaranteed

-Title XI Financing

New Communities Debentures

-United States Government guaranteed debentures

United States Public Housing Notes and Bonds

-United States Government guaranteed public housing notes and bonds

United States Department of Housing and Urban Development

-Project notes and local authority bonds

#### 2. Portfolio Composition

A maximum of 50% of available funds may be invested in United States Government agencies.

#### 3. Limits on Individual Issuers

A maximum of 25% of available funds may be invested in individual United States Government agencies.

#### 4. Maturity Limitations

The maximum length to maturity for an investment in any United States Government agency security is two (2) years from the date of purchase.

#### D. Federal Instrumentalities (United States Government sponsored agencies)

#### 1. Purchase Authorization

The City may invest in bonds, debentures, notes or callables issued or guaranteed by United States Government sponsored agencies (Federal Instrumentalities) which are non-full faith and credit agencies limited to the following:

Federal Farm Credit Bank (FFCB)

Federal Home Loan Bank or its district banks (FHLB)

Federal National Mortgage Association (FNMA)

Federal Agricultural Mortgage Corporation (Farmer Mac)

Federal Home Loan Mortgage Corporation (Freddie-Macs) including Federal -

Home Loan Mortgage Corporation participation certificates

#### 2. Portfolio Composition

A maximum of 75% of available funds may be invested in Federal Instrumentalities.

#### 3. Limits on Individual Issuers

A maximum of 25% of available funds may be invested in any one issuer.

#### 4. Maturity Limitations

The maximum length to maturity for an investment in any Federal Instrumentality security is two (2) years from the date of purchase.

#### E. Commercial Paper

#### 1. Purchase Authorization

The City may invest in commercial paper of any company organized and operating in the United States that is rated, at the time of purchase, "Prime-1" by Moody's and "A-1" by Standard & Poor's (prime commercial paper). If the commercial paper is backed by a letter of credit ("LOC"), the long-term debt of the LOC provider must be rated "A" or better by at least two nationally recognized rating agencies.

#### 2. Portfolio Composition

A maximum of 25% of available funds may be directly invested in prime commercial paper.

#### 3. Limits on Individual Issuers

A maximum of 15% of available funds may be invested with any one issuer.

#### 4. Maturity Limitations

The maximum length to maturity for prime commercial paper shall be 270 days from the date of purchase.

#### F. Bankers' Acceptances

#### 1. Purchase Authorization

The City may invest in Bankers' Acceptances issued by a domestic bank or a federally chartered domestic office of a foreign bank, which is eligible for purchase by the Federal Reserve System, at the time of purchase, the short-term paper is rated, at a minimum, "P-1" by Moody's Investors Services and "A-1" Standard & Poor's.

#### 2. Portfolio Composition

A maximum of 25% of available funds may be directly invested in Bankers' Acceptances

#### 3. Limits on Individual Issuers

A maximum of 15% of available funds may be invested with any one issuer.

#### 4. Maturity Limitations

The maximum length to maturity for Bankers' Acceptances shall be 180 days from the date of purchase.

#### G. Registered Investment Companies (Mutual Funds)

#### 1. Investment Authorization

The City may invest in shares in open-end, no-load provided such funds are registered under the Federal Investment Company Act of 1940 and operated in accordance with 17 C.F.R. § 270.2a-7. In addition, the Financial Services Director may invest in other types of mutual funds provided such funds are registered under the Federal Investment Company Act of 1940, invested exclusively in the securities specifically permitted under this investment policy, and are similarly diversified.

#### 2. Portfolio Composition

A maximum of 100% of available funds may be invested in mutual funds.

#### 3. Rating Requirements

The mutual funds shall be rated "AAAm" by Standard & Poor's or the equivalent by another rating agency.

#### 4. Due Diligence Requirements

A thorough review of any investment mutual fund is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Financial Services Director that will contain a list of questions that covers the major aspects of any investment pool/fund.

#### H. Intergovernmental Investment Pools

#### 1. Investment Authorization

The City may invest in intergovernmental investment pools that are authorized pursuant to the Florida Inter-local Cooperation Act, as provided in Section 163.01, Florida Statutes and provided that said funds contain no derivatives.

#### 2. Portfolio Composition

A maximum of 75% of available funds may be invested in intergovernmental investment pools.

#### 3. Rating Requirements

The investment pool shall be rated "AAAm" by Standard & Poor's or the equivalent by another rating agency.

#### 4. Due Diligence Requirements

A thorough review of any investment pool/fund is required prior to investing, and on a continual basis. There shall be a questionnaire developed by the Financial Services Director that will contain a list of questions that covers the major aspects of any investment pool/fund.

#### XIII. DERIVATIVES AND REVERSE REPURCHASE AGREEMENTS

Investment in any derivative products or the use of reverse repurchase agreements requires specific Charter School Authority Board approval prior to their use. If the Charter School Authority Board approves the use of derivative products, the City of Cape Coral Financial Services Director shall develop sufficient understanding of the derivative products and have the expertise to manage them. A "derivative" is defined as a financial instrument the value of which depends on, or is derived from, the value of one or more underlying assets or indices or asset values. If the Charter School Authority Board approves the use of reverse repurchase agreements or other forms of leverage, the investment shall be limited to transactions in which the proceeds are intended to provide liquidity and for which the City of Cape Coral Financial Services Director has sufficient resources and expertise to manage them.

#### XIV. PERFORMANCE MEASUREMENTS

In order to assist in the evaluation of the portfolio's performance, the Charter School will use performance benchmark for the short-term portfolio. The use of benchmark will allow the Charter School to measure its returns against other investors in the same markets.

A. For the short-term portfolio (less than 24 months maturity), an appropriate benchmark will have a duration and asset mix that approximates the portfolio and will be utilized as a benchmark, such as the S&P Rated GIP Index, to be compared to the portfolio's net book value rate of return.

#### XV. REPORTING

The Financial Services Director shall provide the Charter School Superintendent with annually investment reports which shall then be distributed to the Charter School Authority Board. Schedules in the annually report should include the following:

- A. A listing of individual securities held at the end of the reporting period
- B. Percentage of available funds represented by each investment type
- C. Coupon, discount or earning rate
- D. Average life or duration and final maturity of all investments
- E. Par value and market value

On an annual basis, the Financial Services Director shall provide to the Charter School Superintendent a written report on all invested funds which shall then be distributed to the Charter Authority Board. The annual report shall provide all, but not limited to, the following: a complete list of all invested funds, name or type of security in which the funds are invested, the amount invested, the maturity date, income earned, the book value, the market value and the yield on each investment.

The annual report will show performance on both a book value and total rate of return basis and will compare the results to the above-stated performance benchmarks. All investments shall be reported at fair

value per GASB standards. The audited annual financial statement meets this requirement. This report shall be available to the public.

#### XVI. THIRD-PARTY CUSTODIAL AGREEMENTS

Securities, with the exception of certificates of deposits, shall be held with a third party custodian; and all securities purchased by, and all collateral obtained by; the Charter School should be properly designated as an asset of the Charter School. The securities must be held in an account separate and apart from the assets of the financial institution. A third party custodian is defined as any bank depository chartered by the Federal Government, the State of Florida, or any other state or territory of the United States which has a branch or principal place of business in the State of Florida as defined in Section 658.12, Florida Statutes, or by a national association organized and existing under the laws of the United States which is authorized to accept and execute trusts and which is doing business in the State of Florida. Certificates of deposits will be placed in the provider's safekeeping department for the term of the deposit.

The custodian shall accept transaction instructions only from those persons who have been duly authorized by the Financial Services Director and which authorization has been provided, in writing, to the custodian. Only a duly authorized person shall be permitted to in whole or in part withdraw securities from the custodian.

The custodian shall provide the Financial Services Director with safekeeping receipts that provide detailed information on the securities held by the custodian. Security transactions between a broker/dealer and the custodian involving the purchase or sale of securities by transfer of money or securities must be made on a "delivery vs. payment" basis, if applicable, to ensure that the custodian will have the security or money, as appropriate, in hand at the conclusion of the transaction. Securities held as collateral shall be held free and clear of any liens.

Board

#### XVII. INVESTMENT POLICY ADOPTION

The investment policy shall be adopted by a Charter School ordinance. The City of Cape Coral Financial Services Director shall review the policy annually and the Charter School Authority Board shall approve any modification made thereto.

APPROVED AND ADOPTED BY THE CAPE CORAL CHARTER SCHOOL AUTHORITY BOARD ON November 14, 2017

Kathleen Faul-Evans

, Secretary to the Charter School

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APPROVED

NOV 1 4 2017

CITY OF CAPE CORAL CHARTER SCHOOL AUTHORITY

### Attachment A <u>Glossary of Cash and Investment Management Terms</u>

Accrued Interest. Interest earned but which has not yet been paid or received.

Agency. See "Federal Agency Securities."

Ask Price. Price at which a broker/dealer offers to sell a security to an investor, also known as "offered price."

Asset Backed Securities (ABS). A fixed-income security backed by notes or receivables against assets other than real estate. Generally issued by special purpose companies that "own" the assets and issue the ABS. Examples include securities backed by auto loans, credit card receivables, home equity loans, manufactured housing loans, farm equipment loans and aircraft leases.

**Average Life.** The average length of time that an issue of serial bonds and/or term bonds with a mandatory sinking fund feature is expected to be outstanding.

Bankers' Acceptance (BA's). A draft or bill of exchange drawn upon and accepted by a bank. Frequently used to finance shipping of international goods. Used as a short-term credit instrument, bankers' acceptances are traded at a discount from face value as a money market instrument in the secondary market on the basis of the credit quality of the guaranteeing bank.

Basis Point. One hundredth of one percent, or 0.01%. Thus 1% equals 100 basis points.

**Bearer Security.** A security whose ownership is determined by the holder of the physical security. Typically, there is no registration on the issuer's books. Title to bearer securities is transferred by delivery of the physical security or certificate. Also known as "physical securities."

Benchmark Bills: In November 1999, FNMA introduced its Benchmark Bills program, a short-term debt securities issuance program to supplement its existing discount note program. The program includes a schedule of larger, weekly issues in three- and six-month maturities and biweekly issues in one-year for Benchmark Bills. Each issue is brought to market via a Dutch (single price) auction. FNMA conducts a weekly auction for each Benchmark Bill maturity and accepts both competitive and non-competitive bids through a web based auction system. This program is in addition to the variety of other discount note maturities, with rates posted on a daily basis, which FNMA offers. FNMA's Benchmark Bills are unsecured general obligations that are issued in book- entry form through the Federal Reserve Banks. There are no periodic payments of interest on Benchmark Bills, which are sold at a discount from the principal amount and payable at par at maturity. Issues under the Benchmark program constitute the same credit standing as other FNMA discount notes; they simply add organization and liquidity to the short-term Agency discount note market.

Benchmark Notes/Bonds: Benchmark Notes and Bonds are a series of FNMA "bullet" maturities (non-callable) issued according to a pre-announced calendar. Under its Benchmark Notes/Bonds program, 2, 3, 5, 10 and 30- year maturities are issued each quarter. Each Benchmark Notes new issue has a minimum size of \$4 billion, 30- year new issues having a minimum size of \$1 billion, with re-openings based on investor demand to further enhance liquidity. The amount of non-callable issuance has allowed FNMA to build a yield curve in Benchmark Notes and Bonds in maturities ranging from 2 to 30 years. The liquidity emanating from these large size issues has facilitated favorable financing opportunities through the development of a liquid overnight and term repo market. Issues under the Benchmark program constitute the same credit standing as other FNMA issues; they simply add organization and liquidity to the intermediate- and long-term Agency market.

**Benchmark.** A market index used as a comparative basis for measuring the performance of an investment portfolio. A performance benchmark should represent a close correlation to investment guidelines, risk tolerance and duration of the actual portfolio's investments.

**Bid Price.** Price at which a broker/dealer offers to purchase a security from an investor.

Bond Market Association (BMA). The bond market trade association representing the largest securities markets

in the world. In addition to publishing a Master Repurchase Agreement, widely accepted as the industry standard document for Repurchase Agreements, the BMA also recommends bond market closures and early closes due to holidays.

**Bond.** Financial obligation for which the issuer promises to pay the bondholder (the purchaser or owner of the bond) a specified stream of future cash flows, including periodic interest payments and a principal repayment.

**Book Entry Securities.** Securities that are recorded in a customer's account electronically through one of the financial markets electronic delivery and custody systems, such as the Fed Securities wire, DTC and PTC (as opposed to bearer or physical securities). The trend is toward a certificate-free society in order to cut down on paperwork and to diminish investors' concerns about the certificates themselves. The vast majority of securities are now book entry securities.

**Book Value.** The value at which a debt security is reflected on the holder's records at any point in time. Book value is also called "amortized cost" as it represents the original cost of an investment adjusted for amortization of premium or accretion of discount. Also called "carrying value." Book value can vary over time as an investment approaches maturity and differs from "market value" in that it is not affected by changes in market interest rates.

**Broker/Dealer.** A person or firm transacting securities business with customers. A "broker" acts as an agent between buyers and sellers, and receives a commission for these services. A "dealer" buys and sells financial assets from its own portfolio. A dealer takes risk by owning inventory of securities, whereas a broker merely matches up buyers and sellers. See also "Primary Dealer."

**Bullet Notes/Bonds.** Notes or bonds that have a single maturity date and are non-callable.

Call Date. Date at which a call option may be or is exercised.

Call Option. The right, but not the obligation, of an issuer of a security to redeem a security at a specified value and at a specified date or dates prior to its stated maturity date. Most fixed-income calls are a par, but can be at any previously established price. Securities issued with a call provision typically carry a higher yield than similar securities issued without a call feature. There are three primary types of call options (1) European - one-time calls, (2) Bermudan - periodically on a predetermined schedule (quarterly, semi-annual, annual), and (3) American - continuously callable at any time on or after the call date. There is usually a notice period of at least 5 business days prior to a call date.

**Callable Bonds/Notes.** Securities, which contain an imbedded call option giving the issuer, the right to redeem the securities prior to maturity at a predetermined price and time.

Certificate of Deposit (CD). Bank obligation issued by a financial institution generally offering a fixed rate of return (coupon) for a specified period of time (maturity). Can be as long as 10 years to maturity, but most CDs purchased by public agencies are one year and under.

**Collateral.** Investment securities or other property that a borrower pledges to secure repayment of a loan, secure deposits of public monies, or provide security for a repurchase agreement.

**Collateralization.** Process by which a borrower pledges securities, property, or other deposits for securing the repayment of a loan and/or security.

Collateralized Mortgage Obligation (CMO). A security that pools together mortgages and separates them into short, medium, and long-term positions (called tranches). Tranches are set up to pay different rates of interest depending upon their maturity. Interest payments are usually paid monthly. In "plain vanilla" CMOs, principal is not paid on a tranche until all shorter tranches have been paid off. This system provides interest and principal in a more predictable manner. A single pool of mortgages can be carved up into numerous tranches each with its own payment and risk characteristics.

Commercial Paper. Short term unsecured promissory note issued by a company or financial institution. Issued

at a discount and matures for par or face value. Usually a maximum maturity of 270 days and given a short-term debt rating by one or more NRSROs.

**Convexity.** A measure of a bond's price sensitivity to changing interest rates. A high convexity indicates greater sensitivity of a bond's price to interest rate changes.

**Corporate Note.** A debt instrument issued by a corporation with a maturity of greater than one year and less than ten years.

**Counterparty.** The other party in a two-party financial transaction. "Counterparty risk" refers to the risk that the other party, to a transaction, will fail in its related obligations. For example, the bank or broker/dealer in a repurchase agreement.

Coupon Rate. Annual rate of interest on a debt security, expressed as a percentage of the bond's face value.

**Current Yield.** Annual rate of return on a bond based on its price. Calculated as (coupon rate / price), but does <u>not</u> accurately reflect a bond's true yield level.

**Custody.** Safekeeping services offered by a bank, financial institution or trust company, referred to as the "custodian." Service normally includes the holding and reporting of the customer's securities, the collection and disbursement of income, securities settlement and market values.

**Dealer.** A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

**Delivery Versus Payment (DVP).** Settlement procedure in which securities are delivered versus payment of cash, but only after cash has been received. Most security transactions, including those through the Fed Securities Wire system and DTC, are done DVP as a protection for both the buyer and seller of securities.

**Depository Trust Company (DTC).** A firm through which members can use a computer to arrange for securities to be delivered to other members without physical delivery of certificates. A member of the Federal Reserve System and owned mostly by the New York Stock Exchange, the Depository Trust Company uses computerized debit and credit entries. Most corporate securities, commercial paper, CDs and BAs clear through DTC.

**Derivatives.** For hedging purposes, common derivatives are options, futures, swaps and swaptions. All Collateralized Mortgage Obligations ("CMOs") are derivatives. (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, or (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities or commodities).

**Derivative Security.** Financial instrument created from, or whose value depends upon, one or more underlying assets or indexes of asset values.

**Designated Bond.** FFCB's regularly issued, liquid, non-callable securities that generally have a 2 or 3 year original maturity. New issues of Designated Bonds are \$1 billion or larger. Re-openings of existing Designated Bond issues are generally a minimum of \$100 million. Designated Bonds are offered through a syndicate of two to six dealers. Twice each month the Funding Corporation announces its intention to issue a new Designated Bond, reopen an existing issue, or to not issue or reopen a Designated Bond. Issues under the Designated Bond program constitute the same credit standing as other FFCB issues; they simply add organization and liquidity to the intermediate- and long-term Agency market.

**Discount Notes.** Unsecured general obligations issued by Federal Agencies at a discount. Discount notes mature at par and can range in maturity from overnight to one year. Very large primary (new issue) and secondary markets.

**Discount Rate.** Rate charged by the system of Federal Reserve Banks on overnight loans to member banks. Changes to this rate are administered by the Federal Reserve and closely mirror changes to the "fed funds rate."

Discount Securities. Non-interest-bearing money market instruments that are issued at discount and redeemed

at maturity for full face value. Examples include: U.S. Treasury Bills, Federal Agency Discount Notes, Bankers' Acceptances and Commercial Paper.

**Discount.** The amount by which a bond or other financial instrument sells below its face value. See also "Premium."

**Diversification.** Dividing investment funds among a variety of security types, maturities, industries and issuers offering potentially independent returns.

**Dollar Price.** A bond's cost expressed as a percentage of its face value. For example, a bond quoted at a dollar price of 95 ½, would have a principal cost of \$955 per \$1,000 of face value.

Duff & Phelps. One of several NRSROs that provide credit ratings on corporate and bank debt issues.

**Duration.** The weighted average maturity of a security's or portfolio's cash flows, where the present values of the cash flows serve as the weights. The greater the duration of a security/portfolio, the greater its percentage price volatility with respect to changes in interest rates. Used as a measure of risk and a key tool for managing a portfolio versus a benchmark and for hedging risk. There are also different kinds of duration used for different purposes (e.g. MacAuley Duration, Modified Duration).

Fannie Mae. See "Federal National Mortgage Association."

**Fed Money Wire.** A computerized communications system that connects the Federal Reserve System with its member banks, certain U. S. Treasury offices, and the Washington D.C. office of the Commodity Credit Corporation. The Fed Money Wire is the book entry system used to transfer cash balances between banks for themselves and for customer accounts.

**Fed Securities Wire.** A computerized communications system that facilitates book entry transfer of securities between banks, brokers and customer accounts, used primarily for settlement of U.S. Treasury and Federal Agency securities.

Fed. See "Federal Reserve System."

**Federal Agency Security.** A debt instrument issued by one of the Federal Agencies. Federal Agencies are considered second in credit quality and liquidity only to U.S. Treasuries.

**Federal Agency.** Government sponsored/owned entity created by the U.S. Congress, generally for the purpose of acting as a financial intermediary by borrowing in the marketplace and directing proceeds to specific areas of the economy considered to otherwise have restricted access to credit markets. The largest Federal Agencies are GNMA, FNMA, FHLMC, FHLB, FFCB, SLMA, and TVA.

**Federal Deposit Insurance Corporation (FDIC).** Federal agency that insures deposits at commercial banks, currently to a limit of \$250,000 per depositor per bank.

Federal Farm Credit Bank (FFCB). One of the large Federal Agencies. A government sponsored enterprise (GSE) system that is a network of cooperatively-owned lending institutions that provides credit services to farmers, agricultural cooperatives and rural utilities. The FFCBs act as financial intermediaries that borrow money in the capital markets and use the proceeds to make loans and provide other assistance to farmers and farm-affiliated businesses. Consists of the consolidated operations of the Banks for Cooperatives, Federal Intermediate Credit Banks, and Federal Land Banks. Frequent issuer of discount notes, agency notes and callable agency securities. FFCB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and agricultural industry. Also issues notes under its "designated note" program.

**Federal Funds (Fed Funds).** Funds placed in Federal Reserve Banks by depository institutions in excess of current reserve requirements, and frequently loaned or borrowed on an overnight basis between depository institutions.

**Federal Funds Rate (Fed Funds Rate).** The interest rate charged by a depository institution lending Federal Funds to another depository institution. The Federal Reserve influences this rate by establishing a "target" Fed Funds rate associated with the Fed's management of monetary policy.

Federal Home Loan Bank System (FHLB). One of the large Federal Agencies. A government sponsored enterprise (GSE) system, consisting of wholesale banks (currently twelve district banks) owned by their member banks, which provides correspondent banking services and credit to various financial institutions, financed by the issuance of securities. The principal purpose of the FHLB is to add liquidity to the mortgage markets. Although FHLB does not directly fund mortgages, it provides a stable supply of credit to thrift institutions that make new mortgage loans. FHLB debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes and callable agency securities. Also issues notes under its "global note" and "TAP" programs.

Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac"). One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides stability and assistance to the secondary market for home mortgages by purchasing first mortgages and participation interests financed by the sale of debt and guaranteed mortgage backed securities. FHLMC debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities and MBS. Also, issues notes under its "reference note" program.

Federal National Mortgage Association (FNMA or "Fannie Mae"). One of the large Federal Agencies. A government sponsored public corporation (GSE) that provides liquidity to the residential mortgage market by purchasing mortgage loans from lenders, financed by the issuance of debt securities and MBS (pools of mortgages packaged together as a security). FNMA debt is not an obligation of, nor is it guaranteed by the U.S. government, although it is considered to have minimal credit risk due to its importance to the U.S. financial system and housing market. Frequent issuer of discount notes, agency notes, callable agency securities and MBS. Also issues notes under its "benchmark note" program.

Federal Reserve Bank. One of the 12 distinct banks of the Federal Reserve System.

Federal Reserve System (the Fed). The independent central bank system of the United States that establishes and conducts the nation's monetary policy. This is accomplished in three major ways: (1) raising or lowering bank reserve requirements, (2) raising or lowering the target Fed Funds Rate and Discount Rate, and (3) in open market operations by buying and selling government securities. The Federal Reserve System is made up of twelve Federal Reserve District Banks, their branches, and many national and state banks throughout the nation. It is headed by the seven member Board of Governors known as the "Federal Reserve Board" and headed by its Chairman.

**Fiscal Agent/Paying Agent.** A bank or trust company that acts, under a trust agreement with a corporation or municipality, in the capacity of general treasurer. The agent performs such duties as making coupon payments, paying rents, redeeming bonds, and handling taxes relating to the issuance of bonds.

**Fitch Investors Service, Inc.** One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

Floating Rate Security (FRN or "floater"). A bond with an interest rate that is adjusted according to changes in an interest rate or index. Differs from variable-rate debt in that the changes to the rate take place immediately when the index changes, rather than on a predetermined schedule. See also "Variable Rate Security."

Freddie Mac. See "Federal Home Loan Mortgage Corporation".

Ginnie Mae. See "Government National Mortgage Association".

**Global Notes:** Notes designed to qualify for immediate trading in both the domestic U.S. capital market and in foreign markets around the globe. Usually large issues that are sold to investors worldwide and therefore

have excellent liquidity. Despite their global sales, global notes sold in the U.S. are typically denominated in U.S. dollars.

Government National Mortgage Association (GNMA or "Ginnie Mae"). One of the large Federal Agencies. Government-owned Federal Agency that acquires, packages, and resells mortgages and mortgage purchase commitments in the form of mortgage-backed securities. Largest issuer of mortgage pass-through securities. GNMA debt is guaranteed by the full faith and credit of the U.S. government (one of the few agencies that are actually full faith and credit of the U.S.).

**Government Securities.** An obligation of the U.S. government, backed by the full faith and credit of the government. These securities are regarded as the highest quality of investment securities available in the U.S. securities market. See "Treasury Bills, Notes, Bonds, and SLGS."

**Government Sponsored Enterprise (GSE).** Privately owned entity subject to federal regulation and supervision, created by the U.S. Congress to reduce the cost of capital for certain borrowing sectors of the economy such as students, farmers, and homeowners. GSEs carry the implicit backing of the U.S. Government, but they are not direct obligations of the U.S. Government. For this reason, these securities will offer a yield premium over U.S. Treasuries. Some consider GSEs to be stealth recipients of corporate welfare. Examples of GSEs include: FHLB, FHLMC, FNMA and SLMA.

**Government Sponsored Enterprise Security.** A security issued by a Government Sponsored Enterprise. Considered Federal Agency Securities.

**Index.** A compilation of statistical data that tracks changes in the economy or in financial markets.

**Interest-Only (IO) STRIP.** A security based solely on the interest payments from the bond. After the principal has been repaid, interest payments stop and the value of the security falls to nothing. Therefore, IOs are considered risky investments. Usually associated with mortgage-backed securities.

**Internal Controls.** An internal control structure ensures that the assets of the entity are protected from loss, theft, or misuse. The internal control structure is designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that 1) the cost of a control should not exceed the benefits likely to be derived and 2) the valuation of costs and benefits requires estimates and judgments by management. Internal controls should address the following points:

- 1. **Control of collusion** Collusion is a situation where two or more employees are working in conjunction to defraud their employer.
- 2. **Separation of transaction authority from accounting and record keeping** By separating the person who authorizes or performs the transaction from the people who record or otherwise account for the transaction, a separation of duties is achieved.
- 3. **Custodial safekeeping** Securities purchased from any bank or dealer including appropriate collateral (as defined by state law) shall be placed with an independent third party for custodial safekeeping.
- 4. Avoidance of physical delivery securities Book-entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.
- 5. Clear delegation of authority to subordinate staff members Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
- 6. Written confirmation of transactions for investments and wire transfers Due to the potential for error and improprieties arising from telephone and electronic transactions, all transactions should be supported by written communications and approved by the appropriate person. Written

communications may be via fax if on letterhead and if the safekeeping institution has a list of authorized signatures.

7. **Development of a wire transfer agreement with the lead bank and third-party custodian** - The designated official should ensure that an agreement will be entered into and will address the following points: controls, security provisions, and responsibilities of each party making and receiving wire transfers.

**Inverse Floater.** A floating rate security structured in such a way that it reacts inversely to the direction of interest rates. Considered risky as their value moves in the opposite direction of normal fixed-income investments and whose interest rate can fall to zero.

**Investment Advisor.** A company that provides professional advice managing portfolios, investment recommendations and/or research in exchange for a management fee.

**Investment Adviser Act of 1940.** Federal legislation that sets the standards by which investment companies, such as mutual funds, are regulated in the areas of advertising, promotion, performance reporting requirements, and securities valuations.

**Investment Grade.** Bonds considered suitable for preservation of invested capital; bonds rated a minimum of Baa3 by Moody's, BBB- by Standard & Poor's, or BBB- by Fitch. Although "BBB" rated bonds are considered investment grade, most public agencies cannot invest in securities rated below "A."

**Liquidity.** Relative ease of converting an asset into cash without significant loss of value. Also, a relative measure of cash and near-cash items in a portfolio of assets. Also, a term describing the marketability of a money market security correlating to the narrowness of the spread between the bids and ask prices.

**Local Government Investment Pool (LGIP).** An investment by local governments in which their money is pooled as a method for managing local funds, (i.e., Florida State Board of Administration's Florida Prime Fund).

Long-Term Core Investment Program. Funds that are not needed within a one year period.

**Market Value.** The fair market value of a security or commodity. The price at which a willing buyer and seller would pay for a security.

**Mark-to-market.** Adjusting the value of an asset to its market value, reflecting in the process unrealized gains or losses.

**Master Repurchase Agreement.** A widely accepted standard agreement form published by the Bond Market Association (BMA) that is used to govern and document Repurchase Agreements and protect the interest of parties in a repo transaction.

Maturity Date. Date on which principal payment of a financial obligation is to be paid.

Medium Term Notes (MTN's). Used frequently to refer to corporate notes of medium maturity (5-years and under). Technically, any debt security issued by a corporate or depository institution with a maturity from 1 to 10 years and issued under an MTN shelf registration. Usually issued in smaller issues with varying coupons and maturities, and underwritten by a variety of broker/dealers (as opposed to large corporate deals issued and underwritten all at once in large size and with a fixed coupon and maturity).

**Money Market.** The market in which short-term debt instruments (bills, commercial paper, bankers' acceptance, etc.) are issued and traded.

Money Market Mutual Fund (MMF). A type of mutual fund that invests solely in money market instruments, such as: U.S. Treasury bills, commercial paper, bankers' acceptances, and repurchase agreements. Money market mutual funds are registered with the SEC under the Investment Company Act of 1940 and are subject "rule 2a-7" which significantly limits average maturity and credit quality of holdings. MMF's are managed to maintain a stable net asset value (NAV) of \$1.00. Many MMFs carry ratings by a NRSRO.

Moody's Investors Service. One of several NRSROs that provide credit ratings on corporate and municipal debt

issues.

Mortgage Backed Securities (MBS). Mortgage-backed securities represent an ownership interest in a pool of mortgage loans made by financial institutions, such as savings and loans, commercial banks, or mortgage companies, to finance the borrower's purchase of a home or other real estate. The majority of MBS are issued and/or guaranteed by GNMA, FNMA and FHLMC. There are a variety of MBS structures, some of which can be very risky and complicated. All MBS have reinvestment risk as actual principal and interest payments are dependent on the payment of the underlying mortgages which can be prepaid by mortgage holders to refinance and lower rates or simply because the underlying property was sold.

**Mortgage Pass-Through Securities.** A pool of residential mortgage loans with the interest and principal distributed to investors on a pro-rata basis. Largest issuer is GNMA.

**Municipal Note/Bond.** A debt instrument issued by a state or local government unit or public agency. The vast majority of municipals are exempt from state and federal income tax, although some non-qualified issues are taxable.

**Mutual Fund.** Portfolio of securities professionally managed by a registered investment company that issues shares to investors. Many different types of mutual funds exist (bond, equity, money fund); all except money market funds operate on a variable net asset value (NAV).

**National Association of Securities Dealers (NASD).** Organization of brokers and dealers who trade securities in the United States, supervised by the SEC, and which provides regulatory exams for industry participants.

**Negotiable Certificate of Deposit (Negotiable CD).** Large denomination CDs (\$100,000 and larger) that are issued in bearer form and can be traded in the secondary market.

**Net Asset Value.** The market value of one share of an investment company, such as a mutual fund. This figure is calculated by totaling a fund's assets which includes securities, cash, and any accrued earnings, subtracting this from the fund's liabilities and dividing this total by the number of shares outstanding. This is calculated once a day based on the closing price for each security in the fund's portfolio. (See below.)

[(Total assets) - (Liabilities)]/(Number of shares outstanding)

**NRSRO.** A "Nationally Recognized Statistical Rating Organization." A designated rating organization that the SEC has deemed a strong national presence in the U.S. NRSROs provide credit ratings on corporate and bank debt issues. Only ratings of a NRSRO may be used for the regulatory purposes of rating. Includes Moody's, S&P, Fitch and Duff & Phelps.

Offered Price. See also "Ask Price."

**Open Market Operations.** Federal Reserve monetary policy tactic entailing the purchase or sale of government securities in the open market by the Federal Reserve System from and to primary dealers in order to influence the money supply, credit conditions, and interest rates.

Par Value. Face value, stated value or maturity value of a security.

Physical Delivery. Delivery of readily available underlying assets at contract maturity.

Portfolio. Collection of securities and investments held by an investor.

**Premium.** The amount by which a bond or other financial instrument sells above its face value. See also Discount."

**Primary Dealer.** Any of a group of designated government securities dealers designated by to the Federal Reserve Bank of New York. Primary dealers can buy and sell government securities directly with the Fed. Primary dealers also submit daily reports of market activity and security positions held to the Fed and are subject to its informal oversight. Primary dealers are considered the largest players in the U.S. Treasury securities market.

Prime Paper. Commercial paper of high quality. Highest rated paper is A-1+/A-1 by S&P and P-1 by Moody's.

**Principal.** Face value of a financial instrument on which interest accrues. May be less than par value if some principal has been repaid or retired. For a transaction, principal is par value times price and includes any premium or discount.

**Prudent Investor Standard.** Standard that requires that when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. More stringent than the "prudent person" standard as it implies a level of knowledge commensurate with the responsibility at hand.

Qualified Public Depository - Per Florida Statute 280, means any bank, saving bank or savings association that:

- 1. Is organized and exists under the laws of the United States, the laws of this state or any other state or territory of the United States;
- 2. Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.
- 3. Has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss.1811 seq.
- 4. Meets all requirements of F.S. 280
- 5. Has been designed by the Treasurer as a qualified public depository.

Range Note. A type of structured note that accrues interest daily at a set coupon rate that is tied to an index. Most range notes have two coupon levels; a higher accrual rate for the period the index is within a designated range, the lower accrual rate for the period that the index falls outside the designated range. This lower rate may be zero and may result in zero earnings.

**Rate of Return.** Amount of income received from an investment, expressed as a percentage of the amount invested.

Realized Gains (Losses). The difference between the sale price of an investment and its book value. Gains/losses are "realized" when the security is actually sold, as compared to "unrealized" gains/losses which are based on current market value. See "Unrealized Gains (Losses)."

Reference Bills: FHLMC's short-term debt program created to supplement its existing discount note program by offering issues from one month through one year, auctioned on a weekly or on an alternating four-week basis (depending upon maturity) offered in sizeable volumes (\$1 billion and up) on a cycle of regular, standardized issuance. Globally sponsored and distributed, Reference Bill issues are intended to encourage active trading and market-making and facilitate the development of a term repo market. The program was designed to offer predictable supply, pricing transparency and liquidity, thereby providing alternatives to U.S. Treasury bills. FHLMC's Reference Bills are unsecured general corporate obligations. This program supplements the corporation's existing discount note program. Issues under the Reference program constitute the same credit standing as other FHLMC discount notes; they simply add organization and liquidity to the short-term Agency discount note market.

**Reference Notes:** FHLMC's intermediate-term debt program with issuances of 2, 3, 5, 10 and 30-year maturities. Initial issuances range from \$2 - \$6 billion with re-openings ranging \$1 - \$4 billion.

The notes are high-quality bullet structures securities that pay interest semiannually. Issues under the Reference program constitute the same credit standing as other FHLMC notes; they simply add organization and liquidity to the intermediate- and long-term Agency market.

Repurchase Agreement (Repo). A short-term investment vehicle where an investor agrees to buy securities from a counterparty and simultaneously agrees to resell the securities back to the counterparty at an agreed upon time and for an agreed upon price. The difference between the purchase price and the sale price represents interest earned on the agreement. In effect, it represents a collateralized loan to the investor, where the securities are the collateral. Can be DVP, where securities are delivered to the investor's custodial bank, or "tri-party" where the securities are delivered to a third party intermediary. Any type of security can be used as "collateral," but only some types provide the investor with special bankruptcy protection under the law. Repos should be undertaken only when an appropriate BMA approved master repurchase agreement is in place.

Reverse Repurchase Agreement (Reverse Repo). A repo from the point of view of the original seller of securities. Used by dealers to finance their inventory of securities by essentially borrowing at short-term rates. Can also be used to leverage a portfolio and in this sense, can be considered risky if used improperly.

**Safekeeping.** Service offered for a fee, usually by financial institutions, for the holding of securities and other valuables. Safekeeping is a component of custody services.

Secondary Market. Markets for the purchase and sale of any previously issued financial instrument.

**Securities Lending.** An arrangement between and investor and a custody bank that allows the custody bank to "loan" the investors investment holdings, reinvest the proceeds in permitted investments, and shares any profits with the investor. Should be governed by a securities lending agreement. Can increase the risk of a portfolio in that the investor takes on the default risk on the reinvestment at the discretion of the custodian.

**Sinking Fund.** A separate accumulation of cash or investments (including earnings on investments) in a fund in accordance with the terms of a trust agreement or indenture, funded by periodic deposits by the issuer (or other entity responsible for debt service), for the purpose of assuring timely availability of moneys for payment of debt service. Usually used in connection with term bonds.

**Spread.** The difference between the price of a security and similar maturity U.S. Treasury investments, expressed in percentage terms or basis points. A spread can also be the absolute difference in yield between two securities. The securities can be in different markets or within the same securities market between different credits, sectors, or other relevant factors.

Standard & Poor's. One of several NRSROs that provide credit ratings on corporate and municipal debt issues.

STRIPS (Separate Trading of Registered Interest and Principal of Securities). Acronym applied to U.S. Treasury securities that have had their coupons and principal repayments separated into individual zero-coupon Treasury securities. The same technique and "strips" description can be applied to non-Treasury securities (e.g. FNMA strips).

**Structured Notes.** Notes that have imbedded into their structure options such as step-up coupons or derivative-based returns.

Swap. Trading one asset for another.

TAP Notes: Federal Agency notes issued under the FHLB TAP program. Launched in 6/99 as a refinement to the FHLB bullet bond auction process. In a break from the FHLB's traditional practice of bringing numerous small issues to market with similar maturities, the TAP Issue Program uses the four most common maturities and reopens them up regularly through a competitive auction. These maturities (2, 3, 5 and 10 year) will remain open for the calendar quarter, after which they will be closed and a new series of TAP issues will be opened to replace them. This reduces the number of separate bullet bonds issued, but generates enhanced awareness and liquidity in the marketplace through increased issue size and secondary market volume.

Tennessee Valley Authority (TVA). One of the large Federal Agencies. A wholly owned corporation of the United States government that was established in 1933 to develop the resources of the Tennessee Valley region in order to strengthen the regional and national economy and the national defense. Power operations are separated from non-power operations. TVA securities represent obligations of TVA, payable solely from TVA's

net power proceeds, and are neither obligations of nor guaranteed by the United States. TVA is currently authorized to issue debt up to \$30 billion. Under this authorization, TVA may also obtain advances from the U.S. Treasury of up to \$150 million. Frequent issuer of discount notes, agency notes and callable agency securities.

**Total Return.** Investment performance measured over a period of time that includes coupon interest, interest on interest, and both realized and unrealized gains or losses. Total return includes, therefore, any market value appreciation/depreciation on investments held at period end.

**Treasuries.** Collective term used to describe debt instruments backed by the U.S. Government and issued through the U.S. Department of the Treasury. Includes Treasury bills, Treasury notes, and Treasury bonds. Also a benchmark term used as a basis by which the yields of non-Treasury securities are compared (e.g., "trading at 50 basis points over Treasuries").

**Treasury Bills (T-Bills).** Short-term direct obligations of the United States Government issued with an original term of one year or less. Treasury bills are sold at a discount from face value and do not pay interest before maturity. The difference between the purchase price of the bill and the maturity value is the interest earned on the bill. Currently, the U.S. Treasury issues 4-week, 13-week and 26-week T-Bills

**Treasury Bonds.** Long-term interest-bearing debt securities backed by the U.S. Government and issued with maturities of ten years and longer by the U.S. Department of the Treasury. The Treasury stopped issuing Treasury Bonds in August 2001.

**Treasury Notes.** Intermediate interest-bearing debt securities backed by the U.S. Government and issued with maturities ranging from one to ten years by the U.S. Department of the Treasury. The Treasury currently issues,2-year, 5-year and 10-year Treasury Notes.

**Trustee.** A bank designated by an issuer of securities as the custodian of funds and official representative of bondholders. Trustees are appointed to ensure compliance with the bond documents and to represent bondholders in enforcing their contract with the issuer.

**Uniform Net Capital Rule.** SEC regulation 15C3-1 that outlines the minimum net capital ratio (ratio of indebtedness to net liquid capital) of member firms and non-member broker/dealers.

**Unrealized Gains (Losses).** The difference between the market value of an investment and its book value. Gains/losses are "realized" when the security is actually sold, as compared to "unrealized" gains/losses which are based on current market value. See also "Realized Gains (Losses)."

Variable-Rate Security. A bond that bears interest at a rate that varies over time based on a specified schedule of adjustment (e.g., daily, weekly, monthly, semi-annually or annually). See also "Floating Rate Note."

Weighted Average Maturity (or just "Average Maturity"). The average maturity of all securities and investments of a portfolio, determined by multiplying the par or principal value of each security or investment by its maturity (days or years), summing the products, and dividing the sum by the total principal value of the portfolio. A simple measure of risk of a fixed-income portfolio.

Weighted Average Maturity to Call. The average maturity of all securities and investments of a portfolio, adjusted to substitute the first call date per security for maturity date for those securities with call provisions.

**Yield Curve.** A graphic depiction of yields on like securities in relation to remaining maturities spread over a time line. The traditional yield curve depicts yields on U.S. Treasuries, although yield curves exist for Federal Agencies and various credit quality corporates as well. Yield curves can be positively sloped (normal) where longer-term investments have higher yields, or "inverted" (uncommon) where longer-term investments have lower yields than shorter ones.

**Yield to Call (YTC).** Same as "Yield to Maturity," except the return is measured to the first call date rather than the maturity date. Yield to call can be significantly higher or lower than a security's yield to maturity.

Yield to Maturity (YTM). Calculated return on an investment, assuming all cash flows from the security are

reinvested at the same original yield. Can be higher or lower than the coupon rate depending on market rates and whether the security was purchased at a premium or discount. There are different conventions for calculating YTM for various types of securities.

**Yield.** There are numerous methods of yield determination. In this glossary, see also "Current Yield," "YieldCurve," "Yield to Call" and "Yield to Maturity."

### Attachment B Investment Pool/Fund Questionnaire

- 1. A description of eligible investment securities, and a written statement of investment policy and objectives.
- 2. A description of interest calculations and how it is distributed, and how gains and losses are treated.
- 3. A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.
- 4. A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.
- 5. A schedule for receiving statements and portfolio listings.
- 6. Are reserves, retained earnings, etc. utilized by the pool/fund?
- 7. A fee schedule, and when and how is it assessed.
- 8. Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?



# Investment Policy Statement Review

Recommended Updates November 2020



# Investment Policy Review and Update

- In accordance with Section XVII. Investment Policy Adoption The Investment Committee shall review the policy annually and the City Council shall approve any modification thereto.
- The City's policy is compliant with State Statutes and all investments are compliant with the current guidelines.
- During the Investment Committee Review for the Fiscal Year Ended September 30, 2020 the Committee identified a few recommended updates for the City's investment policy.
- The City's investment policy format is consistent with nationally recognized organizations like the Government Finance Officer's Association and the Association of Public Treasurers of the United States and Canada (APT US&C).
  - We will submit the updated investment policy for Certification with the APT US&C.



## Recommended Updates

- Section IX -Authorized Investment institutions and Dealers
  - Provided specific duties of the Investment Advisor including providing a list of approved brokers annually or as requested.
- Section XI- Competitive Selection of Investment Instruments
  - Clarifying instruments relevant for 2020 going forward.
- Section XII -Authorized Investments and Portfolio Composition
  - Updated the summary table for reference to asset allocation, maturity and rating requirements. The table is followed by details regarding each asset class.



## Recommended Updates cont'd

- Section XII -Authorized Investments and Portfolio Composition
  - Increased the permitted allocation for AAAm rated Intergovernmental Investment Pools from 40% to 60%. This will provide additional diversification and liquidity for the City's investment program. This investment type provides daily liquidity and a competitive yield.
  - Increased the permitted allocation for AAAm rated FLPRIME local government investment pool from 40% to 60%. This will provide additional diversification and liquidity for the City's investment program. This investment type provides daily liquidity and a competitive yield.
  - Deleted United Stated Government Agencies securities that are unavailable or limited availability in the market.



## Recommended Updates cont'd

- Section XII -Authorized Investments and Portfolio Composition
  - Deleted purchase authorization language for "Commercial Paper." This allows flexibility with decisions to buy or sell in this rapid market.
  - Increased the permitted allocation for AA-AAA rated Mortgage- Backed securities from 5% to 15%. This will provide the opportunity for additional diversification for the City's investment program.
  - Updated the Corporate Notes purchase authorized to invest in notes rating equivalent by another rating agency at the time of purchase.
  - Updated language in areas of the policy to agree to the existing approved table allocations.



# THANK YOU

any questions?





#### AGENDA REQUEST FORM CITY OF CAPE CORAL

Item Number: A.

Meeting 1/6/2021

Date:

ORDINANCES/RESOLUTIONS -

Type: Public Hearings

TITLE:

Ordinance 98-20 Public Hearing

#### **REQUESTED ACTION:**

Approve or Deny

#### **SUMMARY EXPLANATION AND BACKGROUND:**

The Ordinance approves the sale of municipal surplus real property described as Lots 35 and 36, Block 5460, Unit 90, Cape Coral Subdivision pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances and authorizes and directs the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property located at 4122 NW 39th Lane to TSAVO Group, Inc. (Applicant: Brought forward by City Management)

#### STRATEGIC PLAN ALIGNMENT:

1. 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?

#### **RECOMMENDATIONS:**

#### SOURCE OF ADDITIONAL INFORMATION:

Dawn Andrews, Real Estate dandrews@capecoral.net Chris Phillips, Interim Financial Services Director cphillip@capecoral.net

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

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

#### PREPARED BY:

Division- Department- City Attorney

#### ATTACHMENTS:

**Description** Type

1. Ordinance 98-20 Ordinance

2. Appraisal3. Location Map

4. Location Map - corrective map to replace lot numbers supplied at the hearing.

Backup Material Backup Material

Backup Material

#### ORDINANCE 98 - 20

AN ORDINANCE APPROVING THE SALE OF MUNICIPAL SURPLUS REAL PROPERTY DESCRIBED AS LOTS 35 AND 36, BLOCK 5460, UNIT 90, 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 LOCATED AT 4122 NW 39<sup>TH</sup> LANE TO TSAVO GROUP, INC.; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral acquired a certain parcel of real property described as Lots 35 and 36, Block 5460, Unit 90, Cape Coral Subdivision, located at 4122 NW 39<sup>th</sup> Lane, 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, the City has obtained an appraisal of a comparable canalfront property; 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 Council hereby approves the sale of the surplus real property described as Lots 35 and 36, Block 5460, Unit 90, Cape Coral Subdivision as recorded in Plat Book 24, Page 27, 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 TSAVO Group, Inc., to purchase property located at 4122 NW 39<sup>th</sup> Lane, legally described as Lots 35 and 36, Block 5460, Unit 90, Cape Coral Subdivision, as recorded in Plat Book 24, Page 27, 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 TSAVO Group, 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	COUNCIL	OF	THE	CITY	OF (	CAPE	CORAL	AT	ITS	REGU	LAF
SESSION THIS		DAY OF				, 202	21.					

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMB	ERS:
COVIELLO GUNTER SHEPPARD HAYDEN	NELSON WELSH WILLIAMS COSDEN
ATTESTED TO AND FILED IN MY OFF 2021.	ICE THIS DAY OF
	KIMBERLY BRUNS CITY CLERK
APPROVED AS TO FORM:	
	_
JOHN E. NACLERIO ASSISTANT CITY ATTORNEY	
Ord\ Surplus Property-Sale to Tsavo Group L35-36 B54	460

### **EXHIBIT A**

#### **Vacant Land Contract**



1.	Sale and Purchase:	CITY OF CAPE CORAL	("Selle				
	and	TSAVO GROUP INC on the terms and conditions specified below the property (	("Buy				
	(the "parties") agree to sell and buy of	on the terms and conditions specified below the property (	("Property")				
	described as:	The second secon	(opo.t)				
	Address: 4122 NW 39TH LN CAPE CORAL, FL 33993						
	Legal Description: CAPE CORAL LIN	NIT 90 BLK 5460 PB 24 PG 27 LOTS 35 + 36					
	Logar Description.	11 50 DER 0400 1 B 24 1 O 27 E0 10 03 + 30					
		**************************************					
	SEC 13 /TWP / 43 /PNG 22 of	LEE County, Florida. Real Property ID No.: 13-43-	22 C3 05460 03				
	including all improvements existing o	n the Property and the following additional property:	22-00-00400.03				
2.	Purchase Price: (U.S. currency)		\$ 53,000				
	All deposits will be made payable to " Escrow Agent's Name:	"Escrow Agent" named below and held in escrow by: City of Cape Coral					
	Escrow Agent's Contact Person:	Dawn Andrews					
	Escrow Agent's Address:	P O Box 150027 cape coral fl 33915					
	Escrow Agent's Phone:	239 574 0735					
	Escrow Agent's Email:	Dawn Andrews P O Box 150027 cape coral fl 33915 239 574 0735 dandrews@cityofcapecoral.net					
	(a) Initial deposit (\$0 if left blank) (Ch						
	accompanies offer     will be delivered to Feeren Are	ant within					
	after Effective Date	ent within days (3 days if left blank)	e 1,000				
	(h) Additional denosit will be delivered	ed to Escrow Agent (Check if applicable)	. \$1,000				
	D within days (10 days if	flot blank) offer Effective Deta					
	within days (10 days if	ten blank) after Effective Date					
	(c) Total Financing (see Bargaran)	eft blank) after expiration of Feasibility Study Period	\$				
	(d) Other: within 7	6) (express as a dollar amount or percentage)	4.000				
	(a) Palacco to class (not including 5	days of City Council approval	\$4,000				
	to be paid at closing by wire trans	uyer's closing costs, prepaid items, and prorations) sfer or other Collected funds	\$ 48,000				
	(f) (Complete only if purchase price	ce will be determined based on a per unit cost instead of	a fixed price.) The				
	unit used to determine the purcha	ase price is \( \Bigcap \) lot \( \Bigcap \) acre \( \Bigcap \) square foot \( \Bigcap \) other (specif	fv):				
	prorating areas of less than a full	unit. The purchase price will be \$ pe	r unit based on a				
	calculation of total area of the Pro	operty as certified to Seller and Buyer by a Florida licens.	ed surveyor in				
	accordance with Paragraph 8(c).	The following rights of way and other areas will be exclude	ded from the				
	calculation:						
3.	Time for Acceptance; Effective Dat	te: Unless this offer is signed by Seller and Buyer and a	n executed conv				
	delivered to all parties on or before see additional terms, this offer will be withdrawn and Buyer's deposit, if						
	any, will be returned. The time for acc	ceptance of any counter-offer will be 3 days after the date	the counter-offer				
	delivered. The "Effective Date" of the	is contract is the date on which the last one of the Se	ller and Ruyer				
	signed or initialed and delivered th	is offer or the final counter-offer.	mer and buyer n				
4		lose on w/in 30days of approval ("Closing Date"), unless					
••	extended by other provisions of this a	entract. The Closing Date will prove all attention	s specifically				
	not limited to Financing and Farailist	ontract. The Closing Date will prevail over all other time po	eriods including, l				
	Sunday or noticed local halides in	ty Study periods. However, if the Closing Date occurs on	a Saturday,				
	day in the event increase noticely, it w	ill extend to 5:00 p.m. (where the Property is located) of the	ne next business				
	inaurance underwriti	ing is suspended on Closing Date and Buyer is unable to	obtain property				
	insurance, Buyer may postpone closi	ing for up to 5 days after the insurance underwriting suspe	ension is lifted. If				
	this transaction does not close for any other items.	reason, Buyer will immediately return all Seller provided	d documents and				
5							
٥.	<b>Extension of Closing Date:</b> If Paragraph 6(b) is checked and Closing Funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements						
Вич	yer <b>WL</b> ) () and Seller () () ack	knowledge receipt of a copy of this page, which is 1 of 8 pages.					
	C-13 Rev 2/20	showledge receipt of a copy of this page, which is 1 of 8 pages.					
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			Form				

53 54		("CFPB Requirements"), if applicable, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.
55 56* 57* 58* 59*	6.	<ul> <li>Financing: (Check as applicable)</li> <li>(a) ☑ Buyer will pay cash for the Property with no financing contingency.</li> <li>(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</li> </ul>
60		after Effective Date (5 days if left blank) and will timely provide any and all credit, employment, financial, and
61		other information required by the lender. If Buyer, after using diligence and good faith, cannot obtain the
62		Financing within the Financing Period, either party may terminate this contract and Buyer's deposit(s) will be
63		returned.
64*		(1) New Financing: Buyer will secure a commitment for new third party financing for \$
65*		or% of the purchase price at (Check one) \[ \square a fixed rate not exceeding% \[ \square a n
66*		adjustable interest rate not exceeding% at origination (a fixed rate at the prevailing interest rate
67		based on Buyer's creditworthiness if neither choice is selected). Buyer will keep Seller and Broker fully
68		informed of the loan application status and progress and authorizes the lender or mortgage broker to
69		disclose all such information to Seller and Broker.
70* 71*		(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:
72*		The mediana and and an arrival in the state of the state
73		The mortgage, note, and any security agreement will be in a form acceptable to <b>Seller</b> and will follow
74 75		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 <b>Buyer</b> defaults; will give <b>Buyer</b> the right to prepay without
76		penalty all or part of the principal at any time(s) with interest only to date of payment; will be due on
77		conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require Buyer to
78		keep liability insurance on the Property, with <b>Seller</b> as additional named insured. <b>Buyer</b> authorizes <b>Seller</b>
79		to obtain credit, employment, and other necessary information to determine creditworthiness for the
80		financing. Seller will, within 10 days after Effective Date, give Buyer written notice of whether or not Seller
81		will make the loan.
82* 83*		(3) Mortgage Assumption: Buyer will take title subject to and assume and pay existing first mortgage to
84*		LN# in the approximate amount of \$ currently payable at
85*		\$ per month, including principal, interest, □ taxes and insurance, and having a
86*		☐ fixed ☐ other (describe)
87*		interest rate of% which □ will □ will not escalate upon assumption. Any variance in the mortgage
88		will be adjusted in the balance due at closing with no adjustment to purchase price. Buyer will purchase
89*		Seller's escrow account dollar for dollar. If the interest rate upon transfer exceeds% or the
90*		assumption/transfer fee exceeds \$, either party may elect to pay the excess, failing
91 92		which this contract will terminate; and <b>Buyer's</b> deposit(s) will be returned. If the lender disapproves <b>Buyer</b> , this contract will terminate; and <b>Buyer's</b> deposit(s) will be returned.
93* 94*	7.	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.
95* 96*	8.	Title: Seller has the legal capacity to and will convey marketable title to the Property by ☐ statutory warranty deed ☐ special warranty deed ☐ other (specify)
97		deed Is 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,
98		restrictions, and public utility easements of record; existing zoning and governmental regulations; and (list any
99*		other matters to which title will be subject)
00		provided there exists at closing no violation of the foregoing.
01		(a) Title Evidence: The party who pays for the owner's title insurance policy will select the closing agent and pay
02		for the title search, including tax and lien search (including municipal lien search) if performed, and all other
03		fees charged by closing agent. Seller will deliver to Buyer, at
04*		(Check one) Seller's Buyer's expense and
05*		(Check one) ⊠ within 30 days after Effective Date □ at least days before Closing Date,
06		(Check one)
07* 08		(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
	Buy	yer () and Seller () () acknowledge receipt of a copy of this page, which is 2 of 8 pages.
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160 161 162		determination of the Feasibility Study Period, <b>Buyer</b> must deliver written notice to <b>Seller</b> of <b>Buyer's</b> determination of whether or not the Property is acceptable. <b>Buyer's</b> failure to comply with this notice requirement will constitute acceptance of the Property as suitable for <b>Buyer's</b> intended use in its "as is"
160		Before expiration of the Feasibility Study Period, Buyer must deliver written notice to Seller of Buyer's
159		result of the Inspections.
158		before conducting the Inspections and (ii) release to Seller all reports and other work generated as a
157		all damages to the Property resulting from the Inspections and return the Property to the condition it was in
156		Seller's prior written consent. If this transaction does not close, Buyer will, at Buyer's expense, (i) repair
155		not engage in any activity that could result in a construction lien being filed against the Property without
154		person, arising from the conduct of any and all Inspections or any work authorized by Buyer. Buyer will
153		expenses, and liability incurred in application for rezoning or related proceedings, and from liability to any
152		harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees,
151		enter the Property and conduct Inspections at their own risk. Buyer will indemnify and hold Seller
150		the purpose of conducting Inspections, provided, however, that Buyer, its agents, contractors, and assigns
149		contractors, and assigns, the right to enter the Property at any time during the Feasibility Study Period for
148		required to file in connection with development or rezoning approvals. Seller gives Buyer, its agents,
147		obtain the rezoning from the appropriate government agencies. Seller will sign all documents Buyer is
146		licenses; and other inspections that Buyer deems appropriate. If the Property must be rezoned, Buyer will
145		local, state, and regional growth management plans; availability of permits, government approvals, and
144		statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with
143		engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision
142		("Inspections") that Buyer deems necessary to determine to Buyer's satisfaction the Property's
141		conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and investigations
140		whether the Property is suitable for Buyer's intended use. During the Feasibility Study Period, Buyer may
139		("Feasibility Study Period") after Effective Date and in Buyer's sole and absolute discretion, determine
138*		(1) I Feasibility Study: Buyer will, at Buyer's expense and within days (30 days if left blank)
137		(a) Inspections: (Check (1) or (2))
136		permit any activity that would materially alter the Property's condition without the Buyer's prior written consent.
135		conditions resulting from Buyer's Inspections and casualty damage, if any, excepted. Seller will not engage in or
134	9.	Property Condition: Seller will deliver the Property to Buyer at closing in its present "as is" condition, with
		(d) Ingress and Egress: Seller warrants that the Property presently has ingress and egress.
133		
132		title defect and <b>Seller's</b> and <b>Buyer's</b> obligations will be determined in accordance with Paragraph 8(b).
131		restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a
130		encroachments on the Property, encroachments by the Property's improvements on other lands, or deed
129		Seller, within 5 days after receiving survey but not later than 5 days before Closing Date, of any
128		(c) Survey: Buyer may, at Buyer's expense, have the Property surveyed and must deliver written notice to
127		to existing defects and close the transaction without reduction in purchase price.
126		notice of <b>Seller's</b> inability to cure the defects to elect whether to terminate this contract or accept title subject
125		the Cure Period. If the defects are not cured within the Cure Period, Buyer will have 10 days after receipt of
124		such cure. Seller may elect not to cure defects if Seller reasonably believes any defect cannot be cured within
123		defects are cured within the Cure Period, closing will occur within 10 days after receipt by Buyer of notice of
122*		cures the defects within days (30 days if left blank) ("Cure Period") after receipt of the notice. If the
121		Buyer if (i) Buyer fails to deliver proper notice of defects or (ii) Buyer delivers proper written notice and Seller
120		no later than Closing Date, deliver written notice to Seller of title defects. Title will be deemed acceptable to
119*		(b) Title Examination: After receipt of the title evidence, Buyer will, within days (10 days if left blank) but
118		then (1) above will be the title evidence.
117		recited in the prior policy and in the update. If such an abstract or prior policy is not available to Seller,
116		effective date and certified to Buyer or Buyer's closing agent together with copies of all documents
115		include copies of all policy exceptions and an update in a format acceptable to Buyer from the policy
114		acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will
113		existing firm. However, if such an abstract is not available to <b>Seller</b> , then a prior owner's title policy
112*		(2) an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an
111		Buyer within 15 days after Effective Date.
110		paying for the owner's title insurance policy and Seller has an owner's policy, Seller will deliver a copy to
109		amount of the purchase price for fee simple title subject only to the exceptions stated above. If Buyer is

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	THE TENTO DE LA STATE OF THE ST
221	PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY
220	PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO
219	(e) PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT
218	Homeowners' or Condominium Association.
217	checked, Seller will pay the assessment in full before or at the time of closing. Public body does not include a
216*	installments,   Seller Buyer (Buyer if left blank) will pay installments due after closing. If Seller is
215	resulted in a lien before closing; and <b>Buyer</b> will pay all other amounts. If special assessments may be paid in
214	last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not
213	pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the
212	(d) Special Assessment by Public Body: Regarding special assessments imposed by a public body, Seller will
210	the previous year's rates will be used with adjustment for any exemptions.
209 210	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,
208 209	(c) Prorations: The following items will be made current and prorated as of the day before Closing Date: real
207*	
206	Other: Florida Compliance fee \$299.00
205	Insurance
	Survey
203	Lender's title policy at the simultaneous issue rate Inspections
202	
202	Title evidence (if applicable under Paragraph 8)
200	Loan expenses
200	Recording fees on the deed and financing statements
199	Taxes and recording fees on notes and mortgages
198	(b) Buyer Costs:
197*	Other:
196	Estoppel Fee(s)
195	Title evidence (if applicable under Paragraph 8)
194	Recording fees for documents needed to cure title
193	Taxes on deed
192	(a) Seller Costs:
191	costs indicated below.
190	Broker as per Paragraph 21. In addition to other expenses provided in this contract, Seller and Buyer will pay the
189	Seller (in local cashier's check if Seller requests in writing at least 5 days before closing) and brokerage fees to
188	binder effective date and recording of Buyer's deed, closing agent will disburse at closing the net sale proceeds to
187	conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title
186	10. Closing Procedure; Costs: Closing will take place in the county where the Property is located and may be
185*	☐ Buyer waives the right to receive a CCCL affidavit or survey.
184	with the shore line of the Property being purchased.
183	Department of Environmental Protection, including whether there are significant erosion conditions associated
182	nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida
181	govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach
180	Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that
179	by law delineating the line's location on the Property, unless <b>Buyer</b> waives this requirement in writing. The
178	defined in Section 161.053, Florida Statutes, Seller will provide Buyer with an affidavit or survey as required by law deligating the line's location on the Bronady, upleas Buyer waives this requirement in writing. The
177	(d) Coastal Construction Control Line ("CCCL"): If any part of the Property lies seaward of the CCCL as
176	improving the Property and rebuilding in the event of casualty.
175	which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to
174	(c) Flood Zone: Buyer is advised to verify by survey, with the lender, and with appropriate government agencies
173	expired or if Paragraph 9(a)(2) is selected.
172	intended use of the Property will not be grounds for terminating this contract if the Feasibility Study Period has
171	(b) Government Regulations: Changes in government regulations and levels of service which affect Buyer's
170	contingent on <b>Buyer</b> conducting any further investigations.
169	growth management, and environmental conditions, are acceptable to <b>Buyer</b> . This contract is not
168	and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency,
167	approved for the installation of a well and/or private sewerage disposal system and that existing zoning
166	being satisfied that either public sewerage and water are available to the Property or the Property will be
165*	(2) No Feasibility Study: Buyer is satisfied that the Property is suitable for Buyer's purposes, including

Form Simplicity

- 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.
- 11. 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). Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or national legal holiday (see 5 U.S.C. 6103) shall extend until 5:00 p.m. (where the Property is located) of the next business day. Time is of the essence in this contract.
- 12. 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.
- 13. 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.
- 14. 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.
- 15. 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.
- 16. 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

Buyer () () and Seller () () acknowledge receipt (	of a copy of this page, which is 5 of 8 pages.
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- 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.
- 17. 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 17 shall survive Closing or termination of this Contract.
- 18. 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.
- 19. 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, 8roker will be treated as a party to this contract. This Paragraph will survive closing.

Section 475.701, Florida Statutes, the follow Commission Lien Act provides that when a bunder a brokerage agreement with you, the	on Lien Act: If the Property is commercial real esting disclosure will apply: The Florida Commercial proker has earned a commission by performing lice broker may claim a lien against your net sales process under the act cannot be waived before the commercial support the commercial process.	Real Estate Sales ensed services ceeds for the
closing agent: Seller and Buyer direct Clos fees as specified in separate brokerage agre Brokers, except to the extent Broker has reta	named below are collectively referred to as "Broker sing Agent to disburse at Closing the full amount of sements with the parties and cooperative agreemer ained such fees from the escrowed funds. This Parting broker to coopensation made by <b>Seller</b> or listing broker to coopensation made by <b>Seller</b> or listing broker to coopensation.	the brokerage nts between the agraph will not be
Dawn Andrews	Lara Chrisphont/3326211	
Seller's Sales Associate/License No.	Buyer's Sales Associate/License No.	
Buyer () () and Seller () () acknowled VAC-13 Rev 2/20	ge receipt of a copy of this page, which is 6 of 8 pages.	©2020 Florida Realtors®
orial#: 090733-900160-4762464		Form
Signed using eSignOnline™ [ Session ID : df0c0717-9fa0-4ccc-b9d5-6e5f95ba5c0a ]		

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239 574 0735  Seller's Sales Associate Phone Number  Dawn Andrews  Listing Brokerage  PO Box 150027, Cape Coral, FL 33915-0027  Listing Brokerage Address  Addenda: The following additional terms are inclu-	305 300 5012  Buyer's Sales Associate Email Address  305 300 5012  Buyer's Sales Associate Phone Number  Royal Realty of SWFL  Buyer's Brokerage  618 SE 3 Street # 115 Cape Coral FI 33991  Buyer's Brokerage Address
Dawn Andrews  Listing Brokerage  PO Box 150027, Cape Coral, FL 33915-0027  Listing Brokerage Address	Royal Realty of SWFL  Buyer's Brokerage 618 SE 3 Street # 115 Cape Coral FI 33991
Dawn Andrews Listing Brokerage PO Box 150027, Cape Coral, FL 33915-0027 Listing Brokerage Address	Royal Realty of SWFL  Buyer's Brokerage  618 SE 3 Street # 115 Cape Coral FI 33991
PO Box 150027, Cape Coral, FL 33915-0027 Listing Brokerage Address	Buyer's Brokerage 618 SE 3 Street # 115 Cape Coral FI 33991
PO Box 150027, Cape Coral, FL 33915-0027 Listing Brokerage Address	Buyer's Brokerage 618 SE 3 Street # 115 Cape Coral FI 33991
Listing Brokerage Address	The state of the s
Listing Brokerage Address	
Addenda: The following additional terms are inclu	
(Check if applicable)  ☐ A. Back-up Contract ☐ B. Other	
proval, this offer will be withdrawn.	
e Closing Date may be extended by the City Manag an additional 30 day period.	ger, or City Manager's designee, upon good cause shown,
ting Brokerage is not accepting a commission	
	Market Open
and the second s	
COUNTER-O	SEEED/DE JECTION
	OFFER/REJECTION
Seller counters Buyer's offer (to accept the counter-	
Seller counters Buyer's offer (to accept the counter- liver a copy of the acceptance to Seller).	OFFER/REJECTION -offer, Buyer must sign or initial the counter-offered terms
Seller counters Buyer's offer (to accept the counter- liver a copy of the acceptance to Seller). Seller rejects Buyer's offer	-offer, Buyer must sign or initial the counter-offered terms
Seller counters Buyer's offer (to accept the counter- liver a copy of the acceptance to Seller). Seller rejects Buyer's offer is is intended to be a legally binding contract. If	-offer, Buyer must sign or initial the counter-offered terms
Seller counters Buyer's offer (to accept the counter- liver a copy of the acceptance to Seller). Seller rejects Buyer's offer is is intended to be a legally binding contract. If gning.	offer, Buyer must sign or initial the counter-offered terms not fully understood, seek the advice of an attorney t
Seller counters Buyer's offer (to accept the counter- liver a copy of the acceptance to Seller). Seller rejects Buyer's offer is is intended to be a legally binding contract. If gning. Iyer: Walquine Leng	offer, Buyer must sign or initial the counter-offered terms not fully understood, seek the advice of an attorney to Date: 11/7/2020
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383	Seller's add	dress for purpose of n	otice:		
384 *	Address:		PO Box 15002	7, Cape Coral, FL 33915-0	0027
385*	Phone:	239 574 0735	Fax:	Email:	dandrews@capecoral.net
386* 387	Effective D	ate: or counter offer.)	(The date on	which the last party sig	ned or initialed and delivered the

Florida REALTORS\* makes no representation as to the legal validity or adequacy of any provision of this form in any specific transaction. This standardized form should not be used in complex transactions or with extensive riders or additions. This form is available for use by the entire real estate industry and is not intended to identify the user as REALTOR\*. REALTOR\* is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS\* and who subscribe to its Code of Ethics. The copyright laws of United States (17 U.S. Code) forbid the unauthorized reproduction of this form by any means including facsimile or computerized forms.

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### **PRIVACY NOTICE**

Pursuant to the Gramm-Leach-Bliley Act of 1999, effective July 1, 2001, Appraisers, along with all providers of personal financial services are now required by federal law to inform their clients of the policies of the firm with regard to the privacy of client nonpublic personal information. As professionals, we understand that your privacy is very important to you and are pleased to provide you with this information.

#### **Types of Nonpublic Personal Information We Collect**

In the course of performing appraisals, we may collect what is known as "nonpublic personal information" about you. This information is used to facilitate the services that we provide to you and may include the information provided to us by you directly or received by us from others with your authorization.

#### **Parties to Whom We Disclose Information**

We do not disclose any nonpublic personal information obtained in the course of our engagement with our clients to nonaffiliated third parties, except as necessary or as required by law. By way of example, a necessary disclosure would be to our employees, and in certain situations, to unrelated third party consultants who need to know that information to assist us in providing appraisal services to you. All of our employees and any third party consultants we employ are informed that any information they see as part of an appraisal assignment is to be maintained in strict confidence within the firm.

A disclosure required by law would be a disclosure by us that is ordered by a court of competent jurisdiction with regard to a legal action to which you are a party.

### **Confidentiality and Security**

We will retain records relating to professional services that we have provided to you for a reasonable time so that we are better able to assist you with your needs. In order to protect your nonpublic personal information from unauthorized access by third parties, we maintain physical, electronic and procedural safeguards that comply with our professional standards to insure the security and integrity of your information.

Please feel free to call us any time if you have any questions about the confidentiality of the information that you provide to us.

File No.: 20100821

# **LAND APPRAISAL REPORT**

	Property Address: 4010 NW 39th Lane County: Lee	City: Cape Coral Legal Description: Lots 49+50, Blk. 5460, Cape Coral	State: FL Zip Code: 33993  I Unit 90, PB 24 PG 27
SUBJECT	Assessor's Parcel #: 13-43-22-C3-05460.0490	Tax Year: 2019 R.E. Taxes: \$ ( Map Reference: 15980	O Special Assessments: \$ 0 Census Tract: 0101.05
UB)	Current Owner of Record: City of Cape Coral	Borrower (if applicable): N//	
S			HOA: \$ 0
	The purpose of this appraisal is to develop an opinion of: This report reflects the following value (if not Current, see		
F		asehold Leased Fee Other (describe)	Titulospootito i iospootito
<b>ASSIGNMENT</b>	Intended Use: The Intended Use is to evaluate t	ne property that is the subject of this appraisal to dete	ermine the current market value of the
Sign	subject site for a potential lot swap with the C Intended User(s) (by name or type): Mark A and Bo		
ASS	include cost (c) (c) hand st type).	ATTITLE IN COLOG	
	Client: Mark A + Bonnie M Solos	Address: 147 Kassan Ct, South Saint Pal	
	Appraiser: Rhonda Elaine Rechkemmer  Characteristics	Address: 1913 SW 54th Street, Cape Co Predominant One-Unit Housing	Present Land Use Change in Land Use
			One-Unit 50 % Not Likely
	Built up: ☐ Over 75% ☐ 25-75% ☐		2-4 Unit 0 % Likely * In Process *
	Growth rate: Rapid Stable		Multi-Unit 5 % * To:
	Property values: Increasing Stable Demand/supply: Shortage In Balance	3 3 3 3 3	Comm'I 5 % Vacant Land 40 %
	Marketing time: Under 3 Mos. 3-6 Mos.	Over 6 Mos.	%
Ž		Factors Affecting Marketability	•
Ę	ltem Good Aver		Good Average Fair Poor N/A
Ä	Employment Stability \(\simega\) Convenience to Employment \(\simega\)	· · ·	
ESC	Convenience to Shopping	Protection from Detrimental Cond	
₽ □	Convenience to Schools		
AREA DESCRIPTION	Adequacy of Public Transportation   Recreational Facilities		
		et is bordered by the Lee/Charlotte County Line to the	
MARKET	south, Burnt Store Road to the east and Cha	rlotte Harbor Preserve State Park to the west. The su	ubject is a vacant site located on Eastover
MA	Canal a 120' wide canal in the northwest port	on of Cape Coral. This site has distant, indirect boatin	
	the waterways to the Guir of Mexico. All support	orting services are located within ten miles including sl s. This market is a mix of single family homes located	
		g of single family homes on acreage sites in this north	
		tgages, FHA/VA and cash transactions. The median s	
		nousing supply in this market is currently in balance wit were noted throughout this market. See Addendum for	
	<u> </u>		Ou A
	Dimensions: 80' x 125' Zoning Classification: R1	Description: Single Fa	Site Area: 10,000 Sq.Ft.
	Zoning Glassingation: 171		army residential
		Do present improvements comply with existing zoning require	ements? Yes No No Improvements
	Uses allowed under current zoning: Allows a sing	le family home.	
	Are CC&Rs applicable? ☐ Yes ☒ No ☐ Unknow	n Have the documents been reviewed? Yes 🖂 No	Ground Rent (if applicable) \$ /
	Comments:		
	Highest & Best Use as improved: Present use, or	Other use (explain) To improve with a single family	home.
	Actual Use as of Effective Date: Vacant Site	Use as appraised in this report:	Vacant Site
_	Summary of Highest & Best Use: Considering the	physically and legally possible as well as the financial	
뎓	the appraiser's opinion that the highest and be	est use of the subject's site is a single family residence	e
ا≘			_
		•	Frontage 80' on canal
SCR	Utilities Public Other Provider/Description		
DESCR	Utilities Public Other Provider/Description Electricity \( \sum_{\text{Description}} \)	Street Asphalt paved	Topography Mostly level/sloping to canal
SITE DESCR	Utilities         Public         Other         Provider/Description           Electricity         ☑         LCEC           Gas         ☐         None           Water         ☑         Well required	Width 60' wide (per plat)	Size Typical for the area
SITE DESCRIPTION	Sanitary Sewer Septic required		
SITE DESCR	Sanitary Sewer Sewer Sewer Source Sewer None	Width         60' wide (per plat)           Surface         Asphalt paved           Curb/Gutter         None           Sidewalk         None	Size Typical for the area Shape Rectangular
SITE DESCR	Sanitary Sewer Storm Sewer Sewer Storm Sewer Sew	Width         60' wide (per plat)           Surface         Asphalt paved           Curb/Gutter         None           Sidewalk         None           Street Lights         Pole	Size         Typical for the area           Shape         Rectangular           Drainage         Appears to be adequate
SITE DESCR	Sanitary Sewer Storm Sewer Sewer Storm Sewer Sew	Width Surface Asphalt paved  Curb/Gutter None	Size Typical for the area Shape Rectangular Drainage Appears to be adequate View Canal
SITE DESCR	Sanitary Sewer Storm Sewer Mone  Telephone Storm Sewer Various providers  Multimedia Storm Sewer Various providers  Other site elements: Storm Sewer Various providers  FEMA Spec'l Flood Hazard Area Storm No FEMA	Width         60' wide (per plat)           Surface         Asphalt paved           Curh/Gutter         None           Sidewalk         None           Street Lights         Pole           Alley         None           Cul de Sac         Underground Utilities         Other (describe)           A Flood Zone         AE         FEMA Map # 12071C0235F	Size         Typical for the area           Shape         Rectangular           Drainage         Appears to be adequate           View         Canal           FEMA Map Date 08/28/2008
SITE DESCR	Sanitary Sewer Storm Sewer Mone  Telephone Storm Sewer Various providers  Multimedia Storm Sewer Various providers  Other site elements: Inside Lot Comer Lot  FEMA Spec'l Flood Hazard Area Yes No FEMA  Site Comments: No adverse easements or ence	Width 60' wide (per plat) Surface Asphalt paved  Curh/Gutter None	Size Typical for the area  Shape Rectangular  Drainage Appears to be adequate  View Canal  FEMA Map Date 08/28/2008  For review. Site dimensions are taken from
SITE DESCR	Sanitary Sewer Storm Sewer None  Telephone Various providers Multimedia Various providers  Other site elements: Inside Lot Comer Lot  FEMA Spec'l Flood Hazard Area Ves No FEMA  Site Comments: No adverse easements or ence	Width 60' wide (per plat) Surface Asphalt paved  Curb/Gutter None	Size Typical for the area  Shape Rectangular  Drainage Appears to be adequate  View Canal  FEMA Map Date 08/28/2008  for review. Site dimensions are taken from assumed to be accurate. The subject's
SITE DESCR	Sanitary Sewer	Width 60' wide (per plat) Surface Asphalt paved  Curh/Gutter None	Size Typical for the area  Shape Rectangular  Drainage Appears to be adequate  View Canal  FEMA Map Date 08/28/2008  for review. Site dimensions are taken from as assumed to be accurate. The subject's  Well and septic are common for this market
SITE DESCR	Sanitary Sewer Storm Sewer None  Telephone Storm Sewer Various providers  Multimedia Storm Sewer Various providers  Other site elements: Inside Lot Comer Lot  FEMA Spec'l Flood Hazard Area Syes No FEMA  Site Comments: No adverse easements or encenthe recorded plat which is assumed to be accessed as the second of the second	Width 60' wide (per plat) Surface Asphalt paved  Curb/Gutter None	Size Typical for the area  Shape Rectangular  Drainage Appears to be adequate  View Canal  FEMA Map Date 08/28/2008  for review. Site dimensions are taken from as assumed to be accurate. The subject's  Well and septic are common for this market



# **LAND APPRAISAL REPORT**

L	<u>AND APP</u>							ile No.: 20100821		
	My research 🔲 did 🔀	did not reveal any	prior	sales or transfers of the s	subject property for	the three years prior to th	e effective date of	this appraisal.		
≿	Data Source(s): Lee County Property Appraiser's web site; Lee County Clerk of Courts; SWFL MLS									
9	1st Prior Subject Sale/Transfer Analysis of sale/transfer history and/or any current agreement of sale/listing: The subject is currently listed for sale by								for sale by	
ST	Date: 04/20/2012 the City of Cape Coral. This site was listed for \$60,000 on 04/11/2019 (347 DOM), per the SWFL									
主		0 Multi-Parcel			6#219022119. The subject had no prior sales or transactions indicated within the past 36 months from					
2	Source(s): Lee County		_					ctions in the previous		
TRANSFER HISTORY	2nd Prior Subject S		1110	enective date or thi	з арргаізаі. Ті	e comparables nau	no prior transa	cuons in the previous	12 1110111115.	
S	•	Sale/ Hallslei								
8	Date:								_	
F	Price:									
	Source(s):									
ļ	FEATURE	SUBJECT PROPER	RTY	COMPARABL		COMPARABL		COMPARABLE		
	Address 4010 NW 39			4126 NW 39th Lan	-	4209 NW 39th Stre		4127 NW 39th Stree		
	Cape Coral,	FL 33993		Cape Coral, FL 339	993	Cape Coral, FL 339	993	Cape Coral, FL 339	93	
	Proximity to Subject			0.12 miles W		0.18 miles W		0.13 miles SW		
	Sale Price		N/A	\$	68,000	\$	50,000	\$	54,000	
	Price/ Sq.Ft.	\$		\$ 6.80		\$ 5.00		\$ 5.40		
	Data Source(s)	Inspection		SWFLMLS#21807	1090/395DOM	SWFLMLS#21902	9390/50DOM	SWFLMLS#219006	698/212DOM	
	Verification Source(s)	LeePA/Public R	ec.	LeePA/Inst#201900	00295126	LeePA/Inst#201900	00168710	LeePA/Inst#201900	0202181	
Ī	VALUE ADJUSTMENT	DESCRIPTION		DESCRIPTION	+(-) \$ Adjust	DESCRIPTION	+(-) \$ Adjust	DESCRIPTION	+(-) \$ Adjust	
Ī	Sales or Financing	N/A		Cash	1	Cash	1 77 37 1	Cash	( )	
I	Concessions	N/A		None		None		None		
$\circ$	Date of Sale/Time	N/A		s12/19; c11/19	0	s07/19; c06/19	0	s08/19; c08/19	0	
<u>Š</u>	Rights Appraised	Fee Simple		Fee Simple	<del>                                     </del>	Fee Simple	<del>                                     </del>	Fee Simple		
Ĕ	Location	U90/IndirectGul	fΛο	U90/IndirectGulfAc	+	U90/IndirectGulfAc		U90/IndirectGulfAc		
뉨	Site Area (in Sq.Ft.)	10,000	IAC	10,000	+	10,000		10,000		
Z	View/Frontage	Canal/80ff		Canal/80ff	+	Canal/80ff		Canal/80ff		
<u>8</u>	•				+					
COMPARISON	Utilities Other Footures	Well/Septic area	<u>a                                      </u>	Well/Septic area	14 000	Well/Septic area		Well/Septic area		
<u> </u>	Other Features	None		Seawall/ConcDock	-14,000			None		
8	Prior Transaction Date	04/20/2012		07/28/1997	-	07/28/2008		04/20/2004		
		\$13,080,100 Mi	ulti	\$9,000		\$100		\$89,900 Disqual.		
SALES	Net Adjustment (Total, in	<u>\$)</u>		□ + ⊠ - \$	-14,000	<u> </u>		<u> </u> + <u> </u> - \$		
Ϋ́				Net 20.6 %		Net %		Net %		
	Adjusted Sale Price (in \$)			Gross 20.6 % \$	54,000		50,000		54,000	
	Summary of Sales Compa	• •						lar boating access to		
								d good indicators of v		
	stable market. Sale	#1 included a co	ncre	ete dock and seawa	II adjusted by p	aired sales. The adj	ustment to Sal	e #1 exceeds the red	commended	
	adjustment guideline	es, but does not	adve	ersely impact the va	lue. Slightly gre	ater emphasis is giv	en to Sale #1	which is the most rec	ent sale and	
	is located on the sub	oject's street.								
	s=settlement/closed	l date; c=contrac	:t/pe	nding date; DOM=d	ays on the mar	ket; Ac=access; ff=	front feet on ca	nal		
	PROJECT INFORMATION	N FOR PUDs (if app	licab	le) 🔲 The Subject	ct is part of a Plann	ed Unit Development.				
ما	Legal Name of Project:									
E E	Describe common elemer	nts and recreational f	acilitie	9S:						
_										
	Indicated Value by: Sale	es Comparison App	roac	<b>h\$</b> 54,000						
	Final Reconciliation The	e Sales Compari	son	Approach best repr	esents the action	ons of typical buvers	and sellers in	the market and is rel	ied on	
N										
Ĕ	entirely for the value estimate. The Cost and Income Approaches are not applicable to vacant land.  This appraisal is made 🖂 "as is", or 🔲 subject to the following conditions:									
≝	This appraisal is fried [2] as is , or subject to the foliating conditions.									
ᇙ										
<b>ECONCILIATION</b>	This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.									
ပ္ထု										
~	my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is:									
	\$ 54.0	000	` . i	as of:	03/23/2	020	. which i	s the effective date of	this appraisal.	
								in this report. See atta		
								report. This appraisal rep		
ATTAC							•	chibits: 🔀 Scope of Wo		
Ę	Limiting cond./Certi				Location Map(s	·	d Addendum	Additional Sa		
Q	Photo Addenda	⊠ Par	cel M	ap	Hypothetical Co		aordinary Assumpt	ions 🛛 Privacy Notic	e	
	Client Contact: Mark 5				Client Na	me: <u>Mark A + Bo</u>	onnie M Solos			
	E-Mail: mbsolos@ao	l.com				7 Kassan Ct, South				
	APPRAISER					IPERVISORY APPI		ıuired)		
					or	CO-APPRAISER (i	if applicable)			
	<b>O</b>	_								
40	Shonda &	Fling Re	Lh	Para and A						
ES	Appraiser Name: Rho				Sul	pervisory or Appraiser Name:				
5	Company: Rechkem									
SIGNATURI	Phone: (239) 542-415			es, inc. (239) 542-2591		npany: one:		Fax:		
S	E-Mail: R.Rechkemm		ιdΧ	(203) 342-2391		ne: Nail:		ι αλ.		
š										
	Date of Report (Signature)		200	) C1	te: FL Lic	e of Report (Signature): ense or Certification #:			State:	
	License or Certification #	. <u>cert.Res.RD</u>	∠005	5 STA					JIGIG	
	Designation:  Expiration Date of License	or Cartification:	441	30/3030		signation: iration Date of License or	Cartification			
	•			30/2020 ☐ Did Not Inchest (Deckt				Did Not Income		
	Inspection of Subject:	☑ Did Inspect	L	Did Not Inspect (Deskt		pection of Subject:	□ nia ilisbect	Did Not Inspect		



### **Supplemental Addendum**

		ouppiomontal Addonadii	1 110	110. 20 10062 1	
Client	Mark A + Bonnie M Solos				
Property Address	4010 NW 39th Lane				
City	Cape Coral	County Lee	State FL	Zip Code 33993	
Rorrower	NI/A				

File No. 20100921

### **Intended User and Use Clarification**

The Intended User of this appraisal report are the Clients, Mark A Solos and Bonnie M Solos. The Intended Use is to evaluate the property that is the subject of this appraisal to determine the current market value for a potential lot swap with the City of Cape Coral. No additional Intended Users are identified by the appraiser. This report is not intended for lending nor insurance purposes.

#### Scope of the Work

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

#### **Highest and Best Use as Vacant**

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

#### **Additional Comments**

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

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

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

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

### **Comments on Future Assessments**

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

### Comments on the City of Cape Coral

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

troperly Address 4.010 NW 39th Lane    Cape Coral   County Lee   State FL Zip Code 3	n this report.) in this report, ased professional diately preceding the cause of the praisal.
APPRAISAL AND REPORT IDENTIFICATION  This Report is one of the following types:  Appraisal Report (A written report prepared under Standards Rule 2.2(a), pursuant to the Scope of Work, as disclosed elsewhere in Restricted (A written report prepared under Standards Rule 2.2(b), pursuant to the Scope of Work, as disclosed elsewhere restricted to the stated intended use by the specified client or intended user.)  Comments on Standards Rule 2-3  Lectify 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 unbia analyses, opinions, and conclusions.  I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.  I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report or the parties involved with this assignment.  I have no bias with respect to the property that is the subject of this report or the parties involved with this assignment.  My compensation for completing this assignment is 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 client, the amount of the value opinion, the attainment of a stipulated result, of the occurrence of a subsequent event directly related to the intended use of this appoint in the attainment of a stipulated result, of the occurrence of a subsequent event directly related to the intended use of this apport.  My compensation for completing this assignment is not contingent upon the development or propring of predetermined value or direction in value that favors client, the amount of the value opinion, the attainment of a stipulated resu	n this report.) in this report, ased professional diately preceding the cause of the praisal.
This Report is one of the following types:  Appraisal Report  (A written report prepared under Standards Rule 2-2(p), pursuant to the Scope of Work, as disclosed elsewhere is calculated.  (A written report prepared under Standards Rule 2-2(p), pursuant to the Scope of Work, as disclosed elsewhere extricted to the stated intended use by the specified client or intended user.)  Comments on Standards Rule 2-3  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 unbia 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 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 no possibly the standard no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report or the parties involved with this assignment.  — My engagement in this assignment was not contingent upon developing or reporting predetermined results.  — My engagement in this assignment as not contingent upon the development or reporting of a predetermined value or direction in value that favors client, the amount of the value opinion, the attainment of a situalated result, or the occurrence of a subsequent event directly related to the intended use of this approach and particular to the time this report was prepared.  — In ave made a personal inspection of the property that is the subject of this report.  No one provided significant real property appraisal assistance to the person(s) signing this certification (if there are exceptions, the name of each individual provents appraisal assistance is stated elsewhere in this repo	in this report, ased professional diately preceding the cause of the praisal.
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 unbia 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 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 no bias with respect to the property that is the subject of this report or the parties involved with this assignment.  I have no bias with respect to the property that is the subject of this report or 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 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 apport.  My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal in effect at the time this report was prepared.  I have made a personal inspection of the property that is the subject of this report.  No one provided significant real property appraisal assistance to the person(s) signing this certification (if there are exceptions, the name of each individual provinced property appraisal assistance is stated elsewhere in this report).  Reasonable Exposure Time (USPAP defines Exposure Time as the estimated length of time that the property interest appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective	diately preceding the cause of the braisal.
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 My Opinion of Reasonable Exposure Time for the subject property at the market value stated in this report is:  35-395 da  anarket as indicated by similar vacant site sales.  Comments on Appraisal and Report Identification	iding significant
	appraisal.)
APPRAISER: SUPERVISORY or CO-APPRAISER (if applicable	e):
Signature: Rhonda Elaine Rechkemmer Signature: Name: Name: Name:	
State Certification #: Cert.Res.RD2869  or State License #: or State License #: State: FL Expiration Date of Certification or License: 11/30/2020  State: Expiration Date of Certification or License:	
Date of Signature and Report: 03/25/2020 Date of Signature:  Effective Date of Appraisal: 03/23/2020  Inspection of Subject: None Interior and Exterior Exterior-Only Inspection of Subject: None Interior and Exterior Inspection of Subject: None Inspec	

### Assumptions, Limiting Conditions & Scope of Work

File No.: 20100821 Property Address: 4010 NW 39th Lane State: FI Zip Code: 33993 Mark A + Bonnie M Solos Address: 147 Kassan Ct, South Saint Paul, MN 55075 Address: 1913 SW 54th Street, Cape Coral, FL 33914-6888 Rhonda Elaine Rechkemmer

### STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

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

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

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



### **Certifications & Definitions**

_	<del></del>				1116110 20	100021	
	Property A	ddress: 4010 NW 39th Lane		City: Cape Coral	State: FL	Zip Code: 33993	
	Client:	Mark A + Bonnie M Solos	Address:	147 Kassan Ct, South Saint Paul, MN	55075		
	Appraiser:	Rhonda Elaine Rechkemmer	Address:	1913 SW 54th Street, Cape Coral, FL	33914-6888		
				•			

FILE No. 20100021

#### APPRAISER'S CERTIFICATION

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

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

#### **Additional Certifications:**

### **DEFINITION OF MARKET VALUE \*:**

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

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

	Client Contact: Mark Solos	Clier	lient Name: Mark A + Bonnie M Solos
	E-Mail: mbsolos@aol.com	Address:	147 Kassan Ct, South Saint Paul, MN 55075
	APPRAISER		SUPERVISORY APPRAISER (if required)
			or CO-APPRAISER (if applicable)
			c. cc / ii / ia iio_i (ii appiioazio)
ES	Shondor Elaine Rechhemmer		
2	1 - Crack Claime / Jean comment		Supervisory or
Ę	Appraiser Name: Rhonda Elaine Rechkemmer		Co-Appraiser Name:
ž	Company: Rechkemmer Appraisal Services, Inc.		Company:
<u>ත</u>	Phone: <u>(239) 542-4152</u> Fax: <u>(239) 542-2591</u>		Phone: Fax:
(J)	E-Mail: R.Rechkemmer@att.net		E-Mail:
	Date Report Signed: 03/25/2020		Date Report Signed:
	License or Certification #: Cert.Res.RD2869 State:	: FL	License or Certification #: State:
	Designation:		Designation:
	Expiration Date of License or Certification: 11/30/2020		Expiration Date of License or Certification:
	Inspection of Subject: Did Inspect Did Not Inspect (Desktop	) )	Inspection of Subject: Did Inspect Did Not Inspect
	Date of Inspection: 03/23/2020		Date of Inspection:

### **Subject Land Photo Page**

Client	Mark A + Bonnie M Solos			
Property Address	4010 NW 39th Lane			
City	Cape Coral	County Lee	State FL	Zip Code 33993
Borrower	N/A			



### **Subject Front**

4010 NW 39th Lane Sales Price N/A Date of Sale N/A

Location U90/IndirectGulfAc

Site/View

View/Frontage Canal/80ff
Utilities Well/Septic area

Other Features None
Prior Transaction Date 04/20/2012



### **Subject View**



### **Subject Street**

### **Comparable Land Photo Page**

Client	Mark A + Bonnie M Solos			
Property Address	4010 NW 39th Lane			
City	Cape Coral	County Lee	State FL	Zip Code 33993
Borrower	N/A			



### Comparable 1

4126 NW 39th Lane

Prox. to Subj. 0.12 miles W
Sales Price 68,000
Date of Sale s12/19; c11/19
Location U90/IndirectGulfAc

Site/View

View/FrontageCanal/80ffUtilitiesWell/Septic areaOther FeaturesSeawall/ConcDock

Prior Transaction Date 07/28/1997



### Comparable 2

4209 NW 39th Street

Prox. to Subj. 0.18 miles W
Sales Price 50,000
Date of Sale s07/19; c06/19
Location U90/IndirectGulfAc

Site/View

View/Frontage Canal/80ff
Utilities Well/Septic area

Other Features None
Prior Transaction Date 07/28/2008



### Comparable 3

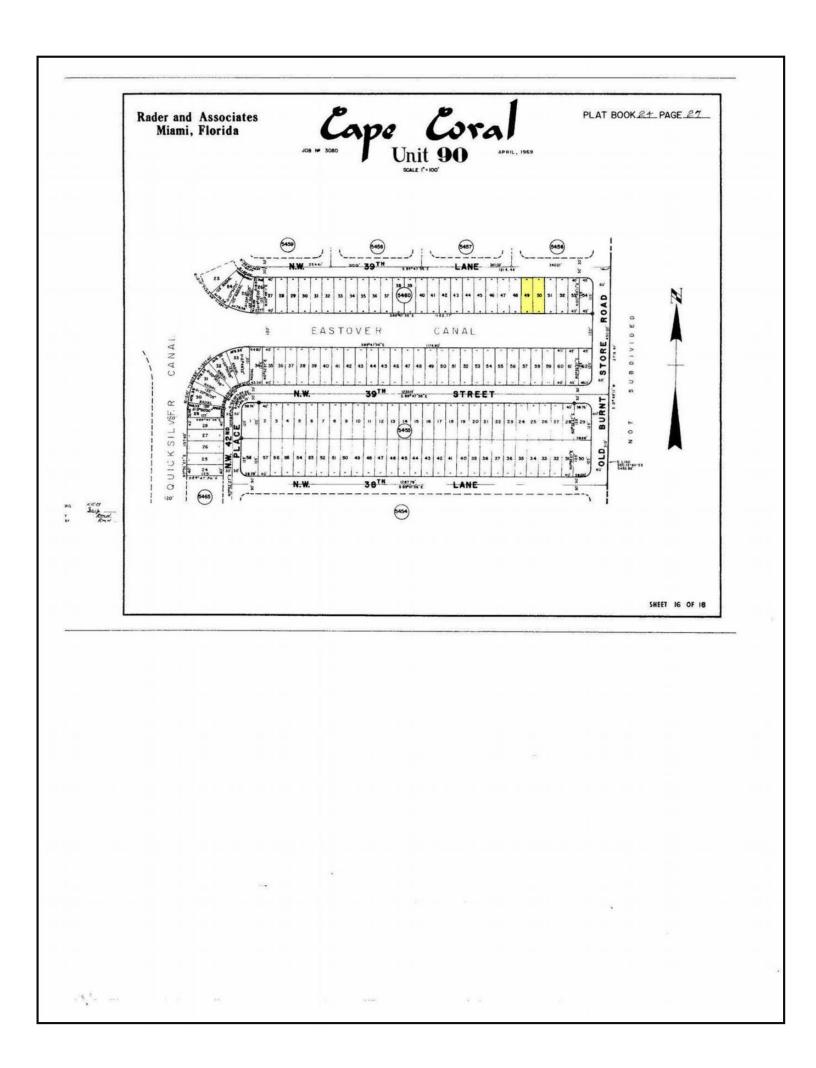
4127 NW 39th Street

Prox. to Subj. 0.13 miles SW
Sales Price 54,000
Date of Sale s08/19; c08/19
Location U90/IndirectGulfAc

Site/View

View/Frontage Canal/80ff
Utilities Well/Septic area

Other Features None
Prior Transaction Date 04/20/2004



### Flood Map

Client	Mark A + Bonnie M Solos				
Property Address	4010 NW 39th Lane				
City	Cape Coral	County Lee	State FL	Zip Code 33993	
Dorrowor	NI/A				

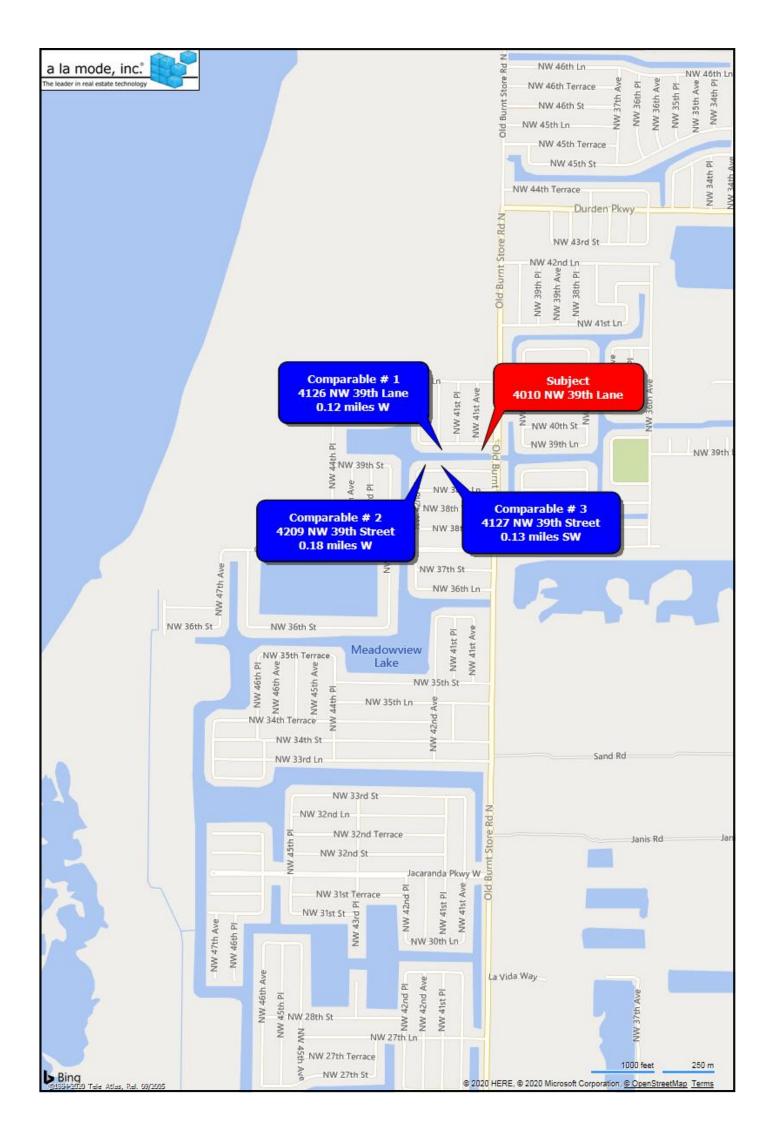


### **Aerial**



### **Location Map**

Client	Mark A + Bonnie M Solos				
Property Address	4010 NW 39th Lane				
City	Cape Coral	County Lee	State FL	Zip Code 33993	
Borrower	N/A				





RICK SCOTT, GOVERNOR

JONATHAN ZACHEM, SECRETARY



# STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

### FLORIDA REAL ESTATE APPRAISAL BD

THE CERTIFIED RESIDENTIAL APPRAISER HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

### RECHKEMMER, RHONDA ELAINE

1913 SW 54 STREET CAPE CORAL FL 33914

LICENSE NUMBER: RD2869

**EXPIRATION DATE: NOVEMBER 30, 2020** 

Always verify licenses online at MyFloridaLicense.com



Do not alter this document in any form.

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Location Map - 4122 NW 39th Lane - Blk 5460, Lots 35-36





### AGENDA REQUEST FORM CITY OF CAPE

CITY OF CAPE CORAL Item Number: A.

Meeting

1/6/2021

Date:

ORDINANCES/RESOLUTIONS -

Type: Public Hearings

TITLE:

Ordinance 99-20 Public Hearing

### **REQUESTED ACTION:**

Approve or Deny

### **SUMMARY EXPLANATION AND BACKGROUND:**

The Ordinance approves the sale of municipal surplus real property described as Lots 53 and 54, Block 5241, Unit 81, Cape Coral Subdivision pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances and authorizes and directs the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property located at 1432 Old Burnt Store Road North to TSAVO Group, Inc. (Applicant: Brought forward by City Management)

### STRATEGIC PLAN ALIGNMENT:

1. 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?

#### **RECOMMENDATIONS:**

n/a

### **SOURCE OF ADDITIONAL INFORMATION:**

Dawn Andrews, Real Estate dandrews@capecoral.net Chris Phillips, Interim Financial Services Director cphillip@capecoral.net

### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

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

### PREPARED BY:

Division- Department-City
Attorney

#### ATTACHMENTS:

D

Description Type

1. Ordinance 99-20 Ordinance

2. Appraisal Backup Material

Backup Material

### ORDINANCE 99 - 20

AN ORDINANCE APPROVING THE SALE OF MUNICIPAL SURPLUS REAL PROPERTY DESCRIBED AS LOTS 53 AND 54, BLOCK 5241, UNIT 81, 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 LOCATED AT 1432 OLD BURNT STORE ROAD NORTH TO TSAVO GROUP, INC.; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral acquired a certain parcel of real property described as Lots 53 and 54, Block 5241, Unit 81, Cape Coral Subdivision, located at 1432 Old Burnt Store Road North, 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, the City has obtained an appraisal of the property; 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 Council hereby approves the sale of the surplus real property described as Lots 53 and 54, Block 5241, Unit 81, Cape Coral Subdivision as recorded in Plat Book 24, Page 110, 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 TSAVO Group, Inc., to purchase property located at 1432 Old Burnt Store Road North, legally described as Lots 53 and 54, Block 5241, Unit 81, Cape Coral Subdivision, as recorded in Plat Book 24, Page 110, 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 TSAVO Group, 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	COUNCIL	OF	THE	CITY	OF	CAPE	CORAL	AT	ITS	REGUI	_AR
SESSION THIS.		_ DAY OF				_, 20	)21.					
					-							
					J	OE	COVIE	LLO, MA	$^{1}$	R		

VOTE OF MAYOR AND O	COUNCILMEMBERS:		
COVIELLO GUNTER SHEPPARD HAYDEN		NELSON WELSH WILLIAMS COSDEN	
ATTESTED TO AND FIL 2021.	ED IN MY OFFICE T	HIS D	DAY OF
		KIMBERLY BI	RUNS
APPROVED AS TO FORM  JOHN E. NACLERIO, III	ſ:		
ASSISTANT CITY ATTOR Ord\ Surplus Property-Sale to Tsa			

# **EXHIBIT A**

### **Vacant Land Contract**



1.	Sale and Purchase:	CITY OF CAPE CORAL TSAVO GROUP INC		("Seller					
	and	TSAVO GROUP INC		"Buye					
	and TSAVO GROUP INC ("Buyer")  (the "parties") agree to sell and buy on the terms and conditions specified below the property ("Property")  described as:								
	described as:								
	Address: 1432 OLD BURNT STORE RD N CAPE CORAL, FL 33993 Legal Description: CAPE CORAL UNIT 81 BLK 5241 PB 24 PG 110 LOTS 53 + 54								
	Logar Boodription: 97 to 2 001	10 to 0111 01 BER 0241 1 B 241 0 110 E0 13 03 + 34							
	W-04								
	CEO 01 (TAIS / 44 (DAIS 22)								
	including all improvements av	of LEE County, Florida. Real Property ID No.: 01-44-2	22-c2-0524	41.053					
	morading an improvements ex	isting on the Property and the following additional property:							
2.	Purchase Price: (U.S. currer	ncy)	\$ 2	0,000					
	All deposits will be made paya	able to "Escrow Agent" named below and held in escrow by		.,					
	Escrow Agent's Name:	City of Cape Coral Dawn Andrews							
	Escrow Agent's Contact Perso	Dawn Andrews							
	Escrow Agent's Address:	P O Box 150027 cape coral fl 33915 239 574 0735 dandrews@cityofcapecoral.net							
	Escrow Agent's Phone:	dandrews@cityofcanecoral not							
	(a) Initial deposit (\$0 if left bla	ink) (Check if applicable)							
	□ accompanies offer     □ will be delivered to Feet	row Agent within							
	after Effective Date	row Agent within days (3 days if left blank)	•	1,000.					
	(b) Additional deposit will be o	delivered to Escrow Agent (Check if applicable)	\$	1,000.					
	☐ within days (10	days if left blank) after Effective Date							
	☐ within days (3 c	days if left blank) after expiration of Feasibility Study Period	\$						
	(c) Total Financing (see Para	graph 6) (express as a dollar amount or percentage)	1						
	(d) Other:	graph 6) (express as a dollar amount or percentage)	\$	4,000.					
	(e) balance to close (not inclu	Iding Buyer's closing costs, prepaid items, and prorations)							
		re transfer or other Collected funds							
	(i) U (Complete only if purcha	ase price will be determined based on a per unit cost instead of a	fixed price	e.) The					
	unit used to determine the purchase price is \( \subseteq \) lot \( \subseteq \) acre \( \subseteq \) square foot \( \subseteq \) 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 Paragrap	oh 8(c). The following rights of way and other areas will be exclude	ed from the	2					
	calculation:	, and an analysis of the contract of the contr	ou nom me						
3.	Time for Acceptance: Effecti	ive Date: Unless this offer is signed by Seller and Buyer and an	everuted	conv					
	delivered to all parties on or be	efore see additional terms this offer will be withdrawn and R	liver's der	nosit i					
	delivered to all parties on or before see additional terms, this offer will be withdrawn and <b>Buyer's</b> 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	e" of this contract is the date on which the last one of the Sell	ler and Bu	ver h					
	signed or initialed and delive	ered this offer or the final counter-offer.		,					
4.	Closing Date: This transactio	Closing Date: This transaction will close on w/in 30days of approval ("Closing Date"), unless specifically							
	extended by other provisions o	of this contract. The Closing Date will prevail over all other time per	riods includ	ding h					
	not limited to, Financing and Fe	easibility Study periods. However, if the Closing Date occurs on a	Saturday						
	Sunday, or national legal holida	ay, it will extend to 5:00 p.m. (where the Property is located) of the	e next bus	iness					
	day. In the event insurance und	derwriting is suspended on Closing Date and Buyer is unable to	obtain pror	perty					
	this transaction does not also	ne closing for up to 5 days after the insurance underwriting suspen	nsion is lift	ed. If					
	other items.	for any reason, Buyer will immediately return all Seller provided	document	s and					
5	Extension of Closing Date: If	f Paragraph 6(b) is checked and Closing Funds from Buyer's lend							
	available on Closing Date due	to Consumer Financial Protection Bureau Closing Disclosure deli	er(s) are n very requir	remen					
Bun	er <b>WL</b> ) () and Seller () (	Nadamandada a sana da da sana							
	er () () and Seller () ( -13 Rev 2/20	) acknowledge receipt of a copy of this page, which is 1 of 8 pages.	00000	-					
	3525-500160-4762136		©2020 Florida						
			Si	mplici					

53 54		("CFPB Requirements"), if applicable, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 10 days.
55 56* 57* 58* 59* 60 61 62 63 64* 65* 66* 67 68 69	6.	<ul> <li>(a) ☑ Buyer will pay cash for the Property with no financing contingency.</li> <li>(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.</li> <li>(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.</li> </ul>
70*		(2) Seller Financing: Buyer will execute a  second purchase money note and mortgage to
71* 72*		Seller in the amount of \$, bearing annual interest at% and payable as follows:
73 74 75 76 77 78 79 80		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
81		will make the loan.
82*		(3) Mortgage Assumption: Buyer will take title subject to and assume and pay existing first mortgage to
83* 84* 85*		LN# in the approximate amount of \$ currently payable at \$ per month, including principal, interest, \[ \Bar{\text{laxes}} and insurance, and having a
86* 87* 88 89* 90* 91 92		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.
93* 94*	7.	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.
95* 96* 97 98 99*	8.	Title: Seller has the legal capacity to and will convey marketable title to the Property by ☐ statutory 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),
100 101 102 103		<ul> <li>(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 (including municipal lien search) if performed, and all other fees charged by closing agent. Seller will deliver to Buyer, at</li> </ul>
104 * 105 * 106		(Check one) Seller's □ Buyer's expense and (Check one) ☑ within 30 days after Effective Date □ at least days before Closing Date, (Check one)
107* 108		(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
	Buy	ver () and Seller () () acknowledge receipt of a copy of this page, which is 2 of 8 pages.
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		Simplicity

amount of the purchase price for fee simple title subject only to the exceptions stated above. If Buyer is 109 110 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. 111 (2) ☐ an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an 1121 existing firm. However, if such an abstract is not available to Seller, then a prior owner's title policy 113 acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will 114 include copies of all policy exceptions and an update in a format acceptable to Buyer from the policy 115 effective date and certified to Buyer or Buyer's closing agent together with copies of all documents 116 recited in the prior policy and in the update. If such an abstract or prior policy is not available to Seller, 117 then (1) above will be the title evidence. 118 (b) Title Examination: After receipt of the title evidence, Buyer will, within 119 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 120 Buyer if (i) Buyer fails to deliver proper notice of defects or (ii) Buyer delivers proper written notice and Seller 121 122 cures the defects within days (30 days if left blank) ("Cure Period") after receipt of the notice. If the 123 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 124 the Cure Period. If the defects are not cured within the Cure Period, Buyer will have 10 days after receipt of 125 126 notice of Seller's inability to cure the defects to elect whether to terminate this contract or accept title subject 127 to existing defects and close the transaction without reduction in purchase price. 128 (c) Survey: Buyer may, at Buyer's expense, have the Property surveyed and must deliver written notice to 129 Seller, within 5 days after receiving survey but not later than 5 days before Closing Date, of any 130 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 131 title defect and Seller's and Buyer's obligations will be determined in accordance with Paragraph 8(b). 132 133 (d) Ingress and Egress: Seller warrants that the Property presently has ingress and egress. 134 9. 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 135 136 permit any activity that would materially alter the Property's condition without the Buyer's prior written consent. 137 (a) Inspections: (Check (1) or (2)) (1) X Feasibility Study: Buyer will, at Buyer's expense and within 138 days (30 days if left blank) 139 ("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 140 141 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 142 engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision 143 statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with 144 local, state, and regional growth management plans; availability of permits, government approvals, and 145 146 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 147 required to file in connection with development or rezoning approvals. Seller gives Buyer, its agents, 148 contractors, and assigns, the right to enter the Property at any time during the Feasibility Study Period for 149 the purpose of conducting Inspections, provided, however, that Buyer, its agents, contractors, and assigns 150 enter the Property and conduct Inspections at their own risk. Buyer will indemnify and hold Seller 151 harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees, 152 153 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 154 not engage in any activity that could result in a construction lien being filed against the Property without 155 Seller's prior written consent. If this transaction does not close, Buyer will, at Buyer's expense, (i) repair 156 all damages to the Property resulting from the Inspections and return the Property to the condition it was in 157 158 before conducting the Inspections and (ii) release to Seller all reports and other work generated as a 159 result of the Inspections. Before expiration of the Feasibility Study Period, Buyer must deliver written notice to Seller of Buyer's 160 161 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" 162 condition. If the Property is unacceptable to Buyer and written notice of this fact is timely delivered to 163 164 Seller, this contract will be deemed terminated, and Buyer's deposit(s) will be returned. and Seller (\_\_\_\_) (\_\_\_\_) acknowledge receipt of a copy of this page, which is 3 of 8 pages.

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Serial#: 023525-500160-4762135

165*	(2) No Feasibility Study: Buyer is satisfied that the Property is suitable for Buyer's purposes, including
166	being satisfied that either public sewerage and water are available to the Property or the Property will be
167	approved for the installation of a well and/or private sewerage disposal system and that existing zoning
168	and other pertinent regulations and restrictions, such as subdivision or deed restrictions, concurrency,
169	growth management, and environmental conditions, are acceptable to Buyer. This contract is not
170	contingent on Buyer conducting any further investigations.
171	(b) Government Regulations: Changes in government regulations and levels of service which affect Buyer's
172	intended use of the Property will not be grounds for terminating this contract if the Feasibility Study Period has
173	expired or if Paragraph 9(a)(2) is selected.
174	(c) Flood Zone: Buyer is advised to verify by survey, with the lender, and with appropriate government agencies
175	which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to
176	improving the Property and rebuilding in the event of casualty.
177	(d) Coastal Construction Control Line ("CCCL"): If any part of the Property lies seaward of the CCCL as
178	defined in Section 161.053, Florida Statutes, Seller will provide Buyer with an affidavit or survey as required
179	by law delineating the line's location on the Property, unless Buyer waives this requirement in writing. The
180	Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that
181	govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach
182	nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida
183	Department of Environmental Protection, including whether there are significant erosion conditions associated
184	with the shore line of the Property being purchased.
185*	☐ Buyer waives the right to receive a CCCL affidavit or survey.
186	10. Closing Procedure; Costs: Closing will take place in the county where the Property is located and may be
187	conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title
188	binder effective date and recording of Buyer's deed, closing agent will disburse at closing the net sale proceeds to
189	Seller (in local cashier's check if Seller requests in writing at least 5 days before closing) and brokerage fees to
190	Broker as per Paragraph 21. In addition to other expenses provided in this contract, Seller and Buyer will pay the
191	costs indicated below.
192	(a) Seller Costs:
193	Taxes on deed
194	Recording fees for documents needed to cure title
195	Title evidence (if applicable under Paragraph 8)
196	Estoppel Fee(s)
197*	Other:
198	(b) Buyer Costs:
199	Taxes and recording fees on notes and mortgages
200	Recording fees on the deed and financing statements
201	Loan expenses
202	Title evidence (if applicable under Paragraph 8)
203	Lender's title policy at the simultaneous issue rate
204	Inspections
205	Survey
206	Insurance
207*	Other: Florida Compliance fee \$299.00
208	(c) Prorations: The following items will be made current and prorated as of the day before Closing Date: real
209	estate taxes (including special benefit tax liens imposed by a CDD), interest, bonds, assessments, leases, and
210	other Property expenses and revenues. If taxes and assessments for the current year cannot be determined.
211	the previous year's rates will be used with adjustment for any exemptions.
212	(d) Special Assessment by Public Body: Regarding special assessments imposed by a public body, Seller will
213	pay (i) the full amount of liens that are certified, confirmed, and ratified before closing and (ii) the amount of the
214	last estimate of the assessment if an improvement is substantially completed as of Effective Date but has not
215	resulted in a lien before closing; and <b>Buyer</b> will pay all other amounts. If special assessments may be paid in
216*	installments,  Seller Buyer (Buyer if left blank) will pay installments due after closing. If Seller is
217	checked, Seller will pay the assessment in full before or at the time of closing. Public body does not include a
218	Homeowners' or Condominium Association.
219	(e) PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT
220	PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO
221	PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY
	WL.
	Buyer () () and Seller () () acknowledge receipt of a copy of this page, which is 4 of 8 pages.  VAC-13 Rev 2/20
Ser	VAC-13 Rev 2/20

Form Simplicity

- IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER 222 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
  - (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.
  - 11. 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). Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or national legal holiday (see 5 U.S.C. 6103) shall extend until 5:00 p.m. (where the Property is located) of the next business day. Time is of the essence in this contract.
  - 12. 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,
  - 13. 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.
  - 14. 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.
  - 15. 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.
  - 16. 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

Buyer () () and Seller () () acknowledge receipt of a copy of this page, which is 5 of 8 pages.	
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ial#: 023625-500160-4762135	Form

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- 277 from Seller's breach and may seek to recover such damages or seek specific performance. Seller will also be 278 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.
  - 17. 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 17 shall survive Closing or termination of this Contract.
  - 18. 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.
  - 19. 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.
  - 20. 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 d.
  - to be S.

	proker may claim a lien against your net sales proceeds for the under the act cannot be waived before the commission is earned.
closing agent: Seller and Buyer direct Clos fees as specified in separate brokerage agre Brokers, except to the extent Broker has reta	named below are collectively referred to as "Broker." Instruction to sing Agent to disburse at Closing the full amount of the brokerage ements with the parties and cooperative agreements between the sined such fees from the escrowed funds. This Paragraph will not be appensation made by Seller or listing broker to cooperating brokers.  Lara Chrisphont/3326211
Seller's Sales Associate/License No.	Buyer's Sales Associate/License No.
Seller's Sales Associate/License No.	

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dandrews@capecoral.net	lara82674@gmail.com
Seller's Sales Associate Email Address	Buyer's Sales Associate Email Address
239 574 0735	305 300 5012
Seller's Sales Associate Phone Number	Buyer's Sales Associate Phone Number
Dawn Andrews	Royal Realty of SWFL
Listing Brokerage	Buyer's Brokerage
PO Box 150027, Cape Coral, FL 33915-0027	618 SE 3 Street # 115 Cape Coral FI 33991
Listing Brokerage Address	Buyer's Brokerage Address
22. Addenda: The following additional terms are (Check if applicable)  ☐ A. Back-up Contract ☐ B. Other	included in the attached addenda and incorporated into this C
signed by Buyer and Seller and an executed copy approval, this offer will be withdrawn.	o the City of Cape Coral City Council approval, unless this offer is delivered to all parties on or before 45 days from City Couranager, or City Manager's designee, upon good cause shown
to an additional 30 day period.	
Listing Brokerage is not accepting a commission	
COUNTE	R-OFFER/REJECTION
COUNTE  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contract	R-OFFER/REJECTION nter-offer, Buyer must sign or initial the counter-offered terms
COUNTE  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contracting	
COUNTE  Seller counters Buyer's offer (to accept the cound deliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contracting signing.  Buyer: Walquime Leny	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offered term
COUNTE  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contracting signing.  Buyer: Walquine Leny  Print name: Walquine	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer must sign or initial the counter-offered terms  In
COUNTE  ☐ Seller counters Buyer's offer (to accept the counted deliver a copy of the acceptance to Seller).  ☐ Seller rejects Buyer's offer  This is intended to be a legally binding contraction of the counted signing.  Buyer: Walquine Leng  Print name: Walquine	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer must sign or initial the counter-off
COUNTE  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contracting signing.  Buyer: Walquine Leny  Print name: Walquine	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer must sign or initial the counter-off
COUNTE  Seller counters Buyer's offer (to accept the countered acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contracting signing.  Buyer: Walquine Leng  Print name: Walquine Buyer: Buyer's address for purpose of notice:	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer must sign or initial the counter-off
COUNTE  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contracting signing.  Buyer: Walquime Leny  Print name: Walquime Leny  Print name: Walquime Leny  Print name: 1500 Wes	R-OFFER/REJECTION Inter-offer, Buyer must sign or initial the counter-offered terms  Ct. If not fully understood, seek the advice of an attorney I  Date: 11/7/2020  me Lemy  Date:
COUNTE  Seller counters Buyer's offer (to accept the counted liver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contracting signing.  Buyer: Walquime Leny  Print name: Walquime Leny  Print name: Walquime Leny  Print name: 1500 Wes	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer must sign or initial the counter-off
COUNTE  Seller counters Buyer's offer (to accept the counter a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contracting in the counter of t	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered terms  In the cou
COUNTE  Seller counters Buyer's offer (to accept the counter deliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contracting signing.  Buyer:  Print name:  Print name:  Buyer's address for purpose of notice:  Address:  954 805 0121  Fax:  Seller:	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  Inter-offer, Buyer must sign or initial the counter-offered terms  In the counter-offered terms  Date:    Date:
COUNTE  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contracting signing.  Buyer: Walquime Leny  Print name: Walquime Buyer:  Print name: Walquime Buyer:  Buyer's address for purpose of notice:  Address: 1500 Wes  Phone: 954 805 0121 Fax:  Seller: City of Counter  City of Counter  Count	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered terms  In the cou

Se	ller's add	dress for purpose of n			
Ad	dress:		PO Box 150027	7, Cape Coral, FL 33915-	0027
Ph	one:	239 574 0735	Fax:	Email:	dandrews@capecoral.net
Eff	fective D	ate:	(The date on	which the last party sig	ned or initialed and delivered
fin	al offer o	or counter offer.)			

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### **PRIVACY NOTICE**

Pursuant to the Gramm-Leach-Bliley Act of 1999, effective July 1, 2001, Appraisers, along with all providers of personal financial services are now required by federal law to inform their clients of the policies of the firm with regard to the privacy of client nonpublic personal information. As professionals, we understand that your privacy is very important to you and are pleased to provide you with this information.

#### **Types of Nonpublic Personal Information We Collect**

In the course of performing appraisals, we may collect what is known as "nonpublic personal information" about you. This information is used to facilitate the services that we provide to you and may include the information provided to us by you directly or received by us from others with your authorization.

#### **Parties to Whom We Disclose Information**

We do not disclose any nonpublic personal information obtained in the course of our engagement with our clients to nonaffiliated third parties, except as necessary or as required by law. By way of example, a necessary disclosure would be to our employees, and in certain situations, to unrelated third party consultants who need to know that information to assist us in providing appraisal services to you. All of our employees and any third party consultants we employ are informed that any information they see as part of an appraisal assignment is to be maintained in strict confidence within the firm.

A disclosure required by law would be a disclosure by us that is ordered by a court of competent jurisdiction with regard to a legal action to which you are a party.

### **Confidentiality and Security**

We will retain records relating to professional services that we have provided to you for a reasonable time so that we are better able to assist you with your needs. In order to protect your nonpublic personal information from unauthorized access by third parties, we maintain physical, electronic and procedural safeguards that comply with our professional standards to insure the security and integrity of your information.

Please feel free to call us any time if you have any questions about the confidentiality of the information that you provide to us.

# **LAND APPRAISAL REPORT**

	AND APPRAISAL REPOR	20.0.0.0					
	Property Address: 1432 Old Burnt Store Rd N	City: Cape Coral State: FL Zip Code: 33993					
		cription: Lots 53+54, Blk. 5241, Cape Coral Unit 81, PB 24 PG 110					
	Logal Desc						
H	Assessor's Parcel #: 01-44-22-C2-05241.0530	Tax Year: 2019 R.E. Taxes: \$ 0 Special Assessments: \$ 0					
SUBJECT	Market Area Name: Cape Coral Unit 81	Map Reference: 15980 Census Tract: 0101.05					
Ξ.							
9	Current Owner of Record: City of Cape Coral	Borrower (if applicable): N/A					
S	Project Type (if applicable):  PUD De Minimis PUD	Other (describe) HOA: \$ 0 per year per month					
ľ	Are there any existing improvements to the property? No	Yes If Yes, indicate current occupancy: Owner Tenant Vacant Not habitable					
		Too in too, indicate outsing decapation.					
	If Yes, give a brief description:						
	The purpose of this appraisal is to develop an opinion of:	et Value (as defined), or other type of value (describe)					
This report reflects the following value (if not Current, see comments): 🔀 Current (the Inspection Date is the Effective Date) 🔲 Retrospective 🔲 Prospectiv							
닐	Property Rights Appraised:  Fee Simple Leasehold	Leased Fee Other (describe)					
Property Rights Appraised: Fee Simple Leasehold Leased Fee Other (describe) Intended Use: The Intended Use is to evaluate the property that is the subject of this appraisal to determine the current market value.  Intended User(s) (by name or type): City of Cape Coral							
The intended ose is to evaluate the property that is the subject of this appraisal to determine the current market value.							
줐							
$\frac{8}{8}$	Intended User(s) (by name or type): City of Cape Coral						
S	Entransia desir(o) (b) hame or typo).						
⋖.							
	Client: City of Cape Coral	Address: P.O. Box 150027, Cape Coral, FL 33915					
Ì	Appraiser: Rhonda Elaine Rechkemmer	Address: 1913 SW 54th Street, Cape Coral, FL 33914-6888					
	Characteristics	Predominant One-Unit Housing Present Land Use Change in Land Use					
	Location: Urban Suburban Rural	Occupancy PRICE AGE One-Unit 50 % Not Likely					
i	Built up:	Owner \$(000) (yrs) 2-4 Unit 0 % Likely * In Process *					
i							
	Property values: Increasing Stable Declining						
	Demand/supply: Shortage In Balance Over Supply	Vacant (>5%) 325 Pred 14 Vacant Land 40 %					
		Vaccuit (>070) 323 1100 14 Vaccuit Land 40 70 %					
	Marketing time: Under 3 Mos. 3-6 Mos. Over 6 Mos.						
z		Factors Affecting Marketability					
Ō	Item Good Average Fair	Poor N/A <u>Item</u> Good Average Fair Poor N/A					
Ĕ	Item Good Average Fair	1001 1471 — abou 1101 1471					
M	Employment Stability	Adequacy of Utilities					
S	Convenience to Employment	Property Compatibility					
Ś	Convenience to Shopping	Protection from Detrimental Conditions					
5	Convenience to Schools	Police and Fire Protection					
⋖	Advances of Dublic Transportation						
Ä	Adequacy of Public Transportation	General Appearance of Properties					
AF	Recreational Facilities	Appeal to Market					
-	Market Area Comments: The subject's market is bordere	ed by the Lee/Charlotte County Line to the north, Pine Island Road (SR 78) to the					
RKET AREA DESCRIPTION	The Subjects Market is bordere						
2	south, Burnt Store Road to the east and Charlotte Harbo	or Preserve State Park to the west. All supporting services are located within ten miles					
⋖	including shopping, restaurants, schools, a golf course, p	parks, boat ramp and other essential services. This market is a mix of single family					
2		access homes. There are also a few areas consisting of single family homes located					
		oral. Financing includes conventional mortgages, private mortgages, FHAVA and cash					
		is considered relatively stable for the past 12 months. The housing supply in this					
		mes selling within three to six months. New construction starts were noted throughout					
	this market. See Addendum for additional comments.						
	Dimensions: 80' x 125'	Site Area: 10,000 Sq.Ft.					
	Zoning Classification: R1	Description: Single Family Residential					
	Do prese	ent improvements comply with existing zoning requirements? $\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \$					
	Uses allowed under current zoning: Allows a single family ho	$\cdot$					
	7 morro a single family not						
Are CC&Rs applicable? Yes No Unknown Have the documents been reviewed? Yes No Ground Rent (if applicable) \$							
	, , ,						
	Comments:						
		se (explain). To improve with a single family home					
		se (explain) To improve with a single family home.					
	Highest & Best Use as improved: Present use, or Other us						
	Highest & Best Use as improved: Present use, or Other us  Actual Use as of Effective Date: Vacant Site	Use as appraised in this report: Vacant Site					
	Highest & Best Use as improved: Present use, or Other us  Actual Use as of Effective Date: Vacant Site						
NC	Highest & Best Use as improved:  Actual Use as of Effective Date:  Summary of Highest & Best Use:  Description:  Vacant Site  Considering the physically as	Use as appraised in this report: Vacant Site and legally possible as well as the financially feasible tests of highest and best use, it is					
TION	Highest & Best Use as improved: Present use, or Other us  Actual Use as of Effective Date: Vacant Site	Use as appraised in this report: Vacant Site and legally possible as well as the financially feasible tests of highest and best use, it is					
IPTION	Highest & Best Use as improved:  Actual Use as of Effective Date:  Summary of Highest & Best Use:  Description:  Vacant Site  Considering the physically as	Use as appraised in this report: Vacant Site and legally possible as well as the financially feasible tests of highest and best use, it is					
RIPTION	Highest & Best Use as improved: Present use, or Other use  Actual Use as of Effective Date: Vacant Site  Summary of Highest & Best Use: Considering the physically a the appraiser's opinion that the highest and best use of the	Use as appraised in this report: Vacant Site and legally possible as well as the financially feasible tests of highest and best use, it is he subject's site is a single family residence.					
SCRIPTION	Highest & Best Use as improved:  Actual Use as of Effective Date:  Summary of Highest & Best Use:  Description:  Vacant Site  Considering the physically as	Use as appraised in this report: Vacant Site and legally possible as well as the financially feasible tests of highest and best use, it is he subject's site is a single family residence.					
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SITE DESCRIPTION	Highest & Best Use as improved: Present use, or Other use  Actual Use as of Effective Date: Vacant Site  Summary of Highest & Best Use: Considering the physically at the appraiser's opinion that the highest and best use of	Use as appraised in this report: Vacant Site and legally possible as well as the financially feasible tests of highest and best use, it is the subject's site is a single family residence.  Drovements Type Public Private Topography Mostly level Asphalt paved Size Typical for the area Shape Rectangular None Drainage Appears to be adequate					
SITE DESCRIPTION	Highest & Best Use as improved: Present use, or Other use  Actual Use as of Effective Date: Vacant Site  Summary of Highest & Best Use: Considering the physically at the appraiser's opinion that the highest and best use of	Use as appraised in this report: Vacant Site and legally possible as well as the financially feasible tests of highest and best use, it is he subject's site is a single family residence.  Provements Type Public Private Frontage 80' on street Topography Mostly level Size Typical for the area Shape Rectangular None Drainage Appears to be adequate None View Residential					
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SITE DESCRIPTION	Highest & Best Use as improved: Present use, or Other use  Actual Use as of Effective Date: Vacant Site  Summary of Highest & Best Use: Considering the physically at the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the width Street Implementation Surface Curb/Gutter Storm Sewer	Use as appraised in this report:    Asphalt paved					
SITE DESCRIPTION	Highest & Best Use as improved: Present use, or Other use  Actual Use as of Effective Date: Vacant Site  Summary of Highest & Best Use: Considering the physically at the appraiser's opinion that the highest and best use of	Use as appraised in this report:    Asphalt paved					
SITE DESCRIPTION	Highest & Best Use as improved: Present use, or Other use  Actual Use as of Effective Date: Vacant Site  Summary of Highest & Best Use: Considering the physically at the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the appraiser's opinion that the highest and best use of the width Street Implementation Surface Curb/Gutter Storm Sewer	Use as appraised in this report:    Asphalt paved					
SITE DESCRIPTION	Highest & Best Use as improved: Present use, or Other use  Actual Use as of Effective Date: Vacant Site  Summary of Highest & Best Use: Considering the physically at the appraiser's opinion that the highest and best use of	Use as appraised in this report:    Asphalt paved					



# LAND APPRAISAL REPORT

	AND APP							ile No.: 20101015	
	My research 🔲 did 🔀		-			the three years prior to	the effective date of	this appraisal.	
ᇫ	Data Source(s): Lee County Property Appraiser's web site; SWFL MLS								
임	1st Prior Subject S			ysis of sale/transfer histor	•	•		ect was listed for sale	
<u>≅</u>	Date: 08/18/2014							S#219023373. The	
ᇍ	Price: \$10							ppraisal. Sales #1 an	
	Source(s): Lee County					nd both recorded o	on 11/27/2019. S	ales #3 had no prior	transactions
TRANSFER HISTORY	2nd Prior Subject S	Sale/Transfer	<u>in t</u>	ne previous 12 mont	hs.				
Z	Date:								_
-	Price:								
	Source(s): FEATURE	CLID IECT DDODED	TV	COMPARABL	E NO. 1	COMPADA	DIE NO 2	COMPADADIE	NO 2
ļ	FEATURE SUBJECT PROPERTY Address 1432 Old Burnt Store Rd N		111			COMPARABLE NO. 2		COMPARABLE NO. 3 4001 NW 22nd Ter	
	Cape Coral, FL 33993			1316 Old Burnt Store Rd N				Cape Coral, FL 33993	
Ì	Proximity to Subject			-				1.08 miles N	
İ	Sale Price	\$	N/A	\$	13,000		\$ 13,000		13,000
Ì	Price/ Sq.Ft.	\$	14//	\$ 1.30	13,000	\$ 1.30	Ψ 13,000	\$ 1.20	10,000
Ì	Data Source(s)	Inspection			3008/181DOM		82843/181DOM	SWFLMLS#220036	950/23DOM
	Verification Source(s)	LeePA/Public R	ec.					LeePA/Inst#202000	
İ	VALUE ADJUSTMENT	DESCRIPTION		DESCRIPTION	+ (-) \$ Adjust	DESCRIPTION	+(-) \$ Adjust	DESCRIPTION	+(-) \$ Adjust
Î	Sales or Financing	N/A		Cash	(,,,,	Cash	(/,	Cash	( )
ᆽ	Concessions	N/A		None		None		None	
ĕΙ	Date of Sale/Time	N/A		s07/20; c06/20	0	s07/20; c06/20	0	s09/20; c09/20	0
	Rights Appraised	Fee Simple		Fee Simple		Fee Simple		Fee Simple	
립	Location	Main Rd/Unit 81		Main Rd/Unit 81		Main Rd/Unit 81		Adj.MainRd/Unit 82	0
<u>ح</u>	Site Area (in Sq.Ft.)	10,000		10,000		10,000		10,802	0
Ö	View	Residential		Residential		Residential		Woods	0
COMPARISON APPROACH	Utilities	Well/Septic area	<u>a</u>	Well/Septic area		Well/Septic area		Well/Septic area	
ַ⊿									
8	Prior Transaction Date	08/18/2014		11/27/2019		11/27/2019		02/15/2013	
		\$10		\$0		\$0	<u> </u>	\$7,900	
SALES	Net Adjustment (Total, in	ቅ)		+ \$ Net %		+	<b>Þ</b>	□ + □ - \$ Net %	
Ž	Adjusted Cale Dries (in (t)			Net % Gross % \$	13,000		\$ 13,000		42,000
	Adjusted Sale Price (in \$) Summary of Sales Compa	rison Annroach	ΛII					re similar frontage on	13,000
	•	• •						ated just over one m	
								lo adjustments are in	
	these differences ba								<u> </u>
		, , , , , , , , , , , , , , , , , , ,							
	s=settlement/closed	date; c=contrac	t/pe	nding date; DOM=da	ays on the mar	ket			
									_
				The Outlier	tion and of a Diago	ad Hala Danalana ad			
	PROJECT INFORMATION FOR PUDs (if applicable)  The Subject is part of a Planned Unit Development.								
PUD	Legal Name of Project:	ate and recreational fo	ocilitio	o:					
₫	Describe common elements and recreational facilities:								
	Indicated Value by: Sale	es Comparison App	roac	h\$ 13,000					
	Indicated Value by: Sales Comparison Approach \$ 13,000 Final Reconciliation The Sales Comparison Approach best represents the actions of typical buyers and sellers in the market and is relied on								
Z	entirely for the value estimate. The Cost and Income Approaches are not applicable to vacant land.								
Ĕ	This appraisal is made \( \sum ''\) "as is", or \( \sum \) subject to the following conditions: See attached Assumptions and Limiting Conditions.								
Ĭ									
S									
<b>ECONCILIATION</b>	This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.								
R	Based upon an inspection of the subject property, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is:								
	\$ 13.000 as of: 10/10/2020 which is the effective date of this appraisal.								
	If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.  A true and complete copy of this report contains 14 pages, including exhibits which are considered an integral part of the report. This appraisal report may not be								
Ϊ									
ATTACH.	properly understood without reference to the information contained in the complete report, which contains the following attached exhibits: 🗵 Scope of Work								
Ę	Limiting cond./Certi				Location Map(s		ood Addendum	Additional Sa	iles
_	Photo Addenda	N → → → → → Pare	cel M	ap	Hypothetical Co		xtraordinary Assumpt	ions	
	Client Contact: Frank E-Mail: famati@cape				Client Na Address: P.C	me: <u>City of Ca</u> D. Box 150027, Ca		245	_
	APPRAISER	corai.net			1	JPERVISORY AP			
							Juli eu)		
	or CO-APPRAISER (if applicable)								
	Dh - 1 El . D. 1h								
ES	Rhonda Elaine Rechhemmer			Sup	Supervisory or				
R	Appraiser Name: Rhonda Elaine Rechkemmer			_	Appraiser Name:				
A	Company: Rechkem					npany:		Fov:	
SIGNATURES	Phone: (239) 542-415 E-Mail: R.Rechkemm		rax:	(239) 542-2591	Pno	one:		Fax:	
တ်	Date of Report (Signature)					e of Report (Signature)	•		
	License or Certification #		2869	) Stat		ense or Certification #:		!	State:
	Designation:		_500			signation:			
	Expiration Date of License	or Certification:	11/:	30/2022		iration Date of License	or Certification:		
	Inspection of Subject:								
Date of Inspection: 10/10/2020			Dat	Date of Inspection:					



### **Supplemental Addendum**

			1110 110: 20 10 10 13		
Client	City of Cape Coral		•		•
Property Address	1432 Old Burnt Store Rd N				
City	Cape Coral	County Lee	State FL	Zip Code 33993	
Borrower	N/A				

File No. 20101015

### **Intended User and Use Clarification**

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

#### Scope of the Work

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

#### **Highest and Best Use as Vacant**

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

### **Additional Comments**

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

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

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

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

#### **Comments on Future Assessments**

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

#### Comment on Property Taxes

The subject's property taxes are currently \$0 each year due to ownership by the City of Cape Coral. The property taxes will increase once the vacant site is sold to a new owner.

### Comments on the City of Cape Coral

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

### Covid-19/Coronavirus Pandemic Comments Relating to the Market

The Covid-19/Coronavirus was declared a global pandemic in March 2020 and has resulted in the closing of many sectors of the United States economy in an effort to slow the spread of the virus. The effective date of this appraisal is subsequent to the pandemic which is still ongoing. The impact on the market due to the pandemic is currently unknown as appraisers rely on historical sales data as well as market trends which are limited at this time. The value opinion and other conclusions indicated in this report are subject to the extraordinary assumption that this event has no measurable effect on marketability or market value of the subject.

Client	City of Cape Coral		F	ile No. 20101015
roperty Address	1432 Old Burnt Store Rd N			
lity Iorrower	Cape Coral	County Lee	State FL	Zip Code 33993
This Report Apprais  Restrict Apprais  Restrict Apprais  Commet I certify that, to The stateme The reported analyses, opinion I have no producted	SAL AND REPORT IDENT  It is one of the following types:  It is one of the written report prepared to the stated intended and the stated intended in the stated intended and the stated intended a	under Standards Rule 2-2(a) under Standards Rule 2-2(b) ded use by the specified client  2-3 If correct. ed only by the reported assumption at is the subject of this report and a her capacity, regarding the property ect of this report or the parties invo non developing or reporting predete contingent upon the development or pulated result, or the occurrence of and this report has been prepared, the subject of this report. The subject of this report. The subject of this report. The subject of this report. The subject of this report. The subject of this report. The subject of this report. The subject of this report. The subject of this report. The subject of this report. The subject of this report. The subject of this report. The subject of this report.	ns and limiting conditions and are my personal, that is the subject of this report within the three lived with this assignment.	losed elsewhere in this report.) closed elsewhere in this report, impartial, and unbiased professional nvolved. e-year period immediately preceding in value that favors the cause of the nded use of this appraisal. ofessional Appraisal Practice that were
appraised wo My Opinion	uld have been offered on the market pric	or to the hypothetical consumr he subject property at the I	e as the estimated length of time that the p mation of a sale at market value on the effe market value stated in this report is:	
	nts on Appraisal and Re JSPAP related issues requiring	disclosure and any St		(if applicable):
State Certification	Cert.Res.RD2869  #: Expiration Date of Certification or License:		Signature: Name: State Certification #: or State License #: Expiration Date of Certification o	
Date of Signature Effective Date or Inspection of St	re and Report: 10/15/2020  f Appraisal: 10/10/2020  ubject: None Interior and Exterior (if applicable): 10/10/2020	r Exterior-Only I	Date of Signature:  Inspection of Subject:  None  Interioration of Inspection (if applicable):	or and Exterior

# Assumptions, Limiting Conditions & Scope of Work

File No.: 20101015 Property Address: 1432 Old Burnt Store Rd N State: FI Zip Code: 33993 City of Cape Coral Address: P.O. Box 150027, Cape Coral, FL 33915 Rhonda Elaine Rechkemmer Address: 1913 SW 54th Street, Cape Coral, FL 33914-6888

#### STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

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

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

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



## **Certifications & Definitions**

		File No.: 2	0101015
Property Address: 1432 Old Burnt Store Rd N		City: Cape Coral State: FL	Zip Code: 33993
Client: City of Cape Coral	Address:	P.O. Box 150027, Cape Coral, FL 33915	
Appraiser: Rhonda Elaine Rechkemmer	Address:	1913 SW 54th Street, Cape Coral, FL 33914-6888	
APPRAISER'S CERTIFICATION			

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

#### **Additional Certifications:**

#### **DEFINITION OF MARKET VALUE \*:**

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

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

	Client Contact: Frank Amati	Clier	lient Name: City of Cape Coral
	E-Mail: famati@capecoral.net Add	dress:	P.O. Box 150027, Cape Coral, FL 33915
	APPRAISER		SUPERVISORY APPRAISER (if required)
			or CO-APPRAISER (if applicable)
			` ,
တ	N 1 50 N		
TURES	Rhonda Elaine Rechhemmer		Supervisory or
2	Appraiser Name: Rhonda Elaine Rechkemmer		Co-Appraiser Name:
¥	Company: Rechkemmer Appraisal Services, Inc.		Company:
	Phone: (239) 542-4152 Fax: (239) 542-2591		Phone: Fax:
(C)	E-Mail: R.Rechkemmer@att.net		E-Mail:
	Date Report Signed: 10/15/2020		Date Report Signed:
	License or Certification #: Cert.Res.RD2869 State: F	<u>L</u>	License or Certification #: State:
	Designation:		Designation:
	Expiration Date of License or Certification: <u>11/30/2022</u>		Expiration Date of License or Certification:
	Inspection of Subject: 🖂 Did Inspect 🖂 Did Not Inspect (Desktop)		Inspection of Subject: Did Inspect Did Not Inspect
	Date of Inspection: 10/10/2020		Date of Inspection:

# **Subject Land Photo Page**

Client	City of Cape Coral			
Property Address	1432 Old Burnt Store Rd N			
City	Cape Coral	County Lee	State FL	Zip Code 33993
Borrower	N/A			



## **Subject Front**

1432 Old Burnt Store Rd N
Sales Price N/A
Date of Sale N/A
Location Main Rd/Unit 81
Site/View

View Residential Utilities Well/Septic area



## **Subject Street**

## **Comparable Land Photo Page**

Client	City of Cape Coral			
Property Address	1432 Old Burnt Store Rd N			
City	Cape Coral	County Lee	State FL	Zip Code 33993
Borrower	N/A			·



## **Comparable 1**

 1316 Old Burnt Store Rd N

 Prox. to Subj.
 0.19 miles S

 Sales Price
 13,000

 Date of Sale
 s07/20; c06/20

 Location
 Main Rd/Unit 81

Site/View

View Residential Utilities Well/Septic area

Prior Transaction Date 11/27/2019



## Comparable 2

 1216 Old Burnt Store Rd N

 Prox. to Subj.
 0.30 miles S

 Sales Price
 13,000

 Date of Sale
 s07/20; c06/20

 Location
 Main Rd/Unit 81

Site/View

View Residential
Utilities Well/Septic area

Prior Transaction Date 11/27/2019



# Comparable 3

4001 NW 22nd Ter

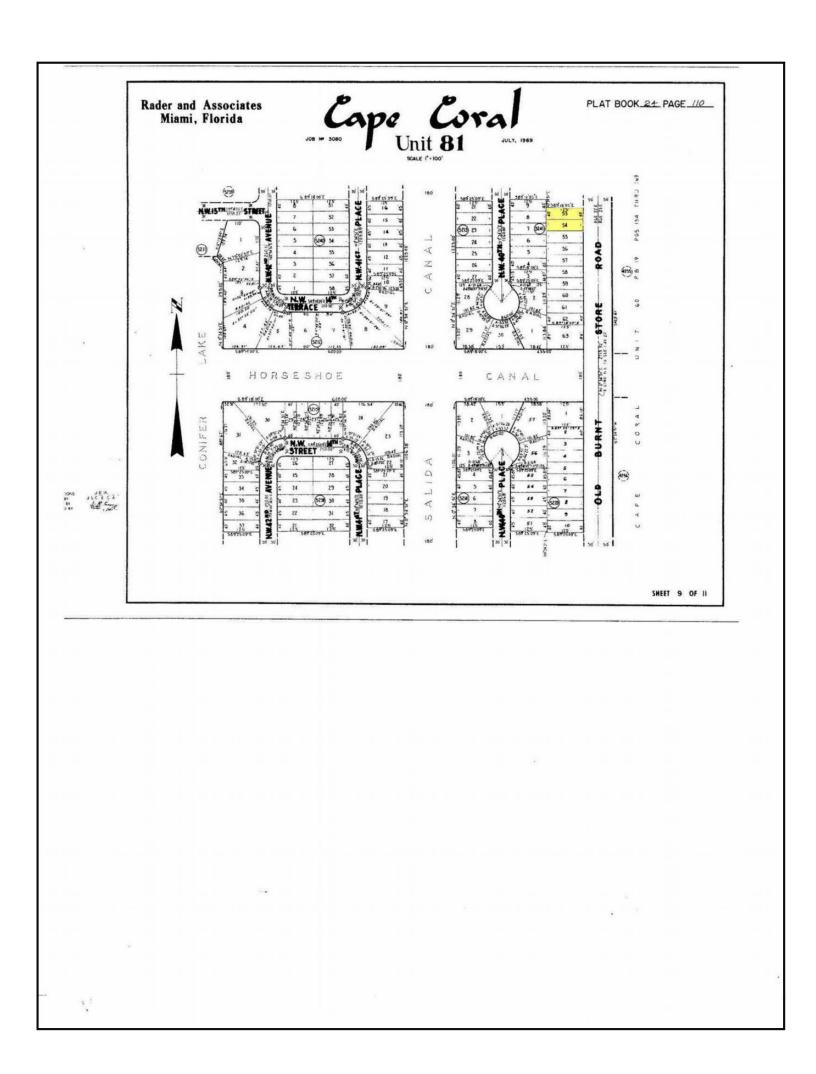
Prox. to Subj. 1.08 miles N
Sales Price 13,000
Date of Sale s09/20; c09/20
Location Adj.MainRd/Unit 82

Site/View

View Woods

Utilities Well/Septic area

Prior Transaction Date 02/15/2013

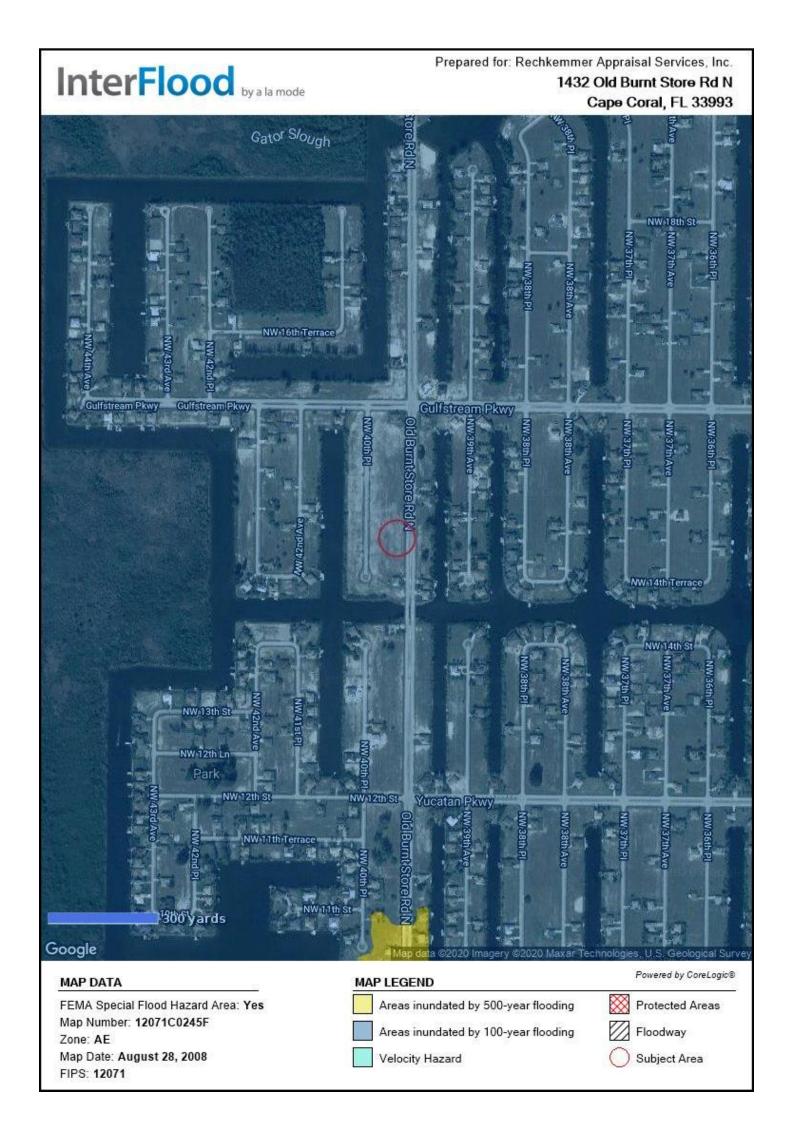


## **Aerial**



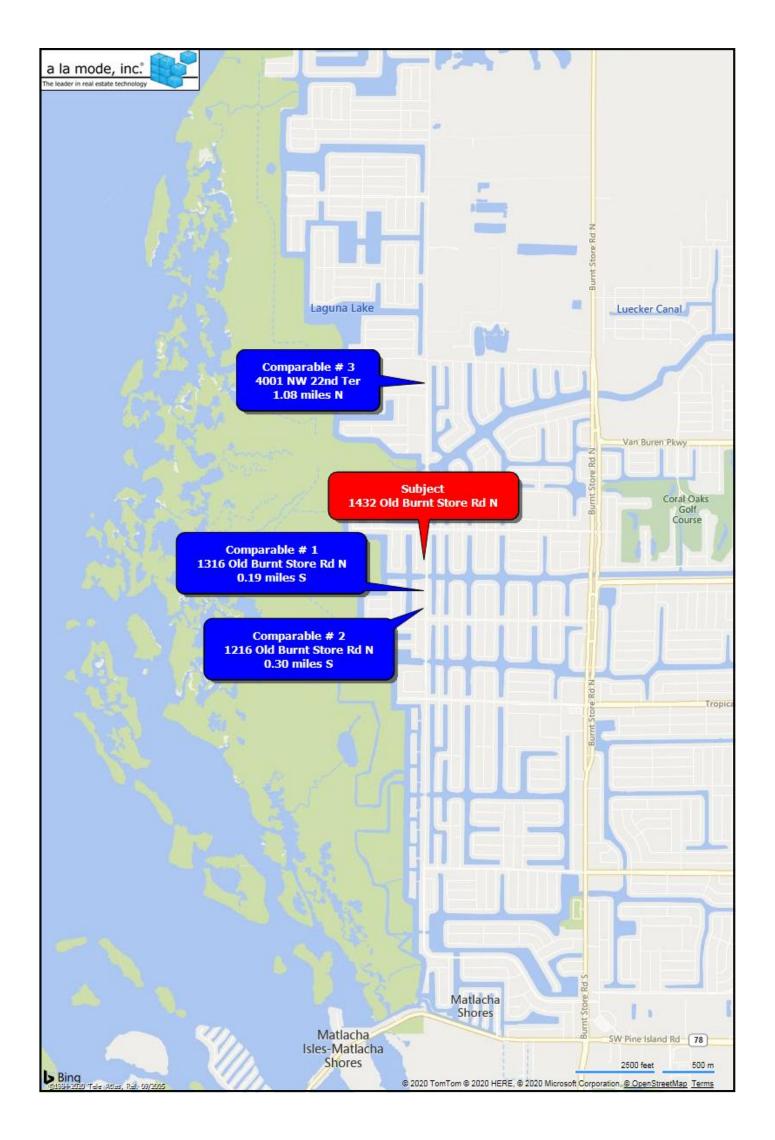
## **Flood Map**

Client	City of Cape Coral				
Property Address	1432 Old Burnt Store Rd N				
City	Cape Coral	County Lee	State FL	Zip Code 33993	
Rorrower	N/Δ	·			



## **Location Map**

Client	City of Cape Coral				
Property Address	1432 Old Burnt Store Rd N				
City	Cape Coral	County Lee	State FL	Zip Code 33993	
Borrower	N/A				



Ron DeSantis, Governor

Halsey Beshears, Secretary



# STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## FLORIDA REAL ESTATE APPRAISAL BD

THE CERTIFIED RESIDENTIAL APPRAISER HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

# RECHKEMMER, RHONDA ELAINE

1913 SW 54 STREET CAPE CORAL FL 33914

**LICENSE NUMBER: RD2869** 

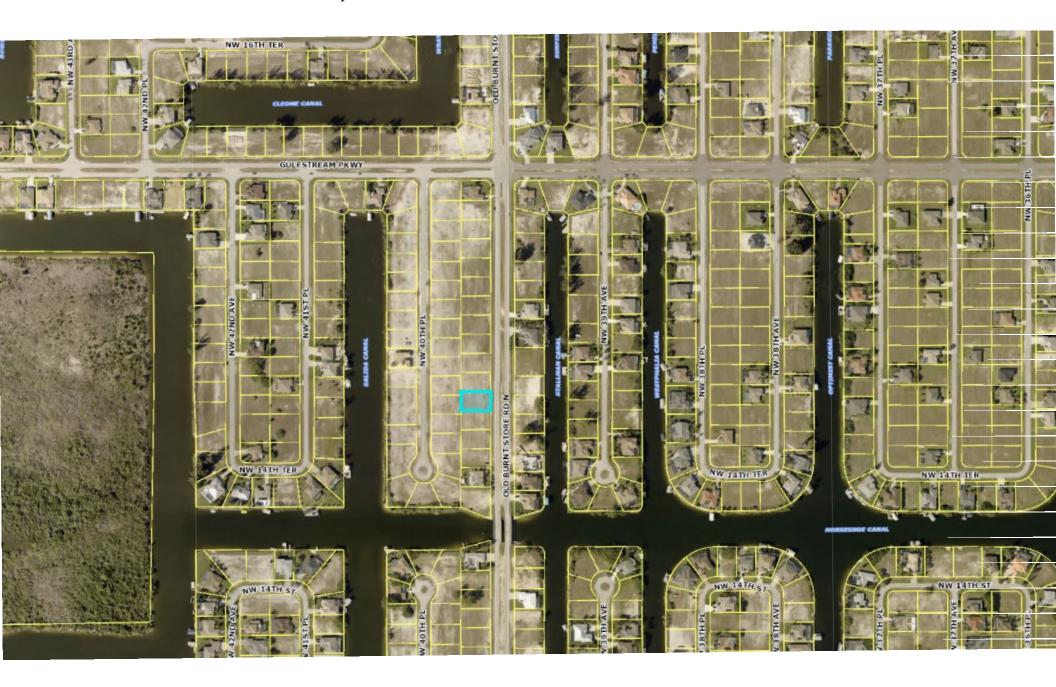
**EXPIRATION DATE: NOVEMBER 30, 2022** 

Always verify licenses online at MyFloridaLicense.com



Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.





# AGENDA REQUEST FORM CITY OF CAPE

CITY OF CAPE CORAL Item Number: A.

Meeting

Date:

1/6/2021

Item

**ORDINANCES/RESOLUTIONS -**

Type: Po

**Public Hearings** 

#### TITLE:

Ordinance 100-20 Public Hearing

#### **REQUESTED ACTION:**

Approve or Deny

#### **SUMMARY EXPLANATION AND BACKGROUND:**

The Ordinance approves the sale of municipal surplus real property described as Lots 49 and 50, Block 5465, Unit 90, Cape Coral Subdivision pursuant to Section 2-155 of the City of Cape Coral Code of Ordinances and authorizes and directs the Mayor and Clerk to execute a deed conveying the aforementioned surplus real property located at 4111 NW 39th Street to TSAVO Group, Inc. (Applicant: Brought forward by City Management.)

## STRATEGIC PLAN ALIGNMENT:

1. 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?

#### **RECOMMENDATIONS:**

n/a

#### SOURCE OF ADDITIONAL INFORMATION:

Dawn Andrews, Real Estate dandrews@capecoral.net Chris Phillips, Interim Financial Services Director cphillip@capecoral.net

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

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

#### PREPARED BY:

Division- Department-City
Attorney

#### ATTACHMENTS:

D

**Description** Type

1. Ordinance 100-20 Ordinance

Appraisal Backup Material

Backup Material

#### ORDINANCE 100 - 20

AN ORDINANCE APPROVING THE SALE OF MUNICIPAL SURPLUS REAL PROPERTY DESCRIBED AS LOTS 49 AND 50, BLOCK 5465, UNIT 90, 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 LOCATED AT 4111 NW 39<sup>TH</sup> STREET TO TSAVO GROUP, INC.; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral acquired a certain parcel of real property described as Lots 49 and 50, Block 5465, Unit 90, Cape Coral Subdivision, located at 4111 NW 39<sup>th</sup> Street, 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, the City has obtained an appraisal of a comparable canalfront property; 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 Council hereby approves the sale of the surplus real property described as Lots 49 and 50, Block 5465, Unit 90, Cape Coral Subdivision as recorded in Plat Book 24, Page 27, 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 TSAVO Group, Inc., to purchase property located at 4111 NW 39<sup>th</sup> Street, legally described as Lots 49 and 50, Block 5465, Unit 90, Cape Coral Subdivision, as recorded in Plat Book 24, Page 27, 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 TSAVO Group, 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	COUNCIL	OF	THE	CITY	OF	CAPE	CORAL	AT	ITS	REGU	JLAR
SESSION T	'HIS		DAY OF	·			_, 20	021.					

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:	
COVIELLO GUNTER SHEPPARD HAYDEN	NELSON WELSH WILLIAMS COSDEN
ATTESTED TO AND FILED IN MY OFFICE T 2021.	THIS DAY OF,
	KIMBERLY BRUNS CITY CLERK
APPROVED AS TO FORM:  JOHN/E. NACLERIO, III ASSISTNT CITY ATTORNEY Ord\ Surplus Property-Sale to Tsavo Group L49-50 B5465	

# **EXHIBIT A**

## **Vacant Land Contract**



١.	Sale and Purchase:	CITY OF CAPE CORAL	("Seller")
	and	CITY OF CAPE CORAL  TSAVO GROUP INC  and buy on the terms and conditions specified below the property ("Property ("Proper	("Buyer"
	(the "parties") agree to sell a	and buy on the terms and conditions specified below the property ("Prop	perty )
	described as:		
	Address:	4111 NW 39TH STREET CAPE CORAL, FL 33993	
	Legal Description: CAPE C	ORAL UNIT 90 BLK 5465 PB 24 PG 27 LOTS 49 + 50	
	42 142 121	of LEE County, Florida. Real Property ID No.: 13-43-22-0	3-05465.0490
	including all improvements	existing on the Property and the following additional property:	
2	Purchase Price: (U.S. curi	rency)\$_	53,000.0
-	All deposits will be made pa	ayable to "Escrow Agent" named below and held in escrow by:	
	Escrow Agent's Contact Pe	erson: Dawn Andrews	
	Escrow Agent's Address:	P O Box 150027 cape coral fl 33915	
	Escrow Agent's Phone:	239 574 0735	
	Escrow Agent's Email:	P O Box 150027 cape coral fl 33915  239 574 0735  dandrews@cityofcapecoral.net	
		blank) (Check if applicable)	
	□ accompanies offer     □		
	☐ will be delivered to E	Escrow Agent within days (3 days if left blank)	1,000.0
	after Effective Date	\$_	1,000.0
	(b) Additional deposit will b	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 Pa	aragraph 6) (express as a dollar amount or percentage)	4 000 0
	(d) Other:	within 7 days of City Council approval \$\$	4,000.0
	(a) Palanca to close (not in	ncluding <b>Buyer's</b> closing costs, prepaid items, and prorations) y wire transfer or other Collected funds\$\$	
	to be paid at closing by	/ Wire transfer or other Collected funds	rad arias \ The
	(f) ☐ (Complete only if pu	rchase price will be determined based on a per unit cost instead of a fix	ted price.) The
	unit used to determine	the purchase price is □ lot □ acre □ square foot □ other (specify):	it based on a
	prorating areas of less	than a full unit. The purchase price will be \$ per un	SUN/AVOR IN
	calculation of total area	a of the Property as certified to Seller and Buyer by a Florida licensed s	from the
		graph 8(c). The following rights of way and other areas will be excluded	nom me
	calculation:		
3.	Time for Acceptance; Eff	fective Date: Unless this offer is signed by Seller and Buyer and an expression before see additional terms, this offer will be withdrawn and Buy	er'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 i
	delivered The "Effective f	Date" of this contract is the date on which the last one of the Seller	and Buyer ha
	delivered. The Effective I	elivered this offer or the final counter-offer.	and buyor na
4.	Closing Date: This transa	action will close on w/in 30days of approval ("Closing Date"), unless sp	ecifically
	extended by other provision	ns of this contract. The Closing Date will prevail over all other time perio	ods including, bi
	not limited to Financing an	nd Feasibility Study periods. However, if the Closing Date occurs on a S	Saturday,
	Sunday or national legal h	noliday, it will extend to 5:00 p.m. (where the Property is located) of the i	next business
	day In the event insurance	e underwriting is suspended on Closing Date and <b>Buyer</b> is unable to ob	tain property
	insurance Buyer may pos	stoone closing for up to 5 days after the insurance underwriting suspens	sion is lifted. If
	this transaction does not cl	lose for any reason, Buyer will immediately return all Seller provided de	ocuments and
	other items.		
5.	Extension of Closing Dat	te: If Paragraph 6(b) is checked and Closing Funds from Buyer's lender	r(s) are not
	available on Closing Date	due to Consumer Financial Protection Bureau Closing Disclosure delive	ary requirement
р.	WL \ \ and Saller (	) () acknowledge receipt of a copy of this page, which is 1 of 8 pages.	
	,		2020 Florida Realtors
	C-13 Rev 2/20 55907-200160-\$235474		Form
			Simplicit

Seller in the amount of \$   Seller in the amount of \$   Seller in the amount of \$   Seller in the amount of \$   Seller in the amount of \$   Seller in the amount of \$   Seller in the amount of \$   Seller in the amount of \$   Seller and will forms generally accepted in the county where the Property is located; will provide for a late pay and acceleration at the mortgagee's option if Buyer defaults; will give Buyer the right to prepay penalty all or part of the principal at any time(s) with interest only to date of payment; will be du conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require keep liability insurance on the Property, with Seller as additional named insured. Buyer author to obtain credit, employment, and other necessary information to determine creditworthiness for financing. Seller will, within 10 days after Effective Date, give Buyer written notice of whether or will make the loan.    13	ry to satisfy
disclose all such information to Seller and Broker.  (2) Seller Financing: Buyer will execute a first second purchase money note and mortg Seller in the amount of \$	tive Date,days inancial, and btain the osit(s) will be  an interest rate d Broker fully
The mortgage, note, and any security agreement will be in a form acceptable to Seller and will forms generally accepted in the county where the Property is located; will provide for a late pay and acceleration at the mortgage's option if Buyer defaults; will give Buyer the right to prepay penalty all or part of the principal at any time(s) with interest only to date of payment; will be du conveyance or sale; will provide for release of contiguous parcels, if applicable; and will require keep liability insurance on the Property, with Seller as additional named insured. Buyer author to obtain credit, employment, and other necessary information to determine creditworthiness for financing. Seller will, within 10 days after Effective Date, give Buyer written notice of whether or will make the loan.  (3)   Mortgage Assumption: Buyer will take title subject to and assume and pay existing first mental interest rate of	ortgage to
LN#	payment fee epay without due on uire <b>Buyer</b> to horizes <b>Seller</b> s for the er or not <b>Seller</b>
<ul> <li>7. 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 of the special warranty deed □ other (specify) □ may assign the legal capacity to and will convey marketable title to the Property by □ statutory will deed ☑ special warranty deed □ other (specify) □ may assign this of the property by □ statutory will deed ☑ special warranty deed □ other (specify) □ may assign and encumbrances of record or known to Seller, but subject to property taxes for the year of closing; or restrictions, and public utility easements of record; existing zoning and governmental regulations; and (other matters to which title will be subject) □ provided there exists at closing no violation of the foregoing.</li> <li>(a) Title Evidence: The party who pays for the owner's title insurance policy will select the closing age for the title search, including tax and lien search (including municipal lien search) if performed, and fees charged by closing agent. Seller will deliver to Buyer, at (Check one) ☑ Seller's □ Buyer's expense and (Check one) ☑ within <u>30</u> days after Effective Date □ at least <u>days</u> before Closing Days (Check one)</li> </ul>	the mortgage vill purchase or the
deed Special warranty deed other (specify), free of liens, eand encumbrances of record or known to Seller, but subject to property taxes for the year of closing; context restrictions, and public utility easements of record; existing zoning and governmental regulations; and (other matters to which title will be subject)	
discharged by <b>Seller</b> at or before closing and, upon <b>Buyer</b> recording the deed, an owner's police.	y warranty s, easements, g; covenants, nd (list any agent and pay and all other g Date, to be
Buyer () and Seller () () acknowledge receipt of a copy of this page, which is 2 of 8 pages.	20 Florido Bookson
Serial#: 055907-200160-8235474	Form Simplicity

	The state of the s
09 10	amount of the purchase price for fee simple title subject only to the exceptions stated above. If <b>Buyer</b> is paying for the owner's title insurance policy and <b>Seller</b> has an owner's policy, <b>Seller</b> will deliver a copy to <b>Buyer</b> within 15 days after Effective Date.
11 12*	(2)  ightharpoonup an abstract of title, prepared or brought current by an existing abstract firm or certified as correct by an
13	existing firm. However, if such an abstract is not available to Seller, then a prior owner's title policy
14	acceptable to the proposed insurer as a base for reissuance of coverage may be used. The prior policy will
15	include copies of all policy exceptions and an update in a format acceptable to Buyer from the policy
16	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,
117	then (1) above will be the title evidence.
118	(b) Title Examination: After receipt of the title evidence, Buyer will, within days (10 days if left blank) but
119*	no later than Closing Date, deliver written notice to Seller of title defects. Title will be deemed acceptable to
120	Buyer if (i) Buyer fails to deliver proper notice of defects or (ii) Buyer delivers proper written notice and Seller
121	cures the defects within days (30 days if left blank) ("Cure Period") after receipt of the notice. If the
122*	cures the detects within days (30 days inelt blank) ( Cure Pendo ) after receipt or the next of notice of
123	defects are cured within the Cure Period, closing will occur within 10 days after receipt by Buyer of notice of
124	such cure. Seller may elect not to cure defects if Seller reasonably believes any defect cannot be cured within
125	the Cure Period. If the defects are not cured within the Cure Period, Buyer will have 10 days after receipt of
126	notice of Seller's inability to cure the defects to elect whether to terminate this contract or accept title subject
127	to existing defects and close the transaction without reduction in purchase price.
128	(c) Survey: Buyer may, at Buyer's expense, have the Property surveyed and must deliver written notice to
129	Seller, within 5 days after receiving survey but not later than 5 days before Closing Date, of any
130	encroachments on the Property, encroachments by the Property's improvements on other lands, or deed
131	restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a
132	title defect and Seller's and Buyer's obligations will be determined in accordance with Paragraph 8(b).
133	(d) Ingress and Egress: Seller warrants that the Property presently has ingress and egress.
124	9. Property Condition: Seller will deliver the Property to Buyer at closing in its present "as is" condition, with
134	conditions resulting from Buyer's Inspections and casualty damage, if any, excepted. Seller will not engage in or
135	permit any activity that would materially alter the Property's condition without the Buyer's prior written consent.
136	(a) Inspections: (Check (1) or (2))
137	(1) S Feasibility Study: Buyer will, at Buyer's expense and within days (30 days if left blank)
138*	("Feasibility Study Period") after Effective Date and in Buyer's sole and absolute discretion, determine
139	whether the Property is suitable for <b>Buyer's</b> intended use. During the Feasibility Study Period, <b>Buyer</b> may
140	conduct a Phase 1 environmental assessment and any other tests, analyses, surveys, and investigations
141	conduct a Phase Tenvironmental assessment and any other tests, analyses, surveys, and investigations
142	("Inspections") that Buyer deems necessary to determine to Buyer's satisfaction the Property's
143	engineering, architectural, and environmental properties; zoning and zoning restrictions; subdivision
144	statutes; soil and grade; availability of access to public roads, water, and other utilities; consistency with
145	local, state, and regional growth management plans; availability of permits, government approvals, and
146	licenses; and other inspections that Buyer deems appropriate. If the Property must be rezoned, Buyer will
147	obtain the rezoning from the appropriate government agencies. Seller will sign all documents Buyer is
148	required to file in connection with development or rezoning approvals. Seller gives Buyer, its agents,
149	contractors, and assigns, the right to enter the Property at any time during the Feasibility Study Period for
150	the purpose of conducting Inspections, provided, however, that Buyer, its agents, contractors, and assigns
151	enter the Property and conduct Inspections at their own risk. Buyer will indemnify and hold Seller
152	harmless from losses, damages, costs, claims, and expenses of any nature, including attorneys' fees,
153	expenses, and liability incurred in application for rezoning or related proceedings, and from liability to any
154	person, arising from the conduct of any and all Inspections or any work authorized by Buyer. Buyer will
155	not engage in any activity that could result in a construction lien being filed against the Property without
156	Seller's prior written consent. If this transaction does not close, Buyer will, at Buyer's expense, (i) repair
157	all damages to the Property resulting from the Inspections and return the Property to the condition it was in
158	before conducting the Inspections and (ii) release to Seller all reports and other work generated as a
159	result of the Inspections.
	Before expiration of the Feasibility Study Period, Buyer must deliver written notice to Seller of Buyer's
160	determination of whether or not the Property is acceptable. Buyer's failure to comply with this notice
161	determination of whether of not the Property is acceptable. Buyer's failure to comply with this hotice
162	requirement will constitute acceptance of the Property as suitable for <b>Buyer's</b> intended use in its "as is" condition. If the Property is unacceptable to <b>Buyer</b> and written notice of this fact is timely delivered to
163	condition. If the Property is unacceptable to Buyer and written notice of this fact is timely delivered to
164	Seller, this contract will be deemed terminated, and Buyer's deposit(s) will be returned.
	Buyer ( ) ( ) and Seller ( ) ( ) acknowledge receipt of a copy of this page, which is 3 of 8 pages.
	#2020 Florida Pagitarel
-	VAC-13 REV 2/20
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165*	(2) No Feasibility Study: Buyer is satisfied that the Property is suitable for Buyer's purposes, including
166	being satisfied that either public sewerage and water are available to the Property or the Property will be
167	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,
168	growth management, and environmental conditions, are acceptable to <b>Buyer</b> . This contract is not
169	
170	contingent on Buyer conducting any further investigations.
171	(b) Government Regulations: Changes in government regulations and levels of service which affect Buyer's
172	intended use of the Property will not be grounds for terminating this contract if the Feasibility Study Period has
173	expired or if Paragraph 9(a)(2) is selected.
174	(c) Flood Zone: Buyer is advised to verify by survey, with the lender, and with appropriate government agencies
175	which flood zone the Property is in, whether flood insurance is required, and what restrictions apply to
176	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
177	defined in Section 161.053, Florida Statutes, Seller will provide Buyer with an affidavit or survey as required
178	
179	by law delineating the line's location on the Property, unless Buyer waives this requirement in writing. The
180	Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that
181	govern coastal property, including delineation of the CCCL, rigid coastal protection structures, beach
182	nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida
183	Department of Environmental Protection, including whether there are significant erosion conditions associated
184	with the shore line of the Property being purchased.
185*	☐ Buyer waives the right to receive a CCCL affidavit or survey.
186	10. Closing Procedure; Costs: Closing will take place in the county where the Property is located and may be
187	conducted by mail or electronic means. If title insurance insures Buyer for title defects arising between the title
188	binder effective date and recording of Buyer's deed, closing agent will disburse at closing the net sale proceeds to
189	Seller (in local cashier's check if Seller requests in writing at least 5 days before closing) and brokerage fees to
190	Broker as per Paragraph 21. In addition to other expenses provided in this contract, Seller and Buyer will pay the
191	costs indicated below.
192	(a) Seller Costs:
193	Taxes on deed
	Recording fees for documents needed to cure title
194	
195	Title evidence (if applicable under Paragraph 8)
196	Estoppel Fee(s)
197*	Other:
198	(b) Buyer Costs:
199	Taxes and recording fees on notes and mortgages
200	Recording fees on the deed and financing statements
201	Loan expenses
202	Title evidence (if applicable under Paragraph 8)
203	
2.00	
204	Lender's title policy at the simultaneous issue rate
204	Lender's title policy at the simultaneous issue rate Inspections
205	Lender's title policy at the simultaneous issue rate Inspections Survey
205 206	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance
205 206 207*	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00
205 206	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00  (c) Prorations: The following items will be made current and prorated as of the day before Closing Date: real
205 206 207*	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00  (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
205 206 207* 208	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00  (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,
205 206 207* 208 209	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00  (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.
205 206 207* 208 209 210	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00  (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.
205 206 207* 208 209 210 211 212	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00  (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
205 206 207* 208 209 210 211 212 213	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00  (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
205 206 207* 208 209 210 211 212 213 214	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00  (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
205 206 207* 208 209 210 211 212 213 214 215	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00  (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
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205 206 207* 208 209 210 211 212 213 214 215 216* 217	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00  (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
205 206 207* 208 209 210 211 212 213 214 215 216* 217 218	Lender's title policy at the simultaneous issue rate Inspections Survey Insurance Other: Florida Compliance fee \$299.00  (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.
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- 222 IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER 223 PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE 224 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.
  - 11. 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). Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or national legal holiday (see 5 U.S.C. 6103) shall extend until 5:00 p.m. (where the Property is located) of the next business day. Time is of the essence in this contract.
  - 12. 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.
  - 13. 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.
  - 14. 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.
  - 15. 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.
  - 16. 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

Simplicity

Buyer () () and Seller () () acknowledge receipt of a copy of this page, which is 5 of	8 pages.
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Serial#: 058907-200160-8235474	E Form

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.
- 17. 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 17 shall survive Closing or termination of this Contract.
- 18. 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.
- 19. 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.
- Commercial Real Estate Sales Commission Lien Act: If the Property is commercial real estate as defined by

Commission Lien Act provides that when a t	orgonic disclosure will apply. The Florida Commercial Real Estate Sales orgonic disclosure will apply. The Florida Commercial Real Estate Sales orgonic disclosure will apply. The Florida Commercial Real Estate Sales orgonic disclosure will apply. The Florida Commercial Real Estate Sales orgonic disclosure will apply. The Florida Commercial Real Estate Sales orgonic disclosure will apply.
broker's commission. The broker's lien right	broker may claim a lien against your net sales proceeds for the sunder the act cannot be waived before the commission is earned.
closing agent: Seller and Buyer direct Clos fees as specified in separate brokerage agre Brokers, except to the extent Broker has reta	named below are collectively referred to as "Broker." Instruction to sing Agent to disburse at Closing the full amount of the brokerage elements with the parties and cooperative agreements between the ained such fees from the escrowed funds. This Paragraph will not be impensation made by Seller or listing broker to cooperating brokers.  Lara Chrisphont/3326211
Seller's Sales Associate/License No.	Buyer's Sales Associate/License No.
Buyer () () and Seller () () acknowled	
Buyer () () and Seller () () acknowled	ge receipt of a copy of this page, which is 6 of 8 pages.
VAC-13 Rev 2/20	ge receipt of a copy of this page, which is 6 of 8 pages.  ©2020 Florida Realtors®

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Seller's Sales Associate Email Address	
	Buyer's Sales Associate Email Address
239 574 0735	305 300 5012
Seller's Sales Associate Phone Number	Buyer's Sales Associate Phone Number
Dawn Andrews	Royal Realty of SWFL
Listing Brokerage	Buyer's Brokerage
PO Box 150027, Cape Coral, FL 33915-0027	618 SE 3 Street # 115 Cape Coral FI 33991
Listing Brokerage Address	Buyer's Brokerage Address
Addenda: The following additional terms are in (Check if applicable)     □ A. Back-up Contract     □ B. Other	ncluded in the attached addenda and incorporated into this
signed by Buyer and Seller and an executed copy i approval, this offer will be withdrawn.	the City of Cape Coral City Council approval, unless this of is delivered to all parties on or before 45 days from City Council approval, unless this of its delivered to all parties on or before 45 days from City Council approval, unless this of its delivered to all parties on or before 45 days from City Council approval, unless this of its delivered to all parties on or before 45 days from City Council approval, unless this of its delivered to all parties on or before 45 days from City Council approval, unless this of its delivered to all parties on or before 45 days from City Council approval, unless this of its delivered to all parties on or before 45 days from City Council approval, unless this of its delivered to all parties on or before 45 days from City Council approval, unless this of its delivered to all parties on or before 45 days from City Council approval, unless this of its delivered to all parties on or before 45 days from City Council approval a
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COUNTER  Seller counters Buyer's offer (to accept the cound deliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contract	R-OFFER/REJECTION
COUNTER  Seller counters Buyer's offer (to accept the cound deliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contract signing.	R-OFFER/REJECTION  Iter-offer, Buyer must sign or initial the counter-offered terr  t. If not fully understood, seek the advice of an attorne
COUNTER  ☐ Seller counters Buyer's offer (to accept the cound deliver a copy of the acceptance to Seller).  ☐ Seller rejects Buyer's offer  This is intended to be a legally binding contract signing.  Buyer: Walquime Leng	R-OFFER/REJECTION  Iter-offer, Buyer must sign or initial the counter-offered term  t. If not fully understood, seek the advice of an attorne  Date: 11/13/2020
COUNTER  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contract signing.  Buyer: Walquime Leng  Print name: Walquime Walquime	R-OFFER/REJECTION  Iter-offer, Buyer must sign or initial the counter-offered term  t. If not fully understood, seek the advice of an attorne  Date: 11/13/2020
COUNTER  ☐ Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  ☐ Seller rejects Buyer's offer  This is intended to be a legally binding contract signing.  Buyer: Walzuime Leng  Print name: Walquime Buyer:	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered term  It. If not fully understood, seek the advice of an attorne  Date: 11/13/2020  Inc. Lermy  Date:
COUNTER  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contract signing.  Buyer: Walquime Leng  Print name: Walquime Buyer:  Print name:	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered term  It. If not fully understood, seek the advice of an attorne  Date: 11/13/2020  Inc. Lermy  Date:
COUNTER  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contract signing.  Buyer:  Walquime Leng  Print name:  Walquime Buyer:  Print name:  Buyer's address for purpose of notice:	R-OFFER/REJECTION  Iter-offer, Buyer must sign or initial the counter-offered term  It. If not fully understood, seek the advice of an attorne  Date: 11/13/2020  Date: Date:
COUNTER  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contract signing.  Buyer: Walzuime Leng  Print name: Walquim  Buyer:  Print name:  Buyer's address for purpose of notice:  Address: 1500 West	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered term  It. If not fully understood, seek the advice of an attorne  Date: 11/13/2020  Inter-offer, Buyer must sign or initial the counter-offered term  Date: 11/13/2020  Date: On Road Suite 200 Weston FL 33326
COUNTER  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contract signing.  Buyer: Walzuime Leng  Print name: Walquim  Buyer:  Print name:  Buyer's address for purpose of notice:  Address: 1500 West	R-OFFER/REJECTION  Iter-offer, Buyer must sign or initial the counter-offered term  It. If not fully understood, seek the advice of an attorne  Date: 11/13/2020  Date: Date:
COUNTER  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contract signing.  Buyer: Walzuime Leng  Print name: Walquim  Buyer:  Print name:  Buyer's address for purpose of notice:  Address: 1500 West	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered term  It. If not fully understood, seek the advice of an attorne  Date: 11/13/2020  Inter-offer, Buyer must sign or initial the counter-offered term  Date:
COUNTER  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contract signing.  Buyer: Walquime Leng  Print name: Walquime Buyer:  Print name:  Buyer's address for purpose of notice:  Address: 1500 Wester  Phone: 954 805 0121 Fax:	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered term  It. If not fully understood, seek the advice of an attorne  Date: 11/13/2020  Inter-offer, Buyer must sign or initial the counter-offered term  Date:
COUNTER  Seller counters Buyer's offer (to accept the coundeliver a copy of the acceptance to Seller).  Seller rejects Buyer's offer  This is intended to be a legally binding contract signing.  Buyer: Walquime Leng  Print name: Walquime Buyer:  Print name: Walquime Buyer's address for purpose of notice:  Address: 1500 Wester Phone: 954 805 0121 Fax:  Seller: City of Ca	R-OFFER/REJECTION  Inter-offer, Buyer must sign or initial the counter-offered term  It. If not fully understood, seek the advice of an attorne  Date: 11/13/2020  Inter-offer, Buyer must sign or initial the counter-offered term  Date:

	dress for purpose of n			
Address: _		PO Box 150027	7, Cape Coral, FL 33915-	0027
Phone:	239 574 0735	Fax:	Email:	dandrews@capecoral.net
Effective Date:		(The date on	which the last party sig	ned or initialed and delivere
	or counter offer.)		minon the fact party ofg	noa or minarca and activere

Florida REALTORS\* makes no representation as to the legal validity or adequacy of any provision of this form in any specific transaction. This standardized form should not be used in complex transactions or with extensive riders or additions. This form is available for use by the entire real estate industry and is not intended to identify the user as REALTOR\*. REALTOR\* is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS\* and who subscribe to its Code of Ethics. The copyright laws of United States (17 U.S. Code) forbid the unauthorized reproduction of this form by any means including facsimile or computerized forms.

Buyer ( ) ( ) and Seller ( ) ( )	) acknowledge receipt of a copy of this page, which is 8 of 8 pages.

VAC-13 Rev 2/20 Serial#: 055907-200160-5236474

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## **PRIVACY NOTICE**

Pursuant to the Gramm-Leach-Bliley Act of 1999, effective July 1, 2001, Appraisers, along with all providers of personal financial services are now required by federal law to inform their clients of the policies of the firm with regard to the privacy of client nonpublic personal information. As professionals, we understand that your privacy is very important to you and are pleased to provide you with this information.

#### **Types of Nonpublic Personal Information We Collect**

In the course of performing appraisals, we may collect what is known as "nonpublic personal information" about you. This information is used to facilitate the services that we provide to you and may include the information provided to us by you directly or received by us from others with your authorization.

#### **Parties to Whom We Disclose Information**

We do not disclose any nonpublic personal information obtained in the course of our engagement with our clients to nonaffiliated third parties, except as necessary or as required by law. By way of example, a necessary disclosure would be to our employees, and in certain situations, to unrelated third party consultants who need to know that information to assist us in providing appraisal services to you. All of our employees and any third party consultants we employ are informed that any information they see as part of an appraisal assignment is to be maintained in strict confidence within the firm.

A disclosure required by law would be a disclosure by us that is ordered by a court of competent jurisdiction with regard to a legal action to which you are a party.

#### **Confidentiality and Security**

We will retain records relating to professional services that we have provided to you for a reasonable time so that we are better able to assist you with your needs. In order to protect your nonpublic personal information from unauthorized access by third parties, we maintain physical, electronic and procedural safeguards that comply with our professional standards to insure the security and integrity of your information.

Please feel free to call us any time if you have any questions about the confidentiality of the information that you provide to us.

File No.: 20100821

# **LAND APPRAISAL REPORT**

	Property Address: 4010 NW 39th Lane County: Lee	City: Cape Coral Legal Description: Lots 49+50, Blk. 5460, Cape Coral	State: FL Zip Code: 33993  I Unit 90, PB 24 PG 27
SUBJECT	Assessor's Parcel #: 13-43-22-C3-05460.0490	Tax Year: 2019 R.E. Taxes: \$ ( Map Reference: 15980	O Special Assessments: \$ 0 Census Tract: 0101.05
UB)	Current Owner of Record: City of Cape Coral	Borrower (if applicable): N//	
S			HOA: \$ 0
	The purpose of this appraisal is to develop an opinion of: This report reflects the following value (if not Current, see		
F		asehold Leased Fee Other (describe)	
<b>ASSIGNMENT</b>	Intended Use: The Intended Use is to evaluate t	ne property that is the subject of this appraisal to dete	ermine the current market value of the
Sign	subject site for a potential lot swap with the C Intended User(s) (by name or type): Mark A and Bo		
ASS	include cost (c) (c) hand st type).	ATTITLE IN COLOG	
	Client: Mark A + Bonnie M Solos	Address: 147 Kassan Ct, South Saint Pal	
	Appraiser: Rhonda Elaine Rechkemmer  Characteristics	Address: 1913 SW 54th Street, Cape Co Predominant One-Unit Housing	Present Land Use Change in Land Use
			One-Unit 50 % Not Likely
	Built up: ☐ Over 75% ☐ 25-75% ☐		2-4 Unit 0 % Likely * In Process *
	Growth rate: Rapid Stable		Multi-Unit 5 % * To:
	Property values: Increasing Stable Demand/supply: Shortage In Balance	3 3 3 3 3	Comm'I 5 % Vacant Land 40 %
	Marketing time: Under 3 Mos. 3-6 Mos.	Over 6 Mos.	%
Ž		Factors Affecting Marketability	•
Ę	ltem Good Aver		Good Average Fair Poor N/A
Ä	Employment Stability \(\simega\) Convenience to Employment \(\simega\)	· · ·	
ESC	Convenience to Shopping	Protection from Detrimental Cond	
₽ □	Convenience to Schools		
AREA DESCRIPTION	Adequacy of Public Transportation   Recreational Facilities		
		et is bordered by the Lee/Charlotte County Line to the	
MARKET	south, Burnt Store Road to the east and Cha	rlotte Harbor Preserve State Park to the west. The su	ubject is a vacant site located on Eastover
MA	Canal a 120' wide canal in the northwest port	on of Cape Coral. This site has distant, indirect boatin	
	the waterways to the Guir of Mexico. All support	orting services are located within ten miles including sl s. This market is a mix of single family homes located	
		g of single family homes on acreage sites in this north	
		tgages, FHA/VA and cash transactions. The median s	
		nousing supply in this market is currently in balance wit were noted throughout this market. See Addendum for	
	<u> </u>		Ou A
	Dimensions: 80' x 125' Zoning Classification: R1	Description: Single Fa	Site Area: 10,000 Sq.Ft.
	Zoning Glassingation: 171		army residential
		Do present improvements comply with existing zoning require	ements? Yes No No Improvements
	Uses allowed under current zoning: Allows a sing	le family home.	
	Are CC&Rs applicable? ☐ Yes ☒ No ☐ Unknow	n Have the documents been reviewed? Yes 🖂 No	Ground Rent (if applicable) \$ /
	Comments:		
	Highest & Best Use as improved: Present use, or	Other use (explain) To improve with a single family	home.
	Actual Use as of Effective Date: Vacant Site	Use as appraised in this report:	Vacant Site
_	Summary of Highest & Best Use: Considering the	physically and legally possible as well as the financial	
뎓	the appraiser's opinion that the highest and be	est use of the subject's site is a single family residence	e
ا≘			_
		•	Frontage 80' on canal
SCR	Utilities Public Other Provider/Description		
DESCR	Utilities Public Other Provider/Description Electricity \( \sum_{\text{Description}} \)	Street Asphalt paved	Topography Mostly level/sloping to canal
SITE DESCR	Utilities         Public         Other         Provider/Description           Electricity         ☑         LCEC           Gas         ☐         None           Water         ☑         Well required	Width 60' wide (per plat)	Size Typical for the area
SITE DESCRIPTION	Sanitary Sewer Septic required		
SITE DESCR	Sanitary Sewer Sewer Sewer Source Sewer None	Width         60' wide (per plat)           Surface         Asphalt paved           Curb/Gutter         None           Sidewalk         None	Size Typical for the area Shape Rectangular
SITE DESCR	Sanitary Sewer Storm Sewer Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Sew	Width         60' wide (per plat)           Surface         Asphalt paved           Curb/Gutter         None           Sidewalk         None           Street Lights         Pole	Size         Typical for the area           Shape         Rectangular           Drainage         Appears to be adequate
SITE DESCR	Sanitary Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Storm Sewer Sewer Storm Sewer Storm Sewer Sew	Width Surface Asphalt paved  Curb/Gutter None	Size Typical for the area Shape Rectangular Drainage Appears to be adequate View Canal
SITE DESCR	Sanitary Sewer Storm Sewer Mone  Telephone Storm Sewer Various providers  Multimedia Storm Sewer Various providers  Other site elements: Storm Sewer Various providers  FEMA Spec'l Flood Hazard Area Storm No FEMA	Width         60' wide (per plat)           Surface         Asphalt paved           Curh/Gutter         None           Sidewalk         None           Street Lights         Pole           Alley         None           Cul de Sac         Underground Utilities         Other (describe)           A Flood Zone         AE         FEMA Map # 12071C0235F	Size         Typical for the area           Shape         Rectangular           Drainage         Appears to be adequate           View         Canal           FEMA Map Date 08/28/2008
SITE DESCR	Sanitary Sewer Storm Sewer Mone  Telephone Storm Sewer Various providers  Multimedia Storm Sewer Various providers  Other site elements: Inside Lot Comer Lot  FEMA Spec'l Flood Hazard Area Yes No FEMA  Site Comments: No adverse easements or ence	Width 60' wide (per plat) Surface Asphalt paved  Curh/Gutter None	Size Typical for the area  Shape Rectangular  Drainage Appears to be adequate  View Canal  FEMA Map Date 08/28/2008  For review. Site dimensions are taken from
SITE DESCR	Sanitary Sewer Storm Sewer None  Telephone Various providers Multimedia Various providers  Other site elements: Inside Lot Comer Lot  FEMA Spec'l Flood Hazard Area Ves No FEMA  Site Comments: No adverse easements or ence	Width 60' wide (per plat) Surface Asphalt paved  Curb/Gutter None	Size Typical for the area  Shape Rectangular  Drainage Appears to be adequate  View Canal  FEMA Map Date 08/28/2008  for review. Site dimensions are taken from assumed to be accurate. The subject's
SITE DESCR	Sanitary Sewer	Width 60' wide (per plat) Surface Asphalt paved  Curh/Gutter None	Size Typical for the area  Shape Rectangular  Drainage Appears to be adequate  View Canal  FEMA Map Date 08/28/2008  for review. Site dimensions are taken from as assumed to be accurate. The subject's  Well and septic are common for this market
SITE DESCR	Sanitary Sewer Storm Sewer None  Telephone Storm Sewer Various providers  Multimedia Storm Sewer Various providers  Other site elements: Inside Lot Comer Lot  FEMA Spec'l Flood Hazard Area Syes No FEMA  Site Comments: No adverse easements or encenthe recorded plat which is assumed to be accessed as the second of the second	Width 60' wide (per plat) Surface Asphalt paved  Curb/Gutter None	Size Typical for the area  Shape Rectangular  Drainage Appears to be adequate  View Canal  FEMA Map Date 08/28/2008  for review. Site dimensions are taken from as assumed to be accurate. The subject's  Well and septic are common for this market



# **LAND APPRAISAL REPORT**

L	<u>AND APP</u>							ile No.: 20100821	
	My research 🔲 did 🔀	did not reveal any	prior	sales or transfers of the s	subject property for	the three years prior to th	e effective date of	this appraisal.	
≿	My research did did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.  Data Source(s): Lee County Property Appraiser's web site; Lee County Clerk of Courts; SWFL MLS								
9	1st Prior Subject S	Sale/Transfer	Ana	lysis of sale/transfer histo	ry and/or any curre	ent agreement of sale/listing	ng: The subj	ect is currently listed	for sale by
ST	Date: 04/20/2012			•	•	-			
主		the City of Cape Coral. This site was listed for \$60,000 on 04/11/2019 (347 DOM), per the SWFL  100 Multi-Parcel  MLS#219022119. The subject had no prior sales or transactions indicated within the past 36 months from							
2	Source(s): Lee County		_	vILS#219022119. The subject had no prior sales or transactions indicated within the past 36 month he effective date of this appraisal. The comparables had no prior transactions in the previous 12 m					
TRANSFER HISTORY	2nd Prior Subject S		1110	enective date or thi	з арргаізаі. Ті	e comparables nau	no prior transa	cuons in the previous	12 1110111115.
S	•	Sale/ Hallslei							
8	Date:								_
F	Price:								
	Source(s):								
ļ	FEATURE	SUBJECT PROPER	RTY	COMPARABL		COMPARABL		COMPARABLE	
	Address 4010 NW 39			4126 NW 39th Lan	-	4209 NW 39th Stre		4127 NW 39th Stree	
	Cape Coral,	FL 33993				Cape Coral, FL 339	993	Cape Coral, FL 339	93
	Proximity to Subject			0.12 miles W		0.18 miles W		0.13 miles SW	
	Sale Price		N/A	\$	68,000	\$	50,000	\$	54,000
	Price/ Sq.Ft.	\$		\$ 6.80		\$ 5.00		\$ 5.40	
	Data Source(s)	Inspection		SWFLMLS#21807	1090/395DOM	SWFLMLS#21902	9390/50DOM	SWFLMLS#219006	698/212DOM
	Verification Source(s)	LeePA/Public R	ec.	LeePA/Inst#201900	00295126	LeePA/Inst#201900	00168710	LeePA/Inst#201900	0202181
Ī	VALUE ADJUSTMENT	DESCRIPTION		DESCRIPTION	+(-) \$ Adjust	DESCRIPTION	+(-) \$ Adjust	DESCRIPTION	+(-) \$ Adjust
Ī	Sales or Financing	N/A		Cash	1	Cash	1 77 37	Cash	( )
I	Concessions	N/A		None		None		None	
$\circ$	Date of Sale/Time	N/A		s12/19; c11/19	0	s07/19; c06/19	0	s08/19; c08/19	0
<u>Š</u>	Rights Appraised	Fee Simple		Fee Simple	<del>                                     </del>	Fee Simple	<del>                                     </del>	Fee Simple	
Ĕ	Location	U90/IndirectGul	fΛο	U90/IndirectGulfAc	+	U90/IndirectGulfAc		U90/IndirectGulfAc	
뉨	Site Area (in Sq.Ft.)	10,000	IAC	10,000	+	10,000		10,000	
Z	View/Frontage	Canal/80ff		Canal/80ff	+	Canal/80ff		Canal/80ff	
<u>8</u>	•				+				
COMPARISON	Utilities Other Footures	Well/Septic area	<u>a                                      </u>	Well/Septic area	14 000	Well/Septic area		Well/Septic area	
<u> </u>	Other Features	None		Seawall/ConcDock	-14,000			None	
8	Prior Transaction Date	04/20/2012		07/28/1997	-	07/28/2008		04/20/2004	
		\$13,080,100 Mi	ulti	\$9,000		\$100		\$89,900 Disqual.	
SALES	Net Adjustment (Total, in	<u>\$)</u>		□ + ⊠ - \$	-14,000	<u> </u>		<u> </u> + <u> </u> - \$	
Ϋ́				Net 20.6 %		Net %		Net %	
	Adjusted Sale Price (in \$)			Gross 20.6 % \$	54,000		50,000		54,000
	Summary of Sales Compa	• •						lar boating access to	
								d good indicators of v	
	stable market. Sale	#1 included a co	ncre	ete dock and seawa	II adjusted by p	aired sales. The adj	ustment to Sal	e #1 exceeds the red	commended
	adjustment guideline	es, but does not	adve	ersely impact the va	lue. Slightly gre	ater emphasis is giv	en to Sale #1	which is the most rec	ent sale and
	is located on the sub	oject's street.							
	s=settlement/closed	l date; c=contrac	:t/pe	nding date; DOM=d	ays on the mar	ket; Ac=access; ff=	front feet on ca	nal	
	s=settlement/closed date; c=contract/pending date; DOM=days on the market; Ac=access; ff=front feet on canal								
	PROJECT INFORMATION FOR PUDs (if applicable) The Subject is part of a Planned Unit Development.								
ما	Legal Name of Project:								
5	Describe common elemer	nts and recreational f	acilitie	9S:					
_									
	Indicated Value by: Sales Comparison Approach \$ 54,000								
	Final Reconciliation The	inal Reconciliation The Sales Comparison Approach best represents the actions of typical buyers and sellers in the market and is relied on							
N	entirely for the value estimate. The Cost and Income Approaches are not applicable to vacant land.								
Ĕ	This appraisal is made 🖂 "as is", or 🗌 subject to the following conditions:								
≝		_	,	v					
ᇙ									-
<b>ECONCILIATION</b>	This report is also s	ubject to other Hyp	otheti	cal Conditions and/or E	xtraordinary Assur	nptions as specified in t	he attached adde	nda.	-
ပ္ထု	Based upon an inspection of the subject property, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications,								
~	my (our) Opinion of	the Market Value	(or	other specified value	type), as defir	ed herein, of the re	al property that	is the subject of thi	s report is:
	\$ 54.0	000	` . i	as of:	03/23/2	020	. which i	s the effective date of	this appraisal.
								in this report. See atta	
								report. This appraisal rep	
ATTAC							•	chibits: 🔀 Scope of Wo	
Ę	Limiting cond./Certi				Location Map(s	·	d Addendum	Additional Sa	
Q	Photo Addenda	⊠ Par	cel M	ap	Hypothetical Co		aordinary Assumpt	ions 🛛 Privacy Notic	e
	Client Contact: Mark 5				Client Na	me: <u>Mark A + Bo</u>	onnie M Solos		
	E-Mail: mbsolos@ao	l.com				7 Kassan Ct, South			
	APPRAISER					IPERVISORY APPI		ıuired)	
					or	CO-APPRAISER (i	if applicable)		
	<b>O</b>	_							
40	Shonda &	Fling Re	Lh	Para and A					
ES	Appraiser Name: Rho				Sul	pervisory or Appraiser Name:			
5	Company: Rechkem								
SIGNATURI	Phone: (239) 542-415			es, inc. (239) 542-2591		npany: one:		Fax:	
S	E-Mail: R.Rechkemm		ιdΧ	(203) 342-2391		ne: Nail:		ı uv.	
š									
	Date of Report (Signature)		200	) C1	te: FL Lic	e of Report (Signature): ense or Certification #:			State:
	License or Certification #	. <u>cert.Res.RD</u>	∠005	5 STA					JIGIG
	Designation:  Expiration Date of License	or Cartification:	441	30/3030		signation: iration Date of License or	Cartification		
	•			30/2020 ☐ Did Not Inchest (Deckt				Did Not Income	
	Inspection of Subject:	☑ Did Inspect	L	Did Not Inspect (Deskt		pection of Subject:	□ nia ilisbect	Did Not Inspect	



## Supplemental Addendum

		ouppionionitai maaonaam	1 110	110. 20 10002 1	
Client	Mark A + Bonnie M Solos				•
Property Address	4010 NW 39th Lane				
City	Cape Coral	County Lee	State FL	Zip Code 33993	
Borrower	N/A				

File No. 20100921

#### **Intended User and Use Clarification**

The Intended User of this appraisal report are the Clients, Mark A Solos and Bonnie M Solos. The Intended Use is to evaluate the property that is the subject of this appraisal to determine the current market value for a potential lot swap with the City of Cape Coral. No additional Intended Users are identified by the appraiser. This report is not intended for lending nor insurance purposes.

#### Scope of the Work

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

#### **Highest and Best Use as Vacant**

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

#### **Additional Comments**

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

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

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

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

#### **Comments on Future Assessments**

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

#### Comments on the City of Cape Coral

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

troperly Address 4.010 NW 39th Lane    Cape Coral   County Lee   State FL Zip Code 3	n this report.) in this report, ased professional diately preceding the cause of the praisal.
APPRAISAL AND REPORT IDENTIFICATION  This Report is one of the following types:  Appraisal Report (A written report prepared under Standards Rule 2.2(a), pursuant to the Scope of Work, as disclosed elsewhere in Restricted (A written report prepared under Standards Rule 2.2(b), pursuant to the Scope of Work, as disclosed elsewhere restricted to the stated intended use by the specified client or intended user.)  Comments on Standards Rule 2-3  Lectify 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 unbia analyses, opinions, and conclusions.  I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.  I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report or the parties involved with this assignment.  I have no bias with respect to the property that is the subject of this report or the parties involved with this assignment.  My compensation for completing this assignment is 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 client, the amount of the value opinion, the attainment of a stipulated result, of the occurrence of a subsequent event directly related to the intended use of this appoint in the attainment of a stipulated result, of the occurrence of a subsequent event directly related to the intended use of this apport.  My compensation for completing this assignment is not contingent upon the development or propring of predetermined value or direction in value that favors client, the amount of the value opinion, the attainment of a stipulated resu	n this report.) in this report, ased professional diately preceding the cause of the praisal.
This Report is one of the following types:  Appraisal Report  (A written report prepared under Standards Rule 2-2(p), pursuant to the Scope of Work, as disclosed elsewhere is calculated.  (A written report prepared under Standards Rule 2-2(p), pursuant to the Scope of Work, as disclosed elsewhere extricted to the stated intended use by the specified client or intended user.)  Comments on Standards Rule 2-3  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 unbia 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 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 no possibly the standard no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report or the parties involved with this assignment.  — My engagement in this assignment was not contingent upon developing or reporting predetermined results.  — My engagement in this assignment as not contingent upon the development or reporting of a predetermined value or direction in value that favors client, the amount of the value opinion, the attainment of a situalated result, or the occurrence of a subsequent event directly related to the intended use of this approach and particular to the time this report was prepared.  — In ave made a personal inspection of the property that is the subject of this report.  No one provided significant real property appraisal assistance to the person(s) signing this certification (if there are exceptions, the name of each individual provents appraisal assistance is stated elsewhere in this repo	in this report, ased professional diately preceding the cause of the praisal.
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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 My Opinion of Reasonable Exposure Time for the subject property at the market value stated in this report is:  35-395 da  anarket as indicated by similar vacant site sales.  Comments on Appraisal and Report Identification	iding significant
	appraisal.)
APPRAISER: SUPERVISORY or CO-APPRAISER (if applicable	e):
Signature: Rhonda Elaine Rechkemmer Signature: Name: Name: Name:	
State Certification #: Cert.Res.RD2869  or State License #: or State License #: State: FL Expiration Date of Certification or License: 11/30/2020  State: Expiration Date of Certification or License:	
Date of Signature and Report: 03/25/2020 Date of Signature:  Effective Date of Appraisal: 03/23/2020  Inspection of Subject: None Interior and Exterior Exterior-Only Inspection of Subject: None Interior and Exterior Inspection of Subject: None Interior and Exterior Inspection of Subject: None Interior and Exterior Inspection of Subject: None Interior and Exterior Inspection of Subject: None	

# Assumptions, Limiting Conditions & Scope of Work

File No.: 20100821 Property Address: 4010 NW 39th Lane State: FI Zip Code: 33993 Mark A + Bonnie M Solos Address: 147 Kassan Ct, South Saint Paul, MN 55075 Address: 1913 SW 54th Street, Cape Coral, FL 33914-6888 Rhonda Elaine Rechkemmer

## STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

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

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

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



## **Certifications & Definitions**

_	<del></del>				1116110 20	100021	
	Property A	ddress: 4010 NW 39th Lane		City: Cape Coral	State: FL	Zip Code: 33993	
	Client:	Mark A + Bonnie M Solos	Address:	147 Kassan Ct, South Saint Paul, MN	55075		
	Appraiser:	Rhonda Elaine Rechkemmer	Address:	1913 SW 54th Street, Cape Coral, FL	33914-6888		
				•			

FILE No. 20100921

#### APPRAISER'S CERTIFICATION

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

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

#### **Additional Certifications:**

#### **DEFINITION OF MARKET VALUE \*:**

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

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

	Client Contact: Mark Solos	Clier	lient Name: Mark A + Bonnie M Solos
	E-Mail: mbsolos@aol.com	Address:	147 Kassan Ct, South Saint Paul, MN 55075
	APPRAISER		SUPERVISORY APPRAISER (if required)
			or CO-APPRAISER (if applicable)
			c. cc / ii / ia iio_i (ii appiioazio)
ES	Shonda Elaine Rechhemmer		
2	1 - Crack Claime / Jean comment		Supervisory or
Ę	Appraiser Name: Rhonda Elaine Rechkemmer		Co-Appraiser Name:
ž	Company: Rechkemmer Appraisal Services, Inc.		Company:
<u>ත</u>	Phone: <u>(239) 542-4152</u> Fax: <u>(239) 542-2591</u>		Phone: Fax:
(J)	E-Mail: R.Rechkemmer@att.net		E-Mail:
	Date Report Signed: 03/25/2020		Date Report Signed:
	License or Certification #: Cert.Res.RD2869 State:	: FL	License or Certification #: State:
	Designation:		Designation:
	Expiration Date of License or Certification: 11/30/2020		Expiration Date of License or Certification:
	Inspection of Subject: Did Inspect Did Not Inspect (Desktop	) )	Inspection of Subject: Did Inspect Did Not Inspect
	Date of Inspection: 03/23/2020		Date of Inspection:

# **Subject Land Photo Page**

Client	Mark A + Bonnie M Solos			
Property Address	4010 NW 39th Lane			
City	Cape Coral	County Lee	State FL	Zip Code 33993
Borrower	N/A			



## **Subject Front**

4010 NW 39th Lane Sales Price N/A Date of Sale N/A

Location U90/IndirectGulfAc

Site/View

View/Frontage Canal/80ff
Utilities Well/Septic area

Other Features None
Prior Transaction Date 04/20/2012



## **Subject View**



# **Subject Street**

## **Comparable Land Photo Page**

Client	Mark A + Bonnie M Solos			
Property Address	4010 NW 39th Lane			
City	Cape Coral	County Lee	State FL	Zip Code 33993
Borrower	N/A			



## Comparable 1

4126 NW 39th Lane

 Prox. to Subj.
 0.12 miles W

 Sales Price
 68,000

 Date of Sale
 \$12/19; c11/19

 Location
 U90/IndirectGulfAc

Site/View

View/FrontageCanal/80ffUtilitiesWell/Septic areaOther FeaturesSeawall/ConcDock

Prior Transaction Date 07/28/1997



## Comparable 2

4209 NW 39th Street

Prox. to Subj. 0.18 miles W
Sales Price 50,000
Date of Sale s07/19; c06/19
Location U90/IndirectGulfAc

Site/View

View/Frontage Canal/80ff
Utilities Well/Septic area

Other Features None
Prior Transaction Date 07/28/2008



## Comparable 3

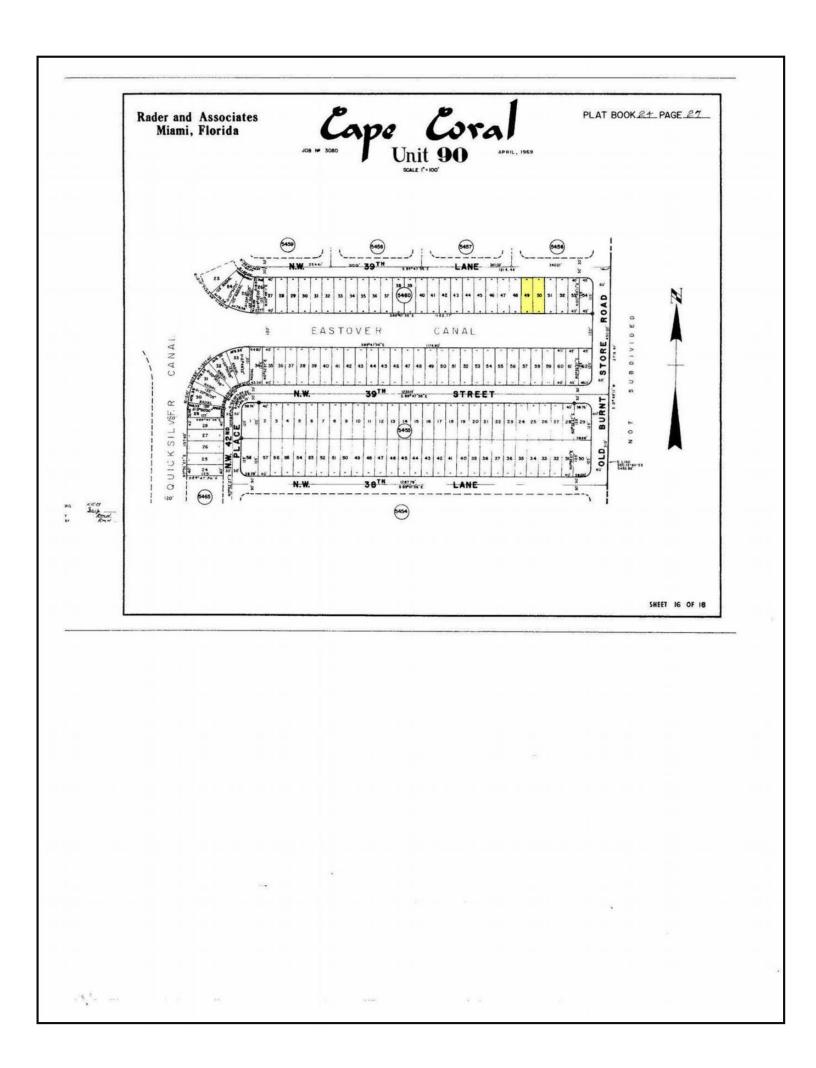
4127 NW 39th Street

Prox. to Subj. 0.13 miles SW
Sales Price 54,000
Date of Sale s08/19; c08/19
Location U90/IndirectGulfAc

Site/View

View/Frontage Canal/80ff
Utilities Well/Septic area

Other Features None
Prior Transaction Date 04/20/2004



## Flood Map

Client	Mark A + Bonnie M Solos				
Property Address	4010 NW 39th Lane				
City	Cape Coral	County Lee	State FL	Zip Code 33993	
Dorrowor	NI/A	·			

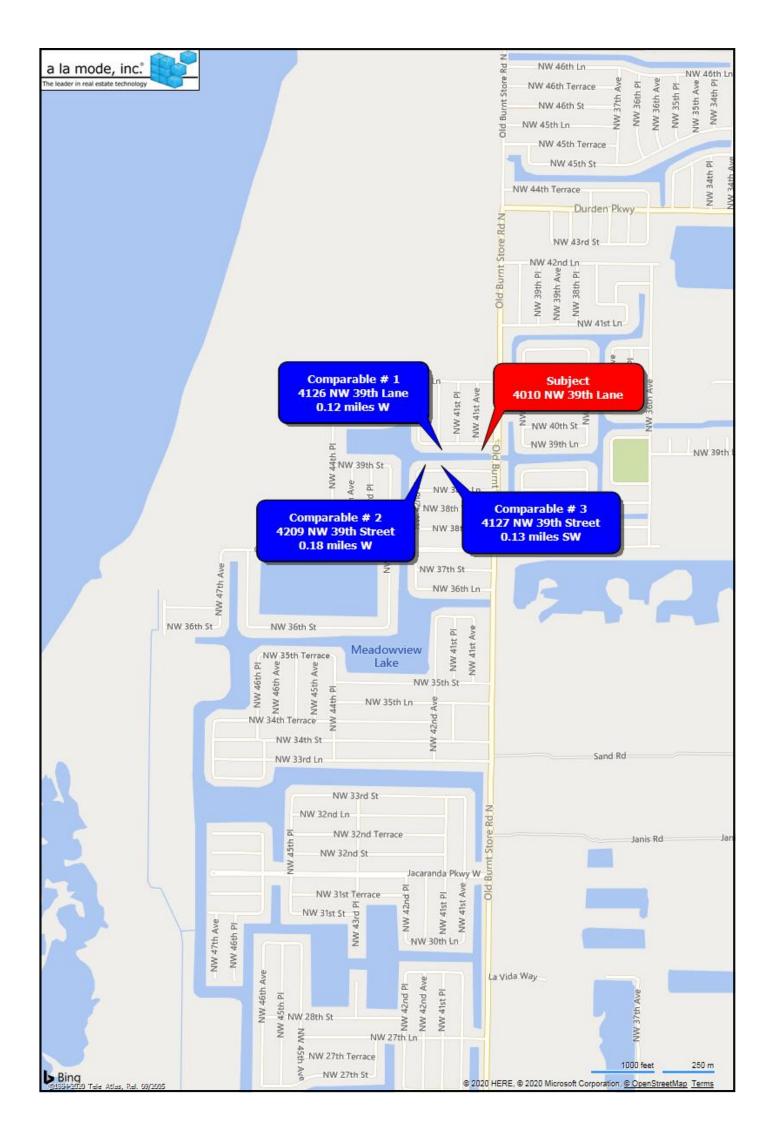


# **Aerial**



## **Location Map**

Client	Mark A + Bonnie M Solos			
Property Address	4010 NW 39th Lane			
City	Cape Coral	County Lee	State FL	Zip Code 33993
Borrower	N/A			





RICK SCOTT, GOVERNOR

JONATHAN ZACHEM, SECRETARY



## STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

#### FLORIDA REAL ESTATE APPRAISAL BD

THE CERTIFIED RESIDENTIAL APPRAISER HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

## RECHKEMMER, RHONDA ELAINE

1913 SW 54 STREET CAPE CORAL FL 33914

LICENSE NUMBER: RD2869

**EXPIRATION DATE: NOVEMBER 30, 2020** 

Always verify licenses online at MyFloridaLicense.com



Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

Location Map - 4111 NW 39th Street - Blk 5465, Lots 49-50





# AGENDA REQUEST FORM

CITY OF CAPE CORAL Item

Number: B.(1)

Meeting

1/6/2021

Date:

**ORDINANCES/RESOLUTIONS -**

Type: I

**Introductions** 

#### TITLE:

Ordinance 1-21 (ZA 20-0001\*) Set Public Hearing for January 20, 2021

#### **REQUESTED ACTION:**

Approve or Deny

#### **SUMMARY EXPLANATION AND BACKGROUND:**

An ordinance amending the City of Cape Coral Official Zoning District Map of all property within the limits of the City of Cape Coral by rezoning property described as two parcels of land lying in Section 8, Township 44 South, Range 24 East, Lee County, Florida, from Industrial Planned Development (a Lee County designation) to Industrial (I) zone; property is located at 1109-1111 Pondella Road.

#### STRATEGIC PLAN ALIGNMENT:

1. 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

#### **RECOMMENDATIONS:**

<u>Hearing Examiner Recommendation:</u> The Hearing Examiner recommends that City Council Grant the Rezoning application.

**DCD Department Recommendation:** Approval

#### SOURCE OF ADDITIONAL INFORMATION:

Vince Cautero, DCD Director, 1-239-574-0600 Wyatt Daltry, Planning Team Coordinator, 1-239-573-3160

## FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

n/a

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

#### PREPARED BY:

Division- Department- City Attorney

### ATTACHMENTS:

### Description

- 1. Ordinance 1-21 (ZA 20-0001\*)
- 2. Hearing Examiner Recommendation
- **a** 3. Back up materials from HEX Hearing
- 4. Staff Presentation

## Туре

Ordinance

Backup Material

Backup Material

Backup Material

#### ORDINANCE 1 - 21

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL OFFICIAL ZONING DISTRICT MAP OF ALL PROPERTY WITHIN THE LIMITS OF THE CITY OF CAPE CORAL BY REZONING PROPERTY DESCRIBED AS TWO PARCELS OF LAND LYING IN SECTION 8, TOWNSHIP 44 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, AS MORE PARTICULARLY DESCRIBED HEREIN, FROM INDUSTRIAL PLANNED DEVELOPMENT (A LEE COUNTY DESIGNATION) TO INDUSTRIAL (I) ZONE; PROPERTY IS LOCATED AT 1109-1111 PONDELLA ROAD; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral City Council has considered testimony, evidence, documentation and the application submitted by HONC DOCKS & LIFTS, INC., for rezoning the below-described property from INDUSTRIAL PLANNED DEVELOPMENT (A LEE COUNTY DESIGNATION) TO INDUSTRIAL (I) ZONE, and considered the recommendations of the Hearing Examiner and City Staff, and has considered the City of Cape Coral Comprehensive Plan with this zoning request.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

Section 1. That the City of Cape Coral Official Zoning District Map of all of the property within the limits of the City of Cape Coral is hereby amended with respect to real property described as follows:

## INDUSTRIAL PLANNED DEVELOPMENT (A LEE COUNTY DESIGNATION) TO INDUSTRIAL (I) ZONE

#### Parcel 1

From the Northeast corner of Section 8, Township 44 South, Range 24 East, Lee County, Florida, run South along the East line of said Section for 40 feet to the South Right-of-Way line of Pondella Road (State Road S-78-A); Thence run Westerly along said Right-of-Way line (40 feet from the centerline) for 685 feet to the Point of Beginning of the lands herein described; from said Point or Beginning run Westerly along said Right-of-Way line for 395 feet; Thence run Southerly parallel with said East line of said Section 8 for 458 feet; thence run Easterly parallel with said South Right-of-Way line of Pondella Road (State Road S-78-A) for 395 feet to the Westerly Right-of-Way line of Westwood Drive; Thence run Northerly parallel with said East line of said Section 8 along the Westerly Right-of-Way line of said Westwood Drive for 458 feet to the Point of Beginning. LESS AND EXCEPT the following.

All of that part of those lands described in Official Records Book 1500, Page 1924, Public Records of Lee County. Florida, lying in Section 8, Township 44 South, Range 24 East, Florida, being more particularly described as follows:

Beginning at the intersection of the Southerly Right-of-Way of Pondella Road (80' ROW) and the Westerly Right-of-Way of Westwood Drive (50' ROW); Thence South 0 degrees 08' 35" West along said Westerly Right-of-Way 13.45 feet to an intersection with the arc of a circular curve concave Southerly having a radius of 7,945.50 feet; Thence Westerly along the arc of said curve through a central angle of 1 degrees 31' 35", an arc distance of 211.65 feet said curve subtended by a chord bearing North 85 degrees 46' 19" West 211.65 feet to said Southerly Right-of-Way; thence South 89 degrees 24' 47" East along said Southerly Right-of-Way 211.12 feet to the Point of Beginning.

#### AND

#### Parcel 2

A Tract or Parcel of land lying in the Northeast Quarter (NE 1/4) or Section 8, Township 44 South, Range 24 East, Lee County, Florida, more particularly described as:

From the Northeast corner of Section 8, run South along the East line of said Section for 40 feet to the South Right-of-Way line of Pondella Road (State Road S-78-A); Thence run Westerly along said

Right-of-Way (40 feet from the Centerline) for 1,080 feet; Thence Run Southerly parallel with the East line of said Section 8 for 458 feet to the Southwest corner of the lands sold to Irons and Grudier by Deed dated December 28, 1979 as recorded by Official Records Book 1398, Page 901 in the Public Records of Lee County, Florida, and the Point of Beginning of the lands herein described, From said Point of Beginning continue Southerly and parallel with the East line of said Section 8 for 230 feet, more or less, to an intersection with the Westerly extension of the Northerly line of the land sold to Welch by Deed dated June 25, 1974 and recorded in Official Records Book 1042, Page 1941, in the Public Records of Lee County, Florida; thence run Easterly along said Westerly extension, along said Northerly line of said Lands sold to Welch and along an Easterly extension thereof for 395 feet, more or less to an intersection with the Westerly Right-of-Way line of Westwood Drive extended South; thence run Northerly along said Extension and along said Westerly Right-of-Way line of Westwood Drive for 229.23 feet to the Southeast comer of said lands sold to Irons and Grudier by Deed dated December 28, 1979 and recorded in Official Records Book 1398, Page 901, in the Public Records of Lee County, Florida; thence Westerly along the Southerly line of said lands for 395 feet to the Point of Beginning.

#### PROPERTY LOCATED AT: 1109-1111 PONDELLA ROAD

and the City administrative office shall amend the City of Cape Coral Official Zoning District Map to reflect this zoning change.

That the amendments to the City of Cape Coral Official Zoning District Map as prescribed herein are consistent with the City of Cape Coral Comprehensive Plan.

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 upon passage by the Cape Coral City Council.

ADOPTED BY THE C SESSION THIS			AL AT ITS REGULAR
		JOE COVIELLO, I	MAYOR
VOTE OF MAYOR AND	) COUNCILMEMBER	S:	
COVIELLO GUNTER SHEPPARD HAYDEN		NELSON WELSH WILLIAMS COSDEN	
ATTESTED TO AND F 2021.	ILED IN MY OFFIC	E THIS DAY	Y OF,
		KIMBERLY BRUN CITY CLERK	IS

APPROVED AS TO FORM:

JOHN E. NACLERIO III ASSISTANT CITY ATTORNEY ord\ZA20-0001

## OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL HEARING EXAMINER RECOMMENDATION

#### ZA HEX Recommendation 11-2020 Rendered November 6, 2020

#### DCD CASE # ZA 20-0001

APPLICATION FOR: Privately Initiated Rezoning for two properties from the Industrial Planned Development zoning (Lee County zoning designation) to the Industrial zoning designation for 6.21 acres.

NAME OF OWNER/APPLICANT: Honc Docks & Lifts, Inc.

NAME OF APPLICANT'S REPRESENTATIVE: Brian Smith, AICP, Ensite, Inc.

LOCATION OF PROPERTY: 1109-1111 Pondella Road, Cape Coral, FL

**STRAP NUMBERS:** 08-44-24-00-00005.0010; 08-44-24-00-00005.0050

**CURRENT ZONING DISTRICT:** Industrial Planned Development

(Lee County Designation)

**APPLICANT'S PROPOSED ZONING:** Industrial Zoning (I)

FUTURE LAND USE CLASSIFICATION: Light Industrial 1

**URBAN SERVICES AREA:** Transition

CITY WATER AND SEWER: Staff testified that this property was recently annexed into

the City of Cape Coral. It is not connected to the City utility system. Staff further testified that the area is adjacent to properties which

are serviced by City water and sewer.

RIGHT-OF-WAY ACCESS: Right of way access is from Pondella Road, a major arterial

roadway.

**HEARING EXAMINER SITE VISIT:** The Hearing Examiner performed a site visit prior to

the Hearing.

**HEARING DATE:** November 3, 2020

SUMMARY OF REQUEST: The Applicant has requested a privately initiated rezoning

from the Lee County Zoning Designation of Industrial Planned Development to the Cape Coral Zoning Designation of Industrial, for an undeveloped, heavily wooded 6.21 acre property located at

<sup>&</sup>lt;sup>1</sup> This Cape Coral Future Land Use Map Amendment was adopted on October 5, 2020, to change this property to the current Classification. Prior to last month, the property carried the Lee County Future Land Use Designation of Intensive Development.

ZA HEX RECOMMENDATION 11-2020 DCD # ZA 20-0001 NOVEMBER 6, 2020

1109 through 1111 Pondella Road. The property cannot be developed under its current Zoning Category.

**PUBLIC CONCERNS**: None expressed at or prior to Hearing.

#### **SUMMARY OF HEARING EXAMINER RECOMMENDATION**

The Hearing Examiner recommends that City Council **GRANT** the Rezoning application.

#### I. NOTICE OF HEARING

Based on the testimony of City Staff Wyatt Daltry at the Hearing, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of Article 3 (Development Review), Chapter 1, § 3.1.10 ("Public Hearing Scheduling and Notice Requirements") of the City of Cape Coral Land Development Code ("LDC").

#### II. PARTICIPANTS IN HEARING

APPLICANT'S REPRESENTATIVE: Brian Smith, AICP, EnSite

CITY STAFF: Wyatt Daltry, AICP

CITY CLERK'S OFFICE: Rose Depaula

TESTIMONY/TELEPHONE CALLS/CORRESPONDENCE FROM MEMBERS OF PUBLIC: NONE received.

#### III. EXHIBITS

APPLICANT'S AND CITY STAFF'S EXHIBITS: previously submitted.

#### IV. REVIEW OF STATUTORY AND LDC REQUIREMENTS

Applicable Regulations: Application Received Subsequent to August 5, 2019
It appears from a review of the documents submitted by Applicant that the Application requesting this Rezoning was submitted for City review on or about January 16, 2020, pursuant to the date on the Letter of Intent.

Accordingly, this case has been reviewed, and this Recommendation is based upon, the Land Development Code ("LDC") in effect subsequent to August 5, 2019, the date the new land development code ordinance was adopted by City Council.

<u>Authority.</u> The Hearing Examiner has the authority to recommend the approval or denial of an application for a rezone, pursuant to LDC Article 2 (Decision Making and Administrative Bodies), Chapter 2 (Hearing Examiner), §2.2.3B.5:

A Hearing Examiner shall hear and decide, or, when applicable, make Recommendations, on the following....

.... 5. Applications for rezoning property."

<u>Entirety of the Record/Standard of Review of Evidence.</u> The Hearing Examiner's Recommendation is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LDC, based upon the entirety of the record before the Hearing Examiner.

The Recommendation of the Hearing Examiner must be based upon competent substantial evidence in the record. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11E.

<u>Presumption of Relevance and Materiality.</u> Matters related to an Application's consistency with the Comprehensive Plan, the City Code of Ordinances, or the LDC will be presumed to be relevant and material. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11F.4.

<u>Hearsay Evidence.</u> 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. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11F.5.

<u>LDC Standards for Rezoning.</u> The Hearing Examiner reviewed the application in accordance with the standards for rezonings set forth in LDC §3.4.6 and specifically set forth in LDC § 3.4.6.A (Manner of Initiation) and LDC § 3.4.6.B (Review Criteria), in addition to the general standards set forth elsewhere in the LDC and the City Comprehensive Plan.

#### **TESTIMONY AT HEARING**

<u>Staff's and Applicant's Representative's Incorporation of Staff Report and Staff Materials</u>

The Applicant's Representative incorporated the Staff Report, Staff PowerPoint and all other Staff documents ("Staff Input") into his presentation by reference. He requested the Hearing Examiner to recommend that City Council find the Staff Input as findings of fact, as well as Staff's testimony at the Hearing, in addition to those separately presented by him.

Staff incorporated his Staff Report into his presentation by reference.

#### Hearing Examiner's Recommended Findings of Fact

The Hearing Examiner recommends that City Council finds as facts all documentary and oral testimony set forth or referenced below, except to the extent (if any) that the Hearing Examiner specifically recommends otherwise.

#### V. DISCUSSION

#### Site Information

This rezoning application was part of a tri-part application, with the other two requests addressing annexation of both parcels into the City of Cape Coral from Lee County and a future land use map amendment to modify the future land use classification from the Lee County to a comparable one utilized by the City of Cape Coral. The first two objectives were accomplished prior to this Hearing on the rezoning application.

During her site visit, the Hearing Examiner observed that the property was heavily wooded and overgrown. In addition, the subject property is adjacent to residential property on the south and east, both of which carry the Lee County zoning designation of Residential Single Family (RS-1) with an inconsistent Future Land Use Classification of Intensive Development.

To the north and west of the subject property are properties with a Light Industrial Future Land Use Classification and an Industrial Zoning Designation. They are located within the municipal boundaries of the City of Cape Coral.

#### Surrounding Properties and Additional HEX Recommendations

The Hearing Examiner inquired as to the juxtaposition of Industrial zoning next to residentially-zoned property.

Staff testified that no other area of Cape Coral has such a juxtaposition, although another area of the Cape has Industrial zoning across a canal from residentially zoned property.

Accordingly, the Hearing Examiner recommends a finding by the City Council that this zoning juxtaposition appears to be *sui generis* in that:

- (1) the prior zoning under Lee County's jurisdiction was also an industrial district:
- (2) the City Council recently changed the Future Land Use of this parcel to a Classification of Light Industrial:

- (3) The only zoning district which is consistent with the Light Industrial FLUC is Industrial:
- (4) The property cannot be developed under its current designation, which is a Lee County zoning district;
- (5) The property cannot be rezoned to a different zoning district than the proposed one without again changing the Future Land Use Classification;
- (6) No members of the public have provided input of any type regarding this proposed rezone; and
- (7) as set forth below in Policy 8.3 of the Future Land Use Element, the City will require protections designed to minimize the negative impact of this proposed zoning district on the neighboring residential property.

#### VI. COMPREHENSIVE PLAN CONSISTENCY

Both staff and the Applicant's Representative testified that the proposed rezone is consistent with various Policies and Goals of the Comprehensive Plan.

#### **Future Land Use Element**

<u>Policy 1.12:</u> The City will continue to conduct commercial land needs studies to identify potential areas of the City, which could accommodate commercially designated land, and then amend the Future Land Use Map, consistent with the studies, findings, and recommendations, and other provisions of the Comprehensive Plan.

Staff testified that, in March 2007, the City commissioned a report entitled: "Future Land Use Analysis: Commercial & Industrial Land Required For The City of Cape Coral At Build-Out," which suggested several strategies to increase the inventory of developable commercial properties within the City. Two suggestions involved: 1) converting parcels with residential future land use to commercial future land use; and 2) increasing the size of existing commercial areas (emphasis added).

Therefore, staff has recommended that the Hearing Examiner recommend to the City Council a finding that the proposed rezone to Industrial would be <u>consistent</u> with Policy 1.12, due to the nature of Industrial zoning.

For the reasons set forth in the prior section of this Recommendation and elsewhere herein, the Hearing Examiner agrees with staff as to the positive applicability of this Policy to the Application.

<u>Policy 8.3:</u> Commercial developments shall be designed to minimize negative impacts on surrounding residential uses and the land development regulations shall provide for adequate buffering between

commercial and residential uses. The design should ensure adequate screening of unsightly views of commercial developments (such as loading docks, rooftop equipment, service entrances, trash containers, parking areas and exterior storage) through the extensive use of landscaping, berms, fencing, concealment, architectural features, open space, setbacks, and/or building orientation. Ensure that the placement of any noise generating activities such as ingress/egress, parking, deliveries, air conditioning equipment and dumpster collections are designed to minimize any adverse noise effects. Traffic and parking should not adversely affect neighborhood quality. Noise, safety and overall maintenance of commercial properties should be carefully monitored.

#### **Economic Development Element**

The Hearing Examiner agrees with staff's analysis that the proposed rezoning is also consistent with the following Policy:

<u>Policy 3.2:</u> The City of Cape Coral shall provide for the location of industrial and commercial development according to the following guidelines:

- The Future Land Use Element's Commercial Node Criteria;
- Access to the transportation network, notably proximity to arterials and collectors:
- Access to utilities:
- Acceptable impacts on the environment and adjacent land uses...
- (remaining bullet points omitted as irrelevant to consideration)

Based upon her review of these and other Policies brought forth by the Applicant's Representative, the Staff Case Report, as well as testimony by the Applicant's Representative and Staff, the Hearing Examiner recommends a finding that granting the requested rezone is in compliance with, and is in furtherance of, the requirements of all applicable provisions of the Comprehensive Plan.

#### VII. REZONING REQUIREMENTS AND CRITERIA: HEX RECOMMENDATIONS

#### A. Review Criteria

1. The application **is consistent** with the Comprehensive Plan. LDC § 3.4.6.B.1

See above recommended findings of fact with discussion regarding the Comprehensive Plan.

The Hearing Examiner recommends a finding that this standard has been met.

2. The full range of uses allowed in the proposed zoning district **would be** compatible with existing uses in the area under consideration. LDC § 3.4.6.B.2

See the discussion under standard 3, immediately below.

The Hearing Examiner recommends a finding that this standard has been met.

3. The range of uses allowed in the proposed zoning district **would be** compatible with existing and potential uses in the area under consideration. LDC § 3.4.6.B.3

The subject property is surrounded on two sides by property zoned Industrial, as set forth above, which the remaining sides are residential. Due to the City's buffering requirements and for the reasons set forth above, the Hearing Examiner agrees with staff's recommendation that the requirements of this standard is fulfilled.

The Hearing Examiner recommends a finding that this standard has been met.

4. The proposed zoning district **would probably serve** a community need or broader public purpose. LDC§ 3.4.6.B.4

The Applicant's Representative testified that the proposed rezoning would contribute to growth within the City through the construction of new business in an area which partially is already industrial in nature.

The Hearing Examiner recommends a finding that this standard has been met.

5. The characteristics of the proposed rezone area **are suitable** for the uses permitted in the proposed zoning district. LDC§ 3.4.6.B.5

The rezone area is currently vacant. It borders upon Pondella Road, which would facilitate easy exit from the property.

The Hearing Examiner recommends a finding that this standard has been met.

#### ZA HEX RECOMMENDATION 11-2020 DCD # ZA 20-0001 NOVEMBER 6, 2020

6. A zoning district other than the district requested **would not** create fewer potential impacts to existing uses in the surrounding area. LDC§ 3.4.6.B.5

This is the only zoning districts within the City that is compatible with the subject property's Future Land Use Classification.

The Hearing Examiner recommends a finding that this standard has been met.

#### VIII. RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the testimony set forth above and the documentary exhibits presented prior to the Hearing, the Hearing Examiner recommends as follows:

- City Council find that the requested rezone is consistent with the requirements of the Comprehensive Plan, the Land Development Code, the City Code of Ordinances and all applicable laws of the State of Florida; and
- 2. City Council **approve** the requested rezoning to the Industrial (I) Zoning District.

This Recommendation takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA

ATTECT.

CITY CLERK

January 16, 2020



Department of Community Development City of Cape Coral 1015 Cultural Park Boulevard Cape Coral, Florida 33990

**RE:** Rezoning Application

STRAP: 08-44-24-00-00005.0010 & 08-44-24-00-00005.0050

Honc Docks and Lifts, Inc.

#### **Dear Community Development,**

This letter of intent describes application for a rezoning of two adjacent parcels, identified as STRAP numbers 08-44-24-00-00005.0010 and 08-44-24-00-00005.0050. The two vacant parcels are  $\pm$  6.2 Acres and located on Pondella Road. The applicant is considering a use for the site that could include manufacturing, fabrication, warehousing, storage outdoor and other related industrial activities. An application for Future Land Use Amendment to bring the two parcels into the Light Industrial classification has been submitted concurrently.

#### <u>History</u>

Both parcels are currently being reviewed for annexation into the city from Lee County, where they were zoned Industrial Planned Development (IPD) with the Intensive Development Future Land Use classification. Lee County zoning resolution Z-05-084 (included with annexation and concurrent zoning applications), rezoned the parcel from AG-2 to IPD, allowed a maximum of ± 100,000 square feet of leasable floor area for industrial and intensive commercial uses.

#### Review Criteria (LDC Section 3.4.6. Rezones)

1. Whether the proposed zoning district proposed is consistent with the City Comprehensive Plan:

The rezoning request is consistent with the Comprehensive Plan. It is compatible with the industrial development trends along Pondella Road, especially with the Industrial Park across Pondella to the North. Additionally, this site is under half a mile from multi-family, but more than 700 feet. This is consistent with the Comprehensive Plan Future Land Use Element Policy 1.7 by siting multi-family residential development in proximity to a potential employment center. Assigning the Light Industrial category here does not deviate from the commercial siting guidelines outlined in the Comprehensive Plan Future Land Use Element by avoiding intrusion into established residential area and utilizing access available on Pondella Road.

2. Whether the full range of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration:

The full range of uses is outlined in Article 4, Chapter 1 of the Land Development Code. The schedule of uses table shows that nearly all the range of uses in the Industrial use category are all allowed in the Industrial zoning, except for Solid Waste and Energy Resource Generation. The full range also includes limited uses from other use categories, such as commercial and professional services. Because the surrounding area is the same zoning category (Industrial) the LDC 4.1.6 tables would allow the identical

range of uses.

3. Whether the range of uses allowed in the proposed zoning district will be compatible with existing and potential uses in the area under consideration;

The Industrial zoning category lies adjacent to the site in all lands within Cape Coral jurisdiction. Because the surrounding zoning categories are identical, the range of uses on legally allowed on the rezoned site would match the existing and potential surrounding. Please see the table below and the two maps included with this application:

	AUTHORITY	ZONING	FUTURE LAND USE
NORTH	City of Cape Coral	Industrial (I)	Light Industrial (I)
SOUTH	Lee County	Residential Single Family (RS-1)	Intensive Development
EAST	Lee County	Residential Single Family (RS-1)	Intensive Development
WEST	City of Cape Coral	Industrial (I)	Light Industrial (I)

4. Whether the proposed zoning district will serve a community need or broader public purpose;

The rezoning would contribute to growth by filling in an already established industrial area with new business.

5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district; and

The rezone area is vacant.

6. Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area.

Any zoning district other than Industrial in this location would be equivalent to spot zoning and would not be compatible with the Future Land Use classification of the surrounding area.

#### Summary

As stated, this application assigns a zoning district to parcels that are requested for annexation into the city from Lee County and is requesting Industrial to match the surrounding properties. The previous zoning in Lee County was IPD. The surrounding land uses within the city of Cape Coral match the zoning being sought. Zoning these parcels to the Industrial District is a logical assignment for this location.

We respectfully request approval and if you have any comments or questions please do not hesitate to contact me at (239) 226-0024 or <a href="mailto:BrianS@en-site.com">BrianS@en-site.com</a>

Sincerely,

Brian R. Smith

Principal / Project Manager



## DEPARTMENT OF COMMUNITY DEVELOPMENT PLANNING DIVISION

For Internal Use Only		
Case		
Date		

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

#### **REZONING APPLICATION**

#### **CHECKLIST**

1.	<ul> <li>Applicant's portion of request shall be typewritten, and signature notarized.</li> <li>a. All forms (Application, Acknowledgement Form, Authorization to Represent) must be signed by the property owner or the applicant. If the Authorized Representative is an attorney, the application and the Acknowledgement Form may be signed by the attorney and an Authorization to Represent Form is not required.</li> <li>b. If there are any deed restrictions on the property, a copy of the restrictions will be required.</li> </ul>
2. 3. 4.	Letter of intent stating the actual request and why the request is being made.  Certified survey done within past six (6) months MAY be required.  If the subject property is within 500 feet of any County properties, the applicant must provide a typewritten list of all affected property owners within the area. The list must Prepared in label format and contain the following information; name, address, city, and zip-code.  Please refer to Rezones Section 3.4.6. (page 7) for additional required documentation.

\*\*\*All items must be provided at the time of submission and all forms must be typewritten\*\*\*

#### NOTE

In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 3.4.6.). Advertising costs will be billed and must be paid prior to hearing.

Following the approval of your request, the applicant shall be responsible for paying the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

It is required that applicant and/or representative attend both the hearing examiner and city council meetings.

**PLANNING DIVISION** 

**OWNER(S) OF PROPERTY INFORMATION** 

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

#### **REZONE REQUEST**

FEE \$2,050.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 3.4.6). Advertising costs will be billed and must be paid prior to hearing.

Owner		Address			
Phone			State_		
Email					
Owner		Address			
Phone			State_		
Email					
APPLICANT INFORMATION	<u>v</u>				
Applicant		Address			
Phone			State_		
Email					
AUTHORIZED REPRESENT	TATIVE INFORMA	ATION (If Applicable)			
Representative		Address			
Phone		City	State	_ Zip	
Email					
PROPERTY INFORMATION	<u> </u>				
Unit Block	Lot (s)	Subdivision_			
Property Address					
Plat Book		Page			
Current Zoning	Strap Nu				
Number of Acres	Prop	posed Zoning			

PLANNING DIVISION

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.

#### (SIGNATURE MUST BE NOTARIZED)

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.

Horre DOCKS & LEFTS INC.	
CORPORATION/COMPANY NAME (IF APPLICABLE)	
DANI STOVALL	ONAUTO SIGNATURE
OWNER'S NAME (TYPE OR PRINT)	OWNER'S SIGNATURE
OWNER'S NAME (TYPE OR PRINT)	OWNER'S SIGNATURE
APPLICANT NAME (TYPE OR PRINT)	APPLICANT SIGNATURE
I have read and understand the above instructions receive a copy of the Notice of Public Hearing stip hearings.	
STATE OF FL , COUNTY OF LE	<u> </u>
Subscribed and sworn to (or affirmed) before me this	s 5th day of November
20 19, by Dan STOVALL who is po	ersonally known or produced
as identification.	
Exp Date: 1/13/23 Commission Num	ber: <u>64 923495</u>
Signature of Notary F	Public:
Notary Public State of Florida Brent M Gibson My Commission GG 923495 Expires 11/13/2023  Printed name of I	Notary Public: BREW M. GIBSW



#### PLANNING DIVISION

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

#### **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 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 and recording 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.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

I hereby acknowledge that I have read and und	derstood the above affidavit on the Day
of November, 2019. 1-long Docus & LSFS, INC CORPORATION/COMPANY NAME	OWNER'S SIGNATURE
STATE OF, COUNTY OF	
Subscribed and sworn to (or affirmed) before	me this 5th day of NOVEMBER,
20 19, by DAN STOVALL	
as identification.	
Exp Date:	mmission Number: 492495
Notary Public State of Florida Signatur	re of Notary Public:
My Commission GG 923495	e of Notary Public: BROH M. GIRSON



**PLANNING DIVISION** 

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

### **AUTHORIZATION TO REPRESENT PROPERTY OWNER(S)**

PLEASE BE ADVISED THAT Rosemarie Fusco & Brian Smith of EnSite, Inc.  (Name of person giving presentation)			
IS AUTHORIZED TO REPRESENT ME IN THE REQUEST BEFORE THE HEARING			
EXAMINER AND CITY COUNCIL FOR: Annexation, Future Land Use Amendment, and Rezoning Application			
(Type of Public Hearing, PUD, Rezone, Special Exception, Vacation of Plat, Variance, etc.)			
JNITBLOCKLOT(S) SUBDIVISION			
OR LEGAL DESCRIPTION STRAPS: 08-44-24-00- 00005.0010 & 08-44-24-00-00005.0050			
OCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.			
PROPERTY OWNER (Please Print)  PROPERTY OWNER (Please Print)  PROPERTY OWNER (Please Print)			
PROPERTY OWNER (Signature & Title)  PROPERTY OWNER (Signature & title)			
STATE OF, COUNTY OF			
20			
as identification.			
Exp Date: 11/13/23 Commission Number: 46 923495			
Notary Public State of Florida  Signature of Notary Public:			
My Commission GG 923495 Expires 11/13/2023 Printed name of Notary Public: Brew M. G/RS/N			

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.

## DEPARTMENT OF COMMUNITY DEVELOPMENT PLANNING DIVISION

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

OWNER/APPLICANT SIGNATURE

#### **DOCUMENTARY EVIDENCE (LDC, Section 3.1.11F.6)**

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 three 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.

(PLEASE TYPE OR PRINT)		
(SIGN	NATURE MUST BE NOTARIZED)	
STATE OF, COU	NTY OF LEE	
Subscribed and sworn to (or aff	irmed) before me this <u>574</u> day of <b>Novembel</b> ,	
20 19, by BRUAN SMITH	who is personally known or produced	
as ider	itification.	
Exp Date: 11/13/23	Commission Number: <u>49 923495</u>	
······································	Signature of Notary Public:	
Notary Public State of Florida Brent M Gibson My Commission GG 923495 Expires 11/3/2023	Printed name of Notary Public: But W. GIBSIN	

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral. FL 33915-0027

#### **REZONES REGULATIONS**

- A. Manner of Initiation. Applications for a change in zoning may be initiated in the following manner:
  - 1. The City Council upon its own motion;
  - 2. The Planning and Zoning Commission upon its own motion;
  - 3. The property owner(s) of at least fifty-one percent of the land in the proposed rezone area;
  - 4. The City Manager for a City initiated rezone; or
  - 5. The Community Development Department, following approval of a similar use determination.
- B. Review Criteria. An application for a rezone shall be reviewed in accordance with the following criteria:
  - 1. Whether the proposed zoning district proposed is consistent with the City Comprehensive Plan;
  - 2. Whether the full range of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration;
  - 3. Whether the range of uses allowed in the proposed zoning district will be compatible with existing and potential uses in the area under consideration;
  - 4. Whether the proposed zoning district will serve a community need or broader public purpose;
  - 5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district; and
  - 6. Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area.
- C. Effective date of approval. A rezone shall take effect upon City Council adoption of the ordinance approving the rezone.
- D. New application after denial. No application for a rezone which has been previously denied by the City Council shall be accepted for at least one year after the date of denial. An application to rezone property to a designation that is different than the designation which was denied by the City Council, will be accepted and considered without consideration of time since the previous application was denied.

STAFF REPORT		
ZA20-0001	Honc Docks and Lifts, Inc.	
DOCKET/CASE/APPLICATION NUMBER	APPLICANT/PROPERTY OWNER	
Wyatt Daltry, AICP, Planning Team	1109-1111 Pondella Road	
Coordinator (239) 573-3160,	Cape Coral, FL	
wdaltry@capecoral.net		
STAFF PLANNER	PROPERTY ADDRESS/LOCATION	

#### **BRIEF SUMMARY OF REQUEST**

Privately-initiated rezone for two properties from the Industrial Planned Development zoning (Lee County zoning designation) to the Industrial zoning designation for 6.21 acres.



PROPOSED ZONING **EXISTING ZONING** EXISTING LAND USE SITE IMPROVEMENTS SIZE OF PROPERTY Intensive None 6.21 acres **Industrial Planned** Development (Lee Development (Lee County County Designation) designation – in process to change to Industrial)

#### STAFF RECOMMENDATION: Approval

Background:	<ul> <li>Property was recently annexed into the City of Cape Coral</li> <li>Upon annexation, property still retains County future land use and zoning; to make the property consistent with City regulations, these need to be amended into City designations</li> <li>The owner has indicated a desire to proceed with industrial development on this site</li> </ul>
Positive Aspects of Application:	<ul> <li>Properties are on or have access to Pondella Road, a major thoroughfare</li> <li>Nearby properties are industrial to north and west</li> </ul>
Negative Aspects of Application:	Single-family residences are present to east and south
Mitigating Factors:	<ul> <li>Properties were zoned for industrial development when in County jurisdiction; a rezone to Industrial is a continuation of that designation</li> </ul>

#### **Additional Site Information**

Street Addresses: 1109 Pondella Road

1111 Pondella Road

**Urban Service Area:** Transition

**City Water and Sewer:** Being recently annexed, the property is not connected to the City utility system, however,

the area is adjacent to properties serviced by City water and sewer.

**Street Access:** The site is accessible from Pondella Road, a major arterial roadway

**STRAP Numbers**: 08-44-24-00-00005.0010

08-44-24-00-00005.0050 (Cape Coral STRAP numbers forthcoming)

Block/Lot(s): N/A

Subdivision: N/A

Case Staff: Wyatt Daltry, AICP, Planning Team Coordinator

**Review Approved** 

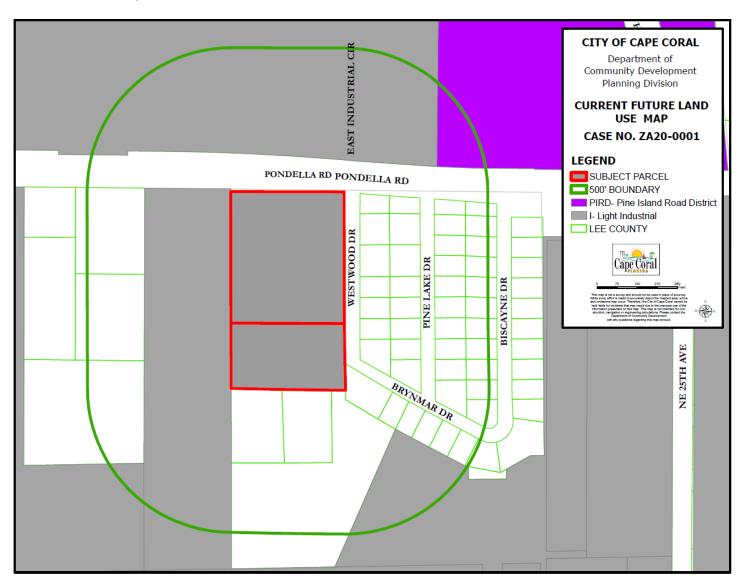
By: Robert Pederson, AICP, Planning Manager

#### **Zoning and Land Use Information:**

Subject	Future Land Use	Zoning
Property:		
Current:	Intensive Development (Lee	Industrial Planned Development (Lee County)
	County); at time of report, the FLU	
	was in process to be amended to	
	Industrial	
Proposed:	Not applicable – not a future land	Industrial
	use change	

<b>Surrounding Areas</b>	Future Land Use	Zoning
North:	Light Industrial (I)	Industrial (I)
South:	Intensive Development (LC)	Single Family Residential (RS-1; Lee County)
East:	Intensive Development (LC)	RS-1 (LC)
West:	I	I

#### **Future Land Use Map**



#### **Background**

The subject properties have been brought forward for annexation in late 2019 and were annexed through Ordinance 30-20 on July 20, 2020.

These properties were designated as an Industrial Planned Development (IPD) by the Lee County Board of County Commissioners in Resolution Z-05-084.

Several enclave areas exist along this segment of Pondella Road. The City has approved several voluntary annexations

within the past decade in the area which has resulted in reducing the size of these enclaves.

The surrounding area is a mix of single-family and duplex residential uses to the east and south and industrial and commercial areas to the north and west. Located on Pondella Road (County Road 78-A), a principal arterial roadway, the site has commercial or industrial opportunities that are attractive to the City.

#### **COMPREHENSIVE PLAN ANALYSIS**

#### **Future Land Use Element**

#### **Comprehensive Plan Analysis**

Staff analyzed the Comprehensive Plan to determine what policies apply to the proposed rezone.

<u>Policy 1.12:</u> The City will continue to conduct commercial land needs studies to identify potential areas of the City, which could accommodate commercially designated land, and then amend the Future Land Use Map, consistent with the studies, findings, and recommendations, and other provisions of the Comprehensive Plan.

In March 2007, the City commissioned a report entitled: "Future Land Use Analysis: Commercial & Industrial Land Required For The City of Cape Coral At Build-Out." This report updated earlier analyses and suggested several strategies to increase the inventory of developable commercial properties within the City. Two of the suggested strategies involve: 1) converting parcels with residential future land use to commercial future land use; and 2) *increasing the size of existing commercial areas (emphasis added).* Therefore, staff finds that the proposed rezone to Industrial is <u>consistent</u> with Policy 1.12.

Any development arising from this rezone will need to be made in accordance with Policy 8.3, Future Land Use Element, which states:

<u>Policy 8.3:</u> Commercial developments shall be designed to minimize negative impacts on surrounding residential uses and the land development regulations shall provide for adequate buffering between commercial and residential uses. The design should ensure adequate screening of unsightly views of commercial developments (such as loading docks, rooftop equipment, service entrances, trash containers, parking areas and exterior storage) through the extensive use of landscaping, berms, fencing, concealment, architectural features, open space, setbacks, and/or building orientation. Ensure that the placement of any noise generating activities such as ingress/egress, parking, deliveries, air conditioning equipment and dumpster collections are designed to minimize any adverse noise effects. Traffic and parking should not adversely affect neighborhood quality. Noise, safety and overall maintenance of commercial properties should be carefully monitored.

Staff Note: A rezone in close proximity to existing single-family residential development understandably causes concern among residents that may live nearby, and the City had developed Policy 8.3 approximately 20 years ago to address this concern. In addition, multiple protections in the Land Use and Development Regulations and the upcoming Land Development Code exist to ensure that commercial development would not affect the surrounding neighborhood. While the policy states commercial development, the City will also provide that the site design for these properties will take into account buffering, landscaping, and other design techniques to protect nearby residences.

#### **Economic Development Element**

Staff reviewed the Economic Development Element, Policy 3.2 for further guidance.

<u>Policy 3.2:</u> The City of Cape Coral shall provide for the location of industrial and commercial development according to the following guidelines:

- The Future Land Use Element's Commercial Node Criteria;
- Access to the transportation network, notably proximity to arterials and collectors;
- Access to utilities;
- Acceptable impacts on the environment and adjacent land uses;
- A focus on scale and clustered development, such as research and technology parks, as valuable economic assets to the City and give such projects high priority;
- Developments will also attract post-secondary education assets, including vocational schools, undergraduate colleges and universities and post-graduate education and research institutions.

Aside from the final two guidelines, the rezone is consistent with this policy. The size of the site is unlikely to result in the development of a technology park or post-secondary education asset.

Overall, the proposed rezone meets the policies of the Comprehensive Plan, above.

#### Land Development Code -- Section 3.4.6 Rezones:

Staff reviewed this request in accordance with Section 3.4.6 of the Land Development Code and provides the following analysis. This section is used for rezone requests.

Review Criteria. An application for a rezone shall be reviewed in accordance with the following criteria:

1. Whether the proposed zoning district proposed is consistent with the City Comprehensive Plan;

The proposed Industrial zoning district is consistent with the Industrial future land use map classification (currently inprocess of amendment)

2. Whether the full range of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration;

Presently, the properties are vacant. The surrounding area has a mixture of industrial and residential uses. The full range of uses in the I district, which consists of industrial uses and uses ancillary to such development, are compatible with existing uses in this area when proper buffering techniques are used.

3. Whether the range of uses allowed in the proposed zoning district will be compatible with existing and potential uses in the area under consideration;

As mentioned earlier, the surrounding area has a mixture of industrial and residential uses. The full range of uses in the I district, which consists of industrial uses and uses ancillary to such development, are compatible with existing and proposed uses in this area, due in part to the fact that Industrial uses have been present on Pondella for the past 40 years.

4. Whether the proposed zoning district will serve a community need or broader public purpose;

The City has a well-documented need for additional industrial uses.

5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district; and

The rezone area is a block on Pondella Road, a four-lane major arterial roadway, located with 1 mile of the intersection of Pondella Road and Pine Island Road, a six-lane principal arterial roadway. Commercial and Industrial uses are present along this roadway, including intense uses such as a concrete batch plant.

6. Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area.

The Industrial zoning district is undoubtedly an intense zoning district. However, the transportation links and compound layout of the site makes it extremely appropriate for industrial usage. There is no alternative to the Industrial zoning district to permit industrial uses.

#### **Public Notification**

This case will be publicly noticed as required by LDC, Section 3.1.10 as further described below.

<u>Publication:</u> A legal ad will be prepared and sent to the *News-Press* announcing the intent of the petitioners to rezone the property described within this report. The ad will appear in the *News-Press* a minimum of 10 days prior to the public hearing scheduled before the Hearing Examiner. Following the public hearing before the Hearing Examiner, the ad announcing the final public hearing before the City Council will appear once in the *News-Press*. The ad will appear in the newspaper not less than 10 days prior to the date of the final public hearing before the City Council.

<u>Written notice</u>: Property owners located within 500 feet from the property line of the land which the petitioners request to rezone will receive written notification of the scheduled public hearings. These letters will be mailed to the aforementioned parties a minimum of 10 days prior to the public hearing scheduled before the Hearing Examiner.

<u>Posting of a Sign:</u> A large sign identifying the case and providing salient information will be posted on the property, as another means of providing notice of the rezoning request.

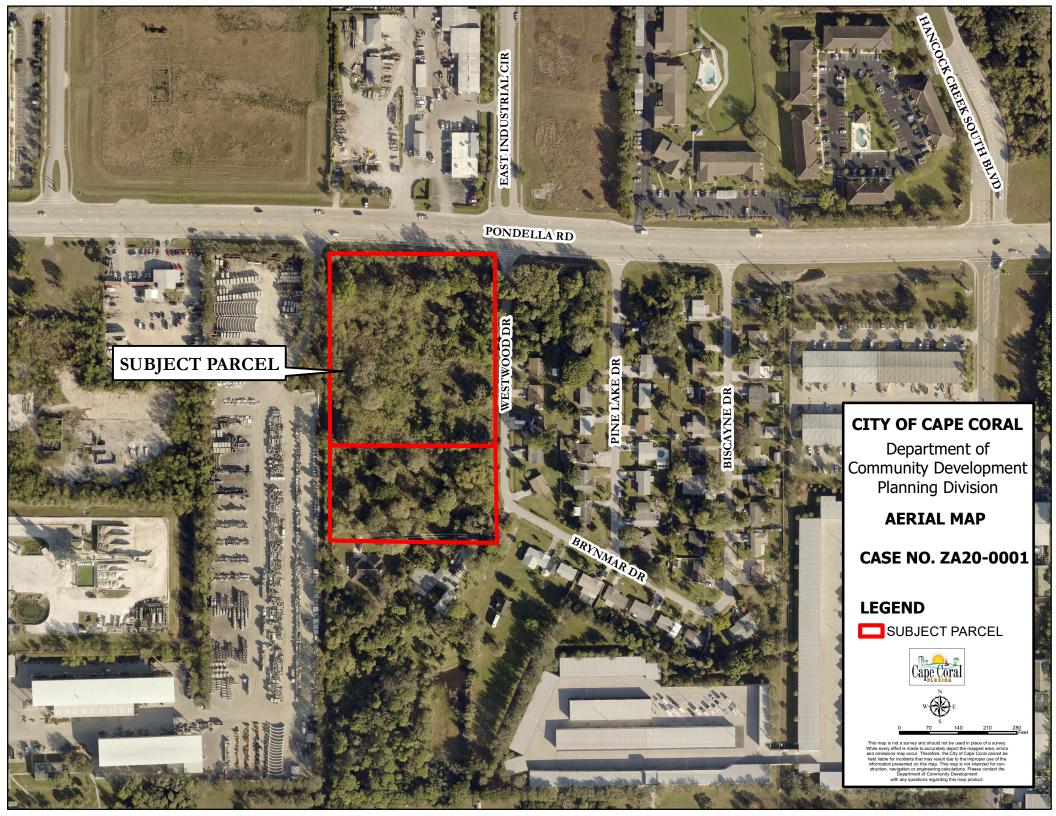
#### **Recommendation:**

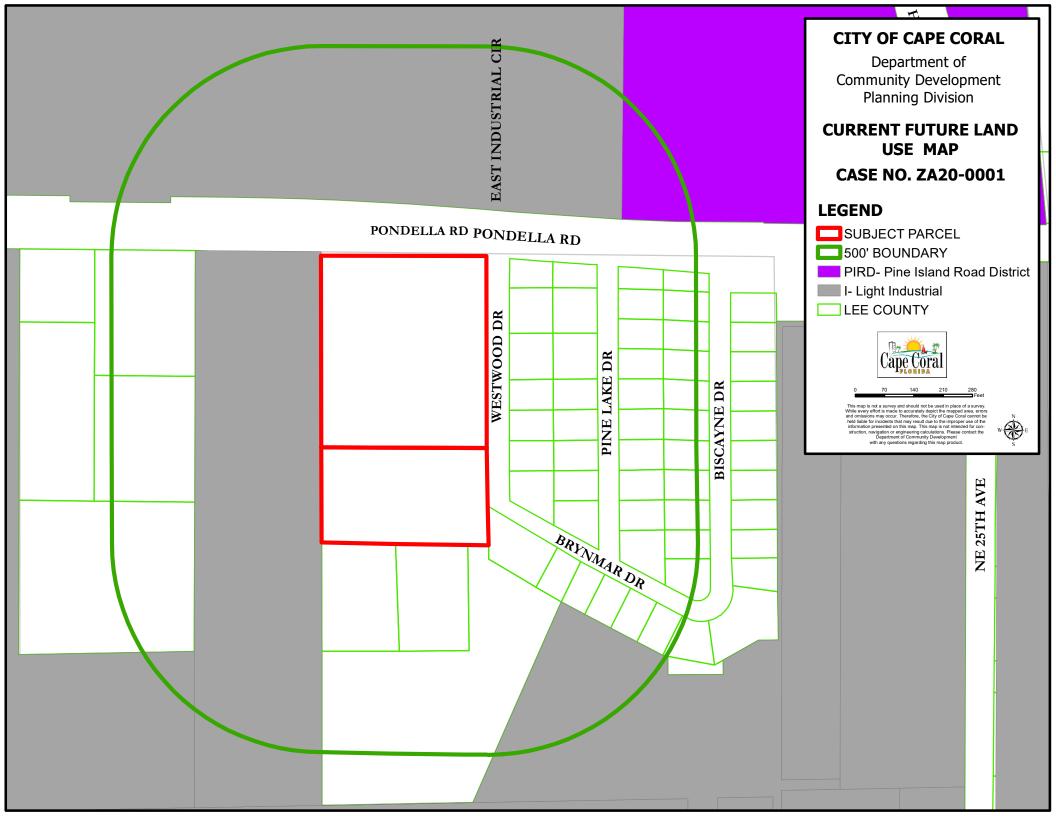
Planning staff has reviewed this request in accordance with Section 3.4.6 of the Land Development Code and the City's Comprehensive Plan. Planning Division recommends **approval** of the rezone request.

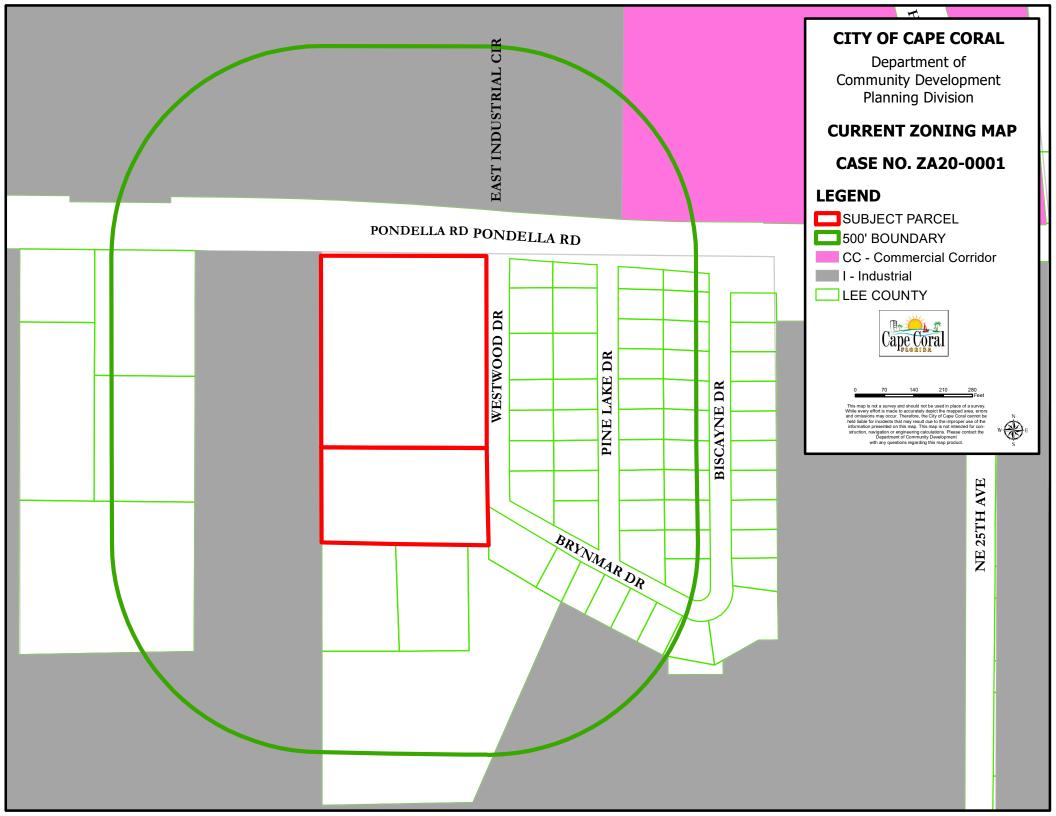
#### **Staff Contact Information:**

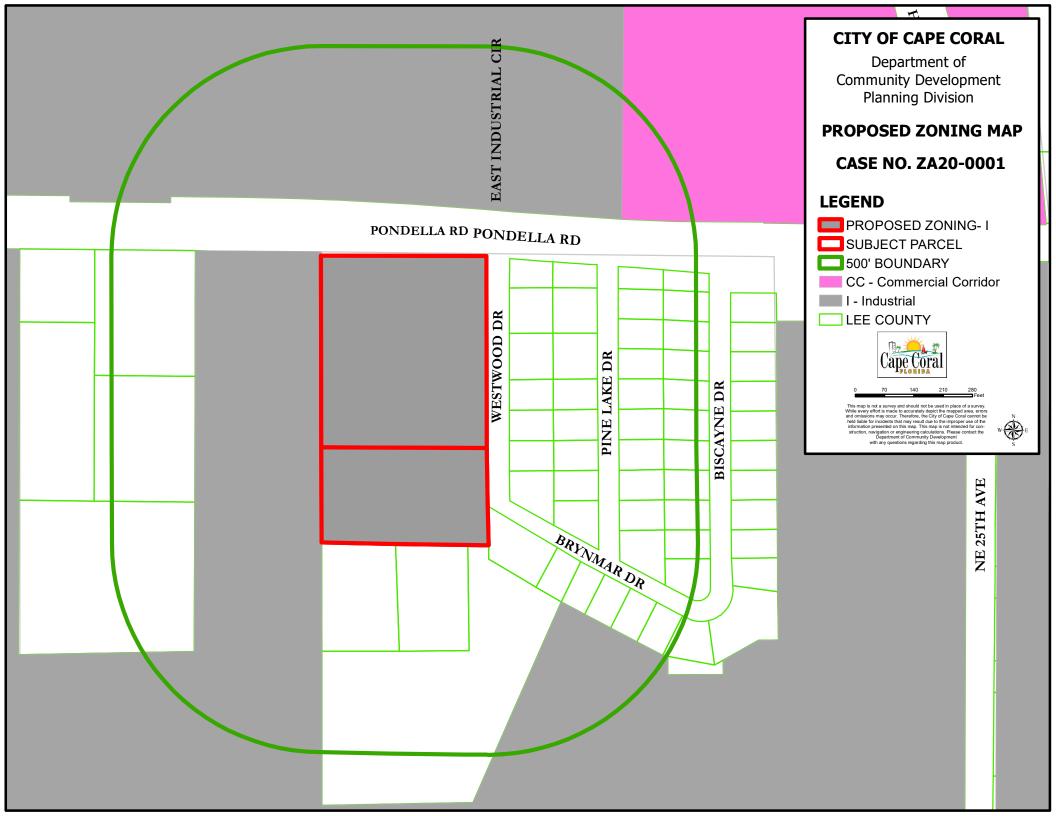
Wyatt Daltry, AICP Planning Team Coordinator Department of Community Development Planning Division (239) 573-3160

email: wdaltry@capecoral.net











Ordinance 1-21/ZA20-0001 Rezone to Industrial (I)



# Background

- A privately-initiated rezone involving 6.2 acres
- Owner: Honc Docks and Lifts, Inc.
- Request is to rezone the subject property to the Industrial District (I)
- Staff requests that the findings of the staff report be incorporated as part of this presentation



Property located at:

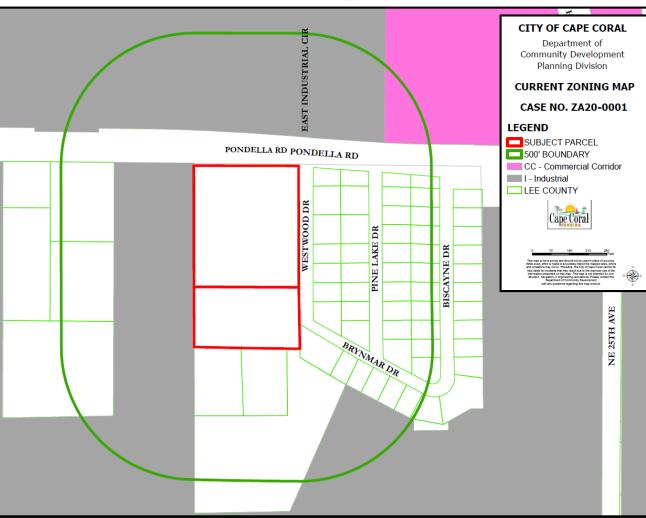
1109-1111 Pondella Road



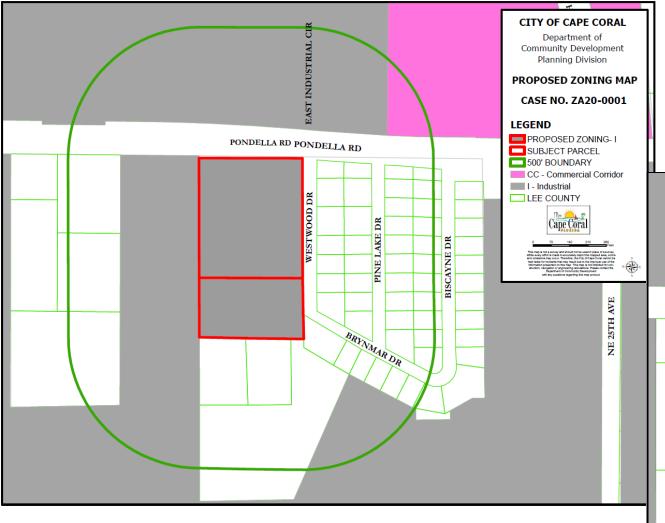
Site

# SUBJECT PARCEL CITY OF CAPE CORAL Department of Community Development Planning Division **AERIAL MAP** CASE NO. ZA20-0001 LEGEND SUBJECT PARCEL

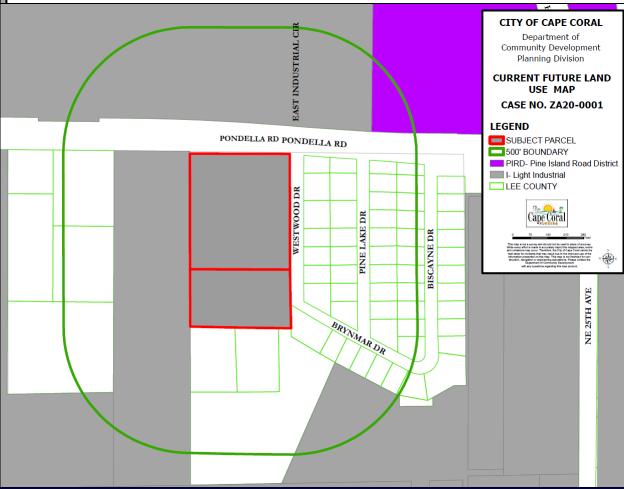
# **Aerial and Current Zoning**







# Proposed Zoning and Future Land Use





## Conclusion

Recently annexed properties need to follow up with FLUM and rezoning; retains County land use and zoning after annexation

Proposed rezone is consistent with Comprehensive Plan

Subject properties are near other industrial properties and active industrial uses; located adjacent to Pondella Road, a major arterial roadway

Staff recommends **Approval** 





#### AGENDA REQUEST FORM CITY OF CAPE

CITY OF CAPE CORAL Item Number:

B.(2)

Meeting

1/6/2021

Date:

**ORDINANCES/RESOLUTIONS -**

Type: Introductions

#### TITLE:

Ordinance 2-21 (ZA 20-0006\*) Set Public Hearing for January 20, 2021

#### REQUESTED ACTION:

Approve or Deny

#### SUMMARY EXPLANATION AND BACKGROUND:

An ordinance amending the City of Cape Coral Official Zoning District Map of all property within the limits of the City of Cape Coral by rezoning property described as Tract A, Block 6114, Unit 97, Cape Coral Subdivision, from Single-Family Residential (R-1) to Commercial (C) zone: property is located at 4330 Burnt Store Road North.

#### STRATEGIC PLAN ALIGNMENT:

1. 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

#### **RECOMMENDATIONS:**

<u>Hearing Examiner Recommendation:</u> The Hearing Examiner recommends that City Council APPROVE the rezone to the Commercial Zoning District.

**DCD Department Recommendation:** Approval

#### **SOURCE OF ADDITIONAL INFORMATION:**

Vince Cautero, DCD Director, 1-239-574-0600 Chad Boyko, Principal Planner, 1-239-573-3162

#### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

n/a

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

#### PREPARED BY:

Division- Department- City Attorney

#### ATTACHMENTS:

#### Description

- 1. Ordinance 2-21 (ZA 20-0006\*)
- 2. Hearing Examiner Recommendation
- a. Back up materials from HEX Hearing
- 4. Staff Presentation

#### Туре

Ordinance

Backup Material

Backup Material

Backup Material

#### ORDINANCE 2 - 21

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL OFFICIAL ZONING DISTRICT MAP OF ALL PROPERTY WITHIN THE LIMITS OF THE CITY OF CAPE CORAL BY REZONING PROPERTY DESCRIBED AS TRACT A, BLOCK 6114, UNIT 97, CAPE CORAL SUBDIVISION, AS MORE PARTICULARLY DESCRIBED HEREIN, FROM SINGLE-FAMILY RESIDENTIAL (R-1) TO COMMERCIAL (C) ZONE; PROPERTY IS LOCATED AT 4330 BURNT STORE ROAD NORTH; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral City Council has considered testimony, evidence, documentation and the application submitted by DURDEN 28, LLC, for rezoning the below-described property from SINGLE-FAMILY RESIDENTIAL (R-1) to COMMERCIAL (C) ZONE, and considered the recommendations of the Hearing Examiner and City Staff, and has considered the City of Cape Coral Comprehensive Plan with this zoning request.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

Section 1. That the City of Cape Coral Official Zoning District Map of all of the property within the limits of the City of Cape Coral is hereby amended with respect to real property described as follows:

#### SINGLE-FAMILY RESIDENTIAL (R-1) TO COMMERCIAL (C) ZONE

TRACT A, BLOCK 6114, UNIT 97, CAPE CORAL SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 25, PAGES 85-97, INCLUSIVE, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, TOGETHER WITH THE NORTH 660 FEET OF THE SOUTH 990 FEET OF THE EAST 1/2 OF THE SOUTHEAST 1/4 SECTION 7, TOWNSHIP 43 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, LESS RIGHT OF WAY BURNT STORE ROAD, OVER THE EASTERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY

#### PROPERTY LOCATED AT: 4330 BURNT STORE ROAD NORTH

HAYDEN

and the City administrative office shall amend the City of Cape Coral Official Zoning District Map to reflect this zoning change.

That the amendments to the City of Cape Coral Official Zoning District Map as prescribed herein are consistent with the City of Cape Coral Comprehensive Plan.

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 upon passage by the Cape Coral City Council.

Coral City Council.	
ADOPTED BY THE COUNCIL OF TH SESSION THIS DAY OF	E CITY OF CAPE CORAL AT ITS REGULAR, 2021.
	JOE COVIELLO, MAYOR
VOTE OF MAYOR AND COUNCILMEM	BERS:
COVIELLO GUNTER	NELSON

COSDEN

ATTESTED TO AND FILED IN MY OF 2021.	FFICE THIS DAY OF	<u> </u>
	KIMBERLY BRUNS CITY CLERK	
APPROVED AS TO FORM:		
JOHN E. NACLERIO III ASSISTANT CITY ATTORNEY ord\ZA20-0006		

## OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL HEARING EXAMINER RECOMMENDATION

#### ZA HEX Recommendation 12-2020 Rendered November 18, 2020

DCD CASE # ZA 20-0006

APPLICATION FOR: Rezoning from the Single-Family Residential (R1) Zoning District to the Commercial (C) Zoning District for a 26.19 acre parcel

NAME OF OWNER/APPLICANT: Durden 28, LLC (by Frank Aloia, Jr., Manager)

NAME OF APPLICANT'S REPRESENTATIVES: Linda Miller, AICP, Senior Planner (Avalon Engineering) and Paul Owen (W. Dexter Bender & Associates)

LOCATION OF PROPERTY: 4330 Burnt Store Road North, Cape Coral, FL

Unit 6114. Tract A

Intersection of Durden Parkway and Burnt Store Road North

STRAP # 07-43-23-C3-06114.A000

**CURRENT ZONING DISTRICT:** Single Family Residential (R-1)

APPLICANT'S PROPOSED ZONING: Commercial (C)

FUTURE LAND USE CLASSIFICATION: Commercial/Professional (CP) (FLUC)<sup>1</sup>

**URBAN SERVICE AREA: Reserve** 

ACCESS: The site has access on Burnt Store Road (an arterial road) and Durden

Parkway (a collector road).

CITY WATER AND SEWER: not available<sup>2</sup>

**HEARING DATE:** November 17, 2020

#### **SUMMARY OF REQUEST:**

Applicant requests the rezone of a 26.19 acre undeveloped parcel in the Northwest Quadrant of Cape Coral from Single-Family Residential to the Commercial Zoning District.

#### **SUMMARY OF HEARING EXAMINER RECOMMENDATION:**

The Hearing Examiner recommends that City Council **APPROVE** the rezone to the Commercial Zoning District.

<sup>&</sup>lt;sup>1</sup> The Future Land Use Classification was changed by City Council to Commercial/Professional (CP) from Single Family and Multi-Family (SM) by Ordinance 43-20 on October 19, 2020 (last month).

<sup>&</sup>lt;sup>2</sup> The Applicant's Representative's Letter of Intent dated April 7, 2020, stated that "within the past year, the Myriad Motor Coach project has installed utility service lines to provide City Utilities (water, sewer and reuse water) to the Motor Coach project from Charlotte County. These lines [would] also serve a future commercial shopping center on the subject parcel."

#### I. NOTICE OF HEARING

Based on the testimony of City Staff Chad Boyko at the Hearing and the Hearing Examiner's observations during her site visit, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of Article 3 (Development Review), Chapter 1, § 3.1.10 ("Public Hearing Scheduling and Notice Requirements") of the City of Cape Coral Land Development Code ("LDC").

#### II. SITE VISIT

The Hearing Examiner performed a site visit prior to the Hearing.

#### III. PARTICIPANTS IN HEARING

APPLICANT'S REPRESENTATIVES<sup>3</sup>: Linda Miller, AICP (Avalon Engineering)<sup>4</sup> and Paul K. Owen (Principal Ecologist, W. Dexter Bender and Associates)<sup>5</sup>

CITY STAFF: Chad Boyko, AICP 6

CITY CLERK'S OFFICE: Rose Depaula

**TESTIMONY BY MEMBERS OF PUBLIC: None** 

PRIOR TELEPHONE CALLS BY MEMBERS OF THE PUBLIC: one call to staff for information. Staff testified that no position was expressed on this Application.

CORRESPONDENCE (EMAIL) FROM MEMBERS OF THE PUBLIC: None

#### IV. EXHIBITS

APPLICANT'S AND CITY STAFF'S EXHIBITS: previously submitted.

There are various references in this Recommendation to testimony by "Applicant's Representative." Mr. Owen testified solely regarding environmental issues related to the Application. Accordingly, all references to testimony by "Applicant's Representative" herein will be references to Ms. Miller, except where testimony is specifically attributed to Mr. Owen.

<sup>&</sup>lt;sup>4</sup> Ms. Miller was accepted as an expert witness in land planning issues, on the basis of her prior testimony before the Hearing Examiner on similar matters and her C.V. (on file with the Clerk's Office) which sets forth her education, experience, and other qualifications.

Mr. Owen was accepted as an expert in wetland and wildlife/protected species matters, on the basis of his prior testimony before the Hearing Examiner on similar matters and his C.V. which sets forth his education, experience and other qualifications and which was presented with Applicant's Hearing Submittals.

<sup>&</sup>lt;sup>6</sup> Mr. Boyko was accepted as an expert witness in land planning issues, on the basis of his prior testimony before the Hearing Examiner on similar matters and his C.V. (on file with the Clerk's Office) which sets forth his education, experience, and other qualifications.

#### V. REVIEW OF STATUTORY AND LDC REQUIREMENTS

Applicable Regulations: Application Received Subsequent to August 5, 2019
It appears from a review of the documents submitted by Applicant's Representative that the Application requesting this Rezoning was submitted for City review on or about April 6, 2020, as set forth on the Letter of Transmittal.

Accordingly, this case has been reviewed, and this Recommendation is based upon, the Land Development Code ("LDC") in effect subsequent to August 5, 2019, the date the new LDC ordinance was adopted by City Council.

<u>Authority.</u> The Hearing Examiner has the authority to recommend the approval or denial of an application for a rezone, pursuant to LDC Article 2 (Decision Making and Administrative Bodies), Chapter 2 (Hearing Examiner), §2.2.3B.5:

A Hearing Examiner shall hear and decide, or, when applicable, make Recommendations, on the following....

.... 5. Applications for rezoning property."

<u>Entirety of the Record/Standard of Review of Evidence.</u> The Hearing Examiner's Recommendation is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LDC, based upon the entirety of the record before the Hearing Examiner.

The Recommendation of the Hearing Examiner must be based upon competent substantial evidence in the record. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11E.

<u>Presumption of Relevance and Materiality.</u> Matters related to an Application's consistency with the Comprehensive Plan, the City Code of Ordinances, or the LDC will be presumed to be relevant and material. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11F.4.

<u>Hearsay Evidence.</u> 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. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11F.5.

<u>LDC Standards for Rezoning.</u> The Hearing Examiner reviewed the application in accordance with the standards for rezonings set forth in LDC §3.4.6 and specifically set forth in LDC § 3.4.6.A (Manner of Initiation) and LDC § 3.4.6.B (Review Criteria), in addition to the general standards set forth elsewhere in the LDC and the City Comprehensive Plan.

#### **TESTIMONY AT HEARING**

Incorporation of Staff Report, Staff Testimony and Additional Documents by Staff and Applicant's Representative

The Applicant's Representative incorporated the Staff Report, Staff PowerPoint, Staff testimony at hearing, and all other Staff documents ("Staff Input") into her presentation by reference. She requested the Hearing Examiner to recommend that City Council find the Staff Input as findings of fact, in addition to those separately presented by her.

Staff incorporated his Staff Report into his presentation by reference.

#### Hearing Examiner's Recommended Findings of Fact

The Hearing Examiner recommends that City Council find as facts all documentary and oral testimony set forth or referenced herein, except to the extent (if any) that the Hearing Examiner specifically recommends otherwise.

#### VI. DISCUSSION

#### Site Information

Staff testified that the subject site is a 26.19 acre undeveloped parcel in northwestern Cape Coral. The site is a platted tract in Block 6114, located at the intersection of Burnt Store Road and Durden Parkway.

The site is surrounded by undeveloped parcels to the north, east, and west. South of the site – across Durden Parkway - the Myriad RV Resort, is currently under construction. Staff testified that municipal water, sewer, and irrigation are not available to the site. He further testified that water and sewer lines which are serviced by Charlotte County have been extended from the northern City of Cape Coral boundary to the Myriad RV Resort. These water and sewer lines run along the front of the site along Burnt Store Road.

Both staff and the Applicant's Representative testified that development permits cannot be issued for the property, as it currently has a zoning designation inconsistent with the existing Commercial/Professional FLUC.

#### **Environmental Concerns**

The Hearing Examiner observed that the site is heavily vegetated. In colloquy, David Owen, Applicant's Representative for environmental matters, testified that "it would require a kayak to travel inside the property" due to its being wet.

#### Mr. Owen further testified as follows:

#### **ENVIRONMENTAL SURVEY RESULTS**

#### Wetlands:

Approximately 3.91 acres of potentially jurisdictional wetlands (FLUCCS Codes 619, 625E1, 625E3, and 641) and 0.26± acre of potentially jurisdictional other surface waters (FLUCCS Code 510D) have been identified on the property. Impacts to these areas, if any, will be addressed during the state wetland permitting process.

#### Listed Species:

Bald Eagle: Bald Eagle Nest LE- 902 is located along the east edge of Burnt Store Road approximately 800 feet south of the subject property.

#### Gopher Tortoise:

Sixteen potentially occupied gopher tortoise burrows were observed in the disturbed land and pines with exotics in the southern third of the site. A permit will be obtained from the FWC if gopher tortoise burrows are found to be located within or immediately adjacent (25 feet or less) to proposed development areas that result in earthwork, mechanical land clearing, or other activities that could collapse the burrow.<sup>7</sup>

#### Florida Bonneted Bat:

Five dead pine trees containing cavities that could potentially be utilized as roosting/nesting cavities by the Florida bonneted bat were observed. No evidence of bat utilization (bat vocalization/chatter from within the potential cavities or guano on or around the snags) was observed.

#### Heritage Trees

No heritage trees were observed on the site during the survey.

#### Unique Features

There were unique features found on the property.

The Hearing Examiner observes that, to the extent that some of these environment matters are within the jurisdiction of the City of Cape Coral, Applicant will be required to comply with City regulations.

To the extent that the remaining environmental matters are within other governmental jurisdictions, Applicant will be required to comply with such other regulations and City staff with coordinate as appropriate on cross-jurisdictional matters.

While the Hearing Examiner did not walk the property due to its heavily vegetated and wet state, she observed numerous signs regarding gopher tortoise burrows in the surrounding properties.

#### Adjacent Zoning/Development

The Applicant's Representative testified that the zoning south to the site is Agricultural (A), with a FLUC of Mixed Use (MX). The property is in the early stages of being developed as a Luxury RV Resort.

She further testified that parcels to the north and west are zoned Single Family Residential (R-1), with a FLUC of Single Family and Multi-Family (SM).

Parcels to the east are within unincorporated Lee County and therefore carry zoning designations and a FLUC from Lee County (unincorporated).

#### Entitlement History

Staff testified that, upon adoption of the Comprehensive Plan in 1989, the site was given a future land use classification of Single-Family/Multi-Family (SM) and zoning designation of Single-Family Residential (R-1B). That FLUC designation stayed in place until last month.

The Applicant initiated a Future Land Use Map amendment to amend the future land use classification of the site from SM to Commercial/Professional (CP) in early 2000. The Commercial/Professional future land use was adopted by the City Council on October 19, 2020, prior to this Hearing.

#### Purpose of the Rezoning Request

The Letter of Intent dated April 7, 2020, from Applicant's Representative, did not specifically state what the purpose of the rezoning request. It did state as follows in reference to Article 3, Section 23.4.6.B, Standard 3 (discussed below in detail):

"Currently, there is a limited amount of commercial uses within the Northwest Section of Cape Coral. The allowable commercial uses permitted in the City's Commercial Zoning District [would] assist in providing this area of the City with the services, entertainment, shopping and dining opportunities that are not offered within a close proximity to the residents of this area."

In addition, the Trip Generation Report provided as part of Applicant's submittals (page 22 of the NOVUS documentary package) referenced "Durden Commercial Park" with a land use characterization of "Shopping Center (LUC 820) and a size of 171,000.00 square feet. <sup>8</sup>

Applicant's Representative further testified that the site's frontage and size combine to make it an ideal site for a future commercial development.

<sup>&</sup>lt;sup>8</sup> In a rezoning, the Applicant is not bound by its written representations of potential uses of the subject property.

#### VII. COMPREHENSIVE PLAN CONSISTENCY

Staff and the Applicant's Representative testified as set forth below.

#### **Future Land Use Element**

#### Policy 1.15, Table 1.

Staff testified that the existing R1 Zoning District is not consistent with the Commercial/Professional FLUC, and therefore should be changed to allow for development to occur.

Two Zoning Districts are consistent with the Commercial/ Professional FLUC: Commercial (as requested by Applicant) and Professional (which was not part of the Application).

#### Policy 1.15.c.: Commercial/Professional:

The Professional (P) District is designed to provide professional office and other compatible development in areas that are suitable for such activities. The P District is appropriate for development of both small-scale and large-scale office or professional development projects, or projects containing uses compatible with such development. The intensity of development within this district is based upon the size (including width, depth, and compactness) and location of the property, as well as on compatibility with adjacent future land use classifications and zoning districts.

The Commercial (C) District is designed to facilitate a broad variety of large or small commercial uses. Uses allowed in the C District range from a variety of small or neighborhood-based commercial uses to larger retail or service uses, which may serve a relatively large trade area and, which may be developed as major shopping facilities.

As many commercial uses have the potential to generate relatively high levels of vehicular trips from customers and sometimes delivery vehicles, preferred locations for the C District have direct access onto arterial or collector roads and adequate depth (a minimum of 250 feet) for larger-scale development.....[remainder of this section omitted as not relevant due to size of subject property].

The Applicant's Representative testified that, as the subject property is located on an arterial road and, at a property depth of 1,200 feet, exceeds the 250-foot minimum depth requirements set

forth above, the application is consistent with this Comprehensive Plan Policy.

It may also be appropriate, under certain circumstances to place restrictions on some commercial uses, such as those with high trip generation rates, adverse aesthetic attributes, and generation of disturbing noises or odors. <sup>9</sup>

The Applicant's Representative testified that development of the uses permitted in the Commercial Zone may serve to shield the nearby residential uses from the noise of Burnt Store Road, which is a designated hurricane evacuation route and which is often heavily trafficked by north-south vehicle, including heavy trucks.

Factors to consider when establishing such limits on intensities or uses include the following: the depth of the property, whether the property is adjacent to a waterway, whether the property is adjacent to or proximate to future land use classifications or zoning districts that allow residential uses, or the functional classification of street(s) available for street access. The placement of limitations upon the types and intensities of uses allowed within the C Zoning District, in accordance with the factors described above, is intended to reduce conflicts between the C District and adjacent or nearby residential zoning districts.

Based upon her review of the foregoing Policies and testimony from staff and the Applicant's Representative, the Hearing Examiner recommends a finding that granting the requested rezone is in compliance with, and is in furtherance of, the requirements of all applicable provisions of the Comprehensive Plan.

#### VIII. REZONING REQUIREMENTS AND CRITERIA: HEX RECOMMENDATIONS

#### A. Review Criteria

1. The proposed zoning district is consistent with the City Comprehensive Plan. LDC § 3.4.6.B.1

See above recommended findings of fact with discussion regarding the Comprehensive Plan.

The Hearing Examiner recommends a finding by City Council that this standard is **met**.

<sup>&</sup>lt;sup>9</sup> Applicant's Representative also referenced Policy 1.17 regarding protection of existing residential land uses from incompatible land uses.

2. The full range of uses allowed in the proposed zoning district **would be** compatible with existing uses in the area under consideration. LDC § 3.4.6.B.2

The Commercial Zoning District allows 55 permitted, conditional, and special exception uses, including (*inter alia*) restaurants, professional offices, retail, entertainment, personal services (such as nail salons). The Applicant's Representative testified that there is a paucity of such uses in this quadrant of Cape Coral and, due to the size of the subject property, appropriate buffering can be accomplished to protect nearby residential uses. In addition, its location on Burnt Store Road would allow for a right in-right out traffic pattern, depending on the site plan requirements.

The discussion set forth under the Comprehensive Plan analysis above is also incorporated herein by reference and is additional support for the Hearing Examiner's recommendation for this standard.

The Hearing Examiner recommends a finding by City Council that this standard is **met**.

3. The range of uses allowed in the proposed zoning district **would be** compatible with existing and potential uses in the area under consideration. LDC § 3.4.6.B.3

The discussion set forth in Standard #2 above is incorporated herein by reference.

The Hearing Examiner recommends a finding by City Council that this standard is **met**.

4. The proposed zoning district **would serve** a community need or broader public purpose. LDC§ 3.4.6.B.4

As set forth above, the current residential zoning of the parcel is inconsistent with the Commercial/Professional FLUC. Accordingly, rezoning the property would serve a community need or broader purpose by allowing the development of the property in a manner consistent with the FLUC.

In addition, staff testified that the City has a well-documented deficit of commercial land in relation to the number of properties developed as single-family residence. The transition of this parcel to Commercial zoning would assist in addressing such an imbalance.

Finally, as the Applicant's Representative testified, and the Hearing Examiner observed on her site visit, there is virtually no commercial development readily accessible to the residential developments in the nearby communities. Developing this property with commercial uses would assist the community in obtaining such services in a more convenient manner.

The Hearing Examiner recommends a finding by City Council that this standard is **met**.

5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district. LDC§ 3.4.6.B.5

The Applicant's Representative testified that the site is appropriate for this rezoning for the following reasons:

- The project site is located on Burnt Store Road, a county major collector roadway; and
- The project site has a depth of over 1,200 feet with frontage on Durden Parkway and 930 linear feet of street frontage along Burnt Store Road; and
- The project site can provide adequate screening to protect the residential lots along the western property line while providing for a variety of commercial uses within a shopping center; and
- Development within this parcel will also block some of the existing street traffic noise from the residential areas to the west.

The Hearing Examiner recommends a finding by City Council that this standard is **met**.

6. A zoning district other than the district requested would not create fewer potential adverse impacts to exiting uses in the surrounding area.

In addition to the Commercial Zoning District, the Professional Zoning District is consistent with the Commercial/Professional FLUC. Both the Staff and the Applicant's Representative presented extensive testimony as to why, in each's opinion, rezoning to the Commercial Zoning District is more appropriate than the P District.<sup>10</sup>

The P district has a smaller number of uses that are generally centered around office uses such as medical offices, professional

<sup>&</sup>lt;sup>10</sup> The Hearing Examiner emphasizes that consideration of rezoning to the Professional Zoning District is not before the Hearing Examiner and would not be before City Council as well.

offices, banks, and other similar establishments. Staff recommended a finding that, while the P district could be utilized on the site, rezoning to the C district is more appropriate due to the size of the site, the location of the site at a commercial node, and the low amount of existing residential development.

The Applicant's Representative testified that the City has developed specific standards of development for the more intensive commercial uses that are permitted. Because of these required development standards and dimensional regulations, she testified that there are more safeguards in place to protect the residents to the west of the site developing with a commercial use then there would be were the property to be developed with some of the professional uses.

The Hearing Examiner recommends a finding by City Council that this standard is **met**.

#### IX. RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the testimony set forth above and the documentary exhibits presented prior to the Hearing, the Hearing Examiner recommends as follows:

- City Council find that the requested rezone is consistent with the requirements of the Comprehensive Plan, the Land Development Code, the City Code of Ordinances and all applicable laws of the State of Florida; and
- 2. City Council **approve** the requested rezoning to the Commercial (C) Zoning District.

This Recommendation takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA

ANNE DALTON, ESQUIRE

ATTEST:

CHY CLERK

## D

#### 19-128AVALON ENGINEERING, INC. TRANSMITTAL

#### LETTER OF

•Architecture •Engineering •Planning

TO:	Plan	Shawn Baker, Planner	PROJECT #:	19-128	
	1015	of Cape Coral Cultural Park Boulevard Coral, Florida	PROJECT:	Zoning Map Amendment Block 6144, Tract A and an Unsubdivided Parcel in Section 7, Township 43S, Range 23E	
FROM:		inda Miller, AICP  r. Planner  DATE:		April 6, 2020	
WE ARE  ☐ Attache ☐ Plans/F ☐ Permit	ed Via	Shop Drawings	EMS:  ] Under Separate Cov  ] Specifications	er Via Contract Disc	
NO. O	_	DESCRIPTION			
1		Zoning Map Amendment Letter of In	ntent		
1		Zoning Application including Authorization/Acknowledgement Forms/Corporation Documents			
1		Special Warranty Deed			
1		Traffic Generation Statement			
1		Environmental Survey Addendum Dated 4/7/2020_Environmental Survey Report			
1		Exhibit A Legal Description in "Wor	Exhibit A Legal Description in "Word" document		
1		Location Map @ 8 ½ x 11			
1		500' Proximity Map @ 8 1/2 x 11			
1		Aerial Vicinity Map @ 8 ½ x 11			
1		Boundary Survey			
THIS DATA IS TRANSMITTED AS CHECKED BELOW:  as requested for approval for signature for your use/files/information for your distribution to be returned					
REMARK	KS:	Please provide case number and staff	comments when availa	able.	

•2503 Del Prado Blvd. S. #200•Cape Coral, Florida 33904 •Phone: (239) 573-2077 •Fax: (239) 573-2076

G:\2019\19-128\Zoning Amendment\Baker\_ Zoning Application Submittal\_Trn.doc



#### Avalon Engineering, Inc.

2503 Del Prado Boulevard South, Suite 200 Cape Coral, Florida 33904

Phone: (239) 573-2077 Fax: (239) 573-2076

#AA C001936 #EB 0003128

April 7, 2020

Mr. Vince Cautero, Director Department of Community Development City of Cape Coral 1015 Cultural Park Boulevard Cape Coral, Florida 33990

PROJECT:

DURDEN 28, UNIT 97, BLOCK 6114, TRACT A, AND PARCEL IN SECTION 7,

**TOWNSHIP 43 SOUTH, AND RANGE 23 EAST** 

SUBJECT:

ZONING MAP AMENDMENT LETTER OF INTENT

Dear Mr. Cautero:

As provided for in Section 3.4.6 of the City of Cape Coral Land Development Code, and on behalf of the property owner, Durden 28, LLC, we respectfully request an Amendment to the Zoning Map to change the zoning designation of the subject 26.19-acre parcel. The property has a current zoning of R1 (Single Family). The applicant is requesting a zoning of C (Commercial). The property is in the process of obtaining a Commercial Professional Land Use and a residential use would not be consistent with the CP Land Use.

The subject parcel is located on the northwest corner of Durden Parkway and Burnt Store Road North. The subject parcel consists of 26.194 acres within Block 6114, Tract A, and an unsubdivided parcel in Section 7, Township 43 South, and Range 23 East. The parcel is directly across Durden Parkway from the Myriad Motor Coach Resort, which is currently under construction.

Within this past year, the Myriad Motor Coach project has installed utility service lines to provide City Utilities (water, sewer, and reuse water) to the Motor Coach project from Charlotte County. These lines will also serve a future commercial shopping center on the subject parcel.

#### MANNER OF INITIATION

Applications for a Zoning Map Amendment (ZA) may be initiated in the following manner:

By a petition of one or more property owners of at least 51% of the property owners of an area proposed for amendment.

The property owner submitting this petition has 100% ownership in the parcels requesting approval of a Zoning Map Amendment to Commercial.

#### **REVIEW CRITERIA**

Per Article 3, Section 3.4.6.B, an application for a rezone shall be reviewed in accordance with the following criteria:

1. Whether the proposed zoning district proposed is consistent with the City Comprehensive Plan:

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. Table 1 shows the zoning districts which are consistent with and implement the respective future land use map classifications.

Table 1:

Future Land Use Consistent Zoning Districts	
Single-Family (SF)	R-1, RE
Single-Family and Multi-Family (SM)	R-1, RML, RMM, RE, A
Multi-Family (MF)	RML, RMM
Low Density Residential (LDR)	RE, A
Commercial/Professional (CP)	C, P
Mixed Use (MX)	ALL except MXB
Downtown Mixed (DM)	SC, MXB
Pine Island Road District (PIRD)	cc
Commercial Activity Center (CAC)	NC
Light Industrial (i)	1
Natural Resources/Preservation (PRES)	PV
Public Facilities (PF)	All
Parks and Recreational (PK)	Ali

Policy 1.15.c: Commercial/Professional

Preferred locations for parcels with C (Commercial) Zoning District is to have direct access onto arterial or collector roads and adequate depth (a minimum of 250 feet).

The subject parcel is located on a collector and has a property depth of greater than 250 feet.

The placement of limitations upon the types and intensities of uses allowed within the C-1 Zoning District, in accordance with the factors described above, is intended to reduce conflicts between the C-1 District and adjacent or nearby residential zoning districts.

The City had placed limitations on specific types of Commercial uses within the City's Land Development Code that reduce conflicts between C (Commercial) Zoning and adjacent or nearby residential zoning districts and the site has enough depth to provide for an adequate buffer yard to separate the uses.

Policy 1.17: Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address buffering and open space requirements, and will protect existing residential land uses from incompatible land uses.

Landscape buffering is required for the development of this site. Green space with landscaping will be provided along the western property line to screen the existing residential lands use from this commercial development.

Policy 7.10: The City shall discourage illogical and inefficient leapfrog development, by encouraging and directing development to areas adjacent to section of the City served by existing centralized utilities, and that the extension of centralized utilities will abide by Policy 1.1.6 of the Infrastructure Element

The site is within an area where utilities exist between Charlotte County and the City of Cape Coral.

2. Whether the full range of uses allowed in the proposed zoning of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration:

The full range of uses allowed within the requested Commercial Zoning District are uses that will be welcomed within the Northwest Section of Cape Coral and which will be appropriate adjacent to an RV Resort.

3. Whether the full range of uses allowed in the proposed zoning district will be compatible with the existing and potential uses in the area under consideration:

Currently, there is a limited amount of commercial uses within the Northwest Section of Cape Coral. The allowable commercial uses permitted in the City's Commercial Zoning District will assist in providing this area of the City with the services, entertainment, shopping and dinning opportunities that are not offered within a close proximity to the residents of this area.

4. Whether the proposed zoning district will serve a community need or broader public purpose:

Yes, the proposed zoning will serve a community need as the City has a deficient of commercial acreage and has a limited amount of commercial uses and services in this area of the City.

5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district;

The project site is located on Burnt Store Road, a county major collector roadway. The project site has a depth of over 1,200 feet and has 930 linear feet of street frontage along Burnt Store Road. The project site can provide adequate screening to protect the residential lots west of the project site while providing for a variety of commercial uses within a shopping center. A new commercial development will also block some of the existing street traffic noise from the residential areas.

6. Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area.

Currently there are only two Zoning Districts In the City of Cape Coral that are compatible with the City's Commercial/ Professional Land Use. These zonings are C (Commercial) or P (Professional). In addition, the City has developed specific standards of development for the commercial uses permitted in this district that would be considered more intrusive and because of these required development standards and dimensional regulations, we believe there are more safe guards for some types of commercial uses then there are professional uses.

We request your approval of this Zoning Amendment. Should you or your staff have questions or require additional information, please let us know.

Sincerely,

AVALON ENGINEERING, INC.

Linda Miller, AICP Senior Planner



## DEPARTMENT OF COMMUNITY DEVELOPMENT PLANNING DIVISION

For Internal Use Only
Case
Date

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

#### REZONING APPLICATION

#### CHECKLIST

1	<ul> <li>Applicant's portion of request shall be typewritten, and signature notarized.</li> <li>a. All forms (Application, Acknowledgement Form, Authorization to Represent) must be signed by the property owner or the applicant. If the Authorized Representative is an attorney, the application and the Acknowledgement Form may be signed by the attorney and an Authorization to Represent Form is not required.</li> <li>b. If there are any deed restrictions on the property, a copy of the restrictions will be required.</li> </ul>
2 3 4	Certified survey done within past six (6) months MAY be required.
*** 4	Il itams must be provided at the time of submission and all forms must be type-wittentit

\*\*\*All items must be provided at the time of submission and all forms must be typewritten\*\*\*

#### NOTE

In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 3.4.6.). Advertising costs will be billed and must be paid prior to hearing.

Following the approval of your request, the applicant shall be responsible for paying the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

It is required that applicant and/or representative attend both the hearing examiner and city council meetings.



**PLANNING DIVISION** 

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

#### **REZONE REQUEST**

FEE \$2,050.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 3.4.6). Advertising costs will be billed and must be paid prior to hearing.

OWNER(S) OF PROPERTY INFOIDURDEN 28 LLC Owner By: Frank Aloia, Jr., It's Manager		Address 2222 Se	econd Street
Phone 239-791-7950			State_FL_Zip_33901
Email_faloia@lawdefined.com		-	
Owner		Address	
Phone			State Zip
Email			
APPLICANT INFORMATION			
Applicant Same as Owner		Address	
Phone		City	State Zip
Email			
AUTHORIZED REPRESENTATIVE	INFORMATION (If App	olicable)	
Representative Avalon Engineering, Inc.		Address 2503 De	Prado Boulevard South
Phone 239-573-2077/ Extension 216			State <sup>FL</sup> Zip 33904
Email linda@avaloneng.com (Linda Miller)			
PROPERTY INFORMATION  Unit_97 Block_6114 Lot (s)	TRACT A, AND A UN-SUBDIVIDED PARCEL IN SEC. 7, TWP 43S, RGE. 23E Subd	livision	
Property Address 4330 Burnt Store Road			
Plat Book <sup>25</sup>			
SM (Single Family and Current Zoning Multi-family)	Strap Number 07-43-23-	-C3-06114.A000	
Number of Acres 26.194	Proposed Zoning	CP (Commercial Profes	esional)



PLANNING DIVISION

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.

#### (SIGNATURE MUST BE NOTARIZED)

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.

DURDEN 28 LLC	
CORPORATION/COMPANY NAME (IF APPLIC	
Frank Aloia, Jr., It's Manager	Mounter
OWNER'S NAME (TYPE OR PRINT)	OWNER'S SIGNATURE
OWNER'S NAME (TYPE OR PRINT)	OWNER'S SIGNATURE
APPLICANT NAME (TYPE OR PRINT)	APPLICANT SIGNATURE
	ctions. Hearing date(s) will be confirmed when I g stipulating the day and time of any applicable
Subscribed and sworn to (or affirmed) before r	
	day of Textorial
2020, by Frank J. Aldia Jr wh	o is personally known or produced
as identification.	
Exp Date: 2-2-202  Commission	Number: <u>66019157</u>
Signature of No	otary Public: DOUGS JUDILUL
	me of Notary Public: Wasquire
MY COMMISSION # GG069157 EXPIRES February 02, 2021	



#### **PLANNING DIVISION**

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral. FL 33915-0027

#### 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 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 and recording 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.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

I hereby acknowledge that I have read and un	derstood the above affidavit on the Day
of February 2020.	
DURDEN 28 LLC	Frank Aloia, Jr., It's Manager
CORPORATION/COMPANY NAME	OWNER'S NAME (TYPE or PRINT)
•	Monney
STATE OF Florida, COUNTY OF	33
Subscribed and sworn to (or affirmed) before n	
2020 by Frank J. Along Jr w	ho is personally known or produced
as identification	n.
Exp Date: 2 · 2 · 2021 Commiss	ion Number: GGOL9157

Signature of Notary Public:

Printed name of Notary Public:





## DEPARTMENT OF COMMUNITY DEVELOPMENT PLANNING DIVISION

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

<b>AUTHORIZATION TO RE</b>	PRESENT PROPERTY OWNER(S)
PLEASE BE ADVISED THAT	Linda Miller
. LENGE DE NOTICES HIM	(Name of person giving presentation)
IS AUTHORIZED TO REPRES	ENT ME IN THE REQUEST BEFORE THE HEARING
EXAMINER AND CITY COUNC	CIL FOR:
Rezone	
(Type of Public Hearing, PUD,	Rezone, Special Exception, Vacation of Plat, Variance, etc.)
UNIT 97 BLOCK 6114	Tract A + N 660 of S 990 of E 1/2 OS SE 1/4 LOT(S) SUBDIVISION
OR LEGAL DESCRIPTION	
LOCATED IN THE CITY OF CADURDEN 28 LLC By: Frank Aloia, Jr., It's Manager	APE CORAL, COUNTY OF LEE, FLORIDA.
PROPERTY OWNER (Please I	
PROPERTY OWNER (Signatur	e & Title) PROPERTY OWNER (Signature & title)
STATE OF Florida,	
	irmed) before me this 25h day of February , 2020 ,
by Frank J. Adola Jr.	who is personally known or producedas
identification.	· ·
Exp Date: 2-2-2021	Commission Number: 6606957
	Signature of Notary Public: MUSQUEUU
DANA SARACIONE MY COMMISSION # GG0691	Land Commune

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.

EXPIRES February 02, 2021



**DURDEN 28 LLC** 

By: Frank Aloia, Jr., It's Manager
OWNER/APPLICANT

#### DEPARTMENT OF COMMUNITY DEVELOPMENT

**PLANNING DIVISION** 

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

#### **DOCUMENTARY EVIDENCE (LDC, Section 3.1.11F.6)**

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 three business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

OWNER/APPLICANT\SIGNA

I have read the above requirement and agree to comply with this provision.

(SIGNATURE MUST BE NOTARIZED)

STATE OF FLOT OW COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 25th day of February

2020 , by WUNKU, Aloua JV who is personally known or produced

as identification.

Exp Date: 2-2-2021 Commission Number: GOOGLET

Signature of Notary Public: DUCKSTACO ME

DANA SARACIONE
MY COMMISSION # GG069157
EXPIRES February 02, 2021

PLANNING DIVISION

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

#### **REZONES REGULATIONS**

- A. Manner of Initiation. Applications for a change in zoning may be initiated in the following manner:
  - 1. The City Council upon its own motion;
  - 2. The Planning and Zoning Commission upon its own motion;
  - 3. The property owner(s) of at least fifty-one percent of the land in the proposed rezone area;
  - 4. The City Manager for a City initiated rezone; or
  - 5. The Community Development Department, following approval of a similar use determination.
- B. Review Criteria. An application for a rezone shall be reviewed in accordance with the following criteria:
  - 1. Whether the proposed zoning district proposed is consistent with the City Comprehensive Plan:
  - Whether the full range of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration;
  - 3. Whether the range of uses allowed in the proposed zoning district will be compatible with existing and potential uses in the area under consideration;
  - Whether the proposed zoning district will serve a community need or broader public purpose;
  - 5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district; and
  - 6. Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area.
- C. Effective date of approval. A rezone shall take effect upon City Council adoption of the ordinance approving the rezone.
- D. New application after denial. No application for a rezone which has been previously denied by the City Council shall be accepted for at least one year after the date of denial. An application to rezone property to a designation that is different than the designation which was denied by the City Council, will be accepted and considered without consideration of time since the previous application was denied.



Department of State / Division of Corporations / Search Records / Detail By Document Number /

#### **Detail by Entity Name**

Florida Limited Liability Company DURDEN 28, LLC

Filing Information

Document Number

L19000223629

FEI/EIN Number

NONE

**Date Filed** 

09/03/2019

**Effective Date** 

09/03/2019

State

FL

Status

**ACTIVE** 

Principal Address

2222 SECOND STREET FORT MYERS, FL 33901

Mailing Address

2222 SECOND STREET FORT MYERS, FL 33901

Registered Agent Name & Address

ALOIA, FRANK J, JR.ESQ 2222 SECOND STREET FORT MYERS, FL 33901

Authorized Person(s) Detail

Name & Address

Title MGR

ALOIA, FRANK J, JR., ESQ 2222 SECOND STREET FORT MYERS, FL 33901

Title MGR

MAJOCKA, JOHN 5936 TARPON GARDENS CIRCLE CAPE CORAL, FL 33914

Title MGR

SCHUTT, ROGER

HILTON HEAD, SC 29926

Annual Reports

No Annual Reports Filed

**Document Images** 

09/03/2019 - Florida Limited Liability

View image in PDF format

Florida Department of State, Division of Corporations

### THIS INSTRUMENT WAS PREPARED BY, RECORD AND RETURN TO:

Harvey Mattel, Esquire 1314 Southeast 2<sup>nd</sup> Avenue Fort Lauderdale, Florida 33316 954.763.5095-telephone

Tax Folio #: 07-43-23-C3-06114.A000

#### SPECIAL WARRANTY DEED

THIS DEED, made this day of wave 2019 between Cape Coral Partners, LLC, a Florida limited liability company, of 1314 SE 2<sup>nd</sup> Avenue, Fort Lauderdale, Florida 33316, GRANTOR\*, and Durden 28, LLC, a Florida limited liability company, of 2222 Second Street, Fort Myers, Florida 33901, GRANTEE\*.

The GRANTOR, in consideration of the sum of Ten and NO/100 (\$10.00) Dollars, and other good and valuable considerations paid to Grantor, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the Grantee, and Grantee's heirs, successors and assigns, as the case may be, forever, the following described land, located in Lee County, Florida:

Tract A, Block 6114, Unit 97, Cape Coral Subdivision, according to the plat thereof, as recorded in Plat Book 25, pages 85-97, inclusive, public records of Lee County, Florida, together with the North 660 feet of the South 990 feet of the East ½ of the Southeast ½ section 7, Township 43 South, Range 23 East, Lee County, Florida, LESS right of way Burnt Store Road, over the Easterly boundary of the above described property, (the "Property")

SUBJECT TO zoning, restrictions, prohibitions, and other requirements imposed by governmental and/or quasi-governmental authority, (this reference to which shall not serve to reimpose same);

SUBJECT TO taxes for the year 2019 and subsequent years, which are not yet due and payable; matters that would be shown by a current and accurate survey of the Property;

**SUBJECT TO** restrictions, conditions, limitations, easements and reservations of record (this reference to which shall not serve to reimpose same).

Grantor does specially warrant the title to the land and will defend the same against all lawful claims of persons claiming by, through and under the Grantor.

\*" GRANTOR" and "GRANTEE" are used for singular or plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal.

GA A	a Florida limite
Witness Signature	ву
Print name of witness	Mark Schmidt,
Withess rignature	
Print name of witness	

Cape Coral Partners LLC, a Florida limited liability company

Mark Schmidt, Managing Member

STATE OF FLORIDA COUNTY OF BROWARD

WITNESSES:

The foregoing instrument as acknowledged before me this 4 day of 64064 2019, by Mark Schmidt, Managing Member of Cape Coral Partners, LLC, a Florida limited liability company, who [His personally known to me or who produced [] a driver's license or [] other:\_\_\_\_\_\_\_\_as identification.

NOTARY PUBLIC- Stave of Florida

Print name of Notary

JENNIFER R. SINGER
Notary Public - State of Florida
Commission # GG 244484
My Comm. Expires Nov 28. 2022
Banded through National Almany Asso.

My Commission expires:

#### **OWNER'S AFFIDAVIT**

BEFORE ME, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared MARK SCHMIDT, Managing Member of Cape Coral Partners, LLC, a Florida limited liability company, ("Seller") who being by me first duly sworn, deposes and says as follows:

1. That Seller is the owner of the following described property, to wit:

Tract A, Block 6114, Unit 97, Cape Coral Subdivision, according to the plat thereof, as recorded in Plat Book 25, pages 85-97, inclusive, public records of Lee County, Florida, together with the North 660 feet of the South 990 feet of the East ½ of the Southeast ¼ section 7, Township 43 South, Range 23 East, Lee County, Florida, LESS right of way Burnt Store Road, over the Easterly boundary of the above described property.

- 2. That the above described property is free and clear of all liens, taxes, encumbrances and claims of every kind, nature and description whatsoever, except for real estate and personal property taxes for the year 2019.
- 3. That there have been no improvements, alterations or repairs to the above described property for which the costs thereof remain unpaid, and that there are no claims for labor or material furnished for repairing or improving the same, which remain unpaid, except the following: **NONE**
- 4. That there are no mechanic's, materialmen's, or laborer's liens against the above described property.
- 5. That the personal property contained in the buildings on said property, or on the said premises, and which, if any, is being sold to the purchaser(s) mentioned below, is also free and clear of all liens, encumbrances, claims and demands whatsoever.
- 6. That affiant(s), in the operation of said building and property, complied in all respects with the SALES TAX LAW of the State of Florida.
- 7. That affiant(s) knows of no violations of Municipal Ordinances pertaining to the above described property.
- 8. That this affidavit is made for the purpose of inducing Durden 28, LLC, a Florida limited liability company, ("Buyer") to purchase said property from affiant(s): Seller.
- 9. Affiant(s) agree(s) that in the event the current real estate and personal property taxes vary in amount from the figures used in making the prorations had in closing the transfer and conveyance of the above described property to said purchaser(s) then a new proration and a correct and proper adjustment will be made upon demand.

- 10. That no judgment or decree has been entered in any court of this state or the United States against said affiant(s), and which remains unsatisfied.
- 11. Affiant(s) further state that she is familiar with the nature of an oath; and with the penalties as provided by the laws of the State aforesaid for falsely swearing to statements made in an instrument of this nature. Affiant(s) further certify that she has read, or have had read to them, the full facts of this affidavit, and understand its context.
  - 12. There are no parties in possession, other than Affiant(s).
- 13. That there has been no change in title to the above-described property from and after September 3, 2019 @ 11:00 p.m., and that there are no matters pending which would give rise to a lien that would attach to the above-described property. Further, Affiant has not executed any instrument that would adversely affect the interest to be insured, as more particularly described below.
- 14. That this Affidavit has been executed and delivered to induce Old Republic National Insurance Company, and/or its agent, Harvey Mattel, Esquire, to insure the owner's interest in favor of Durden 28, LLC, a Florida limited liability company. Affiant(s) hereby agrees to indemnify and hold harmless said Old Republic National Title Insurance Company and/or its agent, Harvey Mattel, Esquire, from any loss they may suffer as a result of any change in title to the above-described property between September 3, 2019 @ 11:00 p.m., (effective date of commitment), through the date of recordation of the Deed in favor of the above.
- 15. Affiant's attention has been brought to Section 1445 of the Internal Revenue Code which became effective on January 1, 1985, which Statute contains in part the following language:

"Except as otherwise provided in this Section, in the case of any disposition of a United States real property interest (as defined in Section 897 (c) by a foreign person, the transferee shall be required to deduct and withhold a tax equal to ten percent of the amount realized on the disposition."

- 16. Further Affiant's attention has been brought to the fact that said Code further provides for a waiver of the deduction in withholding requirement, provided one of several exemptions is complied with, one of said exemptions being that the transferor (seller) is not a "foreign person" as defined by the Statute.
- 17. Affiant(s) affirmatively state, under oath, that Affiant is not a "foreign person" as defined by Internal Revenue Code Section 1445, and that she is a citizen and resident of the United States, whose home or office address is: 1314 SE 2<sup>nd</sup> Avenue, Fort Lauderdale, Florida 33316, and whose tax identification number is 20-2470929.

- 18. This affidavit is made for the purpose of inducing Cape Coral Partners, LLC, a Florida limited liability company, transferee, and Harvey Mattel, Esquire, as transferee's agent, to not collect a portion of the settlement funds and otherwise comply with Section 1445 of the Internal Revenue listed above.
- 19. AFFIANT UNDERSTANDS THAT THIS CERTIFICATION MAY BE DISCLOSED TO THE INTERNAL REVENUE SERVICE BY THE TRANSFEREE AND THAT ANY FALSE STATEMENT THAT AFFIANT HAS MADE HERE COULD BE PUNISHED BY FINE, IMPRISONMENT, OR BOTH.
- Under penalties of perjury, Affiant(s) declare that Affiant(s) have examined this certification and to the best of Affiants' knowledge and belief it is true, correct and complete.

FURTHER AFFIANT SAYETH NAUGHT.

Cape Coral Partners, LLC, a Florida limited liability company

Mark Schmidt, Managing Member

STATE OF FLORIDA

COUNT	Y OF BROWARD
	The foregoing instrument was sworn and subscribed before me this day of 2019, by Mark Schmidt, Managing Member of Cape Coral Partners, LLC, a Florida limited company, who is personally known to me or who have produced identification as shown below.
·	JENNIFER R. SINGER  Notary Public - State of Florida Commission # GG 244484  Or n. My Comm. Expires Nov 28, 2022  Bonded through National Notary Assn.
My Con	Print Name of Notary Public
Notary	cheek one:
W	Person or Persons signing document personally known to me.
()	Person or Persons signing document provided the following form of identification:
	Type:
	Serial No:

#### Certificate of Resolutions and Status

The undersigned, being the Managing Member of Cape Coral Partners, LLC, a Florida limited liability company, (the "Company") organized and existing under the laws of the State of Florida, CERTIFIES:

- 1. The Company is a duly formed, validly existing limited liability company in good standing under the laws of the State of Florida.
- No dissolution, bankruptcy or insolvency proceedings with respect to the Company have been commenced or are contemplated.
- 3. The Articles of Organization, as approved by the Secretary of State of Florida on June 25, 2004, are in full force and effect without modification as of the date of this Certificate.
- 4. The Operating Agreement of the Company was adopted on June 25, 2004, amended on January 1, 2005, and is in full force and effect as amended without further modification.
- 5. The following actions were approved in accordance with the Operating Agreement of the Company by a majority in interest of the "A" Unit Members and the same have not been revoked, canceled, annulled or amended in any manner and are in full force and effect as of the date of this Certificate, and the following Resolutions were adopted:

NOW THEREFORE, BE IT RESOLVED that the Company be, and it hereby is authorized and directed to take any and all actions necessary, convenient and appropriate to execute any and all documents necessary to consummate the transaction contemplated by the Real Estate Purchase Agreement, (the "Agreement"), dated July 11, 2019 with the Company as Seller and CC Land Development Company, LLC as Buyer, (Buyer's interest assigned to Durden 28, LLC, a Florida limited liability company), pursuant to the terms of the Agreement; and

**FURTHER RESOLVED** that Mark Schmidt, Managing Member of Cape Coral Partners, LLC, a Florida limited liability is hereby authorized and directed on behalf of the Company, to execute the Closing Statement and any and all other documents as may be necessary to consummate the transaction as contemplated in the Agreement between Buyer and Seller.

I further certify that the above Resolution is in full force and effect and that the same has not been in any manner modified, changed or rescinded and will not be modified, changed or rescinded without prior written notice to 28 Durden, LLC c/o Frank J. Alioa, Jr, Esquire.

Executed this day of NOOSE 2019.

Cape Coral Partners, LLC, a Florida limited liability company

Mark Schmidt, Managing Member

# DURDEN COMMERCIAL PARK TRIP GENERATION (11/20/19) ITE TRIP GENERATION MANUAL, 10<sup>TH</sup> EDITION 171,000 SQUARE FEET OF COMMERCIAL USES (28 ACRES)

#### Table 1 Land Uses

#### **Durden Commercial Park**

Land Use	Size
Shopping Center (LUC 820)	171,000 Sq. Ft.

## Table 2 Trip Generation – Total Trips Durden Commercial Park

Lánd Use	Weekds In	ıy A.M. Pe Öüt	ak Hour Total		ay P.M. Pe Out	ak Hour Total	Daily (2-way)
Shopping Center (171,000 Square Feet)	147	90	237	388	420	808	8,659

<sup>\*</sup>LUC 820 was utilized for the trip generation purposes of the proposed commercial uses.

Table 3
Trip Generation – New Trips
Durden Commercial Park

			0011111111	******			
	Weekda	A.M. Per	k Hour	Weekda	y P.M. Pe	ak Hour	Daily
Land Use	In	Out	Total	In	Out	Total	(2-way)
Total Trips	147	90	237	388	420	808	8,659
Less LUC 820 Pass- By Trips	-40	-40	-80	-137	-137	-274	-2,944
New Trips	107	50	157	251	283	534	5,715

<sup>\*</sup> ITE indicates an average "pass-by" traffic reduction for Land Use Code 820 of 34%.

### **Shopping Center**

(820)

Vehicle Trip Ends vs: 1000 Sq. Ft. GLA

On a: Weekday

Setting/Location: General Urban/Suburban

Number of Studies: 147 1000 Sq. Ft. GLA: 453

Directional Distribution: 50% entering, 50% exiting

#### Vehicle Trip Generation per 1000 Sq. Ft. GLA

Average Rate

Range of Rates

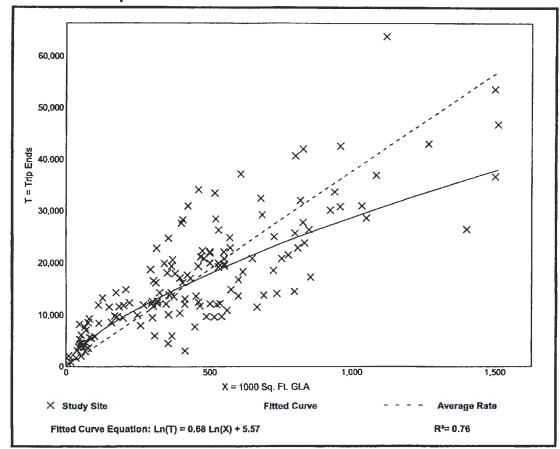
Standard Deviation

37.75

7.42 - 207.98

16.41

#### **Data Plot and Equation**





### Shopping Center (820)

Vehicle Trip Ends vs: 1000 Sq. Ft. GLA

On a: Weekday,

Peak Hour of Adjacent Street Traffic, One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 1000 Sq. Ft. GLA: 351

Directional Distribution: 62% entering, 38% exiting

#### Vehicle Trip Generation per 1000 Sq. Ft. GLA

Average Rate

Range of Rates

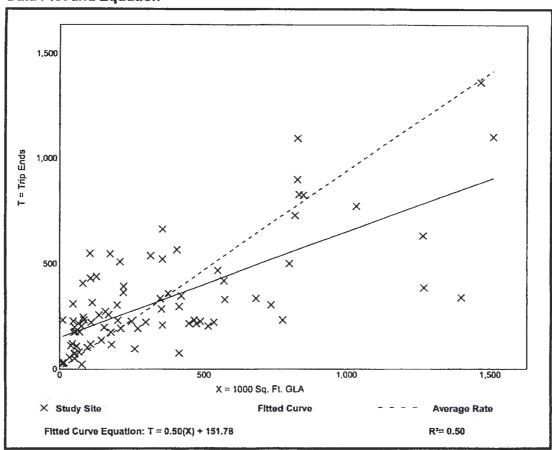
Standard Deviation

0.94

0.18 - 23.74

0.87

#### **Data Plot and Equation**





### Shopping Center (820)

Vehicle Trip Ends vs: 1000 Sq. Ft. GLA

On a: Weekday,

Peak Hour of Adjacent Street Traffic, One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 261 1000 Sq. Ft. GLA: 327

Directional Distribution: 48% entering, 52% exiting

#### Vehicle Trip Generation per 1000 Sq. Ft. GLA

Average Rate

Range of Rates

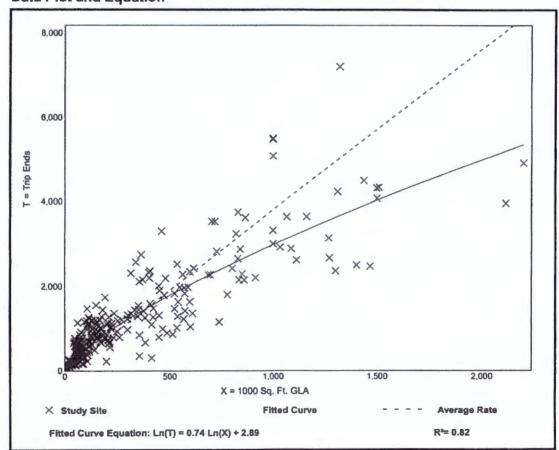
Standard Deviation

3.81

0.74 - 18.69

2.04

#### **Data Plot and Equation**



#### 4330 Burnt Store Road

### **Environmental Survey**

(April 2020 Addendum)

An Environmental Survey report dated December 2019 was prepared by DexBender for this property. As part of that report, the City of Cape Coral Department of Community Development, Planning Division listed species data base, which depicts the location and status of known bald eagle nests and Florida burrowing owl and gopher tortoise burrows within the City of Cape Coral was also reviewed in September 2019 to identify occurrences by those species on the subject property. This review indicated there are numerous gopher tortoise (*Gopherus polyphemus*) burrows in the southern portion of the property as well as in the adjacent single family lots to the west. No other known listed species sightings on or immediately adjacent to the subject property were reported. The field work for the environmental assessment was conducted on October 31 and November 6, 2019 and no bald eagle (*Haliaeetus leucocephalus*) nests were observed in the vicinity of the property.

A current review of the Planning Division's data base indicates that bald eagle nest LE-902 is located along the east edge of Burnt Store Road approximately 800 feet south of the subject property. The attached map shows the approximate location of LE-902. According to information contained in the data base, this nest was first reported by Justin Heller on January 10, 2020.

Source, Esri, Digital Gi ONES/Arbus DS, US, IGN, IGP, swisslopo, E

### 4330 Burnt Store Road

Section 7, Township 43 South, Range 23 East Cape Coral, Lee County, Florida

### **Environmental Survey**

December 2019

Prepared for:

CC Land Development Company 1300 SW 28th Terrace Cape Coral, FL 33914

Prepared by:

DexBender 4470 Camino Real Way, Suite 101 Fort Myers, FL 33966 (239) 334-3680

#### INTRODUCTION

The 26.19± acre parcel is located within a portion of Section 7, Township 43 South, Range 23 East, Cape Coral, Florida. The property is border by Burnt Store Road to the east and Durden Parkway to the south. Undeveloped and regularly mowed single family lots are present to the west. Undeveloped forested uplands and wetlands are present to the north.

#### SITE CONDITIONS

Based on a review of historic aerial photography, the southern third of the site appears to have been cleared and filled prior to 1977. The remainder of the site is forested.

#### **VEGETATIVE CLASSIFICATIONS**

The predominant upland and wetland vegetation associations were mapped in the field on 2019 digital color 1" = 150' scale aerial photography. The property boundary was obtained from Phillip M. Mould, Professional Surveyor and Mapper and inserted into the digital aerial. The property boundary was not staked in the field at the time of our site inspection and was, therefore, estimated based on the overlay of the approximate boundary on the aerial photography. Ten vegetation associations were identified using the Florida Land Use, Cover and Forms Classification System (FLUCCS). Figure 1 depicts the approximate location and configuration of these vegetation associations and Table 1 summarizes the acreages by FLUCCS Code. A brief description of each FLUCCS Code is also provided below.

Table 1. Acreage Summary by FLUCCS Code

FLUCCS	DESCRIPTION	ACREAGE
411	Pine Flatwoods	6.54
411E1	Pine Flatwoods Invaded by Exotics (10 – 25%)	6.29
411E3	Pine Flatwoods Invaded by Exotics (51 – 75%)	1.65
419E3	Other Pines Invaded by Exotics (51 – 75%)	3.56
510D	Ditches	0.26
619	Exotic Wetland Hardwoods	0.41
625E1	Hydric Pine Flatwoods Invaded by Exotics (10 – 25%)	2.37
625E2	Hydric Pine Flatwoods Invaded by Exotics (26 – 50%)	0.59
641	Freshwater Marshes	0.54
740	Disturbed Land	3.98
	Total	26.19

#### FLUCCS Code 411, Pine Flatwoods

A majority of the uplands on the property are pine flatwoods. The pine flatwoods in the northwestern portion of the site are dominated by slash pine (*Pinus elliottii*) and saw palmetto (*Serenoa repens*). The midstory is open with scattered shrubs, such as stagger bush (*Lyonia* sp.) and tarflower (*Befaria racemosa*), present. In addition to the saw

SECTION 7 TOWNSHIP 43 B RANGE 23 E





FLUCC8	Description	Acreage
411	Pine Flatwoods	6.54 ac.
411E1	Pine Flatwoods Invaded by Exetics (10-25%)	6.29 ac.
411E3	Pine Flatwoods Invaded by Exetics (51-75%)	1.65 ac.
419E3	Other Pines Invaded by Exotics (51-75%)	3.56 ac.
\$10D	Ditches	0.26 ac.
619	Exotic Wetland Hardwoods	0.41 ac.
825E1	Hydric Pine Flatwoods invaded by Exotics (10-25%)	2.37 ac.
825E2	Hydric Pine Flatwoods invaded by Exotics (26-50%)	0.56 ac.
641	Freshwater Marshes	6.54 ac.
740	Disturbed Land	3.98 ac.
	Total	26.19 ac

- Potentially Occupied Gopher Tortoise Burrow (16)
- Tree with Cavity (5)

Notes:

- reperly boundary provided by Phillip M. Mould, Professional
- 2. Mapping based on photointerpretation of 2019 aeri
- 3. Delineation of jurisdictional wetlands is preliminary and subject

FOR CONCEPTUAL PLANNING PURPOSES ONLY

December 64, 3019 7: 44:21 s.m. Brewing: DURDENIPLAKEDISG

Figure 1. Protected Species Assessment Map

4330 Burnt Store Road

DEXBENDER ENVIRONMENTAL CONSULTING FORT WYERS 230-334-3600

- 2

palmetto, the ground cover includes species such as threeawn grass (*Aristida* sp.), penny royal (*Piloblephis rigida*), gopher apple (*Licania michauxii*), and pawpaw (*Asimina* sp.).

#### FLUCCS Code 411E1, Pine Flatwoods Invaded by Exotics (10 – 25%)

The pine flatwoods in the southern portion of the site is also dominated by slash pine and saw palmetto. Scattered laurel oak (*Quercus laurifolia*) and cabbage palm (*Sabal palmetto*) are present. Exotics, including melaleuca (*Melaleuca quinquenervia*), Brazilian pepper (*Schinus terebinthifolius*), and cogongrass (*Imperata cylindrica*), are also present in varying densities.

#### FLUCCS Code 411E3, Pine Flatwoods Invaded by Exotics (51 – 75%)

The pine flatwoods adjacent to Burnt Store Road contains a significant density of melaleuca. This appears to have resulted in lower densities of both slash pine and saw palmetto.

#### FLUCCS Code 419, Other Pines Invaded by Exotics (51 – 75%)

The southern 200± feet of the property was partially cleared years ago. It appears that the native ground cover and shrub stratum were removed and the canopy pines were retained. This has resulted in a dense midstory of Brazilian pepper with scattered earleaf acacia (*Acacia auriculiformis*) and carrotwood (*Cupaniopsis anacardioides*). Groundcover is sparse and consists of various weedy upland species.

#### FLUCCS Code 510D, Ditches

Two drainage features were identified on the property. These features convey surface water from the wetland to the large ditch located off-site along the west property line. Control structures regulate the flow of surface water in the conveyances into the off-site ditch.

#### FLUCCS Code 619, Exotic Wetland Hardwoods

A portion of the wetland on-site is dominated by melaleuca. Groundcover in this area was sparse. Two to six inches of standing water was present in this portion of the wetland at the time of our inspection.

#### FLUCCS Code 625E1, Hydric Pine Flatwoods Invaded by Exotics (10 - 25%)

The majority of the wetlands on-site are hydric pine flatwoods. Slash pine dominates the canopy while scattered cabbage palm and wax myrtle (*Myrica cerifera*) are present in the midstory/shrub stratum. The ground cover consists of a variety of wetland and transitional species including little blue maidencane (*Amphicarpum muhlenbergianum*), witchgrass (*Dichanthelium* sp.), muhly grass (*Muhlenbergia* sp.), chocolate weed (*Melochia* sp.), beakrush (*Rhynchospora* sp.), threeawn grass, and widely scattered clumps of saw palmetto. Scattered melaleuca and Brazilian pepper are also present. This portion of the wetland was inundated by one to four inches of standing water at the time of our inspection.

#### FLUCCS Code 625E2, Hydric Pine Flatwoods Invaded by Exotics (26 – 50%)

The northern portion of the wetland extends off-site to the north and east towards Burnt Store Road. This area has a greater density of melaleuca and less dense groundcover. Two to four inches of standing water was present in this portion of the wetland at the time of our inspection.

#### FLUCCS Code 641, Freshwater Marshes

The deepest portion of the wetland, inundated by more than 12 inches of water, is a freshwater marsh. The area is vegetated by arrowhead (Sagittaria sp.), maidencane (Panicum hemitomon), sand cordgrass (Spartina bakeri), loosestrife (Lythrum sp.), and little marsh elder (Iva microcephala).

#### FLUCCS Code 740, Disturbed Land

A portion of the property along the southern boundary has been cleared, possibly filled, and is routinely mowed. Vegetation in the area includes fingergrass (*Eustachys petraea*), sandspur (*Cenchrus* sp.), smutgrass (*Sporobolus indicus*), beggar tick (*Bidens* sp.), pusley (*Richardia* sp.), and southern gaura (*Gaura angustifolia*).

#### SURVEY METHODOLOGY

Prior to conducting the protected species survey, a search of the FWC listed species database (updated June 2019) was conducted to determine the known occurrence of listed species in the project area. This search revealed no known protected species occurring on or immediately adjacent to the site.

The City of Cape Coral Department of Community Development, Planning Division listed species data base, which depicts the location and status of known bald eagle nests and Florida burrowing owl and gopher tortoise burrows within the City of Cape Coral was also reviewed in September 2019 to identify occurrences by those species on the subject property. This review indicated there are numerous gopher tortoise (*Gopherus polyphemus*) burrows in the southern portion of the property as well as in the adjacent single family lots to the west. No other known listed species sightings on or immediately adjacent to the subject property were reported.

For sites that are not routinely mowed the City of Cape Coral requires a professional environmental survey for protected species that adheres to Florida Fish and Wildlife Conservation Commission (FWC) survey guidelines. Therefore, Lee County Protected Species Ordinance No. 89-34, which is required for all projects within unincorporated Lee County and which is accepted by the FWC, has been used as a model. The meandering pedestrian belt transects were spaced approximately 75 feet apart to inspect the site for evidence of species listed as endangered, threatened, or species of special concern by the Florida Fish and Wildlife Conservation Commission (FWC) or the United States Fish and Wildlife Service (FWS). Listed species that could potentially occur on-site based on general habitat types are listed in Table 2. The bald eagle (Haliaeetus leucocephalus) (which has been delisted by the FWC and FWS but is still protected by the City of Cape Coral) was also included in the survey. The approximate locations of all direct sighting

or signs (such as tracks, nests, burrows, and droppings) of a listed species were denoted on the aerial photography. The locations of listed species nests or burrows were also located using a handheld GPS unit with an estimated accuracy of five to ten feet. The 1" = 150' scale aerial Protected Species Assessment Map (Figure 1) depicts the approximate location of the survey transects and the results of the survey.

Table 2. Listed Species That Could Potentially Occur On-site

FLUCCS CODE	Species Name	Present	Absent
411	Eastern Indigo Snake (Drymarchon corais		√
411E1	couperi)		-1
411E3	Gopher Tortoise (Gopherus polyphemus) Red-cockaded Woodpecker (Picoides borealis)		\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
	Southeastern American Kestrel ( <i>Falco</i>		Ž
	sparverius paulus)		,
	Florida bonneted-bat (Eumops floridanus)		√
	Shermans Fox Squirrel (Sciurus niger shermani)		1
419E3	Eastern Indigo Snake (Drymarchon corais		√
	couperi)	V	
	Gopher Tortoise ( <i>Gopherus polyphemus</i> ) Red-cockaded Woodpecker ( <i>Picoides borealis</i> )	٧	1
	Southeastern American Kestrel (Falco		Ž
	sparverius paulus)		,
	Florida bonneted-bat (Eumops floridanus)		√.
	Shermans Fox Squirrel (Sciurus niger shermani)		1
510D	American Alligator (Alligator mississippiensis)		٧,
	Little Blue Heron (Egretta caerulea)		V
	Reddish Egret ( <i>Egretta rufescens</i> ) Roseate Spoonbill ( <i>Ajaia ajaja</i> )		Ž
	Tricolored Heron (Egretta tricolor)		V
619	None		
625E1	Eastern Indigo Snake (Drymarchon corais		1
625E2	couperi) Little Blue Heron ( <i>Egretta caerulea</i> )		√ l
	Red-cockaded Woodpecker (Picoides borealis)		į
	Tricolored Heron (Egretta tricolor)		√
	Florida bonneted-bat (Eumops floridanus)		√,
	Shermans Fox Squirrel (Sciurus niger shermani)		1

FLUCCS CODE	Species Name	Present	Absent
641	American Alligator (Alligator mississippiensis)		V
	Florida Sandhill Crane (Grus canadensis pratensis)		√
	Little Blue Heron (Egretta caerulea)		$\sqrt{}$
	Reddish Egret (Egretta rufescens)		
	Snail Kite (Rostrhamus sociabilis)		√.
	Tricolored Heron (Egretta tricolor)		
	Wood Stork (Mycteria americana)		√
	Gopher Tortoise (Gopherus polyphemus)	1 1	
740	Burrowing Owl (Athene cunicularia)		
	Least Tern (Sterna antillarum)		√ √

During the listed species survey the property was also evaluated for the presence of heritage trees as defined in Section 5.2.2 of the City of Cape Coral Land Use and Development Regulations. All Florida native canopy trees with a 20-inch or greater caliper diameter at breast height (DBH) were flagged, the species and DBH recorded, and their location recorded with the handheld GPS.

The listed species and heritage tree survey was conducted by Craig Smith, Dan Underhill, and Parke Lewis of *DexBender* during the mid-day hours of October 31 and November 6, 2019. During the survey the weather was warm and sunny.

#### SURVEY RESULTS

#### Wetlands

Approximately 3.91 acres of potentially jurisdictional wetlands (FLUCCS Codes 619, 625E1, 625E3, and 641) and 0.26± acre of potentially jurisdictional other surface waters (FLUCCS Code 510D) have been identified on the property. Impacts to these areas, if any, will be addressed during the state wetland permitting process.

#### **Listed Species**

#### Gopher Tortoise

Sixteen potentially occupied gopher tortoise burrows were observed in the disturbed land and pines with exotics in the southern third of the site. A permit will be obtained from the FWC if gopher tortoise burrows are found to be located within or immediately adjacent (25 feet or less) to proposed development areas that result in earthwork, mechanical land clearing, or other activities that could collapse the burrow.

#### Florida Bonneted Bat

Five dead pine trees containing cavities that could potentially be utilized as roosting/nesting cavities by the Florida bonneted bat were observed (Figure 1). No evidence of bat utilization (bat vocalization/chatter from within the potential cavities or guano on or around the snags) was observed.

No additional species listed by either the FWS or the FWC were observed on the site during the protected species survey. In addition to the site inspection, a search of the FWC species database (updated in June 2019) revealed no additional known protected species within or immediately adjacent to the project limits.

#### **Heritage Trees**

No heritage trees were observed on the site during the survey.

#### **Unique Features**

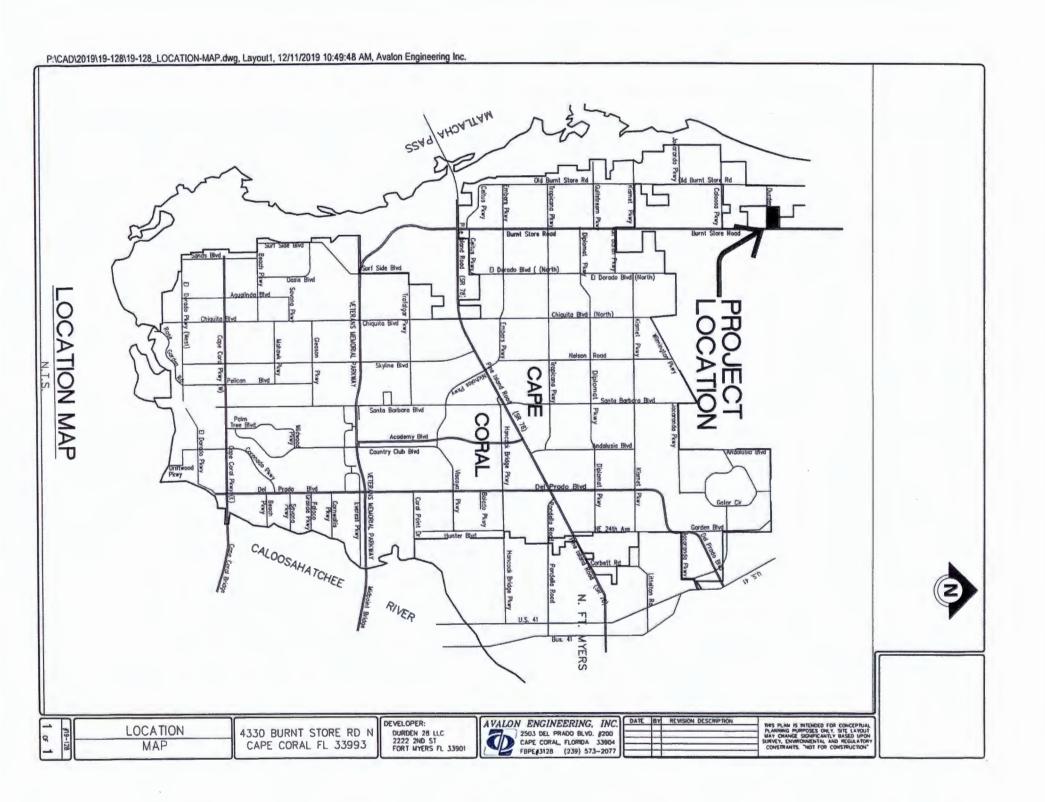
There were unique features found on the property.

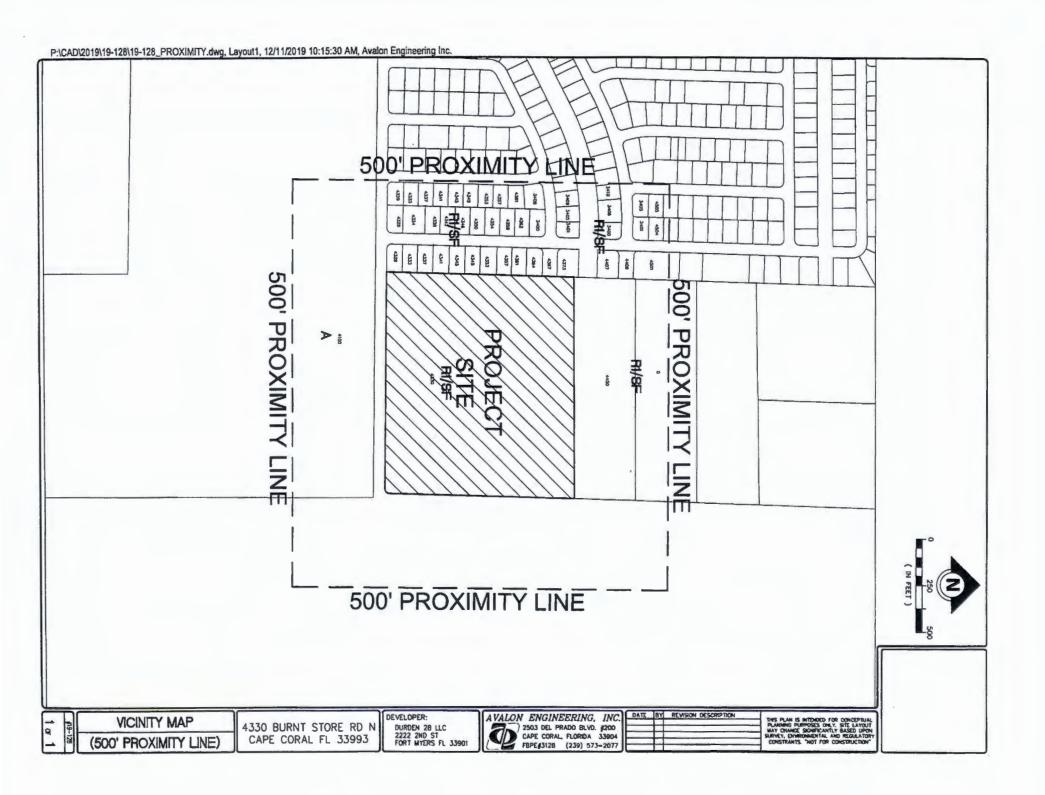
#### Durden 28, LLC

#### **Zoning Amendment**

Legal Description: (INSTRUMENT No. 2019000233657)

TRACT A, BLOCK 6114, UNIT 97, CAPE CORAL SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 25, PAGES 85-97, INCLUSIVE, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, TOGETHER WITH THE NORTH 660 FEET OF THE SOUTH 990 FEET OF THE EAST 1/2 OF THE SOUTHEAST 1/4 SECTION 7, TOWNSHIP 43 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, LESS RIGHT OF WAY BURNT STORE ROAD, OVER THE EASTERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY, (THE "PROPERTY")





### PLANNING DIVISION STAFF REPORT ZA20-0006

### Staff Report prepared by Chad Boyko, AICP, Principal Planner

SITE ADDRESSES 4330 Burnt Store Road North	APPLICANT/OWNER Durden 28, LLC	

#### **SUMMARY OF REQUEST**

The applicant requests a rezone from Single-Family Residential (R1) to Commercial (C) for one parcel that is 26.19 acres. The site is at the intersection of Burnt Store Road and Durden Parkway



#### STAFF RECOMMENDATION: Approval

Positive Aspects of	Addition of 26+ acres along a principal arterial and at commercial node.			
Application:	Commercial land should complement RV resort to the south.			
Negative Aspects of Application:	Some potential loss of environmentally sensitive land.			
Mitigating Factors:	Loss of wetlands will be mitigated through permitting with state and federal agencies.			

#### SITE INFORMATION

Location:

4330 Burnt Store Road North

Unit 6114. Tract A

Intersection of Durden Parkway and Burnt Store Road North

STRAP Number:

07-43-23-C3-06114.A000

Site Area:

26.19 acres

Site:	Future Land Use	Zoning
Current:	Commercial/Professional (CP)	Single-Family Residential (R1)
Proposed:	N/A	Commercial (C)
	Surrounding Future Land Use	Surrounding Zoning
North:	SM	R1
South:	Mixed Use (MX)	Agricultural (A)
East:	Unincorporated Lee County designation	Unincorporated Lee County designation
West:	SM	R1

**Urban Service** 

Area:

Reserve

City Water/Sewer:

No

Type of

**Access Road:** 

The site has frontage on an arterial road (Burnt Store Road) and a collector road (Durden

Parkway)

#### **FINDINGS OF FACT**

The site is a 26.19 acre undeveloped parcel in northwestern Cape Coral. The site is a platted tract in Block 6114 that is at the intersection of Burnt Store Road and Durden Parkway. The site is surrounded by undeveloped parcels to the north, east, and west. South of the site — across Durden Parkway - the Myriad RV Resort, is currently under construction. Municipal water, sewer, and irrigation are not available to the site, however, water and sewer lines that are serviced by Charlotte County have been extended from the northern City of Cape Coral boundary to the Myriad RV Resort. These water and sewer lines run along the front of the site along Burnt Store Road.

Upon adoption of the Comprehensive Plan in 1989, the site was given a future land use designation of Single-Family/Multi-Family (SM) and zoning designation of Single-Family Residential (R-1B). The applicant initiated a Future Land Use Map amendment to amend the future land use designation of the site from SM to Commercial/Professional (CP) in early 2000 and the CP future land use was adopted by the City Council in October 19, 2020.

Parcels to the north and west have the same future land use and zoning designations as the subject site. The parcel to the south has a Mixed Use (MX) future land use designation and an Agricultural (A) zoning district. Parcels to the east of the site are within unincorporated Lee County and have a Lee County future land use and zoning designation.

The applicant is seeking the rezone from Single-Family Residential (R1) to Commercial (C) to construct a commercial development on the site. The applicant states in their Letter of Intent that the site's frontage and size make it an ideal site for a future commercial development.

#### **ANALYSIS**

#### Land Development Code:

Staff reviewed this application based on the review criteria found in LDC, Section 3.4.6 for evaluating rezones.

1. Whether the proposed zoning district is consistent with the City Comprehensive Plan;

The proposed Commercial (C) district will be compatible with the current future land use designation of Commercial/Professional (CP). The Professional Office (P) zoning district is also consistent with the CP future land use designation. There are no development standards with the C or the P district that would prohibit the site from being zoned P.

2. Whether the full range of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration;

The C district allows a wide range of commercial uses such as restaurants, professional offices, retail, medical uses, and entertainment uses. The existing uses in the surrounding area consist of primarily undeveloped lots and a few scattered single-family homes to the north, east, and west. The development to the south consists of the Tranquility Lakes RV Resort which is under construction. The uses in the proposed C district should be compatible with the surrounding area. Future development should be focused towards the frontage along Burnt Store Road. There are 10 lots adjacent to the site that have single-family entitlements, however, all the lots are undeveloped. The lack of existing development should help with compatibility in the near term if the site is developed quickly.

3. Whether the range of uses allowed in the proposed zoning district will be compatible with existing and potential uses in the area under consideration;

The C district should provide some needed services in an area of Cape Coral that has little development other than scattered single-family homes. While the majority of the area surrounding the site is zoned for residential development, there are a few parcels that have started developing with non-residential uses or have had a future land use amendment to allow non-residential development. Burnt Store Road is a principal arterial and several large parcels have frontage along Burnt Store Road to the north and south. These large parcels may not be best suited for residential development and the owners may also request future land use and zoning changes to allow further non-residential development. The applicant's request to rezone the site to C would be consistent with the pattern of establishing non-residential uses along the Burnt Store Road Corridor.

Whether the proposed zoning district will serve a community need or broader public purpose;

The City of Cape Coral has a well-documented deficit of commercial land in relation to the surplus of single-family residential land. The proposed rezone to C will add over 26 acres of commercial land along a principal arterial. There is very little existing commercial development in the area with the nearest non-residential development over two miles south of the site. The rezone will allow for potential development of grocery stores, restaurants, offices, or gas stations.

5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district; and

The site is relatively large – 26 acres – and is at a commercial node. The site has frontage on a principal arterial and has the appropriate size to accommodate a quality commercial development with adequate access, buffering, and commercial intensity. The site's location and size also allow for larger commercial uses to develop on the site such as a shopping center or grocery store, as a smaller site would likely not be able to accommodate similar uses. The site does have access to the City of Cape Coral water and sewer service, however, there are water and sewer lines from Charlotte County that a future development could potentially utilize for water and sewer provision. These characteristics make the site suitable for the proposed rezone and the accompanying uses in the district.

6. Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area.

According to Policy 1.15 of the Comprehensive Plan, the CP future land use designation has two zoning districts that are compatible, the C district and the Professional Office (P) district. The P district has a smaller number of uses that are generally centered around office uses such as medical offices, professional offices, banks, and other similar establishments. The uses in the P district generally generate less traffic and noise than the uses in the C district and can potentially be more compatible with nearby residential uses in densely populated areas. Staff finds that while the P district could be utilized on the site, the C district is more appropriate due to the size of the site, the location of the site at a commercial node, and the low amount of existing residential development.

#### Comprehensive Plan:

#### Consistency with the Comprehensive Plan:

The rezone is consistent with the following goals and policies in the Comprehensive Plan.

#### **Future Land Use Element**

Policy 1.15, Table 1. Staff comment: Both the C and the P Districts are identified in Table 1. as being consistent with the Commercial/Professional FLUC.

Policy 1.13: Staff comment: This policy addresses the need to avoid strip commercial and develop larger assembled sites at commercial node.

Policy 1.15: Staff comment: This policy addresses the distinctions and characteristics of the P and C districts. Notably, the policy states that sites zoned C should have access onto a collector/arterial road and have a minimum depth of 250 feet.

#### **ECONOMIC DEVELOPMENT MASTER PLAN ANALYSIS**

The rezone is neither supported by or in conflict with the City Economic Development Master Plan. The site is not within an Economic Opportunity Area and the rezone is not guaranteed to result in multi-family development.

#### **PUBLIC NOTIFICATION**

This case will be publicly noticed as required by LUDR, Section 8.3.2.A and 8.3.4 as further described below.

<u>Publication:</u> A display ad will be prepared and sent to the *News-Press* announcing the intent of the petitioners to amend the land use of the property described within this report. The ad will appear in the *News-Press* a minimum of 10 days prior to the public hearing scheduled before the Cape Coral Hearing Examiner. Following the public hearing before the Commission, the display ad announcing the final public hearing before the City Council will appear once in the *News-Press*. The ad will appear in the newspaper not less than 10 days prior to the date of the final public hearing before the City Council. The display ads will not be published in the legal section of the *News-Press*.

<u>Written notice</u>: Property owners located within 500 feet from the property line of the land which the petitioners request to vacate will receive written notification of the scheduled public hearing. These letters will be mailed to the aforementioned parties a minimum of 10 days prior to the public hearing scheduled before the Hearing Examiner.

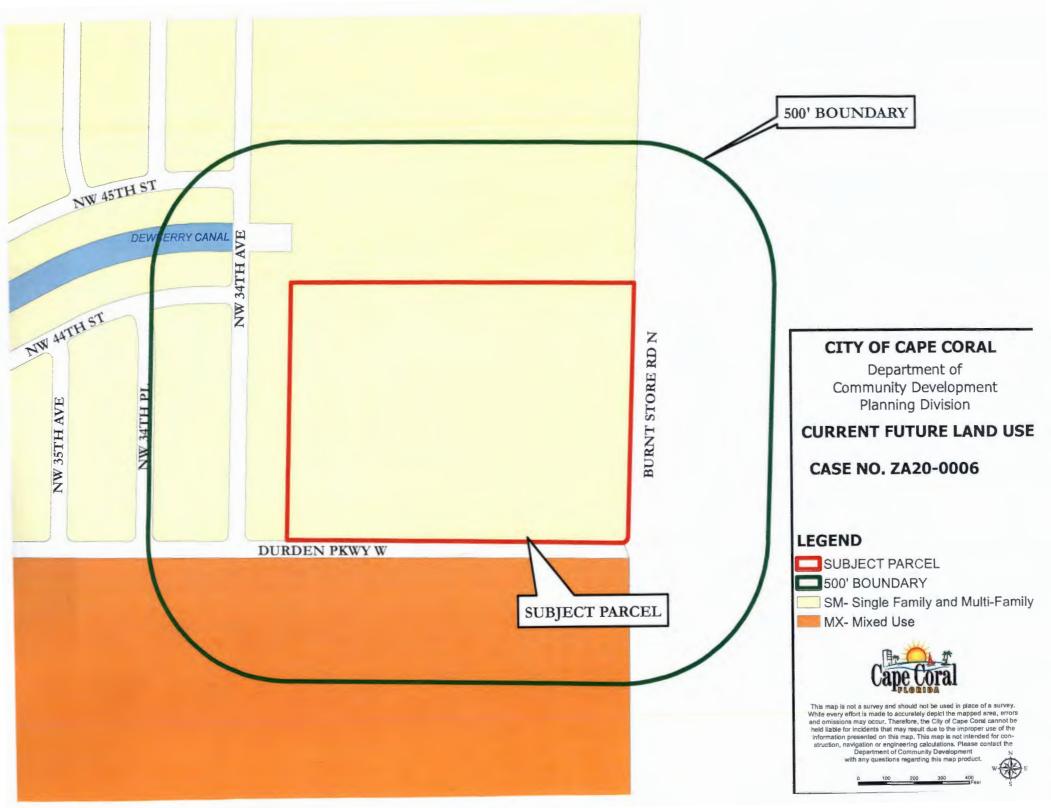
<u>Posting of a Sign:</u> A sign identifying the case and providing salient information will be posted on the property, as another means of providing notice of the land use amendment request.

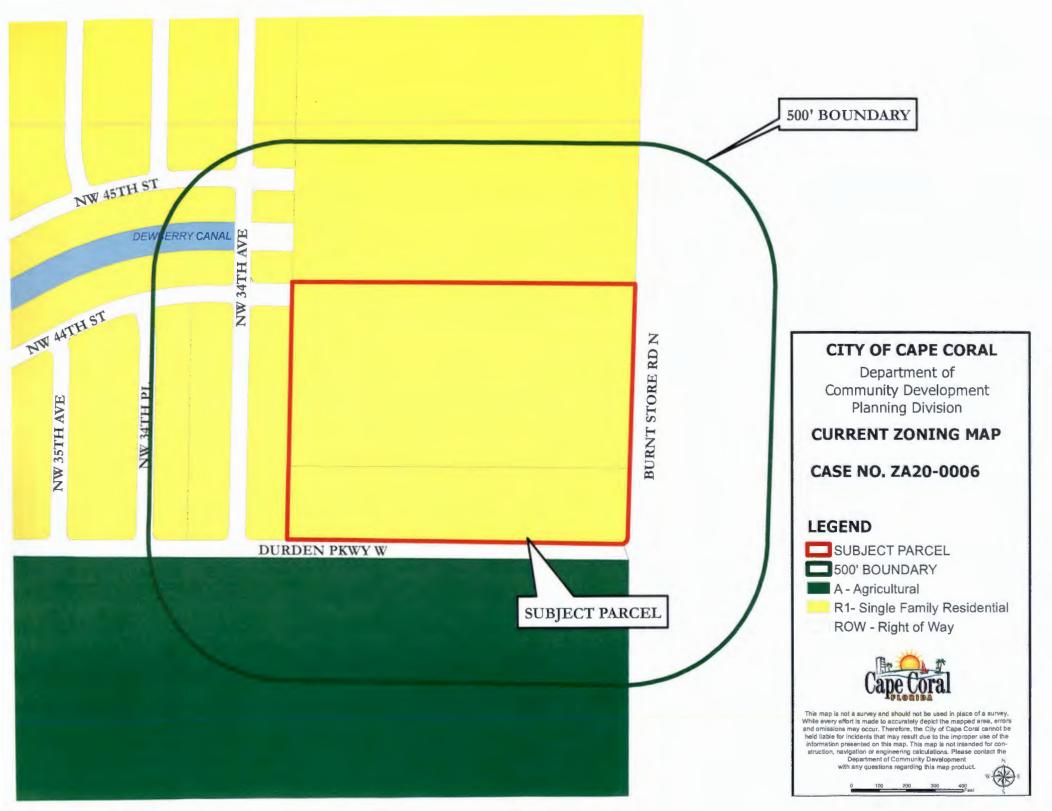
#### **RECOMMENDATION**

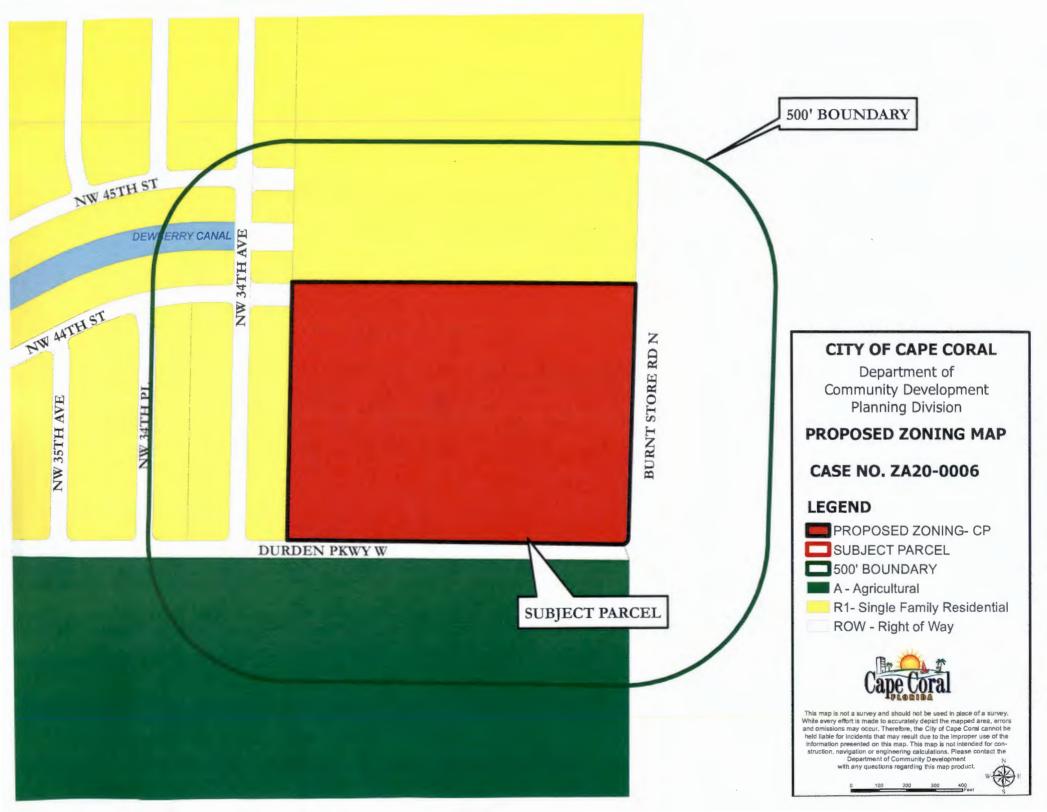
Through the analysis of the Cape Coral Comprehensive Plan and specifically the Future Land Use Element, the proposed rezone to Commercial zoning is consistent with the Comprehensive Plan, the Land Use and Development Regulations, and is compatible with the surrounding area, therefore, Planning Division staff recommends <u>approval</u> of the rezone request.

Chad Boyko, AICP, Principal Planner 239-573-3162 / cboyko@capecoral.net











Ordinance 2-21 / ZA20-0006 Cape Coral City Council



## Ordinance 2-21 / ZA20-0006

- **□Owners: Durden 28, LLC**
- □Location: 4330 Burnt Store Road North
- **□**Size: 26.19 acres
- □Urban Services: Reserve
- □Request: Rezone from Single-Family Residential (R1) to Commercial (C).



## Aerial Map

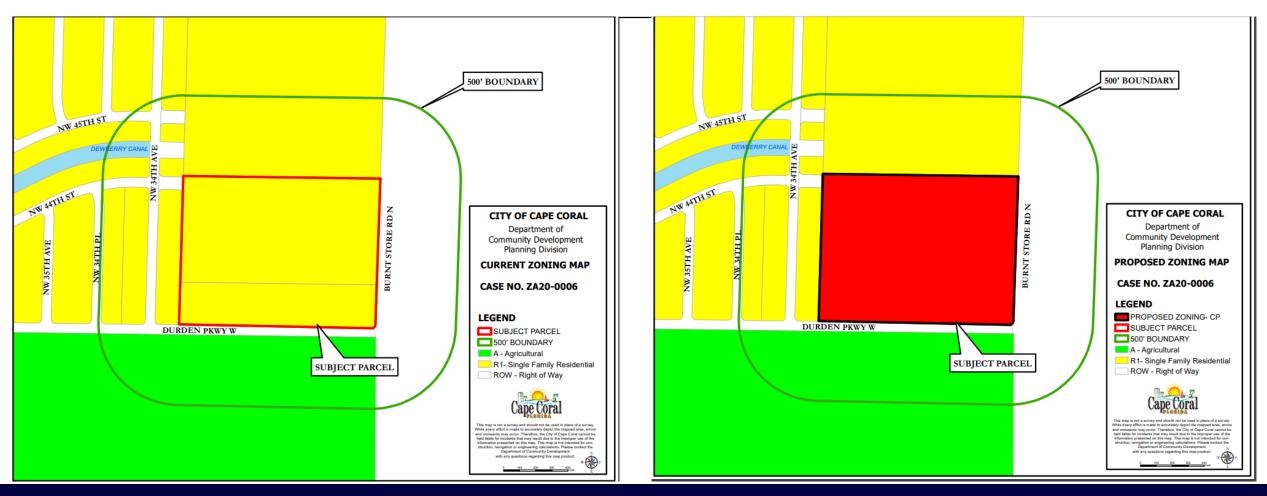


- ☐Site is 1 parcel in NW Cape Coral.
- □North of planned RV Resort.
- □Undeveloped / surrounding area is mostly undeveloped / few scattered homes
- □Sites land use amended to Commercial/Professional recently.
- **□**No City utilities available
- □ Applicant seeks change to develop the site commercially.



## **Current Zoning**

## **Proposed Zoning**





## Analysis – Land Development Code

- □ Whether the proposed zoning district is consistent with the City Comprehensive Plan
  - □Staff Response: The proposed Commercial (C) district will be compatible with the current future land use designation of Commercial/Professional (CP). The Professional Office (P) district is also compatible with CP future land use.
- □ Whether the full range of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration
  - □Staff Response: The C District allows a wide range of commercial uses restaurants, retail, office, and entertainment uses.
  - □Surrounding area is mostly undeveloped closest home is approx. 400 feet away 10 adjacent lots all undeveloped.



# Analysis – Land Development Code

- □ Whether the range of uses allowed in the proposed zoning district will be compatible with existing and potential uses in the area under consideration
  - □Staff Response: C district should provide needed services in growing area. Burnt Store Rd corridor is likely to experience some change from residential entitlements to commercial large parcels arterial road frontage.
- □ Whether the proposed zoning district will serve a community need or broader public purpose
  - □Staff Response: The City has a well-documented need for commercial development. The rezone will add over 26 acres of commercial land at a commercial node. Nearest non-residential development is over 2 miles to the south.



# Analysis – Land Development Code

- □ The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district
  - □Staff Response: Site is large and locate along a principal arterial. Size and location would allow for large commercial development such as grocery store or shopping center, although utility provision will need to be worked out with Charlotte County.
- □ Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area
  - □Staff Response: The CP land use has two compatible districts C and P. The P district allows a variety of office uses but little retail or entertainment uses. The P district is typically utilized in higher density residential areas where the impacts of commercial development are more likely to be felt.



# Analysis – Comprehensive Plan

# **Future Land Use Element**

### Policy 1.15, Table 1.

- Staff comment: Both the C and P Districts are identified in Table 1. as being consistent with the Commercial/Professional FLUC.
- Staff comment: This policy addresses distinctions between P and C districts. C zoned sites should have access onto a collector or arterial and have a minimum depth of 250 feet.

### **Policy 1.13.:**

 Staff comment: This policy addresses the need to avoid strip commercial and develop larger assembled sites at commercial node.



# Recommendation

□Through the analysis of the Cape Coral Comprehensive Plan and specifically the Future Land Use Element, the proposed rezone to Commercial (C) zoning is consistent with the Comprehensive Plan, the Land Use and Development Regulations, and is compatible with the surrounding area, therefore, Planning Division staff recommends approval of the rezone request.

□The Hearing Examiner recommended approval of Ordinance 2-21



# THANK YOU

any questions?





### AGENDA REQUEST FORM CITY OF CAPE

CITY OF CAPE CORAL ltem

Number: B.(3)

Meeting

1/6/2021

Date:

ORDINANCES/RESOLUTIONS -

Type:

**Introductions** 

### TITLE:

Ordinance 3-21 (ZA 20-0010\*) Set Public Hearing for January 20, 2021

### **REQUESTED ACTION:**

Approve or Deny

### SUMMARY EXPLANATION AND BACKGROUND:

The area is located at 1101- 1127 SE 5th Court and 1102-1128 SE 6th Avenue, between the police station and the new Fire Station #2 off Nicholas Parkway, and comprises 3.27 acres.

The purpose of this proposed rezone is to bring a full block of properties including eight duplexes into conformance with the underlying zoning district. The zoning was changed to Professional 30 years ago due to the block's proximity to City Hall but no office development had commenced in that period.

The block is in the City Centrum, an area designed to promote professional and service uses related to governmental activities (e.g. engineering, law). However, the history of residential development on this block coupled with the absence of redevelopment over a thirty-year period suggests that the block is best zoned for residential development.

This is a City initiated rezone request from Professional (P) to Residential Multi-Family Low (RML) for Lots 1-28 of Block 1048, Unit 24.

### STRATEGIC PLAN ALIGNMENT:

1. 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

### **RECOMMENDATIONS:**

**Hearing Examiner Recommendation:** Hearing Examiner recommends that City Council Grant the Rezoning application.

**DCD Department Recommendation:** Approval.

### **SOURCE OF ADDITIONAL INFORMATION:**

Vince Cautero, DCD Director, 1-239-574-0600 Wyatt Daltry, Planning Team Coordinator, 1-239-573-3160

### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

n/a

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

### PREPARED BY:

Division- Department- City Attorney

### ATTACHMENTS:

	Description	Туре
D	1. Ordinance 3-21 (ZA 20-0010*)	Ordinance
D	2. Hearing Examiner Recommendation	Backup Material
D	3. Back up materials from HEX Hearing	Backup Material
D	4 Staff Presentation	Backup Material

### ORDINANCE 3 - 21

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL OFFICIAL ZONING DISTRICT MAP OF ALL PROPERTY WITHIN THE LIMITS OF THE CITY OF CAPE CORAL BY REZONING PROPERTY DESCRIBED AS LOTS 1 THROUGH 28, BLOCK 1048, CAPE CORAL SUBDIVISION, UNIT 24, FROM PROFESSIONAL (P) TO RESIDENTIAL MULTIFAMILY LOW (RML) ZONE; PROPERTY IS LOCATED AT 1101-1127 SE 5<sup>TH</sup> COURT AND 1102-1128 SE 6<sup>TH</sup> AVENUE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral City Council has considered testimony, evidence, documentation and the application submitted by the CITY OF CAPE CORAL for rezoning the below-described property from PROFESSIONAL (P) to RESIDENTIAL MULTI-FAMILY LOW (RML) ZONE, and considered the recommendations of the Hearing Examiner and City Staff, and has considered the City of Cape Coral Comprehensive Plan with this zoning request.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

Section 1. That the City of Cape Coral Official Zoning District Map of all of the property within the limits of the City of Cape Coral is hereby amended with respect to real property described as follows:

### PROFESSIONAL (P) ZONE TO RESIDENTIAL MULTI-FAMILY LOW (RML)

LOTS 1 THROUGH 28, BLOCK 1048, CAPE CORAL SUBDIVISION, UNIT 24, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 14, PAGE(S) 75 AND 76, PUBLIC RECORDS OF LEE COUNTY, FLORIDA

PROPERTY LOCATED AT: 1101-1127 SE 5TH COURT AND 1102-1128 SE 6TH AVENUE

and the City administrative office shall amend the City of Cape Coral Official Zoning District Map to reflect this zoning change.

That the amendments to the City of Cape Coral Official Zoning District Map as prescribed herein are consistent with the City of Cape Coral Comprehensive Plan.

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 upon passage by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF T SESSION THIS DAY OF	HE CITY OF CAPE CORAL AT ITS REG, 2021.	ULAR
	JOE COVIELLO, MAYOR	<del></del>
VOTE OF MAYOR AND COUNCILMEN	MBERS:	
COVIELLO GUNTER SHEPPARD HAYDEN	NELSON WELSH WILLIAMS COSDEN	

ATTESTED TO AND FILED IN MY OF 2021.	FFICE THIS DAY OF	
	KIMBERLY BRUNS CITY CLERK	
APPROVED ASTO FORM:		
JOHN E. NACLERIO III ASSISTANT CITY ATTORNEY		

ord\ZA20-0010

## OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL HEARING EXAMINER RECOMMENDATION

ZA HEX Recommendation 13-2020 Rendered November 17, 2020 DCD CASE # ZA 20-0010

APPLICATION FOR: Rezoning from the Professional (P) to the Residential Multi-Family

Low (RML) Zoning District for fourteen adjacent lots (3.27 acres)

NAME OF OWNERS: various

•

**APPLICANT:** City of Cape Coral

NAME OF APPLICANT'S/STAFF REPRESENTATIVE: Wyatt Daltry, AICP,

Planning Team Coordinator

LOCATION OF PROPERTIES: 1101-1127 SE 5th Court, Cape Coral, FL

1102-1128 SE 6th Avenue, Cape Coral, FL

Unit 24, Block 1048, Lots 1-28 STRAP #s: See Exhibit "A" 1

**CURRENT ZONING DISTRICT:** Professional (P)

APPLICANT'S PROPOSED ZONING: Residential Multi-Family Low (RML)

FUTURE LAND USE CLASSIFICATION: Mixed Use (MX) Future Land Use Classification

**URBAN SERVICE AREA:** Transition

RIGHT-OF-WAY ACCESS: The site has access from Nicholas Parkway, a minor arterial

roadway and local roads as well.

**CITY WATER AND SEWER AVAILABLE: Yes.** 

SITE VISIT: The Hearing Examiner performed a site visit prior to the Hearing.

**HEARING DATE:** November 17, 2020

**SUMMARY OF REQUEST:** Applicant requests rezone of fourteen (14) properties, which

total 3.27 acres, from Professional (P) to Residential Multi-Family

Low (RML).

**PUBLIC CONCERNS**: None expressed via testimony or otherwise.

### SUMMARY OF HEARING EXAMINER RECOMMENDATION

The Hearing Examiner recommends that City Council **GRANT** the Rezoning application.

<sup>&</sup>lt;sup>1</sup> Exhibit "A" is attached hereto and hereby incorporated by reference.

### I. NOTICE OF HEARING

During her site visit, the Hearing Examiner observed that the Zoning Hearing Notification signs were in place.

At the Hearing, City Staff Wyatt Daltry testified that the requirements for proper notice, as set forth in the City Codes and detailed below, had been met.

Based on the testimony of City Staff Wyatt Daltry at the Hearing and her observations during her site visit, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of Article 3 (Development Review), Chapter 1, § 3.1.10 ("Public Hearing Scheduling and Notice Requirements") of the City of Cape Coral Land Development Code ("LDC").

### **PARTICIPANTS IN HEARING**

APPLICANT'S REPRESENTATIVE/CITY STAFF: Wyatt Daltry, AICP

CITY CLERK'S OFFICE: Rose Depaula, Recording Secretary

TESTIMONY FROM MEMBERS OF THE PUBLIC: No members of the public presented testimony.

TELEPHONE CALLS/CORRESPONDENCE FROM MEMBERS OF PUBLIC: Staff testified that he receives no calls or emails for information from members of the public.

### II. EXHIBITS

APPLICANT'S/CITY STAFF'S EXHIBITS: previously submitted.

### III. REVIEW OF STATUTORY AND LDC REQUIREMENTS

Applicable Regulations: Application Received Subsequent to August 5, 2019
It appears from a review of the documents submitted by Applicant that the Application requesting this Rezoning was initiated by Community Development Memorandum dated October 13, 2020.

Accordingly, this case has been reviewed, and this Recommendation is based upon, the Land Development Code ("LDC") in effect subsequent to August 5, 2019, the date the new land development code ordinance was adopted by City Council.

<u>Authority.</u> The Hearing Examiner has the authority to recommend the approval or denial of an application for a rezone, pursuant to LDC Article 2 (Decision Making and Administrative Bodies), Chapter 2 (Hearing Examiner), §2.2.3B.5:

A Hearing Examiner shall hear and decide, or, when applicable, make Recommendations, on the following....

.... 5. Applications for rezoning property."

<u>Entirety of the Record/Standard of Review of Evidence.</u> The Hearing Examiner's Recommendation is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LDC, based upon the entirety of the record before the Hearing Examiner.

The Recommendation of the Hearing Examiner must be based upon competent substantial evidence in the record. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11E.

<u>Presumption of Relevance and Materiality.</u> Matters related to an Application's consistency with the Comprehensive Plan, the City Code of Ordinances, or the LDC will be presumed to be relevant and material. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11F.4.

<u>Hearsay Evidence.</u> 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. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), LDC §3.1.11F.5.

<u>LDC Standards for Rezoning.</u> The Hearing Examiner reviewed the application in accordance with the standards for rezonings set forth in LDC §3.4.6 and specifically set forth in LDC § 3.4.6.A (Manner of Initiation) and LDC § 3.4.6.B (Review Criteria), in addition to the general standards set forth elsewhere in the LDC and the City Comprehensive Plan.

### **TESTIMONY AT HEARING**

Staff's/Applicant's Representative's Incorporation of Staff Report and Staff Materials

The Applicant's Representative/Staff incorporated the Staff Report, Staff PowerPoint and all other Staff documents ("Staff Input") into his presentation by reference.

He requested the Hearing Examiner recommend that City Council find the Staff Input as findings of fact.

### Hearing Examiner's Recommended Findings of Fact

The Hearing Examiner recommends that City Council finds as facts all documentary and oral testimony set forth or referenced below, except to the extent (if any) that the Hearing Examiner specifically recommends otherwise.

### IV. DISCUSSION

### Site Information and Surrounding Area

The property proposed to be rezoned consists of fourteen (14) properties, whose size varies from 10,000 square feet to 10.500 square feet each. Six of them are undeveloped and the remaining eight are developed with duplexes.

Staff testified that these duplexes were built between 1979 and 1987, before the properties were rezoned to Professional, and thus are legal non-conforming uses. No office or retail operations were observed by the Hearing Examiner on the block, as confirmed in the Staff Report.

The surrounding area consists of properties zoned Professional to the South and East (with a Commercial/Professional FLUC); Institutional (INST) to the West (with a PF FLUC), and Commercial (C), Professional, and Single-Family Residential (R1) to the North (respectively MX and Public Facilities (PF) FLUC). These properties are a mix of institutional and residential uses, and vacant property.

The properties are across the street from the Cape Coral Police Department. A nearly-finished Cape Coral Fire Station is across the street to the west.

### Purpose of the Rezoning Request

Staff's Executive Summary is set forth in the Community Development Director's memo of October 13, 2020 to the City Manager. It states that:

"The purpose of this proposed rezone is to bring a full block of properties, including eight duplexes, into conformance with the underlying zoning district. The zoning was changed to Professional 30 years ago due to the block's proximity to City Hall but no office development had commenced in that period."

In addition, the proposed rezoning would allow the existing duplexes to be repaired and upgraded if the owners so desired. Only very limited repairs would be permitted under the existing zoning district. Additional multi-family residential development could occur as well.

### Entitlement History

Staff testified that the sites were previously zoned Multi-Family Residential (R-3 at that time). They were rezoned to Professional Office (then P-1, now P) in 1990. That 1990 rezoning resulted in making the then-existing 8 duplex properties into legal, non-conforming properties.

The area was not further rezoned as part of the City-wide rezoning last year.

### V. <u>COMPREHENSIVE PLAN CONSISTENCY</u>

Staff testified that the proposed rezone is consistent with the following Policies and Goals:

### **Future Land Use Element**

Policy 1.15.b states:

"The Residential Multi-Family Low (RML) District is designed to permit multi-family residential development. Single-family attached projects (three or more units only), single-family residences, and duplexes are also permitted in this zoning district."

The proposed zoning district, Residential Multi-Family Low zoning district is consistent with the Mixed-Use future land use map classification.

Staff testified that, since the involved properties are subdivided into two-lot, 10,000-square foot properties, the ability to build duplexes consistent with the development pattern in this block would be allowed, were the rezoning to be approved.

### Policy 1.7 states:

The City has identified a shortfall of multi-family residential housing stock in the community. To provide better guidance in identifying properties which are appropriate for multi-family residential development, to reduce this shortfall, locational guidelines have been developed. The following locational guidelines are as follows:

### 1.) Proximity to major roadways.

To prevent the establishment of multi-family residential development far in the middle of predominantly single-family neighborhoods, an appropriate location for multi-family residential development is adjacent to or within ¼ mile of major roadways such as arterial and collector roadways, as identified by Figure 7 City Roadway Classifications.

### 2.) Proximity to non-residential land uses.

An important consideration for siting multi-family residential development is the need for multi-family residential uses to be in proximity to major employment centers. Providing housing near commercial uses can result in shorter trips, lessened traffic generation by workers, and providing multiple transportation mode options (walking, bicycling, automobile, bus) for employees.

An appropriate location for multi-family residential development is adjacent to or within ¼ mile of non-residential land uses such as the Commercial/Professional, Light Industrial, Mixed Use, Downtown Mixed, Pine Island Road District, or Commercial Activity Center future land use classifications.

3.) Transitioning from commercial uses to less intense uses.

Multi-family residential uses have traditionally provided a role in buffering single-family uses or neighborhoods from nearby commercial development. Multi-family residential development is often self-contained with parking lots which provide a physical barrier visually separating commercial uses, particularly the lighting and loading areas, from single-family residential uses, which is a benefit to the community.

Therefore, an appropriate location for Multi-family residential development is physically between single-family development and non-residential land uses such as the Commercial/Professional, Light Industrial, Mixed Use, Downtown Mixed, Pine Island Road District, or Commercial Activity Center future land use classifications.

4.) Assemblage opportunities and adjacency to existing multi-family residential.

Single, isolated pre-platted parcels provide little opportunity for largerscale multi-family residential development and contribute to the same ills that strip center commercial developments offer; a proliferation of driveways onto major roadways.

Staff recommends a finding that the proposed rezone would meet the first two guidelines; that the third guideline would be irrelevant, given the properties' location between two institutional uses; and that the fourth guideline would not apply as the proposed rezone sites are not adjacent to existing multi-family residential zoning.

The Hearing Examiner opines that the proposed rezone is consistent with the only two prongs of this Policy which are applicable to the properties.

### **Housing Element**

<u>GOAL</u>: To provide good quality housing in safe, clean neighborhoods, offering a broad choice of options in both type (single family and multi-family) and tenure (owner and renter occupied) to meet the needs of present and future residents of the City, regardless of age or income status.

Staff recommends a finding that increasing the City's amount of multi-family residential land would be consistent with the Housing Element goal set forth above.

The Hearing Examiner agrees with staff's recommendation that the proposed rezone meets all relevant policies of the Comprehensive Plan as set forth above. Accordingly, based upon her review of the foregoing Policies and testimony by the Applicant's Representative/Staff, the Hearing Examiner recommends a finding that granting the requested rezone is in compliance with, and is in furtherance of, the requirements of all applicable provisions of the Comprehensive Plan.

### VI. REZONING REQUIREMENTS AND CRITERIA: HEX RECOMMENDATIONS

### A. Review Criteria

1. The application **is consistent** with the Comprehensive Plan. LDC § 3.4.6.B.1

See above recommended findings of fact with discussion regarding the Comprehensive Plan.

The Hearing Examiner recommends a finding that this standard is met.

2. The full range of uses allowed in the proposed zoning district **would be** compatible with existing uses in the area under consideration.

LDC § 3.4.6.B.2

LDC § 4.1.2 sets forth the philosophy of the RML Zoning District as follows:

This district is to accommodate multi-family housing to meet the needs of a diverse community, while ensuring that there is a transition to single-family neighborhoods which protects the integrity of those neighborhoods. The RML district acts as a transition zone from lower density residential to higher density residential or non-residential uses or zoning districts.

See discussion under Standard 3, below, which incorporates an analysis of the requirements of this Standard 2.

### ZA HEX RECOMMENDATION 13-2020 DCD # ZA 20-0010 NOVEMBER 17, 2020

The Hearing Examiner recommends a finding that this standard is met.

3. The range of uses allowed in the proposed zoning district would be compatible with existing and potential uses in the area under consideration. LDC § 3.4.6.B.3

Staff testified that, as the surrounding area has a mixture of institutional and residential uses, the full range of uses in this district, consisting of residential uses and uses ancillary to such development, are compatible with existing and proposed uses in the area.

Staff further testified that this was due in part to the fact that residential and institutional uses have been present nearby since the establishment of City Hall in the early 1970's.

The Hearing Examiner recommends a finding that this standard is met.

4. The proposed zoning district **would serve** a community need or broader public purpose. LDC§ 3.4.6.B.4

Staff testified that the proposed RML District would serve a community need, since this rezoning would increase the range of residential options availability within the City of Cape Coral.

The Hearing Examiner recommends a finding that this standard is met.

5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district. LDC§ 3.4.6.B.5

As set forth elsewhere herein, the sites are 10,000 to 10,500 square feet in size, similarly to nearby surrounding parcels which have mostly residential uses. Accordingly, the proposed rezone would allow the sites to be develop in conformity with the surrounding area by allowing residential uses.

The proposed rezone area is located on Nicholas Parkway, which is a four-lane minor arterial roadway. Specifically, the area is located within a quarter mile of the intersection of Nicholas Parkway and Cultural Park Boulevard, a four-lane collector roadway.

Additionally, staff testified that the area already has access to centralized utilities; therefore, development of duplexes or other uses permitted in this zoning category would not be problematic.

### ZA HEX RECOMMENDATION 13-2020 DCD # ZA 20-0010 NOVEMBER 17, 2020

The Hearing Examiner recommends a finding that this standard is met.

6. A zoning district other than the district requested **would not** create fewer potential impacts to existing uses in the surrounding area. LDC§ 3.4.6.B.5

Only two (2) zoning districts are compatible with this Comprehensive Plan Future Land Use designation. The other zoning district, RMM, contains a density of 25 units per acre and requires a minimum site size of one acre. Accordingly, these sites would not be appropriate for rezoning to RMM.

The Hearing Examiner recommends a finding that this standard is met.

### VII. RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the testimony set forth above and the documentary exhibits presented prior to the Hearing, the Hearing Examiner recommends as follows:

- City Council find that the requested rezone is consistent with the requirements of the Comprehensive Plan, the Land Development Code, the City Code of Ordinances and all applicable laws of the State of Florida; and
- 2. City Council approve the requested rezoning to the Residential Multi-Family Low (RML) Zoning District.

This Recommendation takes effect on the date specified below.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA

ANNE DALTON, ESQUIRE

ATTECT.

Page 9 of 10

### ZA HEX RECOMMENDATION 13-2020 DCD # ZA 20-0010 NOVEMBER 17, 2020

### **EXHIBIT "A"**

STRAP Numbers: 24-44-23-C3-01048.0010

24-44-23-C3-01048.0030 24-44-23-C3-01048.0050 24-44-23-C3-01048.0070 24-44-23-C3-01048.0190 24-44-23-C3-01048.0130 24-44-23-C3-01048.0150 24-44-23-C3-01048.0170 24-44-23-C3-01048.0190 24-44-23-C3-01048.0210 24-44-23-C3-01048.0230 24-44-23-C3-01048.0250 24-44-23-C3-01048.0250 24-44-23-C3-01048.0270

# CITY OF CAPE CORAL DEPARTMENT OF COMMUNITY DEVELOPMENT MEMORANDUM

TO: Rob Hernandez, City Manager

FROM: Vincent A. Cautero, Community Development Director

Wyatt Daltry, Planning Team Coordinator

DATE: October 13, 2020

SUBJECT: City-initiated Rezoning Request,

ZA 20-0010

### **Executive Summary**

Staff recommends the City initiate a rezone request from Professional (P) to Residential Multi-Family Low (RML) for Lots 1-28 of Block 1048, Unit 24. The area is located at 1101-1127 SE 5<sup>th</sup> Court and 1102-1128 SE 6<sup>th</sup> Avenue, between the police station and the new Fire Station #2 off Nicholas Parkway, and comprises 3.27 acres.

### **Background**

The purpose of this proposed rezone is to bring a full block of properties including eight duplexes into conformance with the underlying zoning district. The zoning was changed to Professional 30 years ago due to the block's proximity to City Hall but no office development had commenced in that period.

The block is in the City Centrum, an area designed to promote professional and service uses related to governmental activities (e.g. engineering, law). However, the history of residential development on this block coupled with the absence of redevelopment over a thirty-year period suggests that the block is best zoned for residential development.

The application is attached for your signature. Please contact me or Wyatt Daltry, Planning Team Coordinator at (239) 573-3160, if you have any questions.

VAC/wad(ZA20-0010memoofintent) Attachment

For Internal Use Only
Case
Date

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

### **REZONING APPLICATION**

**NOTE TO APPLICANT:** The completed application must be legible, and all items must be provided at the time of submission.

### **REZONING REQUIREMENTS**

- 1. 

  Applicant's portion of request shall be typewritten, and signature notarized.
  - All forms (Application, Acknowledgement Form, Authorization to Represent) must be signed by the property owner or the applicant. If the Authorized Representative is an attorney, the application and the Acknowledgement Form may be signed by the attorney and an Authorization to Represent Form is not required.
  - If there are any deed restrictions on the property, a copy of the restrictions will be required.
- 2.  $\square$  Letter of intent stating the actual request and why the request is being made.
- 3. 

  Certified survey done within past six (6) months MAY be required.
- 4. ☐ If the subject property is within 500 feet of any County properties, the applicant must provide a typewritten list of all affected property owners within the area. The list must prepared in label format and contain the following information; name, address, city, and zip-code.
- 5. 

  Please refer to Rezones Section 3.4.6. (page 7) for additional required documentation.

NOTE: In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 3.4.6.). Advertising costs will be billed and must be paid prior to hearing.

Following the approval of your request, the applicant shall be responsible for paying the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

It is required that applicant and/or representative attend both the hearing examiner and city council meetings.



PLANNING DIVISION

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

### **REZONE REQUEST**

FEE \$2,050.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 3.4.6). Advertising costs will be billed and must be paid prior to hearing.

PROPERTY INFORMATION					
Location/Address					
Strap Number	Unit	_ Block	Lot (s)		
Plat Book Page Futu	re Land Use <sub>-</sub>				
Current Zoning	Propos	sed Zoning			
		) INFORMATI			
Owner	_ Address				
Phone	_ City				
Email	State	Zip			
Owner	_ Address				
Phone	_ City				
Email	State	Zip			
APPLICANT INFORMATION (If different from owner)					
Applicant	Address				
Phone	_ City				
Email	State	Zip			
AUTHORIZED REPRESENTATIVE INFORMATION (If Applicable)					
Representative	Add	lress			
Phone	_ City				
Email	State	Zip			



### **PLANNING DIVISION**

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.

### (ALL SIGNATURE MUST BE NOTARIZED)

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.

CORPORATION/COMPA	NY NAME (IF APPLICAB	LE)
OWNER'S NAME (TYPE	OR PRINT)	OWNER'S SIGNATURE
OWNER'S NAME (TYPE	OR PRINT)	OWNER'S SIGNATURE
APPLICANT NAME (TYP	E OR PRINT)	APPLICANT SIGNATURE
		Hearing date(s) will be confirmed when I receive a day and time of any applicable hearings.
STATE OF		, , , , , ,
COUNTY OF	<del></del>	
Sworn to (or affirmed) and	d subscribe before me, by	means of □ physical presence or □ online
notarization, on this	day of	, 2020 by,
know is personally known	to me or produced	as identification.
	Exp Date:	Commission Number:
	Signature of	Notary Public:
	Printed Name of	Notary Public:



### PLANNING DIVISION

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

### **AUTHORIZATION TO REPRESENT PROPERTY OWNER(S)**

PLEASE BE ADVISED	THAT	
	(Na	me of person giving presentation)
IS AUTHORIZED TO R AND CITY COUNCIL.	EPRESENT ME IN THE I	REQUEST BEFORE THE HEARING EXAMINER
UNIT BLOCK	LOT(S)	SUBDIVISION
OR LEGAL DESCRIPT	ON	
LOCATED IN THE CITY	OF CAPE CORAL, COL	JNTY OF LEE, FLORIDA.
PROPERTY OWNER (I	Please Print)	PROPERTY OWNER (Signature & title)
PROPERTY OWNER (I	Please Print)	PROPERTY OWNER (Signature & title)
STATE OF		
COUNTY OF		
Sworn to (or affirmed) a	nd subscribe before me,	by means of □ physical presence or □ online
notarization, on this	day of	, 2020 by,
		as identification.
	Exp Date:	Commission Number:
	Signature	of Notary Public:
	Printed Name	of Notary Public:

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.



### PLANNING DIVISION

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

### **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 and City Council.

I will have the opportunity at the hearing to present 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 and recording costs. All fees are to be submitted to the City of Cape Coral with the application.

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.

, ,		erstood the above affidavit on the Day
of,	, 20	
CORPORATION/COMPAI	NY NAME	OWNER'S NAME (TYPE or PRINT)
		OWNER'S SIGNATURE
STATE OF		
COUNTY OF		
Sworn to (or affirmed) and	subscribe before me,	by means of □ physical presence or □ online
notarization, on this		
	day of	, 2020 by,
know is personally known t		, 2020 by, as identification.
know is personally known t	to me or produced	
know is personally known t	to me or produced	as identification.



### PLANNING DIVISION

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

### **DOCUMENTARY EVIDENCE (LDC, Section 3.1.11F.6)**

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 three business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

I have read the above requirement and agree to comply with this provision.			
OWNER/APPLICANT (PLEASE TYPE OR PRINT)		OWNER/APPLICAI	NT SIGNATURE
	(SIGNATURE MUS	T BE NOTARIZED	))
STATE OF	_		
COUNTY OF	_		
Sworn to (or affirmed) and s	ubscribe before me,	by means of $\Box$ p	hysical presence or □ online
notarization, on this	day of	, 2020	by,
know is personally known to	me or produced		as identification.
	Exp Date:	Commissi	on Number:
	Signature of	f Notary Public:	
	Printed Name of	f Notary Public:	

### PLANNING DIVISION

Tel. (239) 574-0776 Fax (239) 574-0591 P.O. Box 150027 Cape Coral, FL 33915-0027

### **REZONES REGULATIONS**

- A. Manner of Initiation. Applications for a change in zoning may be initiated in the following manner:
  - 1. The City Council upon its own motion;
  - 2. The Planning and Zoning Commission upon its own motion;
  - 3. The property owner(s) of at least fifty-one percent of the land in the proposed rezone area;
  - 4. The City Manager for a City initiated rezone; or
  - 5. The Community Development Department, following approval of a similar use determination.
- B. Review Criteria. An application for a rezone shall be reviewed in accordance with the following criteria:
  - 1. Whether the proposed zoning district proposed is consistent with the City Comprehensive Plan:
  - 2. Whether the full range of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration;
  - 3. Whether the range of uses allowed in the proposed zoning district will be compatible with existing and potential uses in the area under consideration;
  - 4. Whether the proposed zoning district will serve a community need or broader public purpose;
  - 5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district; and
  - 6. Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area.
- C. Effective date of approval. A rezone shall take effect upon City Council adoption of the ordinance approving the rezone.
- D. New application after denial. No application for a rezone which has been previously denied by the City Council shall be accepted for at least one year after the date of denial. An application to rezone property to a designation that is different than the designation which was denied by the City Council, will be accepted and considered without consideration of time since the previous application was denied.

STAFF REPORT		
ZA20-0010	City of Cape Coral	
DOCKET/CASE/APPLICATION NUMBER	APPLICANT/PROPERTY OWNER	
Wyatt Daltry, AICP, Planning Team	1015 Cultural Park Blvd.	
Coordinator (239) 573-3160,	Cape Coral, FL 33915-0027	
wdaltry@capecoral.net		
STAFF PLANNER	PROPERTY ADDRESS/LOCATION	

### **BRIEF SUMMARY OF REQUEST**

City-initiated rezone for 14 properties from P (Professional) zoning designation to RML (Residential Multi-Family Low) zoning designation for 3.27 acres.



Map Source

EXISTING ZONING	EXISTING LAND USE	PROPOSED ZONING	SITE IMPROVEMENTS	SIZE OF PROPERTY
Professional (P)	Mixed Use (MX)	Multi- Family Residential Low (RML)	None	142,547 square feet 3.27 acres

STAFF RECOMMENDATION: Approval

Background:	<ul> <li>Property was rezoned to Professional Office (then P-1, now P) in 1990 from Multi-Family Residential (then R-3)</li> <li>Of 14 properties on block, 8 are developed with duplexes and 6 are vacant</li> <li>No effort to redevelop block with offices has been attempted in 30 years</li> </ul>
Positive Aspects of Application:	•
Negative Aspects of Application:	<ul> <li>Rezone could remove investment-backed expectation for property owners who may have future plans to develop offices</li> </ul>
Mitigating Factors:	<ul> <li>Over 50% of block is developed with duplexes</li> <li>Vacant parcels lack visibility from major (arterial or collector) roadways</li> <li>There has been no assemblage of parcels in Block 1048</li> </ul>

### **Additional Site Information**

**Street Addresses:** 1101-1127 SE 5<sup>th</sup> Court

1102-1128 SE 6<sup>th</sup> Avenue

**Urban Service Area:** Transition

**City Water and Sewer:** City water and sewer utilities are available.

Street Access: The site is accessible from Nicholas Parkway, a minor arterial roadway and local roads

**STRAP Numbers**: 24-44-23-C3-01048.0010

24-44-23-C3-01048.0030 24-44-23-C3-01048.0050 24-44-23-C3-01048.0070 24-44-23-C3-01048.0110 24-44-23-C3-01048.0130 24-44-23-C3-01048.0150 24-44-23-C3-01048.0170 24-44-23-C3-01048.0190 24-44-23-C3-01048.0210 24-44-23-C3-01048.0230 24-44-23-C3-01048.0250 24-44-23-C3-01048.0270

Block/Lot(s): Unit 24, Block 1048, Lots 1-28

**Subdivision:** Cape Coral Subdivision

Case Planner: Wyatt Daltry, AICP, Planning Team Coordinator

**Review Approved** 

By: Robert Pederson, AICP, Planning Manager

### **Zoning and Land Use Information:**

Subject	Future Land Use	Zoning
Property:		
Current:	Mixed Use (MX)	P
Proposed:	No change	RML

Surrounding Areas	Future Land Use	Zoning
North:	MX and Public Facilities (PF)	Commercial (C), P, and Single-Family
		Residential (R1)
South:	Commercial/Professional (CP)	P
East:	СР	P
West:	PF	Institutional (INST)

### **Background**

The surrounding area consists of a mixture of vacant, residential, and institutional uses. A new fire station is being constructed directly across the street to the west, while the City police station is directly across the street to the east.

Block 1048 was rezoned to Professional Office (P-1; the precursor to the Professional (P) zoning district) by Ordinance 61-90 in 1990. This block consists of 14 platted (size: 10,000-10,500 sq. ft.) properties, eight of which have duplexes. The remaining six properties are undeveloped. No office or retail uses have developed on the block since the 1990 rezone.

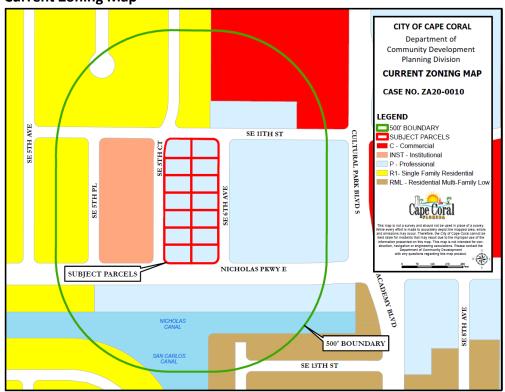
This block was zoned Multi-Family Residential (R-3) for decades prior to the adoption of Ordinance 61-90. The existing duplexes were built between 1979 and 1987. The duplexes are considered legal, non-conforming uses.

Generally, the City does not support rezoning non-residential properties to a residential zone in light of the well-documented deficiency of non-residential development within the community. However, as no redevelopment of this block has occurred in the past 30 years, rezoning the block to permit multi-family residential uses is in the public interest, by permitting the existing duplexes to be repaired and upgraded, and by permitting additional opportunities for multi-family residential development.

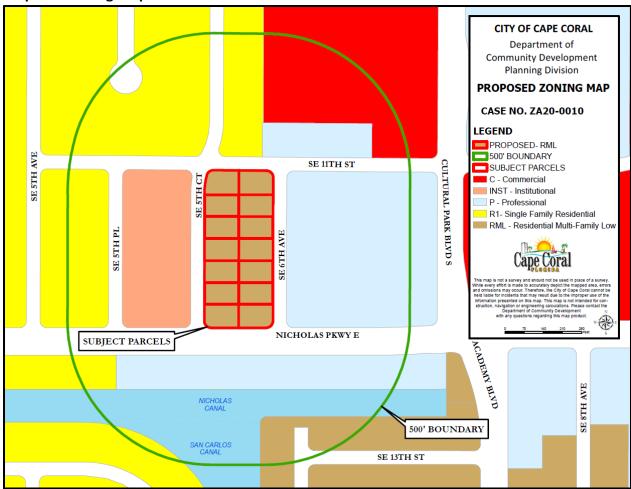
### **Aerial Map**



### **Current Zoning Map**



### **Proposed Zoning Map**



#### **COMPREHENSIVE PLAN ANALYSIS**

#### **Future Land Use Element**

Per Policy 1.15, the Residential Multi-Family Low zoning district is consistent with the Mixed-Use future land use map classification.

Policy 1.15.b states:

"The Residential Multi-Family Low (RML) District is designed to permit multi-family residential development. Single-family attached projects (three or more units only), single-family residences, and duplexes are also permitted in this zoning district."

The requirement to build a mixed-use project is for properties of one acre or greater where utilities are available (i.e. in the Urban Services Infill and Transition Areas). As the properties in this block are subdivided into two-lot, 10,000-square foot properties, the ability to build duplexes consistent with the development pattern in this block is permitted.

### **Comprehensive Plan Analysis**

Staff analyzed the Comprehensive Plan to determine what policies apply to the proposed rezone.

<u>Policy 1.7:</u> The City has identified a shortfall of multi-family residential housing stock in the community. To provide better guidance in identifying properties which are appropriate for multi-family residential development, to reduce this shortfall, locational guidelines have been developed. The following locational guidelines are as follows:

1.) Proximity to major roadways.

To prevent the establishment of multi-family residential development far in the middle of predominantly single-family neighborhoods, an appropriate location for multi-family residential development is adjacent to or within ¼ mile of major roadways such as arterial and collector roadways, as identified by *Figure 7 City Roadway Classifications*.

2.) Proximity to non-residential land uses.

An important consideration for siting multi-family residential development is the need for multi-family residential uses to be in proximity to major employment centers. Providing housing near commercial uses can result in shorter trips, lessened traffic generation by workers, and providing multiple transportation mode options (walking, bicycling, automobile, bus) for employees.

An appropriate location for multi-family residential development is adjacent to or within ¼ mile of non-residential land uses such as the Commercial/Professional, Light Industrial, Mixed Use, Downtown Mixed, Pine Island Road District, or Commercial Activity Center future land use classifications.

3.) Transitioning from commercial uses to less intense uses.

Multi-family residential uses have traditionally provided a role in buffering single-family uses or neighborhoods from

nearby commercial development. Multi-family residential development is often self-contained with parking lots which provide a physical barrier visually separating commercial uses, particularly the lighting and loading areas, from single-family residential uses, which is a benefit to the community.

Therefore, an appropriate location for Multi-family residential development is physically between single-family development and non-residential land uses such as the Commercial/Professional, Light Industrial, Mixed Use, Downtown Mixed, Pine Island Road District, or Commercial Activity Center future land use classifications.

4.) Assemblage opportunities and adjacency to existing multi-family residential.

Single, isolated pre-platted parcels provide little opportunity for larger-scale multi-family residential development and contribute to the same ills that strip center commercial developments offer; a proliferation of driveways onto major roadways.

The proposed rezone meets the first two guidelines. The third guideline is irrelevant given its location between two institutional uses. It is possible but unlikely that small-scale assemblage of undeveloped properties could occur, in reference to the fourth guideline, but the site is not adjacent to existing multi-family residential zoning.

Nevertheless, the rezone meets 2 of 4 guidelines, and therefore, is considered consistent with this policy.

### **Housing Element**

<u>GOAL</u>: To provide good quality housing in safe, clean neighborhoods, offering a broad choice of options in both type (single family and multi-family) and tenure (owner and renter occupied) to meet the needs of present and future residents of the City, regardless of age or income status.

Increasing the City's amount of multi-family residential land is directly consistent with the Housing Element goal, above.

Overall, the proposed rezone meets the policies of the Comprehensive Plan, above.

#### LAND DEVELOPMENT CODE ANALYSIS

### **Land Development Code -- Section 3.4.6 Rezones:**

Staff reviewed this request in accordance with Section 3.4.6 of the Land Development Code and provides the following analysis. This section is used for rezone requests.

Review Criteria. An application for a rezone shall be reviewed in accordance with the following criteria:

1. Whether the proposed zoning district proposed is consistent with the City Comprehensive Plan;

The proposed RML zoning district is consistent with the Mixed-Use future land use map classification.

2. Whether the full range of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration;

Presently, most of the properties are already developed with uses compatible with the proposed zoning district. The surrounding area has a mixture of institutional and residential uses. The full range of uses in the RML district, which consists of residential uses and uses ancillary to such development, are compatible with existing uses in this area.

3. Whether the range of uses allowed in the proposed zoning district will be compatible with existing and potential uses in the area under consideration;

As mentioned earlier, the surrounding area has a mixture of institutional and residential uses. The full range of uses in the I district, which consists of residential uses and uses ancillary to such development, are compatible with existing and proposed uses in this area, due in part to the fact that residential and institutional uses have been present nearby since the established of City Hall in the early 1970's.

4. Whether the proposed zoning district will serve a community need or broader public purpose;

The City has a well-documented need for additional multi-family residential uses.

5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district; and

The rezone area is a block on Nicholas Parkway, a four-lane minor arterial roadway, located with 1/4 mile of the intersection of Nicholas Parkways and Cultural Park Boulevard, a four-lane collector roadway. Residential and Institutional uses are present along these roadways.

6. Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area.

The RML zoning district is one of two zoning districts which permits multi-family development by right. Compared to the Residential Multi-Family Medium zoning district, the RML provides less density (16 vs. 25) and maximum height (38 ft. vs. 50 ft.), which would create fewer adverse impacts.

#### **Public Notification**

This case will be publicly noticed as required by LDC, Section 3.1.10 as further described below.

<u>Publication:</u> A legal ad will be prepared and sent to the *News-Press* announcing the intent of the petitioners to rezone the property described within this report. The ad will appear in the *News-Press* a minimum of 10 days prior to the public hearing scheduled before the Hearing Examiner. Following the public hearing before the Hearing Examiner, the ad announcing the final public hearing before the City Council will appear once in the *News-Press*. The ad will appear in the newspaper not less than 10 days prior to the date of the final public hearing before the City Council.

<u>Written notice</u>: Property owners located within 500 feet from the property line of the land which the petitioners request to rezone will receive written notification of the scheduled public hearings. These letters will be mailed to the aforementioned parties a minimum of 10 days prior to the public hearing scheduled before the Hearing Examiner.

<u>Posting of a Sign:</u> A large sign identifying the case and providing salient information will be posted on the property, as another means of providing notice of the rezoning request.

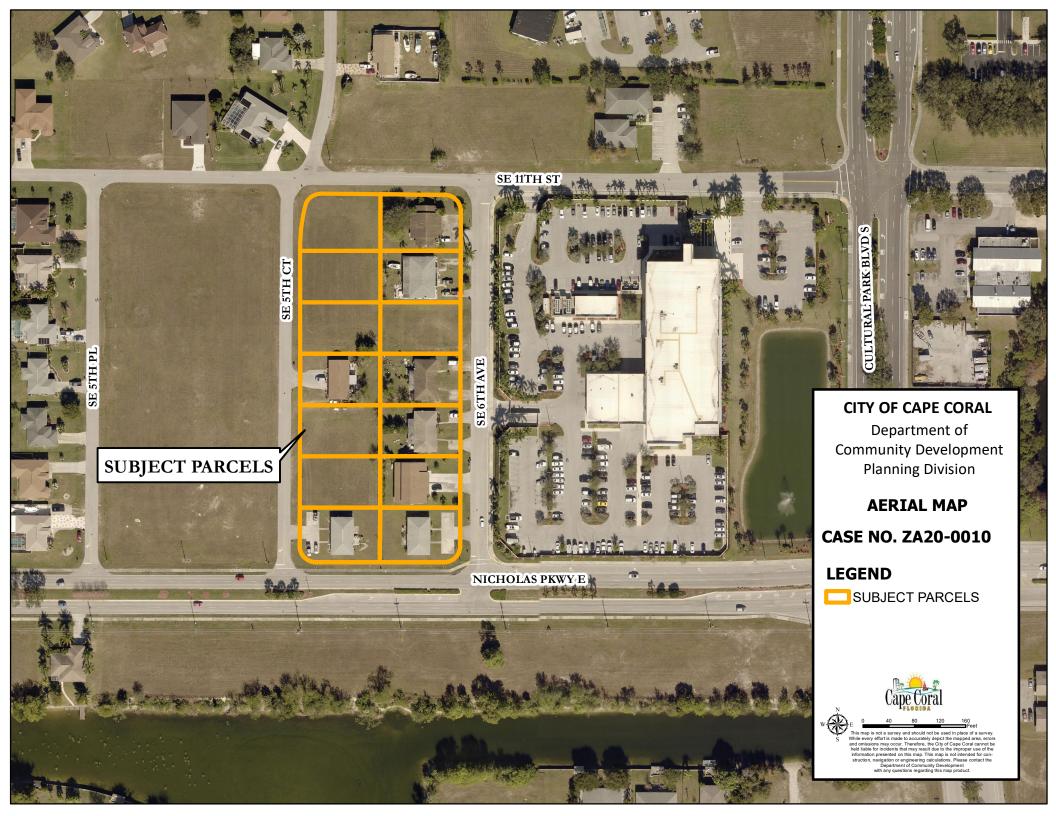
### **Recommendation:**

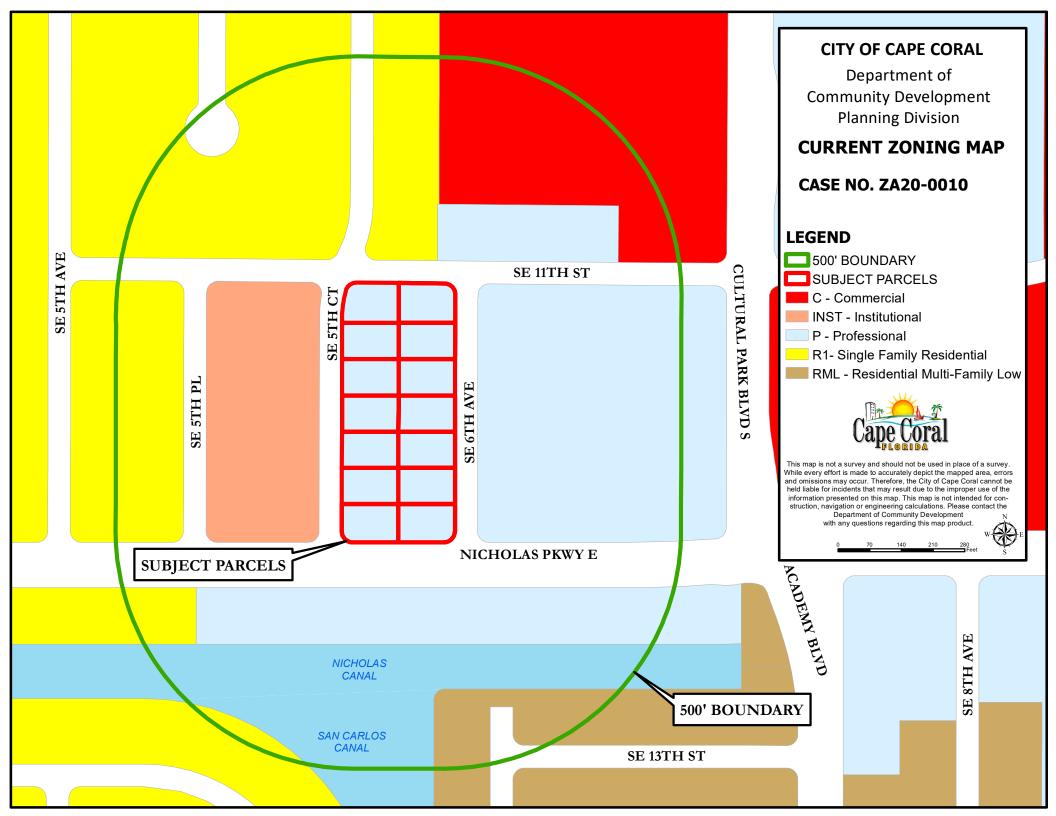
Planning staff has reviewed this request in accordance with Section 3.4.6 of the Land Development Code and the City's Comprehensive Plan. Planning Division recommends **approval** of the rezone request.

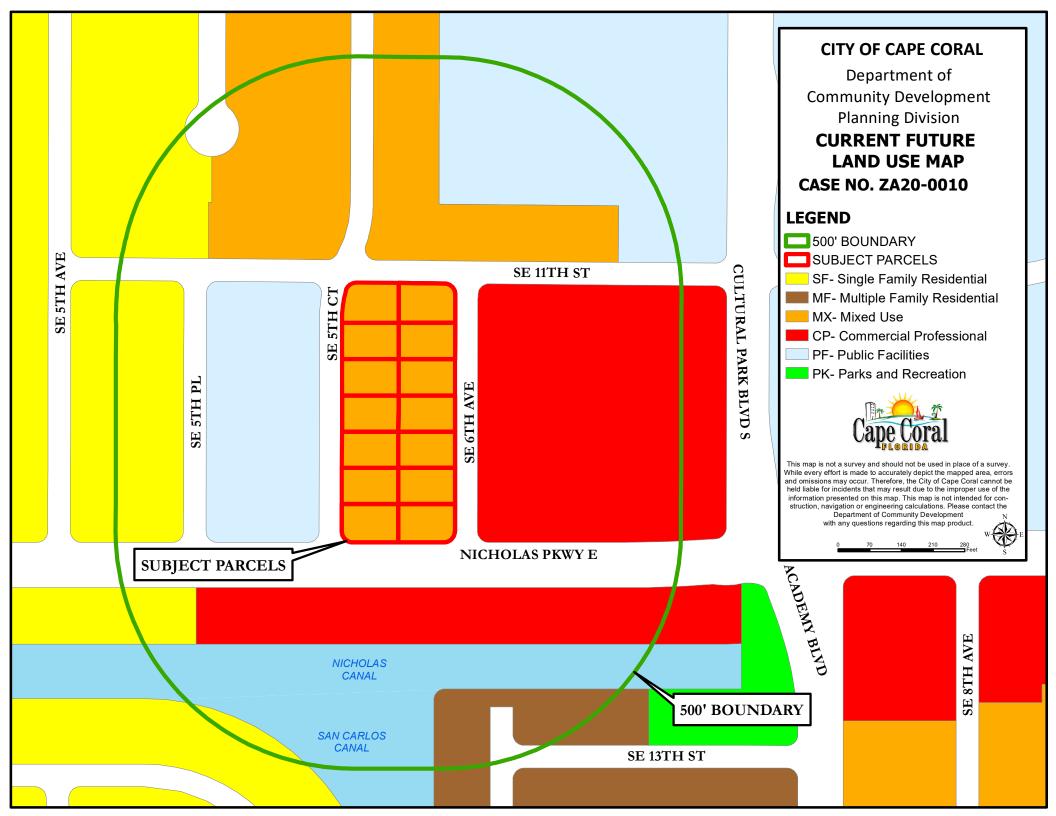
### **Staff Contact Information:**

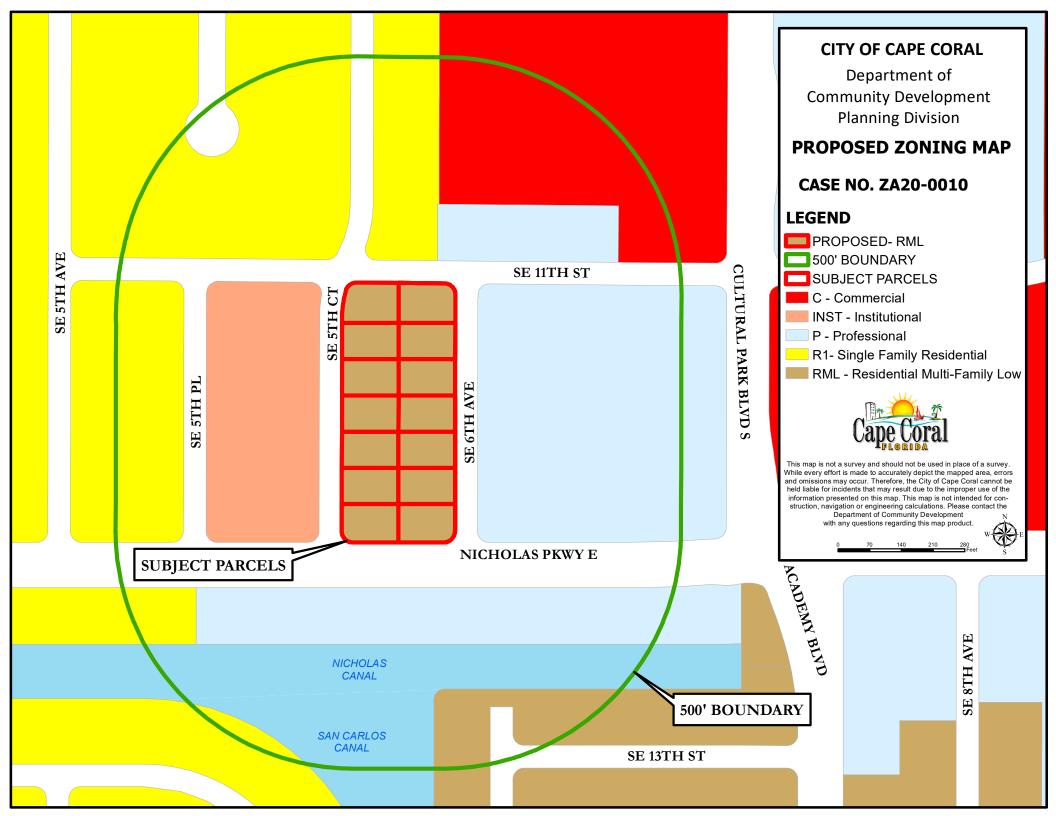
Wyatt Daltry, AICP
Planning Team Coordinator
Department of Community Development
Planning Division
(239) 573-3160

email: wdaltry@capecoral.net











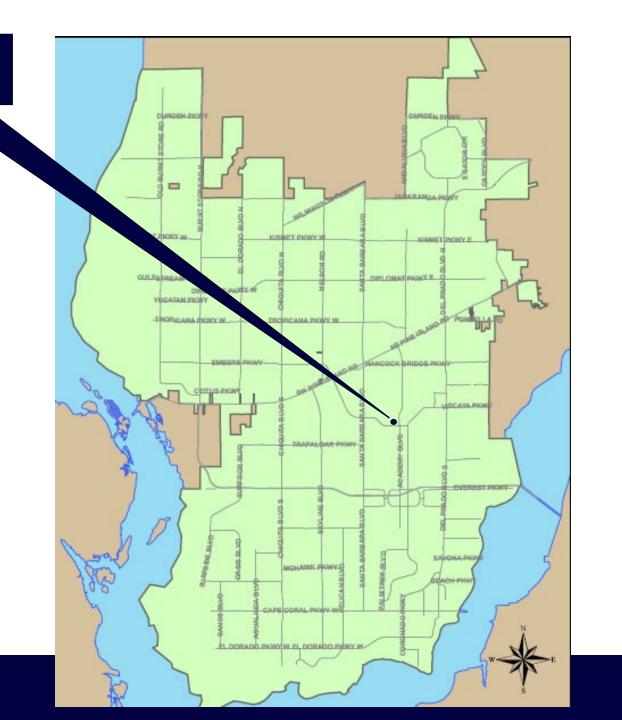
Ordinance 3-21/ZA20-0010 Professional (P) to Residential Multi-Family Low (RML)



# Background

- A City-initiated rezone involving 3.27 acres
- Multiple property owners
- Unit 24, Block 1048, Lots 1-28
- Request is to rezone the subject property to the Residential Multi-Family Low District (RML)
- Staff requests that the findings of the staff report be incorporated as part of this presentation





Property located at:

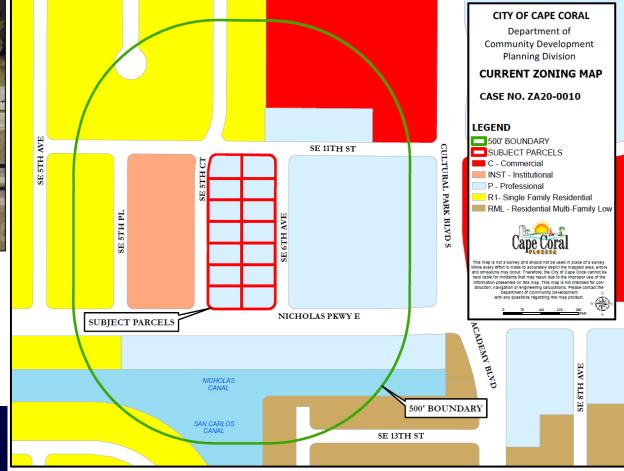
1101-1127 SE 5<sup>th</sup>
Court and 1102-1128
SE 6<sup>th</sup> Avenue



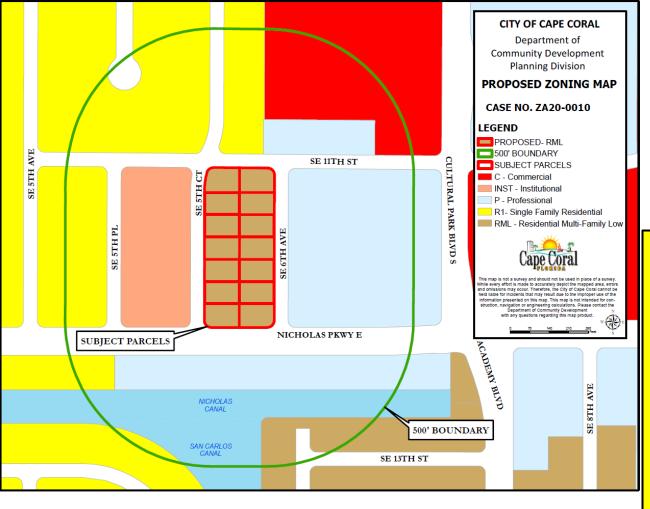
Site



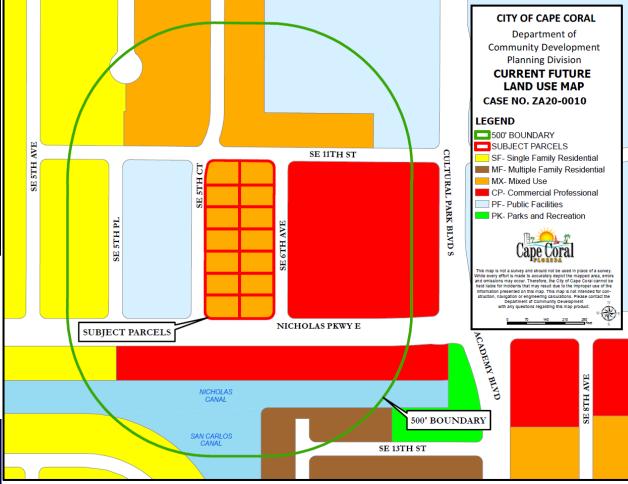
# **Aerial and Current Zoning**







# Proposed Zoning and Future Land Use





# Background

Subject properties were rezoned to Professional Office (P-1; the precursor to the Professional (P) zoning district) by Ordinance 61-90 in 1990

14 separate properties, eight developed with duplexes

**Duplexes built from 1979-1987** 

No professional office development has occurred in area since rezone to Professional in 1990





### AGENDA REQUEST FORM

CITY OF CAPE CORAL

Item

Number: 11.A.

Meeting Date:

1/6/2021

Item Type:

UNFINISHED BUSINESS

TITLE:

Water Quality - Update

**REQUESTED ACTION:** 

**SUMMARY EXPLANATION AND BACKGROUND:** 

### STRATEGIC PLAN ALIGNMENT:

1. 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?

### **RECOMMENDATIONS:**

### **SOURCE OF ADDITIONAL INFORMATION:**

### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

1. Will this action result in a Budget Amendment?

### PREPARED BY:

Division- Department-

ATTACHMENTS:

**Description** Type

1. Water Quality Memo Backup Material

### MEMORANDUM

### CITY OF CAPE CORAL PUBLIC WORKS DEPARTMENT

TO:

Rob Hernandez, City Manager

FROM:

Paul Clinghan, Public Works Director

DATE:

January 4, 2021

SUBJECT: Water Quality Update

As of Monday, January 4, 2021, the stage of Lake Okeechobee was 15.81 ft, compared to 13 ft last year. The total inflows to the Lake were 1,362 cfs and the total outflows from the Lake were 1,826 cfs. After several months of high flows from the Lake, salinities in the Caloosahatchee River Estuary have risen to levels that sustain good ecological conditions.

For the past month, Blue Green Algae blooms have not been observed on Lake Okeechobee.

This past week, Lee County reported slight Blue Green Algae presence along the upstream Franklin Lock and at the Davis boat ramp.

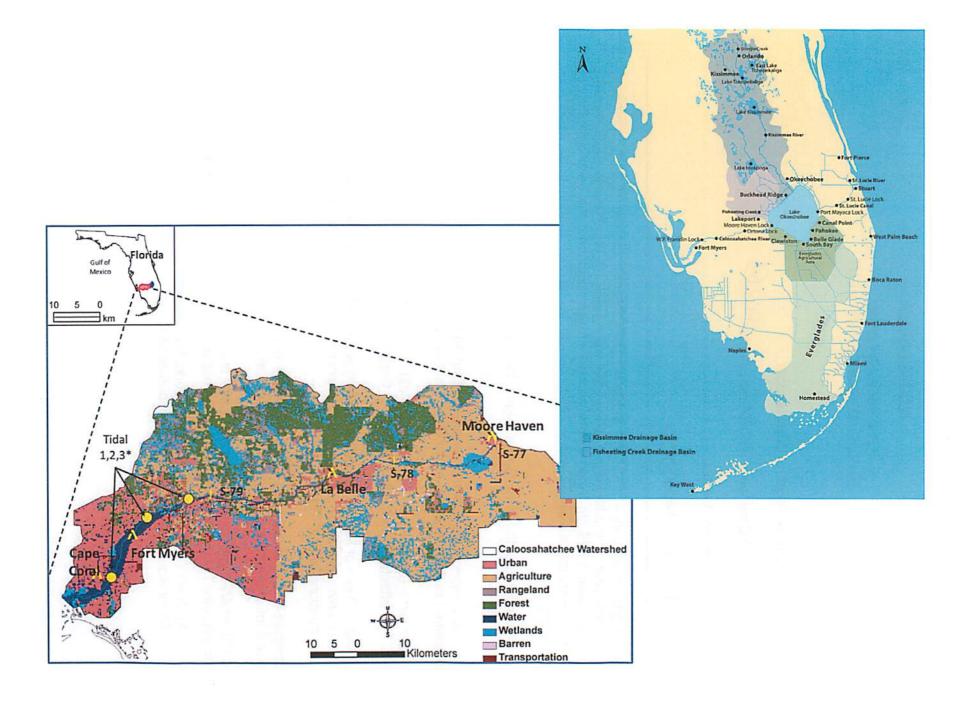
During last week's monitoring, City staff did not report any visible Blue Green Algae or Red Tide effects along the tidal portion of Cape Coral.

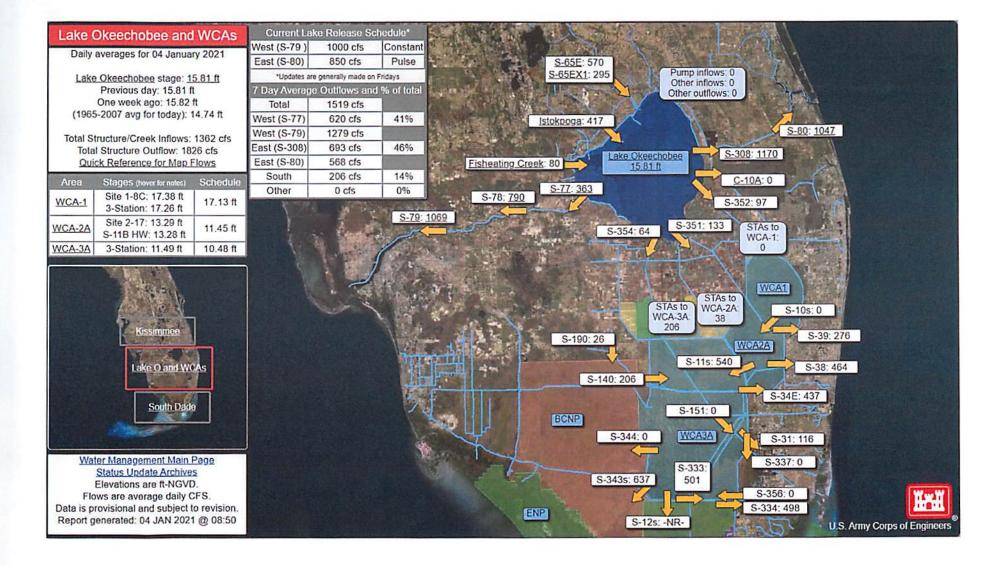
A patchy bloom of Red Tide (Karenia brevis) is present off Collier and Lee counties. Out of 13 samples collected in Lee County on December 28, 2020, 5 contained low to medium concentrations of Red Tide.

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

C: Michael Ilczyszyn, Senior Public Works Manager Maya Robert, Environmental Resources Manager







### AGENDA REQUEST FORM

CITY OF CAPE CORAL

Item

Number: 11.C.

Meeting

**Item Type:** 

1/6/2021

Date:

**UNFINISHED** 

**BUSINESS** 

### TITLE:

Council Meeting Calendar additions/changes request - Brought forward by City Management/City Clerk Bruns

### **REQUESTED ACTION:**

Approve or Deny

### **SUMMARY EXPLANATION AND BACKGROUND:**

Action items requested:

- 1. Add second Committee of the Whole Meeting in February (February 24, 2021, at 4:30 p.m. in Council Chambers.)
- 2. As a part of the previously scheduled Council Retreat, add an Executive Session Meeting of the City Council (in the shade) regarding Collective Bargaining pursuant to Florida Statutes Section 447.605(1), on Thursday, January 14, 2021 at 8:30 a.m. Public Participation at the Retreat to follow after the shade meeting beginning at 10:00 a.m. to be held at the Westin Cape Coral Resort at Marina Village, 5951 Silver King Boulevard, Tarpon Ballrooms 1, 2, and 3, Cape Coral, FL 33914
- 3. As a part of the previously scheduled Council Retreat, add an Executive Session Meeting of the City Council (in the shade) regarding ITS Security Policy, pursuant to Florida Statutes Section 281.301, on Friday, January 15, 2021 at 8:30 a.m. Public Participation at the Retreat to follow after the shade meeting beginning at 9:15 a.m. to be held at the Westin Cape Coral Resort at Marina Village, 5951 Silver King Boulevard, Tarpon Ballrooms 1, 2, and 3, Cape Coral, FL 33914

### STRATEGIC PLAN ALIGNMENT:

1. 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

#### **RECOMMENDATIONS:**

City Management recommends approval of Action items 1 through 3

### SOURCE OF ADDITIONAL INFORMATION:

Kimberly Bruns, City Clerk, 1-239-574-0417

### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

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

### PREPARED BY:

Division- Managerial Department- City Clerk's Department



# AGENDA REQUEST FORM CITY OF CAPE CORAL

Item Number: 12.A. Meeting Date: 1/6/2021

Item Type: NEW BUSINESS

### TITLE:

FY 2020 Annual Investment Performance Review

#### REQUESTED ACTION:

Informational

### **SUMMARY EXPLANATION AND BACKGROUND:**

Presentation of the FY2020 Annual Investment Performance Review by Public Trust Advisors.

Investment performance summary:

The City's utilizes a diversified investment program that focuses primarily on safety of principal and ensuring liquidity for ongoing and longer term expenditures. The City only invests in highly rated fixed income securities and bank deposits and the investment program is compliant with the investment policy statement and with Florida State Statutes. This balanced investment approach minimizes risk and results in a strategy that benefits in a rising interest rate environment and protects income in a declining interest rate environment. Even as interest rates fell from 3% in late 2018 to 0% in 2020, the City's long term investment program earned \$3.9 million net income for FYE2020, a decrease of less the 2% compared to the prior fiscal year. The City's investment advisor Public Trust Advisors communicates frequently with staff and meets formally on a quarterly basis with the investment committee and provides a market update and investment program strategy review.

### STRATEGIC PLAN ALIGNMENT:

1. 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 B:** ENHANCE FINANCIAL SUSTAINABILITY DURING ALL ECONOMIC TIMES

### **RECOMMENDATIONS:**

Informational

### SOURCE OF ADDITIONAL INFORMATION:

Christopher Phillips, Interim Financial Services Director 1-239-574-0435 Heather Abrams, Debt Treasury Manager 1-239-574-3029

### FISCAL IMPACT/FUNDING SOURCES(S)/BUDGET CONSIDERATIONS:

n/a

1. Will this action result in a Budget Amendment?

### PREPARED BY:

Suzanne Lopez, Senior Administrative Specialist

Division
Debt
Treasury

DepartmentFinancial
Services

### ATTACHMENTS:

	Description	Туре
D	1. Economic Update and Trends	Backup Material
D	2. Cape Coral Chart 2020	Backup Material
D	3. Annual Investment Report 9-2020 1-3 Year	Backup Material
D	4. Annual Investment Report 9-2020 1-5 Year	Backup Material



# Economic Update and Historical Trends





# International Monetary Fund Growth Projections





# Bloomberg Forecast – December 2020 Survey

Indicator	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022 -
Economic Activity										
■ Real GDP (YoY%)	1.8	2.5	3.1	1.7	2.3	3.0	2.2	-3.5	3.9	3.1
Consumer Spending	1.5	3.0	3.8	2.8	2.6	2.7	2.4	-3.8	4.5	3.2
Government Spendin	-2.4	-0.9	1.8	1.8	0.9	1.8	2.3	1.2	0.1	0.8
Private Investment (	6.9	5.6	5.5	-1.5	3.5	6.3	1.7	-6.0	7.5	4.3
Exports (YoY%)	3.6	4.2	0.4	0.3	3.9	3.0	-0.1	-13.4	5.0	4.7
└ Imports (YoY%)	1.5	5.0	5.2	1.7	4.7	4.1	1.1	-10.3	8.5	4.2
Industrial Production (Yo	2.0	3.1	-1.0	-2.0	2.3	4.0	0.8	-7.1	4.1	3.0
Price Indices										
CPI (YoY%)	1.5	1.6	0.1	1.3	2.1	2.5	1.8	1.2	2.0	2.1
PCE Price Index (YoY%)							1.4	1.2	1.8	2.0
Core PCE (yoy%)	1.5	1.6	1.2	1.6	1.7	2.0	1.7	1.4	1.7	1.8▼



Source: Bloomberg

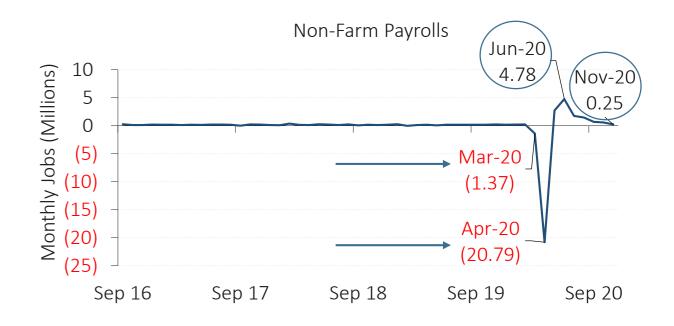
### The Labor Market

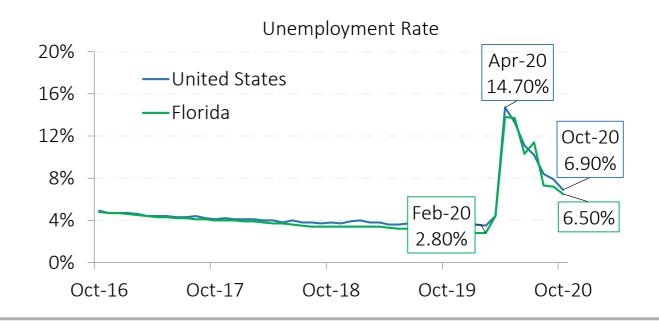
### Nonfarm Payrolls

- After more than 22 million job losses in March and April, the economy recovered 12.3 million of these jobs from May through November, although there remains considerable uncertainty in the job market outlook and renewed restrictions.
- Weekly jobless claims averaged 784k in October, significantly below the 3.8mm weekly average in March and April.

### Unemployment Rate

- Unemployment continues to surprise in a good way.
   Nationwide the unemployment rate dropped to 6.7% in November.
- Florida unemployment continues to improve as well dipping to 6.5% in October, although there are drastic differences in rates by region.







Source: Bloomberg

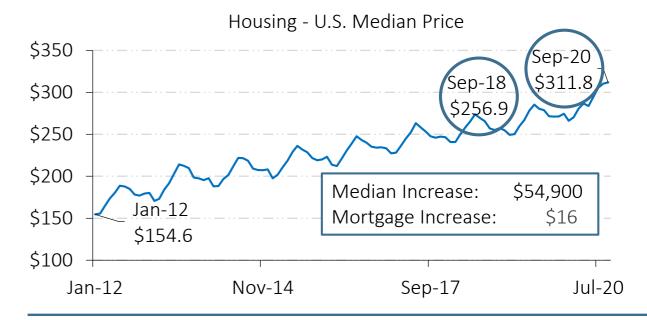
### The Housing Market

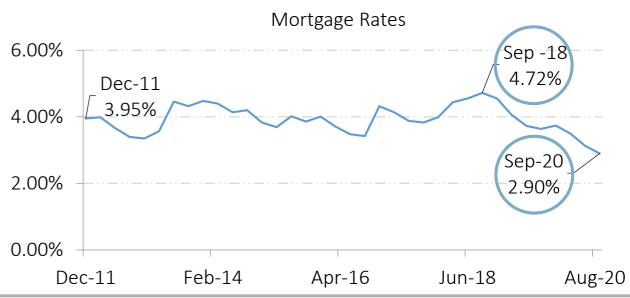
### Median Housing Prices

- Amazingly, even the COVID19 pandemic has not impacted housing demand and prices.
- The median home price increased 14.8% for the last 12 months and has doubled since the low of \$155k in January 2012.

### Mortgage Rates and Demand

- Historically low mortgage rates have encouraged buyers and helped maintain pricing trend.
- Rates were more than 1.8% lower from September 2018.
- This decrease in mortgage rates essentially offset the more than \$54k price increase in housing during the same period.







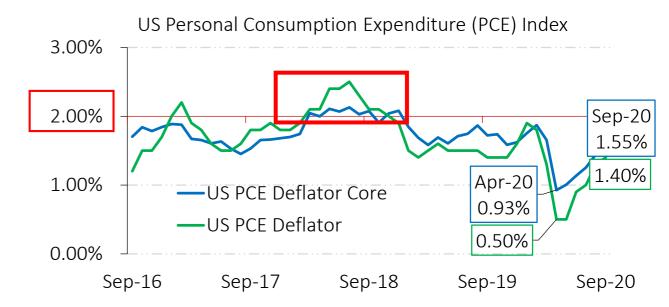
### Inflation and Growth

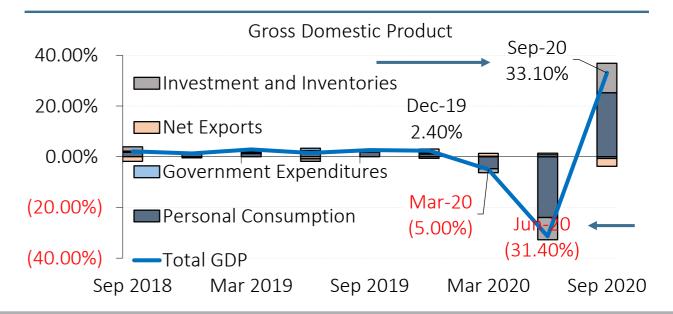
### Personal Consumption Expenditures

- PCE declined as demand dropped from economic closures across the globe in March and April.
- o The PCE and Consumer Prices (CPI) indexes remained stubbornly below the FOMC's previous target of 2.0% long before the COVID-19 pandemic.
- o Recently, the FOMC stated a change to the 2.0% inflation target approach since Chairman Bernanke put this in place in 2012.

### **GDP Contracts at Historic Level**

- o Gross Domestic Product contracts by the most ever since being recorded in 1947.....Then rebounds by the most ever
- O Personal consumption (-24.8%) and business investments (-4.8%) make up more than 85% of the economy.
- The strength and speed of the economic recovery will be dependent on consumer and business spending.

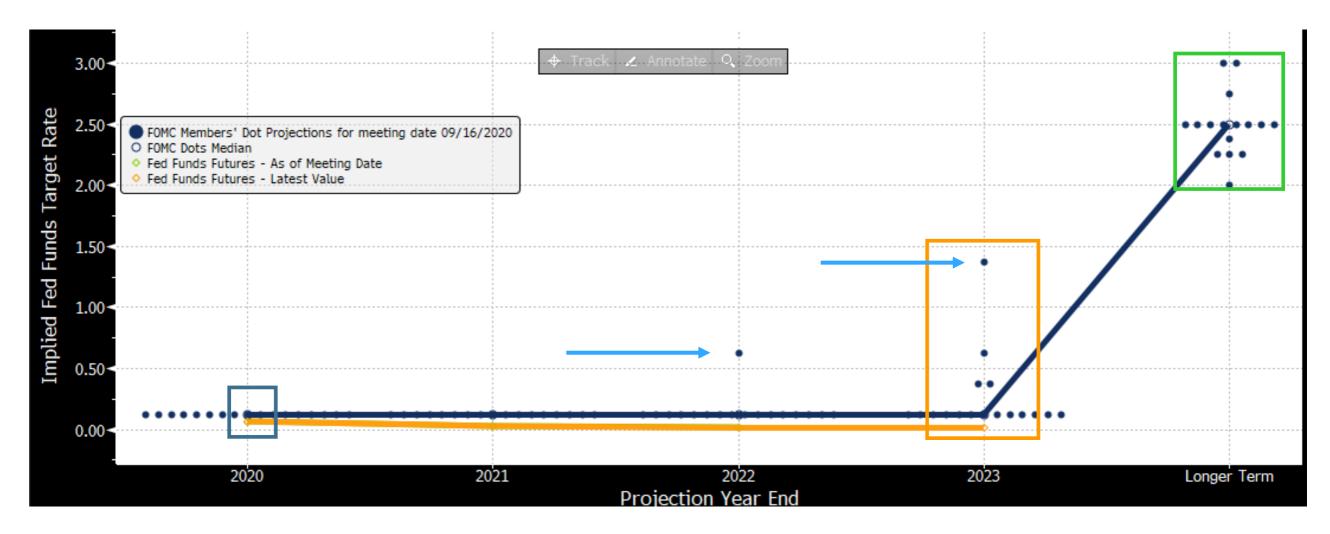






Source: Bloomberg

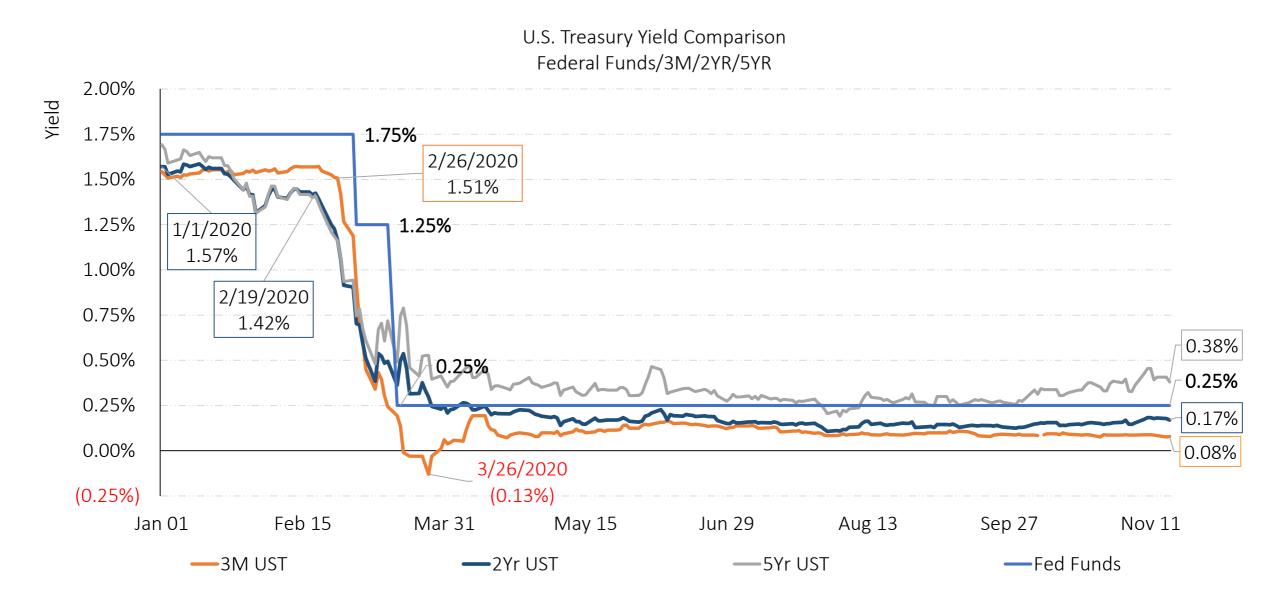
# Federal Open Market Committee Dot Plot – September 16, 2020



o The FOMC currently projects the overnight rate to remain at 0.00% - 0.25% through 2023.

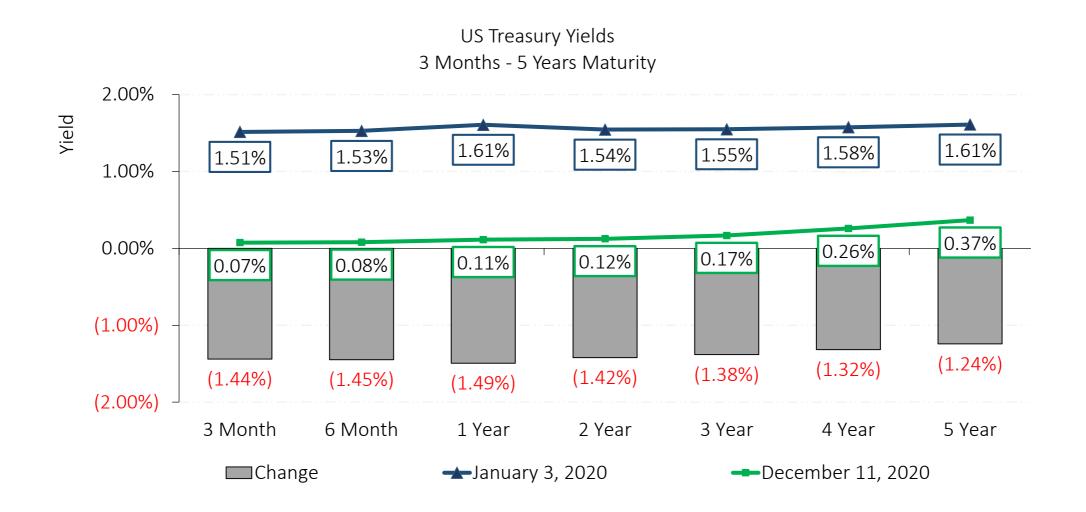


# U.S. Treasury Yields





# Yield Curve Begins to Show (Slight) Signs of Steepening

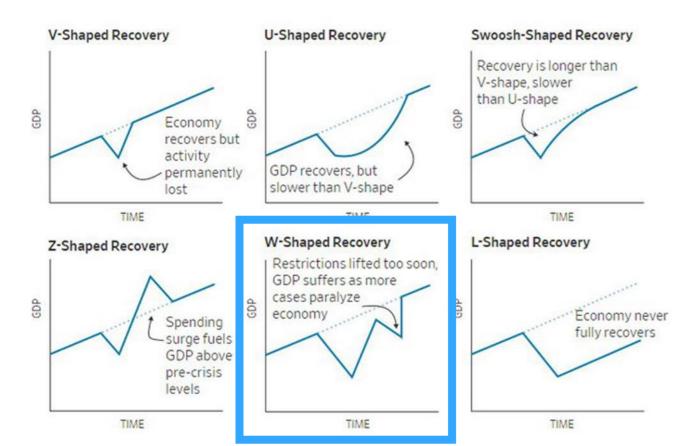


O While still near historical lows, the U.S. Treasury yield curve has begun to steepen in recent weeks.

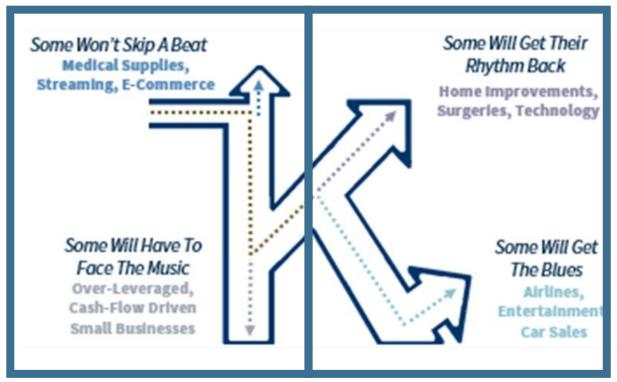


# Recovery Scenarios

### Original Scenarios



### Recent Suggested Recovery Scenario





# Investment Characteristics and Strategy for the City's Portfolio

- The City's overall investment program is well diversified.
- ✓ The portfolio is compliant with the City's investment policy.
- ✓ The strategy for the portfolio is consistent with strategic risk profile is key long-term investment success.
- ✓ The portfolio weighted average book yield of the longer term portfolios 1.61% is well above current market rates.
- ✓ We will continue to manage each portfolio with the disciplined duration and to complement the liquidity portfolio.
- ✓ This strategy has provided protection from reinvestment rate risk as interest rates have fallen to close to zero.
- ✓ Investment Net Income for the longer term portfolios for FY19/20 was \$3.9mm.
- ✓ Public Trust works closely with the City's Finance Team and Investment Committee to determine optimal investment strategies with a Safety first approach.
- ✓ The multiple duration approach has resulted in an investment program that seeks to minimize investment volatility and also ensure liquidity for ongoing cash flow needs.



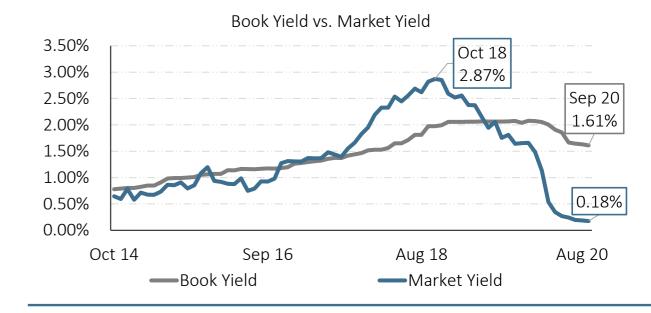
# The City's Long Term Portfolios – Historical Trends

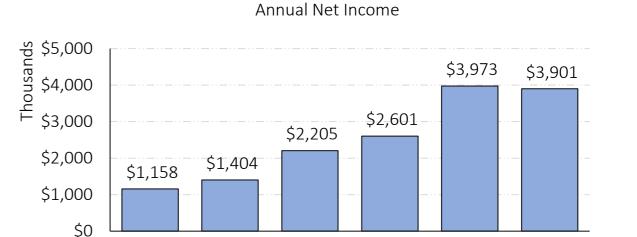
### Book Yield vs. Market Yield

- The investment portfolio book yield is significantly higher than current market yields as a result of the duration strategy that has protected the income from declining as drastically as interest rates.
- As of September 30<sup>th</sup> 62% of portfolio holdings are yielding 1.50% or higher and 32% of the portfolio holdings yielding 1.50% or higher have a maturity of 1 year of longer. This structure provides a hedge against immediate declines in income.

### Annual Net Income

- The City's disciplined approach to the longer duration investment strategy has resulted in higher net income during the rising interest rate environment.
- The portfolio strategy protected net income for FY19-20. Net Income declined slightly from the previous year even as rates fell from 3% in late 2018 to close to zero by March of 2020.





FY16-17

FY15-16

FY17-18

FY18-19

FY19-20



Source: Clearwater Analytics Public Trust Advisors 2020 © 13

FY14-15

# Disclosures

This presentation is for informational purposes only. The information contained herein has been obtained from sources that we believe to be reliable, but its accuracy and completeness are not guaranteed. The materials in the attached are opinions of Public Trust Advisors, LLC and should not be construed as investment advice. Many factors affect performance including changes in market conditions and interest rates and in response to other economic, political, or financial developments. Performance comparisons will be affected by changes in interest rates. Investing involves risk including the possible loss of principal. The presentation is not a recommendation to buy, sell, implement, or change any securities or investment strategy, function, or process. Any financial and/or investment decision should be made only after considerable research, consideration, and involvement with an experienced professional engaged for the specific purpose. All calculations and discussion presented are purely based on opinion and assumptions, not fact. These assumptions may or may not be correct based on foreseen and unforeseen events. All calculations and results presented and are for discussion purposes only and should not be used for making and calculations and/or decisions. **Past performance is not an indication of future performance. Any financial and/or investment decision may incur losses.** 

The investment advisor providing these services is Public Trust Advisors, LLC, an investment adviser registered with the U.S. Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940, as amended. Registration with the SEC does not imply a certain level of skill or training. Public Trust is required to maintain a written disclosure brochure of our background and business experience. If you would like to receive a copy of our current disclosure brochure, privacy policy, or code of ethics please contact us.

There is no guarantee that investment strategies will achieve the desired results under all market conditions, and each investor should evaluate its ability to invest long-term, especially during periods of a market downturn. This information may contain statements, estimates, or projections that constitute "forward-looking statements" as defined under U.S. federal and other jurisdictions' securities laws. Any such forward looking statements are inherently speculative and are based on currently available information, operating plans, and projections about future events and trends. As such, they are subject to numerous risks and uncertainties.

#### **Public Trust Advisors**

717 17th Street, Suite 1850 Denver, Colorado 80202





Asset Allocation as of	f September 30,	2020
------------------------	-----------------	------

Asset Allocation as of September 30, 2020											
	Sep	tember 30, 2020	Portfolio	Permitted			Sec.	September 30, 2020	Portfolio	Permitted	
Security Distribution <sup>(1)</sup> Ending Balance		Allocation by Policy <sup>(2)</sup> Cor		Compliant	iant Issuer Description <sup>(1)</sup>		<b>Ending Balance</b>	Allocation	by Policy <sup>(2)</sup>	Compliant	
Cash	\$	25,783,464.92	6.25%	100.00%	YES	FLCLASS <sup>(2)</sup>	Int Gov	\$ 68,979,288.90	16.72%	40.00%	YES
LGIP		67,548,999.04	16.38%	25.00%	YES	FL SAFE <sup>(2)</sup>	Int Gov	40,486,784.03	9.82%	40.00%	YES
U.S. Treasury Notes		99,419,546.44	24.10%	100.00%	YES	FL PRIME (SBA)(2)	LGIP	67,548,999.04	16.38%	40.00%	YES
U.S. Agency Notes		340,877.38	0.08%	25.00%	YES	MMF - Fidelity Prime	MMF	3,191,935.09	0.77%	10.00%	YES
FNMA		10,544,771.80	2.56%	25.00%	YES	Custody Cash	Cash	-	0.00%	100.00%	YES
FHLMC		23,758,198.54	5.76%	25.00%	YES	First Horizon Local Account	Cash	4,292,286.06	1.04%	100.00%	YES
FFCB		19,335,105.06	4.69%	25.00%	YES	BankUnited Local Account	Cash	7,411,340.84	1.80%	100.00%	YES
FHLB		32,270,718.21	7.82%	25.00%	YES	Bank of America Local Account <sup>(2)</sup>	Cash	14,079,838.02	3.41%	100.00%	YES
Fed Instrumentality Subtotal	\$	85,908,793.60	20.83%	80.00%	YES	U.S. Treasury Notes	UST	99,419,546.44	24.10%	100.00%	YES
Asset Backed Securities		-	0.00%	25.00%	YES	U.S. Agency Notes	US Agy	-	0.00%	25.00%	YES
Commercial Paper		-	0.00%	25.00%	YES	FNMA	GSE	9,878,608.88	2.40%	25.00%	YES
Corporate Notes		20,797,291.57	5.04%	25.00%	YES	FHLMC	GSE	21,062,174.29	5.11%	25.00%	YES
Bankers Acceptances		-	0.00%	25.00%	YES	FFCB	GSE	19,335,105.06	4.69%	25.00%	YES
Money Market Funds		3,191,935.09	0.77%	25.00%	YES	FHLB	GSE	32,270,718.21	7.82%	25.00%	YES
Municipal Bonds		-	0.00%	20.00%	YES	Apple Inc.	Corp	6,245,349.36	1.51%	5.00%	YES
Intergovernmental Funds 109,466,072.93		109,466,072.93	26.54%	40.00%	YES	Caterpillar Inc.	Corp	771,412.61	0.19%	5.00%	YES
Certificates of Deposit -		0.00%	25.00%	YES	Chevron Corp	Corp	4,251,153.03	1.03%	5.00%	YES	
Total Portfolio Market Value \$ 412,456,980.97		100.00%			Cisco Systems	Corp	1,363,270.68	0.33%	5.00%	YES	
						Exxon Mobil Corp	Corp	1,238,398.48	0.30%	5.00%	YES
		g Portfolio Allocatio	n			Johnson & Johnson	Corp	545,164.89	0.13%	5.00%	YES
		ed Inst 9.93%. MB	s .			Microsoft Corp	Corp	1,547,102.71	0.38%	5.00%	YES
U.S. Agy	1:	0.90	٠,	Corp .04%		Pfizer Inc.	Corp	1,029,586.79	0.25%	5.00%	YES
0.08%	_			.0470		Toyota Motor Credit Corp	Corp	2,507,802.69	0.61%	5.00%	YES
				_MMF		US Bank	Corp	1,298,050.33	0.31%	5.00%	YES
				0.77%			Corp	-	0.00%	5.00%	YES
U.S. Tsy					FNMA MBS	MBS	666,162.91	0.16%	5.00%	YES	
24.10%					FHLMC MBS	MBS	2,696,024.25	0.65%	5.00%	YES	
			GNMA MBS	MBS	340,877.38	0.08%	5.00%	YES			
Int Gov 26.54%				MBS	-	0.00%	5.00%	YES			
					MBS	-	0.00%	5.00%	YES		
LGIP Cash					MBS	-	0.00%	5.00%	YES		
6.25%							MBS		0.00%	5.00%	YES

**Total Portfolio Market Value** 

412,456,980.97

100.00%

<sup>(1)</sup> Mortgage backed securities included in security description and listed separately in issuer description. Public Trust managed assets represent market value plus accrued interest.

<sup>(2)</sup> External assets not managed by Public Trust, Information provided by City staff. Asset allocation limits defined in the City's investment policy.



Annual Investment Report for Period Ended September 30, 2020



City of Cape Coral 1-3 Year
1015 Cultural Park Blvd

Cape Coral, Florida 33990

Public Trust Advisors LLC 201 E. Pine Street, Suite 750 Orlando, Florida 32801



### City of Cape Coral 1-3 Year Summary

Investment Management Portfolio Review					
Investment Portfolio Summary Comparison	3				
Investment Portfolio Maturity Distribution	4				
Investment Portfolio Maturity Distribution By Security Type	5				
Investment Portfolio Rating Distribution	6				
Investment Portfolio Security Distribution - Market Value	7				
Investment Portfolio Security Distribution - Historical Cost	8				
Additional Disclosure	9				
Portfolio Holding Details	10				



### City of Cape Coral 1-3 Year Summary Comparison for the period October 1, 2019 to September 30, 2020

City of Cape Coral 1-3 Year		October 1, 2019 Beginning Balance		eptember 30, 2020 Ending Balance	Portfolio Characteristic	October 1, 2019 Beginning Balance	September 30, 2020 Ending Balance	
Historical Cost	\$	135,340,945.20	\$	138,279,378.58	Book Yield Gross	2.11%	1.60%	
Book Value	\$	135,583,398.32	\$	138,348,769.59	Market Yield Gross	1.83%	0.17%	
Accrued Interest		699,315.97	\$	600,536.55	Weighted Average Coupon	1.98%	1.82%	
<b>Book Value Plus Accrued</b>	\$	136,282,714.29	\$	138,949,306.14	Duration	1.06 Years	1.31 Years	
Net Unrealized Gain/Loss	\$	813,999.09	\$	1,862,908.69	Weighted Effective Maturity	1.08 Years	1.34 Years	
Market Value Plus Accrued <sup>(2)</sup>	\$	137,096,713.38	\$	140,812,214.83	Weighted Final Maturity	1.09 Years	1.35 Years	
Net Pending Transactions		684.91		2.82				
Market Value Plus Accrued Net <sup>(2)</sup> \$ 1		137,097,398.29	\$	140,812,217.65				
				September 2020				

### September 2020

City of Cape Coral 1-3 Year	Net Income			
Interest Income	\$	2,718,434.11		
Net Amortization/Accretion		(66,026.06)		
Net Realized Gain/Loss <sup>(3)</sup>		13,500.52		
Miscellaneous Income		0.00		
Net Income	\$	2,665,908.57		

<sup>(1)</sup> Payables represent amounts due to settle security transactions that have been executed but have not settled as of period end. The funds used to settle these trades may come from a variety of sources including cash within the portfolio, proceeds from future security transactions including maturities and sales, or other sources including money market funds. For reporting purposes, a payable is created for over-period settlements which are reflected in the detailed holdings.

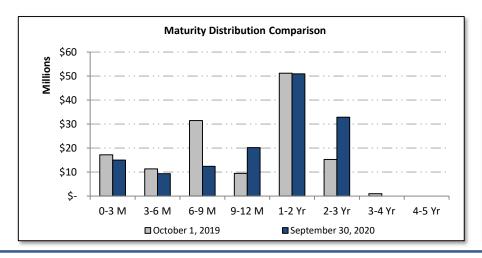
<sup>(2)</sup> Market Value Plus Accrued Net represents the market value of the portfolio net payables and recievables from transactions that settle in the following reporting period.

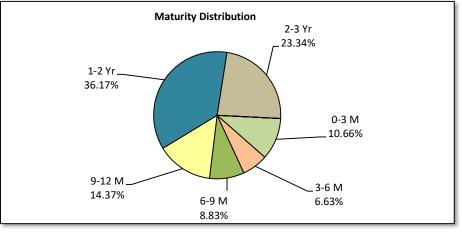
<sup>(3)</sup> MBS paydowns may result in negative realized losses rather than amortization in as a result of accounting method.



# City of Cape Coral 1-3 Year Maturity Distribution Market Value Basis October 1, 2019 to September 30, 2020

Maturity Distribution	October 1, 2019 Beginning Balance	September 30, 2020 Ending Balance	Portfolio Allocation	Distribution Change
0-3 Months	\$ 17,223,590.00	\$ 15,003,875.82	10.66%	-1.91%
3-6 Months	11,340,798.11	9,338,196.31	6.63%	-1.64%
6-9 Months	31,488,889.68	12,435,454.99	8.83%	-14.14%
9-12 Months	9,500,346.27	20,237,415.13	14.37%	7.44%
1-2 Years	51,228,746.59	50,935,950.17	36.17%	-1.19%
2-3 Years	15,297,160.55	32,861,322.42	23.34%	12.18%
3-4 Years	1,017,182.17	-	0.00%	-0.74%
4-5 Years	-	-	0.00%	0.00%
5-6 Years	-	-	0.00%	0.00%
6 Years +		<u> </u>	0.00%	0.00%
Total Portfolio	\$ 137,096,713.37	\$ 140,812,214.84	100.00%	

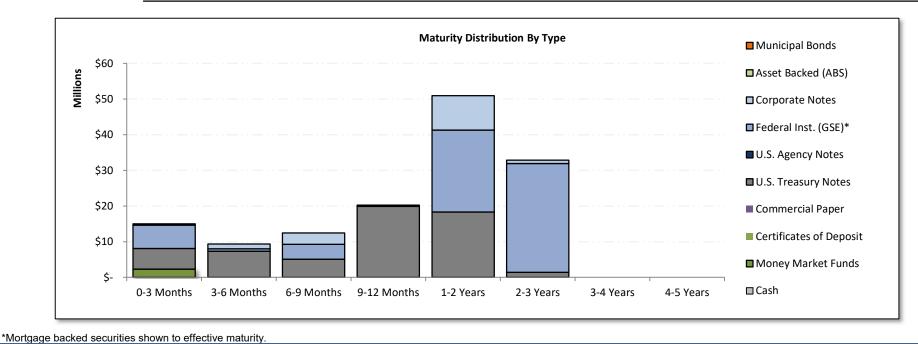






# City of Cape Coral 1-3 Year Maturity Distribution Market Value Basis as of September 30, 2020

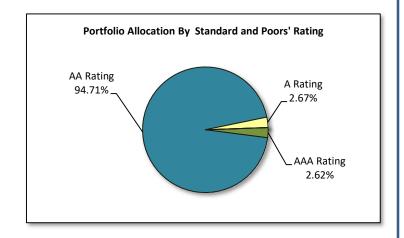
Security Distribution	C	-3 Months	3	-6 Months	6-9 I	Months	9.	-12 Months	1-2 Years	2-3 Years	3-4 Years	4-5 Years	T	otal Portfolio
Cash	\$	-	\$	-	\$	-	\$	-	\$ -	\$ -	\$ -	\$ -	\$	-
Money Market Funds		2,287,463		-		-		-	-	-	-	-		2,287,463
Certificates of Deposit		-		-		-		-	-	-	-	-		-
Commercial Paper		-		-		-		-	-	-	-	-		-
U.S. Treasury Notes		5,792,742		7,305,191	5,	115,968		19,877,742	18,345,689	1,425,749	-	-		57,863,080
U.S. Agency Notes		-		-		-		-	-	-	-	-		-
Federal Inst. (GSE)*		6,560,227		669,735	4,	.096,561		359,673	22,971,438	30,508,571	-	-		65,166,206
Corporate Notes		363,443		1,363,271	3,	222,926		-	9,618,823	927,002	-	-		15,495,465
Asset Backed (ABS)		-		-		-		-	-	-	-	-		-
Municipal Bonds		-		-		-		-	-	-	-	-		
Total	\$	15,003,876	\$	9,338,196	\$ 12,	435,455	\$	20,237,415	\$ 50,935,950	\$ 32,861,322	\$ -	\$ -	\$	140,812,215

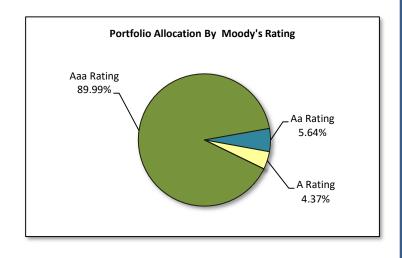




# City of Cape Coral 1-3 Year Rating Distribution Market Value Basis as of September 30, 2020

S&P Rating Distribution	-	otember 30, 2020 Ending Balance	Portfolio Allocation
Short Term Rating Distribution			
A-1+	\$	-	0.00%
A-1		-	0.00%
A-2			0.00%
<b>Total Short Term Ratings</b>	\$	-	0.00%
Long Term Rating Distribution			
AAA Rating	\$	3,682,308.37	2.62%
AA Rating		133,364,593.35	94.71%
A Rating		3,765,313.12	2.67%
Below A		-	0.00%
Not Rated		-	0.00%
Total Long Term Rating	\$	140,812,214.84	100.00%
Total Portfolio	\$	140,812,214.84	100.00%
Moody's Rating Distribution	-	otember 30, 2020 Ending Balance	Portfolio Allocation
Short Term Rating Distribution			
P-1	\$	-	0.00%
P-2		-	0.00%
<b>Total Short Term Ratings</b>	\$	-	0.00%
Long Term Rating Distribution			
Aaa Rating	\$	126,711,595.02	89.99%
Aa Rating	•	7,942,449.23	5.64%
A Rating		6,158,170.59	4.37%
Below A		- · ·	0.00%
Not Rated		-	0.00%
Total Long Term Rating	\$	140,812,214.84	100.00%
Total Portfolio	\$	140,812,214.84	100.00%

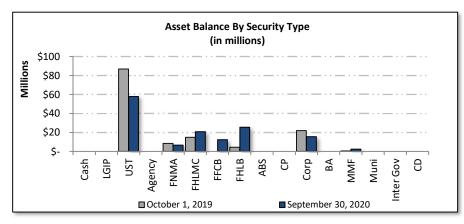


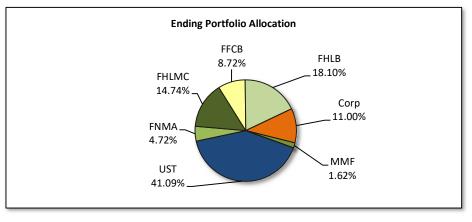




### City of Cape Coral 1-3 Year Market Value Basis Security Distribution October 1, 2019 to September 30, 2020

Security Distribution	October 1, 2019 eginning Balance	Portfolio Allocation	ptember 30, 2020 Ending Balance	Book Yield	Portfolio Allocation	Change in Allocation
Cash	\$ -	0.00%	\$ -	0.00%	0.00%	0.00%
LGIP	\$ -	0.00%	-	0.00%	0.00%	0.00%
U.S. Treasury Notes	86,781,831.21	63.30%	57,863,080.42	2.40%	41.09%	-22.21%
U.S. Agency Notes	-	0.00%	-	0.00%	0.00%	0.00%
FNMA	8,429,863.87	6.15%	6,640,183.83	1.89%	4.72%	-1.43%
FHLMC	14,934,549.01	10.89%	20,754,042.98	1.10%	14.74%	3.85%
FFCB	-	0.00%	12,284,639.63	0.59%	8.72%	8.72%
FHLB	4,432,472.96	3.23%	25,487,339.78	0.57%	18.10%	14.87%
Fed Instrumentality Subtotal	\$ 27,796,885.84	20.28%	\$ 65,166,206.23	0.88%	46.28%	26.00%
Asset Backed Securities	\$ -	0.00%	-	0.00%	0.00%	0.00%
Commercial Paper	-	0.00%	-	0.00%	0.00%	0.00%
Corporate Notes	21,970,374.62	16.03%	15,495,464.89	1.87%	11.00%	-5.02%
Bankers Acceptances	-	0.00%	-	0.00%	0.00%	0.00%
Money Market Funds	547,621.70	0.40%	2,287,463.30	0.01%	1.62%	1.23%
Municipal Bonds	-	0.00%	-	0.00%	0.00%	0.00%
Intergovernmental Funds	-	0.00%	-	0.00%	0.00%	0.00%
Certificates of Deposit	-	0.00%	-	0.00%	0.00%	0.00%
Total Portfolio Market Value	\$ 137,096,713.37	100.00%	\$ 140,812,214.84	1.60%	100.00%	



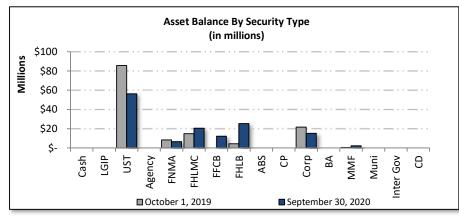


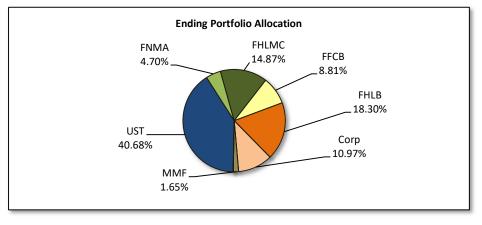
<sup>\*</sup>Permitted allocation based on aggregate assets as defined within the investment policy.



# City of Cape Coral 1-3 Year Historical Cost Basis Security Distribution October 1, 2019 to September 30, 2020

Security Distribution	October 1, 2019 Beginning Balance		Portfolio Allocation	-	otember 30, 2020 Ending Balance	Book Yield	Portfolio Allocation	Change in Allocation
Cash	\$	-	0.00%	\$	-	0.00%	0.00%	0.00%
LGIP		-	0.00%		-	0.00%	0.00%	0.00%
U.S. Treasury Notes	85	,578,935.50	63.23%		56,258,511.79	2.40%	40.68%	-22.55%
U.S. Agency Notes		-	0.00%		-	0.00%	0.00%	0.00%
FNMA	8,	,317,032.52	6.15%		6,503,862.87	1.89%	4.70%	-1.44%
FHLMC	14	,779,040.99	10.92%		20,562,196.43	1.10%	14.87%	3.95%
FFCB		-	0.00%		12,186,400.00	0.59%	8.81%	8.81%
FHLB	4	,435,056.00	3.28%		25,307,386.00	0.57%	18.30%	15.02%
Fed Instrumentality Subtotal	\$ 27	,531,129.51	20.34%	\$	64,559,845.31	0.88%	46.69%	26.35%
Asset Backed Securities		-	0.00%		-	0.00%	0.00%	0.00%
Commercial Paper		-	0.00%		-	0.00%	0.00%	0.00%
Corporate Notes	21	,683,258.50	16.02%		15,173,558.18	1.87%	10.97%	-5.05%
Bankers Acceptances		-	0.00%		-	0.00%	0.00%	0.00%
Money Market Funds		547,621.70	0.40%		2,287,463.30	0.01%	1.65%	1.25%
Municipal Bonds		-	0.00%		-	0.00%	0.00%	0.00%
Intergovernmental Funds		-	0.00%		-	0.00%	0.00%	0.00%
Certificates of Deposit		-	0.00%		-	0.00%	0.00%	0.00%
Total Portfolio Historical Cost	\$ 135	,340,945.20	100.00%	\$	138,279,378.58	1.60%	100.00%	





<sup>\*</sup>Permitted allocation based on aggregate assets as defined within the investment policy.



#### **Additional Disclosure**

This information is for the sole purposes of the client and is not intended to provide specific advice or recommendations. Please review the contents of this information carefully. Should you have any questions regarding the information presented, calculation methodology, investment portfolio, security detail, or any other facet of this information, please feel free to contact us.

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Clients may be permitted to establish one or more unmanaged accounts for the purposes of client reporting. Clients may also be permitted to provide externally managed assets for the purposes of client reporting. Public Trust defines unmanaged accounts or assets as one where the investment direction remains the sole responsibility of the client rather than the Investment Manager. Unmanaged accounts or external assets do not receive ongoing supervision and monitoring services. The Investment Manager does not make any investment recommendations and may not charge a fee for reporting on these accounts or assets. The primary purpose for this service is to include unmanaged accounts or assets owned by the client in the performance reports provided by the Investment Manager. The Investment Manager assumes no liability for the underlying performance of any unmanaged accounts or assets, and it is the client's sole responsibility for the accuracy or correctness of any such performance.

Beginning and ending balances are based on market value plus accrued interest on a trade date basis. Statements and reports made available to the end user either from Public Trust or through the online reporting platform may present information and portfolio analytics using various optional methods including, but not limited to, historical cost, amortized cost, and market value. All information is assumed to be correct, but the accuracy has not been confirmed and therefore is not guaranteed to be correct. Information is obtained from third party sources that may or may not be verified. The data in this report is unaudited and is only applicable for the date denoted on the report. Market values may change day-to-day based on numerous circumstances such as trading volume, news released about the underlying issuer, issuer performance, etc. Underlying market values may be priced via numerous aspects as certain securities are short term in nature and not readily traded. Performance results are shown net of all fees and expenses and reflect the reinvestment of dividends and other earnings.

Many factors affect performance including changes in market conditions and interest rates and in response to other economic, political, or financial developments. Investment involves risk including the possible loss of principal. No assurance can be given that the performance objectives of a given strategy will be achieved. Past performance is no guarantee of future results. Any financial and/or investment decision may incur losses.

The investment advisor providing these services is Public Trust Advisors, LLC, an investment adviser registered with the U.S. Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940, as amended. Registration with the SEC does not imply a certain level of skill or training. Public Trust is required to maintain a written disclosure brochure of our background and business experience. If you would like to receive a copy of our current disclosure brochure, Privacy Policy, or Code of Ethics, or have any questions regarding your account please contact us.

Public Trust Advisors 717 17th Street, Suite 1850 Denver, CO 80202



# City of Cape Coral 1-3 Year Detail

**Portfolio Holdings** 

Portfolio Income

**Portfolio Transactions** 

**Issuer Concentration** 

**Security Concentration** 

**Portfolio Activity Summary** 



Annual Investment Report for Period Ended September 30, 2020



City of Cape Coral 1-5 Year 1015 Cultural Park Blvd Cape Coral, Florida 33990

Public Trust Advisors LLC 201 E. Pine Street, Suite 750 Orlando, Florida 32801



# City of Cape Coral 1-5 Year Summary

Investment Management Portfolio Review	Page
Investment Portfolio Summary Comparison	3
Investment Portfolio Maturity Distribution	4
Investment Portfolio Maturity Distribution By Security Type	5
Investment Portfolio Rating Distribution	6
Investment Portfolio Security Distribution - Market Value	7
Investment Portfolio Security Distribution - Historical Cost	8
Additional Disclosure	9
Portfolio Holding Details	10



### City of Cape Coral 1-5 Year Summary Comparison for the period October 1, 2019 to September 30, 2020

City of Cape Coral 1-5 Year	october 1, 2019 ginning Balance	otember 30, 2020 Ending Balance	Portfolio Characteristic	October 1, 2019 Beginning Balance	September 30, 2020 Ending Balance
Historical Cost	\$ 65,719,387.97	\$ 67,096,879.68	<b>Book Yield Gross</b>	1.98%	1.66%
Book Value	\$ 65,554,146.82	\$ 66,805,464.92	Market Yield Gross	1.76%	0.19%
Accrued Interest	 324,210.54	\$ 308,315.34	Weighted Average Coupon	2.05%	2.01%
Book Value Plus Accrued	\$ 65,878,357.35	\$ 67,113,780.26	Duration	1.73 Years	1.94 Years
Net Unrealized Gain/Loss	\$ 490,950.62	\$ 1,732,448.99	Weighted Effective Maturity	1.81 Years	2.02 Years
Market Value Plus Accrued <sup>(2)</sup>	\$ 66,369,307.98	\$ 68,846,229.25	Weighted Final Maturity	1.94 Years	2.11 Years
Net Pending Transactions	 202.50	0.60			
Market Value Plus Accrued Net <sup>(2)</sup>	\$ 66,369,510.48	\$ 68,846,229.85			
		 entember 2020			

#### September 2020

City of Cape Coral 1-5 Year	Net Income				
Interest Income	\$	1,363,322.80			
Net Amortization/Accretion		(122,105.55)			
Net Realized Gain/Loss <sup>(3)</sup>		(5,996.24)			
Miscellaneous Income		0.00			
Net Income	\$	1,235,221.01			

<sup>(1)</sup> Payables represent amounts due to settle security transactions that have been executed but have not settled as of period end. The funds used to settle these trades may come from a variety of sources including cash within the portfolio, proceeds from future security transactions including maturities and sales, or other sources including money market funds. For reporting purposes, a payable is created for over-period settlements which are reflected in the detailed holdings.

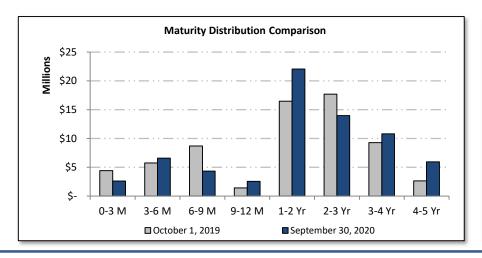
<sup>(2)</sup> Market Value Plus Accrued Net represents the market value of the portfolio net payables and recievables from transactions that settle in the following reporting period.

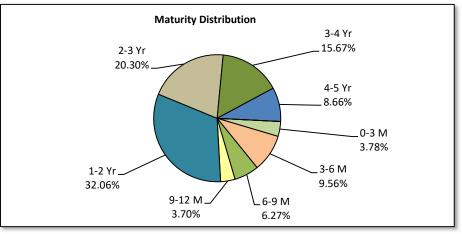
<sup>(3)</sup> MBS paydowns may result in negative realized losses rather than amortization in as a result of accounting method.



# City of Cape Coral 1-5 Year Maturity Distribution Market Value Basis October 1, 2019 to September 30, 2020

Maturity Distribution	October 1, 2019 Beginning Balance	September 30, 2020 Ending Balance	Portfolio Allocation	Distribution Change		
0-3 Months	\$ 4,431,716.28	\$ 2,603,154.04	3.78%	-2.90%		
3-6 Months	5,763,111.90	6,579,286.67	9.56%	0.87%		
6-9 Months	8,687,587.10	4,318,973.41	6.27%	-6.82%		
9-12 Months	1,401,026.15	2,550,282.40	3.70%	1.59%		
1-2 Years	16,493,286.41	22,070,794.04	32.06%	7.21%		
2-3 Years	17,693,982.21	13,973,428.13	20.30%	-6.36%		
3-4 Years	9,271,325.50	10,789,876.37	15.67%	1.70%		
4-5 Years	2,627,272.43	5,960,434.19	8.66%	4.70%		
5-6 Years	-	-	0.00%	0.00%		
6 Years +		<u> </u>	0.00%	0.00%		
Total Portfolio	\$ 66,369,307.98	\$ 68,846,229.24	100.00%			

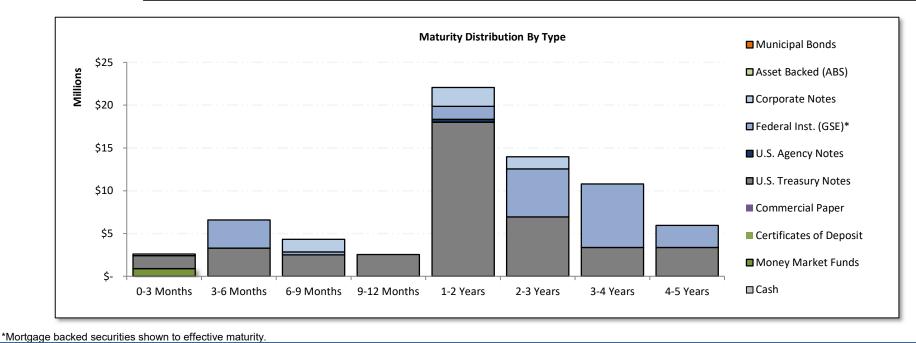






# City of Cape Coral 1-5 Year Maturity Distribution Market Value Basis as of September 30, 2020

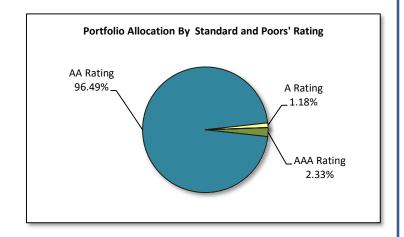
Security Distribution	0-	-3 Months	3-	6 Months	6-	-9 Months	9-	-12 Months	1-2 Years	2-3 Years	3-4 Years	4-5 Years	To	tal Portfolio
Cash	\$	-	\$	-	\$	-	\$	-	\$ -	\$ -	\$ -	\$ -	\$	-
Money Market Funds		904,472		-		-		-	-	-	-	-		904,472
Certificates of Deposit		-		-		-		-	-	-	-	-		-
Commercial Paper		-		-		-		-	-	-	-	-		-
U.S. Treasury Notes		1,516,961		3,292,533		2,521,570		2,550,282	18,008,216	6,930,263	3,368,525	3,368,117		41,556,466
U.S. Agency Notes		-		-		-		-	340,877	-	-	-		340,877
Federal Inst. (GSE)*		-		3,286,754		323,718		-	1,507,402	5,611,044	7,421,351	2,592,317		20,742,587
Corporate Notes		181,722		-		1,473,685		-	2,214,299	1,432,121	-	-		5,301,827
Asset Backed (ABS)		-		-		-		-	-	-	-	-		-
Municipal Bonds		-		-		-		-	-	-	-	-		-
Total	\$	2,603,154	\$	6,579,287	\$	4,318,973	\$	2,550,282	\$ 22,070,794	\$ 13,973,428	\$ 10,789,876	\$ 5,960,434	\$	68,846,229

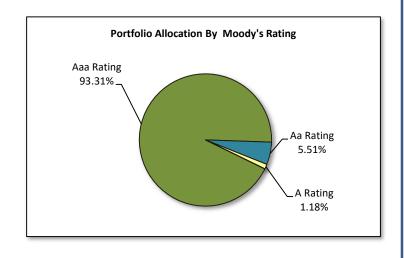




# City of Cape Coral 1-5 Year Rating Distribution Market Value Basis as of September 30, 2020

S&P Rating Distribution	-	tember 30, 2020 nding Balance	Portfolio Allocation
Short Term Rating Distribution			
A-1+	\$	-	0.00%
A-1		-	0.00%
A-2		-	0.00%
<b>Total Short Term Ratings</b>	\$	-	0.00%
Long Term Rating Distribution			
AAA Rating	\$	1,601,894.33	2.33%
AA Rating		66,432,382.41	96.49%
A Rating		811,952.51	1.18%
Below A		-	0.00%
Not Rated		-	0.00%
Total Long Term Rating	\$	68,846,229.24	100.00%
Total Portfolio	\$	68,846,229.24	100.00%
	-	tember 30, 2020	Double Allegation
Moody's Rating Distribution	. —	nding Balance	Portfolio Allocation
Short Term Rating Distribution			/
P-1	\$	-	0.00%
P-2	<b>A</b>	-	0.00%
Total Short Term Ratings	\$	-	0.00%
Long Term Rating Distribution			
Aaa Rating	\$	64,241,825.10	93.31%
Aa Rating		3,792,451.63	5.51%
A Rating		811,952.51	1.18%
Below A		-	0.00%
Not Rated		<u>-</u>	0.00%
Total Long Term Rating	\$	68,846,229.24	100.00%
Total Portfolio	\$	68,846,229.24	100.00%

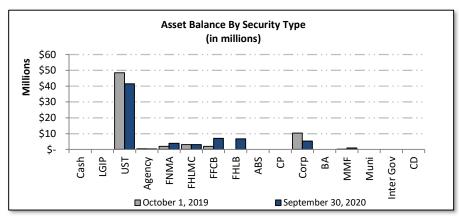


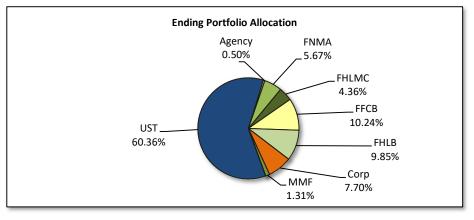




### City of Cape Coral 1-5 Year Market Value Basis Security Distribution October 1, 2019 to September 30, 2020

Security Distribution	October 1, 2019 Beginning Balance		Portfolio Allocation	•	otember 30, 2020 Ending Balance	Book Yield	Portfolio Allocation	Change in Allocation	
Cash	\$	-	0.00%	\$	-	0.00%	0.00%	0.00%	
LGIP	\$	-	0.00%		-	0.00%	0.00%	0.00%	
U.S. Treasury Notes		48,518,209.11	73.10%		41,556,466.01	1.94%	60.36%	-12.74%	
U.S. Agency Notes		451,422.16	0.68%		340,877.38	1.36%	0.50%	-0.19%	
FNMA		1,985,134.53	2.99%		3,904,587.96	1.15%	5.67%	2.68%	
FHLMC		2,987,205.01	4.50%		3,004,155.55	2.72%	4.36%	-0.14%	
FFCB		1,973,437.18	2.97%		7,050,465.44	1.01%	10.24%	7.27%	
FHLB		-	0.00%		6,783,378.42	0.48%	9.85%	9.85%	
Fed Instrumentality Subtotal	\$	6,945,776.72	10.47%	\$	20,742,587.38	1.11%	30.13%	19.66%	
Asset Backed Securities	\$	-	0.00%		-	0.00%	0.00%	0.00%	
Commercial Paper		-	0.00%		-	0.00%	0.00%	0.00%	
Corporate Notes		10,363,966.76	15.62%		5,301,826.68	1.87%	7.70%	-7.91%	
Bankers Acceptances		-	0.00%		-	0.00%	0.00%	0.00%	
Money Market Funds		89,933.23	0.14%		904,471.79	0.01%	1.31%	1.18%	
Municipal Bonds		-	0.00%		-	0.00%	0.00%	0.00%	
Intergovernmental Funds		-	0.00%		-	0.00%	0.00%	0.00%	
Certificates of Deposit		<u>-</u>	0.00%		-	0.00%	0.00%	0.00%	
<b>Total Portfolio Market Value</b>	\$	66,369,307.98	100.00%	\$	68,846,229.24	1.66%	100.00%		



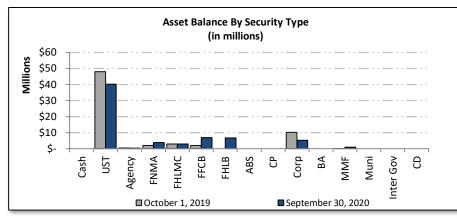


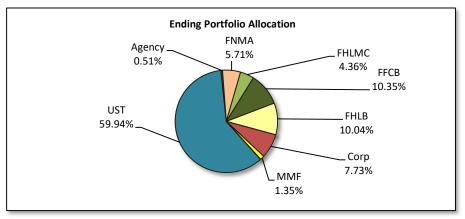
<sup>\*</sup>Permitted allocation based on aggregate assets as defined within the investment policy.



# City of Cape Coral 1-5 Year Historical Cost Basis Security Distribution October 1, 2019 to September 30, 2020

Security Distribution	October 1, 2019 Beginning Balance		Portfolio Allocation	September 30, 2020 Ending Balance		Book Yield	Portfolio Allocation	Change in Allocation
Cash	\$	-	0.00%	\$	-	0.00%	0.00%	0.00%
U.S. Treasury Notes		48,054,712.97	73.12%		40,219,704.37	1.94%	59.94%	-13.18%
U.S. Agency Notes		466,081.55	0.71%		343,398.10	1.36%	0.51%	-0.20%
FNMA		1,995,003.60	3.04%		3,829,945.26	1.15%	5.71%	2.67%
FHLMC		2,926,672.27	4.45%		2,926,672.27	2.72%	4.36%	-0.09%
FFCB		1,955,830.50	2.98%		6,947,840.50	1.01%	10.35%	7.38%
FHLB		-	0.00%		6,737,785.75	0.48%	10.04%	10.04%
Fed Instrumentality Subtotal	\$	6,877,506.37	10.46%	\$	20,442,243.78	1.11%	30.47%	20.00%
Asset Backed Securities		-	0.00%		-	0.00%	0.00%	0.00%
Commercial Paper		-	0.00%		-	0.00%	0.00%	0.00%
Corporate Notes		10,231,153.85	15.57%		5,187,061.64	1.87%	7.73%	-7.84%
Bankers Acceptances		-	0.00%		-	0.00%	0.00%	0.00%
Money Market Funds		89,933.23	0.14%		904,471.79	0.01%	1.35%	1.21%
Municipal Bonds		-	0.00%		-	0.00%	0.00%	0.00%
Intergovernmental Funds		-	0.00%		-	0.00%	0.00%	0.00%
Certificates of Deposit		<u>-</u>	0.00%		<u>-</u>	0.00%	0.00%	0.00%
<b>Total Portfolio Historical Cost</b>	\$	65,719,387.97	100.00%	\$	67,096,879.68	1.66%	100.00%	





<sup>\*</sup>Permitted allocation based on aggregate assets as defined within the investment policy.



#### **Additional Disclosure**

This information is for the sole purposes of the client and is not intended to provide specific advice or recommendations. Please review the contents of this information carefully. Should you have any questions regarding the information presented, calculation methodology, investment portfolio, security detail, or any other facet of this information, please feel free to contact us.

Public Trust Advisors, LLC (Public Trust) statements and reports are intended to detail our investment advisory activity as well as the activity of certain client accounts managed by Public Trust. The custodian bank maintains the control of assets and executes and settles all investment transactions. The custodian statement is the official record of security and cash holdings transactions. Public Trust recognizes that clients may use these reports to facilitate record keeping; therefore, it is recommended that the client reconcile this information with their custodian bank statement. Many custodians use a settlement date basis that may result in the need to reconcile due to a timing difference. The underlying market value, amortized cost, and accrued interest may differ between the custodian and this statement or report. This can be attributed to differences in calculation methodologies and pricing sources used.

Public Trust does not have the authority to withdraw funds from or deposit funds to the custodian. Our clients retain responsibility for their internal accounting policies, implementing and enforcing internal controls, and generating ledger entries or otherwise recording transactions. The total market value represents prices obtained from various sources; it may be impacted by the frequency at which prices are reported, and such prices are not guaranteed. Prices received from pricing vendors are generally based on current market quotes but when such quotes are not available, the pricing vendors use a variety of techniques to estimate value. These estimates, particularly for fixed-income securities, may be based on certain minimum principal amounts (e.g. \$1 million) and may not reflect all the factors that affect the value of the security including liquidity risk. The prices provided are not firm bids or offers. Certain securities may reflect N/A or unavailable where the price for such security is generally not available from a pricing source. The market value of a security, including those priced at par value, may differ from its purchase price and may not closely reflect the value at which the security may be sold or purchased based on various market factors. The securities in this investment portfolio, including shares of mutual funds, are not guaranteed or otherwise protected by Public Trust, the FDIC (except for certain non-negotiable certificates of deposit), or any government agency unless specifically stated otherwise.

Clients may be permitted to establish one or more unmanaged accounts for the purposes of client reporting. Clients may also be permitted to provide externally managed assets for the purposes of client reporting. Public Trust defines unmanaged accounts or assets as one where the investment direction remains the sole responsibility of the client rather than the Investment Manager. Unmanaged accounts or external assets do not receive ongoing supervision and monitoring services. The Investment Manager does not make any investment recommendations and may not charge a fee for reporting on these accounts or assets. The primary purpose for this service is to include unmanaged accounts or assets owned by the client in the performance reports provided by the Investment Manager. The Investment Manager assumes no liability for the underlying performance of any unmanaged accounts or assets, and it is the client's sole responsibility for the accuracy or correctness of any such performance.

Beginning and ending balances are based on market value plus accrued interest on a trade date basis. Statements and reports made available to the end user either from Public Trust or through the online reporting platform may present information and portfolio analytics using various optional methods including, but not limited to, historical cost, amortized cost, and market value. All information is assumed to be correct, but the accuracy has not been confirmed and therefore is not guaranteed to be correct. Information is obtained from third party sources that may or may not be verified. The data in this report is unaudited and is only applicable for the date denoted on the report. Market values may change day-to-day based on numerous circumstances such as trading volume, news released about the underlying issuer, issuer performance, etc. Underlying market values may be priced via numerous aspects as certain securities are short term in nature and not readily traded. Performance results are shown net of all fees and expenses and reflect the reinvestment of dividends and other earnings.

Many factors affect performance including changes in market conditions and interest rates and in response to other economic, political, or financial developments. Investment involves risk including the possible loss of principal. No assurance can be given that the performance objectives of a given strategy will be achieved. Past performance is no guarantee of future results. Any financial and/or investment decision may incur losses.

The investment advisor providing these services is Public Trust Advisors, LLC, an investment adviser registered with the U.S. Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940, as amended. Registration with the SEC does not imply a certain level of skill or training. Public Trust is required to maintain a written disclosure brochure of our background and business experience. If you would like to receive a copy of our current disclosure brochure, Privacy Policy, or Code of Ethics, or have any questions regarding your account please contact us.

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# City of Cape Coral 1-5 Year Detail

**Portfolio Holdings** 

Portfolio Income

**Portfolio Transactions** 

**Issuer Concentration** 

**Security Concentration** 

**Portfolio Activity Summary**