

**Mayor**

Joe Coviello

**Council Members**

District 1: John Gunter

District 2: John M. Carioscia Sr.

District 3: Marilyn Stout

District 4: Jennifer I. Nelson

District 5: Dave Stokes

District 6: Richard Williams

District 7: Jessica Cosden



1015 Cultural Park Blvd.  
Cape Coral, FL

**City Manager**

John Szerlag

**City Attorney**

Dolores Menendez

**City Auditor**

Andrea R. Butola

**City Clerk**

Rebecca van Deutekom

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

May 7, 2018

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 CARIOSCIA

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

A. TERYN LAYMANCE - DIPLOMAT ELEMENTARY

#### **4. ROLL CALL**

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

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

#### **6. RECOGNITIONS/ACHIEVEMENTS**

A. The Westin Tarpon Point Ballroom Recognition

B. Fleet Recognition

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

A. Regular Meeting - April 16, 2018

#### **8. BUSINESS**

A. PUBLIC COMMENT - CONSENT AGENDA

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

B. CONSENT AGENDA

- (1) Resolution 58-18 Approve PB-FIN18-39CV piggybacking The Cooperative Purchasing Network (TCPN) contract #R142104 with Lowe's Home Centers, LLC for the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis at an estimated annual cost of \$120,000.00 not to exceed budgetary limits, and authorize the City Manager or Designee to execute the contract, amendments, and renewals; Department: Citywide; Dollar Value: \$120,000; (General Fund)
- (2) Resolution 79-18 Award RFP-FIN17-78/KS Actuarial Services to Madison Consulting Group, Inc., for Self-Insurance Funds Incurred but Not Reported (IBNR) and Bolton Partners, Inc., for Other Post-Employment Benefits; Retiree Drug Subsidy Medicare Part D and Self-Funded Health Insurance, at the unit prices stated in the contract at an estimated annual cost of \$22,000 not to exceed budgetary limits and authorize the City Manager or Designee to execute the contracts, amendments, renewals and all required documents. The term of the contract is for three (3) years with two (2) additional one (1) year renewal periods – the term of the contract dollar value, if monies appropriated in the subsequent fiscal years, is a total of \$66,000; Department: Finance; Estimated Annual Dollar Value: \$22,000; {total of \$66,000} (General Fund)
- (3) Resolution 85-18 Approve piggyback of US Communities sponsored Maricopa County, AZ contract #16154 with Home Depot U.S.A., Inc. for the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis at an estimated annual cost of \$66,000, not to exceed budgetary limits, and authorize the City Manager or Designee to execute the purchase orders and related documents; Department: Citywide; Estimated Annual Dollar Value: \$66,000; (General Fund)
- (4) Resolution 86-18 Approve piggyback of National IPA sponsored City of Tucson, AZ contract #141003 with W.W. Grainger, Inc. for the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis at an estimated annual cost of \$175,000, not to exceed budgetary limits, and authorize the City Manager or Designee to execute the purchase orders and related documents; Department: Citywide; Estimated Dollar Value: \$175,000; (General Fund)
- (5) Resolution 88-18 Award ITB-UT18-35/KR Acidization of



Select Upper Floridan Wellfield Supply Wells for the North Reverse Osmosis (NRO) and Southwest Reverse Osmosis (SWRO) Water Treatment Plants (WTP) to A.C. Schultes of Florida Inc. located in Gibsonton, Florida to provide "Well Acidization Services" as the lowest responsive, responsible bidder for the initial project of six (6) wells in the amount of \$536,910 with a 10% City controlled contingency of \$53,691 for a total of \$590,601 and Approve continued use of the contract for individual work assignments, for "Well Acidization Services", based on the unit prices shown in agreement up to the annual budgetary limits and authorize the City Manager or designee to execute the contract, amendment and renewals; Department: Utilities; Dollar Value: \$590,601 for initial project {annual budget \$800,000; after FY19, \$1.6 million each year in FY20 and FY21; (Water and Sewer Fund)

- (6) Resolution 92-18 Approval of Purchase Contract for the purchase of Lots 24 through 29, Block 1548, Unit 17, Cape Coral Subdivision, 2025 NE 6th Street, for a future Fire Station site for the purchase price of \$90,000 plus closing costs not to exceed \$2,500; Department: Financial Services / Real Estate Division; Dollar Value: \$92,500; (Fire Impact Fee Fund); Note: Trade offer rejected by Seller.

#### C. CITIZENS INPUT TIME

A maximum of 60 minutes is set for input of citizens on matters concerning the City Government to include Resolutions appearing in sections other than Consent Agenda or Public Hearing; 3 minutes per individual.

#### D. PERSONNEL ACTIONS

- (1) Resolution 97-18 Approval to reclassify 3 vacant Building Inspectors to Senior Inspectors, reclassify 1 vacant Building Inspector to a Chief Plans Examiner/Inspector, add 2 new Customer Service Representatives, reclassify 2 vacant Customer Service Representatives to 2 Senior Customer Service Representatives, and add 1 new Construction Inspector, within the Department of Community Development; Department: Human Resources; Dollar Amount: FY 2018 amount of \$80,575 is within budget/Recurring cost for FY 2019 is \$205,505; (Building Fund)
- (2) Resolution 100-18 Approval to reclassify 1 vacant Survey Crew Chief to a Land Surveyor/Senior Surveyor, creating two new classifications, within the Public Works Department; Department: Human Resources; Dollar Value: FY 2018 amount of \$4,864 is within budget/Recurring cost for FY 2019 is \$12,407; (General Fund)

#### E. PETITIONS TO COUNCIL

(1) NONE

F. APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

(1) NONE

**9. ORDINANCES/RESOLUTIONS**

A. Public Hearings

(1) Ordinance 26-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends Chapter 2, Administration, Article VI, Pensions, Division 2, Firefighter Pension of the Code of Ordinances, to amend Sections 2-122.1, Definitions; 2-122.6, Benefit Amounts and Eligibility; 2-122.8, Disability; 2-122.9, Vesting; 2-122.10, Optional Forms of Benefits; 2-122.15, Maximum Pension; 2-122.27, Deferred Retirement Option Plan (DROP); 2-122.28, Prior Fire Service; 2-122.29, Reemployment after Retirement; and establishing Section 2-122.30, Defined Contribution Component (Share Plan). (Applicant: Brought forward by City Management)

(2) Ordinance 27-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 1, Police Pension, to amend Section 2-121.1, Definitions; Section 2-121.4, Finances and Fund Management; Establishment and Operation of Fund; Section 2-121.6, Benefit Amounts and Eligibility; Section 2-121.9, Vesting; Section 2-121.10, Optional Forms of Benefits; Section 2-121.15, Maximum Pension; Section 2-121.27, Deferred Retirement Option Plan (DROP); Section 2-121.28, Prior Police Service; and Section 2-121.9, Reemployment after Retirement. (Applicant: Brought forward by City Management)

(3) Ordinance 28-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 3, General Employees Pension, to amend Section 2-123.1, Definitions; Section 2-123.4, Finances and Fund Management; Establishment and Operation of Fund; Section 2-123.6, Benefit Amounts and Eligibility; Section 2-123.7, Death Benefits; Section 2-123.8, Optional Forms of Benefits; Section 2-123.9, Vesting; Section 2-123.13, Maximum Pension; Section 2-123.24, Deferred Retirement Option Plan (DROP); Section 2-123.25, Purchase of Nonqualified Service Credit; Section 2-123.26, Prior Government Service; and Section 2-123.27, Reemployment After Retirement. (Applicant:

Brought forward by City Management)

(4) Ordinance 30-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An Ordinance authorizing the issuance of not to exceed \$8,100,000 in aggregate principal amount of Debt Obligations to finance the acquisition and construction of a Fire Station and various Streetscape Improvements; Providing for a covenant to budget and appropriate legally available non-ad valorem revenues to pay the principal, redemption premium, if any, and interest on the Debt Obligations; and providing for the rights of the holders of such debt obligations. (Applicant: Brought forward by City Management.)

(5) Resolution 106-18 Public Input Loan from Iberiabank to finance a Fire Station and Streetscape Improvements

WHAT THE RESOLUTION ACCOMPLISHES:

The Resolution accepts a proposal of Iberiabank to provide the City with a loan in order to finance the acquisition and construction of a fire station and various streetscape improvements; approves the form of a loan agreement; authorizes the issuance of a promissory note pursuant to such loan agreement in the aggregate principal amount of not to exceed \$8,100,000 in order to evidence such loan; authorizing the repayment of such note from a covenant to budget and appropriate legally available non-ad valorem revenues; delegating certain authority to the Mayor, City Manager and other officers of the City for the authorization, execution and delivery of the loan agreement, promissory note, and various other documents with respect thereto. (Applicant: Brought forward by City Manager.)

(6) Ordinance 33-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 12, Offenses and Miscellaneous Provisions, by establishing Article XII, Parking on Public Property, to provide regulations for parking trailers in City-owned or controlled parking lots in the South Cape Downtown District. (Applicant: Brought forward by Councilmember Gunter)

B. Introductions

(1) Resolution 83-18 (VP 17-0019\*) Set Public Hearing Date for May 14, 2018

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

WHAT THE RESOLUTION ACCOMPLISHES:

A resolution providing for the vacation of plat for all platted

interior lot lines and public utility and drainage easements lying within Blocks 4722-4725, Cape Coral Unit 70; property located at 3514 Chiquita Boulevard. (Applicant: Newcom Real Properties, LLC)

Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions set forth in Hearing Examiner Recommendation Order 5-2018.

City Management Recommendation: City Management recommends approval.

- (2) Ordinance 9-18 Set Public Hearing Date for June 4, 2018

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 8, Fire Prevention and Emergency Management, Article II, Fire Prevention, by amending Section 8-10, City of Cape Coral Fire Prevention and Protection Code Adopted; Amendments to Fire Codes, to be consistent with the current edition of the National Fire Codes; Establishing Section 8-14, Burn Ban Implementation Procedures, providing procedures to ban open burning when extreme dry conditions warrant a ban; by amending Article IV, Emergency Management, to provide for the declaration of a state of local emergency in preparation for or response to an emergency or disaster; to prohibit the sale of beer in the Alcoholic Beverage Prohibition; to amend Removal of Debris to include conditions affecting public health and safety; amending termination provisions. (Applicant: Brought forward by City Management)

- (3) Ordinance 34-18 Set Public Hearing Date for June 4, 2018

**WHAT THE ORDINANCE ACCOMPLISHES:**

The ordinance amends the Code of Ordinances, Chapter 12, "Offenses and Miscellaneous Provisions", Article II, "Offenses Creating Nuisances", Section 12-23 to provide regulations for parking commercial vehicles and trailers on certain public streets posted with signs. (Applicant: Brought forward by Councilmember Gunter.)

## **10. UNFINISHED BUSINESS**

- A. Water Quality - Update
- B. Follow Up Items for Council
- C. Southwest Florida Regional Planning Council Membership

## **11. NEW BUSINESS**

- A. FLC Board of Directors Selection (Brought forward by Mayor Pro Tem Williams)
- B. Burnt Store Road Right-of-Way Committee Discussion (Brought forward by Councilmember Cosden)

- C. Reinstatement of Parks Master Plan Stakeholders Group (Brought forward by City Manager)

**12. REPORTS OF THE MAYOR AND COUNCIL MEMBERS**

**13. REPORTS OF THE CITY ATTORNEY AND CITY MANAGER**

**14. TIME AND PLACE OF FUTURE MEETINGS**

- A. A Regular Meeting of the Cape Coral City Council is Scheduled for Monday, May 14, 2018 at 4:30 p.m. in Council Chambers

**15. MOTION TO ADJOURN**

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

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

Persons wishing to address Council under Citizens Input or the Consent Agenda may do so during the designated times at each meeting. No prior scheduling is necessary.

All speakers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

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

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

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

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

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

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

Item Number:	6.B.
Meeting Date:	5/7/2018
Item Type:	RECOGNITIONS/ACHIEVEMENTS

**AGENDA  
REQUEST FORM**  
CITY OF CAPE  
CORAL



**TITLE:**

Fleet Recognition

**REQUESTED ACTION:**

Informational

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

**LEGAL REVIEW:**

**EXHIBITS:**

**PREPARED BY:**

Brenda Willis      Division- Administration      Department- Public Works

**SOURCE OF ADDITIONAL INFORMATION:**

<b>Item Number:</b>	<b>7.A.</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>APPROVAL OF MINUTES</b>

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

Regular Meeting - April 16, 2018

**REQUESTED ACTION:**

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?

2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below.

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

**LEGAL REVIEW:**

**EXHIBITS:**

**PREPARED BY:**

Division- Department-

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

**Description**

**Type**

□ Regular Meeting - April 16, 2018

Backup Material



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

**April 16, 2018**

**Council Chambers**

**4:30 p.m.**

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

Invocation/Moment of Silence – Councilmember Williams

Pledge of Allegiance – Mecaes Vutsinas - Diplomat Elementary

Roll Call: Mayor Coviello, Council Members Carioscia, Cosden, Gunter, Nelson, Stokes, Stout, and Williams were present.

**CHANGES TO AGENDA/ADOPTION OF AGENDA**

Mayor Coviello announced Item 11C was withdrawn and requested Item 11B to be moved to directly after Citizen's Input.

Councilmember Williams requested Item 11A to be moved immediately following 8 F(1).

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

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

**RECOGNITIONS/ACHIEVEMENTS**

Recognition for Leadership Efforts by Senator Benacquisto and Representative Eagle during the 2018 Legislative Session and Appreciation for supporting the City's Appropriation requests.

Mayor Coviello recognized the Leadership Efforts by Senator Benacquisto and Representative Eagle.

Representative Eagle explained the successes achieved in reference to the Pipeline Project and the Mobile Command Center.

**APPROVAL OF MINUTES**

**Strategic Planning Meeting – March 20, 2018**

***Councilmember Williams moved, seconded by Councilmember Gunter to approve the minutes for the March 20, 2018 Strategic Planning Meeting as presented. Voice Poll: All "ayes." Motion carried.***

**Regular Meeting – April 2, 2018**

***Councilmember Gunter moved, seconded by Councilmember Cosden to approve the minutes for the April 2, 2018 regular meeting as presented. Voice Poll: All "ayes." Motion carried.***

**BUSINESS**

**PUBLIC COMMENT - CONSENT AGENDA**

No speakers.

CONSENT AGENDA

- 1) Resolution 69-18 Approve Contract PB-CW18-63/AP piggybacking the State of Florida Department of Management Services Participating addendum #43190000-18-NASPO-ACS-1 awarded to Motorola Solutions, Inc. via the lead agency, State of Washington Contract/NASPO Master Agreement #06913 for the purchase of Portable Radios, Mobile Radios, and accessories, at the unit price awarded, not to exceed budgetary limits; And authorize the City Manager, or designee, to sign the contract, amendments and any renewals. The contract was competitively solicited and awarded; Department: Police/Fire; Estimated Annual Dollar Value \$90,000; (General Fund)
- 2) Resolution 70-18 Approve piggybacking Fresno Unified School District Agreement #17-21 with Interline Brands dba SupplyWorks for the purchase of Cleaning Supplies, Equipment and Custodial Related Products to include Paper Goods, at the unit prices bid, at an estimated annual cost of \$204,000 not to exceed budgetary limits, and authorize the City Manager or Designee to execute the contract, amendments and any renewals; Citywide: Lead Department Public Works/Facilities; Dollar Value: \$204,000; (General Fund)
- 3) Resolution 76-18 Approval of a Local Agency Program Agreement between the Florida Department of Transportation and the City of Cape Coral for the construction of a sidewalk on both sides of Andalusia Boulevard between Pine Island Road and Diplomat Parkway; Department: Public Works; Dollar Value: N/A; (Fund: N/A - FDOT Grant \$125,000)
- 4) Resolution 77-18 Approval of a Local Agency Program Agreement Between the Florida Department of Transportation and the City of Cape Coral for the construction of sidewalks on the south side of Tropicana Parkway from Burnt Store Road to Chiquita Boulevard; Department: Public Works; Dollar Value: N/A; (Fund: N/A - FDOT Grant \$478,081)
- 5) Informed Consent/Potential Conflict of Interest for the Law Firm of Manson Bolves Donaldson Varn; Department: City Attorney; Dollar Value: N/A; (Fund: N/A)
- 6) Resolution 84-18 FDEP Settlement Agreement-Hurricane Irma; Department: Utilities; Dollar Amount: \$500; (Water and Sewer Fund)
- 7) Resolution 87-18 Approve the Waiver of the Procurement Procedures for the Security Measures Capital Purchases identified for the Charter School, authorize the use of undesignated reserves and authorize the City Manager or Designee to execute the contract, amendment, renewals and any other related documents; Department: Police Department; Estimated Dollar Value: \$530,650; (Undesignated Reserves)

***Councilmember Williams moved, seconded by Councilmember Stout to approve items 8(B)(1), (2), (3), (4), (5), (6), and (7), as presented.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

### CITIZENS INPUT TIME

Lori Haus-Bulcock appeared on behalf of the Cape Coral Wildlife Trust. She voiced particular concerns with changes to the Eagle Ordinance based on Federal and State authority changes. She explained the negative impacts from noise and changing the habitat.

Donna Germain, President and CEO of the Chamber of Commerce, and Joseph Francioni, Chairman, Board of Directors, Chamber of Commerce, shared Chamber highlights this year which included hosting the 29<sup>th</sup> Annual Golf Tournament at Coral Oaks Golf Course, raised more than \$1500 to help the Gallagher family; 25<sup>th</sup> Anniversary of the Leadership Program; and preparation of the Freedom 5K on July 4<sup>th</sup>. They will be presenting monthly to showcase their highlights.

Mary Anne Sweeney commended the Council and City staff during the transition of the new Council, discussing grants, advancement of utilities, technology, communications, and vehicle improvements. She addressed the Council and City Manager about the status of the Assistant City Manager who was placed on Administrative Leave.

Cheryl Anderson, Member of the Board of Directors, Cape Coral Friends of Wildlife, and Board of Directors of the newly formed Cape Coral Wildlife Trust, appeared to address the potential Eagle Ordinance change. She discussed the history of the item, back from 8 years ago. She categorized the Cape Coral Eagles as urban Eagles and they should have a study done in Cape Coral similar to the urban Gopher Tortoise study. This is a step back and does not promote eco-tourism in Cape Coral.

Bob Renshaw appeared to discuss the Eagle Ordinance. He referenced watching a bald eagle family daily from his back yard. He expressed concern to the changes affecting the eagles in Cape Coral.

Resident and Educator appeared to discuss the Bald Eagle mascot at two Cape Coral schools. She wanted to know how to explain to students that the City is reducing their living space for our national symbol.

Jim Collier discussed the pristine nature of Cape Coral and Lee County. He discussed his career as a builder. It makes you plan and schedule building appropriately. Keep the same buffer zones as you have now. Those who cannot plan appropriately should not be building; it is all in the planning. He urged Council not to amend the Eagle Ordinance.

Ralph A. Santillo, CEO and Chairman of the Board of Invest in America's Veterans Foundation, and the Southwest Florida Military Museum and Library, appeared to discuss a booklet he dropped off to all of Council to give them an idea as to where things are at with the museum. Due to growth, a Jacksonville operation has been opened. This is a national organization with over 300 veterans with more on the way. He invited Council to visit the museum.

Dan Sheppard appeared to discuss the beautification of the medians in our City. He learned about roadblocks such as the budget. He learned the median at the foot of the Cape Coral Bridge which ends at Del Prado is taken care of by the County. It looks rough. One of the group's aspirations was to make that look nice, but there is no control over that accomplishment. Can Council assist in receiving funding to make improvements? He also asked to remove roadblocks for the median improvement program in place.

Pascha Donaldson, Vice President, Cape Coral Friends of Wildlife, appeared to oppose changing the Eagle Ordinance. She reviewed the presence of Eagle nests around Cape Coral. She discussed the animal instincts that have affected the Eagles moving their nests. This year the eaglet population was not successful, several deaths have occurred. Please protect the eagles with the 1,100 feet.

Jim McCormick discussed attending Council meetings for 20 years. He has always been an advocate for more parks in Cape Coral. He noted over 20 years ago Council authorized the Tourism Industry Promotion Committee which included people from all areas of entertainment. Parks are essential to the public in Cape Coral. He offered support to any open land agreement and addition to parks. Keep our taxes low, safety is essential, and be careful with financial liabilities.

Councilmember Williams thanked the speakers this evening on the Eagles, the public hearing is set for May 14, 2018; he also thanked Ralph Santillo and invited members of the public to visit the Military Museum; and he asked the City Manager to address the Assistant City Manager position.

City Manager Szerlag explained that the matter is under investigation, and he is not permitted to discuss it with the public.

Councilmember Stokes requested the City Manager address the median question entering the City.

Councilmember Gunter noted entering the Veterans Bridge is also in need of being addressed with the County to see if they are willing to participate in a beautification project. If they are not willing, offer for the City to take a look at that.

City Manager Szerlag agreed to address this with the County, such as toll money.

Mayor Coviello agreed.

Councilmember Nelson discussed the upcoming Eagle Ordinance. How many properties or businesses have been inhibited to develop? Does it warrant a need for change? If wildlife representatives can share statistics, has the population improved the statistics?

Mayor Coviello echoed the request for the number of eagle nests and was looking for more information. Is the distance just during mating season or all year round? He also reviewed the Old Golf Course property and Sirenia Vista Park; and addition of pickleball courts in the future.

City Manager Szerlag provided an update on the Old Golf Course property. He was not confident that a conditional contract for purchase will be achieved by hiatus, but he is confident that there will be a terms sheet. It revolves around the cleanup of the site at this time.

Resolution 89-18 Request to County Board of Commissioners to Carve Out Cape Coral from any Straw Ballot Measure related to Consolidation of Fire Districts

City Manager Szerlag explained what this Resolution would accomplish. As the 10<sup>th</sup> largest city in Florida, we want to be in control of our level of service. This bill would essentially increase the level of service outside of Lee County and decrease the level of service inside of our County. We would be the largest financial contributor to a County-wide system, our assets are estimated at \$37 million; and read a letter about pension contribution issues.

Interim Fire Chief Russell reviewed taking away Home Rule with the passing of this. The City will lose control of the Fire Program.

Joe Mazurkiewicz explained the independent district system. He listed the missing questions. This asks the County Commission to circumvent their own policies. We want the City of Cape Coral opted out.

Mayor Coviello inquired as to what we are asking.

City Manager Szerlag responded there are two things being asked.

1. Carve out Cape Coral
2. In addition, should they proceed, that they do a study before this goes to the voters.

Councilmember Stokes reviewed mutual aid and the systems in place that works. This would cost the City of Cape Coral in service and the pension topic. This is a bad idea, do not include City of Cape Coral Fire Rescue Services.

***Councilmember Williams moved, seconded by Councilmember Stokes to approve Resolution 89-18, as presented.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

### PERSONNEL ACTIONS

#### Selection of Legislative Executive Assistant to Council

Council Office Manager Williams discussed the need to select a third Legislative Executive Assistant to Council. The list included five potential candidates: Steven Smith, James Anderson, Lance Pate, Cheryl Mackowski, and Wendy Phillips.

Discussion held in reference to the qualifications for the applicants and a preference for the internal candidates.

City Clerk van Deutekom compiled a tally for applicants James Anderson, Cheryl Mackowski, Lance Pate, Wendy Phillips, and Steven Smith. The results were as follows:

***Williams - Philips  
Carioscia - Mackowski  
Cosden - Phillips  
Coviello - Mackowski  
Gunter - Mackowski  
Nelson - Mackowski  
Stokes - Mackowski  
Stout - Mackowski***

***Councilmember Williams moved, seconded by Councilmember Cosden to extend the offer of employment to Cheryl Mackowski as the Legislative Executive Assistant to Council at the minimum pay range.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

Resolution 78-18 Approval to reinstate the second Deputy Chief position in June 2018 ahead of the approved start date of October 1, 2018; Department: Police Department; Dollar Value: \$55,820; (General Fund)

Chief of Police Newlan explained what this Resolution would accomplish.

***Councilmember Stokes moved, seconded by Councilmember Gunter to approve Resolution 78-18.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

### Petition to Council

Request to Waive Delinquent Water Bill from Prior Owner

Andy Ritums, the petitioner, requested a waiver of the prior owner's unpaid utility bill balance. He reviewed his history working with the City of Cape Coral for previous unpaid utility bills and an Ordinance change in 2016. The City has never foreclosed on a property for an unpaid water bill.

Fletcher Reynolds appeared to discuss a purchase he made of an abandoned duplex. The City refused to turn on the water until he paid a \$5,000 existing water bill. He described the neighborhood improvement.

Councilmember Carioscia inquired if this appeared as a lien when a title search was done.

Mr. Ritums responded the property was liened. Based on his experiences since 2013, the City was not collecting for these.

Discussion held in reference to the monthly fees; the property being purchased with a certificate of title; level playing field; advantages of buying foreclosed property; and changes in 2016.

Councilmember Nelson explained an experience she encountered with the purchase of her home. How many other people has this affected?

Councilmember Gunter inquired about the research completed, did he see the lien?

Dr. Reynolds responded in the affirmative.

Discussion about the policy change.

Customer and Field Services Manager Boyd addressed Council about the purchase of the property with the lien. City of Cape Coral Water and Sewer Revenue Bond Resolution 98-86 section 5.09 specifies the City will not render free services. By operation of Florida Statute 159.17, the City shall have a lien on locations served by the Water and Sewer System for all service charges. The active accounts belonged to the landlord, the City liened the locations for the past two balances on those accounts. The City first liened the location for the balances due on the water accounts on April 15, 2009. Those liens were updated periodically, most recently on December 18, 2017. The entire balance due has been paid as of February 22, 2018. The liens were released on March 2, 2018. Ordinance 34-16 included changes to Chapter 19 of the City of Cape Coral's Code of Ordinances. There was a provision to withhold service where there is a balance due until it is settled in full. Payoffs are updated daily on the City website. On a daily basis, we provide payoffs to an average of 78 customers.

Discussion on the impact financially for every account if this was approved.

Councilmember Carioscia inquired if we have waived these delinquent liens prior to a certain date.

Mr. Boyd responded that was the basis for the City not following through with collection in 2013 if we had not recorded a lien.

Discussion held regarding the minimum based charges for services availability; how other municipalities deal with this system; and the bond covenant and ordinance that states the minimum monthly charges.

City Attorney Menendez stated this is an owner situation.

Assistant City Attorney Griffin responded that he concurs with the statements made by Mr. Boyd. State Statute 180.13.2 states our Council and other municipalities can fix

rates, charge a fair amount for the services provided, and recover them through some process. Each lien is good for 5 years. It does not matter who owns the property, the lien runs with the property like a tax bill. Your charges become a lien. We complete the liens so that the documentation supports the amount owed. Home Rule applies, we could do this under our authority.

Councilmember Williams commented on the monthly billing for having the water available. How long does it take for the City to turn off the water? Mr. Boyd replied as early as 46 days from the first bill not paid.

Councilmember Williams inquired why are you billing them? Mr. Boyd explained it is based on each customer that can benefit from the service.

Discussion held about updating the Ordinance to perfect the lien.

Utilities Director Pearson reviewed the fixed rate covers costs that never go away such as electricity, chemicals, labor, etc. The variable cost is how much water they use.

Councilmember Gunter pointed out the property is a duplex so the fee is incurred times two. He questioned Mr. Boyd about the waiver that had been requested and was it given to previous properties.

Mr. Boyd stated he was familiar with a 2013 case, the balance was written off because the lien had not been perfected.

John Carney, Carney Properties & Investment Group, discussed in 2009 there was a change where purchasers are responsible for past due water bills. He paid approximately \$200,000 in past due water bills. He would like these accounts to be capped at \$200 per property. He reviewed the history of accounts, please consider looking into this. We are the only city that does it.

Councilmember Carioscia recused himself from the vote as Fletcher Reynolds is his doctor.

City Attorney Menendez announced the reason to preclude would be for financial gain. She inquired if his reason was the appearance of impropriety.

Councilmember Carioscia stated he would feel more comfortable with recusing himself from the vote.

Mr. Ritums replied he has several properties and can provide details at a future date.

City Manager Szerlag recommended denial of the waiver. He can contact Steven Miller of our Bond Counsel, Nabors Giblin, to discuss the issue with our City Attorney. Then, provide information on the methodologies that were used for the past couple of decades on how and why we assess a ready to serve charge.

***Councilmember Williams moved, seconded by Councilmember Gunter to deny the request for a waiver of prior owner's unpaid utility bill balance.***

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

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

Councilmember Williams stated that Council will be appointing seven junior seats and explained the purpose and role of the members of the Youth Council.

City Clerk van Deutekom reviewed the vacancies on the Youth Council due to member expirations. The term expires 5/1/18; new expiration date is 5/1/2020. Ten applications were received from students in Cape Coral High School, Island Coast High School, Mariner High School, and Oasis High School. There were no applications received from Ida S. Baker High School, North Fort Myers High School, and At Large.

Youth Council –Vacancies

Applicants:

Amanda Benitez – Cape Coral High School  
Garrett Forro – Cape Coral High School  
Isabella Fe Ico – Cape Coral High School

Brittney Curulli – Island Coast High School  
Brianna Shelly – Island Coast High School  
Hope Sullins – Island Coast High School (withdrew)

Javier A. Orozco – Mariner High School  
Marissa Gibbs – Mariner High School  
Sarah Gerega – Mariner High School

Jake Zivkovic – Oasis High School

City Clerk van Deutekom asked the Council to give their preferences by school.

City Clerk van Deutekom compiled a tally for applicants Amanda Benitez, Garrett Forro, and Isabella Ico of **Cape Coral High School**.

**Cape Coral High School**

**Williams – Ico**  
**Carioscia – Ico**  
**Cosden – Ico**  
**Coviello – Ico**  
**Gunter – Ico**  
**Nelson – Ico**  
**Stokes – Ico**  
**Stout – Ico**

The results were as follows: Eight for Isabella Fe Ico.

***Councilmember Williams moved, seconded by Councilmember Gunter to appoint Isabella Fe Ico to the Youth Council as Cape Coral High School Rising Junior member.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted “aye.” Eight “ayes.” Motion carried 8-0.***

City Clerk van Deutekom compiled a tally for applicants Brittney Curulli and Brianna Shelly of Island Coast High School.

**Island Coast High School**

**Williams – Curulli**  
**Carioscia – Curulli**  
**Cosden – Curulli**  
**Coviello – Curulli**  
**Gunter – Curulli**  
**Nelson – Curulli**  
**Stokes – Curulli**  
**Stout – Curulli**



The results were as follows: Eight for Brittney Curulli.

***Councilmember Cosden moved, seconded by Councilmember Nelson to appoint Brittney Curulli to the Youth Council as Island Coast High School Rising Junior member.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

City Clerk van Deutekom compiled a tally for applicants Sarah Gerega, Marissa Gibbs, and Javier A. Orozco of **Mariner High School**.

**Mariner High School**

***Williams – Orozco  
Carioscia – Gibbs  
Cosden – Orozco  
Coviello – Gerega  
Gunter – Orozco  
Nelson – Orozco  
Stokes – Orozco  
Stout – Orozco***

The results were as follows: Six for Javier A. Orozco, One for Sarah Gerega, and One for Marissa Gibbs.

***Councilmember Williams moved, seconded by Councilmember Nelson to appoint Javier A. Orozco to the Youth Council as Mariner High School Rising Junior member.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

***Councilmember Cosden moved, seconded by Councilmember Stokes to appoint Jake Zivkovic to the Youth Council as Oasis High School Rising Junior member.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

City Clerk van Deutekom compiled a tally for applicants Amanda Benitez, Garrett Forro, Sarah Gerega, Marissa Gibbs, and Brianna Shelly of **At Large**.

***Williams – Gerega  
Carioscia – Gibbs  
Cosden – Benitez  
Coviello – Gerega  
Gunter – Benitez  
Nelson – Benitez  
Stokes – Benitez  
Stout – Benitez***

The results were as follows: 5 Benitez, 2 for Gerega, and 1 for Gibbs.

***Councilmember Williams moved, seconded by Councilmember Gunter to appoint Amanda Benitez to the Youth Council as At Large Rising Junior member.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

Discussion held in reference to allowing a 30 days extension to fill the vacancies for North Fort Myers and Ida S. Baker High School.

Reports from Youth Council - Councilmember Williams (Liaison for the Youth Council)

Youth Council Member Baxter and Youth Council Member Cerretani discussed the makeup of the Youth Council; reviewed topics including Medical Marijuana; School Safety, Gun Reform; Events at City Facilities to give teens more ideas to do; Teen Choice Awards; SWOT Analysis/Strategic Plan; Formal Recommendation for the Old Golf Course Property; Job Shadowing Program; Blessings in a Backpack fundraisers at Movies in the Park; Gardens in Public Schools with produce going to local food pantries; discussing commercial recycling with a future recommendation forthcoming; Special Populations/Guardian Angels aiding program; going forward 2<sup>nd</sup> Friday in May, attempting to raise \$5,000 to have a program in a school; work closer with City Council in order to coordinate our projects and concerns of mutual interest.

Member Cerretani gave kudos to all of the applicants that were interviewed this evening.

*Council recessed at 7:05 p.m. and reconvened at 7:27 p.m.*

**ORDINANCES/RESOLUTIONS**

**PUBLIC HEARINGS**

Resolution 64-18 (VP 17-0014\*) Public Hearing

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

**WHAT THE RESOLUTION ACCOMPLISHES:**

A resolution providing for the vacation of plat for a portion of Eternity Canal right-of-way and the underlying public utility and drainage easements located adjacent to property located at 2730 SW 51st Street; providing for the vacation of plat for public utility and drainage easements associated with the property located at 2730 SW 51st Street. (Applicant: Roy and Marilyn Dirkmaat)

Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions set forth in VP HEX Recommendation 4-2018.

City Management Recommendation: City Management recommends approval.

City Clerk van Deutekom read the title of the Resolution and administered the oath.

Planning Team Coordinator Struve explained what the Resolution would accomplish. He discussed the power point presentation which included the following slides:

- Resolution 64-18 VP 17-0014
- Applicants, Rep, Requests, Location
- VP 17-0014 site
- Current Zoning Map
- Background
- Requested Variations
- Analysis (LUDR, Section 8.11)
- Recommendations

Public Hearing opened.

No speakers.

Public Hearing closed.

***Councilmember Gunter moved, seconded by Councilmember Stout to approve Resolution 64-18, as presented.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

**Ordinance 24-18 (AX 17-0002) Public Hearing**

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance providing for the annexation of a tract of land lying in Sections 17, 20 and 21, Township 43 South, Range 23 East, Lee County, Florida; providing for the redefinition of City boundaries. (Applicant: GA-Pinnacle Cape Coral, LLC)

City Clerk van Deutekom read the title of the Ordinance.

Planning Team Coordinator Daltry explained what the Ordinance would accomplish. He discussed the power point presentation which included the following slides:

- Ordinance 24-18 AX 17-0002 Summary
- AX 17-0002, Applicant, Location, Urban Services Area, Request
- Subject Properties
- Facts About Annexations
- Background
- Conclusion
- Staff Recommends Approval

Public Hearing opened.

No speakers.

Public Hearing closed.

***Councilmember Stout moved, seconded by Councilmember Gunter to adopt Ordinance 24-18, as presented.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

**Ordinance 29-18 Public Hearing**

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance amending Ordinance 54-17, which adopted the City of Cape Coral Operating Budget, Revenues and Expenditures, and Capital Budget for Fiscal Year 2018, by increasing total Revenues and Expenditures by a total of \$7,460,181. (Applicant: Brought forward by City Management.)

City Clerk van Deutekom read the title of the Ordinance.

Financial Services Director Bateman explained what the Ordinance would accomplish. She discussed the power point presentation which included the following slides:

- Ordinance 29-18
- Distribution of Amendment by Fund Type
- Summary by Fund Type
- Summary of FY 2018 Budget Amendment #1 – All Funds
- Summary of FY 2018 Budget Amendment #1 – General Fund

Public Hearing opened.

No speakers.

Public Hearing closed.

***Councilmember Williams moved, seconded by Councilmember Stout to adopt Ordinance 29-18, as presented.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

**Ordinance 31-18 (VP 17-0011\*) Public Hearing**

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

**WHAT THE ORDINANCE ACCOMPLISHES:**

An ordinance providing for the release of the Right-of-Way Easement within the Quitclaim Deed recorded in Official Record Book 2443, Pages 778-782 of the Public Records of Lee County; providing for the vacation of plat for a portion of Eternity Canal Right-of-Way and the underlying public utility and drainage easements located adjacent to the property located at 2802 SW 51st Street; providing for the vacation of plat for public utility and drainage easements associated with the property located at 2802 SW 51st Street. (Applicant: Steward Gibboney IV)

Hearing Examiner Recommendation: The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions set forth in VP HEX Recommendation 3-2018.

City Management Recommendation: City Management recommends approval.

City Clerk van Deutekom read the title of the Ordinance and administered the oath.

Planning Team Coordinator Struve explained what the Ordinance would accomplish. He discussed the power point presentation which included the following slides:

- Ordinance 31-18 VP 17-0011
- Applicants, Requests, Location
- VP 17-0011 site
- Current Zoning Map
- Background
- Requested Vacations
- Analysis (LUDR, Section 8.11)
- Request of Release of Easements
- Analysis
- Recommendations/Correspondence (Four phone calls – all informational)

Public Hearing opened.

No speakers.

Public Hearing closed.

***Councilmember Gunter moved, seconded by Councilmember Stokes to adopt Ordinance 31-18, as presented.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

**INTRODUCTIONS**

**Ordinance 26-18 Set Public Hearing for May 7, 2018**

**WHAT THE ORDINANCE ACCOMPLISHES:**

The ordinance amends Chapter 2, Administration, Article VI, Pensions, Division 2, Firefighter Pension of the Code of Ordinances, to amend Sections 2-122.1, Definitions; 2-122.6, Benefit Amounts and Eligibility; 2-122.8, Disability; 2-122.9, Vesting; 2-122.10, Optional Forms of Benefits; 2-122.15, Maximum Pension; 2-122.27, Deferred Retirement Option Plan (DROP); 2-122.28, Prior Fire Service; 2-122.29, Reemployment after Retirement; and establishing Section 2-122.30, Defined Contribution Component (Share Plan). (Applicant: Brought forward by City Management)

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for May 7, 2018 in Council Chambers.

Ordinance 27-18 Set Public Hearing for May 7, 2018

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 1, Police Pension, to amend Section 2-121.1, Definitions; Section 2-121.4, Finances and Fund Management; Establishment and Operation of Fund; Section 2-121.6, Benefit Amounts and Eligibility; Section 2-121.9, Vesting; Section 2-121.10, Optional Forms of Benefits; Section 2-121.15, Maximum Pension; Section 2-121.27, Deferred Retirement Option Plan (DROP); Section 2-121.28, Prior Police Service; and Section 2-121.9, Reemployment after Retirement. (Applicant: Brought forward by City Management)

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for May 7, 2018 in Council Chambers.

Ordinance 28-18 Set Public Hearing for May 7, 2018

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 3, General Employees Pension, to amend Section 2-123.1, Definitions; Section 2-123.4, Finances and Fund Management; Establishment and Operation of Fund; Section 2-123.6, Benefit Amounts and Eligibility; Section 2-123.7, Death Benefits; Section 2-123.8, Optional Forms of Benefits; Section 2-123.9, Vesting; Section 2-123.13, Maximum Pension; Section 2-123.24, Deferred Retirement Option Plan (DROP); Section 2-123.25, Purchase of Nonqualified Service Credit; Section 2-123.26, Prior Government Service; and Section 2-123.27, Reemployment After Retirement.

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for May 7, 2018 in Council Chambers.

Ordinance 32-18 Set Public Hearing Date for May 14, 2018

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending Cape Coral Code of Ordinances, Chapter 23, Protected Species, Article I, Bald Eagle Protection, to amend definitions; to reduce the size of the Eagle Nest Management Zone; to provide that any development, other than a single-family home or duplex within an Eagle Nest Management Zone shall require the submission of an Eagle Nest Management Plan; to reduce the distance from an active eagle nest prohibiting any development to occur during nesting period; to provide for removal of nest trees if authorized by federal permits; to update the Monitoring Protocol to the current United States Fish and Wildlife Service Bald Eagle Monitoring Guidelines dated September 2007. (Applicant: Brought forward by City Management)

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for May 14, 2018 in Council Chambers.

Ordinance 33-18 Set Public Hearing for May 7, 2018

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 12, Offenses and Miscellaneous Provisions, by establishing Article XII, Parking on Public Property, to provide regulations for parking trailers in City-owned or controlled parking lots in the South Cape Downtown District. (Applicant: Brought forward by Councilmember Gunter)

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for May 7, 2018 in Council Chambers.

## UNFINISHED BUSINESS

### Water Quality – Update

Public Works Director Clinghan reviewed the memo provided to Council and gave the most current update on Lake Okeechobee.

#### Follow Up Items Requested by Council:

Councilmember Gunter inquired as to the Regional Planning Council topic, discussed at the April 2, 2018 meeting. We are not as a City under contractual obligation to participate in the program. We were given an opinion from the Florida Attorney General that it is mandated that the Counties participate but not as a municipality. He requested additional discussion. It was his recommendation to withdraw from the program.

***Councilmember Gunter moved, seconded by Councilmember Carioscia to withdraw from the Regional Planning Council.***

Councilmember Cosden stated this should appear on an agenda prior to making a motion, expecting more information from staff. She was not in favor of making decisions like this without it appearing on the agenda.

Discussion held in reference to staff using the Regional Planning Council for reports.

CT Business Manager Murphy reviewed the use of the Regional Planning Council report for the sea level rising. This was used as a transit method, it was to pass through the money from the State of Florida using your budget line item to issue a check request to send to the Regional Planning Council.

Discussion held regarding the members as Council being paid from the Council's budget.

Councilmember Stokes reiterated he was not in favor of continuing the membership. He was in favor of making the decision tonight in order to not incur other bills.

City Attorney Menendez reviewed the importance to have items on an agenda, unless they are urgent or ministerial. Some headings on the agenda may be causing problems. The heading is supposed to indicate items that are not resolved.

Mayor Coviello reviewed the need for the public to be aware of the items on the agenda.

City Manager Szerlag agreed with the City Attorney. Follow up items for Council should be identified as part of the agenda explanation.

Mayor Coviello inquired about the research to pay the \$24,000.

Mr. Murphy explained an email was sent in Council's Friday packet that responded to this amount.

Councilmember Stout supported the motion to discontinue the membership based on the topic being addressed at a previous meeting and discussions with County Commissioners last year plus the fact that it is not mandatory for the City to belong to the RPC.

Councilmember Cosden reiterated the need for public notice and preparation time for items for transparency purposes.

Councilmember Williams explained he was not in favor of addressing the topic this evening. He was interested in the facts and what benefits we have derived from the Regional Planning Council in the past and in the future.

Discussion held regarding the item appearing in the future.

***Councilmember Gunter withdrew his motion. The second agreed to withdraw the initial motion.***

***Councilmember Gunter moved, seconded by Councilmember Stokes to place the Regional Planning Council membership consideration on the May 7, 2018 meeting agenda.***

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

Resolution 5-18 Interlocal agreement between the Green Corridor Property Assessment Clean Energy (PACE) District and the City of Cape Coral; Department: Community Development; Dollar Value: N/A; (Fund: N/A)

Resolution 80-18 Membership Agreement between the Florida Resiliency and Energy District and the City of Cape Coral; Department: Community Development; Dollar Value: N/A; (Fund: N/A)

Resolution 81-18 Interlocal Agreement between Florida Green Finance Authority and the City of Cape Coral; Department: Community Development; Dollar Value: N/A; (Fund: N/A)

Resolution 82-18 Interlocal Subscription Agreement between the City of Cape Coral and Florida PACE Funding Agency; Department: Community Development; Dollar Value: N/A; (Fund: N/A)

CT Business Manager Murphy explained what these four Resolutions would accomplish. Residents would be able to select one of the four vendors to take advantage of low interest rate loans to provide for energy efficiency, wind mitigation, and sustainability for their structures. The current market rate was in the five percent range.

Councilmember Gunter inquired if seawalls are included.

CT Business Manager Murphy stated that seawalls were not included. A different legal opinion has been determined and sent to staff and our City Attorney that they are no longer interested in providing this service.

City Manager Szerlag reviewed the study session was over a year ago prior to the seawall problem. It is for more energy efficient improvements on homes. After the Hurricane, PACE was looked at for seawalls. The initial review of the program was to look at energy efficiency for homes.

Councilmember Williams requested an explanation as to why this is being brought to the City. The new members need to know more about the program before a vote can be taken.

Finance Director Bateman explained the program comes through the City for the purpose of putting the assessments for the loans on to the property tax bill.

Councilmember Williams inquired as to why we need to be involved and expressed concern for the liens being placed on the property.

City Attorney Menendez explained the pledging of real estate for the program and repair.

City Manager Szerlag explained if this needs to be revisited at a future Committee of the Whole meeting to reach a consensus on where to go with the program. It is a resource for residents when they cannot get a bank loan.

Councilmember Stokes inquired about the purpose of the PACE loans and the City's responsibility.

CT Business Manager Murphy stated the City accepts no responsibility for the indebtedness. We are a conduit to apply the lien to the tax roll.

Housing Coordinator Yearsley stated the program is not necessarily marketed for low to moderate income families as they have other resources. This provides an alternate financing mechanism. There is an education component. When we offer this program, we also supply other options.

Councilmember Nelson explained she thought this was focused around seawalls and now realizes it is not. It supplies another option for residents. She does not have a problem recommending another option for residents.

Mayor Coviello inquired about a cap for how much can be loaned.

Devesh Murlow, Ygrene Energy Fund, Clearwater, FL, explained that by State Statute a minimum 10% equity from the just value listed on the property appraiser's site is required. He stated the length of the term is based on the useful life of the product; wind mitigation credits are big. He noted the main criteria to qualify besides equity is payment history and no recent bankruptcy. There is no income qualification, and they are only allowed to finance products for minimum performance that should deliver a savings.

Mayor Coviello requested statistics for what the program has and performance.

Mr. Murlow explained Ygrene has the longest history with about 17,000 projects. He noted five properties where owners had stopped making payments were resolved before it could go to a tax certificate. This is better than prime default rates; these are high quality projects which creates property value.

Mayor Coviello explained this should be an opportunity made available to residents as long as we are not financially involved.

***Councilmember Stout moved, seconded by Councilmember Nelson to approve Items 10(C), 10(D), 10(E), and 10(F), as presented, Resolutions 5-18, 80-18, 81-18, and 82-18, respectively.***

***Council polled as follows: Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Williams voted "nay." Seven "ayes." One "nay." Motion carried 7-1.***

## **NEW BUSINESS**

Reports from Youth Council - Councilmember Williams (Liaison for the Youth Council)  
**- MOVED TO DIRECTLY AFTER YOUTH COUNCIL APPOINTMENTS**

Resolution 89-18 Request to County Board of Commissioners to Carve Out Cape Coral from any Straw Ballot Measure related to Consolidation of Fire Districts -MOVED TO DIRECTLY AFTER CITIZEN'S INPUT

**WITHDRAWN - Military Tribute Banner Program - AMMILVETS (Brought forward by Councilmember Cosden)**

## **NEW BUSINESS (continued)**

Councilmember Gunter reviewed working with the City Attorney's Office about the trailer parking on City owned parking lots. Back in December he made a motion to take a look



at that particular issue and try to come up with a solution to a problem down in the CRA area on parking lots. As a result, another area that could be a problem, especially if this Ordinance is passed at our next meeting, are the trailers or commercial vehicles moving out to the street location. Staff recommended that we probably should take a look at that particular Ordinance as well as the parking of commercial vehicles and trailers on residential streets in the City. He requested a second to continue to work with staff involving this issue.

Councilmember Stout seconded that.

City Attorney Menendez explained there are already regulations dealing with this. Staff has identified certain streets where this type of parking is already not allowed. Some of those are in the South Cape but they are only portions. This would be an opportunity to refine this and maybe increase some of the areas where that parking is not allowed. There is no vote necessary this evening. This would be an Ordinance brought forward to you. The Introduction could be on the same night that you hear the Ordinance concerning the parking. It was recommended that the effective date would not be until there was adequate time to post the signs and make the public aware. In that timeframe, Council would have an opportunity to adopt the Ordinance concerning the on-street parking that would go hand in glove with the restrictions on the South Cape Parking Lot Regulations.

Mayor Coviello inquired if that would require a separate Ordinance.

City Attorney Menendez stated it would be a separate Ordinance that would be brought forward very soon but not at the same hearing as the parking lots. Council has already received these provisions, this is just an expansion of them. These are not in the LUDR's but in the City Code.

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

Councilmember Williams – Topics: Attended Sirenia Park Dedication; Interviewed applicants for the Cape Coral Mayors Scholarship Fund; CCCIA Dinner Meeting; and Youth Council Meeting.

Councilmember Carioscia – Topics: No report

Councilmember Cosden – Topics: No report

Councilmember Gunter – Topics: No report

Councilmember Nelson – Topics: Attended Lizbeth Benacquisto's luncheon last week at Babcock Ranch and Imaginarium Gala.

Councilmember Stokes – Topics: Attended the Touch-a-Truck Rally; Charter School Foundation Rally; Sirenia Vista Ribbon Cutting; Annual Post Legislative Session; CCCIA Dinner Meeting; and CCPD Swearing in Ceremony.

Councilmember Stout – Topics: Attended Women of Distinction, Winner was Deputy Chief Lisa Barnes; Opening of Coralina Apartments.

Councilmember Nelson congratulated Councilmember Stout who was nominated for Women of Distinction.

Mayor Coviello – Topics: Attended Bimini Basin Mooring Field informational meeting; Met with former Mayor Feichthaler; Sirenia Vista Ribbon Cutting; Touch-a-Truck; CCCIA Family Picnic; Charter School Fundraiser; invited to the Taste of the Cape as a food judge; Symphony in the Park; issued a Proclamation for the Telecommuters Week in the Police Department; attended Coralina Grand Opening; CCPD Swearing in of 3 officers and new Metro Diner in Cape Coral and Bike Night. Will issue a proclamation at Cape

Coral Civic Association meeting; attending CPAC meeting, Do the Right Thing, and MPO Meeting.

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

City Attorney – Topic: No Report

City Manager – Topic: Staff's report on pros and cons on the RPC did make the packet last week, but it will re-appear on the May 7, 2018 meeting agenda. A PDP extension is needed until September 1, 2018 to give staff time to evaluate the financial obligations that are inherent to the existing PDP, as well as the Tax Increment Financing (TIF) agreement. He discussed the need for Council to consider the approval of Resolution 91-18.

Walk On Item - Resolution 91-18 A Resolution of the City Council of the City of Cape Coral, Florida, Providing an Extension to the Downtown Village Square Planned Development Project to September 1, 2018 to Commence Substantial Construction; Providing Consideration for the Extension; Providing Evidence of Continued Economic Viability of the Project; Providing an Effective Date.

City Attorney Menendez explained this matter and asked if anyone wants to provide input.

Discussion held in reference to the need for items to appear on the agenda for public notice.

Councilmember Carioscia questioned if all the taxes and fees on this property were all up to date.

City Manager Szerlag explained this came up in a hurry, and it is important to consider to determine all the aspects and see if we want to proceed. If it is not extended, the PDP will expire.

Councilmember Gunter reviewed support but was concerned about transparency.

Councilmember Stout explained the timing would cost the applicant another PDP fee.

Annette Barbaccia, AMB Planning Consultants, reviewed the fact that if this was not approved for this short period of time, it would be a big financial consequence to the project.

Councilmember Cosden inquired about the financial impact. Is it on the City's side or the Developer side?

Ms. Barbaccia responded it would be on both sides; staff may come up with different recommendations than what has already been approved.

Councilmember Cosden requested the addition of items on the agenda even if we will not have back up.

City Attorney Menendez suggested providing the entire audience the opportunity to speak.

Public Input opened.

No speakers

Public Input closed.

Councilmember Stokes suggested having a special meeting at 3:30 p.m. on April 23, 2018 to address the topic.

Councilmember Williams expressed his support for the item. He requested an explanation be given to the new Council.

Ms. Barbaccia explained that Village Square was approved in 2010. The City started the initiative through the CRA and encouraged people to assemble for a block area which her client did. TIF was worked through with the CRA. The PDP was approved which entails 152 multi-family units, a six-story public parking garage, and about ¼ million square feet of commercial, retail, restaurants, etc. Her client obtained the EB5 Regional Center Designation which is based on the percentage of unemployment relative to the national average. She noted that of the \$130 million project, \$66 million is associated with EB5.

Councilmember Williams requested that Ms. Barbaccia meet with the new councilmembers individually.

City Manager Szerlag discussed this with the Mayor last Friday and at that point the agenda was closed. It was agreed that it could be walked on as an item for disposition of City Council. That was different from the RPC issue that does not have a sense of urgency. Staff recommended approval for the extension on behalf of City's management. He was agreeable to a special meeting if Council desired one.

Discussion held regarding clarification for the extension is September 1, 2018.

Councilmember Gunter agreed to have a special meeting at 3:30 p.m. on 4/23/2018.

***Councilmember Cosden moved, seconded by Councilmember Nelson to approve Resolution 91-18, as presented.***

Discussion held in reference to an annual update from the applicant.

Councilmember Stout expressed support for the Resolution.

Discussion held in reference to the September 1, 2018 deadline.

Discussion held regarding the options available if Council decided against continuing the project.

Councilmember Stout voiced her support for this project, especially since it would provide downtown parking.

City Attorney Menendez explained why the date of September 1, 2018 was chosen which was a 120-day extension. August 1, 2018 was based on 90 days. She mentioned the Council meeting schedule where the last meeting in August would be on the 20<sup>th</sup>, and the next meeting would be on September 17<sup>th</sup>.

***Councilmember Williams called the question.***

***Council polled as follows on calling the question: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

City Clerk vanDeutekom restated the motion to approve Resolution 91-18 and called the roll.

***Council polled as follows: Williams, Carioscia, Cosden, Coviello, Gunter, Nelson, Stokes, and Stout voted "aye." Eight "ayes." Motion carried 8-0.***

**TIME AND PLACE OF FUTURE MEETINGS**

A Committee of the Whole Meeting was scheduled for Monday, April 23, 2018 at 4:30 p.m. in Council Chambers.

**MOTION TO ADJOURN**

There being no further business, the meeting adjourned at 9:05 p.m.

Submitted by,

Rebecca van Deutekom, MMC  
City Clerk

**Item Number: B.(1)**  
**Meeting Date: 5/7/2018**  
**Item Type: CONSENT AGENDA**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 58-18 Approve PB-FIN18-39CV piggybacking The Cooperative Purchasing Network (TCPN) contract #R142104 with Lowe's Home Centers, LLC for the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis at an estimated annual cost of \$120,000.00 not to exceed budgetary limits, and authorize the City Manager or Designee to execute the contract, amendments, and renewals; Department: Citywide; Dollar Value: \$120,000; (General Fund)

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

1. Departments Citywide, such as Public Works and Utilities, purchase operational supplies for the day to day operations.
2. In an effort to leverage and benefit from competitive and discount pricing, the City reviews pricing and piggyback opportunities.
3. In partnership with The Cooperative Purchasing Network (TCPN), lead public agency Region 4 Education Service Center issued competitively solicited Request for Proposal Number 14-21 on October 30, 2014 to select a company to provide maintenance, repair, and operational supplies and related services on an as-needed basis.
4. The RFP process resulted in Lowe's Home Centers LLC providing the most responsive and responsible proposal.
5. Lowe's Home Centers was selected and Contract #R142104 was awarded for a term starting on April 1, 2015 through March 31, 2020
6. Due to the City's status as a participating public agency with TCPN/National IPA purchasing cooperative, the City can piggyback the existing contract. After evaluation Staff recommends piggybacking the contract.
7. Utilizing the Lowe's for Pros program, the City will benefit from contract pricing plus an

additional 7% savings on each point-of-sale purchase, dedicated customer service, streamlined and enhanced efficiency of the City's business processes.

8. This procurement is governed by the City of Cape Coral Code of Ordinances, Article VII, Division 1, §2-144(f) authorizes the City to purchase goods or services from contracts awarded by other governmental entities by competitive bid or request for proposals.
9. This approval does not grant exclusivity. Staff has been directed to also check prices of other sources.
10. This is a budgeted item.
11. Funding Source: This contract would be utilized by all City Departments and will be funded through each respective operational account

**LEGAL REVIEW:**

Legal review the agreement

**EXHIBITS:**

Department Recommendation  
Resolution 58-18

**PREPARED BY:**

Wanda                      Division- Procurement      Department- Finance  
Roop

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

Description	Type
▣ Recommendation Memo	Backup Material
▣ Resolution 58-18	Resolution

CITY OF CAPE CORAL  
FINANCIAL SERVICES DEPARTMENT

TO: John Szerlag, City Manager  
Victoria Bateman, Financial Services Director

FROM: Wanda Roop, Procurement Manager *WR*  
Christy VanAllen, Procurement Specialist *CV*

DATE: April 13, 2018

SUBJECT: Piggyback National IPA contract with Lowes Home Centers, Inc.  
To purchase maintenance, repair, and operational supplies on an as-needed basis

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### Background

Lowe's Home Centers is currently used by Public Works, Facilities, and other departments citywide. Presently there is no discount program in place to save the City on each purchase made. Based on historical data the estimated annual spend is \$120,000.

In partnership with The Cooperative Purchasing Network (now National IPA), lead public agency Region 4 Education Service Center issued competitively solicited Request for Proposal Number 14-21 on October 30, 2014 to select a company to provide maintenance, repair, and operational supplies and related services on an as-needed basis.

The RFP process resulted in Lowe's Home Centers LLC providing the most responsive and responsible proposal. Contract #R142104 was awarded to Lowe's Home Centers. The term is April 1, 2015 through March 31, 2020.

### Recommendation

Due to the City's status as a participating public agency with TCPN/National IPA purchasing cooperative, the City is able to piggyback the existing contract. Utilizing the Lowe's for Pros program, the City will benefit from contract pricing plus an additional 7% savings on each point-of-sale purchase, and enhanced efficiency of the City's business processes.

After a comprehensive evaluation of the Lowe's for Pros program, Procurement recommends piggybacking Region 4 Education Service Center contract #R142104 with Lowe's Home Centers, LLC for the purchase of maintenance, repair, and operational supplies on an as-needed basis.

### Fund Availability

This is a budgeted item. Funding will be on a department-by-department basis, not to exceed budgetary limits.

WR:cv (Memo Recommendation)

RESOLUTION 58 – 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING CONTRACT #PB-PW18-39CV BETWEEN THE CITY OF CAPE CORAL AND LOWE'S HOME CENTERS, LLC, FOR THE PURCHASE OF MAINTENANCE, REPAIR AND OPERATIONAL SUPPLIES AND RELATED SERVICES IN ACCORDANCE WITH THE COOPERATIVE PURCHASING NETWORK CONTRACT #R142104; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE CONTRACT, AMENDMENTS AND RENEWALS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, many City departments currently purchase maintenance, repair and operational supplies; and

WHEREAS, in partnership with The Cooperative Purchasing Network, lead public agency Region 4 Education Service Center issued competitive solicitation Request for Proposal #14-21 to select a company to provide maintenance, repair, and operational supplies and related services on an as-needed basis; and

WHEREAS, Contract #142104 was awarded to Lowe's Home Centers, LLC, as the most responsive and responsible proposer; and

WHEREAS, Section 2-144(f) of the City of Cape Coral Code of Ordinances authorizes the City to purchase goods or services under a contract awarded by another governmental entity by competitive bid; and

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

WHEREAS, the Procurement Manager has considered the requirements stated in Section 2-144(f) of the Code of Ordinances in making her determination to use The Cooperative Purchasing Network Contract #R152104 resulting from lead Agency Region 4 Education Service Center's competitive solicitation; and

WHEREAS, the City Council desires to approve Contract #PB-PW18-39CV with Lowe's Home Centers, LLC, in accordance with The Cooperative Purchasing Network Contract #R152104 for the purchase of maintenance, repair, and operational supplies and related services at an estimated annual cost of \$120,000, not to exceed budgetary limits.

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

Section 1. The City Council hereby approves Contract #PB-PW18-39CV with Lowe's Home Centers, LLC, in accordance with The Cooperative Purchasing Network Contract #R152104 for the purchase of maintenance, repair, and operational supplies and related services at an estimated annual cost of \$120,000, not to exceed budgetary limits. A copy of the contract is attached hereto as Exhibit 1.

Section 2. The City Council hereby authorizes the City Manager to execute the Contract and any necessary amendments, renewals, and purchase orders.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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JOE COVIELLO, MAYOR



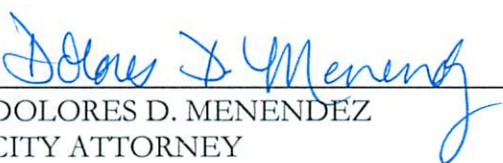
VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res/Piggyback TCPN-Lowes Home Centers

**CITY OF CAPE CORAL  
CONTRACT WITH LOWE'S HOME CENTERS, LLC  
FOR MAINTENANCE, REPAIR AND OPERATIONS (MRO)  
SUPPLIES AND RELATED SERVICES  
CONTRACT #PB-PW18-39CV**

THIS CONTRACT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between the **CITY OF CAPE CORAL FLORIDA**, hereinafter referred to as "City", and **LOWE'S HOME CENTERS, LLC, LOWES PRO SERVICES**, located at 1605 Curtis Bridge Rd., Wilkesboro, NC 28697, hereinafter referred to as "Contractor".

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

1. The CONTRACTOR will provide the CITY with MRO materials and supplies as specified in The Cooperative Purchasing Network's (TCPN) Contract Number R142104 resulting from lead agency Region 4 Education Service Center's competitive solicitation RFP No. 14-21 for Maintenance, Repair and Operations Supplies and Related Services, as outlined in "Exhibit A", attached hereto and made a part hereof.
2. The CONTRACTOR will provide the CITY a 7% discount at point of sale and free local delivery for major appliance purchases of \$399 or more. For other purchases made with Lowes Accounts Receivable the delivery fee is \$20 within 75 miles. For all other purchase methods standard delivery fees apply. This contract is available for use Citywide through its expiration date of March 31, 2020, and through any contract extensions approved by TCPN purchasing cooperative.
3. The CITY will provide to the CONTRACTOR a Purchase Order for the purchase of all supplies and services on an as-needed basis.
4. The CITY has the option to terminate the Contract for non-performance at any time. Upon termination, CONTRACTOR shall be paid in full for all outstanding monies due for goods procured pursuant to this Contract.
5. Contract Documents shall include:
  - A. Region 4 Education Service Center RFP No. 14-21
  - B. TCPN Contract Number R142104
  - C. This Contract as well as other documents attached hereto and/or referenced herein
6. Delivery: All orders placed to be delivered within the City of Cape Coral as per location on purchase order issued.
7. Invoices: Contractor is to indicate purchase order number on all invoices. Any portion of this order, which cannot be filled as specified, will not be substituted until the City has been notified, and approval in writing has been initiated.
8. Assignment: This Contract may not be assigned except with the written consent of the City, and if so assigned, shall extend and be binding upon the successors and assigns of the Contractor.



**CITY OF CAPE CORAL  
CONTRACT WITH LOWE'S HOME CENTERS, LLC  
FOR MAINTENANCE, REPAIR AND OPERATIONS (MRO)  
SUPPLIES AND RELATED SERVICES  
CONTRACT #PB-PW18-39CV**

9. Disclosure: The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the Contract.
10. Administration of Contract: The Public Works Director, or their representative, shall administer this Contract for the City.
11. Other Contracts: The City of Cape Coral reserves the right to purchase off State Contracts or any other available contracts or providers if deemed to be in the best interest of the City.
12. 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.

13. Amendments: No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties.
14. Payments: The 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, 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 the City has overpaid such invoice, the Contractor shall promptly refund to the City the amount of such overpayment.

15. Indemnity: To the extent permitted by law (F.S. 768.28), the Contractor shall indemnify and hold harmless the City its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and any persons employed or utilized by Contractor in the performance of this Contract.



CITY OF CAPE CORAL  
CONTRACT WITH LOWE'S HOME CENTERS, LLC  
FOR MAINTENANCE, REPAIR AND OPERATIONS (MRO)  
SUPPLIES AND RELATED SERVICES  
CONTRACT #PB-PW18-39CV

16. Damage Liability: The awarded Contractor shall be responsible for all claims filed for damage to City facilities in connection with Contractor's performance.
17. Invalid Provision: The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
18. 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.

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.

19. 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.
20. Insurance: Without limiting its liability, the CONTRACTOR shall be required to procure and maintain at its own expense during the life of the Contract, insurance of the types and in the minimum amounts as specified in the Contract Documents which will protect the CONTRACTOR, from claims which may arise out of or result from the CONTRACTOR'S execution of the project, whether such execution by himself or by any sub-consultant, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Any questions regarding the insurance requirements should be directed to the Risk Manager, (239) 574-0529. The CITY shall be listed as additional insured on General Liability policies.
21. 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.
22. Entire Agreement: This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

CITY OF CAPE CORAL  
CONTRACT WITH LOWE'S HOME CENTERS, LLC  
FOR MAINTENANCE, REPAIR AND OPERATIONS (MRO)  
SUPPLIES AND RELATED SERVICES  
CONTRACT #PB-PW18-39CV

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: Rebecca van Deutekom

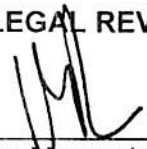
Typed Name: A. John Szerlag

Title: City Clerk

Title: City Manager

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

CITY LEGAL REVIEW:

  
\_\_\_\_\_  
Dolores Menendez  
City Attorney

2.21.2018

Date

WITNESS CONTRACTOR:

CONTRACTOR:

Lowes Home Center, LLC

Signature: Emily F. Torrence

Signature: 

Typed Name: Emily F. Torrence

Typed Name: Darrin G. Clark

Title: Sales + Ops Manager

Title: VP, ProServices

Date: February 28, 2018

**Item Number: B.(2)**  
**Meeting Date: 5/7/2018**  
**Item Type: CONSENT AGENDA**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 79-18 Award RFP-FIN17-78/KS Actuarial Services to Madison Consulting Group, Inc., for Self-Insurance Funds Incurred but Not Reported (IBNR) and Bolton Partners, Inc., for Other Post-Employment Benefits; Retiree Drug Subsidy Medicare Part D and Self-Funded Health Insurance, at the unit prices stated in the contract at an estimated annual cost of \$22,000 not to exceed budgetary limits and authorize the City Manager or Designee to execute the contracts, amendments, renewals and all required documents. The term of the contract is for three (3) years with two (2) additional one (1) year renewal periods – the term of the contract dollar value, if monies appropriated in the subsequent fiscal years, is a total of \$66,000; Department: Finance; Estimated Annual Dollar Value: \$22,000; {total of \$66,000} (General Fund)

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

1. On September 27, 2017, Request for Proposal #RFP-FIN17-78/KS was issued for Actuarial Services for the Self-Insurance Funds Incurred but not Reported (IBNR), Other Post-Employment Benefits, Retiree Drug Subsidy Medicare Part D and Self-Funded Health Insurance.
2. On November 28, 2017, ten (10) proposals were received, in alphabetical order: Aquarius Capital Solutions Group, LLC.; Arthur J. Gallagher & Co; Bolton Partners, Inc.; Cornerstone Actuarial Solutions, LLC; Foster & Foster, Inc.; Gabriel, Roeder, Smith & Company; Jefferson Solutions, Inc., Madison Consulting Group, Inc., The Howard E. Nyhart Company, Inc.; SGRisk, LLC
3. After evaluation, Madison Consulting Group, Inc., and Bolton Partners, Inc., were selected as the top ranked responsive responsible proposer meeting the requirements and specifications outlined in the proposal.
4. Staff recommends awarding a contract to *Madison Consulting Group, Inc.*, for Self-

Insurance Funds Incurred but Not Reported (IBNR) and *Bolton Partners, Inc.*, for Other Post-Employment Benefits; Retiree Drug Subsidy Medicare Part D; and Self-Funded Health Insurance at the unit prices stated for an estimated annual amount of \$22,000.

5. If approved, the term of the contract will be for three (3) years with two (2) additional one (1) year renewal periods.
6. This is a budgeted item.
7. Funding information: Account #123101.631399 (General Fund Financial Services); 500110.631399, 500210.631399 (Property and Liability Self Insurance); 500500.631399 (General Fund, Government Services) 500500.631399 (Self Insurance Medical)

**LEGAL REVIEW:**

Contracts reviewed by Legal

**EXHIBITS:**

Department Recommendation

Resolution 79-18

Evaluation Matrix RFP-FIN17-78/KS

**PREPARED BY:**

Wanda

Roop

Division- Procurement

Department- Finance

**SOURCE OF ADDITIONAL INFORMATION:**

Victoria Bateman, Financial Services Director

**ATTACHMENTS:**

Description	Type
▣ Department Recommendation Memo	Backup Material
▣ Resolution 79-18	Resolution
▣ Evaluation Matrix RFP-FIN17-78/KS	Backup Material



CITY OF CAPE CORAL  
FINANCIAL SERVICES

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

FROM: Monte Vavra, Deputy Director of Financial Services *MV*  
Britt Martin, Senior Management/Budget Analyst *BM*  
Laura Tanner, Senior Accounting Manager *LT*  
Jill Ramirez, Benefits Manager *JR*

DATE: March 09, 2018

SUBJECT: Actuarial Services for Other Post-Employment Benefits, Incurred But Not Reported claims for Property and Liability Self-Insurance fund, Retiree Drug Subsidy, and Self Insurance Medical Fund

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**Background**

The City has used the same firms to perform actuarial services for the past number of years and issued a Request for Proposal to competitively solicit the services. The City annually updates the following items: Other Post-Employment Benefits (OPEB), Incurred But Not Reported (IBNR) property and liability claims, Retiree Drug Subsidy, and Self-Insured Medical Fund report form 112.08.

**Recommendation**

A Request for Proposal was prepared and issued. On November 28, 2017, ten (10) proposals were received, in alphabetical order: Aquarius Capital Solutions Group, LLC.; Arthur J. Gallagher & Co; Bolton Partners, Inc.; Cornerstone Actuarial Solutions, LLC; Foster & Foster, Inc.; Gabriel, Roeder, Smith & Company; Jefferson Solutions, Inc., Madison Consulting Group, Inc., The Howard E. Nyhart Company, Inc.; SGRisk, LLC

After evaluation, Madison Consulting Group, Inc., and Bolton Partners, Inc., were selected as the top ranked responsive responsible proposer meeting the requirements and specifications outlined in the proposal. Staff recommends awarding a contract to *Madison Consulting Group, Inc.*, for Self-Insurance Funds Incurred but Not Reported (IBNR) and *Bolton Partners, Inc.*, for Other Post-Employment Benefits; Retiree Drug Subsidy Medicare Part D; and Self-Funded Health Insurance at the unit prices stated.

**Fund Availability:**

Funds will be included in each annual operating budget in the following funds:

OPEB actuarial – General Fund, Financial Services 123101.631399  
IBNR actuarial – Property and Liability Self-Insurance Fund 500110.631399, 500210.631399  
Retiree Drug Subsidy – General Fund, Government Services 500500.631399  
Self Insurance Medical Fund 500500.631399



RESOLUTION 79 - 18

A RESOLUTION OF THE CITY OF CAPE CORAL, FLORIDA, AWARDING THE CONTRACT FOR ACTUARIAL SERVICES FOR SELF-INSURANCE FUNDS INCURRED BUT NOT REPORTED (IBNR) TO MADISON CONSULTING GROUP, INC, AND FOR ACTUARIAL SERVICES FOR OTHER POST-EMPLOYMENT BENEFITS (OPEB), RETIREE DRUG SUBSIDY MEDICARE PART D, AND SELF-FUNDED HEALTH INSURANCE TO BOLTON PARTNERS, INC.; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACTS AND ANY FUTURE RENEWALS BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 27, 2017, REQUEST FOR PROPOSAL #RFP-FIN17-78/KS was issued for Actuarial Services for Self-Insurance Funds Incurred but Not Reported (IBNR), Other Post-Employment Benefits (OPEB), Retiree Drug Subsidy Medicare Part D, and Self-Funded Health Insurance; and

WHEREAS, on November 28, 2017, the City received ten (10) proposals; and

WHEREAS, after evaluation of the proposals, Madison Consulting Group, Inc., and Bolton Partners, Inc., were ranked as the top responsive responsible proposers meeting the requirements and specifications outlined in the RFP; and

WHEREAS, staff recommends awarding the contract for Actuarial Services for Self-Insurance Funds Incurred but Not Reported (IBNR) to Madison Consulting Group, Inc., and for Actuarial Services for Other Post-Employment Benefits (OPEB), Retiree Drug Subsidy Medicare Part D, and Self-Funded Health Insurance to Bolton Partners, Inc., for an estimated annual total amount of \$22,000; and

WHEREAS, the term of the contracts is for three (3) years with an option to renew for two (2) additional one-year periods; and

WHEREAS, the City Council desires to authorize the City Manager to enter into a contract between the City of Cape Coral and Madison Consulting Group, Inc., for Actuarial Services for Self-Insurance Funds Incurred but Not Reported (IBNR) and a contract between the City of Cape Coral and Bolton Partners, Inc., for Actuarial Services for Other Post-Employment Benefits (OPEB), Retiree Drug Subsidy Medicare Part D, and Self-Funded Health Insurance, for an estimated annual total amount of \$22,000, and to approve the renewal of the contracts for up to two additional one-year periods, if the City Manager deems the renewal to be in the best interest of the City.

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

Section 1. The City Council hereby awards the contract for Actuarial Services for Self-Insurance Funds Incurred but Not Reported (IBNR) to Madison Consulting Group, Inc., and the contract for Actuarial Services for Other Post-Employment Benefits (OPEB), Retiree Drug Subsidy Medicare Part D, and Self-Funded Health Insurance to Bolton Partners, Inc.

Section 2. The City Council hereby authorizes the City Manager to enter into a contract between the City of Cape Coral and Madison Consulting Group, Inc., for Actuarial Services for Self-Insurance Funds Incurred but Not Reported (IBNR) and a contract between the City of Cape Coral and Bolton Partners, Inc., for Actuarial Services for Other Post-Employment Benefits (OPEB), Retiree Drug Subsidy Medicare Part D, and Self-Funded Health Insurance, for an estimated annual total amount of \$22,000, and authorizes the City Manager or his designee to execute the contracts. Copies of the contracts are attached hereto as Exhibits 1 and 2.

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

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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


VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM,  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res/Award RFP-Madison Consulting Group



CITY OF CAPE CORAL  
ACTUARIAL SERVICES  
CONTRACT RFP-FIN17-78/KS

THIS CONTRACT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between the **CITY OF CAPE CORAL, FLORIDA**, hereinafter called "**CITY**", and **MADISON CONSULTING GROUP, INC.**, located at 200 North Second Street, Madison, GA 30650, hereinafter called "**CONTRACTOR**".

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

1. The CONTRACTOR will provide Actuarial Services for Self-Insurance Funds for the Incurred but Not Reported (IBNR) in accordance with the Contract Documents.
2. The CONTRACTOR will provide all 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 agrees to perform all WORK described in the CONTRACT DOCUMENTS for the following amount **\$3,000** per year as listed on the CONTRACTOR'S Proposal during the term of the contract.
4. The **Term** of this contract is for a three (3) year period with two (2) one-year renewal periods upon agreement of both parties.
5. **Termination:** This Contract may be terminated by the CITY for its convenience upon thirty (30) days prior written notice to the CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract. Such amount shall be paid by the CITY after inspection of the work to determine the extent of performance under this Contract, whether completed or in progress.
6. **Annual Appropriation Contingency:** 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.
7. The Term "**Contract Documents**" shall include this Contract, Addenda and the Contractor's Proposal except when it conflicts with any other contractual provision, the Notice to Proceed, Certificates and the Request for Proposal 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.
8. **Assignment:** This Contract may not be assigned except with the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
9. **Disclosure:** The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or 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 Contract.
10. **Administration of Contract:** The Financial Services Director, or 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



**CITY OF CAPE CORAL  
ACTUARIAL SERVICES  
CONTRACT RFP-FIN17-78/KS**

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.

12. **Amendments:** No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties.
13. **Payments:** CITY shall make payment and CONTRACTOR shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice.
14. **Contractor's Representations:** In order to induce CITY to enter into the Contract CONTRACTOR makes the following representations:

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

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.

15. **Indemnity:** To the extent permitted by law (F.S. 768.28), the CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or Intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by CONTRACTOR in the performance of this Contract.
16. **Damage Liability:** The awarded CONTRACTOR shall be responsible for all claims filed for damage to private property, windows, screen enclosures, real estate signs, etc. Additionally, the CONTRACTOR shall be responsible for damage to all public property or utility property, fire hydrants, catch basins, guy wires telephone pedestals, etc. Copies of all damage claims shall be submitted to the Risk Manager and copy the Procurement Division.
17. **Invalid Provision:** The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
18. **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.



**CITY OF CAPE CORAL  
ACTUARIAL SERVICES  
CONTRACT RFP-FIN17-78/KS**

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.

19. **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.
20. **Insurance:** Unless otherwise specified, CONTRACTOR shall, at its own expense, carry and maintain the following minimum insurance coverage, as well as any insurance coverage required by law:
- a. **Workers' Compensation** Coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$1,000,000.00 each accident.
  - b. **Comprehensive General Liability:** Shall have minimum limits of \$1,000,000.00 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. **Professional Liability** (errors and omissions) coverage shall have minimum limits of \$1,000,000.00 per occurrence with respect to negligent acts, errors or omissions in connection with the professional services to be provided and any deductible not to exceed \$50,000.00 each claim. Policies should be written on a "Claims Made basis, with a retroactive date that is acceptable to the City.
  - d. 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.
  - e. 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) 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.
  - 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 CONTRACTOR's liability under the Agreement.
21. **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.
22. **Entire Agreement:** This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.



CITY OF CAPE CORAL  
ACTUARIAL SERVICES  
CONTRACT RFP-FIN17-78/KS

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:

Signature: \_\_\_\_\_

Typed Name: Rebecca van Deutekom

Title: City Clerk

CITY:

City of Cape Coral, Florida

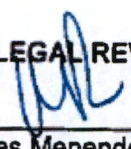
Signature: \_\_\_\_\_

Typed Name: A. John Szerlag

Title: City Manager

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

CITY LEGAL REVIEW:

  
Dolores Menendez  
City Attorney

4/23/2018  
Date

WITNESS CONTRACTOR:

Signature: 

Typed Name: Dana H. Cline

Title: Office Manager

CONTRACTOR:

Madison Consulting Group, Inc.

Signature: 

Typed Name: John Gleba

Title: Secretary/Treasurer

Date: 4/24/18



CITY OF CAPE CORAL  
ACTUARIAL SERVICES  
CONTRACT RFP-FIN17-78/KS

THIS CONTRACT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between the **CITY OF CAPE CORAL, FLORIDA**, hereinafter called "**CITY**", and **BOLTON PARTNERS, INC.**, located at 36 S. Charles Street, Suite 1000, Baltimore, MD 21201, hereinafter called "**CONTRACTOR**".

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

1. The CONTRACTOR will provide Actuarial Services for Other Post-Employment Benefits (OPEB); Retiree Drug Subsidy Medicare Part D; Self-Funded Health Insurance in accordance with the Contract Documents.
2. The CONTRACTOR will provide all 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 agrees to perform all WORK described in the CONTRACT DOCUMENTS at the unit prices outlined in **EXHIBIT A**, attached hereto and made a part hereof.
4. The **Term** of this contract is for a three (3) year period with two (2) two one-year renewal periods upon agreement of both parties.
5. **Termination:** This Contract may be terminated by the CITY for its convenience upon thirty (30) days prior written notice to the CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract. Such amount shall be paid by the CITY after inspection of the work to determine the extent of performance under this Contract, whether completed or in progress.
6. **Annual Appropriation Contingency:** 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.
7. The Term "**Contract Documents**" shall include this Contract, Addenda and the Contractor's Proposal except when it conflicts with any other contractual provision, the Notice to Proceed, Certificates and the Request for Proposal 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.

8. **Assignment:** This Contract may not be assigned except with the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
9. **Disclosure:** The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or 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 Contract.
10. **Administration of Contract:** The Financial Services Director, or 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



CITY OF CAPE CORAL  
ACTUARIAL SERVICES  
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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.

12. **Amendments:** No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties.
13. **Payments:** CITY shall make payment and CONTRACTOR shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice.
14. **Contractor's Representations:** In order to induce CITY to enter into the Contract CONTRACTOR makes the following representations:

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

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.

15. **Indemnity:** To the extent permitted by law (F.S. 768.28), the CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by CONTRACTOR in the performance of this Contract.
16. **Damage Liability:** The awarded CONTRACTOR shall be responsible for all claims filed for damage to private property, windows, screen enclosures, real estate signs, etc. Additionally, the CONTRACTOR shall be responsible for damage to all public property or utility property, fire hydrants, catch basins, guy wires telephone pedestals, etc. Copies of all damage claims shall be submitted to the Risk Manager and copy the Procurement Division.
17. **Invalid Provision:** The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
18. **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



**CITY OF CAPE CORAL  
ACTUARIAL SERVICES  
CONTRACT RFP-FIN17-78/KS**

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.

19. **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.
20. **Insurance:** Unless otherwise specified, CONTRACTOR shall, at its own expense, carry and maintain the following minimum insurance coverage, as well as any insurance coverage required by law:
- a. **Workers' Compensation** Coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$1,000,000.00 each accident.
  - b. **Comprehensive General Liability:** Shall have minimum limits of \$1,000,000.00 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. **Professional Liability** (errors and omissions) coverage shall have minimum limits of \$1,000,000.00 per occurrence with respect to negligent acts, errors or omissions in connection with the professional services to be provided and any deductible not to exceed \$50,000.00 each claim. Policies should be written on a "Claims Made basis, with a retroactive date that is acceptable to the City.
  - d. 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.
  - e. 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) 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.
  - 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 CONTRACTOR's liability under the Agreement.
21. **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.
22. **Entire Agreement:** This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

CITY OF CAPE CORAL  
ACTUARIAL SERVICES  
CONTRACT RFP-FIN17-78/KS

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: Rebecca van Deutekom

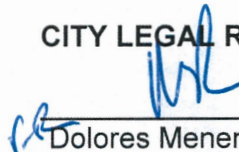
Typed Name: A. John Szerlag

Title: City Clerk

Title: City Manager

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

**CITY LEGAL REVIEW:**

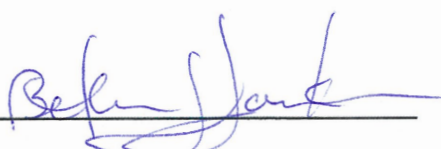
  
\_\_\_\_\_  
Dolores Menendez  
City Attorney

4/23/2018  
Date

**WITNESS CONTRACTOR:**

**CONTRACTOR:**

Bolton Partners, Inc.

Signature:  \_\_\_\_\_

Signature:  \_\_\_\_\_

Typed Name: Bethany Janka

Typed Name: Thomas B. Lowman

Title: Proposal Coordinator

Title: Vice President & Chief Actuary

Date: 4/25/18



CITY OF CAPE CORAL  
ACTUARIAL SERVICES  
CONTRACT RFP-FIN17-78/KS

EXHIBIT A

**OTHER POST EMPLOYMENT BENEFITS (OPEB)**

GASB 75 Full Valuation Fiscal Year Ending 2018	\$12,000
GASB 75 Update Valuation Fiscal Year Ending 2019	2,800
GASB 75 Full Valuation Fiscal Year Ending 2020	12,250
<b>Total for Three Years</b>	<b>\$27,050</b>

GASB 75 Update Valuation Fiscal Year Ending 2021	\$2,800
GASB 75 Full Valuation Fiscal Year Ending 2022	12,500
<b>Total for Five Years</b>	<b>\$42,350</b>

**RETIREE DRUG SUBSIDY**

Attestation and Related Services for 2019	\$3,000
Attestation and Related Services for 2020	3,000
Attestation and Related Services for 2021	3,000
<b>Total for Three Years</b>	<b>\$9,000</b>

Attestation and Related Services for 2022	\$3,100
Attestation and Related Services for 2023	3,100
<b>Total for Five Years</b>	<b>\$15,200</b>

**SELF FUNDED HEALTH INSURANCE FUND**

Attestation and Related Services for 2019	\$4,000
Attestation and Related Services for 2020	4,000
Attestation and Related Services for 2021	4,000
<b>Total for Three Years</b>	<b>\$12,000</b>

Attestation and Related Services for 2022	\$4,200
Attestation and Related Services for 2023	4,200
<b>Total for Five Years</b>	<b>\$20,400</b>

**City of Cape Coral - Actuarial Services  
RFP-FIN17-78/KS**

Type of Service	Aquarius Capital Solutions Group, LLC 110 Betsy Brown Rd., Port Chester, NY 10573	Arthur J Gallagher & Co., 4350 W. Cypress St., Suite 300, Tampa, FL 33607	Bolton Partners, Inc., 36 S. Charles St., Suite 1000, Baltimore, MD 21201	Foster and Foster, Inc., 13420 Parker Commons Blvd., Suite 104, Ft. Myers, FL 33912	Gabriel, Roeder, Smith & Company 1 E. Broward Blvd., Suite 505, Ft. Lauderdale, FL 33301	Jefferson Solutions, Inc., 14 Brittany Oaks, Clifton Park, NY 12065	The Howard E. Nyhart Co., Inc., 8415 Allison Pointe Blvd., Suite 300, Indianapolis, IN 46250
Retiree Drug Subsidy Medicare Part D	350	345	371	343	366	0	301
Other Post Employment Benefits (OPEB)	330	331	339	305	353	335	338
Self Funded Health Insurance	347	332	371	357	346	0	290
<b>Totals</b>	<b>1027</b>	<b>1008</b>	<b>1081</b>	<b>1005</b>	<b>1065</b>	<b>335</b>	<b>929</b>
<b>Ranking</b>	<b>3</b>	<b>4</b>	<b>1</b>		<b>2</b>		

Type of Service	Aquarius Capital Solutions Group, LLC 110 Betsy Brown Rd., Port Chester, NY 10573	Cornerstone Actuarial Solutions, LLC 2025 Janmar Ct., Snellville, GA 30078	Madison Consulting Group, Inc., 200 N. Second St., Madison, GA 30650	SGRisk, LLC., 1050 Wall Street West, Suite 610, Lyndhurst, NY 07071	The Howard E. Nyhart Company, Inc., 8415 Allison Pointe Blvd., Suite 300, Indianapolis, IN 46250
Self Insurance Funds Incurred But Not Reported (IBNR)	351	301	362	322	292
<b>Ranking</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>3</b>	

**Item Number: B.(3)**  
**Meeting Date: 5/7/2018**  
**Item Type: CONSENT AGENDA**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 85-18 Approve piggyback of US Communities sponsored Maricopa County, AZ contract #16154 with Home Depot U.S.A., Inc. for the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis at an estimated annual cost of \$66,000, not to exceed budgetary limits, and authorize the City Manager or Designee to execute the purchase orders and related documents; Department: Citywide; Estimated Annual Dollar Value: \$66,000; (General Fund)

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

1. Departments Citywide, such as Public Works and Utilities, purchase operational supplies for the day to day operations.
2. In an effort to leverage and benefit from competitive and discount pricing, the City reviews pricing and piggyback opportunities.
3. In partnership with purchasing cooperative US Communities, lead public agency Maricopa County, AZ issued competitively solicited Request for Proposal Number 16154 on August 4, 2016 to select a company to provide maintenance, repair, and operational supplies and related services on an as-needed basis.
4. The RFP process resulted in Home Depot U.S.A., Inc. providing the most responsive and responsible proposal.
5. Contract #16154 was awarded to Home Depot U.S.A., Inc. The term of said contract is from February 1, 2017 through December 31, 2021.
6. Due to the City's status as a participating public agency with US Communities purchasing cooperative, the City is able to piggyback the existing contract After evaluation Staff recommends piggybacking the contract.
7. Piggybacking the contract will yield cost savings to the City over its current pricing structure,

streamlined and enhanced efficiency of the City's business processes.

8. This procurement is governed by the City of Cape Coral Code of Ordinances, Article VII, Division 1, §2-144(f) authorizes the City to purchase goods or services from contracts awarded by other governmental entities by competitive bid or request for proposals.
9. This approval does not grant exclusivity. Staff has been directed to also check prices of other sources.
10. This is a budgeted item.
11. Funding Source: This contract would be utilized by all City Departments and will be funded through each respective operational account

**LEGAL REVIEW:**

Contract reviewed by Legal

**EXHIBITS:**

Recommendation memo

Resolution 85-18

US Communities MICPA

**PREPARED BY:**

Wanda

Roop

Division- Procurement

Department- Finance

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Recommendation Memo	Backup Material
▣ Resolution 85-18	Resolution
▣ US Communities MICPA	Backup Material

CITY OF CAPE CORAL  
FINANCIAL SERVICES DEPARTMENT

TO: John Szerlag, City Manager  
Victoria Bateman, Financial Services Director

FROM: Wanda Roop, Procurement Manager WR  
Christy VanAllen, Procurement Specialist CV

DATE: April 13, 2018

SUBJECT: Piggyback US Communities contract with Home Depot  
To purchase maintenance, repair, and operational supplies on an as-needed basis

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### Background

Home Depot is currently used by Public Works, Facilities, and other departments citywide. Based on historical data the estimated annual spend is \$66,000.

In partnership with US Communities purchasing cooperative, lead public agency Maricopa County, AZ issued competitively solicited Request for Proposal Number 16154 on August 4, 2016 to select a company to provide maintenance, repair, and operational supplies and related services on an as-needed basis.

The RFP process resulted in Home Depot U.S.A, Inc. providing the most responsive and responsible proposal. Contract #16154 was awarded to Home Depot U.S.A., Inc. The term is February 1, 2017 through December 31, 2021.

### Recommendation

Due to the City's status as a participating public agency with US Communities purchasing cooperative, the City is able to piggyback the existing contract. Utilizing the contract pricing will yield cost savings for the City.

After a comprehensive evaluation of the Home Depot U.S.A., Inc. program, Procurement recommends piggybacking Maricopa County, AZ contract #16154 with Home Depot U.S.A, Inc. for the purchase of maintenance, repair, and operational supplies on an as-needed basis.

### Fund Availability

This is a budgeted item. Funding will be on a department-by-department basis, not to exceed budgetary limits.

WR:cv (Memo Recommendation)



RESOLUTION 85 – 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING THE PURCHASE OF MAINTENANCE, REPAIR AND OPERATIONAL SUPPLIES FROM HOME DEPOT U.S.A., INC., IN ACCORDANCE WITH MARICOPA COUNTY, AZ CONTRACT #16154; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE PURCHASE ORDERS AND RELATED DOCUMENTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, many City departments currently purchase maintenance, repair and operational supplies for day-to-day operations; and

WHEREAS, in partnership with purchasing cooperative US Communities, lead public agency Maricopa County, AZ issued competitive solicitation Request for Proposal #16154 to select a company to provide maintenance, repair, and operational supplies and related services on an as-needed basis; and

WHEREAS, Contract #16154 was awarded to Home Depot U.S.A., Inc., as the most responsive and responsible proposer; and

WHEREAS, Section 2-144(f) of the City of Cape Coral Code of Ordinances authorizes the City to purchase goods or services under a contract awarded by another governmental entity by competitive bid; and

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

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

WHEREAS, the City Council desires to approve the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis in accordance with Maricopa County, AZ contract #16154 with Home Depot U.S.A., Inc., via the U.S. Communities Government Purchasing Alliance, in the estimated annual amount of \$66,000, not to exceed budgetary limits.

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

Section 1. The City Council hereby approves the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis in accordance with Maricopa County, AZ Contract #16154 with Home Depot, U.S.A., Inc., via the U.S. Communities Government Purchasing Alliance, by City purchase order, in the estimated annual amount of \$66,000, not to exceed budgetary limits.

Section 2. The City Council hereby authorizes the City Manager or the City Manager's designee to execute the purchase orders and related documents between the City of Cape Coral and the vendor.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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JOE COVIELLO, MAYOR



VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO  
GUNTER  
CARIOSCIA  
STOUT

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NELSON  
STOKES  
WILLIAMS  
COSDEN

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY

res/Piggyback US Communities Maricopa County-Home Depot



# U.S. COMMUNITIES<sup>®</sup>

## GOVERNMENT PURCHASING ALLIANCE



### **MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT**

This Master Intergovernmental Cooperative Purchasing Agreement (“Agreement”) is made between certain government agencies that execute a Lead Public Agency Certificate (collectively, “Lead Public Agencies”) to be appended and made a part hereof and other government agencies (“Participating Public Agencies”) that agree to the terms and conditions hereof through the U.S. Communities registration process and made a part hereof.

#### **RECITALS**

WHEREAS, after a competitive solicitation and selection process by Lead Public Agencies, in compliance with their own policies, procedures, rules and regulations, a number of suppliers (each, a “Contract Supplier”) have entered into Master Agreements with Lead Public Agencies to provide a variety of goods, products and services based on national and international volumes (herein “Products and Services”);

WHEREAS, Master Agreements are made available by Lead Public Agencies through U.S. Communities and provide that Participating Public Agencies may purchase Products and Services on the same terms, conditions and pricing as the Lead Public Agency, subject to any applicable local purchasing ordinances and the laws of the State of purchase;

WHEREAS, the parties desire to comply with the requirements and formalities of any intergovernmental cooperative act, if applicable, to the laws of the State of purchase;

WHEREAS, the parties hereto desire to conserve resources and reduce procurement cost;

WHEREAS, the parties hereto desire to improve the efficiency, effectiveness and economy of the procurement of necessary Products and Services;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and of the mutual benefits to result, the parties agree as follows:

1. That each party will facilitate the cooperative procurement of Products and Services.
2. That the procurement of Products and Services subject to this Agreement shall be conducted in accordance with and subject to the relevant statutes, ordinances, rules and regulations that govern each party’s procurement practices.
3. That the cooperative use of solicitations obtained by a party to this Agreement shall be in accordance with the terms and conditions of the solicitation, except as modification of those terms and conditions is otherwise allowed or required by applicable law.
4. That the Lead Public Agencies will make available, upon reasonable request and subject to convenience, information which may assist in improving the effectiveness, efficiency and economy of Participating Public Agencies’ procurement of Products and Services
5. That the Participating Public Agency will make timely payments to the Contract Supplier for Products and Services received in accordance with the terms and conditions of the procurement. Payment, inspections and acceptance of Products and Services ordered by the Participating Public Agency shall be the exclusive obligation of such Participating Public Agency. Disputes between the Participating Public Agency and Contract Supplier are to be resolved in accordance with the applicable laws and venue rules of the State of purchase.
6. The Participating Public Agency shall not use this Agreement as a method for obtaining additional concessions or reduced prices for similar products or services.
7. The Participating Public Agency is solely responsible for ordering, accepting, and paying and any other action, inaction or decision regarding the Products and Services obtained under this Agreement. A Lead Public Agency shall not be liable in any fashion for any violation by a Participating Public Agency, and the Participating Public Agency shall be responsible for its own conduct to the extent permitted by law.
8. The exercise of any rights or remedies by the Participating Public Agency shall be the exclusive obligation of such Participating Public Agency.
9. This Agreement shall remain in effect until termination by a party giving thirty (30) days prior written notice to U.S. Communities at 2999 Oak Road, Suite 710, Walnut Creek, CA 94597.
10. This Agreement shall become effective after execution of the Lead Public Agency Certificate or Participating Public Agency registration, as applicable.

## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of Fairfax County VA (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.

Cathy Muse

Authorized Signature, Lead Public Agency

Sept 9, 2015

Date

### LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of Maricopa County (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.

MARICOPA COUNTY, ARIZONA

BY: 

CHAIRMAN, BOARD OF SUPERVISORS

OCT 16 2015

DATE

ATTESTED:

  
CLERK OF THE BOARD 100715

OCT 16 2015

DATE

DEPUTY

APPROVED AS TO FORM:

  
LEGAL COUNSEL

October 14, 2015  
DATE

**LEAD PUBLIC AGENCY CERTIFICATE**

I hereby acknowledge, on behalf of North Carolina State University (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.



Sharon Loosman, Director of Materials Management  
Authorized Signature, Lead Public Agency

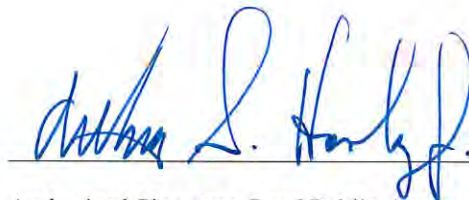
9/16/15

Date

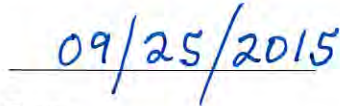
## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of San Diego Unified School District (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.

A handwritten signature in blue ink, appearing to read "Anthony L. Hardy", is written over a horizontal line.

Authorized Signature, Lead Public Agency

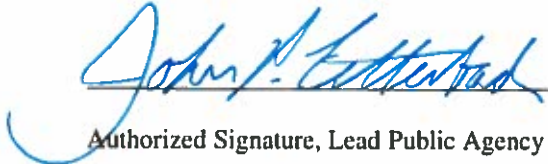
A handwritten date "09/25/2015" in blue ink is written over a horizontal line.

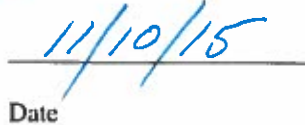
Date

## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of the City and County of Denver (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.

  
Authorized Signature, Lead Public Agency


  
Date



## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of City of Mesquite (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.

  
Authorized Signature, Lead Public Agency

10/26/2015  
Date



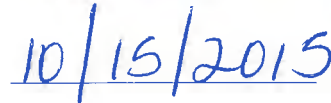
## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of The City of Kansas City, Missouri (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.



Authorized Signature, Lead Public Agency



Date

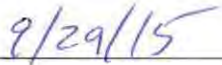
## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of County of Dane, Wisconsin (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.



Authorized Signature, Lead Public Agency



Date

**LEAD PUBLIC AGENCY CERTIFICATE**

I hereby acknowledge, on behalf of Fresno Unified School District (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.



Authorized Signature, Lead Public Agency

9-25-15

Date

## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of Barron County (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.



\_\_\_\_\_  
Authorized Signature, Lead Public Agency



\_\_\_\_\_  
Date

## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of City of Charlotte (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.

Karen Ewing

Authorized Signature, Lead Public Agency

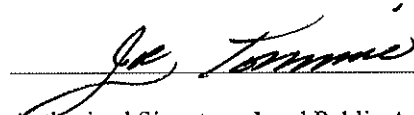
9/1/2015

Date

## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of Cobb County (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.

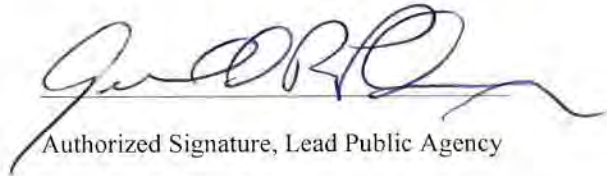
  
Authorized Signature, Lead Public Agency

9/10/2015  
Date

## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of County of Los Angeles (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.



Authorized Signature, Lead Public Agency

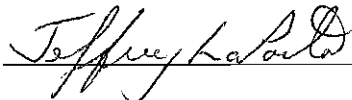
September 2, 2015

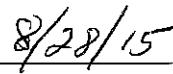
Date

## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of Harford County Public Schools (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.

  
\_\_\_\_\_  
Authorized Signature, Lead Public Agency

  
\_\_\_\_\_  
Date



## Lead Public Agency Certificate

### LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of Chicago (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.

  
\_\_\_\_\_  
Authorized Signature, Lead Public Agency

1/6/15  
\_\_\_\_\_  
Date

## Lead Public Agency Certificate

### LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of Port of Portland, Oregon (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.

Bobbie Matthews

Authorized Signature, Lead Public Agency

1/25/14

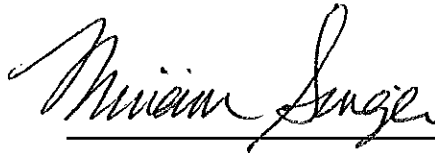
Date

## Lead Public Agency Certificate

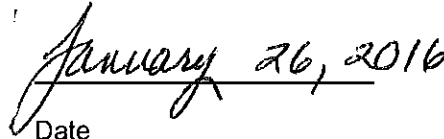
### LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of Miami Dade County (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.



Authorized Signature, Lead Public Agency



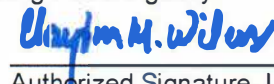
Date

## Lead Public Agency Certificate

### LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of Washington County Public Schools (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.



Authorized Signature, Lead Government Agency



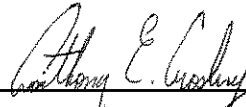
Date

## Lead Public Agency Certificate

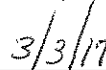
### LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of Prince William County Public Schools (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement, (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.



\_\_\_\_\_  
Authorized Signature, Lead Public Agency



\_\_\_\_\_  
Date

**Item Number: B.(4)**  
**Meeting Date: 5/7/2018**  
**Item Type: CONSENT AGENDA**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 86-18 Approve piggyback of National IPA sponsored City of Tucson, AZ contract #141003 with W.W. Grainger, Inc. for the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis at an estimated annual cost of \$175,000, not to exceed budgetary limits, and authorize the City Manager or Designee to execute the purchase orders and related documents; Department: Citywide; Estimated Dollar Value: \$175,000; (General Fund)

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

1. Departments Citywide, such as Public Works and Utilities, purchase operational supplies for the day to day operations.
2. In an effort to leverage and benefit from competitive and discount pricing, the City reviews pricing and piggyback opportunities.
3. In partnership with purchasing cooperative National IPA, lead public agency City of Tucson, AZ issued competitively solicited Request for Proposal Number 141003 on April 1, 2014 to select a company to provide maintenance, repair, and operational supplies and related services on an as-needed basis.
4. The RFP process resulted in W.W. Grainger, Inc. providing the most responsive and responsible proposal.
5. Contract #141003 was awarded to W.W. Grainger, Inc. The term is from January 1, 2015 through December 31, 2019
6. Due to the City's status as a participating public agency with National IPA purchasing cooperative, the City is able to piggyback the existing contract. After evaluation Staff recommends piggybacking the contract.
7. Piggybacking the contract will yield cost savings to the City over its current pricing structure,

streamlined and enhanced efficiency of the City's business processes.

8. This procurement is governed by the City of Cape Coral Code of Ordinances, Article VII, Division 1, §2-144(f) authorizes the City to purchase goods or services from contracts awarded by other governmental entities by competitive bid or request for proposals.
9. This approval does not grant exclusivity. Staff has been directed to also check prices of other sources.
10. This is a budgeted item.
11. Funding Source: This contract would be utilized by all City Departments and will be funded through each respective operational account

**LEGAL REVIEW:**

Contract reviewed by Legal

**EXHIBITS:**

Recommendation Memo

Resolution 86-18

National IPA Master Intergovernmental Cooperative Purchasing Agreement

**PREPARED BY:**

Wanda                      Division- Procurement      Department- Finance  
Roop

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Recommendation Memo	Backup Material
▣ Resolution 86-18	Resolution
▣ National IPA MICPA	Backup Material

CITY OF CAPE CORAL  
FINANCIAL SERVICES DEPARTMENT

TO: John Szerlag, City Manager  
Victoria Bateman, Financial Services Director

FROM: Wanda Roop, Procurement Manager *WR*  
Christy VanAllen, Procurement Specialist *CN*

DATE: April 13, 2018

SUBJECT: Piggyback National IPA contract with Grainger  
To purchase maintenance, repair, and operational supplies on an as-needed basis

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### Background

Grainger is currently used by Public Works, Facilities, and other departments citywide. Based on historical data the estimated annual spend is \$175,000.

In partnership with purchasing cooperative National IPA, lead public agency City of Tucson, AZ issued competitively solicited Request for Proposal Number 141003 on April 1, 2014 to select a company to provide maintenance, repair, and operational supplies and related services on an as-needed basis.

The RFP process resulted in W.W. Grainger, Inc. providing the most responsive and responsible proposal. Contract #141003 was awarded to W.W. Grainger, Inc. The term is January 1, 2015 through December 31, 2019.

### Recommendation

Due to the City's status as a participating public agency with National IPA purchasing cooperative, the City is able to piggyback the existing contract. Utilizing the contract pricing will yield cost savings for the City.

After a comprehensive evaluation of the W.W. Grainger, Inc. program, Procurement recommends piggybacking City of Tucson, AZ contract #141003 for the purchase of maintenance, repair, and operational supplies on an as-needed basis.

### Fund Availability

This is a budgeted item. Funding will be on a department-by-department basis, not to exceed budgetary limits.

WR:cv (Memo Recommendation)



RESOLUTION 86 – 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING THE PURCHASE OF MAINTENANCE, REPAIR, AND OPERATIONAL SUPPLIES FROM W.W. GRAINGER, INC., IN ACCORDANCE WITH CITY OF TUCSON, AZ CONTRACT #141003; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE PURCHASE ORDERS AND ANY RELATED DOCUMENTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, many City departments currently purchase maintenance, repair, and operational supplies for day-to-day operations; and

WHEREAS, in partnership with the National Intergovernmental Purchasing Alliance Company (“National IPA”), lead public agency City of Tucson, AZ issued competitive solicitation Request for Proposal #141003 to select a company to provide maintenance, repair, and operational supplies and related services on an as-needed basis; and

WHEREAS, Contract #141003 was awarded to W.W. Grainger, Inc., as the most responsive and responsible proposer; and

WHEREAS, Section 2-144(f) of the City of Cape Coral Code of Ordinances authorizes the City to purchase goods or services under a contract awarded by another governmental entity by competitive bid; and

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

WHEREAS, the Procurement Manager has considered the requirements stated in Section 2-144(f) of the Code of Ordinances in making her determination to use the City of Tucson Contract; and

WHEREAS, the City Council desires to approve the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis in accordance with City of Tucson, AZ Contract #141003 with W.W. Grainger, Inc., via the National IPA, in the estimated annual amount of \$175,000, not to exceed budgetary limits.

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

Section 1. The City Council hereby approves the purchase of maintenance, repair, and operational supplies and related services on an as-needed basis in accordance with City of Tucson AZ Contract #141003 with W.W. Grainger, Inc., via the National IPA, by City purchase order, in the estimated annual amount of \$175,000, not to exceed budgetary limits.

Section 2. The City Council hereby authorizes the City Manager or the City Manager's designee to execute the purchase orders and related documents between the City of Cape Coral and the vendor.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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JOE COVIELLO, MAYOR


VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res/Piggyback National IPA, Tucson-WW Grainger

# Terms of Participation

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## National IPA Participation Agreement

### **MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT**

This Master Intergovernmental Cooperative Purchasing Agreement (this "**Agreement**") is entered into by and between those certain government agencies that execute a Principal Procurement Agency Certificate ("**Principal Procurement Agencies**") with National Intergovernmental Purchasing Alliance Company ("**National IPA**") to be appended and made a part hereof and such other public agencies ("**Participating Public Agencies**") who register to participate in the cooperative purchasing programs administered by National IPA and its affiliates and subsidiaries (collectively, the "**National IPA Parties**") by either registering on a National IPA Party website (such as [www.nationalipa.org](http://www.nationalipa.org)), or by executing a copy of this Agreement.

### **RECITALS**

**WHEREAS**, after a competitive solicitation and selection process by Principal Procurement Agencies, a number of suppliers have entered into "**Master Agreements**" (herein so called) to provide a variety of goods, products and services ("**Products**") to the applicable Principal Procurement Agency and the Participating Public Agencies;

**WHEREAS**, Master Agreements are made available by Principal Procurement Agencies through the National IPA Parties and provide that Participating Public Agencies may purchase Products on the same terms, conditions and pricing as the Principal Procurement Agency, subject to any applicable federal and/or local purchasing ordinances and the laws of the State of purchase; and

**WHEREAS**, in addition to Master Agreements, the National IPA Parties may from time to time offer Participating Public Agencies the opportunity to acquire Products through other group purchasing agreements.

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement, and of the mutual benefits to result, the parties hereby agree as follows:

1. Each party will facilitate the cooperative procurement of Products.

2. The Participating Public Agencies shall procure Products in accordance with and subject to the relevant federal, state and local statutes, ordinances, rules and regulations that govern Participating Public Agency's procurement practices. The Participating Public Agencies hereby acknowledge and agree that it is the intent of the parties that all provisions of this Agreement and that Principal Procurement Agencies' participation in the program described herein comply with all applicable laws, including but not limited to the requirements of 42 C.F.R. § 1001.952(h), as may be amended from time to time. The Participating Public Agencies further acknowledge and agree that they are solely responsible for their compliance with all applicable "safe harbor" regulations, including but not limited to any and all obligations to fully and accurately report discounts and incentives.
3. The Participating Public Agency represents and warrants that the Participating Public Agency is not a hospital and is not purchasing Products on behalf of a hospital.
4. The cooperative use of Master Agreements shall be in accordance with the terms and conditions of the Master Agreements, except as modification of those terms and conditions is otherwise required by applicable federal, state or local law.
5. The Principal Procurement Agencies will make available, upon reasonable request, Master Agreement information which may assist in improving the procurement of Products by the Participating Public Agencies.
6. The Participating Public Agency agrees the National IPA Parties may provide access to group purchasing organization ("GPO") agreements directly or indirectly by enrolling the Participating Public Agency in another GPO's purchasing program, including but not limited to Vizient Source, LLC, Provista, Inc. and other National IPA affiliates and subsidiaries; provided the purchase of Products through a National IPA Party or any other GPO shall be at the Participating Public Agency's sole discretion.
7. The Participating Public Agencies (each a "Procuring Party") that procure Products through any Master Agreement or GPO Product supply agreement (each a "GPO Contract") will make timely payments to the distributor, manufacturer or other vendor (collectively, "Supplier") for Products received in accordance with the terms and conditions of the Master Agreement or GPO Contract, as applicable. Payment for Products and inspections and acceptance of Products ordered by the Procuring Party shall be the exclusive obligation of such Procuring Party. Disputes between Procuring Party and any Supplier shall be resolved in accordance with the law and venue rules of the State of purchase unless otherwise agreed to by the Procuring Party and Supplier.
8. The Procuring Party shall not use this Agreement as a method for obtaining additional concessions or reduced prices for similar products or services.
9. The Procuring Party shall be responsible for the ordering of Products under this Agreement. A non-procuring party shall not be liable in any fashion for any violation by a Procuring Party, and, to the extent

permitted by applicable law, the Procuring Party shall hold non-procuring party harmless from any liability that may arise from the acts or omissions of the Procuring Party.

10. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE NATIONAL IPA PARTIES EXPRESSLY DISCLAIM ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES REGARDING ANY PRODUCT, MASTER AGREEMENT AND GPO CONTRACT. THE NATIONAL IPA PARTIES SHALL NOT BE LIABLE IN ANY WAY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR RELIANCE DAMAGES, EVEN IF THE NATIONAL IPA PARTIES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, THE PROCURING PARTY ACKNOWLEDGES AND AGREES THAT THE NATIONAL IPA PARTIES SHALL HAVE NO LIABILITY FOR ANY ACT OR OMISSION BY A SUPPLIER OR OTHER PARTY UNDER A MASTER AGREEMENT OR GPO CONTRACT.
11. This Agreement shall remain in effect until termination by a party giving thirty (30) days' written notice to the other party. The provisions of Paragraphs 6 - 10 hereof shall survive any such termination.
12. This Agreement shall take effect upon (i) execution of the Principal Procurement Agency Certificate, or (ii) the registration on a National IPA Party website or the execution of this Agreement by a Participating Public Agency, as applicable.

## TCPN Standard Membership Agreement

This TCPN Cooperative Purchasing Membership Agreement will allow a Member Agency to purchase commodities and/or services, from any and all TCPN Official Contract Holders, under the same terms, conditions and price as stated in each awarded contract. It is hereby agreed to by TCPN and the Member Agency that:

1. TCPN has followed procurement procedures for products and/or services offered by this Agreement in accordance with TCPNs governing procurement statutes and regulations.
2. It is the sole responsibility of each Member Agency to follow their state procurement statutes as it pertains to cooperative purchasing, or joint power agreements, with in-state or out-of- state public agencies.
3. TCPN makes their cooperative purchasing contracts available to Member Agencies "as is," and is under no obligation to revise the terms, conditions, scope, price, and/or any other conditions of the contract for the benefit of the Member Agency.
4. The use of each contract by the Member Agency shall adhere to the terms and conditions of the TCPN contract, including the order placement procedures provided by each Official Contract Holder.

5. It is the sole responsibility of the Member Agency to accept delivery of products and/or services, and the Member Agency hereby agrees to make timely payments to each Official Contract Holder for products and/or services received pursuant to this Agreement. Any dispute which may arise between the Member Agency and the Official Contract Holder are to be resolved between the Member Agency and the Official Contract Holder. TCPN will make every effort to facilitate a favorable remedy for both parties.
6. This Agreement incorporates all Agreements, covenants and understandings between TCPN and the Member Agency. No prior Agreement or understanding, verbal or otherwise, by the parties or their agents, shall be valid or enforceable unless embodied in this Agreement. This Agreement shall not be altered, changed or amended except by written revision or addendum executed by both parties.
7. This Agreement between TCPN and the Member Agency shall be presided over by TCPN governing law and jurisdiction, and shall become effective immediately and remain in effect unless terminated by either party with thirty (30) days written notice to the other party. Any such notice shall be sent to the address listed below.

The Cooperative Purchasing Network  
2555 Meridian Blvd., Ste. 300  
Franklin, TN 37067

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**Item Number: B.(5)**  
**Meeting Date: 5/7/2018**  
**Item Type: CONSENT AGENDA**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 88-18 Award ITB-UT18-35/KR Acidization of Select Upper Floridan Wellfield Supply Wells for the North Reverse Osmosis (NRO) and Southwest Reverse Osmosis (SWRO) Water Treatment Plants (WTP) to A.C. Schultes of Florida Inc. located in Gibsonton, Florida to provide "Well Acidization Services" as the lowest responsive, responsible bidder for the initial project of six (6) wells in the amount of \$536,910 with a 10% City controlled contingency of \$53,691 for a total of \$590,601 and Approve continued use of the contract for individual work assignments, for "Well Acidization Services", based on the unit prices shown in agreement up to the annual budgetary limits and authorize the City Manager or designee to execute the contract, amendment and renewals; Department: Utilities; Dollar Value: \$590,601 for initial project {annual budget \$800,000; after FY19, \$1.6 million each year in FY20 and FY21; (Water and Sewer Fund)

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**ELEMENT G: WORK TOWARD EFFICIENT AND COST-EFFECTIVE SOLUTIONS TO PROTECT AND CONSERVE NATURAL RESOURCES, WHILE PROMOTING ENVIRONMENTAL AWARENESS AND SUSTAINABILITY IN THE COMMUNITY.**

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

**SUMMARY EXPLANATION AND BACKGROUND:**

1. An ITB was issued for Well Acidization Services for the North Reverse Osmosis (NRO) Water Treatment Plant (WTP) and Southwest Reverse Osmosis (SWRO) Water Treatment Plant (WTP). The Improvements to be performed generally include, but are not limited to the removal of the permanent well pumps; performing geophysical and video logging of the wells; acidizing the supply wells; redevelopment of the wells with compressed air; performing post-acidization geophysical and video logging of the wells; reinstalling the permanent well



- pumps; disinfection of the well; conducting bacteriological clearance and site restoration.
2. On January 31, 2018, Invitation to Bid, ITB-UT18-35KR, was issued, for the Well Acidization of Select Upper Floridan NRO and SWRO Wellfield Supply Wells.
  3. On March 6, 2018, three (3) bids were received, from firms listed in alphabetical order – A.C. Schultes of Florida, Inc.; Southeast Drilling Services, Inc, (non-responsive); Youngquist Brothers, Inc.,
  4. On March 28, 2018, A.C. Schultes of Florida, Inc. was deemed the lowest responsive and responsible bidder meeting all requirements as outlined in the bid documents. Southeast Drilling Services, Inc. was deemed non-responsive due to missing information outlined in the bid documents.
  5. If approved, the initial term of the contract is for one (1) year with the option of two (2) additional one (1) year renewal periods. The initial work assignment is for the first six (6) wells in the amount of \$536,910, plus a request for 10% City controlled contingency of \$53,591 for a total of \$590,601. The contract will continue for additional work assignments using the unit prices included in the contract documents up to budgetary limits annually
  6. The Department Director is requesting 10% City Controlled Contingency. The Expenditure of Contingency, if any will be subject to approval of specific change orders by the Utilities Department Director, if justified upon identified needs with an appropriate scope and cost to address specific needs.
  7. This Item is a budgeted item.
  8. Funding: Account No: 4050084.662601 – Improvements Other than Buildings with an unencumbered balance of \$815,678 in FY18 with recurring CIP budget of \$800,000 in FY19 and increase to \$1,600,000 each year in FY20 and FY21 (Water and Sewer Capital Improvement Fund)

#### **LEGAL REVIEW:**

Contract reviewed by Legal

#### **EXHIBITS:**

Department Memo

Resolution 88-18

Bid Tabulation – ITB-UT18-35KR

#### **PREPARED BY:**

Wanda

Roop

Division- Procurement

Department- Finance

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

Jeff Pearson, Utilities Director

#### **ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Department Memo	Backup Material
▣ Resolution 88-18	Resolution
▣ Bid Tabulation – ITB-UT 18-35/KR	Backup Material



**TO:** John Szerlag, City Manager  
Victoria Bateman, Financial Services Director  
Wanda Roop, Procurement Manager

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

**DATE:** March 29, 2018

**SUBJECT:** Utilities Department's Recommendation of Award for the  
Acidization of Select Upper Floridan Wellfield Supply Wells for  
the North RO WTP & Southwest RO WTP, ITB-UT18-35/KR

**Project Scope:**

The proposed project will generally be comprised of the acidization of six (6) selected existing Upper Floridan aquifer raw water production wells serving the North Reverse Osmosis (NRO) Water Treatment Plant (WTP) (3 wells) and/or the Southwest Reverse Osmosis (SWRO) Water Treatment Plant (WTP) (3 wells). The Scope of Work for each selected well shall generally include, but is not limited to the removal of the permanent well pump; performing geophysical and video logging of the well; acidizing the supply well; redevelopment of the well with compressed air; performing post-acidization geophysical and video logging of the well; reinstalling the permanent well pump; disinfection of the well; conducting a two-point bacteriological clearance of the well; and, site restoration of the well site/staging area. In general, all methods and materials used during the execution of the work shall be in accordance with the latest revisions of the American Water Works Association (AWWA) Standards for Deep Wells (AWWA A100-06) as they apply to the proposed Work.

**Project Bids:**

On Tuesday, March 6, 2018, the City of Cape Coral received three (3) Bids from qualified contractors for the Acidization of Select Upper Floridan Wellfield Supply Wells for the North RO WTP & Southwest RO WTP, ITB-UT18-35/KR. Bids were received from A.C. Schultes of Florida Inc., from Gibsonton, Florida; Southeast Drilling Services, Inc. from Tampa, Florida; and, Youngquist Brothers, Inc. out of Fort Myers, Florida. The bid item extensions and the summation of the bid items was checked for accuracy for each bidder.

The Total Estimated Construction Cost was as follows: (Listed in Alphabetical Order)

A.C Schultes of Florida, Inc.	\$536,910.00
Southeast Drilling Services, Inc.	\$535,200.00
Youngquist Brothers, Inc.	\$1,095,000.00

A copy of the Procurement Department's Bid Tabulation is included as an attachment.

#### **Utilities Department Recommendation:**

The Procurement Department reviewed the bid totals and the bidder's qualifications as submitted along with additional requested documentation and has determined that A.C. Schultes of Florida, Inc. is the lowest responsive, responsible bidder for the Acidization of Select Upper Floridan Wellfield Supply Wells for the North RO WTP & Southwest RO WTP, ITB-UT18-35/KR. The Utilities Department concurs with the Procurement Department's determination that A.C. Schultes of Florida, Inc. is the lowest responsible, responsive bidder. The Utilities Department therefore recommends award of the project to A.C. Schultes of Florida, Inc., for the Total Estimated Construction Cost of \$536,910.00 for the initial one (1) year term of the agreement with two (2) additional one (1) year renewals with mutual agreement of all parties from the fully executed Agreement date. References were checked by the Utilities Department as a part of the review process.

#### **Contingency Funds:**

In conjunction with recommending the award of the Acidization of Select Upper Floridan Wellfield Supply Wells for the North RO WTP & Southwest RO WTP project, the Utilities Department requests a contingency amount of ten percent (10%) of the Total Estimated Construction Cost be allocated for this project. The work involves working with existing pumps and ancillary equipment. With this type of work the Utilities Department may encounter unforeseen obstacles requiring extra attention on behalf of the contractor. The Utilities Department must be prepared to deal with these situations in a timely manner to assure the project is completed in an expeditious manner thereby minimizing disruption to the Water Production Division's ongoing operation. Additional costs requested by the contractor will be reviewed by the Utilities Department prior to the work being performed.

**Fund Availability:**

Funding for this project has been included in the Utilities Department's CIP Budget, Business Unit 4050084.662601, NRO-10, Rehab/Rpl Raw Water Wells and is presented as a line item in the FY2017 budget. Additional funding to cover the requested City controlled contingency amount of 10% (\$53,691.00), when added to the total bid amount (\$536,910.00) totals \$590,601.00. The NRO-10, Rehab/Rpl Raw Water Wells account presently has an unencumbered balance of \$815,600.00.

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

Attachment: Procurement Department's Bid Tabulation for:  
Acidization of Select Upper Floridan Wellfield Supply Wells for the North  
RO WTP & Southwest RO WTP  
ITB-UT18-35/KR





ITB-UT18-35/KR Acidization of Select Upper Floridan Wellfield Supply Wells for North RO WTP & Southwest RO WTP Bid Due/ Opening - March 6, 2018									
Bid Tabulation Detail Line Items				A.C. Schultes of Florida, Inc. 11865 US Highway 41 South Gibsonton, FL 33534		Southeast Drilling Services, Inc. 10614 E US Highway 92 Tampa, FL 33610		Youngquist Brothers, Inc. 16465 Pine Ridge Road Fort Myers, FL 33908	
ITEM	DESCRIPTION	ESTIMATED QUANTITY (A)	UNIT	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)
North RO WTP Wellfield (Lines 1-12)									
1	Mobilization, Demobilization, Maintenance of Traffic (MOT), Erosion Control, Site Restoration – NRO WTP Wellfield Supply Wells	3	EA	\$4,350.00	\$13,050.00	\$8,500.00	\$25,500.00	\$9,125.00	\$27,375.00
2	Remove Permanent Well Pump From Supply Well	3	EA	\$9,000.00	\$27,000.00	\$2,500.00	\$7,500.00	\$17,100.00	\$51,300.00
3	Conduct Pre-Acidization Geophysical and Video Logging	3	EA	\$7,600.00	\$22,800.00	\$4,000.00	\$12,000.00	\$23,255.00	\$69,765.00
4	Install Acid Header and Acid Tubbing	3	EA	\$15,970.00	\$47,910.00	\$8,500.00	\$25,500.00	\$31,745.00	\$95,235.00
5	Conduct Acidization Procedure	24,000	GAL	\$3.25	\$78,000.00	\$6.00	\$144,000.00	\$4.00	\$96,000.00
6	Post-Acidization Redevelopment of the Supply Well	72	HRS.	\$175.00	\$12,600.00	\$300.00	\$21,600.00	\$400.00	\$28,800.00
7	Conduct Post-Acidization Geophysical and Video Logging	3	EA	\$7,600.00	\$22,800.00	\$5,000.00	\$15,000.00	\$25,615.00	\$76,845.00
8	Reinstall the Permanent Well Pump, Wellhead and Associated Appurtenances	3	EA	\$8,500.00	\$25,500.00	\$2,500.00	\$7,500.00	\$22,002.00	\$66,006.00
9	Conduct Disinfection of Supply Well	3	EA	\$3,500.00	\$10,500.00	\$2,000.00	\$6,000.00	\$10,558.00	\$31,674.00
10	Conduct Bacteriological Clearance Testing	3	EA	\$1,250.00	\$3,750.00	\$500.00	\$1,500.00	\$1,000.00	\$3,000.00
11	Allowance for Local Government Permits and Fees - NRO WTP Wellfield Supply Wells	1	EA	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
12	Total Cost for Acidization of Select Upper Floridan Wellfield Supply Wells for the North RO WTP			\$265,410.00		\$267,600.00		\$547,500.00	
Southwest RO WTP Wellfield (Lines 13-24)									
13	Erosion Control, Site Restoration – SWRO WTP Wellfield Supply Wells	3	EA	\$4,350.00	\$13,050.00	\$8,500.00	\$25,500.00	\$9,125.00	\$27,375.00
14	Remove Permanent Well Pump From Supply Well	3	EA	\$9,000.00	\$27,000.00	\$2,500.00	\$7,500.00	\$17,100.00	\$51,300.00
15	Conduct Pre-Acidization Geophysical and Video Logging	3	EA	\$7,600.00	\$22,800.00	\$4,000.00	\$12,000.00	\$23,255.00	\$69,765.00
16	Install Acid Header and Acid Tubbing	3	EA	\$18,000.00	\$54,000.00	\$8,500.00	\$25,500.00	\$31,745.00	\$95,235.00
17	Conduct Acidization Procedure	24000	GAL	\$3.25	\$78,000.00	\$6.00	\$144,000.00	\$4.00	\$96,000.00
18	Post-Acidization Redevelopment of the Supply Well	72	HRS.	\$175.00	\$12,600.00	\$300.00	\$21,600.00	\$400.00	\$28,800.00
19	Conduct Post-Acidization Geophysical and Video Logging	3	EA	\$7,600.00	\$22,800.00	\$5,000.00	\$15,000.00	\$25,615.00	\$76,845.00
20	Reinstall the Permanent Well Pump, Wellhead and Associated Appurtenances	3	EA	\$8,500.00	\$25,500.00	\$2,500.00	\$7,500.00	\$22,002.00	\$66,006.00
21	Conduct Disinfection of Supply Well	3	EA	\$3,500.00	\$10,500.00	\$2,000.00	\$6,000.00	\$10,558.00	\$31,674.00
22	Conduct Bacteriological Clearance Testing	3	EA	\$1,250.00	\$3,750.00	\$500.00	\$1,500.00	\$1,000.00	\$3,000.00
23	Allowance for Local Government Permits and Fees - SWRO WTP Wellfield Supply Wells	1	EA	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
24	Total Cost for Acidization of Select Upper Floridan Wellfield Supply Wells for the Southwest RO WTP			\$271,500.00		\$267,600.00		\$547,500.00	
TOTAL Combined Cost for Acidization of Select Upper Floridan Wellfield Supply Wells for North and Southwest RO WTP - Summation of ITEM 12 and ITEM 24				\$536,910.00		\$535,200.00		\$1,095,000.00	
				Lowest Responsible Responsive		Non-Responsive			

A RESOLUTION OF THE CITY OF CAPE CORAL AWARDING A BID FOR ACIDIZATION OF SELECT UPPER FLORIDIAN WELLFIELD SUPPLY WELLS FOR THE NORTH REVERSE OSMOSIS WATER TREATMENT PLANT AND THE SOUTHWEST REVERSE OSMOSIS WATER TREATMENT PLANT TO A.C. SCHULTES OF FLORIDA, INC.; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT DOCUMENTS, AMENDMENTS AND RENEWALS BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING FOR APPROVAL OF A CONTINGENCY AMOUNT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on December 20, 2017, INVITATION TO BID (ITB) #UT18-35/KR was issued for Acidization of Select Upper Floridian Wellfield Supply Wells for the North Reverse Osmosis Water Treatment Plant and the Southwest Reverse Osmosis Water Treatment Plant; and

WHEREAS, having received three (3) bids, the City Manager recommends the award of the bid to A.C. Schultes of Florida, Inc., as the lowest qualified responsible and responsive bidder meeting the requirements and criteria set forth in the invitation to bid, in the amount of \$536,910, subject to a City-controlled contingency amount not to exceed ten (10) percent; and

WHEREAS, the initial work assignment is for six wells, and the Utilities Department requests approval for use of the contract for additional individual work assignments for Well Acidization Services, based on the unit prices stated in the contract, not to exceed annual budgetary limits; and

WHEREAS, the term of the contract is for one (1) year with two (2) optional one-year renewals; and

WHEREAS, the City Council desires to award the bid for Acidization of Select Upper Floridian Wellfield Supply Wells for the North Reverse Osmosis Water Treatment Plant and the Southwest Reverse Osmosis Water Treatment Plant to A.C. Schultes of Florida, Inc.; desires to authorize use of the contract for additional individual Well Acidization Services work assignments; and desires to authorize the City Manager to approve the renewal of the contract for up to two additional one-year periods, if the City Manager deems the renewals to be in the best interest of the City.

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 Acidization of Select Upper Floridian Wellfield Supply Wells for the North Reverse Osmosis Water Treatment Plant and the Southwest Reverse Osmosis Water Treatment Plant to A.C. Schultes of Florida, Inc., in the total amount of \$536,910, subject to a City-controlled contingency amount not to exceed ten (10) percent of the total amount of the contract.

Section 2. The City Council hereby approves the contract between the City of Cape Coral and A.C. Schultes of Florida, Inc., for Acidization of Select Upper Floridian Wellfield Supply Wells for the North Reverse Osmosis Water Treatment Plant and the Southwest Reverse Osmosis Water Treatment Plant, and authorizes the City Manager or his designee to execute the Contract. A copy of the Contract is attached hereto as Exhibit A.

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

Section 4. The City Council hereby authorizes use of the contract for additional individual Well Acidization Services work assignments, at the unit prices stated in the contract, not to exceed annual budgetary limits.

Section 5. The City Council hereby authorizes the City Manager to approve the renewal of the contract for two (2) additional one-year periods and authorizes the City Manager to execute any future contract documents associated with such renewal(s), should the City Manager deem it to be in the best interest of the City.

Section 6. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO \_\_\_\_\_  
GUNTER \_\_\_\_\_  
CARIOSCIA \_\_\_\_\_  
STOUT \_\_\_\_\_

NELSON \_\_\_\_\_  
STOKES \_\_\_\_\_  
WILLIAMS \_\_\_\_\_  
COSDEN \_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM,  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res/Bid Award-AC Schultes



**City of Cape Coral  
Well Acidization Services  
Contract CON-UT18-35/KR**

THIS CONTRACT is made this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between the **CITY OF CAPE CORAL, FLORIDA**, hereinafter called "**CITY**", and **A.C. Schultes, of Florida Inc.** a Florida Profit Corporation, hereinafter called "**CONTRACTOR**", with principle place of business as follows:

**A.C. Schultes of Florida, Inc  
11865 US Highway 41 South.  
Gibsonton, Florida 33534**

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

1. The **CONTRACTOR** will provide the following services for the Acidization of Select Upper Floridan Wellfield Supply Wells for the North Reverse Osmosis Water Treatment Plant and the Southwest Reverse Osmosis Water Treatment Plant on each well selected for hereafter known as "**Well Acidization Services**" in accordance with the Contract Documents.

The service shall generally be comprised of the acidization of selected existing Upper Floridan aquifer raw water production wells serving the North Reverse Osmosis (NRO) Water Treatment Plant (WTP) and/or the Southwest Reverse Osmosis (SWRO) Water Treatment Plant (WTP). The well Contractor shall be responsible for all labor, personal protective gear, materials, transportation, tools, supplies, equipment, and appurtenances necessary to perform the well acidization process as described in the contract documents. In general, all methods and materials used during the execution of the work shall be in accordance with the latest revisions of the American Water Works Association (AWWA) Standards for Deep Wells (AWWA A100-06) as they apply to the particular needs or conditions encountered during the execution of the Work. The Scope of Work for each selected well shall generally include, but is not limited to the removal of the permanent well pump; performing geophysical and video logging of the well; acidizing the supply well; redevelopment of the well with compressed air; performing post-acidization geophysical and video logging of the well; reinstalling the permanent well pump; disinfection of the well; conducting a two-point bacteriological clearance of the well; and, site restoration of the well site/staging area. It should be noted that work on one (1) well must be completed, with the well back in service, before work can begin on the next selected supply well.

2. The **CONTRACTOR** will furnish all the material, supplies, tools, equipment, labor, supervisory staff, freight, transportation, goods, permits, and other services necessary for the completion of the services described in the Contract Documents.
3. The **CONTRACTOR** will commence specified work assignments as required by the **CONTRACT DOCUMENTS** immediately upon receipt of a Purchase Order or a Notice to Proceed. Work assignments will be completed within 60 calendar days from the date the Purchase Order or Notice to Proceed is given.
4. **Liquidated Damages** – The liquidated damages will be \$300.00 per day and will commence for each consecutive calendar day beyond 60th consecutive calendar day after the Notice to Proceed date. The liquidated damages will be \$300.00 per day for each well site that has not been completed within the 60 days, and will continue until the work has been completed.

5. The CONTRACTOR agrees to perform all the WORK described in the CONTRACT DOCUMENTS for City selected wells for each sight (North Reverse Osmosis and Southwest Reverse Osmosis, Water Treatment Plants), for the unit pricing provided in the bid proposal. The unit pricing is stated in the contract documents and attached as Bid Proposal Form - Attachment "D". The number of wells to be acidized each year will be at the discretion of the City and based upon budgetary limits. The unit pricing will remain fixed for the term of the agreement and for any subsequent mutually agreed upon renewal periods.
6. This agreement does not provide a guarantee of any work to the Contractor for the term of the agreement.
7. The initial term of this agreement shall be for one-year (1) commencing on contract execution date by the City until 364 days after the contract execution date with the option of renewal for two (2) additional one (1) year renewal periods, by mutual agreement of parties for the unit pricing provided in the Bid Proposal Form - Attachment "D".
8. This agreement may be terminated by the CITY for its convenience upon thirty (30) days prior written notice to the CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this agreement. Such amount shall be paid by the CITY after inspection of the work to determine the extent of performance under this agreement, whether completed or in progress.
9. The Term "Contract Documents" shall include this Contract, Addenda, Contractor's Bid Proposal, except when it conflicts with any other contractual provisions, the Notice to Proceed, the Bonds, the Bid Package prepared and issued by the CITY, the General Conditions, the Specifications and Drawings, any Special Conditions, together with all Written Amendments, Change Orders, Work Change Directives or Field Orders. 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. **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.
11. **Disclosure:** The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the agreement.
12. **Administration of Agreement:** The Utilities Director or their representative shall administer this agreement for the CITY.
13. **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.

14. **Amendments:** No Amendments or variation of the terms or conditions of this agreement shall be valid unless in writing and signed by the parties.

15. **Payment Procedures:** CONTRACTOR shall submit Invoices for Payment in accordance with the contract specifications. Invoices for Payment will be processed by the CITY as provided in the contract specifications.

16. **Contractor's Representations:** In order to induce CITY to enter into the Agreement 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 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.

17. **Indemnity:** The CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and any persons employed or utilized by CONTRACTOR in the performance of this Contract.

18. **Other Provisions:** The CITY reserves unto itself sole authority to execute and authorize the issuance of change order(s), directives, or other documents to the CONTRACTOR which impact on or change the contract time or price. This provision supersedes any other contradictory provisions within the Contract Documents.

19. **Invalid Provision:** The invalidity or unenforceability of any provision of this agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

20. **Record Keeping:** Records of the Contractor's personnel, sub-consultants, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

Contractor shall keep full and detailed accounts and financial records pertaining to the 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 project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

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.

21. **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 ITB. This also applies to any sub-contractors used by the Contractor.
22. **Entire Agreement:** This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.
23. **Insurance:** Without limiting its liability, the CONTRACTOR shall be required to procure and maintain at its own expense during the life of the Contract, insurance of the types and in the minimum amounts stated below as will protect the CONTRACTOR, from claims which may arise out of or as a result from the CONTRACTOR's execution of the project, whether such execution by himself or by any sub-contractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

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

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

**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 \$1,000,000 each accident.

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

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

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

In the event the insurance coverage expires prior to 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 SUB-CONTRACTORS comply with the same insurance requirements spelled out above.

All Certificate of Insurance documents must be on file with and approved by the City of Cape Coral before the Commencement of any work activities. The contract number should be shown "CON-UT18-35/KR" under the "Description of Operations", with the project title of "Well Acidization Services".

24. **Licenses and Permits:** Contractor shall maintain and submit copies of all Licenses and Permits required to complete the project to the City. The Contractor must maintain valid licenses and permits throughout the life of the contract.
25. **Other Contracts:** The City of Cape Coral reserves the right to purchase off State Contracts or any other available contracts or providers if deemed to be in the best interest of the City.
26. **Payment and Performance Bonds:** Pursuant to FL Statute §255.05 any CONTRACTOR entering a contract for the construction of a public building or public work, or for any repairs upon a building or public work shall, before commencing work, execute, deliver to the City of Cape Coral (Procurement), and record in the public records of Lee County, Florida, an original payment and performance bond issued by a surety authorized to do business in the State of Florida. The amount of the bond shall be 100% of the contract amount. The original recorded bond will be returned to City (Procurement) before any commencement of work.
27. **Entire Agreement:** This Contract constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

(END OF SECTION)



IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their authorized signatures, this Agreement which shall be deemed an original and the contract date shall be fully executed on the date of last signature written below and shall become effective for 364 days from that date.

CITY:

CITY:

ATTEST:

City of Cape Coral, Florida

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Rebecca van Deutekom, MMC

A. John Szerlag

Name

Name

City Clerk

City Manager

Title

Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

CITY LEGAL REVIEW:

*fa* Dolores Menendez – City Attorney

04/09/2018  
Date

CONTRACTOR:

A.C. Schultes of Florida, Inc.

Company

Vice President

Title

4/12/18  
Date

*Gregory Schultes*  
Signature

Typed/Printed Name

CGC1516532

State of Florida Contractor License  
Number

CONTRACTOR-ADDRESS FOR PROVIDING NOTICES:

A.C. Schultes of Florida Inc.

Company

11865 US Highway 41 South

Street

Gibsonton, Florida 33534

City, State, Zip Code

Gregory Schultes

Contact Person Name

**BID PROPOSAL FORM  
PAGE 1 OF 4**

**Acidization of Select Upper Floridan Wellfield Supply Wells  
(North RO WTP & Southwest RO WTP)**

The undersigned certifies that this bid is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder and that the bidder is in compliance with all requirements. In submitting a bid to the City of Cape Coral, the bidder offers and agrees that if the bid is accepted, the bidder will convey, sell, assign or transfer to the City of Cape Coral all rights, title and interest in and all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Cape Coral. At the City's discretion, such assignment shall be made and become effective at the time the purchasing agency tenders final payment to the bidder.

The undersigned declares that the statements and representations made in this proposal are true in every respect and that the said proposal 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 # 1 - 2/23/18

Addendum # \_\_\_\_\_

Addendum # \_\_\_\_\_

**PRICES SHALL BE EFFECTIVE FOR ONE HUNDRED AND EIGHTY (180) DAYS FROM BID OPENING DATE, AND THEREAFTER IF ACCEPTED BY THE CITY FOR THE TERM DESIGNATED IN THIS BID.**

**BID PROPOSAL FORM**  
**PAGE 2 OF 4**

**BID SCHEDULE**  
**Acidization of Select Upper Floridan Wellfield Supply Wells**  
**(North RO WTP & Southwest RO WTP)**

(1) Item No.	(2) Item Description	(3) Est. Qty. (A)	(4) Unit	(5) Unit Price (B)	(6) TOTAL ITEM COST (A x B)
<b>NORTH REVERSE OSMOSIS WATER TREATMENT PLANT WELLFIELD SUPPLY WELLS</b>					
1.	Mobilization, Demobilization, Maintenance of Traffic (MOT), Erosion Control, Site Restoration – NRO WTP Wellfield Supply Wells	3	EA	\$4,350	\$13,050
2.	Remove Permanent Well Pump From Supply Well	3	EA	\$9,000	\$27,000
3.	Conduct Pre-Acidization Geophysical and Video Logging	3	EA	\$7,600	\$22,800
4.	Install Acid Header and Acid Tubbing	3	EA	\$15,970	\$47,910
5.	Conduct Acidization Procedure	24,000	GAL	\$3.25	\$78,000
6.	Post-Acidization Redevelopment of the Supply Well	72	HRS.	\$175	\$12,600
7.	Conduct Post-Acidization Geophysical and Video Logging	3	EA	\$7,600	\$22,800
8.	Reinstall the Permanent Well Pump, Wellhead and Associated Appurtenances	3	EA	\$8,500	\$25,500
9.	Conduct Disinfection of Supply Well	3	EA	\$3,500	\$10,500
10.	Conduct Bacteriological Clearance Testing	3	EA	\$1,250	\$3,750
11.	Allowance for Local Government Permits and Fees – NRO WTP Wellfield Supply Wells	1	LS	\$1,500.00	\$1,500.00
<b>12.</b>	<b>TOTAL COST FOR THE ACIDIZATION OF SELECT UPPER FLORIDAN WELLFIELD SUPPLY WELLS FOR THE NORTH REVERSE OSMOSIS WATER TREATMENT PLANT</b> <i>(Summation of Total Item Cost (Column 6)) for NRO WTP Wellfield Supply Wells)</i>				<b>\$265,410</b>



**ITB-UT18-35/KR**  
**BID PROPOSAL FORM**  
**(PAGE 3 OF 4)**  
**BID SCHEDULE (CONTINUED)**

(1) Item No.	(2) Item Description	(3) Est. Qty. (A)	(4) Unit	(5) Unit Price (B)	(6) TOTAL ITEM COST (A x B)	
SOUTHWEST REVERSE OSMOSIS WATER TREATMENT PLANT WELLFIELD SUPPLY WELLS						
13.	Mobilization, Demobilization, Maintenance of Traffic (MOT), Erosion Control, Site Restoration – SWRO WTP Wellfield Supply Wells	3	EA	\$4,350	\$13,050	
14.	Remove Permanent Well Pump From Supply Well	3	EA	\$9,000	\$27,000	
15.	Conduct Pre-Acidization Geophysical and Video Logging	3	EA	\$7,600	\$22,800	
16.	Install Acid Header and Acid Tubbing	3	EA	\$18,000	\$54,000	
17.	Conduct Acidization Procedure	24,000	GAL	\$3.25	\$78,000	
18.	Post-Acidization Redevelopment of the Supply Well	72	HRS.	\$175	\$12,600	
19.	Conduct Post-Acidization Geophysical and Video Logging	3	EA	\$7,600	\$22,800	
20.	Reinstall the Permanent Well Pump, Wellhead and Associated Appurtenances	3	EA	\$8,500	\$25,500	
21.	Conduct Disinfection of the Supply Well	3	EA	\$3,500	\$10,500	
22.	Conduct Bacteriological Clearance Testing	3	EA	\$1,250	\$3,750	
23.	Allowance for Local Government Permits and Fees – SWRO WTP Wellfield Supply Wells	1	LS	\$1,500.00	\$1,500.00	
24.	TOTAL COST FOR THE ACIDIZATION OF SELECT UPPER FLORIDAN WELLFIELD SUPPLY WELLS FOR THE SOUTHWEST REVERSE OSMOSIS WATER TREATMENT PLANT (Summation of Total Item Cost (Column 6)) for the SWRO WTP Wellfield Supply Wells)				\$271,500	
TOTAL COMBINED COST FOR THE ACIDIZATION OF SELECTED UPPER FLORIDAN WELLFIELD SUPPLY WELLS FOR THE NORTH REVERSE OSMOSIS WATER TREATMENT PLANT AND THE SOUTHWEST REVERSE OSMOSIS WATER TREATMENT PLANT (Summation of Line Item No. 12 (Column 6) and Line Item No. 24 (Column 6))						\$536,910

(TOTAL COMBINED COST FOR THE ACIDIZATION OF SELECTED UPPER FLORIDAN WELLFIELD SUPPLY WELLS FOR THE NRO WTP & THE SWRO WTP IN WORDS – SUMMATION OF COLUMN 7)

**BID PROPOSAL FORM**  
**PAGE 4 OF 4**

Prices quoted shall be effective for One Hundred Eighty (180) days from bid opening date, and if accepted by the City, for the period specified herein.

A.C. Schultes of Florida, Inc.  
COMPANY

  
SIGNATURE

11865 US Highway 41 South  
ADDRESS

Gregory Schultes  
NAME (PRINTED)

Gibsonton, FL 33534  
CITY, STATE, ZIP CODE

Vice President  
TITLE

813-741-3010  
PHONE NUMBER

March 5, 2018  
DATE

813-741-3170  
FAX NUMBER

greg.acsfl@verizon.net  
E-MAIL ADDRESS

Federal Employer Identification Number or Social Security Number 14-1871186

(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.)

**REMARKS BY BIDDER**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
BIDDER: A.C. Schultes of Florida, Inc.

DATE: March 5, 2018

Company Name: A.C. Schultes of Florida, Inc.

ITB-UT18-35/KR Acidization of Select Upper Floridan Wellfield Supply Wells for North RO WTP & Southwest RO WTP Bid Due/ Opening - March 6, 2018									
Bid Tabulation Detail Line Items				A.C. Schultes of Florida, Inc. 11865 US Highway 41 South Gibson <span>ton</span> , FL 33534		Southeast Drilling Services, Inc. 10614 E US Highway 92 Tampa, FL 33610		Youngquist Brothers, Inc. 16465 Pine Ridge Road Fort Myers, FL 33908	
ITEM	DESCRIPTION	ESTIMATED QUANTITY (A)	UNIT	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)
North RO WTP Wellfield (Lines 1-12)									
1	Mobilization, Demobilization, Maintenance of Traffic (MOT), Erosion Control, Site Restoration – NRO WTP Wellfield Supply Wells	3	EA	\$4,350.00	\$13,050.00	\$8,500.00	\$25,500.00	\$9,125.00	\$27,375.00
2	Remove Permanent Well Pump From Supply Well	3	EA	\$9,000.00	\$27,000.00	\$2,500.00	\$7,500.00	\$17,100.00	\$51,300.00
3	Conduct Pre-Acidization Geophysical and Video Logging	3	EA	\$7,600.00	\$22,800.00	\$4,000.00	\$12,000.00	\$23,255.00	\$69,765.00
4	Install Acid Header and Acid Tubbing	3	EA	\$15,970.00	\$47,910.00	\$8,500.00	\$25,500.00	\$31,745.00	\$95,235.00
5	Conduct Acidization Procedure	24,000	GAL	\$3.25	\$78,000.00	\$6.00	\$144,000.00	\$4.00	\$96,000.00
6	Post-Acidization Redevelopment of the Supply Well	72	HRS.	\$175.00	\$12,600.00	\$300.00	\$21,600.00	\$400.00	\$28,800.00
7	Conduct Post-Acidization Geophysical and Video Logging	3	EA	\$7,600.00	\$22,800.00	\$5,000.00	\$15,000.00	\$25,615.00	\$76,845.00
8	Reinstall the Permanent Well Pump, Wellhead and Associated Appurtenances	3	EA	\$8,500.00	\$25,500.00	\$2,500.00	\$7,500.00	\$22,002.00	\$66,006.00
9	Conduct Disinfection of Supply Well	3	EA	\$3,500.00	\$10,500.00	\$2,000.00	\$6,000.00	\$10,558.00	\$31,674.00
10	Conduct Bacteriological Clearance Testing	3	EA	\$1,250.00	\$3,750.00	\$500.00	\$1,500.00	\$1,000.00	\$3,000.00
11	Allowance for Local Government Permits and Fees - NRO WTP Wellfield Supply Wells	1	EA	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
12	Total Cost for Acidization of Select Upper Floridan Wellfield Supply Wells for the North RO WTP			\$265,410.00		\$267,600.00		\$547,500.00	
Southwest RO WTP Wellfield (Lines 13-24)									
13	Erosion Control, Site Restoration – SWRO WTP Wellfield Supply Wells	3	EA	\$4,350.00	\$13,050.00	\$8,500.00	\$25,500.00	\$9,125.00	\$27,375.00
14	Remove Permanent Well Pump From Supply Well	3	EA	\$9,000.00	\$27,000.00	\$2,500.00	\$7,500.00	\$17,100.00	\$51,300.00
15	Conduct Pre-Acidization Geophysical and Video Logging	3	EA	\$7,600.00	\$22,800.00	\$4,000.00	\$12,000.00	\$23,255.00	\$69,765.00
16	Install Acid Header and Acid Tubbing	3	EA	\$18,000.00	\$54,000.00	\$8,500.00	\$25,500.00	\$31,745.00	\$95,235.00
17	Conduct Acidization Procedure	24000	GAL	\$3.25	\$78,000.00	\$6.00	\$144,000.00	\$4.00	\$96,000.00
18	Post-Acidization Redevelopment of the Supply Well	72	HRS.	\$175.00	\$12,600.00	\$300.00	\$21,600.00	\$400.00	\$28,800.00
19	Conduct Post-Acidization Geophysical and Video Logging	3	EA	\$7,600.00	\$22,800.00	\$5,000.00	\$15,000.00	\$25,615.00	\$76,845.00
20	Reinstall the Permanent Well Pump, Wellhead and Associated Appurtenances	3	EA	\$8,500.00	\$25,500.00	\$2,500.00	\$7,500.00	\$22,002.00	\$66,006.00
21	Conduct Disinfection of Supply Well	3	EA	\$3,500.00	\$10,500.00	\$2,000.00	\$6,000.00	\$10,558.00	\$31,674.00
22	Conduct Bacteriological Clearance Testing	3	EA	\$1,250.00	\$3,750.00	\$500.00	\$1,500.00	\$1,000.00	\$3,000.00
23	Allowance for Local Government Permits and Fees - SWRO WTP Wellfield Supply Wells	1	EA	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
24	Total Cost for Acidization of Select Upper Floridan Wellfield Supply Wells for the Southwest RO WTP			\$271,500.00		\$267,600.00		\$547,500.00	
TOTAL Combined Cost for Acidization of Select Upper Floridan Wellfield Supply Wells for North and Southwest RO WTP - Summation of ITEM 12 and ITEM 24				\$536,910.00		\$535,200.00		\$1,095,000.00	
				Lowest Responsible Responsive		Non-Responsive			

**Item Number: B.(6)**  
**Meeting Date: 5/7/2018**  
**Item Type: CONSENT AGENDA**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 92-18 Approval of Purchase Contract for the purchase of Lots 24 through 29, Block 1548, Unit 17, Cape Coral Subdivision, 2025 NE 6th Street, for a future Fire Station site for the purchase price of \$90,000 plus closing costs not to exceed \$2,500; Department: Financial Services / Real Estate Division; Dollar Value: \$92,500; (Fire Impact Fee Fund); Note: Trade offer rejected by Seller.

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

1. The City's Fire Master Plan has identified a need for a future fire station in the northeastern section of Cape Coral, close to the Pine Island Road / Pondella Road area to service the northeast area of the Pine Island Road Corridor. An additional fire station in this area would improve the ISO rating and address areas of high population density and call volumes in the future.
2. Staff had been searching for a potential fire station site in this area which would offer suitable access and could be assembled into a site large enough for a neighborhood fire station. This location allows for reduced response times eastward to US 41, toward the Judd Creek area, westward along the Pine Island Road Corridor and north and south on Del Prado Boulevard.
3. Last year, Staff began negotiating the purchase of this property with the property owner. A contract offer to purchase the property based on an appraisal, by an independent state certified appraiser, was submitted reflecting a market value of \$90,000. The contract included the City paying the title closing costs. The utility assessments for this property have been paid in full.

4. In September 2017, the City purchased the property adjacent and to the north. The subject site purchase will complete the assemblage necessary for the future Fire Station #13 site.

5. Staff recommends approval of the Purchase Contract for the purchase of Lots 24 through 29, Block 1548, Unit 17, Cape Coral Subdivision, 2025 NE 6<sup>th</sup> Street, for a future Fire Station site for the purchase price of \$90,000 plus closing costs not to exceed \$2,500.

## **LEGAL REVIEW:**

## **EXHIBITS:**

Resolution 92-18

Property Appraiser Printout

Location Map

Appraisal

Conceptual Plan - shown on overhead at the meeting

## **PREPARED BY:**

Dawn Y. Andrews, Property  
Broker

Division- Real  
Estate

Department- Financial  
Services

## **SOURCE OF ADDITIONAL INFORMATION:**

Interim Fire Chief Mike Russell  
239-242-3641

Fire Division Chief Ryan Lamb  
239-242-3602

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

## **ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Resolution 92-18	Resolution
▣ Property Appraiser Sheet - Blk 1548, Lots 24-29	Backup Material
▣ Location Map - Blk 1548, Lots 24-29	Backup Material
▣ Appraisal - Blk 1548, Lots 24-29	Backup Material
▣ Conceptual Plan - shown at meeting on the overhead	Backup Material



RESOLUTION 92 – 18

A RESOLUTION OF THE CITY OF CAPE CORAL AUTHORIZING THE CITY MANAGER TO ENTER INTO A "CONTRACT FOR SALE AND PURCHASE" BETWEEN SOUTHWINDS SOUTH, LLC, AND THE CITY OF CAPE CORAL FOR THE PURCHASE OF LOTS 24 THROUGH 29, BLOCK 1548, UNIT 17, CAPE CORAL SUBDIVISION, FOR A FUTURE FIRE STATION SITE; PROPERTY LOCATED AT 2025 NE 6<sup>TH</sup> STREET; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City's Fire Master Plan has identified a need for a future fire station in the northeastern section of Cape Coral, close to the Pine Island Road/Pondella Road area; and

WHEREAS, an additional fire station in this area would improve the Fire Department's ISO rating and address the issues of high population density and call volumes in the future; and

WHEREAS, the subject location will complete the assemblage necessary for a site large enough for a neighborhood fire station, allowing for reduced response times eastward to US 41, toward the Judd Creek area, westward along the Pine Island Road Corridor, and north and south on Del Prado Boulevard; and

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

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

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

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

Section 1. The City Council hereby authorizes the City Manager or his designee to execute a "Contract for Sale and Purchase" between Southwinds South, LLC, and the City of Cape Coral for the purchase of Lots 24-29, Block 1548, Unit 17, Cape Coral Subdivision, as more fully described in the Contract, in the amount of \$90,000, plus closing costs not to exceed \$2,500. The property is located at 2025 NE 6<sup>th</sup> Street. A copy of the "Contract for Sale and Purchase" is attached hereto as Exhibit A.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
DOLORES D. MENENDEZ  
CITY ATTORNEY

Res/Purchase Real Property-Fire Station #13 L24-29 B1548



## CONTRACT FOR SALE AND PURCHASE

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

**PARTIES:** Southwinds South, LLC, a Florida limited liability company, 1406 SE 46<sup>th</sup> Lane, Suite 4, Cape Coral, Florida 33904 as "**SELLER**", and City of Cape Coral, a Florida Municipal Corporation, P.O. Box 150027, Cape Coral, Florida 33915-0027, successors or assigns, as "**BUYER**", hereby agree that the **SELLER** shall sell and **BUYER** shall buy the following described property (hereinafter referred to as "**PROPERTY**") upon the following terms and conditions:

1. **LEGAL DESCRIPTION** of real estate located in Lee County, Florida:  
  
Lots 24 through 29, Block 1548, Unit 17, Cape Coral Subdivision, as recorded  
  
Plat Book 14, Pages 23 through 38, inclusive of the Public Records of Lee County,  
  
Florida.
2. **PURCHASE PRICE** \$90,000.00
3. **CONDITIONAL CONTRACT.** This contract for sale and purchase is a binding contract once it is executed by the **SELLER** and by the City Manager on behalf of the **BUYER**. However, this contract is expressly subject to approval by the Cape Coral City Council. If the Cape Coral City Council fails or refuses to approve the purchase within 45 calendar days of the date when the City Manager has signed this contract, then this contract shall be null and void. This contract is subject to applicable Florida probate proceedings, if required. **BUYER** and **SELLER** understand and agree that in the event probate proceedings are necessary, **SELLER** shall be solely responsible for any and all expenses necessary to complete said probate proceedings.
4. **EFFECTIVE DATE & CLOSING DATE.** The Effective Date of this contract shall be the date of Council authorization. This contract shall be closed and the deed shall be

delivered within 30 business days after Council authorization unless extended by other provisions of this contract. Such other provisions shall include, but not be limited to, paragraph 7. Possession shall be granted on the day of closing unless otherwise agreed in writing.

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

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

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

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

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

of (1) accepting the title as it then is; (2) affording **SELLER** additional time to cure the defect(s); or (3) terminate the contract by providing written notice to the **SELLER**.

8. **EXISTING MORTGAGES.** **SELLER** shall furnish estoppel letters from mortgagee(s) setting forth the principal balance, escrow balance, method of payment, and whether the mortgage is in good standing. It shall be **SELLER'S** obligation to obtain any satisfactions of mortgage required for closing.
9. **SURVEY.** If **BUYER** desires a survey, **BUYER** shall have the property surveyed at its expense prior to closing date. If the survey shows an encroachment, the same shall be treated as a title defect.
10. **OTHER AGREEMENTS.** No agreements or representations, unless incorporated in this contract, shall be binding upon any of the parties, unless they be in writing and agreed to by all parties.
11. **MECHANIC'S LIENS.** **SELLER** shall execute an affidavit that there have been no improvements to the subject property and that **SELLER** has not entered any contracts for the provision of goods or services that could give rise to a mechanic's lien for the ninety (90) days immediately preceding the date of closing.
12. **TIME IS OF THE ESSENCE** in the performance of this contract.
13. **DOCUMENTS FOR CLOSING.** **SELLER** shall execute a Warranty Deed, Seller's Affidavit and other necessary closing documents provided by closing agent.
14. **EXPENSES.** State surtax, title insurance, title search, title exam and settlement fee shall be paid by **BUYER**.
15. **PRORATION OF TAXES (REAL AND PERSONAL).** Taxes shall be prorated based upon the current year's tax without regard to discount. If the closing takes place and the current year's taxes are not fixed, and the current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If the current year's

assessment is not available, then taxes will be prorated on the prior year's tax, provided, however, if there is a completed improvement of the subject premises by January 1 of the year of closing, then the taxes shall be prorated to the date of closing based upon the prior year's millage. It is further agreed that should, upon receipt of current tax statement, the taxes be different by more than Ten Dollars (\$10.00) than those estimated, the proration shall be adjusted.

16. **ATTORNEY'S FEES AND COSTS.** In connection with any litigation arising out of the contract, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees. The parties agree to venue in Lee County, Florida for any action arising out of this Contract.
17. **DEFAULT BY SELLER.** If **SELLER** fails to perform any of the covenants of this contract other than the failure of **SELLER** to render his title marketable after diligent effort **BUYER** may proceed at law or in equity to enforce its legal rights under this contract, including, but not limited to, the right to bring suit for specific performance.
18. All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors and assigns of the respective parties.
19. This agreement shall be interpreted, construed, and governed according to the Laws of the State of Florida.
20. The invalidity or unenforceability of any particular provision of this agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid and unenforceable provisions were omitted.
21. **SELLER** and **BUYER** hereby agree that this contract to purchase the real property described above is for a proper municipal purpose and grants the **BUYER** the right to enter the real property described above for the purpose of surveying, soil borings, or any other work as deemed necessary by the **BUYER**. The parties herein further agree that the

purchase of this property does not destroy or cause any damage whatsoever to **SELLER** or his successor or assigns with respect to any commercial or residential property owned by them whose lands are being so purchased or located upon adjoining lands.

22. The place of closing and delivery of the deed to **BUYER** shall be at any office designated by **BUYER**.
23. **ENVIRONMENTAL AUDIT.** **BUYER** may perform or have performed, at **BUYER'S** expense, an environmental audit of the property. If such an audit identifies environmental problems unacceptable to the **BUYER** then **BUYER** may elect to accept the property in its existing condition or **BUYER** may terminate this Contract without obligation.
24. **REAL ESTATE COMMISSIONS.** **BUYER** and **SELLER** understand and agree that in the event **BUYER** has knowledge of any listing agreement for the subject property, then **BUYER**, at its option, may elect to notify and provide a copy of this contract to the listing Broker. **SELLER** shall be solely responsible for any Broker compensation, Realtor notification or any other terms and conditions of any listing agreement. **SELLER** shall also be responsible for any Realtor transaction fee or administration fee.
25. **DISCLOSURE OF BENEFICIAL INTERESTS.** **SELLER** agrees to comply with the provisions of Section 286.23(1), Florida Statutes. Said section requires that, before property that is owned by a partnership, limited partnership, corporation, trust or any other form of representative capacity whatsoever for others, is conveyed to a governmental unit, the representative of the owner/entity shall make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state the names and addresses of every person having a beneficial interest in the Real Property, however small or minimal.



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

CITY OF CAPE CORAL, FLORIDA

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

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

\_\_\_\_\_  
Witness to Rebecca van Deutekom

BY: \_\_\_\_\_  
Rebecca van Deutekom              Date  
City Clerk

\_\_\_\_\_  
Witness

Print Name: Karina Curesi

**SOUTHWINDS SOUTH, LLC, a Florida  
limited liability company**

BY: KIRBY, LLC, a Florida limited liability  
Company, its Managing Member

\_\_\_\_\_  
Witness

Print Name: Annamaria L. Edmonson

BY: LS                      3/13/2018  
Lynn A. Kirby                      Date

Its: MANAGING MEMBER

APPROVED AS TO FORM:

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

# DISCLOSURE AFFIDAVIT

Parcel Strap #: 08-44-24-C2-01548.0240

STATE OF FLORIDA

COUNTY OF LEE

**BEFORE ME**, the undersigned authority in said County and State, personally appeared Lynn A. Kirby who being first duly sworn, deposes and says:

1. **THAT** he is:

( ) a. President (or Vice President) of KIRBY, LLC, a Florida limited liability company, incorporated or organized under the laws of the State of Florida;

or ( ) b. A Partner (or limited Partner) of the firm of \_\_\_\_\_ composed of \_\_\_\_\_ and \_\_\_\_\_ doing business under the name of \_\_\_\_\_.

or ☒ c. Managing Member of a limited liability company organized under the laws of Florida, doing business as KIRBY, LLC, a Florida limited liability company, Managing Member of Southwinds South, LLC, a Florida limited liability company.

2. **THAT** the names and addresses listed on Exhibit "A" attached hereto and by this reference made a part hereof are the name and address of every person having a beneficial interest in the real property described as Lots 24 through 29, Block 1548, Unit 17, Cape Coral Subdivision, however small or minimal.

3. **THIS** Affidavit is provided to comply with the provisions of Section 286.23, Florida Statutes.

Under penalties of perjury, I do hereby declare that the information contained in this Affidavit is true and correct.

\_\_\_\_\_  
(Signature)  
Print Name: Lynn A. Kirby

Title: MANAGING MEMBER

Address: 1406 SE 46<sup>th</sup> Lane, #4, Cape Coral, FL 33904

Sworn to and subscribed before me this 13<sup>th</sup> day of March, 2018, by Lynn A. Kirby as MANAGING MEMBER of KIRBY, LLC, a Florida limited liability company, Managing Member of Southwinds South, LLC, a Florida limited liability company who is personally known by me or has produced \_\_\_\_\_ as identification.  
(describe identification)

My Commission Expires: 3-11-21

(seal)



\_\_\_\_\_  
Notary Public (Signature)

Karina Ciresi  
Notary Public (Print Name)

EXHIBIT "A"

The following is a list of every person with a beneficial interest in the real property described as Lots 24 through 29, Block 1548, Unit 17, Cape Coral Subdivision:

NAME STEPHAN HAYWOOD REV TRUST NAME \_\_\_\_\_

ADDRESS P.O. BOX 101526 ADDRESS \_\_\_\_\_

ADDRESS CAPE CORAL, FL. 33910 ADDRESS \_\_\_\_\_

NAME THE JOHN LOW LIVING TRUST NAME \_\_\_\_\_

ADDRESS 3406 SE 13<sup>th</sup> PLACE ADDRESS \_\_\_\_\_

ADDRESS CAPE CORAL, FL. 33904 ADDRESS \_\_\_\_\_

NAME KEVIN LACASSE NAME \_\_\_\_\_

ADDRESS 6021 SILVER KING BLVD # 502 ADDRESS \_\_\_\_\_

ADDRESS CAPE CORAL, FL. 33914 ADDRESS \_\_\_\_\_

NAME BRIAN KIRBY NAME \_\_\_\_\_

ADDRESS 1406 SE 46<sup>th</sup> LANE #4 ADDRESS \_\_\_\_\_

ADDRESS CAPE CORAL, FL. 33904 ADDRESS \_\_\_\_\_

NAME LYNN KIRBY NAME \_\_\_\_\_

ADDRESS 1406 SE 46<sup>th</sup> LANE #4 ADDRESS \_\_\_\_\_

ADDRESS CAPE CORAL, FL. 33904 ADDRESS \_\_\_\_\_

NAME \_\_\_\_\_ NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_ ADDRESS \_\_\_\_\_

ADDRESS \_\_\_\_\_ ADDRESS \_\_\_\_\_

NAME \_\_\_\_\_ NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_ ADDRESS \_\_\_\_\_

ADDRESS \_\_\_\_\_ ADDRESS \_\_\_\_\_



Lee County Property Appraiser

Tax Year  
[Next Parcel Number](#)
[Previous Parcel Number](#)
[Tax Estimator](#)
[Cape Coral Fees](#)
[Tax Bills](#)
[Print](#)

## Property Data

STRAP: 08-44-24-C2-01548.0240 Folio ID: 10535756

## Owner Of Record

SOUTHWINDS SOUTH LLC  
1406 SE 46TH LN STE 4  
CAPE CORAL FL 33904

## Site Address

2025 NE 6TH ST  
CAPE CORAL FL 33909

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

CAPE CORAL UNIT 17  
BLK 1548 PB 14 PG 35  
LOTS 24 THRU 29

## Classification / DOR Code

VACANT COMMERCIAL / 10

## [ Tax Map Viewer ]



## [ Pictometry Aerial Viewer ]



## Current Working Values



**Just** 12,000 As Of 06/30/2016

## Attributes

Land Units Of Measure	SF
Units	30000.00
Frontage	0
Depth	0
Total Number of Buildings	0
Total Bedrooms / Bathrooms	0
Total Living Area	0
1st Year Building on Tax Roll	0
Historic District	No

## Image of Structure



## Exemptions



## Values (2016 Tax Roll)



## Taxing Authorities



## Sales / Transactions



## Parcel Numbering History



## Location Information



## Solid Waste (Garbage) Roll Data



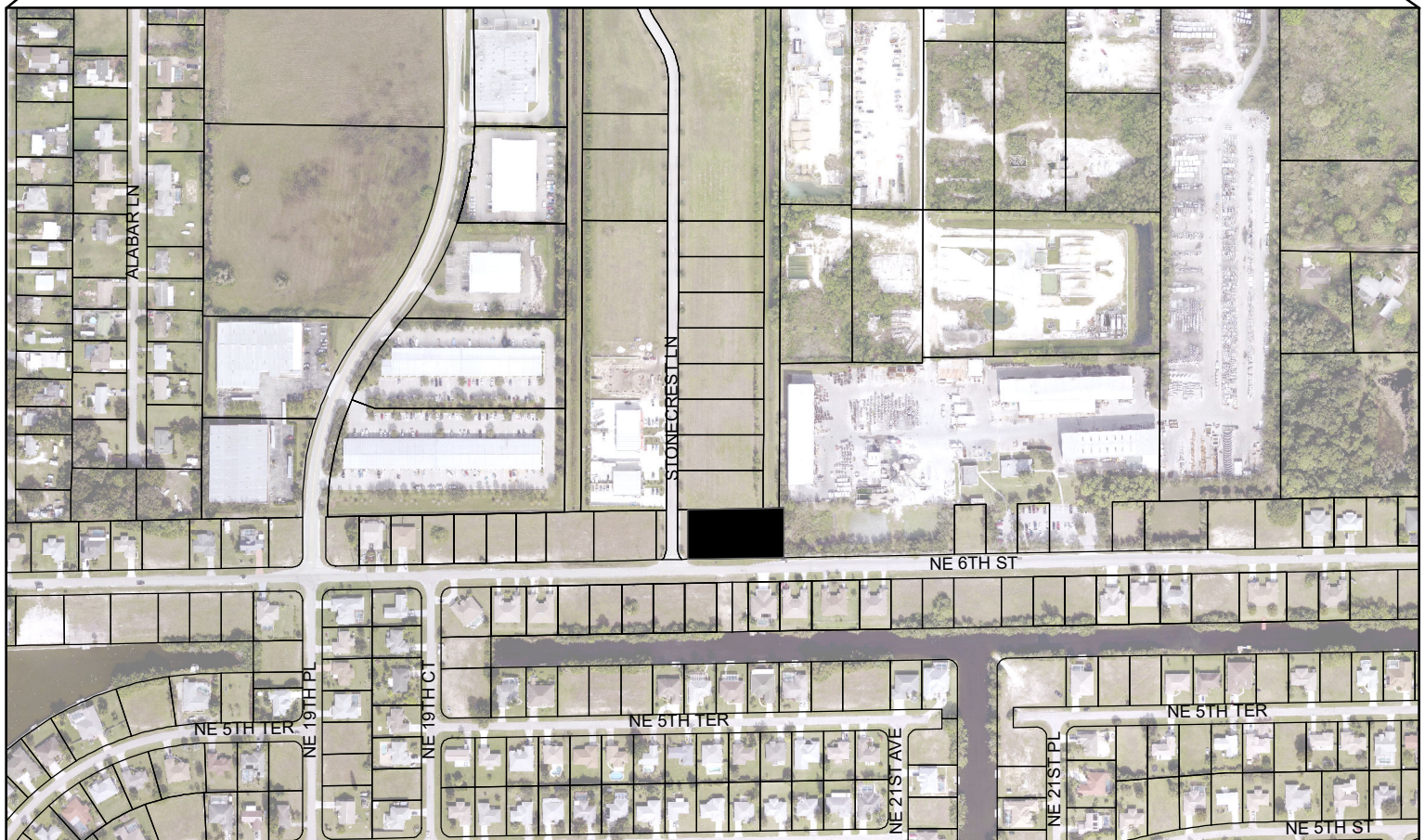
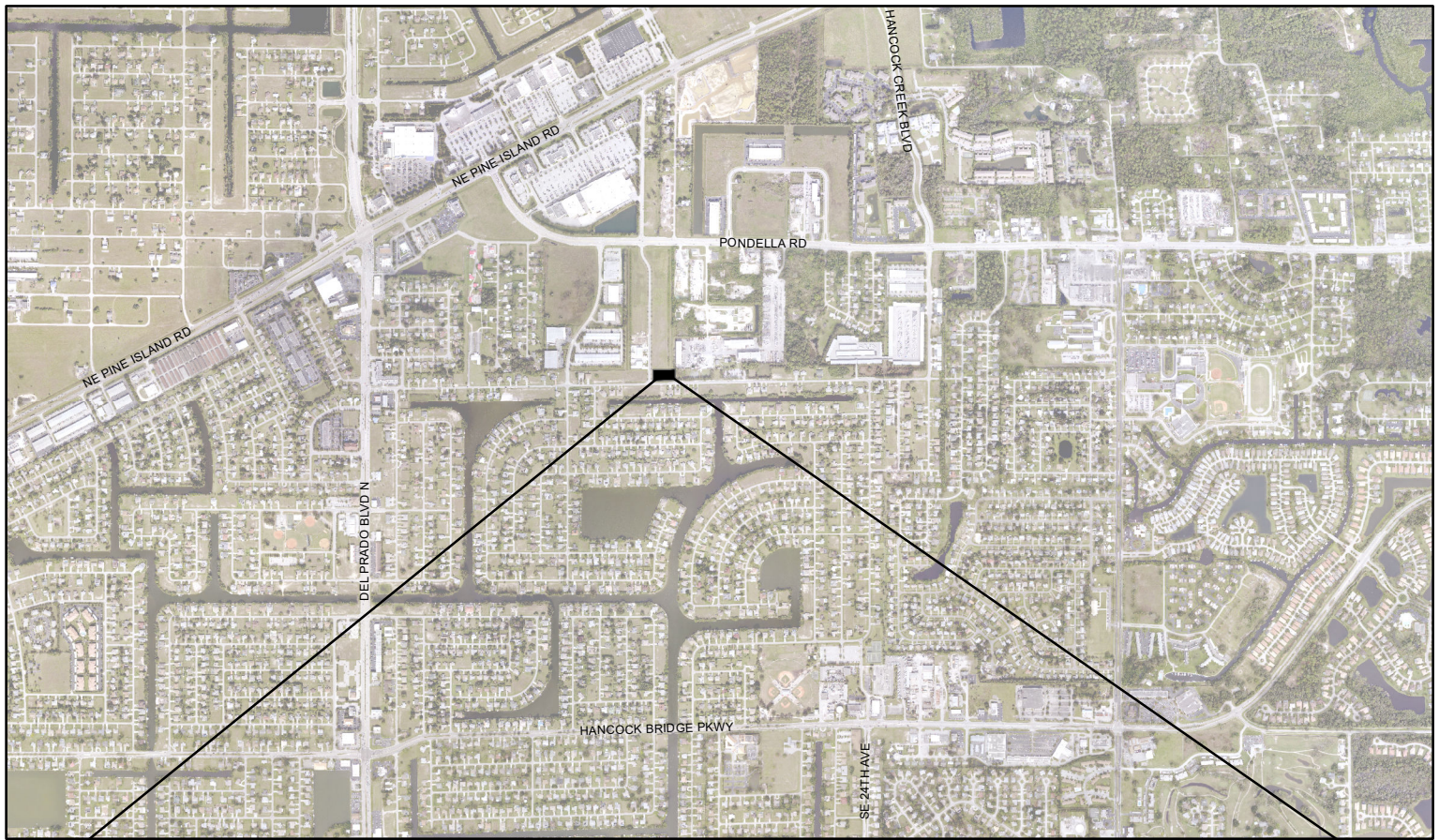
## Flood and Storm Information

**Appraisal Details (2016 Tax Roll)**

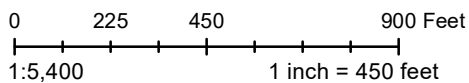
TRIM (proposed tax) Notices are available for the following tax years  
[ [2007](#) [2008](#) [2009](#) [2010](#) [2011](#) [2012](#) [2013](#) [2014](#) [2015](#) [2016](#) ]

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





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



## FUTURE FIRE STATION SITE

Block 1548 Lot 23  
2025 NE 6th Street



**Real Estate Appraisal Report**

**Of**

A Vacant Site  
2025 NE 6th Street, Cape Coral  
Lee County, FL, 33909

**As of**

March 10, 2017

**Prepared For**

Ms. Dawn Andrews, Property Broker  
City of Cape Coral, Financial Services Department, Real Estate Division  
P. O. Box 150027  
Cape Coral, FL, 3915-0027

**Prepared by**

STEWART & COMPANY, INC.  
5237 Summerlin Commons Boulevard, Suite 388  
Fort Myers, Florida 33907

**File Name:**

17-007A

**Stewart & Company**

Real Estate Analysts

# Stewart & Company

Real Estate Analysts

5237 Summerlin Commons Blvd., Suite 388

Ft. Myers, FL 33907

239-275-2207

E-mail: [billstewart@stewartcoappraisal.com](mailto:billstewart@stewartcoappraisal.com)

May 8, 2017

Ms. Dawn Andrews, Property Broker  
City of Cape Coral, Financial Services Department, Real Estate Division  
P. O. Box 150027  
Cape Coral, FL 3915-0027

Re: Real Estate Appraisal Report  
Vacant Site  
2025 NE 6th Street, Cape Coral,  
Lee County, FL, 33909

File: 17-007A

Dear Ms. Andrews:

At your request, we have prepared an appraisal for the above referenced property, which may be briefly described as follows:

The subject is a vacant site containing approximately 30,000 square feet of land area.

Please reference page 9 of this report for important information regarding the scope of research and analysis for this appraisal, including property identification, inspection, highest and best use analysis and valuation methodology.

We certify that we have no present or contemplated future interest in the property beyond this estimate of value. The appraiser has provided no services with regard to the subject site in the three years prior to this assignment.

Your attention is directed to the Limiting Conditions and Assumptions section of this report (page 7). Acceptance of this report constitutes an agreement with these conditions and assumptions. In particular, we note the following:

Hypothetical Conditions:

- There are no hypothetical conditions for this appraisal.

Ms. Andrews  
City of Cape Coral, Financial Services Department, Real Estate Division  
May 8, 2017

Page 2

Extraordinary Assumptions:

- There are no extraordinary assumptions for this appraisal.

Based on the appraisal described in the accompanying report, subject to the Limiting Conditions and Assumptions, Extraordinary Assumptions and Hypothetical Conditions (if any), we have made the following value conclusion:

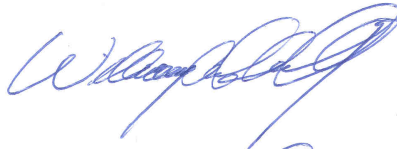
**Current As Is Market Value:**

The "As Is" market value of the Fee Simple estate of the property, as of March 10, 2017, is

**Ninety Thousand Dollars (\$90,000)**

The market exposure time preceding March 10, 2017 would have been 6 to 9 months and the estimated marketing period as of March 10, 2017 is 9 months.

Respectfully submitted,  
**Stewart & Company, Inc.**



William E. Stewart, MAI  
State-Certified General Real Estate Appraiser-RZ233

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## Summary of Important Facts and Conclusions

### GENERAL

**Subject:** Vacant Site  
2025 NE 6th Street, Cape Coral,  
Lee County, FL, 33909

**Owner:** Southwinds South LLC

**Legal Description:** Lots 24 through 29, Block 1548, Cape Coral Unit 17, PB 14, Page 35, public records of Lee County.

**Date of Report:** May 8, 2017

**Intended Use:** The intended use is to assist the client in negotiating to purchase the property, with possible use in a condemnation proceeding.

**Intended User:** The client, the City of Cape Coral, and its representatives. There are no other intended users for this appraisal.

### Assessment:

Real Estate Assessment and Taxes					
Tax ID	Land	Total	County Rate	Tax Rate	Taxes
08-44-24-C2-01548.0240	\$12,000	\$12,000	\$19.25	\$19.25	\$231

Notes: In addition to the annual ad valorem tax amount, there are annual assessments and payments totalling \$548.70.

**Sale History:** There are no known listings, agreements for sale or options involving the subject property. No market transactions have occurred in the last three years.

### Land:

Land Summary						
Parcel ID	Gross Land Area (Acres)	Gross Land Area (Sq Ft)	Usable Land Area (Acres)	Usable Land Area (Sq Ft)	Topography	Shape
Vacant Site	0.69	30,000	0.69	30,000	Level	Roughly rectangular



**Zoning:** The site is zoned Corridor with a Commerce Park Overlay. The site is designated PIRD or Pine Island Road District on the Cape Coral Future Land Use plan.

**Highest and Best Use of the Site:** Commercial or light industrial development

**Type of Value:** Market Value

<b>Reconciled Value:</b>	<u><b>As Is</b></u>
Value Conclusion	\$90,000
Effective Date	March 10, 2017
Property Rights	Fee Simple

## Limiting Conditions and Assumptions

Acceptance of and/or use of this report constitutes acceptance of the following limiting conditions and assumptions; these can only be modified by written documents executed by both parties.

This appraisal is to be used only for the purpose stated herein. While distribution of this appraisal in its entirety is at the discretion of the client, individual sections shall not be distributed; this report is intended to be used in whole and not in part.

No part of this appraisal, its value estimates or the identity of the firm or the appraiser may be communicated to the public through advertising, public relations, media sales, or other media.

All files, work papers and documents developed in connection with this assignment are the property of Stewart & Company, Inc. Information, estimates and opinions are verified where possible, but cannot be guaranteed. Plans provided are intended to assist the client in visualizing the property; no other use of these plans is intended or permitted.

No hidden or unapparent conditions of the property, subsoil or structure, which would make the property more or less valuable, were discovered by the appraiser or made known to the appraiser. No responsibility is assumed for such conditions or engineering necessary to discover them. Unless otherwise stated, this appraisal assumes there is no existence of hazardous materials or conditions, in any form, on or near the subject property.

Unless otherwise stated in this report, the existence of hazardous substances, including without limitation asbestos, polychlorinated biphenyl, petroleum leakage, or agricultural chemicals, which may or may not be present on the property, was not called to the attention of the appraiser nor did the appraiser become aware of such during the appraiser's inspection. The appraiser has no knowledge of the existence of such materials on or in the property unless otherwise stated. The appraiser, however, is not qualified to test for such substances. The presence of such hazardous substances may affect the value of the property. The value opinion developed herein is predicated on the assumption that no such hazardous substances exist on or in the property or in such proximity thereto, which would cause a loss in value. No responsibility is assumed for any such hazardous substances, or for any expertise or knowledge required to discover them.

Unless stated herein, the property is assumed to be outside of areas where flood hazard insurance is mandatory. Maps used by public and private agencies to determine these areas are limited with respect to accuracy. Due diligence has been exercised in interpreting these maps, but no responsibility is assumed for misinterpretation.

Good title, free of liens, encumbrances and special assessments is assumed. No responsibility is assumed for matters of a legal nature.

Necessary licenses, permits, consents, legislative or administrative authority from any local, state or Federal government or private entity are assumed to be in place or reasonably obtainable.

It is assumed there are no zoning violations, encroachments, easements or other restrictions which would affect the subject property, unless otherwise stated.

The appraisers are not required to give testimony in Court in connection with this appraisal. If the appraisers are subpoenaed pursuant to a court order, the client agrees to pay the appraiser Stewart & Company, Inc.'s regular per diem rate plus expenses.

Appraisals are based on the data available at the time the assignment is completed.

Amendments/modifications to appraisals based on new information made available after the appraisal was completed will be made, as soon as reasonably possible, for an additional fee.

### **Americans with Disabilities Act (ADA) of 1990**

A civil rights act passed by Congress guaranteeing individuals with disabilities equal opportunity in public accommodations, employment, transportation, government services, and telecommunications. Statutory deadlines become effective on various dates between 1990 and 1997. Stewart & Company, Inc. has not made a determination regarding the subject's ADA compliance or non-compliance. **Non-compliance could have a negative impact on value; however this has not been considered or analyzed in this appraisal.**

## **Definition of Market Value**

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

1. The buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto;
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.

Source: 12 CFR Ch. V(1-1-11 Edition, 504.2(g), Office of Thrift Supervision

## Scope of Work

According to the Uniform Standards of Professional Appraisal Practice, it is the appraiser's responsibility to develop and report a scope of work that results in credible results that are appropriate for the appraisal problem and intended user. Therefore, the appraiser must identify and consider:

- the client and intended users;
- the intended use of the report;
- the type and definition of value;
- the effective date of value;
- assignment conditions;
- typical client expectations; and
- typical appraisal work by peers for similar assignments.

This appraisal is prepared for Ms. Dawn Andrews, Property Broker, City of Cape Coral, Financial Services Department, Real Estate Division. The problem to be solved is to estimate the 'as is' market value of the subject property. The intended use is to assist the client in negotiating to purchase the property, with possible use in a condemnation proceeding. This appraisal is intended for the use of client, the City of Cape Coral, and its representatives. There are no other intended users for this appraisal.

SCOPE OF WORK	
Report Type:	This is an Appraisal Report as defined by Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2(a). This format provides a summary or description of the appraisal process, subject and market data and valuation analyses.
Property Identification:	The subject has been identified by the legal description and the assessors' parcel number.
Inspection:	An inspection of the subject was made from the adjacent road and from walking the site.
Effective Date of Value:	March 10, 2017
Market Area and Analysis of Market Conditions:	A complete analysis of market conditions has been made. The appraiser maintains and has access to comprehensive databases for this market area and has reviewed the market for sales and listings relevant to this analysis.
Highest and Best Use Analysis:	A complete as vacant and as improved highest and best use analysis for the subject has been made. Physically possible, legally permissible and financially feasible uses were considered, and the maximally productive use was concluded.

Type of Value:  
Valuation Analyses

Market Value

Cost Approach:

A cost approach was not applied as there are no improvements to which this approach can be applied.

Sales Comparison  
Approach:

A sales approach was applied as there is adequate data to develop a value estimate and this approach reflects market behavior for this property type.

Income Approach:

An income approach was not applied as the subject not is an income producing property and there is not adequate data to develop a value estimate with this approach.

Hypothetical Conditions:

There are no hypothetical conditions for this appraisal.

Extraordinary Assumptions:

There are no extraordinary assumptions for this appraisal.



# Location Map



## Market Area Analysis

Lee County is located within the Southwest Florida coastal region, approximately 125 miles south of Tampa and 145 miles northwest of Miami. Lee County covers an area of roughly 1,013 square miles, within which are six incorporated cities. These cities include Fort Myers, Cape Coral, Bonita Springs, Sanibel, and the Town of Fort Myers Beach.

Lee County was recognized as one of the fastest growing counties in the United States, with an annual growth rate since 1970 of approximately 10% per year. The City of Cape Coral has the largest population within Lee County, with Fort Myers, Bonita Springs, the Town of Fort Myers Beach and the City of Sanibel ranking in that order. This rapid growth in population has, to a great extent, resulted from the immigration of elderly and retired people from other states in the United States, plus from other areas in Florida.

Much of the growth in the county has been in residential development, both within the incorporated cities and in unincorporated areas of the county. This residential development has taken the form of large structure developments, most including golf courses, throughout the county, plus significant individual single-family residences being built on existing platted lots in areas such as Cape Coral and Lehigh Acres. The residential markets in Lee County and the City of Cape Coral are again on the upswing after recovering from the recession that began in 2006. This recovery has resulted in increasing prices and activity.

The market for commercial properties has also been improving with increasing sales activity in many areas, and prices increasing in reaction to the increased demand. Demand for existing improved sites has also increased with corresponding increases in prices and occupancies.

The subject property is located south of Pondella Road along Stonecrest Lane and NE 6<sup>th</sup> Street. This area is a mix of commercial and light industrial uses between Pondella Road and NE 6<sup>th</sup> Street, with primarily residential uses south of NE 6<sup>th</sup> Street. There are some duplex type residential uses on the north side of NE 6<sup>th</sup> Street, but most are on the south side.

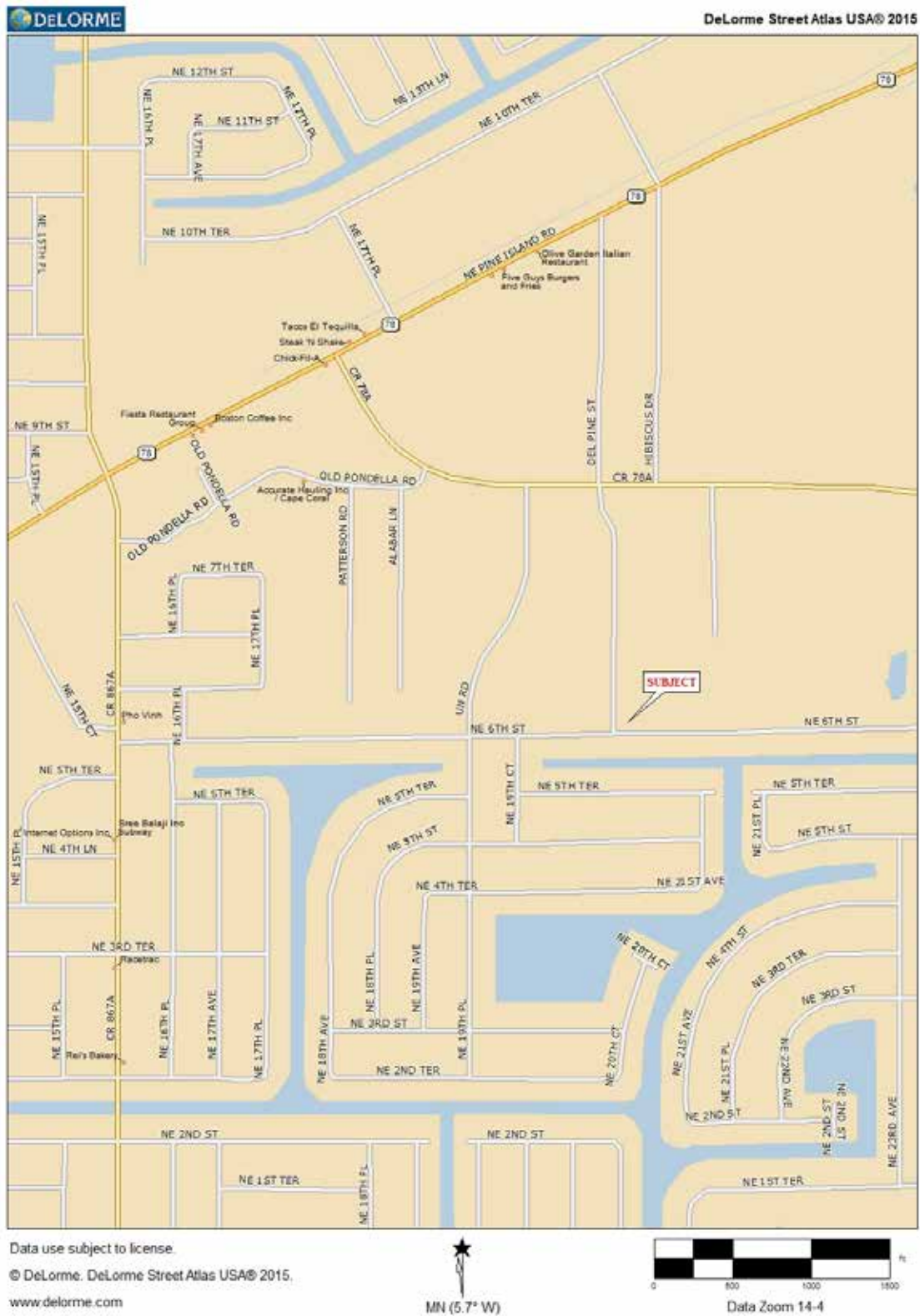
The age of the properties is also mixed, with some dating from the 1970's, and many newer properties from the early 2000's and newer. The light industrial and commercial uses along Stonecrest Lane are relatively new improvements and appear to be fully occupied.

Market activity along this area of Cape Coral has been good in the recent past but appears to be increasing slowly. There were few recent sales within the immediate area, and some properties have been listing for a significant amount of time. However, the sales that have occurred are at prices that are in line with properties listed for sale.

This area is just east of a major commercial center along Pine Island Road between Pondella Road and Del Prado Boulevard. In the past few years there has been significant development of shopping facilities and other commercial uses, and this will benefit the subject site, in my opinion..

In conclusion, the subject is within an area of increasing activity and demand. This trend is expected to continue into the foreseeable future.

# Market Area Map



## Property Description

SITE	
Location:	The subject site is located at the northeast corner of Stonecrest Lane and NE 6th Street in Cape Coral. The street address is 2025 NE 6th Street.
Current Use of the Property:	The site is currently vacant.
Site Size:	<p>Total: 0.689 acres; 30,000 square feet.</p> <p>The size of the subject site was taken from an examination of various public records. While there is some disagreement in public records with regard to the size of the sit, this area is considered to provide the best indication of size with the data available, and is used as no survey has yet been prepared on the site.</p> <p>Usable: 0.689 acres; 30,000 square feet</p> <p>The subject site is completely developable and considered usable area.</p>
Shape:	The site is roughly rectangular.
Frontage/Access:	The subject property has good access with frontage directly onto NE 6 <sup>th</sup> Street and exposure to Stonecrest Lane. There is a narrow strip of land between the subject and Stonecrest Lane that is part of the common elements of Southwind Commercial Center.
Visibility:	Good.
Topography:	The subject has level topography at grade and no areas of wetlands.
Soil Conditions:	The soil conditions observed at the subject appear to be typical of the region and adequate to support development.
Utilities:	<p>Electricity: The site is served by public electricity.</p> <p>Sewer: City sewer</p> <p>Water: City water</p> <p>Irrigation Water: City of Cape Coral</p> <p>Adequacy: The available utilities are adequate for development of the subject.</p>

Site Improvements:

- There are street lights
- There are sidewalks on the west side of Stonecrest Lane and the north side of NE 6th Street
- There are curbs and gutters along Stonecrest Lane and to the east of the subject on NE 6th Street
- The landscaping consists of only sod.

Flood Zone:

The subject is located in an area mapped by the Federal Emergency Management Agency (FEMA). The subject is located in FEMA flood zone X, which is not classified as a flood hazard area.

FEMA Map Number: 12071C0270F  
FEMA Map Date: August 28, 2008

The subject is not within a flood zone.

Environmental Issues: There are no known environmental issues.

Encumbrance / Easements: There are no detrimental easements or encroachments

Site Comments: This is a very typical site within the subject market area.



## Aerial Plat





## ***Subject Photographs***



NE 6<sup>th</sup> Street Looking East from the Subject



NE 6<sup>th</sup> Street looking East Past the Subject



Subject Site Looking Northeasterly across NE 6<sup>th</sup> Street



Subject Site Looking Southeasterly from the East Lot Line

## Assessment and Taxes

**Taxing Authority**     Lee County

**Assessment Year**     2016

Real Estate Assessment and Taxes					
Tax ID	Land	Total	County Rate	Tax Rate	Taxes
08-44-24-C2-01548.0240	\$12,000	\$12,000	\$19.25	\$19.25	\$231

Notes:                      In addition to the annual ad valorem tax amount, there are annual assessments and payments totalling \$548.70.

## Comments

In addition to the ad valorem assessment, there are numerous City of Cape Coral annual payments which total \$584.70.

## Zoning

LAND USE CONTROLS	
Zoning Code	The site is zoned CORR/CPO, or Corridor with a Commerce Park Overlay. The site is designated PIRD, or Pine Island Road District on the Cape Coral Future Land Use plan.
Zoning Description	These land use regulations allow a variety of commercial uses with the possibility of light industrial use. While residential use is allowed with these land use regulations, sites must contain a minimum of 45,000 square feet for residential development, and the subject is not that large.
Current Use Legally Conforming	The subject is legal and conforming use.
Zoning Comments	The subject zoning is typical for the area and considered reasonable. Zoning on the south side of NE 6th Street is residential with many duplexes in place.

## Highest and Best Use

Highest and best use may be defined as the reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.

1. **Legally Permissible:** The land use regulations which govern legally permissible uses are the zoning and land use plan designation by Cape Coral. Legally permissible uses would include neighborhood commercial such as retail or office, plus light industrial such as warehousing or similar uses. Residential uses would not be permitted on this site, due to the size.
2. **Physically Possible:** The only physically possible uses that are considered are those that are legally permissible. With a typical 30,000 square foot size, either small office or small retail uses would be physically possible on the site, as would small light industrial uses, and these types of uses are common in this area of the City.
3. **Financially Feasible:** In considering financially feasible uses, market activity and demand within the market area of the subject is considered. At the present time there appears to be only limited demand for the light industrial or commercial within the area, and the site may remain vacant until demand for this type of use increases.
4. **Maximally Productive.** In my opinion, the maximally production use of the site is to develop it with commercial use or light industrial use as demand warrants.

## Highest and Best Use of the Site

The highest and best use of the site, as vacant, is for development with a commercial or light industrial uses as demand increases to justify this development.

## Valuation Methodology

Three basic approaches may be used to arrive at an estimate of market value. They are:

1. The Cost Approach
2. The Income Approach
3. The Sales Comparison Approach

### Cost Approach

The Cost Approach is summarized as follows:

$$\begin{array}{l} \text{Cost New} \\ - \text{Depreciation} \\ + \text{Land Value} \\ \hline = \text{Value} \end{array}$$

### Income Approach

The Income Approach converts the anticipated flow of future benefits (income) to a present value estimate through a capitalization and or a discounting process.

### Sales Comparison Approach

The Sales Comparison Approach compares sales of similar properties with the subject property. Each comparable sale is adjusted for its inferior or superior characteristics. The values derived from the adjusted comparable sales form a range of value for the subject. By process of correlation and analysis, a final indicated value is derived.

### Final Reconciliation

The appraisal process concludes with the Final Reconciliation of the values derived from the approaches applied for a single estimate of market value. Different properties require different means of analysis and lend themselves to one approach over the others.

### ***Analyses Applied***

A **cost analysis** was considered and was not developed because there are no improvements to be considered and for which costs can be estimated.

A **sales comparison analysis** was considered and was developed because there is adequate data to develop a value estimate and this approach reflects market behavior for this property type.

An **income analysis** was considered and was not developed because the subject is not an income producing property and there is not adequate data to develop a value estimate with this approach.

## Sales Comparison Approach – Land Valuation

The Sales Comparison Approach is based on the premise that a buyer would pay no more for a specific property than the cost of obtaining a property with the same quality, utility, and perceived benefits of ownership. It is based on the principles of supply and demand, balance, substitution and externalities. The following steps describe the applied process of the Sales Comparison Approach.

- The market in which the subject property competes is investigated; comparable sales, contracts for sale and current offerings are reviewed. The sales are first being analyzed as if the parcels selling fee and clear, without the outstanding assessment to which the subject and two of the comparables are encumbered. After arriving at this estimate, the actual outstanding assessments for the subject are subtracted to arrive at a market value with the buyer assuming outstanding assessments, which is typical in the market.
- The most pertinent data is further analyzed and the quality of the transaction is determined.
- The most meaningful unit of value for the subject property is determined.
- Each comparable sale is analyzed and where appropriate, adjusted to equate with the subject property.
- The value indication of each comparable sale is analyzed and the data reconciled for a final indication of value via the Sales Comparison Approach.

### ***Land Comparables***

We have researched four comparables for this analysis; these are documented on the following pages followed by a location map and analysis grid. All sales have been researched through numerous sources, inspected and verified by a party to the transaction. The cash equivalent price shown is the sales price plus the total of the outstanding assessments. As mentioned previously, it is typical within the local market for the purchaser to assume outstanding assessments, and the subject is analyzed on this basis.

No.	Location	Sale Date	Price	Size in SF	Price/ SF
1.	637 NE 25th Avenue	03/28/2016	\$56,000	18,644	\$3.00
2.	1931-2001 NE 6th Street	12/15/2016	\$160,000	39,988	\$4.00
3.	403/407/411 NE 2nd Place	12/28/2016	\$73,680	30,013	\$2.45
4.	671-713 Stonecrest Lane	04/13/2017	\$79,900	21,150	\$3.78



## Land Sale No. 1



### Property Identification

Record ID	7937
Property Type	Commercial/Light Industrial
Address	637 NE 25th Avenue, Cape Coral, Lee County, Florida 33909
Tax ID	09-44-24-C1-01553.0170

### Sale Data

Grantor	Anita Ayhens
Grantee	Kelly Wright
Sale Date	March 28, 2016
Deed Book/Page	2016000065381
Property Rights	Fee simple
Conditions of Sale	Arm's length
Financing	Cash to seller
Sale History	None in the prior three years
Legal Desc.	Lengthy
Verification	NDC and Public records

Sale Price	\$56,000
Cash Equivalent	\$56,000

### **Land Sale No. 1 (Cont.)**

#### **Land Data**

<b>Zoning</b>	CORR/CPO, Corridor with Commerce Park Overlay
<b>Topography</b>	Level and cleared
<b>Utilities</b>	Full public with fee due
<b>Shape</b>	Rectangular
<b>Future Land Use Plan</b>	Pine Island Road District-Cape Coral
<b>Highest and Best Use</b>	Commercial development
<b>Access</b>	Good

#### **Land Size Information**

<b>Gross Land Size</b>	0.428 Acres or 18,644 SF
------------------------	--------------------------

#### **Indicators**

<b>Sale Price/Gross Acre</b>	\$130,841
<b>Sale Price/Gross SF</b>	\$3.00

#### **Remarks**

This is a typical vacant site for this area. Surrounding uses include commercial, light industrial and residential.

## Land Sale No. 2



### Property Identification

<b>Record ID</b>	7938
<b>Property Type</b>	Commercial/Light Industrial
<b>Address</b>	1931-2001 NE 6th Street, Cape Coral, Lee County, Florida 33909
<b>Tax ID</b>	08-44-24-C1-01548.0070 and 08-44-24-C1-01548.0090

### Sale Data

<b>Grantor</b>	Stathas Contracting, Inc.
<b>Grantee</b>	Eastham-Leep partners LLC
<b>Sale Date</b>	December 15, 2016
<b>Deed Book/Page</b>	2016000262127
<b>Property Rights</b>	Fee simple
<b>Conditions of Sale</b>	Arm's length
<b>Financing</b>	Cash to seller
<b>Sale History</b>	None in the prior three years
<b>Legal Desc.</b>	Lots 7-14, Blk 1548, Cape Coral Unit 17
<b>Verification</b>	Nick Stathas, grantee, NDC and public records, Confirmed by William Stewart

<b>Sale Price</b>	\$160,000
<b>Cash Equivalent</b>	\$160,000

### Land Data

<b>Zoning</b>	CORR/CPO, Corridor with Commerce Park Overlay
<b>Topography</b>	Level and cleared

**Land Sale No. 2 (Cont.)**

<b>Utilities</b>	Full public
<b>Shape</b>	Rectangular
<b>Future Land Use Plan</b>	Pine Island Road District-Cape Coral
<b>Highest and Best Use</b>	Residential or light industrial
<b>Access</b>	Good

**Land Size Information**

<b>Gross Land Size</b>	0.918 Acres or 39,988 SF
------------------------	--------------------------

**Indicators**

<b>Sale Price/Gross Acre</b>	\$174,292
<b>Sale Price/Gross SF</b>	\$4.00

**Remarks**

This site is surrounded by both light industrial and duplex type residential uses. All of the surrounding uses have the same land use regulations as the subject site. It was reported that the purchaser of this site also purchased additional sites that would increase the overall size to allow residential development.



### Land Sale No. 3



#### Property Identification

<b>Record ID</b>	7939
<b>Property Type</b>	Commercial
<b>Address</b>	403/407/411 NE 2nd Place, Cape Coral, Lee County, Florida 33909
<b>Tax ID</b>	12-44-23-C4-02374.0190 and

#### Sale Data

<b>Grantor</b>	David Ghasempour
<b>Grantee</b>	Scott James Miller
<b>Sale Date</b>	December 28, 2016
<b>Deed Book/Page</b>	2017000001921
<b>Property Rights</b>	Fee simple
<b>Conditions of Sale</b>	Arm's length
<b>Financing</b>	Cash to seller
<b>Sale History</b>	None in the prior three years
<b>Legal Desc.</b>	Lots 17-22, Block 2374, Cape Coral Unit 35
<b>Verification</b>	National Data Collective, Public Records, Confirmed by William Stewart
<b>Sale Price</b>	\$60,000
<b>Cash Equivalent</b>	\$60,000
<b>Upward Adjustment</b>	\$13,680 Assumed fees and assessments
<b>Adjusted Price</b>	\$73,680

### **Land Sale No. 3 (Cont.)**

#### **Land Data**

<b>Zoning</b>	CORR/CPO, Corridor with Commerce Park Overlay
<b>Topography</b>	Level and mostly cleared
<b>Utilities</b>	Full public
<b>Shape</b>	Rectangular
<b>Future Land Use Plan</b>	Pine Island Road District-Cape Coral
<b>Highest and Best Use</b>	General commercial development
<b>Access</b>	Fair

#### **Land Size Information**

<b>Gross Land Size</b>	0.689 Acres or 30,013 SF
------------------------	--------------------------

#### **Indicators**

<b>Sale Price/Gross Acre</b>	\$106,938 Adjusted
<b>Sale Price/Gross SF</b>	\$2.45 Adjusted

#### **Remarks**

This site is located north of Pine Island Road on a small side street. other uses on this street are commercial in nature.



## Land Listing No. 4



### Property Identification

<b>Record ID</b>	7940
<b>Property Type</b>	Commercial/Light Industrial
<b>Address</b>	671-713 Stonecrest Lane, Cape Coral, Lee County, Florida 33909
<b>Tax ID</b>	Multiple

### Sale Data

<b>Grantor</b>	Jadboir Ventures LLC
<b>Survey Date</b>	April 13, 2017
<b>Property Rights</b>	Fee simple
<b>Conditions of Sale</b>	Arm's length
<b>Financing</b>	Cash
<b>Sale History</b>	None in the prior three years
<b>Legal Desc.</b>	Lot 15, Southwind Commercial Center
<b>Verification</b>	Listing broker; Other sources: Listing flyer and public records, Confirmed by William Stewart
<b>Listing Price</b>	\$79,900
<b>Cash Equivalent</b>	\$79,900

#### **Land Listing No. 4 (Cont.)**

##### **Land Data**

<b>Zoning</b>	CORR/CPO, Corridor with Commerce Park Overlay
<b>Topography</b>	Level and cleared
<b>Utilities</b>	Full public
<b>Shape</b>	Rectangular
<b>Future Land Use Plan</b>	Pine Island Road District-Cape Coral
<b>Highest and Best Use</b>	Light industrial development
<b>Access</b>	Good

##### **Land Size Information**

<b>Gross Land Size</b>	0.486 Acres or 21,150 square feet
------------------------	-----------------------------------

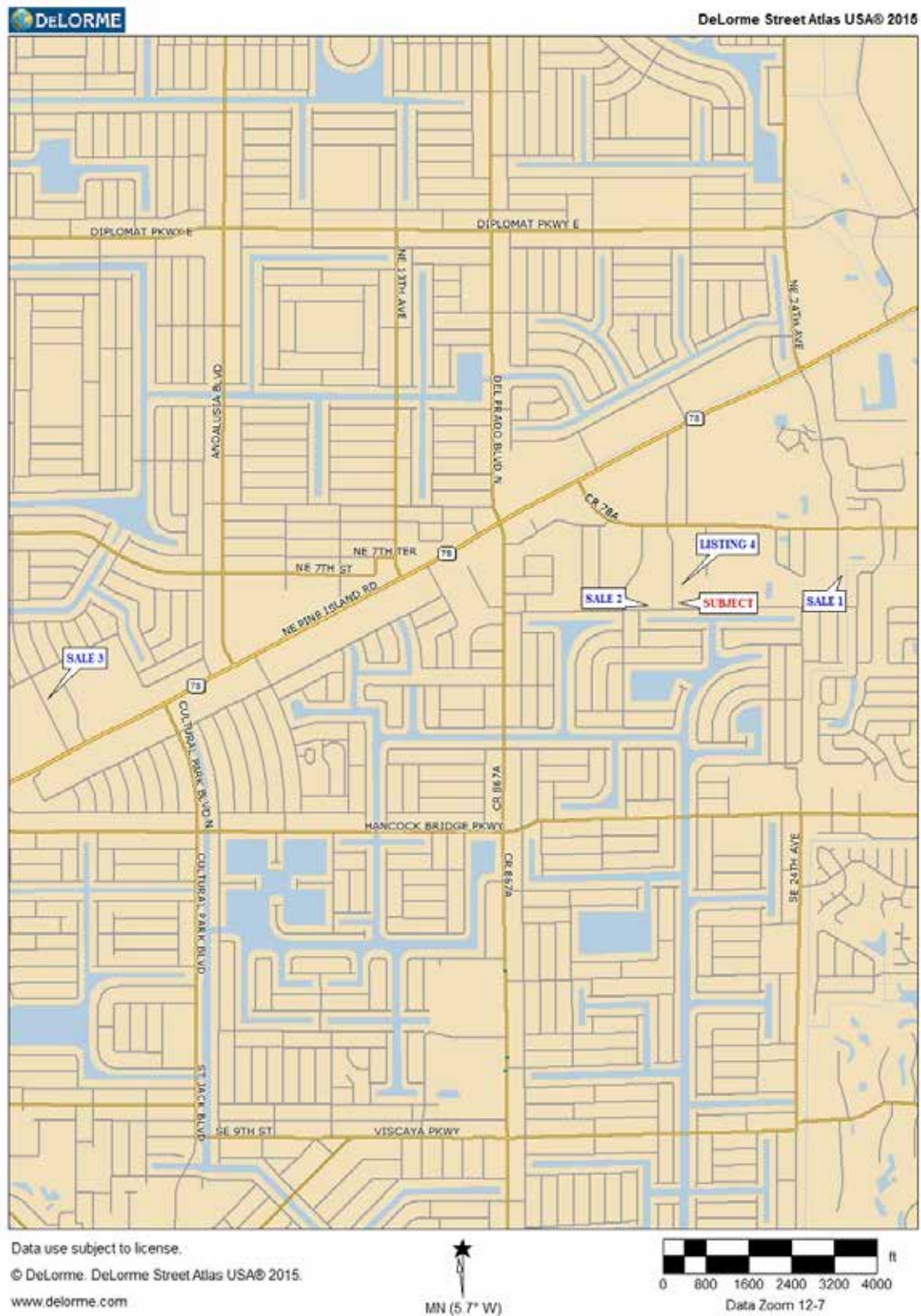
##### **Indicators**

<b>Sale Price/Gross Acre</b>	\$164,560
<b>Sale Price/Gross SF</b>	\$3.78

##### **Remarks**

This is one of eight contiguous sites for sale at the same price.

### Comparable Sales Map



## ***Analysis***

The above sales have been analyzed and compared with the subject property. We have considered adjustments in the areas of:

ÿ Property Rights Sold	ÿ Market Trends
ÿ Financing	ÿ Location
ÿ Conditions of Sale	ÿ Physical Characteristics
ÿ Infrastructure	ÿ Zoning and Land Use

## ***Comparable Land Sale Comparisons***

### **Property Rights**

All of the sales transferred fee simple interest and no adjustments are considered necessary.

### **Financing**

All sales have typical financing or are cash sales and no adjustments are considered necessary.

### **Conditions of Sale**

All sales are typical market transactions.

### **Economic Trends**

Prices within the area have been increasing somewhat, but only Sale Number 1 is old enough to warrant an adjustment for economic conditions.

### **Location**

All of the sales are considered to have locational influences similar to the subject. Sale number 1 is the oldest sale and is located on the outskirts of the light industrial area within which the subject is located. Sale Number 3 is located the longest distance from the subject, in a somewhat inferior area. Sale Number 2 has a location almost identical to the subject and is the most similar with regard to location. Listing Number 4, while located north of and adjacent to the subject, has no frontage on NE 6<sup>th</sup> Street and is within a commercial park. The location for this listing is considered very similar to the subject.

### **Zoning/Future Land Use**

All of the sales have the same zoning and land use as the subject. This was an important consideration in the search for comparable data.

### **Topography/Size**

All of the sales have topography similar to the subject. In addition, all of the sales and the listing have size similar to the subject. Sale Number 2 is one sale in an assemblage of sites by the purchaser that they

project will be large enough to allow residential development, and the price is based upon this assumption by the purchaser. Therefore, this sale is considered superior in size to the subject.

### **Access**

All sales and the listings have the same access as the subject.

### **Utilities**

Utility availability to each of the sales is comparable to the subject, and no adjustments are considered necessary. However, adjustments to the sales prices for each sale were made to reflect any outstanding utility and other assessments.

## ***Sales Comparison Approach Conclusion – Land Valuation***

The comparable sales are all relatively recent sales of similar sites in the same general area or very similar areas of Cape Coral. Sale Number 1, while the oldest sale, is considered the similar overall. Sale Number 2 is a recent sale in the immediate location of the subject and given weight, but is considered superior due to being purchased for residential use. The one similar listing found was that of a group of sites just north of the subject along Stonecrest Lane.

After consideration all of the available data and the analysis of the date, the estimated unit value for the subject is \$3.00 per square foot. Multiplying this by the 30,000 square feet in the site provides an estimate value of \$90,000.

## ***Marketing Time and Exposure Time***

Marketing time is the opinion of the amount of time it might take to market a real property interest at the estimated market value during the period immediately after the effective date of the appraisal. Exposure time is the amount of time estimated for the property to have been listed prior to the effective date of the appraisal to sell on the effective date of appraisal. See the Glossary in the Addendum to the appraisal for complete definitions and the source of the definition.

In the case of the subject property the market is active and the marketing time and exposure time are considered to be the same. After examining the available sales data and listed properties, it is our opinion that the marketing time is 9 months and the exposure time is 6 months to 9 months.

## Final Reconciliation

The process of reconciliation involves the analysis of each approach to value. The quality of data applied, the significance of each approach as it relates to market behavior and defensibility of each approach are considered and weighed. Finally, each is considered separately and comparatively with each other.

### Value Indication

**Sales Comparison Approach – Land Value:**      \$90,000

### Sales Comparison Approach

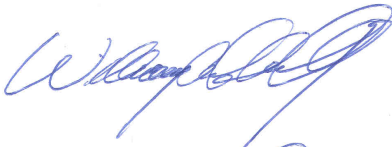
The sales comparison approach best reflects the actions of participants in the market for properties similar to the subject. Adequate comparable sales data is available for comparison to the subject, and in my opinion this approach to value produces a credible value estimate.

### Value Conclusion

Based on the data and analyses developed in this appraisal, we have reconciled to the following value conclusion, as of March 10, 2017, subject to the Limiting Conditions and Assumptions of this appraisal.

**Reconciled Value:**      Premise: As Is  
                                 Interest: Fee Simple  
                                 Value Conclusion: \$90,000  
                                 Ninety Thousand Dollars

**Stewart & Company, Inc.**



William E. Stewart, MAI  
State-Certified General Real Estate Appraiser-RZ233



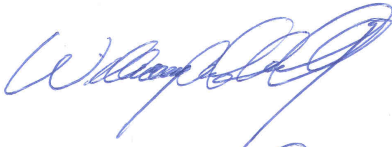
## Certification Statement

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

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions as well as requirements (if any), and are my personal, unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved. I have 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 report.
- The reported analyses, opinion and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- The By-Laws and Regulations of the Institute require each Member and Candidate to control the use and distribution of each appraisal report signed by such Member or Candidate. Therefore, except as hereinafter provided, the party for whom this appraisal report was prepared may distribute copies of this appraisal report, in its entirety, to such third parties as may be selected by the party for whom this appraisal report was prepared; however, selected portions of this appraisal report shall not be given to third parties without the prior written consent of the signatory of this appraisal report. Further, neither all nor any part of this appraisal report shall be disseminated to the media, sales media or other media for public communication without the prior written consent of the signator of this appraisal report.
- As of the date of this report, I have completed the requirements of the continuing education program of the Appraisal Institute.

- 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 signing this certification.
- This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or approval of a loan.
- The appraiser has provided no services with regard to the subject site in the three years prior to this assignment.
- The undersigned appraiser has experience in appraising properties of this type and thus meets the competency requirements.

**Stewart & Company, Inc.**



William E. Stewart, MAI  
State-Certified General Real Estate Appraiser-RZ233

## **Addenda**

## ***Qualifications of William E. Stewart***

### **EDUCATION:**

Graduate of The University of Florida in 1972  
Bachelor of Science in Business Administration  
Major in Real Estate and Urban Land Studies

Society of Real Estate Appraisers  
Course 101: Introduction to Appraising Real Property, 1971 and 1984  
Course 201: Principles of Income Property Valuation, 1975  
Professional Practices Seminar, 1975 and 1979

American Institute of Real Estate Appraisers  
Course II: Appraisal of Urban Properties, 1976  
Course VI: Investment Analysis, 1979  
Standards of Professional Practice: Ethics Seminar, 1980, 1986, and 1991

Seminars on varied subjects

### **MEMBERSHIPS:**

Member (MAI) of the Appraisal Institute, Florida Gulf Coast Chapter  
Realtor Member of the Cape Coral Association of Realtors  
Accredited Cape Coral Residential Specialist Realtor

### **EXPERIENCE:**

Hunnicuttt & Associates, Inc., Private Appraisal Department, 1972-77  
Associated with John Sawyer, MAI, SRPA, 1977-1978  
Associated with Paul R. Jacobs, Inc., 1978 and 1979  
Jacobs, Stewart & Associates, Inc., 1980  
Stewart, Stephan & Bowen, Inc., 1980 to 2010  
Stewart & Company, 1998 to Present

### **LICENSES:**

State-Certified General Real Estate Appraiser RZ233 in Florida

### **MISCELLANEOUS:**

Qualified as an expert witness in the Lee, Collier, Hendry, and Charlotte Counties  
Qualified as a fee appraiser by the Florida Department of Transportation  
Qualified as a fee appraiser by the Florida Department of Environmental Protection  
Qualified as a fee appraiser by the South Florida Water Management District

## **Glossary**

This glossary contains the definitions of common words and phrases, used throughout the appraisal industry, as applied within this document. Please refer to the publications listed in the **Works Cited** section below for more information.

### **Works Cited:**

- § Appraisal Institute. *The Appraisal of Real Estate*. 13<sup>th</sup> ed. Chicago: Appraisal Institute, 2008. Print.
- § Appraisal Institute. *The Dictionary of Real Estate Appraisal*. 5<sup>th</sup> ed. 2010. Print.

### **Effective Date**

1. The date on which the analyses, opinion, and advice in an appraisal, review, or consulting service apply.
2. In a lease document, the date upon which the lease goes into effect.  
(Dictionary, 5th Edition)

### **Exposure Time**

1. The time a property remains on the market.
2. The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based on an analysis of past events assuming a competitive and open market. (Dictionary, 5th Edition)

### **Extraordinary Assumption**

An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2010-2011 ed.) (Dictionary, 5th Edition)

### **Fee Simple Estate**

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Dictionary, 5th Edition)

### **Highest & Best Use**

The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity. Alternatively, the probable use of land or improved property—specific with respect to the user and timing of the use—that is adequately supported and results in the highest present value. (Dictionary, 5th Edition)

### **Highest and Best Use of Land or a Site as Though Vacant**

Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be

made vacant by demolishing any improvements. (Dictionary, 5th Edition)

### **Highest and Best Use of Property as Improved**

The use that should be made of a property as it exists. An existing improvement should be renovated or retained as is so long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one. (Dictionary, 5th Edition)

### **Hypothetical Condition**

That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (Dictionary, 5th Edition)

### **Leased Fee Interest**

A freehold (ownership interest) where the possessory interest has been granted to another party by creation of a contractual landlord-tenant relationship (i.e., a lease). (Dictionary, 5th Edition)

### **Market Area**

The area associated with a subject property that contains its direct competition. (Dictionary, 5th Edition)

### **Market Value**

The major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined.

1. The most widely accepted components of market value are incorporated in the following definition: The most probable price that the specified property interest should sell for in a competitive market after a reasonable exposure time, as of a specified date, in cash, or in terms equivalent to cash, under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, for self-interest, and assuming that neither is under duress.

2. Market value is described in the Uniform Standards of Professional Appraisal Practice (USPAP) as follows: A type of value, stated as an opinion, that presumes the transfer of a property (i.e., a right of ownership or a bundle of such rights), as of a certain date, under specific conditions set forth in the definition of the term identified by the appraiser as applicable in an appraisal. (USPAP, 2010-2011 ed.) USPAP also requires that certain items be included in every appraisal report. Among these items, the following are directly related to the definition of market value:

- Identification of the specific property rights to be appraised.
- Statement of the effective date of the value opinion.
- Specification as to whether cash, terms equivalent to cash, or other precisely described financing terms are



assumed as the basis of the appraisal.

- If the appraisal is conditioned upon financing or other terms, specification as to whether the financing or terms are at, below, or above market interest rates and/or contain unusual conditions or incentives. The terms of above—or below—market interest rates and/or other special incentives must be clearly set forth; their contribution to, or negative influence on, value must be described and estimated; and the market data supporting the opinion of value must be described and explained.

3. The following definition of market value is used by agencies that regulate federally insured financial institutions in the United States: The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the 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:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised,

and acting in what they consider their best interests;

- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (12 C.F.R. Part 34.42(g); 55 Federal Register 34696, August 24, 1990, as amended at 57 Federal Register 12202, April 9, 1992; 59 Federal Register 29499, June 7, 1994)

4. The International Valuation Standards Council defines market value for the purpose of international standards as follows: The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion. (International Valuation Standards, 8th ed., 2007)

5. Market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would

have sold on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. (Uniform Standards for Federal Land Acquisitions) (Dictionary, 5th Edition)

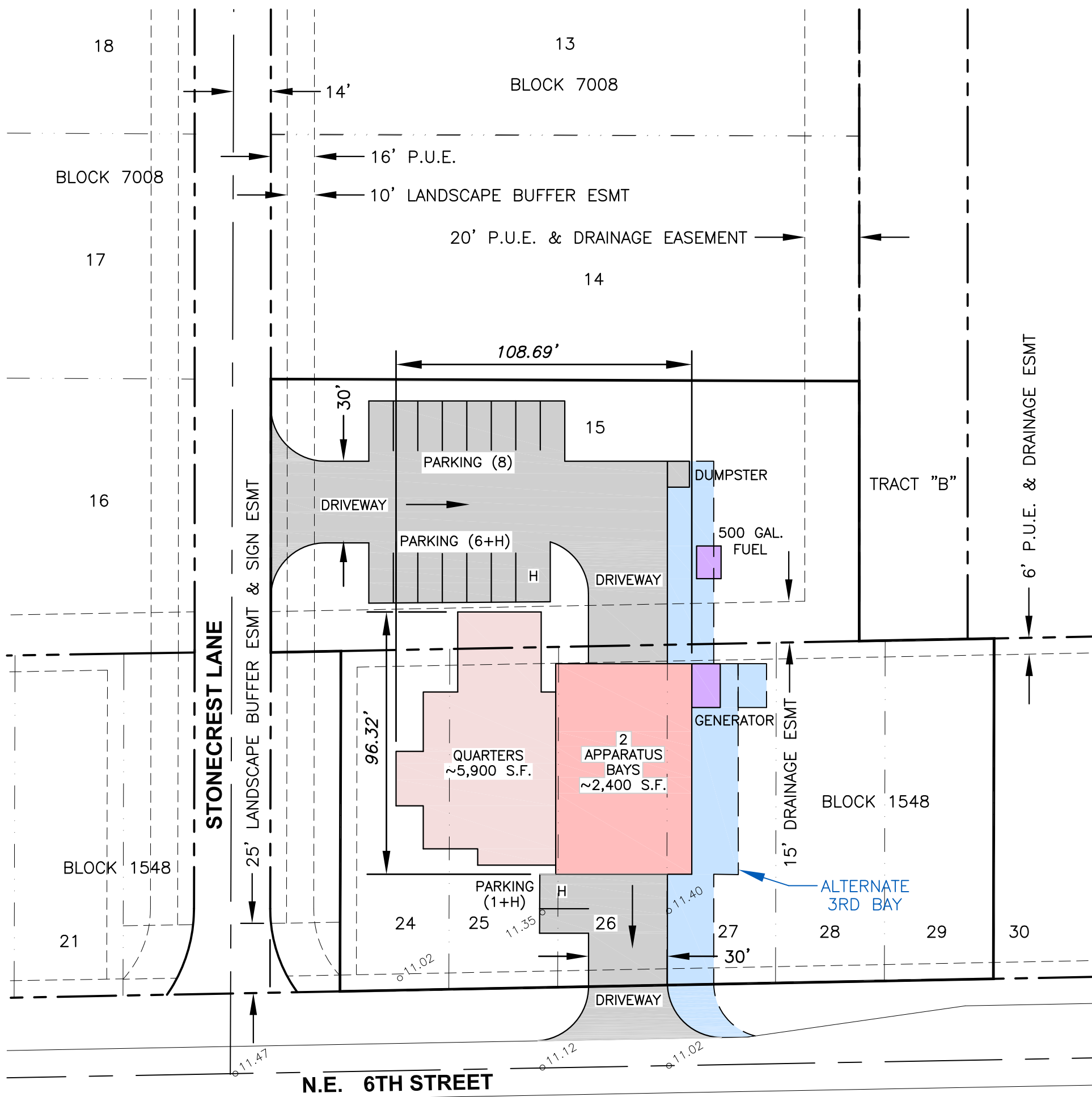
**Marketing Time**

An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of the appraisal. Marketing time differs from exposure time, which is always presumed to precede the effective date of an appraisal. (Advisory Opinion 7 of the Standards Board of The Appraisal Foundation and Statement on Appraisal Standards No. 6, "Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions" address the determination of reasonable exposure and marketing time). (Dictionary, 5th Edition)

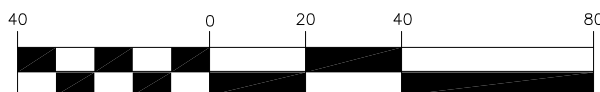
**Scope of Work**

The type and extent of research and analyses in an assignment. (Dictionary, 5th Edition)

# FIRE STATION N.E. 6TH STREET



1 inch = 40 ft.



GRAPHIC SCALE IN FEET

<b>Item Number:</b>	<b>D.(1)</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>PERSONNEL ACTIONS</b>

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 97-18 Approval to reclassify 3 vacant Building Inspectors to Senior Inspectors, reclassify 1 vacant Building Inspector to a Chief Plans Examiner/Inspector, add 2 new Customer Service Representatives, reclassify 2 vacant Customer Service Representatives to 2 Senior Customer Service Representatives, and add 1 new Construction Inspector, within the Department of Community Development; Department: Human Resources; Dollar Amount: FY 2018 amount of \$80,575 is within budget/Recurring cost for FY 2019 is \$205,505; (Building Fund)

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

Resolution 97-18 approval to

- reclassify 3 vacant Building Inspectors to Senior Inspectors (not a new classification; no additional FTE's required)
- reclassify 1 vacant Building Inspector to a Chief Plans Examiner/Inspector (not a new classification; no additional FTE's required)
- add 2 new Customer Service Representatives (not a new classification; 2 new FTE's required)
- reclassify 2 vacant Customer Service Representatives to 2 Senior Customer Service Representatives (not a new classification; no additional FTE's required)
- add 1 new Construction Inspector (not a new classification; 1 new FTE required)

within the Department of Community Development. Department: Human Resources; Dollar Amount: FY 2018 amount of \$80,575 requiring a budget amendment with recurring cost for FY 2019 of \$205,505. (Fund: Building Fund)

**LEGAL REVIEW:**

**EXHIBITS:**

Memo - Community Development Mid-Year Structure Adjustment with attachments  
revised Resolution 97-18

**PREPARED BY:**

Molly  
Liebegott

Division- Administration

Department- Human  
Resources

**SOURCE OF ADDITIONAL INFORMATION:**

Lisa Sonogo - Human Resources Director  
Vince Cautero - DCD Director






ATTACHMENTS:

	Description	Type
📎	Memo - Community Development Mid-Year Structure Adjustment with attachments	Backup Material
📎	revised Resolution 97-18	Backup Material

**MEMORANDUM**

CITY OF CAPE CORAL  
CITY MANAGER'S OFFICE

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager   
Lisa Sonego, Human Resources Director   
Victoria L Bateman, Financial Services Director   
Vincent Cautero, Community Development Director   
Chris Phillips, Management/Budget Administrator 

DATE: May 2, 2018

SUBJECT: Community Development Mid-Year Structure Adjustment

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The outcome of this mid-year structure adjustment is to decrease permit and inspection turn-around times. The structure adjustment has been reviewed and approved by the fast, fair and predictable stakeholders group.

In accordance with the City's Code of Ordinances, Section 2-36.4(b), City Council approval is required to create additional regular, full-time positions (FTEs).

The Building division of Community Development is seeking approval to enhance their structure by reinstating three (3) FTEs and reclassifying six (6) existing vacant FTEs to other existing classifications (titles).

Details of each action requested and the organizational charts of the structure are also included.

These mid-year adjustments meet the needs of the department. The cost for these adjustments, totaling \$80,575 for FY 2018, is available with the non-general fund category and will require a budget amendment. The recurring cost for FY 2019 is \$205,505 and, if approved, will be incorporated into the City Manager's proposed FY 2019 budget.

Approval is requested.

JS/LS/VB/CP



## MEMORANDUM

### CITY OF CAPE CORAL DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager  
Lisa Sonego, Human Resources Director  
Vincent Cautero, Community Development Director  
Stephen Beckman, Building Official

DATE: May 1, 2018

SUBJECT: Position Changes – Building Division

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#### Executive Summary

The Community Development Director and the Building Official are requesting changes to the organizational structure and new staff positions in the Building Division to improve permit turn-around times. Specifically, two additional Customer Service Representatives (CSR) and a Construction Inspector for fiscal year 2018 are being requested. The one additional Customer Service Representative will be utilized to continue to decrease wait times for walk-in customers submitting permit applications, address expired and abandoned permit applications, and handle permit/recordkeeping and filing needs. The second additional CSR will assist the Inspection and Plan Review sections with monitoring the inspection and plan review schedules, returning calls from customers and general citizen inquiries, and coordinate with contractors and their agents. The new Construction Inspector will bring the well inspections under the umbrella of the Building Division and allow the Division to perform compliance inspections on private provider services operating in the City. These new positions are a reinstatement of positions that were previously filled in the Building Division.

We are also proposing to upgrade two CSR positions to Senior CSR, three of the four vacant Building Inspector FTEs to Senior Building Inspector positions, and the fourth vacant Building Inspector FTE to a Chief Plans Examiner/Inspector position.

These position changes were discussed at the Fast, Fair and Predictable Stakeholders meeting on April 24, 2018. The stakeholders indicated their support of these requests. These changes are non-general fund expenses.



## **1. New Positions**

### **a. Permitting Staff Levels**

Present levels of staffing for the permitting section are:

- 1 Customer Service Supervisor
- 3 Permit Coordinators
- 4 CSRs for web permitting
- 1 CSR for certificate of occupancy and private provider processing
- 7 CSRs at the front counter
- 1 part-time records clerk (contract position)

### **b. New CSR Positions**

The Building Division requests two new CSR positions. Additional staff will assist the permitting counter staff to reduce wait times, address expired and abandoned permits, aid in permit filing and record keeping, and respond to web permitting applications.

### **c. New Construction Inspector**

The Building Division is requesting creation of a new Construction Inspector position for well permits and to assist in private provider compliance with statutory requirements. The new Construction Inspector will conduct well inspections and allow the Division to perform compliance inspections on private provider services operating in the City. Presently, one well technician from the Utilities Department is handling the well inspections and bills his hours to the Building Division.

Single Domestic Well permits have risen sharply over the past few years: From 2012 to 2013 there was a five percent increase; from 2013 to 2014 there was an increase of 33%; from 2014 to 2015 there was a 33% increase; from 2015-2016 there was a 68% increase; and a 56% increase from 2016-2017 was observed.

In addition to wells, the new Construction Inspector will inspect for private provider compliance with statutory reporting requirements. Over the past few years, as the City was unable to meet next-day inspection needs of the builders and customers, more inspection services have shifted to private providers. As a result, more and more examples of unsatisfactory work have surfaced, indicating non-compliance. Additionally, if inspections are not performed by the City, fees from permits are refunded to permit holders per the requirements of Florida Statute 553.791(2)(b). An additional benefit will be tracking of regained inspections.



## **2. Proposed Reorganization**

There are two CSR positions which are proposed to be upgraded to Senior CSR positions. The Senior CSRs will assist the Customer Service Supervisor with closer oversight to groups of CSRs.

Currently, there are four vacant Building Inspector FTEs which are proposed to be upgraded to three Senior Building Inspector positions and a Chief Plans Examiner/Inspector position. This will better align the process within the construction disciplines and improve the span of control of the inspectors and plans examiners.

Prior to the reduction in staff, which took place as a result of the downturn, senior positions existed.

### **a. Span of Control**

Since 2011, construction activities have been increasing in Cape Coral. From 2014 to present, these levels have increased substantially and continue to grow. In reviewing new single-family residential permits issued, which is usually the largest and simplest indicator, we have experienced a steady increase since 2016. In 2016, there were 1,280 new single-family permits; in 2017, there were 1,661 new single-family permits; and as of March 31, 2018, there were 981 new single-family permits.

The introduction of electronic permitting dramatically changed the way permits have been processed, and has lowered the number of Customer Service Representatives at the front counter. However, staff must still process permits in much the same manner as a walk-in.

In addition to the increase in permit applications, there are significant numbers of expired and abandoned permits that should be addressed. Since 2003, this number has risen from five in 2003 to 1,155 in 2017. The reason for the increase is that there is a shortage of staff, as well as a lack of ability to enforce and penalize. Many building departments are adding fees to their ordinances for abandoned permit research, and some departments are even adding code requirements to address contractors who consistently let permits expire by limiting their ability to pull new permits unless old permits are properly closed. We are exploring both of these options with the assistance of the City Attorney's staff.

### **b. New Chief Plans Examiner/Inspector and Senior Building Inspectors**

Prior to the reduction in staff, the Building Division inspection staff was organized with Chief Inspectors/Plans Examiners and Senior Building Inspector positions. As our staff has increased to its present level of 30 inspectors and reviewers, one supervisor cannot adequately supervise the entire staff. Additionally, each specialty area has its own set of unique issues that are addressed through code interpretations and inspection techniques.



The new Chief Plans Examiner/Inspector position will have supervisory responsibilities over all the plan review staff and will also perform plan review services. The new Senior Inspector positions will serve as leads for each specialty area of inspectors reporting to the current Chief Plans Examiner/Inspector. These positions will continue to perform the same job functions they are currently performing, with additional responsibilities of instruction and guidance. The Senior Inspectors will also work with the inspectors to distribute the inspection load for each day and ensure their completion.

**c. New Senior CSRs**

The Building Division proposes to change the classification of two vacant CSR positions to Senior CSRs who will assist the Customer Service Supervisor with closer oversight of the CSRs. The Senior CSR positions will focus on the front counter, web permits, and permit coordination work, and these responsibilities will lower the day to day span of control for the Customer Service Supervisor. They will serve as technical leads and report directly to the Customer Service Supervisor.

**d. Fiscal Impact**

Please see the attached fiscal impact statements. The funding for these positions will be through the special revenue account in the Building Division and will not be funded through the general fund. The cost for these FTE positions are set forth below.

Position	Cost for Remainder of FY2018 (10 Pay Periods)	FY2019 Annual Salary
Customer Service Representative (2)	\$39,379.85	\$100,437.36
Construction Inspector	\$24,038.94	\$61,310.75
Senior Customer Service Representative (2)	\$1,543.81	\$3,937.44
Building Inspector I to Chief Plans Examiner/Chief Inspector	\$4,883.26	\$12,454.64
Building Inspector I to Senior Inspector (3)	\$10,729.42	\$27,365.13

**e. Organizational Structure**

Current and proposed organizational charts are attached for your review.

VAC/SB:ed (memo\_building\_position\_changes\_05-01-2018.docx)

Attachments



## Estimate of Annual Cost for General Pension Employee

Business Unit:		235010/Building		Effect Date: 5.7.2018	
Position:		Qty 2 - Customer Service Representative			
FY2018	Grade	10	Hourly Rate	\$ 15.63	FY2019
	Step	Minimum			FY2020
Object	Description	Amount	Unit Rate	Annual Units/Hours	@ 3% Amount
612001	Regular Hours	\$ 32,510	\$ 15.63	2,080	\$ 33,485
612002	Longevity		TBD		
615101	Add Pays		TBD		
615104	Standby		TBD		
615104	Availability		TBD		
615105	Tool Allowance		TBD		
615106	Shift Diff		TBD		
Subtotal Salary		\$ 32,510			\$ 33,485
621101	FICA	2,016	0.062		2,076
621102	Medicare	471	0.0145		486
622101	General Pension (Normal)	2,819	0.0867		2,903
	Hartford AD&D	39	0.0001		40
	Hartford Life	312	0.0004		321
	Mutual of Omaha/LTD	172	0.00044		177
623101	Insurance	523			538
	BCBS High Blue	10,332	10,332 FY18 Annualized		11,107
623102	Self Insured Plan	\$ 10,332			\$ 11,107
624101	Workers Comp	85	0.26 WC Table		87
FY18 Annual Salary and Benefits		\$ 48,756	This is an approximate value only		\$ 50,682
At Two (2) Positions Requested		\$ 97,512			\$ 101,364
FY18 2 CSR Estimate w/ 10 PPE Remaining		\$ 39,380			\$ 105,403.84

Based on factors effective on 4.12.18

jmf bdgt

## Estimate of Annual Cost for General Pension Employee

Business Unit:		235010/Building		Effect Date: 5.7.2018		
Position:		Qty 2 - Sr Customer Service Representative				
FY2018	Grade	11	Hourly Rate	\$ 16.42	FY2019	FY2020
	Step	Minimum				
Object	Description	Amount	Unit Rate	Annual Units/Hours	@ 3% Amount	@ 3% Amount
612001	Regular Hours	\$ 34,154	\$ 16.42	2,080	\$ 35,179	\$ 36,234
612002	Longevity		TBD			
615101	Add Pays		TBD			
615104	Standby		TBD			
615104	Availability		TBD			
615105	Tool Allowance		TBD			
615106	Shift Diff		TBD			
Subtotal Salary		\$ 34,154			\$ 35,179	\$ 36,234
621101	FICA	2,118	0.062		2,181	2,247
621102	Medicare	495	0.0145		510	525
622101	General Pension (Normal)	2,961	0.0867		3,050	3,141
	Hartford AD&D	41	0.0001		42	43
	Hartford Life	328	0.0004		338	348
	Mutual of Omaha/LTD	180	0.00044		186	191
623101	Insurance	549			566	582
	BCBS High Blue	10,332	10,332	FY18 Annualized	11,107	11,940
623102	Self Insured Plan	\$ 10,332			\$ 11,107	\$ 11,940
624101	Workers Comp	89	0.26	WC Table	91	94
FY18 Annual Salary and Benefits		\$ 50,698	This is an approximate value only		\$ 52,684	\$ 54,763
At Two (2) Positions Requested		\$ 101,396			\$ 105,368	\$ 109,525.84
FY18 2 SR CSR Estimate w/ 10 PPE Remaining		\$ 40,948				

Based on factors effective on 4.12.18

jmf bdgt



Estimate of Annual Cost for General Pension Employee						
Business Unit:		235010/Building		Effect Date: 5.21.18		
Position:		Construction Inspector				
FY2018	Grade Step	15 Minimum	Hourly Rate	\$ 19.95	FY2019	FY2020
Object	Description	Amount	Unit Rate	Annual Units/Hours	@ 3% Amount	@ 3% Amount
612001	Regular Hours	\$ 41,496	\$ 19.95	2,080	\$ 42,741	\$ 44,023
612002	Longevity		TBD			
615101	Add Pays		TBD			
615104	Standby		TBD			
615104	Availability		TBD			
615105	Tool Allowance		TBD			
615106	Shift Diff		TBD			
Subtotal Salary		\$ 41,496			\$ 42,741	\$ 44,023
621101	FICA	2,573	0.062		2,650	2,729
621102	Medicare	602	0.0145		620	638
622101	General Pension (Normal)	3,598	0.0867		3,706	3,817
	Hartford AD&D	50	0.0001		51	53
	Hartford Life	398	0.0004		410	423
	Mutual of Omaha/LTD	219	0.00044		226	232
623101	Insurance	667			687	708
	BCBS High Blue	10,332	10,332 FY18 Annualized		11,107	11,940
623102	Self Insured Plan	\$ 10,332			\$ 11,107	\$ 11,940
624101	Workers Comp	257	0.62 WC Table		265	273
FY18 Annual Salary and Benefits		\$ 59,525	This is an approximate value only		\$ 61,776	\$ 64,128
FY18 Estimate w/ 10 PPE Remaining		\$ 24,039				

Based on factors effective on 4.12.18

jmf bdgt

# REVIEW OF BUDGETARY IMPACT FOR POSITION CHANGE

Payroll Category	Current Position	Proposed Position	Difference
Position Title	Building Inspector I	Senior Inspector	
Employee Group	Hourly, Bargaining	Hourly, Bargaining	
Grade	18	21	
Annual Rate Basis	Minimum of Grade	Minimum of Grade	
Rate per Hour	\$ 23.10	\$ 26.74	\$ 3.64
Annual Rate	\$ 48,048.00	\$ 55,619.20	\$ 7,571.20
Fica	2,978.98	3,448.39	469.41
Medicare	720.72	834.29	113.57
Pension	4,165.76	4,822.18	656.42
WC	288.29	333.72	45.43
Total/Position	\$ 56,201.75	\$ 65,057.78	\$ 8,856.03
Per 26 Annual PPEs	\$ 2,161.61	\$ 2,502.22	\$ 340.62
@ 10.5 PPEs to EOY FY18	\$ 22,696.86	\$ 26,273.33	\$ 3,576.47
<b>@ 3 Proposed Positions</b>	\$ 68,090.58	\$ 78,820.00	<b>\$ 10,729.42</b>

## NOTES:

1. Pension - Estimated normal cost only.
2. BU 235010 - Building Fund
3. Anticipation is the remainder of payroll costs & benefits would be relatively static.
4. Proposal is to convert three Inspector I positions to 3 Senior Inspector positions.
5. Estimated effective date of implementation 5.7.18

How will the increased budgetary needs be addressed by requesting department?

*Current YTD Actuals for Personnel in BU 235010, Building at \$2,146,786 or \$45.79% of FY18 Adopted budget of \$4,688,674 with 13 of 26 pay periods posted or 50%. Current Budget to Actual variance of 4.21% resulting from FY18 position vacancies represents \$197,393 below YTD benchmark, excluding future Leave Buyback of \$76,755.*

Completed by

Mike Fischer  
Budget Staff Member

4.12.18  
Date

# REVIEW OF BUDGETARY IMPACT FOR POSITION CHANGE

Payroll Category	Current Position		Proposed Position		Difference
Position Title	Building inspector I		Chief Plans Examiner/Inspector		
Employee Group	Hourly, Bargaining		Hourly, Bargaining		
Grade	18		22		
Annual Rate Basis	Minimum of Grade		Minimum of Grade		
Rate per Hour	\$	23.10	\$	28.07	\$ 4.97
Annual Rate	\$	48,048.00	\$	58,385.60	\$ 10,337.60
Fica		2,978.98		3,619.91	640.93
Medicare		720.72		875.78	155.06
Pension		4,165.76		5,062.03	896.27
WC		288.29		350.31	62.02
Total/Position	\$	56,201.75	\$	68,293.63	\$ 12,091.88
Per 26 Annual PPEs	\$	2,161.61	\$	2,626.68	\$ 465.07
@ 10.5 PPEs to EOY FY18	\$	22,696.86	\$	27,580.12	\$ 4,883.26

## NOTES:

1. Pension - Estimated normal cost only.
2. BU 235010 - Building Fund
3. Anticipation is the remainder of payroll costs & benefits would be relatively static.
4. Estimated effective date of implementation 5.7.18

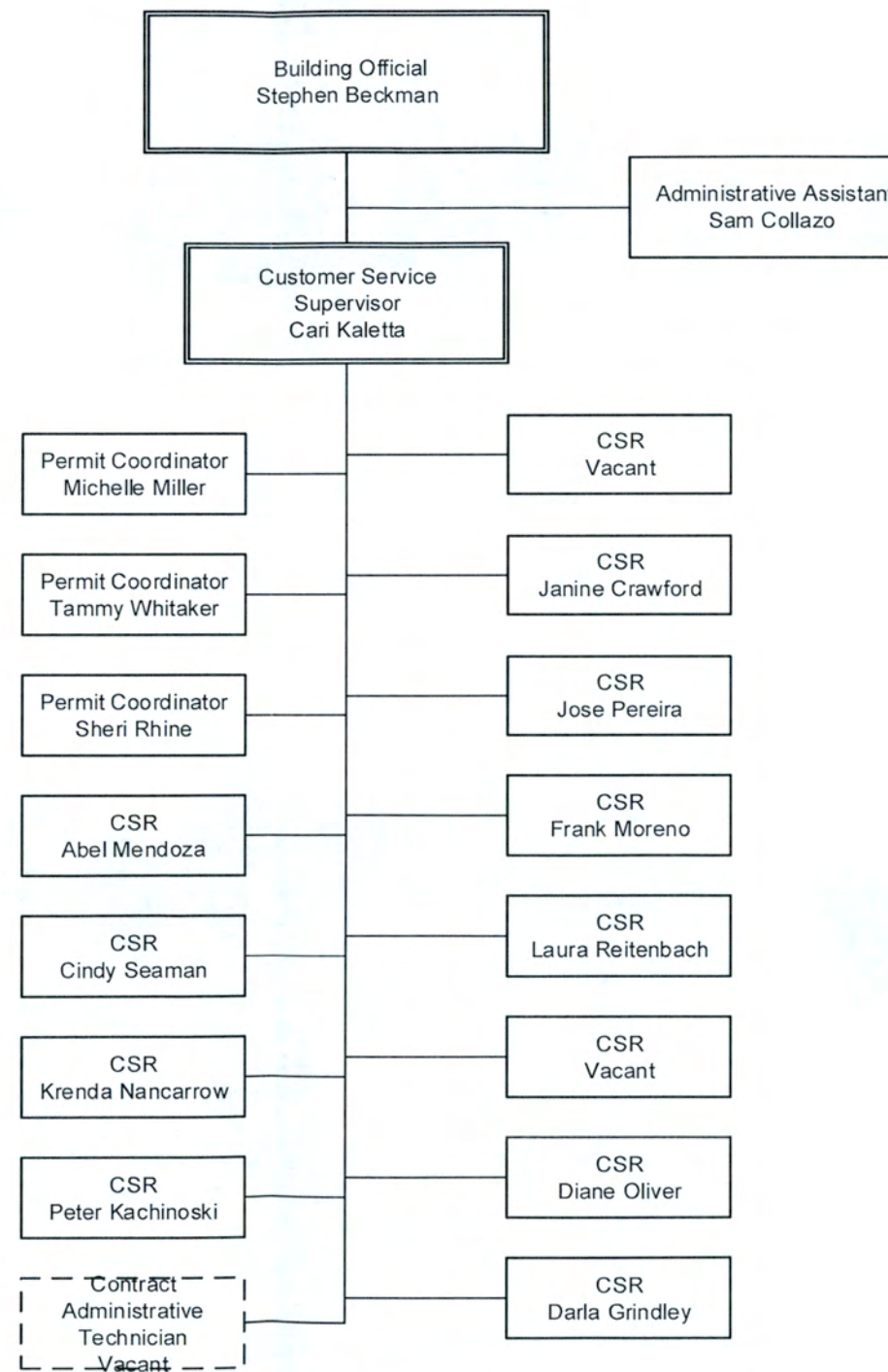
How will the increased budgetary needs be addressed by requesting department?

*Current YTD Actuals for Personnel in BU 235010, Building at \$2,146,786 or \$45.79% of FY18 Adopted budget of \$4,688,674 with 13 of 26 pay periods posted or 50%. Current Budget to Actual variance of 4.21% resulting from FY18 position vacancies represents \$197,393 below YTD benchmark, excluding future Leave Buyback of \$76,755.*

Completed by	Mike Fischer	4.12.18
	Budget Staff Member	Date



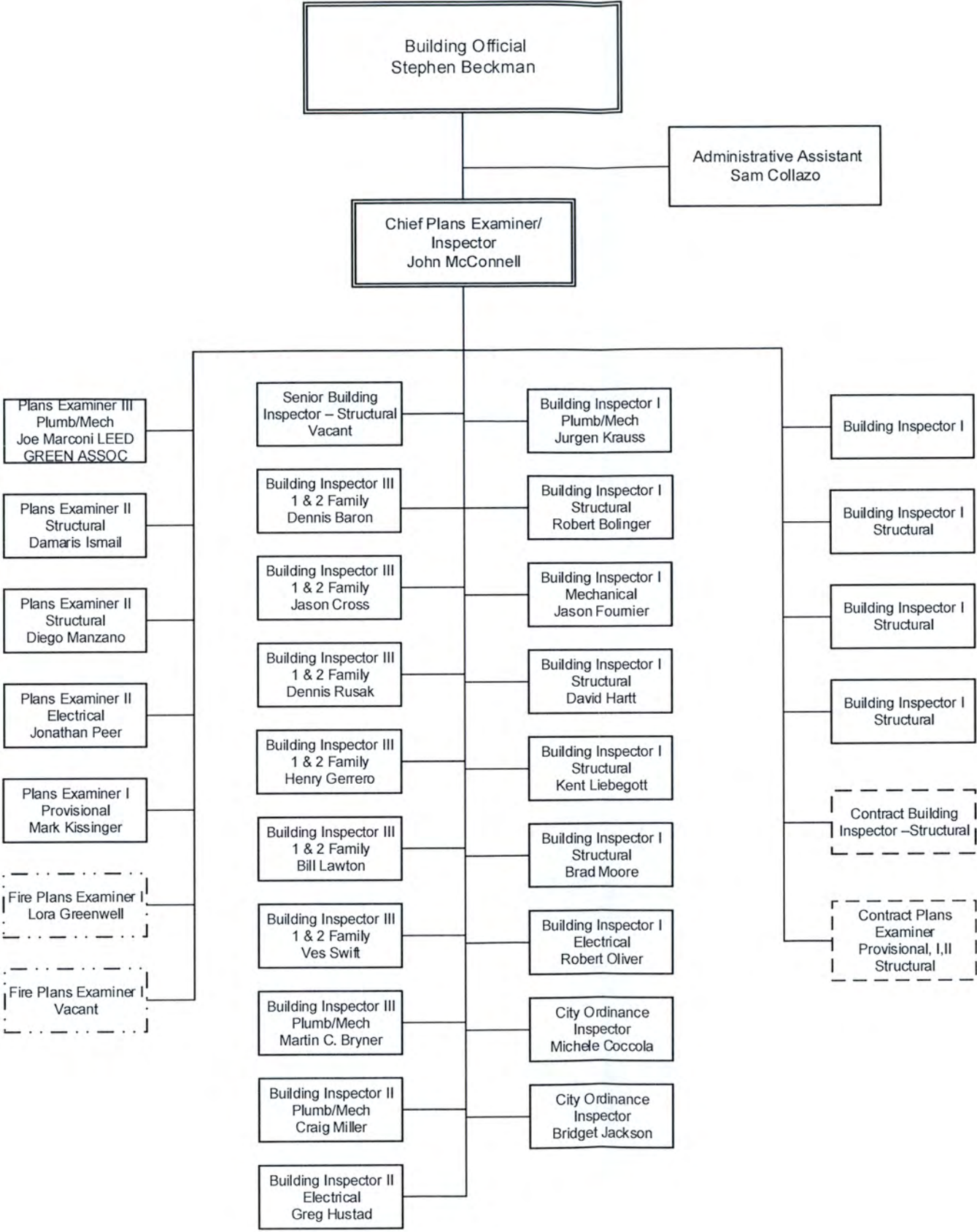
# Community Development Fiscal Year 2018



Contract, not included in DCD FTE  
count

DCD Organization Approved  
Fiscal Year 2018  
Building Division

32 FTE's SPECIAL REVENUE FUND

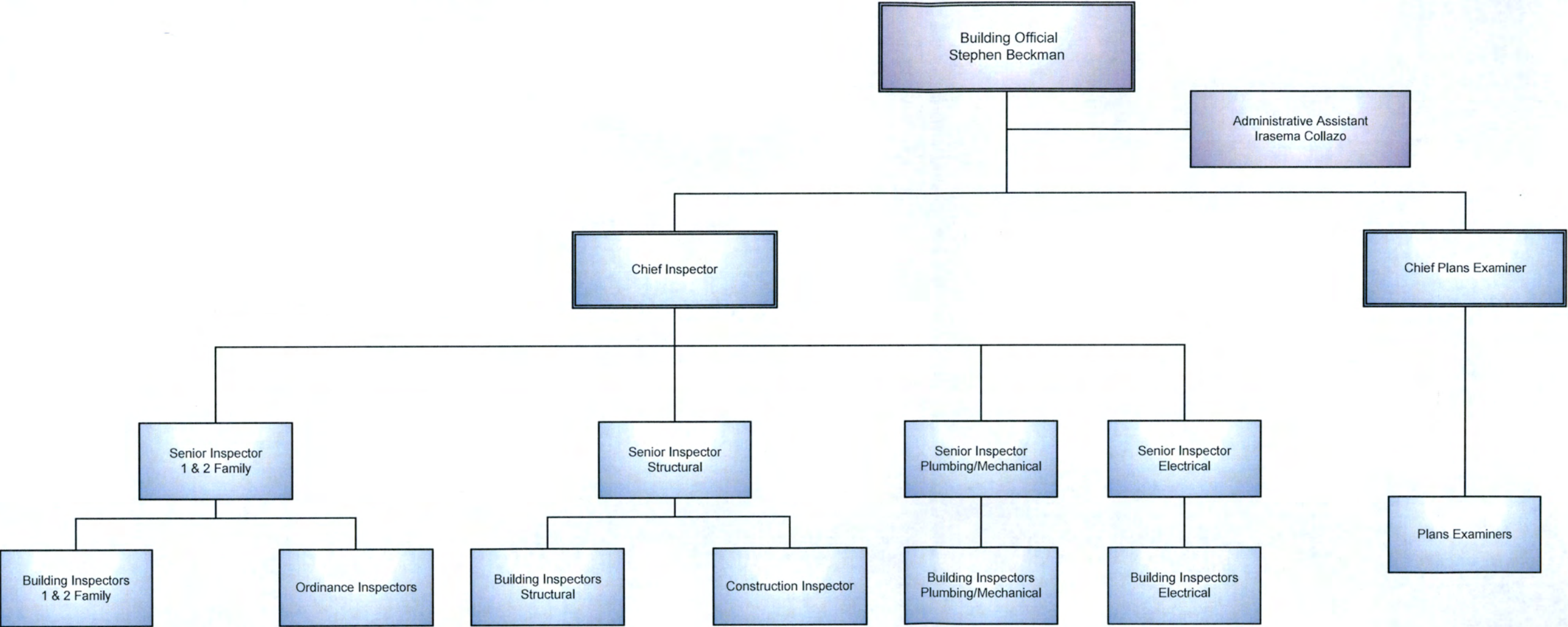


General Fund, not included in FTE count

Contract, not included in DCD FTE count



DCD Organization Proposed  
Fiscal Year 2018  
Building Division

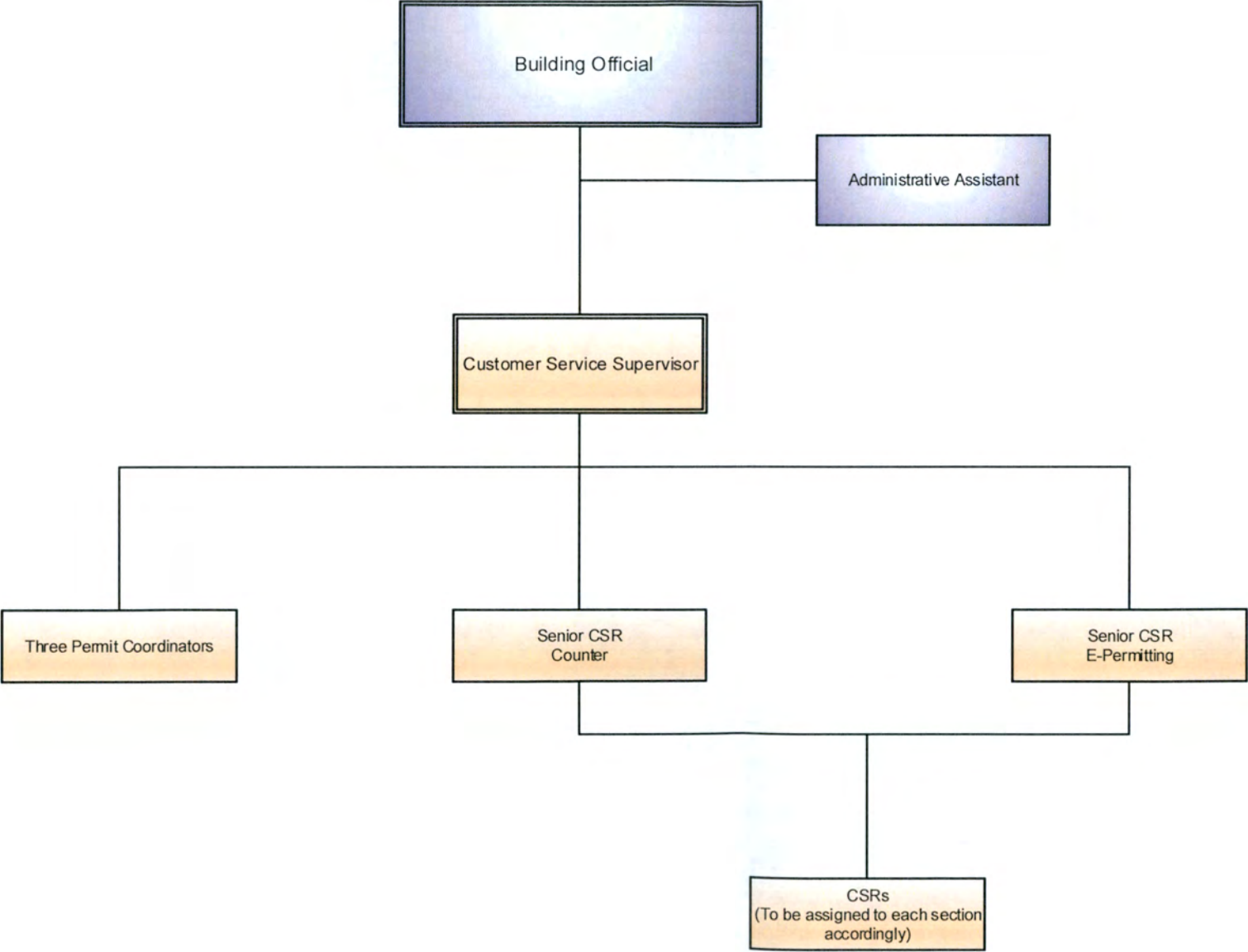


Building Administration



Building Inspectors

DCD Organization Proposed  
Fiscal Year 2018  
Building Division



 Building Administration

 Permitting Section

RESOLUTION 97 - 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AUTHORIZING THE ADDITION OF THREE REGULAR FULL-TIME POSITIONS IN THE DEPARTMENT OF COMMUNITY DEVELOPMENT; APPROVING THE RECLASSIFICATION OF SIX POSITIONS, AND ELIMINATING TWO CONTRACT POSITIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Department of Community Development (DCD) has seen an increase in construction activities since 2011, with substantial increases occurring since 2014; and

WHEREAS, with permit activity increasing, there is a need to maintain acceptable service levels in permitting, customer service, and inspections; and

WHEREAS, DCD is proposing a reorganization of certain positions to increase efficiency and provide appropriate levels of service which includes the addition of three new positions and the reclassification of six positions; and

WHEREAS, Section 2-36.4(b) 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 finds the addition of one "Construction Inspector" position to perform duties in connection with the provision of services related to well inspections and compliance inspections on private provider services operating in the City, and the reinstatement of two "Customer Service Representative" positions, to perform duties in connection with the building and permitting processes of the City and inspection and plan review schedules, to be in the best interest of the City; and

WHEREAS, Section 2-36.6 requires City Council to approve the reclassification of positions where the duties and responsibilities have materially changed and be approved by City Council if the reclassification is more than two pay grades higher or lower than the pay grade for the position prior to the reclassification; and

WHEREAS, the Director of DCD finds that in order to establish a span of control that is consistent with best practices within the department, two "Customer Service Representative" positions warrant reclassification to "Senior Customer Service Representative" positions, three "Building Inspector" positions warrant reclassification to "Senior Building Inspector" positions, and one "Building Inspector" position warrants reclassification to a "Chief Plans Examiner/Inspector" position; and

WHEREAS, the City Manager finds that the reclassifications set forth above are in the best interest of the City; and

WHEREAS, with the creation of new classifications and reclassification of positions, two existing contract positions will be eliminated.

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, pursuant to Section 2-36.4(b) of the Code of Ordinances, the addition of one regular full-time position classified as the "Construction Inspector" in the Department of Community Development at pay grade 15, and the reinstatement of two regular full-time positions classified as the "Customer Service Representative" in the Department of Community Development at pay grade 10.

SECTION 2. The City Council hereby approves the reclassification of two "Customer Service Representative" positions at pay grade 10 to "Senior Customer Service Representative" positions at pay grade 11; the reclassification of three "Building Inspector" positions at pay grade 20 to "Senior Building Inspector" positions at pay grade 21; and the reclassification of one "Building Inspector" position at pay grade 20 to a "Chief Plans Examiner/Inspector" position at pay grade 22.

SECTION 3. The City Council hereby approves the elimination of two existing contract positions due to the addition of new regular full-time positions and reclassifications of other positions.

SECTION 4. 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 \_\_\_\_\_, 2018.

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

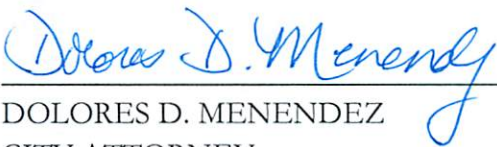
VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res/Positions DCD  
5/2/18



<b>Item Number:</b>	<b>D.(2)</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>PERSONNEL ACTIONS</b>

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

Resolution 100-18 Approval to reclassify 1 vacant Survey Crew Chief to a Land Surveyor/Senior Surveyor, creating two new classifications, within the Public Works Department; Department: Human Resources; Dollar Value: FY 2018 amount of \$4,864 is within budget/Recurring cost for FY 2019 is \$12,407; (General Fund)

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

Resolution 100-18 approval to reclassify 1 vacant Survey Crew Chief to a Land Surveyor/Senior Surveyor (2 new classifications; no additional FTE's required) within the Public Works Department. Department: Human Resources; Dollar Value: FY 2018 no budgetary impact, recurring cost for FY 2019 of \$12,407 (Fund: General Fund)

**LEGAL REVIEW:**

**EXHIBITS:**

Memo - Public Works Mid-Year Structure Adjustment  
Resolution 100-18



**PREPARED BY:**

Molly  
Liebegott      Division- Administration      Department- Human  
Resources

**SOURCE OF ADDITIONAL INFORMATION:**

Lisa Sonogo - Human Resources Director

Paul Clinghan - Public Works Director

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▢ Memo - Public Works Mid-Year Structure Adjustment	Backup Material
▢ Resolution 100-18	Backup Material

MEMORANDUM

CITY OF CAPE CORAL  
CITY MANAGER'S OFFICE

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager   
Lisa Sonego, Human Resources Director   
Victoria L Bateman, Financial Services Director   
Paul Clinghan, Public Works Director   
Chris Phillips, Management/Budget Administrator 

DATE: May 2, 2018

SUBJECT: Public Works Mid-Year Structure Adjustment

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The outcome of this mid-year structure adjustment is to decrease the survey review and approval time related to the increased demand in the building industry and, more specifically, the survey portion of the Department of Community Development reviews.

In accordance with the City's Code of Ordinances, Section 2.36-4, City Council approval is required to create new classifications (titles).

The Surveying division of Public Works is seeking approval to change their structure by creating two (2) new classifications: Land Surveyor and Senior Land Surveyor. This will allow for a surveyor to be hired in the Public works area.

No additional FTEs are required for this action as Public Works is requesting to use a current vacant FTE (Survey Crew Chief) and convert that to a surveyor role.

Details of each classification requested and the organizational charts of the structure are also included.




This mid-year adjustment to Land Surveyor, cost totaling \$4,864 for FY 2018, is within the existing budget and meets the needs of the department. The recurring cost for FY 2019 is \$12,407 and, if approved, will be incorporated into the City Manager's proposed FY 2019 budget. Time spent on Community Development reviews will be allocated to the Building Fund.

Approval is requested.

JS/LS/VB/CP

CITY OF CAPE CORAL  
PUBLIC WORKS DEPARTMENT

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager   
Lisa Sonogo, Human Resources Director   
Paul Clinghan, Public Works Director 

DATE: April 9, 2018

SUBJECT: New Classification – Land Surveyor

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As the building industry continues to grow in Cape Coral, so does the need for licensed survey work. The City currently has one Registered Surveyor on staff who is responsible for Boundary Surveys, Legal Descriptions, the Survey portion of Department of Community Development reviews, and highly technical calculations to comply with Florida Statutes and Administrative Codes.

The Public Works Department is requesting that the New Classification, Land Surveyor be approved. This will allow Public Works to hire a Land Surveyor to work on the increased backlog of surveys and assist in requirements of the Survey Division for the future.

Public Works currently has a vacant Survey Crew Chief FTE that we would like to change to the new Land Surveyor FTE.

Attached is the job description, which has been reviewed and evaluated.

PC/TC:bw

C: Tom Chernesky, Registered Surveyor

# REVIEW OF BUDGETARY IMPACT FOR POSITION CHANGE

Payroll Category	Current Position	Proposed Position	Difference
Position Title	Survey Crew Chief	Land Surveyor	
Employee Group	Hourly, Bargaining	Hourly, Bargaining	
Grade	PG-17	ENG2	
Annual Rate Basis	Minimum	Minimum	
Hourly Rate	\$ 22.00	\$ 26.95	\$ 4.95
Annual Rate	\$ 45,760.00	\$ 56,056.00	\$ 10,296.00
Fica	2,837.12	3,475.47	638.35
Medicare	686.40	840.84	154.44
Pension	3,967.39	4,860.06	892.67
WC	283.71	347.55	63.84
Total	<u>\$ 53,534.62</u>	<u>\$ 65,579.92</u>	<u>\$ 12,045.30</u>
Per 26 Pay Periods Ending	\$ 2,059.02	\$ 2,522.30	\$ 463.28
FY18 at 10.5 PPE remaining	<u>\$ 21,619.75</u>	<u>\$ 26,484.20</u>	<u>\$ 4,864.45</u>

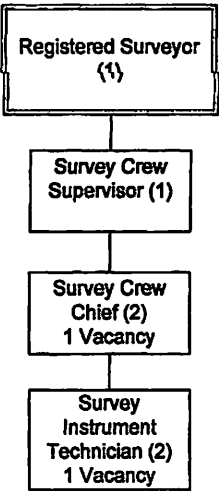
## NOTES:

1. Proposed reclass of Survey Crew Chief position.
2. Minimum of grade as example, all other payroll costs assumed relatively constant.
3. Bu 130123 PW Survey
4. Assumptions based on FY18 payroll parameters.

How will the increased budgetary needs be addressed by requesting department?  
*BU 130123 Personnel Actuals of \$164,843 at YTD PE 4.10.18 with 13 PPEs or 50% of total FY18 PPEs posted represents 32.68% of total Adopted Personnel budget of \$504,464. No adverse budgetary impact anticipated.*

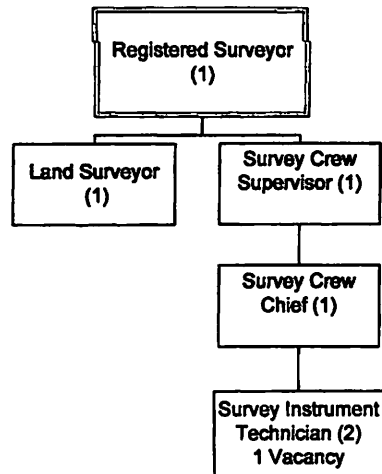
Completed by	Chris Phillips	5.2.18
	Budget Staff Member	Date


**PUBLIC WORKS SURVEY DIVISION  
CURRENT FTE LIST  
4/6/2018**





**PUBLIC WORKS SURVEY DIVISION  
PROPOSED FTE LIST  
4/6/2018**



	<b>City of Cape Coral, Florida</b> <b>Job Description</b>		
<b>Classification Title</b>	Land Surveyor		
<b>Job Unit</b>	Professional		
<b>FLSA Status</b>	Exempt	<b>Pay Grade</b>	ENG2-3
<b>Pay Range</b>	<b>Annual:</b> \$56,056.00 - \$93,329.60	<b>Hourly:</b>	\$26.95 - \$44.87
<b>Safety Sensitive</b>	No	<b>Fingerprinting Required</b>	No

## GENERAL SUMMARY

Under general direction of the Registered Surveyor, prepares and reviews surveys, legal descriptions, reports, applications, and technical calculations related to survey and mapping for accuracy and compliance. Affixes Signature and Certification to completed surveying and mapping products in conformance with State Statutes and State Administrative Codes. Supervision may be exercised over subordinate personnel and/or administrative staff at the direction of the Registered Surveyor.

## ESSENTIAL DUTIES & 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.*

*Specific Duties may differ from Land Surveyor or Senior Land Surveyor.*

- Prepares and reviews surveys, legal descriptions, reports and highly technical calculations in conformance with State Statutes, State Administrative Codes and City Codes.
- Provides legal and professional consultation or recommendations on project coordination and survey matters as they relate to compliance with State Statutes and City Code to Contractors, Department Directors, Division Managers, Office and Field Personnel, Engineers, Planners and Regulatory Agencies.
- Reviews the survey and mapping component of submitted applications for Planned Development Projects, Special Exceptions, Vacation of Plats, Land Use Changes and Zoning Amendments. Reviews all Plat Applications for conformance with State Statutes, State Administrative Code and City Codes and Regulations.
- Coordinates and prepares Survey Grade GIS surveying and mapping products for public use.
- Prepares and presents on Survey Division as requested for City events, exhibits, and other related opportunities.
- Schedules, attends and/or represents the City at meetings of County, State, Federal and Regional agencies regarding surveying and mapping.

<b>Classification Title</b>	Land Surveyor
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- Attends and participates in workshops, meetings, seminars and/or training opportunities to maintain certifications, elevate professional competency, acquire current industry knowledge and maintain current knowledge of regulatory developments.
- May supervise assigned survey field crew personnel engaged in surveying and mapping activities.
- Performs or oversees data collection and post-processing, including database and AutoCAD drawing creation, calculations, and notes.
- Maintains survey records, reports and files as required by Florida statutes and departmental policies.
- Assists the public and city personnel with survey related questions.
- Maintains and elevates professional competency through continued education programs, seminars, study materials and professional journals.
- Prepares and maintains daily, biweekly and monthly work progress reports as required and needed for performance evaluations.
- Participates in research, data compilation and assimilation into various reports and studies concerning assigned functional area as directed.
- Analyzes survey field notes to resolve Land Boundaries.
- Assumes direct responsibility for their work product.
- Performs office and/or field tasks as assigned by the Registered Surveyor.
- May be required to operate a motor vehicle in performance of assigned tasks.
- Performs related duties as required.

## **MINIMUM QUALIFICATIONS**

### **Education and Experience**

#### **Land Surveyor (\$56,056.00 Min - \$84,073.60 Max)**

- A State of Florida Professional Land Surveyor and Mapper License in accordance with Chapter 472, State of Florida Statutes, at time of application and maintained throughout employment in this classification.

#### **Senior Land Surveyor (\$62,212.80 Min - \$93,329.60 Max)**

- A State of Florida Professional Land Surveyor and Mapper License in accordance with Chapter 472, State of Florida Statutes, at time of application and maintained throughout employment in this classification.
- Five (5) years of experience as a Licensed Surveyor and Mapper.



**Licenses or Certifications**

- A State of Florida Professional Land Surveyor and Mapper License in accordance with Chapter 472, State of Florida Statutes, at time of application and maintained throughout employment in this classification.
- Must possess a valid state driver's license or obtain a valid Florida driver's license within thirty (30) days of hire or promotion.

**OTHER JOB REQUIREMENTS**

- None.

**PREFERRED QUALIFICATIONS**

- Florida Surveying and Mapping experience.

**KNOWLEDGE, SKILLS AND ABILITIES REQUIRED****Knowledge of:**

- Relevant statutes and codes of the State of Florida governing the practice of Surveying and Mapping (Chapter 472 of the Florida Statutes and Chapter 5J-17 of the Florida Administrative Code).
- Manual of Instructions for the Survey of the Public Land of the United States.
- Modern survey work principles and practice and an understanding of historical survey practice and methodology.
- Geographic Coordinated Systems and the State Plane Coordinate System.
- Operation, adjustment, maintenance, and care of all surveying instruments, e.g. GPS receivers, Geodetic total stations, Electronic data collectors, Digital Levels; of which are not all encompassing.
- Transportation Standard Specifications for Road and Bridge Construction, and other applicable federal, state and local statutes, ordinances and regulations.
- Euclidean geometry and Cartesian geometry, and trigonometry.
- Stakeout calculations and field stakeout procedures.
- Conventional and GPS equipment and practices, and an understanding of Global Positioning System (GPS) technology.
- Carlson, Topcon, Leica, Trimble or equivalent surveying software and their field and office applications.
- Report and record maintenance principles and procedures.
- Effective leadership and supervisory principles and techniques.
- Safety precautions and personal protective equipment required in survey operations.

<b>Classification Title</b>	Land Surveyor
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**Skill in:**

- Written, verbal, electronic, and visual communications for effective expression and clarity.
- Use of modern office equipment and various computer programs and applications, to include Microsoft Word, Excel and Outlook.
- Preparation and development of project design and specifications.
- Organization, prioritization, and time management.
- Judgment and comparison.

**Ability to:**

- Learn the City's Engineering Design Standards.
- Read and interpret aerial photographs and topographical maps of all types.
- Read, interpret and contribute to the development of engineering plans and specifications.
- Relate to people beyond giving and receiving instructions, to include applying consistent respect, courtesy and tact in considerable public contact, with the media, and/or in delicate or confrontational situations.
- Develop and maintain effective working relationships with management, City Officials, subordinate personnel and other departments.
- Adapt to performing under frequent deadlines and/or in response to emergencies.
- Convey a sense of authority and influence.
- Assign and review the work of subordinate employees and provide effective leadership at all times.
- Effectively convey ideas and information verbally and in writing using language that is appropriate to both the complexity of the topic and the knowledge and understanding of the audience.
- Analyze situations quickly and objectively.
- Read and interpret various technical materials, schematics, specifications, drawings and maps, ranging from moderate to complex terminology, associated with job functions.
- Adapt new technology and methods to increase program effectiveness.
- Organize and review work for efficient results and accuracy.
- Compare and/or judge the readily observable, functional or composite characteristics of signs, equipment and roads.
- Issue, understand and receive both oral and written instructions, and communicate efficiently and effectively in Standard English.



- Add, subtract, multiply and divide, calculate decimals and percentages; understand and perform advanced mathematical skills, i.e., graphs, geometric and algebraic principles.
- Inspect items for proper length, width and shape, and visually read various types of information.
- Exercise sound judgment and make decisions in accordance with established laws, regulations, ordinances, departmental policies and procedures.

## **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 inside and outside, subject to weather conditions and uneven terrain.

## **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 *medium physical demands*, such as exerting up to 50 lbs. of force occasionally, and/or up to 20 lbs. of force frequently, and/or up to 10 lbs. of force constantly to move objects. Tasks involve walking, standing, bending, climbing, stooping, some unassisted lifting, carrying, pushing and/or pulling of moderately heavy objects up to 50 pounds. 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.

RESOLUTION 100 - 18

A RESOLUTION OF THE CITY OF CAPE CORAL, FLORIDA, PROVIDING FOR THE APPROVAL OF THE CREATION OF TWO NEW POSITION CLASSIFICATIONS, AND APPROVAL OF THE RECLASSIFICATION OF ONE POSITION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Public Works Department has one Registered Surveyor position that performs boundary surveys, creates legal descriptions, and reviews legal descriptions for land use matters; and

WHEREAS, there exists a backlog of work that must be performed by a surveyor with the proper credentials; 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; and

WHEREAS, the City Manager has determined that two new classifications titled "Land Surveyor" and "Senior Land Surveyor" are necessary in order to hire an additional surveyor; and

WHEREAS, the Public Works Director desires the ability to provide for non-competitive promotions for employees in the "Land Surveyor" classification to be promoted to the "Senior Land Surveyor" position when the Director determines the employee to be qualified; and

WHEREAS, Section 2-36.6 of the Code of Ordinances requires City Council to approve the reclassification of positions where the duties and responsibilities have materially changed if the reclassification is more than two pay grades higher or lower than the pay grade for the position prior to the reclassification; and

WHEREAS, the Public Works Department is requesting that, due to the material change in duties and responsibilities of one of the "Survey Crew Chief" positions, one "Survey Crew Chief" position be reclassified to the "Land Surveyor" and "Senior Land Surveyor" positions; and

WHEREAS, the "Survey Crew Chief" position will not be filled in order to hire either a "Land Surveyor" or "Senior Land Surveyor" to maintain the current level of regular full-time positions within the department; and

WHEREAS, the City Council desires to approve the new position classifications of "Land Surveyor" and "Senior Land Surveyor", reclassify the "Survey Crew Chief" position, and allow the ability for promotion when determined appropriate by the Director.

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 positions of "Land Surveyor" at pay grade ENG-2 and "Senior Land Surveyor" at pay grade ENG-3.

SECTION 2. Pursuant to Section 2-36.6 of the City of Cape Coral Code of Ordinances, the City Council hereby approves the reclassification one of the "Survey Crew Chief" positions to the positions of "Land Surveyor" and "Senior Land Surveyor", allowing only one of the surveyor positions to be filled at this time, depending upon the qualifications of the selected applicant.

SECTION 3. The City Council hereby authorizes the ability to provide for non-competitive promotions for employees in the "Land Surveyor" classification to promote to the "Senior Land Surveyor" classification upon determination by the Public Works Director of the qualifications of the incumbent in the position.

SECTION 4. 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 \_\_\_\_\_, 2018.

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

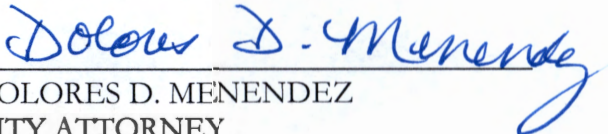
VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
res/Positions-Create Surveyor Classifications  
5/1/18



<b>Item Number:</b>	<b>A.(1)</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Public Hearings</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Ordinance 26-18 Public Hearing

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

The Pension Board for the Firefighters retirement plan has requested certain changes to the Firefighter Pension Plan. The changes are resulting from several factors. There were changes to the IRS regulations and Florida law that necessitated changes to the plan, certain provisions needed clarification, and certain provisions were a result of collective bargaining negotiations. Changes include adding a definition of Normal Retirement Age, clarifying the application of the maximum benefit cap, adding a rehire after disability retirement provision, providing for a share plan, or defined contribution component, and providing an administration deadline for changing a joint survivor.

**LEGAL REVIEW:**

**EXHIBITS:**

Memo  
Ordinance 26-18  
Actuarial Letter of No Impact

**PREPARED BY:**

Division-      Department- City  
Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Memo	Backup Material
▣ Ordinance 26-18	Ordinance
▣ Actuarial Letter of No Impact	Backup Material



**MEMORANDUM**

CITY OF CAPE CORAL  
CITY MANAGER'S OFFICE

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager 

DATE: April 27, 2018

SUBJECT: Firefighters Pension Plan Changes

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Ordinance 26-18 brings forwards proposed changes to this plan by the Pension Board for the Firefighters Retirement Plan, due to changes in IRS regulations and to Florida law.

Please find attached a letter from Douglas Lozen of Foster and Foster, the City's actuarial firm, summarizing these changes and stating that these changes do not result in a change in the valuation results.

Attachment: Letter from Foster & Foster, Actuaries and Consultants  
Ordinance 26-18

ORDINANCE 26 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE VI, PENSIONS, DIVISION 2, FIREFIGHTER PENSION, TO AMEND SECTION 2-122.1, DEFINITIONS, SECTION 2-122.6, BENEFIT AMOUNTS AND ELIGIBILITY, SECTION 2-122.8, DISABILITY, SECTION 2-122.9, VESTING, SECTION 2-122.10 OPTIONAL FORMS OF BENEFITS, SECTION 2-122.15, MAXIMUM PENSION, SECTION 2-122.27, DEFERRED RETIREMENT OPTION PLAN (DROP), SECTION 2-122.28, PRIOR FIRE SERVICE, AND SECTION 2-122.29 REEMPLOYMENT AFTER RETIREMENT, AND ESTABLISHING SECTION 2-122.30, DEFINED CONTRIBUTION COMPONENT (SHARE PLAN); PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Cape Coral Firefighters Pension Fund has determined that the operation of the maximum benefit cap has presented issues regarding the calculation of the member benefits; and

WHEREAS, the Internal Revenue Service issued a regulation regarding Normal Retirement Age as applied to Governmental Plans; and

WHEREAS, the Plan provides for a reversion to the normal form in the event of the death of a joint annuitant and also provides for the ability to name a substituted joint annuitant without addressing the time frame for such a substitution to be made before the reversion occurs; and

WHEREAS, the City of Cape Coral has expressed an interest in possibly hiring qualified disability retirees into the City's General Employee work force; and

WHEREAS, the City Council agrees that these changes need to be made to the Cape Coral Firefighters Pension Plan to ease the administrative issues, to ensure compliance with the IRS, and to establish the treatment of any rehired disability retiree; and

WHEREAS, the International Association of Firefighters, Local 2424 has agreed to the changes contained in this Ordinance.

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

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 2, Firefighter Pension, is hereby amended as follows:

**CHAPTER 2 ADMINISTRATION**

...

**ARTICLE VI - PENSIONS**

...

**DIVISION 2. - FIREFIGHTER PENSION**

**§ 2-122.1 - Definitions.**

- (a) As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated.

...

**ACTUARIAL EQUIVALENT.** A benefit or amount of equal value, based upon the RP-2000 Combined Healthy Mortality Table (unisex) and an interest rate equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board of 7.9% per annum. This definition may only be amended by the city pursuant to the recommendation of the Board using the assumptions adopted by the Board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

...

**SPOUSE.** The ~~lawful~~ wife or husband, under applicable law, of a member or retiree at the time benefits become payable.

...

**§ 2-122.6 - Benefit amounts and eligibility.**

- (a) Normal retirement date.
- (1) The member's normal retirement date for members hired before June 16, 2014 shall be the first day of the month coincident with, or next following the earlier of the attainment of age 50, regardless of years of credited service, or the completion of 25 years of credited service, regardless of age. A member may retire on his or her normal retirement date or on the first day of any month thereafter, and each member shall become 100% vested in his or her accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date. The normal retirement age for a member retiring under the Normal Retirement Date of 25 years of credited service, regardless of age, is the age that the member has attained when the member has at least 25 years of service and is retired.
- (2) The member's normal retirement date for members hired on or after June 16, 2014 shall be the first day of the month coincident with, or next following the earlier of the attainment of age 52 and ten years of credited service or the completion of 25 years of credited service, regardless of age. A member may retire on his or her normal retirement date or on the first day of any month thereafter, and each member shall become 100% vested in his or her accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.
- (b) Normal retirement benefit. A member retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his or her retirement and be continued thereafter during member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal 3.25% of average final compensation, for each year of credited service.
- (c) Maximum retirement benefit. The maximum monthly retirement benefit ~~received by~~ paid to a member at the time of retirement under the normal form of benefit shall not exceed the greater of \$7,916.67 or the member's accrued monthly benefit on June 16, 2014, exclusive of cost of living adjustments. The maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment. A member's choice of the life only or the social security optional form of benefit may result in a retirement benefit which is more than the maximum, but is actuarially equivalent to the normal form with the maximum cap applied. Notwithstanding the foregoing, for each year the funded ratio of the Retirement Plan (calculated by dividing the actuarial value of assets by the actuarial accrued liability) is equal to or greater than 80% in accordance with the annual actuarial valuation report, the maximum monthly retirement benefit shall be increased by a 1% index; increases, when applicable due to the funded ratio, will be applied on the applicable plan year in which funding requirements are being established in the most recent actuarial valuation report dated on or before July 1 of the prior plan year. The maximum monthly retirement benefit shall not be reduced if the funded ratio of the Retirement Plan falls below 80%, but shall be frozen until the funded ratio returns to 80% or greater based in accordance to the most recent actuarial valuation dated on or before July 1 of the prior plan year.

...

**§ 2-122.8 - Disability.**

...

- (g) Benefit offsets. When a retiree is receiving a disability pension and workers' compensation benefits pursuant to F.S. Chapter 440 or Social Security disability benefits, for the same disability, and the total monthly benefits received from each combined exceed 100% of the member's average monthly wage, as defined in F.S. Chapter 440, the disability pension benefit shall be reduced so that the total monthly amount received by the retiree does not exceed 100% of such

average monthly wage. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten years certain by dividing the lump sum amount by 83.9692. Social Security disability cost-of-living increases shall not be used to further offset disability benefits. Notwithstanding the foregoing, in no event shall the disability pension benefit be reduced below the greater of 42% of average final compensation or 2% ~~2.75%~~ of average final compensation times years of credited service.

...

**§ 2-122.9 - Vesting.**

- (a) Benefit upon termination of service and upon death after termination of service.
- (1) In the event of the termination of a member's service prior to his or her normal retirement date and on and after the time that his or her vested percentage is more than 0% for any reason other than his or her death or early retirement as described in § 2-122.6 or disability retirement as described in § 2-122.8 (hereafter referred to as a "terminated member"), the member will be entitled to a monthly retirement income to commence on the first day of the month following attainment of age 50 for members hired before June 16, 2014, or age 52 for members hired on or after June 16, 2014, on his or her normal retirement date, provided his or her employee contributions remain in the plan. If the member has completed ten years credited service, he or she will be entitled to a monthly retirement income to commence the first day of any month which is prior to his or her attaining age 50 for members hired before June 16, 2014, or age 52 for members hired on or after June 16, 2014, normal retirement date and on or after the date on which he or she attains age 40; provided, however, that, he or she files a request in writing with the Board.
- (2) The monthly retirement income payable to a member under the provisions of this subsection (a) shall be equal to:
- The product of the member's vested percentage at his or her date of termination and the deferred monthly retirement income commencing at age 50 for members hired before June 16, 2014, or age 52 for members hired on or after June 16, 2014, normal retirement date which he or she has accrued to the date of termination of his or her service. If the monthly retirement income is to commence prior to his or her attainment of age 50 for members hired before June 16, 2014, or age 52 for members hired on or after June 16, 2014, normal retirement date, the benefit in this paragraph shall be actuarially reduced; provided, however:
  - If the member had met the requirements for early retirement as set forth in § 2-122.6 as of the date of termination of his service, the benefit computed in a. above will not be less than the monthly retirement income which can be provided by the single-sum value of the monthly early retirement income which would have been payable to the member in accordance with the provisions in § 2-122.6 if the member had retired on the date of termination of his or her service, accumulated with interest from the date of termination of his or her service to the date as of which his or her monthly retirement income payments are to commence in accordance with the provisions above.
  - The amount of the accrued deferred monthly retirement income referred to in this subsection (a) shall be computed as for normal retirement under § 2-122.6, based upon the terminated member's number of years of credited service and average final compensation at the date of termination of his or her service.
  - For members who terminate service prior to June 16, 2014, the amount of the accrued deferred monthly retirement income referred to in this subsection (a) shall be computed as for normal retirement under § 2-122.6, based upon the terminated member's number of years of credited service and average final compensation at the date of termination of his or her service, in accordance with the following table.

Full Years of credited service as of Date of Termination of Service	Vesting Percentage of Accrued Deferred Retirement Income
Less than 5 years	0%
5 years but less than 6	50%
6 years but less than 7	60%
7 years but less than 8	70%
8 years but less than 9	80%
9 years but less than 10	90%
10 years or more	100%

- e. A member who terminates service on or after June 16, 2014 shall be 100% vested in their accrued benefit upon completing ten years of credited service, which shall include credited service prior to June 16, 2014, and such member shall be 0% vested if service is terminated before completing ten years of credited service; provided, members who have more than five years but less than ten years of credited service on June 16, 2014 shall retain their vested percentage as provided in paragraph d. above, but shall not earn any additional vested percentage until completing ten years of credited service, at which time they shall be 100% vested in their accrued benefit.
- f. Also, any member who has attained age 40 with the completion ten years credited service shall be 100% vested.
- g. All computations in subsections a. and c. of this section shall be on the basis of the interest and mortality assumptions in effect on the date of termination of the member's service.

...

#### § 2-122.10 - Optional forms of benefits.

- (a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a member, upon written request to the Board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:
  - (1) A retirement income of a monthly amount payable to the retiree for his lifetime only.
  - (2) A retirement income of a modified monthly amount, payable to the retiree during his or her lifetime and following the death of the retiree, 100%, 75%, 66-2/3% or 50% of such monthly amounts payable to his or her designated joint pensioner for the lifetime of his or her joint pensioner. Except where the retiree's joint pensioner is his spouse, the payments to the joint pensioner as a percentage of the payments to the retiree shall not exceed the applicable percentage provided for in the applicable table in the Treasury regulations. In the event that the retiree is predeceased by the joint pensioner, the retiree's monthly benefit shall revert to the amount payable under the normal form of benefit, life with 120 payments guaranteed, determined as of the retirement date, so long as this reversion provides a monthly benefit at least as great as the benefit paid at the time of the joint pensioner's death. The revised benefit shall be increased for any cost-of-living adjustments received prior to the joint pensioner's death. Additionally, the guaranteed portion of the benefit upon reversion shall account for the number of payments received prior to the reversion date. See Q & A-2 of § 1.401(a)(9)-6. Should the retiree determine to change the joint annuitant in accordance with subsection (b) below instead of reversion to the normal form of benefit, the retiree shall have 60 days from the date of death of the joint pensioner to make this election, otherwise the benefit will revert to the normal form in accordance with the provisions of this section.
  - (3) If a member retires prior to the time at which social security benefits are payable, he may elect to receive an increased retirement benefit until such time as social security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of Retirement. The amounts payable shall be as recommended by the actuaries for the system, based upon the social security law in effect at the time of the member's retirement.



- (4) A member may elect a percentage of benefit in a lump sum as follows provided for below. If the member's accrued benefit under the normal form is limited by the maximum retirement benefit of §2-122.6(c), then any partial lump sum distribution as provided for below shall be based on a reduction from the maximum benefit cap under §2-122.6(c). The lump sums to be paid are as follows:

- a. Five percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining 95% paid under the normal form or as per (1), (2) or (3) above.
- b. Ten percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining 90% paid under the normal form or as per (1), (2), or (3) above.
- c. Fifteen percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining 85% paid under the normal form or as per (1), (2) or (3) above.
- d. Twenty percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining 80% paid under the normal form or as per (1), (2) or (3) above.

- (b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his or her beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his or her designated beneficiary at any time, but may only change his or her joint pensioner twice. Subject to the restriction in the previous sentence, a member may substitute a new joint pensioner for a deceased joint pensioner within 60 days of the deceased joint pensioner's death otherwise the benefit will revert to the normal form in accordance with the provisions of subsection (a)(2) above.

...

#### § 2-122.15 - Maximum pension.

...

- (f) ~~Less than ten years of participation or service.~~ The maximum retirement benefits payable under this section to any member who has completed less than ten years of ~~credited service~~ participation with the city shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of ~~credited service~~ participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to § 2-122.8, or pre-retirement death benefits paid pursuant to § 2-122.7. For purposes of this section, "participation" means years of service in the Cape Coral Municipal Firefighters' Retirement Plan, excluding any purchased service from outside this System.

...

- (l) Additional limitation on pension benefits. Notwithstanding anything herein to the contrary:
- (1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100% of his or her average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
  - (2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is

already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 671223, Title 10, U.S. Code.

**§ 2-122.27 - Deferred retirement option plan (DROP).**

...

- (d) Distribution of DROP Accounts on termination of employment.

...

- (2) Form of distribution.

- a. Unless the member elects otherwise, distribution of his or her DROP Account shall be made in a cash lump sum. A member may elect, in such time and manner as the Board shall prescribe, to receive a total distribution or multiple partial distributions during the 120 month period ~~proceeding~~ following his or her termination of employment as a firefighter or to receive the optional form of benefit described below.

Until the value of the member's DROP Account is completely depleted, payments in approximately equal quarterly or annual installments over a period, designated by the member, not to exceed the life expectancy of the last survivor of the member and his or her beneficiary. In the event that the member dies before all installments have been paid, the remaining balance in his or her DROP Account shall be paid in an immediate cash lump sum to his or her beneficiary, or if none is designated, then to the member's estate.

- b. If a member dies before his or her benefit is paid, his or her DROP Account shall be paid to his or her beneficiary in such optional form as his or her beneficiary may select. If no beneficiary designation is made, the DROP Account shall be distributed to the member's estate.

**§ 2-122.28 - Prior fire service.**

Unless otherwise prohibited by law, and except as provided for in § 2-122.1, the time that a member previously served as a firefighter with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, or the years and fractional parts of years that a member served as a firefighter for any other municipal, county or special district fire department in the State of Florida shall be added to his or her years of credited service; provided that:

...

- (e) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county or special district fire department, if such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan as set forth in § 2-122.15(4)(1)(2).

...

**§ 2-122.29 - Reemployment after retirement.**

...

- (g) In order for a disability retiree under this Pension Fund to subsequently become an employee of the city in a position covered by either of the other City pension plans, the disability retiree shall agree to discontinue receipt of the disability pension benefit from this system during the term of re-employment. If the disability retiree does not agree to the discontinuance of disability pension benefit from this plan, the disability retiree will not be eligible for employment in a position covered by another City pension plan. The Pension Fund retains the right to require the retiree to undergo additional periodic re-examinations to determine if the disability has ceased to exist.

In the event a person who is receiving a disability pension from the Police Pension Plan subsequently becomes an employee of the City in a position covered by the Firefighter Pension Plan, the employee agrees that the disability pension benefit will be discontinued during the term of re-employment.

**§ 2-122.30 – Defined Contribution Component (Share Plan).**

Pursuant to the requirements of Florida Statutes §175.351(6), a defined contribution plan component is established in addition to the defined benefit component of this local law plan. This defined contribution component is not currently funded.

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

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

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO \_\_\_\_\_  
GUNTER \_\_\_\_\_  
CARIOSCIA \_\_\_\_\_  
STOUT \_\_\_\_\_

NELSON \_\_\_\_\_  
STOKES \_\_\_\_\_  
WILLIAMS \_\_\_\_\_  
COSDEN \_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES MENENDEZ

CITY ATTORNEY

ord/Pension amendments - Fire

Draft: 10/24/17

11/16/17

12/15/17

12/20/17

1/22/18

1/30/18

3/5/18

3/17/18

April 9, 2018

Ms. Ferrell Jenne, Plan Administrator  
2503 Del Prado Blvd. S.  
Suite 502  
Cape Coral, FL 33904

Re: City of Cape Coral  
Municipal Firefighters' Retirement Plan

Dear Ferrell:

In response to Bonnie Scheuermann's email dated March 14, 2018, we have reviewed proposed Ordinance 26-18 (identified on page 7 as ord/Pension amendments – Fire Draft 3/17/18). The following amendments to the pension plan are proposed:

1. Section 2-122.1, Definitions, is being amended for IRC changes and requirements, to amend the definitions of:

Actuarial Equivalent - to amend the definition to incorporate the interest rate equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board

Spouse - To clarify the definition in accordance with a recent US Supreme Court ruling

2. Section 2-122.6, Benefit amounts and eligibility, is being amended to change the Normal Retirement Date to include IRC required language regarding Normal Retirement Age and Normal Retirement Date, and to clarify that the maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment.

3. Section 2-122.8 – Disability, is being amended to change the minimum disability pension benefit to the greater of 42% of average final compensation or 2.75% of average final compensation times years of credited service.

4. Section 2-122.9, Vesting, is being amended to disclose the commencement date for members who terminate employment prior to the Normal or Early Retirement Date.

5. Section 2-122.10, Optional Forms of Benefits, has been amended to allow members 60 days to elect to change a joint annuitant following the death of the original joint pensioner, otherwise the benefit will revert to the normal form of benefit. This section has also been amended to clarify that if the member's accrued benefit is capped, the partial lump sum amounts will be based on the capped benefit amount.

6. Section 2-122.15, Maximum Pension, amends several subsections for compliance with IRC changes.

Ms. Ferrell Jenne  
April 9, 2018  
Page 2

7. Section 2-122.27, Deferred Retirement Option Plan, is being amended to correct subsection (2) a. to state that members may elect to receive a total distribution or multiple partial distributions during the 120 month period following termination of employment.

8. Section 2-122.28, Prior Fire Service, subsection (e), is being amended to correct a reference.

9. Section 2-122.29, Reemployment after retirement, is being amended to add section (g) to state that if a disability retiree is re-employed by the City in a position covered by another pension plan, the disability retiree must agree to discontinue receipt of benefits during the term of re-employment.

10. Section 2-122.30, Defined Contribution Component (Share Plan), is being added to establish a defined contribution plan.

Because the changes do not result in a change in the valuation results, it is our opinion that a formal Actuarial Impact Statement is not required in support of its adoption. However, since the Division of Retirement must be aware of the current provisions of all public pension programs, it is recommended that you send a copy of this letter and a copy of the fully executed Ordinance to each of the following offices:

Mr. Keith Brinkman  
Bureau of Local Retirement Systems  
Division of Retirement  
P. O. Box 9000  
Tallahassee, FL 32315-9000

Steve Bardin  
Municipal Police and Fire  
Pension Trust Funds  
Division of Retirement  
P.O. Box 3010  
Tallahassee, FL 32315-3010

The undersigned is familiar with the immediate and long-term aspects of pension valuations, and meets the Qualification Standards of the American Academy of Actuaries necessary to render the actuarial opinions contained herein.

If you have any questions, please let me know.

Sincerely,



Douglas H. Lozen, EA, MAAA

cc: Scott Christiansen, Plan Attorney



## ORDINANCE 26 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE VI, PENSIONS, DIVISION 2, FIREFIGHTER PENSION, TO AMEND SECTION 2-122.1, DEFINITIONS, SECTION 2-122.6, BENEFIT AMOUNTS AND ELIGIBILITY, SECTION 2-122.8, DISABILITY, SECTION 2-122.9, VESTING, SECTION 2-122.10 OPTIONAL FORMS OF BENEFITS, SECTION 2-122.15, MAXIMUM PENSION, SECTION 2-122.27, DEFERRED RETIREMENT OPTION PLAN (DROP), SECTION 2-122.28, PRIOR FIRE SERVICE, AND SECTION 2-122.29 REEMPLOYMENT AFTER RETIREMENT, AND ESTABLISHING SECTION 2-122.30, DEFINED CONTRIBUTION COMPONENT (SHARE PLAN); PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Cape Coral Firefighters Pension Fund has determined that the operation of the maximum benefit cap has presented issues regarding the calculation of the member benefits; and

WHEREAS, the Internal Revenue Service issued a regulation regarding Normal Retirement Age as applied to Governmental Plans; and

WHEREAS, the Plan provides for a reversion to the normal form in the event of the death of a joint annuitant and also provides for the ability to name a substituted joint annuitant without addressing the time frame for such a substitution to be made before the reversion occurs; and

WHEREAS, the City of Cape Coral has expressed an interest in possibly hiring qualified disability retirees into the City's General Employee work force; and

WHEREAS, the City Council agrees that these changes need to be made to the Cape Coral Firefighters Pension Plan to ease the administrative issues, to ensure compliance with the IRS, and to establish the treatment of any rehired disability retiree; and

WHEREAS, the International Association of Firefighters, Local 2424 has agreed to the changes contained in this Ordinance.

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

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 2, Firefighter Pension, is hereby amended as follows:

### CHAPTER 2 ADMINISTRATION

...

### ARTICLE VI - PENSIONS

...

### DIVISION 2. - FIREFIGHTER PENSION

#### § 2-122.1 - Definitions.

- (a) As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated.

...

**ACTUARIAL EQUIVALENT.** A benefit or amount of equal value, based upon the RP-2000 Combined Healthy Mortality Table (unisex) and an interest rate equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board ~~of 7.9%~~ per annum. This definition may only be amended by the city pursuant to the recommendation of the Board using the assumptions adopted by the Board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

...

**SPOUSE.** The ~~lawful~~ wife or husband, under applicable law, of a member or retiree at the time benefits become payable.

...

#### § 2-122.6 - Benefit amounts and eligibility.

- (a) Normal retirement date.
- (1) The member's normal retirement date for members hired before June 16, 2014 shall be the first day of the month coincident with, or next following the earlier of the attainment of age 50, regardless of years of credited service, or the completion of 25 years of credited service, regardless of age. A member may retire on his or her normal retirement date or on the first day of any month thereafter, and each member shall become 100% vested in his or her accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date. The normal retirement age for a member retiring under the Normal Retirement Date of 25 years of credited service, regardless of age, is the age that the member has attained when the member has at least 25 years of service and is retired.
  - (2) The member's normal retirement date for members hired on or after June 16, 2014 shall be the first day of the month coincident with, or next following the earlier of the attainment of age 52 and ten years of credited service or the completion of 25 years of credited service, regardless of age. A member may retire on his or her normal retirement date or on the first day of any month thereafter, and each member shall become 100% vested in his or her accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.
- (b) Normal retirement benefit. A member retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his or her retirement and be continued thereafter during member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal 3.25% of average final compensation, for each year of credited service.
- (c) Maximum retirement benefit. The maximum monthly retirement benefit ~~received by~~ paid to a member at the time of retirement under the normal form of benefit shall not exceed the greater of \$7,916.67 or the member's accrued monthly benefit on June 16, 2014, exclusive of cost of living adjustments. The maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment. A member's choice of the life only or the social security optional form of benefit may result in a retirement benefit which is more than the maximum, but is actuarially equivalent to the normal form with the maximum cap applied. Notwithstanding the foregoing, for each year the funded ratio of the Retirement Plan (calculated by dividing the actuarial value of assets by the actuarial accrued liability) is equal to or greater than 80% in accordance with the annual actuarial valuation report, the maximum monthly retirement benefit shall be increased by a 1% index; increases, when applicable due to the funded ratio, will be applied on the applicable plan year in which funding requirements are being established in the most recent actuarial valuation report dated on or before July 1 of the prior plan year. The maximum monthly retirement benefit shall not be reduced if the funded ratio of the Retirement Plan falls below 80%, but shall be frozen until the funded ratio returns to 80% or greater based in accordance to the most recent actuarial valuation dated on or before July 1 of the prior plan year.

...

#### § 2-122.8 - Disability.

...

- (g) Benefit offsets. When a retiree is receiving a disability pension and workers' compensation benefits pursuant to F.S. Chapter 440 or Social Security disability benefits, for the same disability, and the total monthly benefits received from each combined exceed 100% of the member's average monthly wage, as defined in F.S. Chapter 440, the disability pension benefit shall be reduced so that the total monthly amount received by the retiree does not exceed 100% of such



average monthly wage. The amount of any lump sum workers' compensation payment shall be converted to an equivalent monthly benefit payable for ten years certain by dividing the lump sum amount by 83.9692. Social Security disability cost-of-living increases shall not be used to further offset disability benefits. Notwithstanding the foregoing, in no event shall the disability pension benefit be reduced below the greater of 42% of average final compensation or ~~2%~~ 2.75% of average final compensation times years of credited service.

...

#### § 2-122.9 - Vesting.

- (a) Benefit upon termination of service and upon death after termination of service.
- (1) In the event of the termination of a member's service prior to his or her normal retirement date and on and after the time that his or her vested percentage is more than 0% for any reason other than his or her death or early retirement as described in § 2-122.6 or disability retirement as described in § 2-122.8 (hereafter referred to as a "terminated member"), the member will be entitled to a monthly retirement income to commence on the first day of the month following attainment of age 50 for members hired before June 16, 2014, or age 52 for members hired on or after June 16, 2014, on his or her normal retirement date, provided his or her employee contributions remain in the plan. If the member has completed ten years credited service, he or she will be entitled to a monthly retirement income to commence the first day of any month which is prior to his or her attaining age 50 for members hired before June 16, 2014, or age 52 for members hired on or after June 16, 2014, normal retirement date and on or after the date on which he or she attains age 40; provided, however, that, he or she files a request in writing with the Board.
- (2) The monthly retirement income payable to a member under the provisions of this subsection (a) shall be equal to:
- a. The product of the member's vested percentage at his or her date of termination and the deferred monthly retirement income commencing at age 50 for members hired before June 16, 2014, or age 52 for members hired on or after June 16, 2014, normal retirement date which he or she has accrued to the date of termination of his or her service. If the monthly retirement income is to commence prior to his or her attainment of age 50 for members hired before June 16, 2014, or age 52 for members hired on or after June 16, 2014, normal retirement date, the benefit in this paragraph shall be actuarially reduced; provided, however:
- b. If the member had met the requirements for early retirement as set forth in § 2-122.6 as of the date of termination of his service, the benefit computed in a. above will not be less than the monthly retirement income which can be provided by the single-sum value of the monthly early retirement income which would have been payable to the member in accordance with the provisions in § 2-122.6 if the member had retired on the date of termination of his or her service, accumulated with interest from the date of termination of his or her service to the date as of which his or her monthly retirement income payments are to commence in accordance with the provisions above.
- c. The amount of the accrued deferred monthly retirement income referred to in this subsection (a) shall be computed as for normal retirement under § 2-122.6, based upon the terminated member's number of years of credited service and average final compensation at the date of termination of his or her service.
- d. For members who terminate service prior to June 16, 2014, the amount of the accrued deferred monthly retirement income referred to in this subsection (a) shall be computed as for normal retirement under § 2-122.6, based upon the terminated member's number of years of credited service and average final compensation at the date of termination of his or her service, in accordance with the following table.

Full Years of credited service as of Date of Termination of Service	Vesting Percentage of Accrued Deferred Retirement Income
Less than 5 years	0%
5 years but less than 6	50%
6 years but less than 7	60%
7 years but less than 8	70%
8 years but less than 9	80%
9 years but less than 10	90%
10 years or more	100%

- e. A member who terminates service on or after June 16, 2014 shall be 100% vested in their accrued benefit upon completing ten years of credited service, which shall include credited service prior to June 16, 2014, and such member shall be 0% vested if service is terminated before completing ten years of credited service; provided, members who have more than five years but less than ten years of credited service on June 16, 2014 shall retain their vested percentage as provided in paragraph d. above, but shall not earn any additional vested percentage until completing ten years of credited service, at which time they shall be 100% vested in their accrued benefit.
- f. Also, any member who has attained age 40 with the completion ten years credited service shall be 100% vested.
- g. All computations in subsections a. and c. of this section shall be on the basis of the interest and mortality assumptions in effect on the date of termination of the member's service.

...

#### § 2-122.10 - Optional forms of benefits.

- (a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a member, upon written request to the Board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:
  - (1) A retirement income of a monthly amount payable to the retiree for his lifetime only.
  - (2) A retirement income of a modified monthly amount, payable to the retiree during his or her lifetime and following the death of the retiree, 100%, 75%, 66-2/3% or 50% of such monthly amounts payable to his or her designated joint pensioner for the lifetime of his or her joint pensioner. Except where the retiree's joint pensioner is his spouse, the payments to the joint pensioner as a percentage of the payments to the retiree shall not exceed the applicable percentage provided for in the applicable table in the Treasury regulations. In the event that the retiree is predeceased by the joint pensioner, the retiree's monthly benefit shall revert to the amount payable under the normal form of benefit, life with 120 payments guaranteed, determined as of the retirement date, so long as this reversion provides a monthly benefit at least as great as the benefit paid at the time of the joint pensioner's death. The revised benefit shall be increased for any cost-of-living adjustments received prior to the joint pensioner's death. Additionally, the guaranteed portion of the benefit upon reversion shall account for the number of payments received prior to the reversion date. See Q & A-2 of § 1.401(a)(9)-6). Should the retiree determine to change the joint annuitant in accordance with subsection (b) below instead of reversion to the normal form of benefit, the retiree shall have 60 days from the date of death of the joint pensioner to make this election, otherwise the benefit will revert to the normal form in accordance with the provisions of this section.
  - (3) If a member retires prior to the time at which social security benefits are payable, he may elect to receive an increased retirement benefit until such time as social security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of Retirement. The amounts payable shall be as recommended by the actuaries for the system, based upon the social security law in effect at the time of the member's retirement.



(4) A member may elect a percentage of benefit in a lump sum as follows provided for below. If the member's accrued benefit under the normal form is limited by the maximum retirement benefit of §2-122.6(c), then any partial lump sum distribution as provided for below shall be based on a reduction from the maximum benefit cap under §2-122.6(c). The lump sums to be paid are as follows:

- a. Five percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining 95% paid under the normal form or as per (1), (2) or (3) above.
- b. Ten percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining 90% paid under the normal form or as per (1), (2), or (3) above.
- c. Fifteen percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining 85% paid under the normal form or as per (1), (2) or (3) above.
- d. Twenty percent of the total actuarial equivalent value of the benefit paid as a lump sum benefit with the remaining 80% paid under the normal form or as per (1), (2) or (3) above.

(b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his or her beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his or her designated beneficiary at any time, but may only change his or her joint pensioner twice. Subject to the restriction in the previous sentence, a member may substitute a new joint pensioner for a deceased joint pensioner within 60 days of the deceased joint pensioner's death otherwise the benefit will revert to the normal form in accordance with the provisions of subsection (a)(2) above.

...

#### § 2-122.15 - Maximum pension.

...

(f) ~~Less than ten years of participation or service.~~ The maximum retirement benefits payable under this section to any member who has completed less than ten years of ~~credited service~~ participation with the city shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of ~~credited service~~ participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to § 2-122.8, or pre-retirement death benefits paid pursuant to § 2-122.7. For purposes of this section, "participation" means years of service in the Cape Coral Municipal Firefighters' Retirement Plan, excluding any purchased service from outside this System.

...

(l) Additional limitation on pension benefits. Notwithstanding anything herein to the contrary:

- (1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100% of his or her average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
- (2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is



already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 671223, Title 10, U.S. Code.

**§ 2-122.27 - Deferred retirement option plan (DROP).**

...

- (d) Distribution of DROP Accounts on termination of employment.

...

- (2) Form of distribution.

- a. Unless the member elects otherwise, distribution of his or her DROP Account shall be made in a cash lump sum. A member may elect, in such time and manner as the Board shall prescribe, to receive a total distribution or multiple partial distributions during the 120 month period ~~proceeding~~ following his or her termination of employment as a firefighter or to receive the optional form of benefit described below.

Until the value of the member's DROP Account is completely depleted, payments in approximately equal quarterly or annual installments over a period, designated by the member, not to exceed the life expectancy of the last survivor of the member and his or her beneficiary. In the event that the member dies before all installments have been paid, the remaining balance in his or her DROP Account shall be paid in an immediate cash lump sum to his or her beneficiary, or if none is designated, then to the member's estate.

- b. If a member dies before his or her benefit is paid, his or her DROP Account shall be paid to his or her beneficiary in such optional form as his or her beneficiary may select. If no beneficiary designation is made, the DROP Account shall be distributed to the member's estate.

**§ 2-122.28 - Prior fire service.**

Unless otherwise prohibited by law, and except as provided for in § 2-122.1, the time that a member previously served as a firefighter with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, or the years and fractional parts of years that a member served as a firefighter for any other municipal, county or special district fire department in the State of Florida shall be added to his or her years of credited service; provided that:

...

- (e) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county or special district fire department, if such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan as set forth in § 2-122.15~~(4)~~(1)(2).

...

**§ 2-122.29 - Reemployment after retirement.**

...

- (g) In order for a disability retiree under this Pension Fund to subsequently become an employee of the city in a position covered by either of the other City pension plans, the disability retiree shall agree to discontinue receipt of the disability pension benefit from this system during the term of re-employment. If the disability retiree does not agree to the discontinuance of disability pension benefit from this plan, the disability retiree will not be eligible for employment in a position covered by another City pension plan. The Pension Fund retains the right to require the retiree to undergo additional periodic re-examinations to determine if the disability has ceased to exist.

In the event a person who is receiving a disability pension from the Police Pension Plan subsequently becomes an employee of the City in a position covered by the Firefighter Pension Plan, the employee agrees that the disability pension benefit will be discontinued during the term of re-employment.

**§ 2-122.30 – Defined Contribution Component (Share Plan).**

Pursuant to the requirements of Florida Statutes §175.351(6), a defined contribution plan component is established in addition to the defined benefit component of this local law plan. This defined contribution component is not currently funded.

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

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

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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


VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES MENENDEZ  
CITY ATTORNEY

ord/Pension amendments - Fire  
Draft: 10/24/17  
11/16/17  
12/15/17  
12/20/17  
1/22/18  
1/30/18  
3/5/18  
3/17/18

April 9, 2018

Ms. Ferrell Jenne, Plan Administrator  
2503 Del Prado Blvd. S.  
Suite 502  
Cape Coral, FL 33904

Re: City of Cape Coral  
Municipal Firefighters' Retirement Plan

Dear Ferrell:

In response to Bonnie Scheuermann's email dated March 14, 2018, we have reviewed proposed Ordinance 26-18 (identified on page 7 as ord/Pension amendments – Fire Draft 3/17/18). The following amendments to the pension plan are proposed:

1. Section 2-122.1, Definitions, is being amended for IRC changes and requirements, to amend the definitions of:

Actuarial Equivalent - to amend the definition to incorporate the interest rate equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board

Spouse - To clarify the definition in accordance with a recent US Supreme Court ruling

2. Section 2-122.6, Benefit amounts and eligibility, is being amended to change the Normal Retirement Date to include IRC required language regarding Normal Retirement Age and Normal Retirement Date, and to clarify that the maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment.

3. Section 2-122.8 – Disability, is being amended to change the minimum disability pension benefit to the greater of 42% of average final compensation or 2.75% of average final compensation times years of credited service.

4. Section 2-122.9, Vesting, is being amended to disclose the commencement date for members who terminate employment prior to the Normal or Early Retirement Date.

5. Section 2-122.10, Optional Forms of Benefits, has been amended to allow members 60 days to elect to change a joint annuitant following the death of the original joint pensioner, otherwise the benefit will revert to the normal form of benefit. This section has also been amended to clarify that if the member's accrued benefit is capped, the partial lump sum amounts will be based on the capped benefit amount.

6. Section 2-122.15, Maximum Pension, amends several subsections for compliance with IRC changes.



Ms. Ferrell Jenne  
April 9, 2018  
Page 2

7. Section 2-122.27, Deferred Retirement Option Plan, is being amended to correct subsection (2) a. to state that members may elect to receive a total distribution or multiple partial distributions during the 120 month period following termination of employment.

8. Section 2-122.28, Prior Fire Service, subsection (e), is being amended to correct a reference.

9. Section 2-122.29, Reemployment after retirement, is being amended to add section (g) to state that if a disability retiree is re-employed by the City in a position covered by another pension plan, the disability retiree must agree to discontinue receipt of benefits during the term of re-employment.

10. Section 2-122.30, Defined Contribution Component (Share Plan), is being added to establish a defined contribution plan.

Because the changes do not result in a change in the valuation results, it is our opinion that a formal Actuarial Impact Statement is not required in support of its adoption. However, since the Division of Retirement must be aware of the current provisions of all public pension programs, it is recommended that you send a copy of this letter and a copy of the fully executed Ordinance to each of the following offices:

Mr. Keith Brinkman  
Bureau of Local Retirement Systems  
Division of Retirement  
P. O. Box 9000  
Tallahassee, FL 32315-9000

Steve Bardin  
Municipal Police and Fire  
Pension Trust Funds  
Division of Retirement  
P.O. Box 3010  
Tallahassee, FL 32315-3010

The undersigned is familiar with the immediate and long-term aspects of pension valuations, and meets the Qualification Standards of the American Academy of Actuaries necessary to render the actuarial opinions contained herein.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglas H. Lozen". The signature is fluid and cursive, with the first name "Douglas" being more prominent and the last name "Lozen" following in a similar style.

Douglas H. Lozen, EA, MAAA

cc: Scott Christiansen, Plan Attorney

Item Number:	A.(2)
Meeting Date:	5/7/2018
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA  
REQUEST FORM**  
CITY OF CAPE  
CORAL



**TITLE:**

Ordinance 27-18 Public Hearing

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

The Pension Board for the Police retirement plan has requested certain changes to the Police Pension Plan. The changes are resulting from several factors. There were changes to the IRS regulations and Florida law that necessitated changes to the plan, certain provisions needed clarification, and certain provisions were a result of collective bargaining negotiations. Some of the changes include adding a definition of Normal Retirement Age, clarifying the application of the maximum benefit cap, and adding a rehire after disability retirement provision.

**LEGAL REVIEW:**

**EXHIBITS:**

Memo  
Ordinance 27-18  
Actuarial Letter of No Impact

**PREPARED BY:**



Division- Department- City  
Attorney


**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Memo	Backup Material
▣ Ordinance 27-18	Ordinance
▣ Actuarial Letter of No Impact	Backup Material

**MEMORANDUM**

CITY OF CAPE CORAL  
CITY MANAGER'S OFFICE

TO: Mayor Coviello and Council Members  
FROM: John Szerlag, City Manager   
DATE: April 27, 2018  
SUBJECT: Police Pension Plan Changes

---

Ordinance 27-18 brings forwards proposed changes to this plan by the Pension Board for the Police Retirement Plan, due to changes in IRS regulations and to Florida law.

Please find attached a letter from Douglas Lozen of Foster and Foster, the City's actuarial firm, summarizing these changes and stating that these changes do not result in a change in the valuation results.

Attachment: Letter from Foster & Foster, Actuaries and Consultants  
Ordinance 27-18

ORDINANCE 27 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE VI, PENSIONS, DIVISION 1, POLICE PENSION, TO AMEND SECTION 2-121.1, DEFINITIONS, SECTION 2-121. 4, FINANCES AND FUND MANAGEMENT; ESTABLISHMENT AND OPERATION OF FUND, SECTION 2-121.6, BENEFIT AMOUNTS AND ELIGIBILITY, SECTION 2-121-9, VESTING, SECTION 2-121.10, OPTIONAL FORMS OF BENEFITS, SECTION 2-121.15, MAXIMUM PENSION, SECTION 2-121.27, DEFERRED RETIREMENT OPTION PLAN (DROP), SECTION 2-121.28, PRIOR POLICE SERVICE, AND SECTION 2-121.29, REEMPLOYMENT AFTER RETIREMENT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 1, Police Pension, is hereby amended as follows:

**CHAPTER 2 ADMINISTRATION**

...

**ARTICLE VI: - PENSIONS**

**DIVISION 1. - POLICE PENSION**

**§ 2-121.1 - Definitions.**

- (a) As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated.

...

***ACTUARIAL EQUIVALENT.*** A benefit or amount of equal value, based upon the RP-2000 Combined Healthy Mortality Table (~~unisex~~) and an interest rate ~~equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board of 8% per annum~~. This definition may only be amended by the city pursuant to the recommendation of the Board using the assumptions adopted by the Board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

...

***CREDITED SERVICE.***

...

- b. The years or fractional parts of a year that a member performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L. 103-353), after separation from employment as a police officer with the city to perform training or service, shall be added to his or her years of credited service for all purposes, including vesting; provided that:
1. The member is entitled to reemployment under the provisions of USERRA.
  2. The member returns to his or her employment as a police officer within one year from the earlier of the date of his or her military discharge or his or her release from active service, unless otherwise required by USERRA.
  3. The maximum credit for military service pursuant to this paragraph shall be five years.

4. This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by § 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under § 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under § 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of credited service either during each plan year of a member's employment with the city or in the plan year in which the member terminates employment.

...

**SPOUSE.** The ~~lawful~~ wife or husband, under applicable law, of a member or retiree at the time benefits become payable.

...

#### § 2-121.4 - Finances and fund management; establishment and operation of fund.

...

- (f) The Board shall have the following investment powers and authority:

...

- (2) All monies paid into or held in the fund shall be invested and reinvested by the Board and the investment of all or any part of such funds shall be subject to the following:

...

- c. In addition, the Board may, upon recommendation by the Board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100 and Revenue Ruling 2011-1, IRS Notice 2012-6 and Revenue Ruling 2014-24 or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under § 401(a) of the Code, individual retirement accounts that are exempt under § 408(e) of the Code, eligible governmental plans that meet the requirements of § 457(b) of the Code, and governmental plans under § 401(a)(24) of the Code. For this purpose, a trust includes a custodial account or separate tax favored account maintained by an insurance company that is treated as a trust under § 401(f) or under § 457(g)(3) of the Code. While any portion of the assets of the fund are invested in such a group trust, such group trust is itself adopted as a part of the system or plan.

1. Any collective or common group trust to which assets of the fund are transferred pursuant to subsection c. shall be adopted by the board as part of the plan by executing appropriate participation, adoption agreements, and/or trust agreements with the group trust's trustee.

2. The separate account maintained by the group trust for the plan pursuant to subsection c. shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the plan.
3. For purposes of valuation, the value of the separate account maintained by the group trust for the plan shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

...

**§ 2-121.6 - Benefit amounts and eligibility.**

**(a) Normal retirement date.**

- (1) The normal retirement date for members whose employment commenced prior to October 1, 2013, shall be the first day of the month coincident with, or next following the earlier of the attainment of age 50, regardless of years of credited service or the completion of 25 years of credited service, regardless of age. The normal retirement age for a member retiring under the normal retirement date of 25 years of credited service, regardless of age, is the age that the member has attained when the member has at least 25 years of service and is retired.
- (2) The normal retirement date for members whose employment commenced on or after October 1, 2013, shall be the first day of the month coincident with, or next following the earlier of the attainment of age 52, with ten years of credited service or the completion of 27 years of credited service, regardless of age. The normal retirement age for a member retiring under the normal retirement date of 27 years of credited service, regardless of age, is the age that the member has attained when the member has at least 27 years of service and is retired.
- (3) A member may retire on his or her normal retirement date or on the first day of any month thereafter, and each member shall become 100% vested in his or her accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.

- (b) Normal retirement benefit. A member retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his or her retirement and be continued thereafter during member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal 3.25% of Average Final Compensation, for each year of credited service. Notwithstanding the foregoing, the maximum monthly retirement benefit ~~of paid at the time of retirement under the normal form of benefit to~~ members who are employed and have not reached the normal retirement date on October 1, 2013, and members hired on or after October 1, 2013, shall not exceed the greater of \$7,916.67 or the member's accrued monthly retirement benefit on October 1, 2013, exclusive of cost-of-living adjustments. The maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment. A member's choice of the life only or the social security optional form of benefit may result in a retirement benefit which is more than the maximum, but is actuarially equivalent to the normal form with the maximum cap applied. If a member who is subject to the maximum monthly retirement benefit provided in the preceding sentence retires and is reemployed in accordance with § 2-121.29(b), the maximum total monthly retirement benefit payable upon final retirement based on all periods of employment shall not exceed the greater of \$7,916.67 or the member's accrued monthly retirement benefit on October 1, 2013, exclusive of cost-of-living adjustments. Only the normal form of benefit remains limited by the maximum cap; a member's choice of the life only or the social security optional form of benefit may result in a retirement benefit which is more than the maximum, but is actuarially equivalent to the normal form with the maximum cap applied.

...



**§ 2-121.9 - Vesting.**

(a) Benefit upon termination of service and upon death after termination of service.

- (1) In the event of the termination of a member's service prior to his or her normal retirement date and on and after the time that his or her vested percentage is more than 0% for any reason other than his or her death or early retirement as described in § 2-121.6 or disability retirement as described in § 2-121.9 (hereafter referred to as a "terminated member"), the member will be entitled to a monthly retirement income to commence on the first day of the month following attainment of age 50 for members hired before October 1, 2013, or age 52 for members hired on or after October 1, 2013, his or her normal retirement date, provided his or her employee contributions remain in the plan. If the member has completed ten years credited service, he or she will be entitled to a monthly retirement income to commence the first day of any month which is prior to his or her attaining age 50 for members hired before October 1, 2013, or age 52 for members hired on or after October 1, 2013, normal retirement date and on or after the date on which he or she attains age 40; provided, however, that, he or she files a request in writing with the Board. The monthly retirement income payable to a member under the provisions of this subsection (a) shall be equal to:

- a. The product of the member's vested percentage at his or her date of termination and the deferred monthly retirement income commencing at age 50 for members hired before October 1, 2013, or age 52 for members hired on or after October 1, 2013, normal retirement date which he or she has accrued to the date of termination of his or her service. If the monthly retirement income is to commence prior to his or her attainment of age 50 for members hired before October 1, 2013, or age 52 for members hired on or after October 1, 2013, normal retirement date, the benefit in this paragraph shall be actuarially reduced; provided, however:
- b. If the member had met the requirements for early retirement as set forth in § 2-121.6 as of the date of termination of his service, the benefit computed in a. above will not be less than the monthly retirement income which can be provided by the single-sum value of the monthly early retirement income which would have been payable to the member in accordance with the provisions in § 2-121.6 if the member had retired on the date of termination of his or her service, accumulated with interest from the date of termination of his or her service to the date as of which his or her monthly retirement income payments are to commence in accordance with the provisions above.

...

**§ 2-121.10 - Optional forms of benefits.**

...

- (b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his or her beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his or her designated beneficiary at any time, but may only change his or her joint pensioner twice. Subject to the restriction in the previous sentence, a member may substitute a new joint pensioner for a deceased joint pensioner. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

...

**§ 2-121.15 - Maximum pension.**

...

- (f) Less than ten years of participation ~~or service~~. The maximum retirement benefits payable under this section to any member who has completed less than ten years of ~~credited service~~ participation with the city shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of ~~credited service~~ participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to § 2-121.8, or pre-retirement death benefits paid pursuant to §2-121.7. For purposes of this section, "participation" means years of service in the Cape Coral Municipal Police Retirement Plan, excluding any purchased service from outside this System.

...

- (l) Additional limitation on pension benefits. Notwithstanding anything herein to the contrary:
- (1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1,1980, shall not exceed 100% of his or her average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
  - (2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter ~~671223~~, Title 10, U.S. Code.
- (m) Effect of direct rollover on 415(b) limit. If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under Code Section 401(a) which is maintained by the employer, any annuity resulting from the rollover amount that is determined using a more favorable actuarial basis than required under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b).

**§ 2-121.27 - Deferred retirement option plan (DROP).**

- (a) Definitions. As used in this § 2-121.27, the following definitions apply.

...

**TOTAL RETURN OF THE ASSETS.** For purposes of calculating earnings on a member's DROP account pursuant to subsection (c)(2)b.2., for each fiscal year quarter, the percentage increase (or decrease) in the interest and dividends earned on investments, including realized and unrealized gains (or losses), of the total Plan assets.

...

- (c) Funding.
- (1) Establishment of DROP Account. A DROP Account shall be established for each member participating in the DROP. A member's DROP Account shall consist of amounts transferred to the DROP under subsection (c)(2) and earnings or interest on those amounts.
  - (2) Transfers from retirement system.
    - a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he or she would have received under the system had he or she terminated his or her employment as a police officer

and elected to receive monthly benefit payments thereunder shall be transferred to his or her DROP Account except as otherwise provided for in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (4), but in no event shall it continue past the date he or she terminates his or her employment as a police officer.

- b. A member's DROP Account under this subsection (c)(2) shall be debited or credited ~~after each fiscal year quarter~~ with either:
1. Interest at an effective rate of 6.5% per annum compounded monthly ~~determined on the last business day of the prior month's ending balance and credited to the member's DROP account as of such date (to be applicable to all current and future DROP participants); or~~
  2. Earnings, ~~to be credited or debited to the member's DROP account, determined as of the last business day of each fiscal year quarter and debited or credited as of such date,~~ determined as follows: The average daily balance in a member's DROP Account shall be credited or debited at a rate equal to the net investment return realized by the system for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP Account is invested by the Board net of brokerage commissions, transaction costs and management fees. For purposes of calculating earnings on a member's DROP account pursuant to this subsection (c)(2)b.2., brokerage commissions, transaction costs, and management fees shall be determined for each quarter by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these quarterly contractual fees to the board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total plan assets.
  3. Earnings received on investment plans or on investment vehicles which the Board makes available to members for DROP investment purposes, so long as there is no additional cost to the system by making such choices available to the members.

Upon electing participation in the DROP, the member shall elect to receive either interest or earnings on his or her account to be determined as provided above. The member may, in writing, elect to change his or her election two times each 12-month period during his or her DROP participation. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter.

- c. A member's DROP Account shall only be credited or debited with earnings or interest and monthly benefits while the member is a participant in the DROP. A member's final DROP Account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation for participants electing the net plan return and at the end of the month immediately preceding termination of participation for participants electing the flat interest rate return, plus any monthly periodic additions made to the DROP Account subsequent to the end of the previous quarter or month, as applicable, and prior to distribution. If a member fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the member's first month of employment following the last month of the permissible period of DROP participation, the member's DROP Account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP Account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the member is employed by the Police Department and no cost-of-living adjustments shall be applied to the member's credit during such period of continued employment. A member

employed by the Police Department after the permissible period of DROP participation will still not be eligible for pre-retirement death or disability benefits, nor will he accrue additional credited service.

...

(f) General provisions.

- (1) The DROP is not a separate retirement plan. Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 2-121.27 for the remainder of his employment, rather than in the normal manner provided under the plan. Upon termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.
- (2) Notional account. The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the member's termination from the DROP. The member has no control over the investment of the DROP account.
- (3) No employer discretion. The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (4) IRC limit. The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).
- (4 5) Amendment of Drop. The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP Account of any member.
- (2 6) Facility of payment. If a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the Board shall direct that any benefit due him, shall have been be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- (3 7) Information. Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or her or on his or her account under the DROP, shall file with the Board the information that it shall require to establish his rights and benefits under the DROP.
- (4 8) Prevention of escheat. If the Board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the Board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the Board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the Board may, if it so elects and upon receiving advice from counsel to the system, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the system. Upon such cancellation, the system shall have no further liability therefor except that, in the event such person or his or her beneficiary later notifies the Board of his or her whereabouts and requests the payment or payments due to him or her under the DROP, the amount so applied shall be paid to him or her in accordance with the provisions of the DROP.
- (5 2) Written elections, notification.

- a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the Board in a time and manner determined by the Board under rules uniformly applicable to all employees similarly situated. The Board reserves the right to change the from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
  - b. Each member or retiree who has a DROP Account shall be responsible for furnishing the Board with his or her current address and any subsequent changes in his or her address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him or her at the last such address given to the Board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the Board of his or her address.
- (6 10) Benefits not guaranteed. All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP Account and neither the city nor the Board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.
- (7 11) Construction.
- a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
  - b. The titles and headings of the subsections in this section are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.
- (8 12) Forfeiture of retirement benefits. Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.
- (9 13) Effect of DROP participation on employment. Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

**§ 2-121.28 - Prior police service.**

Unless otherwise prohibited by law, and except as provided for in § 2-121.1, the time that a member previously served as a full-time police officer with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, or the time that a member served as a police officer for any other municipal, county or state law enforcement department in the State of Florida shall be added to his or her years of credited service; provided that:

...

- (c) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county or state law enforcement department, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in § 2-121.15(~~1~~ 1)(2).

...



§ 2-121.29 - Reemployment after retirement.

...

- (g) In order for a disability retiree under this Pension Fund to subsequently become an employee of the city in a position covered by either of the other City pension plans, the disability retiree shall agree to discontinue receipt of the disability pension benefit from this system during the term of re-employment. If the disability retiree does not agree to the discontinuance of the disability pension benefit from this plan, the disability retiree will not be eligible for employment in a position covered by another City pension plan. The Pension Fund retains the right to require the retiree to undergo additional periodic re-examinations to determine if the disability has ceased to exist.

In the event a person who is receiving a disability pension from the Firefighter Pension Plan subsequently becomes an employee of the City in a position covered by the Police Pension Plan, the employee agrees that the disability pension benefit will be discontinued during the term of re-employment.

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

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

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

VOTE OF MAYOR AND COUNCILMEMBERS:

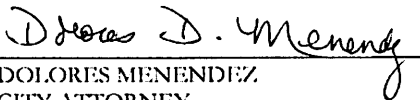
COVIELLO \_\_\_\_\_  
GUNTER \_\_\_\_\_  
CARIOSCIA \_\_\_\_\_  
STOUT \_\_\_\_\_

NELSON \_\_\_\_\_  
STOKES \_\_\_\_\_  
WILLIAMS \_\_\_\_\_  
COSDEN \_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
DOLORIS MENENDEZ  
CITY ATTORNEY

ord/Pension amendments - Police  
Draft 10/25/17

11/16/17  
12/15/17  
12/20/17  
1/22/18  
1/30/18  
3/5/18

April 9, 2018

Ms. Amber McNeill, Plan Administrator  
Resource Centers  
4100 Center Pointe Drive, Ste. 108  
Fort Myers, FL 33916

Re: City of Cape Coral  
Municipal Police Officers' Retirement Plan

Dear Amber:

In response to Scott Christiansen's email dated March 8, 2018 we have reviewed proposed Ordinance 27-18 (identified on page 9 as ord/Pension amendments – Police Draft 3/5/18). The following amendments to the pension plan are proposed:

1. Section 2-121.1, Definitions, is being amended for IRC changes and requirements, to amend the definitions of:

- a. Actuarial Equivalent - to amend the definition to incorporate the interest rate equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board
- b. Credited Service - to clarify IRC regulations on leave conversions
- c. Spouse - To clarify the definition in accordance with a recent US Supreme Court ruling

2. Section 2-121.4, Finances and Fund Management, is being amended to further incorporate recent IRC requirements with regard to investments in commingled funds.

3. Section 2-121.6, Benefit amounts and eligibility, is being amended to change the Normal Retirement Date to include IRC required language regarding Normal Retirement Age and Normal Retirement Date, and to clarify that the maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment.

4. Section 2-121.9, Vesting, is being amended to disclose the commencement date for members who terminate employment prior to the Normal or Early Retirement Date

5. Section 2-121.10, Optional Forms of Benefits, amends subsection (b) to clarify that if proof of good health of a joint pensioner who is being replaced is not provided, the actuary will assume that the joint pensioner is deceased for purposes of calculating the revised benefit amount.

Ms. Amber McNeill  
April 9, 2018  
Page 2

6. Section 2-121.15, Maximum Pension, amends several subsections for compliance with IRC changes.

7. Section 2-121.27, Deferred Retirement Option Plan, is being amended in accordance with recent direction from the IRS in connection with the issuance of several recent Favorable Determination Letters to clarify investment returns on DROP accounts and add several sections clarifying the DROP provisions as required by the IRS.

We have also amended the provisions regarding when interest is calculated and paid, which will avoid a participant's forfeiture of interest accrued during the first or second month of the quarter should the member terminate DROP participation at the end of the first or second month of the quarter.

8. Section 2-121.28, Prior Police Service, subsection (e), is being amended to correct a reference.

9. Section 2-121.29, Reemployment after retirement, is being amended to add section (g) to state that if a disability retiree is re-employed by the City in a position covered by another pension plan, the disability retiree must agree to discontinue receipt of benefits during the term of re-employment.

Because the changes do not result in a change in the valuation results, it is our opinion that a formal Actuarial Impact Statement is not required in support of its adoption. However, since the Division of Retirement must be aware of the current provisions of all public pension programs, it is recommended that you send a copy of this letter and a copy of the fully executed Ordinance to each of the following offices:

Mr. Keith Brinkman  
Bureau of Local Retirement Systems  
Division of Retirement  
P. O. Box 9000  
Tallahassee, FL 32315-9000

Steve Bardin  
Municipal Police and Fire  
Pension Trust Funds  
Division of Retirement  
P.O. Box 3010  
Tallahassee, FL 32315-3010

The undersigned is familiar with the immediate and long-term aspects of pension valuations, and meets the Qualification Standards of the American Academy of Actuaries necessary to render the actuarial opinions contained herein.

If you have any questions, please let me know.

Sincerely,



Douglas H. Lozen, EA, MAAA

Cc: Scott Christiansen, Plan Attorney

ORDINANCE 27 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE VI, PENSIONS, DIVISION 1, POLICE PENSION, TO AMEND SECTION 2-121.1, DEFINITIONS, SECTION 2-121. 4, FINANCES AND FUND MANAGEMENT; ESTABLISHMENT AND OPERATION OF FUND, SECTION 2-121.6, BENEFIT AMOUNTS AND ELIGIBILITY, SECTION 2-121-9, VESTING, SECTION 2-121.10, OPTIONAL FORMS OF BENEFITS, SECTION 2-121.15, MAXIMUM PENSION, SECTION 2-121.27, DEFERRED RETIREMENT OPTION PLAN (DROP), SECTION 2-121.28, PRIOR POLICE SERVICE, AND SECTION 2-121.29, REEMPLOYMENT AFTER RETIREMENT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 1, Police Pension, is hereby amended as follows:

**CHAPTER 2 ADMINISTRATION**

...

**ARTICLE VI: - PENSIONS**

**DIVISION 1. - POLICE PENSION**

**§ 2-121.1 - Definitions.**

- (a) As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated.

...

***ACTUARIAL EQUIVALENT.*** A benefit or amount of equal value, based upon the RP-2000 Combined Healthy Mortality Table (unisex) and an interest rate equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board of 8% per annum. This definition may only be amended by the city pursuant to the recommendation of the Board using the assumptions adopted by the Board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

...

***CREDITED SERVICE.***

...

- b. The years or fractional parts of a year that a member performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L. 103-353), after separation from employment as a police officer with the city to perform training or service, shall be added to his or her years of credited service for all purposes, including vesting; provided that:
1. The member is entitled to reemployment under the provisions of USERRA.
  2. The member returns to his or her employment as a police officer within one year from the earlier of the date of his or her military discharge or his or her release from active service, unless otherwise required by USERRA.
  3. The maximum credit for military service pursuant to this paragraph shall be five years.

4. This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by § 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under § 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under § 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of credited service either during each plan year of a member's employment with the city or in the plan year in which the member terminates employment.

...

**SPOUSE.** The ~~lawful~~ wife or husband, under applicable law, of a member or retiree at the time benefits become payable.

...

#### **§ 2-121.4 - Finances and fund management; establishment and operation of fund.**

...

- (f) The Board shall have the following investment powers and authority:

...

- (2) All monies paid into or held in the fund shall be invested and reinvested by the Board and the investment of all or any part of such funds shall be subject to the following:

...

- c. In addition, the Board may, upon recommendation by the Board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100 and Revenue Ruling 2011-1, IRS Notice 2012-6 and Revenue Ruling 2014-24 or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under § 401(a) of the Code, individual retirement accounts that are exempt under § 408(e) of the Code, eligible governmental plans that meet the requirements of § 457(b) of the Code, and governmental plans under § 401(a)(24) of the Code. For this purpose, a trust includes a custodial account or separate tax favored account maintained by an insurance company that is treated as a trust under § 401(f) or under § 457(g)(3) of the Code. While any portion of the assets of the fund are invested in such a group trust, such group trust is itself adopted as a part of the system or plan.

1. Any collective or common group trust to which assets of the fund are transferred pursuant to subsection c. shall be adopted by the board as part of the plan by executing appropriate participation, adoption agreements, and/or trust agreements with the group trust's trustee.



2. The separate account maintained by the group trust for the plan pursuant to subsection c. shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the plan.
3. For purposes of valuation, the value of the separate account maintained by the group trust for the plan shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

...

#### § 2-121.6 - Benefit amounts and eligibility.

##### (a) Normal retirement date.

- (1) The normal retirement date for members whose employment commenced prior to October 1, 2013, shall be the first day of the month coincident with, or next following the earlier of the attainment of age 50, regardless of years of credited service or the completion of 25 years of credited service, regardless of age. The normal retirement age for a member retiring under the normal retirement date of 25 years of credited service, regardless of age, is the age that the member has attained when the member has at least 25 years of service and is retired.
- (2) The normal retirement date for members whose employment commenced on or after October 1, 2013, shall be the first day of the month coincident with, or next following the earlier of the attainment of age 52, with ten years of credited service or the completion of 27 years of credited service, regardless of age. The normal retirement age for a member retiring under the normal retirement date of 27 years of credited service, regardless of age, is the age that the member has attained when the member has at least 27 years of service and is retired.
- (3) A member may retire on his or her normal retirement date or on the first day of any month thereafter, and each member shall become 100% vested in his or her accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.

- (b) Normal retirement benefit. A member retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his or her retirement and be continued thereafter during member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal 3.25% of Average Final Compensation, for each year of credited service. Notwithstanding the foregoing, the maximum monthly retirement benefit ~~of paid at the time of retirement under the normal form of benefit to~~ members who are employed and have not reached the normal retirement date on October 1, 2013, and members hired on or after October 1, 2013, shall not exceed the greater of \$7,916.67 or the member's accrued monthly retirement benefit on October 1, 2013, exclusive of cost-of-living adjustments. The maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment. A member's choice of the life only or the social security optional form of benefit may result in a retirement benefit which is more than the maximum, but is actuarially equivalent to the normal form with the maximum cap applied. If a member who is subject to the maximum monthly retirement benefit provided in the preceding sentence retires and is reemployed in accordance with § 2-121.29(b), the maximum total monthly retirement benefit payable upon final retirement based on all periods of employment shall not exceed the greater of \$7,916.67 or the member's accrued monthly retirement benefit on October 1, 2013, exclusive of cost-of-living adjustments. Only the normal form of benefit remains limited by the maximum cap; a member's choice of the life only or the social security optional form of benefit may result in a retirement benefit which is more than the maximum, but is actuarially equivalent to the normal form with the maximum cap applied.

...

## § 2-121.9 - Vesting.

(a) Benefit upon termination of service and upon death after termination of service.

(1) In the event of the termination of a member's service prior to his or her normal retirement date and on and after the time that his or her vested percentage is more than 0% for any reason other than his or her death or early retirement as described in § 2-121.6 or disability retirement as described in § 2-121.9 (hereafter referred to as a "terminated member"), the member will be entitled to a monthly retirement income to commence on the first day of the month following attainment of age 50 for members hired before October 1, 2013, or age 52 for members hired on or after October 1, 2013, his or her normal retirement date, provided his or her employee contributions remain in the plan. If the member has completed ten years credited service, he or she will be entitled to a monthly retirement income to commence the first day of any month which is prior to his or her attaining age 50 for members hired before October 1, 2013, or age 52 for members hired on or after October 1, 2013, normal retirement date and on or after the date on which he or she attains age 40; provided, however, that, he or she files a request in writing with the Board. The monthly retirement income payable to a member under the provisions of this subsection (a) shall be equal to:

- a. The product of the member's vested percentage at his or her date of termination and the deferred monthly retirement income commencing at age 50 for members hired before October 1, 2013, or age 52 for members hired on or after October 1, 2013, normal retirement date which he or she has accrued to the date of termination of his or her service. If the monthly retirement income is to commence prior to his or her attainment of age 50 for members hired before October 1, 2013, or age 52 for members hired on or after October 1, 2013, normal retirement date, the benefit in this paragraph shall be actuarially reduced; provided, however:
- b. If the member had met the requirements for early retirement as set forth in § 2-121.6 as of the date of termination of his service, the benefit computed in a. above will not be less than the monthly retirement income which can be provided by the single-sum value of the monthly early retirement income which would have been payable to the member in accordance with the provisions in § 2-121.6 if the member had retired on the date of termination of his or her service, accumulated with interest from the date of termination of his or her service to the date as of which his or her monthly retirement income payments are to commence in accordance with the provisions above.

...

## § 2-121.10 - Optional forms of benefits.

...

(b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his or her beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his or her designated beneficiary at any time, but may only change his or her joint pensioner twice. Subject to the restriction in the previous sentence, a member may substitute a new joint pensioner for a deceased joint pensioner. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

...



§ 2-121.15 - Maximum pension.

...

- (f) Less than ten years of ~~participation or service~~. The maximum retirement benefits payable under this section to any member who has completed less than ten years of ~~credited service~~ participation with the city shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of ~~credited service~~ participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to § 2-121.8, or pre-retirement death benefits paid pursuant to §2-121.7. For purposes of this section, "participation" means years of service in the Cape Coral Municipal Police Retirement Plan, excluding any purchased service from outside this System.

...

- (l) Additional limitation on pension benefits. Notwithstanding anything herein to the contrary:
- (1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100% of his or her average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
  - (2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 671223, Title 10, U.S. Code.
- (m) Effect of direct rollover on 415(b) limit. If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under Code Section 401(a) which is maintained by the employer, any annuity resulting from the rollover amount that is determined using a more favorable actuarial basis than required under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b).

§ 2-121.27 - Deferred retirement option plan (DROP).

- (a) Definitions. As used in this § 2-121.27, the following definitions apply.

...

**TOTAL RETURN OF THE ASSETS.** For purposes of calculating earnings on a member's DROP account pursuant to subsection (c)(2)b.2., for each fiscal year quarter, the percentage increase (or decrease) in the interest and dividends earned on investments, including realized and unrealized gains (or losses), of the total Plan assets.

...

- (c) Funding.
- (1) Establishment of DROP Account. A DROP Account shall be established for each member participating in the DROP. A member's DROP Account shall consist of amounts transferred to the DROP under subsection (c)(2) and earnings or interest on those amounts.
  - (2) Transfers from retirement system.
    - a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he or she would have received under the system had he or she terminated his or her employment as a police officer

and elected to receive monthly benefit payments thereunder shall be transferred to his or her DROP Account except as otherwise provided for in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (4), but in no event shall it continue past the date he or she terminates his or her employment as a police officer.

- b. A member's DROP Account under this subsection (c)(2) shall be debited or credited ~~after each fiscal year quarter~~ with either:
1. Interest at an effective rate of 6.5% per annum compounded monthly ~~determined on the last business day of the prior month's ending balance and credited to the member's DROP account as of such date~~ (to be applicable to all current and future DROP participants); or
  2. Earnings, to be credited or debited to the member's DROP account, determined as of the last business day of each fiscal year quarter and debited or credited as of such date, determined as follows: The average daily balance in a member's DROP Account shall be credited or debited at a rate equal to the net investment return realized by the system for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP Account is invested by the Board net of brokerage commissions, transaction costs and management fees. For purposes of calculating earnings on a member's DROP account pursuant to this subsection (c)(2)b.2., brokerage commissions, transaction costs, and management fees shall be determined for each quarter by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these quarterly contractual fees to the board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total plan assets.
  3. Earnings received on investment plans or on investment vehicles which the Board makes available to members for DROP investment purposes, so long as there is no additional cost to the system by making such choices available to the members.

Upon electing participation in the DROP, the member shall elect to receive either interest or earnings on his or her account to be determined as provided above. The member may, in writing, elect to change his or her election two times each 12-month period during his or her DROP participation. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter.

- c. A member's DROP Account shall only be credited or debited with earnings or interest and monthly benefits while the member is a participant in the DROP. A member's final DROP Account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation for participants electing the net plan return and at the end of the month immediately preceding termination of participation for participants electing the flat interest rate return, plus any monthly periodic additions made to the DROP Account subsequent to the end of the previous quarter or month, as applicable, and prior to distribution. If a member fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the member's first month of employment following the last month of the permissible period of DROP participation, the member's DROP Account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP Account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the member is employed by the Police Department and no cost-of-living adjustments shall be applied to the member's credit during such period of continued employment. A member



employed by the Police Department after the permissible period of DROP participation will still not be eligible for pre-retirement death or disability benefits, nor will he accrue additional credited service.

...

(f) General provisions.

- (1) The DROP is not a separate retirement plan. Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 2-121.27 for the remainder of his employment, rather than in the normal manner provided under the plan. Upon termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.
- (2) Notional account. The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the member's termination from the DROP. The member has no control over the investment of the DROP account.
- (3) No employer discretion. The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (4) IRC limit. The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).
- (4 5) Amendment of Drop. The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP Account of any member.
- (2 6) Facility of payment. If a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the Board shall direct that any benefit due him, shall have been be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- (3 7) Information. Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or her or on his or her account under the DROP, shall file with the Board the information that it shall require to establish his rights and benefits under the DROP.
- (4 8) Prevention of escheat. If the Board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the Board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the Board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the Board may, if it so elects and upon receiving advice from counsel to the system, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the system. Upon such cancellation, the system shall have no further liability therefor except that, in the event such person or his or her beneficiary later notifies the Board of his or her whereabouts and requests the payment or payments due to him or her under the DROP, the amount so applied shall be paid to him or her in accordance with the provisions of the DROP.
- (5 2) Written elections, notification.



- a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the Board in a time and manner determined by the Board under rules uniformly applicable to all employees similarly situated. The Board reserves the right to change the from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
  - b. Each member or retiree who has a DROP Account shall be responsible for furnishing the Board with his or her current address and any subsequent changes in his or her address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him or her at the last such address given to the Board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the Board of his or her address.
- (6 10) Benefits not guaranteed. All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP Account and neither the city nor the Board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.
- (7 11) Construction.
- a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
  - b. The titles and headings of the subsections in this section are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.
- (8 12) Forfeiture of retirement benefits. Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.
- (9 13) Effect of DROP participation on employment. Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

#### **§ 2-121.28 - Prior police service.**

Unless otherwise prohibited by law, and except as provided for in § 2-121.1, the time that a member previously served as a full-time police officer with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, or the time that a member served as a police officer for any other municipal, county or state law enforcement department in the State of Florida shall be added to his or her years of credited service; provided that:

...

- (e) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county or state law enforcement department, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in § 2-121.15(1)(2).

...

§ 2-121.29 - Reemployment after retirement.

...

- (g) In order for a disability retiree under this Pension Fund to subsequently become an employee of the city in a position covered by either of the other City pension plans, the disability retiree shall agree to discontinue receipt of the disability pension benefit from this system during the term of re-employment. If the disability retiree does not agree to the discontinuance of the disability pension benefit from this plan, the disability retiree will not be eligible for employment in a position covered by another City pension plan. The Pension Fund retains the right to require the retiree to undergo additional periodic re-examinations to determine if the disability has ceased to exist.

In the event a person who is receiving a disability pension from the Firefighter Pension Plan subsequently becomes an employee of the City in a position covered by the Police Pension Plan, the employee agrees that the disability pension benefit will be discontinued during the term of re-employment.

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

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

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

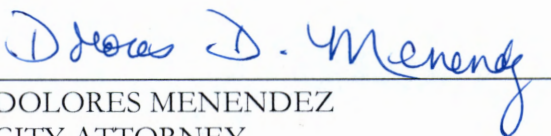
VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES MENENDEZ  
CITY ATTORNEY

ord/Pension amendments - Police

Draft: 10/25/17

11/16/17

12/15/17

12/20/17

1/22/18

1/30/18

3/5/18

April 9, 2018

Ms. Amber McNeill, Plan Administrator  
Resource Centers  
4100 Center Pointe Drive, Ste. 108  
Fort Myers, FL 33916

Re: City of Cape Coral  
Municipal Police Officers' Retirement Plan

Dear Amber:

In response to Scott Christiansen's email dated March 8, 2018 we have reviewed proposed Ordinance 27-18 (identified on page 9 as ord/Pension amendments – Police Draft 3/5/18). The following amendments to the pension plan are proposed:

1. Section 2-121.1, Definitions, is being amended for IRC changes and requirements, to amend the definitions of:
  - a. Actuarial Equivalent - to amend the definition to incorporate the interest rate equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board
  - b. Credited Service - to clarify IRC regulations on leave conversions
  - c. Spouse - To clarify the definition in accordance with a recent US Supreme Court ruling
2. Section 2-121.4, Finances and Fund Management, is being amended to further incorporate recent IRC requirements with regard to investments in commingled funds.
3. Section 2-121.6, Benefit amounts and eligibility, is being amended to change the Normal Retirement Date to include IRC required language regarding Normal Retirement Age and Normal Retirement Date, and to clarify that the maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment.
4. Section 2-121.9, Vesting, is being amended to disclose the commencement date for members who terminate employment prior to the Normal or Early Retirement Date
5. Section 2-121.10, Optional Forms of Benefits, amends subsection (b) to clarify that if proof of good health of a joint pensioner who is being replaced is not provided, the actuary will assume that the joint pensioner is deceased for purposes of calculating the revised benefit amount.

Ms. Amber McNeill  
April 9, 2018  
Page 2

6. Section 2-121.15, Maximum Pension, amends several subsections for compliance with IRC changes.

7. Section 2-121.27, Deferred Retirement Option Plan, is being amended in accordance with recent direction from the IRS in connection with the issuance of several recent Favorable Determination Letters to clarify investment returns on DROP accounts and add several sections clarifying the DROP provisions as required by the IRS.

We have also amended the provisions regarding when interest is calculated and paid, which will avoid a participant's forfeiture of interest accrued during the first or second month of the quarter should the member terminate DROP participation at the end of the first or second month of the quarter.

8. Section 2-121.28, Prior Police Service, subsection (e), is being amended to correct a reference.

9. Section 2-121.29, Reemployment after retirement, is being amended to add section (g) to state that if a disability retiree is re-employed by the City in a position covered by another pension plan, the disability retiree must agree to discontinue receipt of benefits during the term of re-employment.

Because the changes do not result in a change in the valuation results, it is our opinion that a formal Actuarial Impact Statement is not required in support of its adoption. However, since the Division of Retirement must be aware of the current provisions of all public pension programs, it is recommended that you send a copy of this letter and a copy of the fully executed Ordinance to each of the following offices:

Mr. Keith Brinkman  
Bureau of Local Retirement Systems  
Division of Retirement  
P. O. Box 9000  
Tallahassee, FL 32315-9000

Steve Bardin  
Municipal Police and Fire  
Pension Trust Funds  
Division of Retirement  
P.O. Box 3010  
Tallahassee, FL 32315-3010

The undersigned is familiar with the immediate and long-term aspects of pension valuations, and meets the Qualification Standards of the American Academy of Actuaries necessary to render the actuarial opinions contained herein.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas H. Lozen". The signature is fluid and cursive, with a large loop at the end.

Douglas H. Lozen, EA, MAAA

Cc: Scott Christiansen, Plan Attorney

<b>Item Number:</b>	<b>A.(3)</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Public Hearings</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Ordinance 28-18 Public Hearing

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

The Pension Board for the General Employee's retirement plan has requested certain changes to the General Employee Pension Plan. The changes are resulting from both changes to the IRS regulations and also from changes to Florida law, and certain provisions needed clarification. Some of the changes include adding a definition of Normal Retirement Age, clarifying the manner of payment of death benefits, clarifying the application of the maximum benefit cap, providing for purchase of nonqualified service credit, and adding a provision for hiring police or fire employees receiving a disability pension.

**LEGAL REVIEW:**

**EXHIBITS:**

Memo  
Ordinance 28-18  
Actuarial Letter of No Impact



**PREPARED BY:**

Division- Department- City  
Attorney

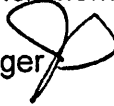
**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Memo	Backup Material
▣ Ordinance 28-18	Ordinance
▣ Actuarial Letter of No Impact	Backup Material

**MEMORANDUM**

**CITY OF CAPE CORAL  
CITY MANAGER'S OFFICE**

TO: Mayor Coviello and Council Members  
FROM: John Szerlag, City Manager   
DATE: April 27, 2018  
SUBJECT: General Employees Pension Plan Changes

---

Ordinance 28-18 brings forwards proposed changes to this plan by the Pension Board for the General Employees Retirement Plan, due to changes in IRS regulations and to Florida law.

Please find attached a letter from Douglas Lozen of Foster and Foster, the City's actuarial firm, summarizing these changes and stating that these changes do not result in a change in the valuation results.

Attachment: Letter from Foster & Foster, Actuaries and Consultants  
Ordinance 28-18

ORDINANCE 28 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE VI, PENSIONS, DIVISION 3, GENERAL EMPLOYEES PENSION, TO AMEND SECTION 2-123.1, DEFINITIONS, SECTION 2-123.4, FINANCES AND FUND MANAGEMENT; ESTABLISHMENT AND OPERATION OF FUND, SECTION 2-123.6, BENEFIT AMOUNTS AND ELIGIBILITY, SECTION 2-123.7, DEATH BENEFITS, SECTION 2-123.8, OPTIONAL FORMS OF BENEFITS, SECTION 2-123.9, VESTING, SECTION 2-123.13, MAXIMUM PENSION, SECTION 2-123.24, DEFERRED RETIREMENT OPTION PLAN (DROP), SECTION 2-123.25, PURCHASE OF NONQUALIFIED SERVICE CREDIT, SECTION 2-123.26, PRIOR GOVERNMENT SERVICE, AND SECTION 2-123.27, REEMPLOYMENT AFTER RETIREMENT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 3, General Employees Pension, is hereby amended as follows:

**CHAPTER 2 ADMINISTRATION**

...

**ARTICLE VI: - PENSIONS**

...

**DIVISION 3. - GENERAL EMPLOYEES PENSION**

**§ 2-123.1 - Definitions.**

- (a) As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated.

...

***ACTUARIAL EQUIVALENT.*** A benefit or amount of equal value, based upon the RP 2000 Combined Healthy Mortality Table (unisex) and an interest rate equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board of 8% per annum. This definition may only be amended by the city pursuant to the recommendation of the Board using assumptions adopted by the Board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

...

***CREDITED SERVICE.***

...

- b. In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, then such other credited service shall be used in determining vesting as provided for in § 2-123.9, and for determining eligibility for early or normal retirement. Such other credited service will not be considered in determining benefits under this system. Only his or her credited service and salary under this system on or after his or her date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a member of this system who is or becomes eligible for a benefit from this system after he or she has become a member of another pension system maintained by the city, shall be based upon the member's average final compensation, credited service and benefit accrual rate as of the date the member ceases to be a general employee.

Beginning January 1, 2009, to the extent required by § 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under § 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under § 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of credited service either during each plan year of a member's employment with the city or in the plan year in which the member terminates employment.

...

**SPOUSE.** The ~~lawful~~ wife or husband, under applicable law, of a member or retiree at the time benefits become payable.

...

#### § 2-123.4 - Finances and fund management; establishment and operation of fund.

...

(f) The Board shall have the following investment powers and authority:

...

(2) All monies paid into or held in the fund shall be invested and reinvested by the Board and the investment of all or any part of such funds shall be subject to the following:

- a. Notwithstanding any limitation provided for in the Florida Statutes to the contrary (unless such limitation may not be amended by local ordinance) or any limitation in prior city ordinances to the contrary, all monies paid into or held in the Fund may be invested and reinvested in such securities, investment vehicles or property wherever situated and of whatever kind, as shall be approved by the Board, including, but not limited to, common or preferred stocks, bonds, and other evidences of indebtedness or ownership.
- b. The Board shall develop and adopt a written investment policy statement setting forth permissible types of investments, goals and objectives of investments and setting quality and quantity limitations on investments in accordance with the recommendations of its investment consultants. The investment policy statement shall be reviewed by the Board at least annually.
- c. In addition, the Board may, upon recommendation by the Board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100 and Revenue Ruling 2011-1, IRS Notice 2012-6 and Revenue Ruling 2014-24 or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under § 401(a) of the Code, individual retirement accounts that are exempt under § 408(e) of the Code, eligible governmental plans that meet the requirements of § 457(b) of the Code, and governmental plans under § 401(a)(24) of the Code. For this purpose, a trust includes a custodial account or separate tax favored account maintained by an insurance company that is treated as a trust under § 401(f) or under § 457(g)(3) of the Code. While any portion of the assets of the Fund are invested in such a group trust, such group trust is itself adopted as a part of the system or plan.

1. Any collective or common group trust to which assets of the fund are transferred pursuant to subsection c. shall be adopted by the board as part of the plan by executing appropriate participation, adoption agreements, and/or trust agreements with the group trust's trustee.

2. The separate account maintained by the group trust for the plan pursuant to subsection c. shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the plan.
3. For purposes of valuation, the value of the separate account maintained by the group trust for the plan shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

...

**§ 2-123.6 - Benefit amounts and eligibility.**

- (a) Normal retirement date. The normal retirement date for members hired before October 1, 2013 shall be the first day of the month coincident with or next following the earlier of the attainment of age 60, regardless of the years of credited service, or upon the completion of 25 years of credited service, regardless of age. The normal retirement age for a member retiring under the Normal Retirement Date of 25 years of credited service, regardless of age, is the age that the member has attained when the member has at least 25 years of service and is retired. The normal retirement date for members hired on or after October 1, 2013 shall be the first day of the month coincident with or next following the earlier of the attainment of age 62 with ten years of credited service, or upon the completion of 27 years of credited service, regardless of age. The normal retirement age for a member retiring under the Normal Retirement Date of 27 years of credited service, regardless of age, is the age that the member has attained when the member has at least 27 years of service and is retired. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become 100% vested in his or her accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.
- (b) Normal retirement benefit. A member retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his or her retirement and be continued thereafter during member's lifetime and ceasing upon death, but with 120 monthly payments guaranteed in any event. For those members with less than 20 years of credited service, the monthly retirement benefit shall equal 2.5% of average final compensation. For those members with 20 or more years of credited service the monthly retirement benefit shall equal 2.6% of average final compensation for the first 20 years of credited service and 2.75% of average final compensation for each year of credited service greater than 20 years of credited service. Notwithstanding the foregoing, the maximum monthly retirement benefit paid at the time of retirement under the normal form of benefit to ~~for~~ members who have reached the normal retirement date on or before October 1, 2013, as well as members who are within five years of the normal retirement date who attained at least 15 years of credited service on October 1, 2013, shall not be greater than 80% of the average final compensation of the member exclusive of cost of living adjustments. For all other members who are employed on October 1, 2013 and members who are hired on or after that date, the maximum monthly retirement benefit shall not exceed the lesser of:
  - (1) 80% of average final compensation; or
  - (2) The greater of \$7,916.67 or the member's accrued monthly retirement benefit on October 1, 2013, exclusive of cost-of-living adjustments.

The maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment. A member's choice of the life only or the social security optional form of benefit may result in a retirement benefit which is more than the maximum, but is actuarially equivalent to the normal form with the maximum cap applied.

If a member who is subject to the maximum monthly retirement benefit provided in the preceding sentence retires and is reemployed in accordance with § 2-123.27(b), the maximum total monthly retirement benefit payable upon final retirement based on all periods of employment shall not exceed the lesser of:



- (1) 80% of average final compensation; or
- (2) The greater of \$7,916.67 or the member's accrued monthly retirement benefit on October 1, 2013, exclusive of cost-of-living adjustments.

The maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment. A member's choice of the life only or the social security optional form of benefit may result in a retirement benefit which is more than the maximum, but is actuarially equivalent to the normal form with the maximum cap applied.

...

#### § 2-123.7 - Death benefits.

- (a) Benefit payable in the event of death ~~on or prior to~~ the normal retirement date while in service. If the service of a member is terminated by reason of his or her death on or prior to his or her normal retirement date, there shall be payable to his or her beneficiary (or beneficiaries) the monthly retirement income, beginning on the first day of the month coincident with, or next following, the date of his or her death, or December 31 of the calendar year immediately following the calendar year in which the member died, which can be provided by the single-sum value of member's deferred monthly retirement income commencing at his or her normal retirement date which has accrued to the date of his or her death.
- (b) Benefit payable in event of death ~~while in service on or after~~ the normal retirement date ~~but prior to commencement of benefit payments.~~
  - (1) If the service of a member is terminated by reason of death ~~on or after~~ the normal retirement date, there shall be payable to member's designated beneficiary (or beneficiaries) the monthly retirement income, determined actuarially, beginning on the first day of the month coincident with, or next following, the date of death, which can be provided by the single-sum value of the retirement income to which he would have been entitled had he retired immediately prior to the date of his or her death.
  - (2) All computations shall be on the basis of the interest and mortality assumptions used for the actuarial valuation coincident with, or next preceding, the member's date of death.
- (c) Manner of payment of death benefits.
  - (1) The normal form of payment of the death benefit is a monthly income payable for ten years certain and life thereafter which provides monthly income payments payable for the life of the beneficiary and further provides that in the event of beneficiary's death within a period of ten years after the member's death, the same monthly amount shall be continued for the remainder of the ten-year period.
  - (2) In lieu of a payment of a benefit in the form of monthly income described above, the single-sum value of the benefit, as determined by an actuary selected by the Board, may be paid on an actuarially equivalent basis, as the member may have elect or, in the absence of such an election prior to death, as the beneficiary may elect, in one of the following optional forms: (1) life annuity, (2) lump sum, or (3), if only one primary beneficiary, 100% joint and survivor annuity. The conversion to a life annuity shall be calculated with and without cost-of-living adjustments. At the sole discretion of the Board, a lump sum payment elected by the member or beneficiary may be paid in annual installments not to exceed ten (10) years, to the member's beneficiary in such other manner and form as the member may elect and the Board may approve, or, in the event no election is made by the member prior to death, as the beneficiary may elect and the Board may approve.

§ 2-123.8 - Optional forms of benefits.

...

- (b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and the member's retirement income benefits have commenced, the member may thereafter change his or her designated beneficiary at any time, but may only change his or her joint pensioner if the designated joint pensioner and the member were married at the time of member's retirement and are divorced subsequent thereto and the joint pensioner is alive at the time of the change. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

...

- (g) Notwithstanding anything herein to the contrary, the Board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the monthly income payments to be paid do not exceed \$1,000. At the request of a member or a member's beneficiary before a monthly benefit commences, the Board, in its discretion, may make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the monthly income payments to be paid does not exceed \$10,000. Any such payment made to any person pursuant to the power and discretion ~~conferred~~ upon the Board by the preceding sentences shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

§ 2-123.9 - Vesting.

- (a) *Benefit upon termination of service and upon death after termination of service.* In the event of the termination of a member's service prior to his or her normal retirement date and on and after the time that his or her vested percentage is more than 0% for any reason other than his or her death or early retirement as described in § 2-123.6 (hereafter referred to as a "terminated member"), the member will be entitled to a monthly retirement income to commence on the first day of the month following attainment of age 60 for members hired before October 1, 2013, or age 62 for members hired on or after October 1, 2013, normal retirement age, provided his or her employee contributions remain in the Plan. If the member has completed ten years credited service, he or she will be entitled to a monthly retirement income to commence the first day of any month which is prior to his or her attaining age 60 for members hired before October 1, 2013, or age 62 for members hired on or after October 1, 2013, normal retirement age and on or after the date on which he or she attains age 50; provided, however, that he or she files a request in writing with the Board. The monthly retirement income payable to a member under the provisions of this subsection (a) shall be equal to:
- (1) The product of the member's vested percentage at his or her date of termination and the deferred monthly retirement income commencing at age 60 for members hired before October 1, 2013, or age 62 for members hired on or after October 1, 2013, normal retirement age which he or she has accrued to the date of termination of his or her service. If the monthly retirement income is to commence prior to his attainment of age 60 for members hired before October 1, 2013, or age 62 for members hired on or after October 1, 2013, normal retirement age, the benefit in this paragraph shall be actuarially reduced; provided, however;
  - (2) a. If the member had met the requirements for early retirement as set forth in § 2-123.6 as of the date of termination of his or her service, the benefit computed in (1) above will not be less than the monthly retirement income which can be provided by the single-sum value of the monthly early retirement income which would have been payable to the member in accordance with the provisions in § 2-123.6 if the member had retired on the date of termination of his or her service, accumulated with interest from the date of termination

of his service to the date as of which his or her monthly retirement income payments are to commence in accordance with the provisions above.

- b. For members who terminate service prior to October 1, 2013, the amount of the accrued deferred monthly retirement income referred to in this subsection (a) shall be computed as for normal retirement under § 2-123.6, based upon the terminated member's number of years of credited service and average final compensation at the date of termination of his or her service, in accordance with the following table.

Full Years of Credited Service as of Date of Termination of Service	Vested Percentage of Accrued Deferred Retirement Income
Less than 5 years	0%
5 years but less than 6	50%
6 years but less than 7	60%
7 years but less than 8	70%
8 years but less than 9	80%
9 years but less than 10	90%
10 years or more	100%

- c. Also, any member who has attained age 50 with the completion of ten years credited service shall be 100% vested.
- d. All computations in subsections (a) and (c) of this section shall be on the basis of the interest and mortality assumptions in effect on the date of termination of the member's service.

...

#### § 2-123.13 - Maximum pension.

...

- (f) ~~Less than ten years of participation-service.~~ The maximum retirement benefits payable under this section to any member who has completed less than ten years of ~~credited-service participation~~ with the city shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of ~~credited-service participation~~ and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable pre-retirement death benefits paid pursuant to §2-123.7. For purposes of this section, "participation" means years of service in the Cape Coral Municipal General Employees' Retirement Plan, excluding any purchased service from outside this system.

...

- (l) Additional limitation on pension benefits. Notwithstanding anything herein to the contrary:

- (1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100% of his or her average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
- (2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67 1223, Title 10, U.S. Code.

- (m) Effect of direct rollover on 415(b) limit. If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under Code Section 401(a) which is maintained by the employer, any annuity resulting from the rollover amount

that is determined using a more favorable actuarial basis than required under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b).

§ 2-123.24 - Deferred retirement option plan (DROP).

- (a) Definitions. As used in this section, the following definitions apply.

...

**TOTAL RETURN OF THE ASSETS.** For purposes of calculating earnings on a member's DROP account pursuant to subsection (c)(2)b.2., for each fiscal year quarter, the percentage increase (or decrease) in the interest and dividends earned on investments, including realized and unrealized gains (or losses), of the total Plan assets.

...

- (c) Funding.

- (1) Establishment of DROP Account. A DROP Account shall be established for each member participating in the DROP. A member's DROP Account shall consist of amounts transferred to the DROP under subsection (c)(2) and earnings or interest on those amounts.
- (2) Transfers from retirement system.
  - a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he or she would have received under the system had he or she terminated his or her employment as a general employee and elected to receive monthly benefit payments thereunder shall be transferred to his or her DROP Account, except as otherwise provided for in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4), but in no event shall it continue past the date he or she terminates his or her employment as a general employee.
  - b. A member's DROP Account under this subsection (c)(2) shall be debited or credited after each fiscal year quarter with either:
    1. Interest at an effective rate of 6.5% per annum compounded monthly determined on the last business day of the prior month's ending balance and credited to the member's DROP account as of such date (to be applicable to all current and future DROP participants); or
    2. Earnings, to be credited or debited to the member's DROP account, determined as of the last business day of each fiscal year quarter and debited or credited as of such date, determined as follows: The average daily balance in a member's DROP Account shall be credited or debited at a rate equal to the net investment return realized by the system for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP Account is invested by the Board net of brokerage commissions, management fees and transaction costs.
    3. Earnings received on investment plans or on investment vehicles which the Board makes available to members for DROP investment purposes, so long as there is no additional cost to the system by making such choices available to the members.
    4. For purposes of calculating earnings on a member's DROP account pursuant to this subsection (c)(2)b.2., brokerage commissions, transaction costs, and management fees shall be determined for each quarter by the investment consultant pursuant to contracts with fund

managers as reported in the custodial statement. The investment consultant shall report these quarterly contractual fees to the board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total plan assets.

- 4g. Upon electing participation in the DROP, the member shall elect to receive either interest or earnings on his or her account to be determined as provided above. The member may, in writing, elect to change his or her election two times each 12-month period. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter.
- eg. A member's DROP Account shall only be credited or debited with earnings or interest and monthly benefits while the member is a participant in the DROP. A member's final DROP account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation for participants electing the net plan return and at the end of the month immediately preceding termination of participation for participants electing the flat interest rate return, plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter or month, as applicable, and prior to distribution. If a member fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the member's first month of employment following the last month of the permissible DROP participation, the member's DROP Account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the member is employed by the city, and no cost-of-living adjustments shall be applied to the member's credit during such period of continued employment. A member employed by the city after the permissible period of DROP participation will still not be eligible for pre-retirement death benefits, nor will he or she accrue additional credited service except as provided for in § 2-123.27, Reemployment after retirement.

...

(f) General provisions.

- (1) The DROP is not a separate retirement plan. Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 2-123.24 for the remainder of his employment, rather than in the normal manner provided under the plan. Upon termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.
- (2) Notional account. The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the member's termination from the DROP. The member has no control over the investment of the DROP account.
- (3) No employer discretion. The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (4) IRC limit. The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).
- (+ 5) Amendment of DROP. The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part



of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP Account of any member.

- (2 ~~6~~) Facility of payment. If a member or other person entitled to a benefit under the DROP is unable to care for his or her affairs because of illness or accident or is a minor, the Board shall direct that any benefit due him or her, shall be made. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- (3 ~~7~~) Information. Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or her or on his or her account under the DROP, shall file with the Board the information that it shall require to establish his or her rights and benefits under the DROP.
- (4 ~~8~~) Prevention of escheat. If the Board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the Board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the Board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the Board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his or her beneficiary later notifies the Board of his or her whereabouts and requests the payment or payments due to him or her under the DROP, the amount so applied shall be paid to him or her in accordance with the provisions of the DROP.
- (5 ~~2~~) Written elections, notification.
  - a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the Board in a time and manner determined by the Board under rules uniformly applicable to all employees similarly situated. The Board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
  - b. Each member or retiree who has a DROP Account shall be responsible for furnishing the Board with his or her current address and any subsequent changes in his or her address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him or her at the last such address given to the Board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the Board of his or her address.
- (6 ~~10~~) Benefits not guaranteed. All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP Account and neither the city nor the Board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.
- (7 ~~11~~) Construction.
  - a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
  - b. The titles and headings of the subsections in this § 2-123.24 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

- (8 ~~12~~) Forfeiture of retirement benefits. Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.
- (9 ~~13~~) Effect of DROP participation on employment. Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.
- (40 ~~14~~) BAC-DROP. In lieu of participation in the DROP, a member may elect to participate in an actuarially equivalent BAC-DROP to a date of the member's choosing; provided that, the date is not further back than the member's normal retirement date. The total BAC-DROP period shall not exceed 60 months and shall provide an immediate partial lump sum distribution, payable to the member's DROP Account. The lump sum shall be the accrued benefit, determined as if the member had entered the DROP retroactively, as described above, accumulated with interest at the annual fixed rate of 6.5%. The member may choose an actuarially equivalent form of benefit at the time of BAC-DROP entry, as described in § 2-123.8. Member contributions shall be returned for the period of the BAC-DROP participation. A member electing the BAC-DROP shall terminate employment not later than the first day of the month following his or her election to participate in the BAC-DROP. The Board's authority and power for administration of the BAC-DROP shall be the same as those provided for in the DROP.

**§ 2-123.25 - (Reserved) Purchase of nonqualified service credit.**

Unless otherwise prohibited by law, any member shall be permitted to purchase additional participation (which does not include purchased service) under this system for periods when there was no performance of service ("air time") provided that:

- (a) The member contributes to the fund the sum that he would have contributed had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service. The cost of purchasing the credited service will be based on fully generational mortality and an investment return assumption that is two hundred (200) basis points less than the investment return assumption utilized in the last board approved valuation report.
- (b) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.
- (c) Payment by the member of the required amount shall be made within six (6) months of his or her request for credit, but, in any event, prior to retirement, and shall be made in one lump sum payment upon receipt of which credited service shall be given.
- (d) In lieu of the lump sum payment provided for in paragraph (c) above, a member may elect to make payments over a period of time, prior to the member's retirement date, in order to fully pay the amount provided for in paragraph (a). The member shall be required to notify the Board, in writing, of his or her election to make payments in the manner provided for in this paragraph within 30 days of his or her receipt of the cost pursuant to paragraph (b) above. The payment plan provided for in this paragraph shall be subject to the following terms:
  - (1) The principal amount to be paid shall be determined as set forth in paragraph (a) above.
  - (2) The original principal amount shall be amortized over the period beginning with the first payment and ending no later than 60 months from the date of the first payment.
  - (3) Payments shall consist of principal and interest, with interest equal to the actuarial assumption at the time of application.

- (4) Payments shall be made by payroll deduction from each paycheck on an after-tax basis beginning with the first paycheck immediately following the request.
- (5) In the event the member dies, retires (including entry into the Deferred Retirement Option Plan (DROP)), or otherwise separates from employment, without having made full payment of the principal amount necessary to receive all credited service requested, the member shall receive as much of the credited service requested, determined using procedures established by the actuary, which could be purchased with the amount of principal paid by the member to the date of his or her death, retirement, or separation from employment.
- (6) In the event the member's employment is terminated for any reason and he or she is not entitled to any benefit from the plan other than the return of the amounts he or she had deducted from his or her paycheck as his or her normal contribution to the plan, the amounts which the member has paid pursuant to this subsection to purchase additional credited service, shall be returned to him or her.
- (e) Service purchased pursuant to this section shall count toward eligibility and benefit calculations for any retirement benefit, but shall not count toward vesting. The maximum combined purchase under this section and sections 2-123.23 and 2-123.26 shall be 5 years.

**§ 2-123.26 - Prior government service.**

Unless otherwise prohibited by law, and except as provided for in § 2-123.1, the time that a member previously served as a general employee with the City of Cape Coral during a period of previous employment and for which period accumulated contributions were withdrawn from the Fund, or when the general employee was not previously a member of the Plan, or the time that a member served as a general employee for any other municipal, county, state, or federal employment in the United States shall be added to his or her years of credited service; provided that:

...

- (f) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipality or county, if such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan ~~as set forth in § 2-123.13, subsection (k)(2) of the plan document.~~

**§ 2-123.27 - Reemployment after retirement.**

- (a) Any retiree who is retired under this system may be reemployed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Reemployment by the city shall be subject to the limitations set forth in this section.
- (b) After normal retirement. Any retiree who is retired under normal retirement pursuant to this system and who is reemployed as a general employee after that retirement and, by virtue of that reemployment, is eligible to participate in this system, shall upon being reemployed continue receipt of benefits if he is at least age sixty-two (62), otherwise the system shall discontinue receipt of benefits until he reaches age sixty-two (62). Upon reemployment, the retiree shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average final compensation, and credited service as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period and not including any period of DROP participation), and credited service as of the date of subsequent retirement. The amount of any death benefit received as a result of a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit.

- (c) Any retiree who is retired under normal retirement pursuant to this system and who is reemployed by the city after that retirement and, by virtue of that reemployment is ineligible to participate in this system, shall, during the period of such reemployment, continue to receive retirement benefits previously earned. Former DROP participants shall begin receipt of benefits under these circumstances.
- (d) After early retirement. Any retiree who is retired under early retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity, shall discontinue receipt of benefits from the system until the earlier of termination of employment or such time as the reemployed retiree reaches age sixty-two (62) ~~the date that he or she would have been eligible for normal retirement under this system had he or she continued employment and not elected early retirement.~~ **NORMAL RETIREMENT**, as used in this subsection, shall be the current normal retirement date provided for under this system. If by virtue of that reemployment, the retiree is eligible to participate in this system, the retiree shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average final compensation, credited service and early retirement reduction factor as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period), and credited service as of the date of subsequent retirement. The amount of any death benefit received as a result of a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit. Retirement pursuant to an early retirement incentive program shall be deemed early retirement for purposes of this section if the member was permitted to retire prior to the customary retirement date provided for in the system at the time of retirement.
- (e) Reemployment of terminated vested persons. Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.
- (f) DROP participants. ~~Members or Retirees who are or were in the deferred retirement option plan shall, following termination of employment after the DROP participation,~~ have the options provided for in this section for reemployment.
- (g) In the event a person who is receiving a disability pension benefit from the Police Pension Plan or the Firefighter Pension Plan subsequently becomes an employee of the City in a position covered by the General Employee Pension Plan, the employee agrees that the disability pension benefit will be discontinued during the term of re-employment.

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

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

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR  
SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

VOTE OF MAYOR AND COUNCILMEMBERS:


COVIELLO \_\_\_\_\_  
GUNTER \_\_\_\_\_  
CARIOSCIA \_\_\_\_\_  
STOUT \_\_\_\_\_

NELSON \_\_\_\_\_  
STOKES \_\_\_\_\_  
WILLIAMS \_\_\_\_\_  
COSDEN \_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES MENENDEZ  
CITY ATTORNEY  
ord/General Pension changes  
Draft: 10/24/17  
12/15/17  
12/20/17  
1/22/18  
3/5/18



April 9, 2018

Ms. Ferrell Jenne, Plan Administrator  
2503 Del Prado Blvd. S.  
Suite 502  
Cape Coral, FL 33904

Re: City of Cape Coral  
Municipal General Employees' Retirement Plan

Dear Ferrell:

In response to Bonnie Scheuermann's email dated March 14, 2018, we have reviewed the most recently proposed Ordinance (identified as Ordinance 28-18) including the following proposed changes:

1. Section 2-123.1, Definitions, is being amended for IRC changes and requirements, to amend the definitions of:

- a. Actuarial Equivalent - to amend the definition to incorporate the interest rate equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board
- b. Credited Service - to clarify IRC regulations on leave conversions
- c. Spouse - To clarify the definition in accordance with a recent US Supreme Court ruling

2. Section 2-123.4, Finances and Fund Management, is being amended to further incorporate recent IRC requirements with regard to investments in commingled funds.

3. Section 2-123.6, Benefit amounts and eligibility, is being amended to change the Normal Retirement Date to include IRC required language regarding Normal Retirement Age and Normal Retirement Date, and to clarify that the maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment.

4. Section 2-123.7, Death Benefits, is being amended to describe optional forms of payment available to beneficiaries.

5. Section 2-123.8, Optional Forms of Benefits, has been amended to amend subsection (b) to clarify that if proof of good health of a joint pensioner who is being replaced is not provided, the actuary will assume that the joint pensioner is deceased for purposes of calculating the revised benefit amount. Subsection (g) has been amended to allow the Board to grant permission for lump sum payments to be made in the event that the total commuted value of the monthly income payments to be paid does not exceed \$10,000.

6. Section 2-123.9, Vesting, is being amended to disclose the commencement date for members who terminate employment prior to the Normal or Early Retirement Date.

7. Section 2-123.13, Maximum Pension, has had several subsections amended to comply with IRC changes.

Ms. Ferrell Jenne  
April 9, 2018  
Page 2

8. Section 2-123.24, Deferred Retirement Option Plan, is being amended in accordance with recent direction from the IRS in connection with the issuance of several recent Favorable Determination Letters to clarify investment returns on DROP accounts and add several sections clarifying the DROP provisions as requires by the IRS. The section has also been amended to define Total Return of the Assets.

We have also amended the provisions regarding when interest is calculated and paid, which will avoid a participant's forfeiture of interest accrued during the first or second month of the quarter should the member choose the fixed interest rate option and terminate DROP participation at the end of the first or second month of the quarter.

9. Section 2-123.25, Purchase of nonqualified service credit, has been added to allow members to purchase additional participation ("air time").

10. Section 2-123.26, Prior government service, has been amended to remove a reference.

11. Section 2-123.27, Reemployment after retirement, is being amended to clarify that if a member is reemployed, benefits will be discontinued until the member attains age 62. Section (g) was added to state that if a disability retiree is re-employed by the City in a position covered by another pension plan, the disability retiree must agree to discontinue receipt of benefits during the term of re-employment.

Because the changes do not result in a change in the valuation results, it is our opinion that a formal Actuarial Impact Statement is not required in support of its adoption. However, since the Division of Retirement must be aware of the current provisions of all public pension programs, it is recommended that you send a copy of this letter and a copy of the fully executed Ordinance to each of the following offices:

Mr. Keith Brinkman  
Bureau of Local Retirement Systems  
Division of Retirement  
P. O. Box 9000  
Tallahassee, FL 32315-9000

The undersigned is familiar with the immediate and long-term aspects of pension valuations, and meets the Qualification Standards of the American Academy of Actuaries necessary to render the actuarial opinions contained herein.

If you have any questions, please let me know.

Sincerely,



Douglas H. Lozen, EA, MAAA

cc: Scott Christiansen, Plan Attorney

ORDINANCE 28 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE VI, PENSIONS, DIVISION 3, GENERAL EMPLOYEES PENSION, TO AMEND SECTION 2-123.1, DEFINITIONS, SECTION 2-123.4, FINANCES AND FUND MANAGEMENT; ESTABLISHMENT AND OPERATION OF FUND, SECTION 2-123.6, BENEFIT AMOUNTS AND ELIGIBILITY, SECTION 2-123.7, DEATH BENEFITS, SECTION 2-123.8, OPTIONAL FORMS OF BENEFITS, SECTION 2-123.9, VESTING, SECTION 2-123.13, MAXIMUM PENSION, SECTION 2-123.24, DEFERRED RETIREMENT OPTION PLAN (DROP), SECTION 2-123.25, PURCHASE OF NONQUALIFIED SERVICE CREDIT, SECTION 2-123.26, PRIOR GOVERNMENT SERVICE, AND SECTION 2-123.27, REEMPLOYMENT AFTER RETIREMENT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, Administration, Article VI, Pensions, Division 3, General Employees Pension, is hereby amended as follows:

**CHAPTER 2 ADMINISTRATION**

...

**ARTICLE VI: - PENSIONS**

...

**DIVISION 3. - GENERAL EMPLOYEES PENSION**

**§ 2-123.1 - Definitions.**

- (a) As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated.

...

***ACTUARIAL EQUIVALENT.*** A benefit or amount of equal value, based upon the RP 2000 Combined Healthy Mortality Table (unisex) and an interest rate equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board of 8% per annum. This definition may only be amended by the city pursuant to the recommendation of the Board using assumptions adopted by the Board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

...

***CREDITED SERVICE.***

...

- b. In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, then such other credited service shall be used in determining vesting as provided for in § 2-123.9, and for determining eligibility for early or normal retirement. Such other credited service will not be considered in determining benefits under this system. Only his or her credited service and salary under this system on or after his or her date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a member of this system who is or becomes eligible for a benefit from this system after he or she has become a member of another pension system maintained by the city, shall be based upon the member's average final compensation, credited service and benefit accrual rate as of the date the member ceases to be a general employee.



Beginning January 1, 2009, to the extent required by § 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under § 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under § 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of credited service either during each plan year of a member's employment with the city or in the plan year in which the member terminates employment.

...

**SPOUSE.** The ~~lawful~~ wife or husband, under applicable law, of a member or retiree at the time benefits become payable.

...

#### § 2-123.4 - Finances and fund management; establishment and operation of fund.

...

(f) The Board shall have the following investment powers and authority:

...

(2) All monies paid into or held in the fund shall be invested and reinvested by the Board and the investment of all or any part of such funds shall be subject to the following:

- a. Notwithstanding any limitation provided for in the Florida Statutes to the contrary (unless such limitation may not be amended by local ordinance) or any limitation in prior city ordinances to the contrary, all monies paid into or held in the Fund may be invested and reinvested in such securities, investment vehicles or property wherever situated and of whatever kind, as shall be approved by the Board, including, but not limited to, common or preferred stocks, bonds, and other evidences of indebtedness or ownership.
- b. The Board shall develop and adopt a written investment policy statement setting forth permissible types of investments, goals and objectives of investments and setting quality and quantity limitations on investments in accordance with the recommendations of its investment consultants. The investment policy statement shall be reviewed by the Board at least annually.
- c. In addition, the Board may, upon recommendation by the Board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100 and Revenue Ruling 2011-1, IRS Notice 2012-6 and Revenue Ruling 2014-24 or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under § 401(a) of the Code, individual retirement accounts that are exempt under § 408(e) of the Code, eligible governmental plans that meet the requirements of § 457(b) of the Code, and governmental plans under § 401(a)(24) of the Code. For this purpose, a trust includes a custodial account or separate tax favored account maintained by an insurance company that is treated as a trust under § 401(f) or under § 457(g)(3) of the Code. While any portion of the assets of the Fund are invested in such a group trust, such group trust is itself adopted as a part of the system or plan.

1. Any collective or common group trust to which assets of the fund are transferred pursuant to subsection c. shall be adopted by the board as part of the plan by executing appropriate participation, adoption agreements, and/or trust agreements with the group trust's trustee.

2. The separate account maintained by the group trust for the plan pursuant to subsection c. shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the plan.
3. For purposes of valuation, the value of the separate account maintained by the group trust for the plan shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

...

#### § 2-123.6 - Benefit amounts and eligibility.

- (a) Normal retirement date. The normal retirement date for members hired before October 1, 2013 shall be the first day of the month coincident with or next following the earlier of the attainment of age 60, regardless of the years of credited service, or upon the completion of 25 years of credited service, regardless of age. The normal retirement age for a member retiring under the Normal Retirement Date of 25 years of credited service, regardless of age, is the age that the member has attained when the member has at least 25 years of service and is retired. The normal retirement date for members hired on or after October 1, 2013 shall be the first day of the month coincident with or next following the earlier of the attainment of age 62 with ten years of credited service, or upon the completion of 27 years of credited service, regardless of age. The normal retirement age for a member retiring under the Normal Retirement Date of 27 years of credited service, regardless of age, is the age that the member has attained when the member has at least 27 years of service and is retired. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become 100% vested in his or her accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.
- (b) Normal retirement benefit. A member retiring hereunder on or after his or her normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his or her retirement and be continued thereafter during member's lifetime and ceasing upon death, but with 120 monthly payments guaranteed in any event. For those members with less than 20 years of credited service, the monthly retirement benefit shall equal 2.5% of average final compensation. For those members with 20 or more years of credited service the monthly retirement benefit shall equal 2.6% of average final compensation for the first 20 years of credited service and 2.75% of average final compensation for each year of credited service greater than 20 years of credited service. Notwithstanding the foregoing, the maximum monthly retirement benefit paid at the time of retirement under the normal form of benefit to ~~for~~ members who have reached the normal retirement date on or before October 1, 2013, as well as members who are within five years of the normal retirement date who attained at least 15 years of credited service on October 1, 2013, shall not be greater than 80% of the average final compensation of the member exclusive of cost of living adjustments. For all other members who are employed on October 1, 2013 and members who are hired on or after that date, the maximum monthly retirement benefit shall not exceed the lesser of:
  - (1) 80% of average final compensation; or
  - (2) The greater of \$7,916.67 or the member's accrued monthly retirement benefit on October 1, 2013, exclusive of cost-of-living adjustments.

The maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment. A member's choice of the life only or the social security optional form of benefit may result in a retirement benefit which is more than the maximum, but is actuarially equivalent to the normal form with the maximum cap applied.

If a member who is subject to the maximum monthly retirement benefit provided in the preceding sentence retires and is reemployed in accordance with § 2-123.27(b), the maximum total monthly retirement benefit payable upon final retirement based on all periods of employment shall not exceed the lesser of:



- (1) 80% of average final compensation; or
- (2) The greater of \$7,916.67 or the member's accrued monthly retirement benefit on October 1, 2013, exclusive of cost-of-living adjustments.

The maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment. A member's choice of the life only or the social security optional form of benefit may result in a retirement benefit which is more than the maximum, but is actuarially equivalent to the normal form with the maximum cap applied.

...

#### § 2-123.7 - Death benefits.

- (a) Benefit payable in the event of death ~~on or prior to~~ the normal retirement date while in service. If the service of a member is terminated by reason of his or her death on or prior to his or her normal retirement date, there shall be payable to his or her beneficiary (or beneficiaries) the monthly retirement income, beginning on the first day of the month coincident with, or next following, the date of his or her death, or December 31 of the calendar year immediately following the calendar year in which the member died, which can be provided by the single-sum value of member's deferred monthly retirement income commencing at his or her normal retirement date which has accrued to the date of his or her death.
- (b) Benefit payable in event of death ~~while in service~~ on or after the normal retirement date but prior to commencement of benefit payments.
  - (1) If the service of a member is terminated by reason of death on or after his or her normal retirement date, there shall be payable to member's designated beneficiary (or beneficiaries) the monthly retirement income, determined actuarially, beginning on the first day of the month coincident with, or next following, the date of death, which can be provided by the single-sum value of the retirement income to which he would have been entitled had he retired immediately prior to the date of his or her death.
  - (2) All computations shall be on the basis of the interest and mortality assumptions used for the actuarial valuation coincident with, or next preceding, the member's date of death.
- (c) Manner of payment of death benefits.
  - (1) The normal form of payment of the death benefit is a monthly income payable for ten years certain and life thereafter which provides monthly income payments payable for the life of the beneficiary and further provides that in the event of beneficiary's death within a period of ten years after the member's death, the same monthly amount shall be continued for the remainder of the ten-year period.
  - (2) In lieu of a payment of a benefit in the form of monthly income described above, the single-sum value of the benefit, as determined by an actuary selected by the Board, may be paid on an actuarially equivalent basis, as the member may have elect or, in the absence of such an election prior to death, as the beneficiary may elect, in one of the following optional forms: (1) life annuity, (2) lump sum, or (3), if only one primary beneficiary, 100% joint and survivor annuity. The conversion to a life annuity shall be calculated with and without cost-of-living adjustments. At the sole discretion of the Board, a lump sum payment elected by the member or beneficiary may be paid in annual installments not to exceed ten (10) years, to the member's beneficiary in such other manner and form as the member may elect and the Board may approve, or, in the event no election is made by the member prior to death, as the beneficiary may elect and the Board may approve.

## § 2-123.8 - Optional forms of benefits.

...

- (b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and the member's retirement income benefits have commenced, the member may thereafter change his or her designated beneficiary at any time, but may only change his or her joint pensioner if the designated joint pensioner and the member were married at the time of member's retirement and are divorced subsequent thereto and the joint pensioner is alive at the time of the change. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

...

- (g) Notwithstanding anything herein to the contrary, the Board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the monthly income payments to be paid do not exceed \$1,000. At the request of a member or a member's beneficiary before a monthly benefit commences, the Board, in its discretion, may make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the monthly income payments to be paid does not exceed \$10,000. Any such payment made to any person pursuant to the power and discretion ~~conferred~~ conferred upon the Board by the preceding sentences shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

## § 2-123.9 - Vesting.

- (a) *Benefit upon termination of service and upon death after termination of service.* In the event of the termination of a member's service prior to his or her normal retirement date and on and after the time that his or her vested percentage is more than 0% for any reason other than his or her death or early retirement as described in § 2-123.6 (hereafter referred to as a "terminated member"), the member will be entitled to a monthly retirement income to commence on the first day of the month following attainment of age 60 for members hired before October 1, 2013, or age 62 for members hired on or after October 1, 2013, ~~normal retirement age,~~ provided his or her employee contributions remain in the Plan. If the member has completed ten years credited service, he or she will be entitled to a monthly retirement income to commence the first day of any month which is prior to his or her attaining age 60 for members hired before October 1, 2013, or age 62 for members hired on or after October 1, 2013, ~~normal retirement age~~ and on or after the date on which he or she attains age 50; provided, however, that he or she files a request in writing with the Board. The monthly retirement income payable to a member under the provisions of this subsection (a) shall be equal to:
- (1) The product of the member's vested percentage at his or her date of termination and the deferred monthly retirement income commencing at age 60 for members hired before October 1, 2013, or age 62 for members hired on or after October 1, 2013, ~~normal retirement age~~ which he or she has accrued to the date of termination of his or her service. If the monthly retirement income is to commence prior to his attainment of age 60 for members hired before October 1, 2013, or age 62 for members hired on or after October 1, 2013, ~~normal retirement age~~, the benefit in this paragraph shall be actuarially reduced; provided, however;
- (2) a. If the member had met the requirements for early retirement as set forth in § 2-123.6 as of the date of termination of his or her service, the benefit computed in (1) above will not be less than the monthly retirement income which can be provided by the single-sum value of the monthly early retirement income which would have been payable to the member in accordance with the provisions in § 2-123.6 if the member had retired on the date of termination of his or her service, accumulated with interest from the date of termination



of his service to the date as of which his or her monthly retirement income payments are to commence in accordance with the provisions above.

- b. For members who terminate service prior to October 1, 2013, the amount of the accrued deferred monthly retirement income referred to in this subsection (a) shall be computed as for normal retirement under § 2-123.6, based upon the terminated member's number of years of credited service and average final compensation at the date of termination of his or her service, in accordance with the following table.

Full Years of Credited Service as of Date of Termination of Service	Vested Percentage of Accrued Deferred Retirement Income
Less than 5 years	0%
5 years but less than 6	50%
6 years but less than 7	60%
7 years but less than 8	70%
8 years but less than 9	80%
9 years but less than 10	90%
10 years or more	100%

- c. Also, any member who has attained age 50 with the completion of ten years credited service shall be 100% vested.
- d. All computations in subsections (a) and (c) of this section shall be on the basis of the interest and mortality assumptions in effect on the date of termination of the member's service.

...

#### § 2-123.13 - Maximum pension.

...

- (f) ~~Less than ten years of participation-service.~~ The maximum retirement benefits payable under this section to any member who has completed less than ten years of ~~credited-service~~ participation with the city shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of ~~credited-service~~ participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable pre-retirement death benefits paid pursuant to §2-123.7. For purposes of this section, "participation" means years of service in the Cape Coral Municipal General Employees' Retirement Plan, excluding any purchased service from outside this system.

...

- (l) Additional limitation on pension benefits. Notwithstanding anything herein to the contrary:
- (1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100% of his or her average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
- (2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67 1223, Title 10, U.S. Code.
- (m) Effect of direct rollover on 415(b) limit. If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under Code Section 401(a) which is maintained by the employer, any annuity resulting from the rollover amount

that is determined using a more favorable actuarial basis than required under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b).

**§ 2-123.24 - Deferred retirement option plan (DROP).**

- (a) Definitions. As used in this section, the following definitions apply.

...

**TOTAL RETURN OF THE ASSETS.** For purposes of calculating earnings on a member's DROP account pursuant to subsection (c)(2)b.2., for each fiscal year quarter, the percentage increase (or decrease) in the interest and dividends earned on investments, including realized and unrealized gains (or losses), of the total Plan assets.

...

- (c) Funding.

- (1) Establishment of DROP Account. A DROP Account shall be established for each member participating in the DROP. A member's DROP Account shall consist of amounts transferred to the DROP under subsection (c)(2) and earnings or interest on those amounts.
- (2) Transfers from retirement system.
  - a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he or she would have received under the system had he or she terminated his or her employment as a general employee and elected to receive monthly benefit payments thereunder shall be transferred to his or her DROP Account, except as otherwise provided for in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4), but in no event shall it continue past the date he or she terminates his or her employment as a general employee.
  - b. A member's DROP Account under this subsection (c)(2) shall be debited or credited after each fiscal year quarter with either:
    1. Interest at an effective rate of 6.5% per annum compounded monthly ~~determined~~ on the last business day of the prior month's ending balance and credited to the member's DROP account as of such date (to be applicable to all current and future DROP participants); or
    2. Earnings, to be credited or debited to the member's DROP account, determined as of the last business day of each fiscal year quarter and debited or credited as of such date, determined as follows: The average daily balance in a member's DROP Account shall be credited or debited at a rate equal to the net investment return realized by the system for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the member's DROP Account is invested by the Board net of brokerage commissions, management fees and transaction costs.
    3. Earnings received on investment plans or on investment vehicles which the Board makes available to members for DROP investment purposes, so long as there is no additional cost to the system by making such choices available to the members.
    4. For purposes of calculating earnings on a member's DROP account pursuant to this subsection (c)(2)b.2., brokerage commissions, transaction costs, and management fees shall be determined for each quarter by the investment consultant pursuant to contracts with fund



managers as reported in the custodial statement. The investment consultant shall report these quarterly contractual fees to the board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total plan assets.

- ~~4c.~~ Upon electing participation in the DROP, the member shall elect to receive either interest or earnings on his or her account to be determined as provided above. The member may, in writing, elect to change his or her election two times each 12-month period. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter.
- ~~ed.~~ A member's DROP Account shall only be credited or debited with earnings or interest and monthly benefits while the member is a participant in the DROP. A member's final DROP account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation for participants electing the net plan return and at the end of the month immediately preceding termination of participation for participants electing the flat interest rate return, plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter or month, as applicable, and prior to distribution. If a member fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the member's first month of employment following the last month of the permissible DROP participation, the member's DROP Account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the member is employed by the city, and no cost-of-living adjustments shall be applied to the member's credit during such period of continued employment. A member employed by the city after the permissible period of DROP participation will still not be eligible for pre-retirement death benefits, nor will he or she accrue additional credited service except as provided for in § 2-123.27, Reemployment after retirement.

...

(f) General provisions.

- (1) The DROP is not a separate retirement plan. Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 2-123.24 for the remainder of his employment, rather than in the normal manner provided under the plan. Upon termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.
- (2) Notional account. The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the member's termination from the DROP. The member has no control over the investment of the DROP account.
- (3) No employer discretion. The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (4) IRC limit. The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).
- (4 ~~5~~) Amendment of DROP. The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part



of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP Account of any member.

- (2 9) Facility of payment. If a member or other person entitled to a benefit under the DROP is unable to care for his or her affairs because of illness or accident or is a minor, the Board shall direct that any benefit due him or her, shall be made. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- (3 7) Information. Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or her or on his or her account under the DROP, shall file with the Board the information that it shall require to establish his or her rights and benefits under the DROP.
- (4 8) Prevention of escheat. If the Board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the Board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the Board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the Board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his or her beneficiary later notifies the Board of his or her whereabouts and requests the payment or payments due to him or her under the DROP, the amount so applied shall be paid to him or her in accordance with the provisions of the DROP.
- (5 9) Written elections, notification.
  - a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the Board in a time and manner determined by the Board under rules uniformly applicable to all employees similarly situated. The Board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
  - b. Each member or retiree who has a DROP Account shall be responsible for furnishing the Board with his or her current address and any subsequent changes in his or her address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him or her at the last such address given to the Board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the Board of his or her address.
- (6 10) Benefits not guaranteed. All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP Account and neither the city nor the Board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.
- (7 11) Construction.
  - a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
  - b. The titles and headings of the subsections in this § 2-123.24 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

- (8 12) Forfeiture of retirement benefits. Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.
- (9 13) Effect of DROP participation on employment. Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.
- (~~10~~ 14) BAC-DROP. In lieu of participation in the DROP, a member may elect to participate in an actuarially equivalent BAC-DROP to a date of the member's choosing; provided that, the date is not further back than the member's normal retirement date. The total BAC-DROP period shall not exceed 60 months and shall provide an immediate partial lump sum distribution, payable to the member's DROP Account. The lump sum shall be the accrued benefit, determined as if the member had entered the DROP retroactively, as described above, accumulated with interest at the annual fixed rate of 6.5%. The member may choose an actuarially equivalent form of benefit at the time of BAC-DROP entry, as described in § 2-123.8. Member contributions shall be returned for the period of the BAC-DROP participation. A member electing the BAC-DROP shall terminate employment not later than the first day of the month following his or her election to participate in the BAC-DROP. The Board's authority and power for administration of the BAC-DROP shall be the same as those provided for in the DROP.

**§ 2-123.25 - (~~Reserved~~) Purchase of nonqualified service credit.**

Unless otherwise prohibited by law, any member shall be permitted to purchase additional participation (which does not include purchased service) under this system for periods when there was no performance of service ("air time") provided that:

- (a) The member contributes to the fund the sum that he would have contributed had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service. The cost of purchasing the credited service will be based on fully generational mortality and an investment return assumption that is two hundred (200) basis points less than the investment return assumption utilized in the last board approved valuation report.
- (b) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.
- (c) Payment by the member of the required amount shall be made within six (6) months of his or her request for credit, but, in any event, prior to retirement, and shall be made in one lump sum payment upon receipt of which credited service shall be given.
- (d) In lieu of the lump sum payment provided for in paragraph (c) above, a member may elect to make payments over a period of time, prior to the member's retirement date, in order to fully pay the amount provided for in paragraph (a). The member shall be required to notify the Board, in writing, of his or her election to make payments in the manner provided for in this paragraph within 30 days of his or her receipt of the cost pursuant to paragraph (b) above. The payment plan provided for in this paragraph shall be subject to the following terms:
  - (1) The principal amount to be paid shall be determined as set forth in paragraph (a) above.
  - (2) The original principal amount shall be amortized over the period beginning with the first payment and ending no later than 60 months from the date of the first payment.
  - (3) Payments shall consist of principal and interest, with interest equal to the actuarial assumption at the time of application.



- (4) Payments shall be made by payroll deduction from each paycheck on an after-tax basis beginning with the first paycheck immediately following the request.
- (5) In the event the member dies, retires (including entry into the Deferred Retirement Option Plan (DROP)), or otherwise separates from employment, without having made full payment of the principal amount necessary to receive all credited service requested, the member shall receive as much of the credited service requested, determined using procedures established by the actuary, which could be purchased with the amount of principal paid by the member to the date of his or her death, retirement, or separation from employment.
- (6) In the event the member's employment is terminated for any reason and he or she is not entitled to any benefit from the plan other than the return of the amounts he or she had deducted from his or her paycheck as his or her normal contribution to the plan, the amounts which the member has paid pursuant to this subsection to purchase additional credited service, shall be returned to him or her.
- (e) Service purchased pursuant to this section shall count toward eligibility and benefit calculations for any retirement benefit, but shall not count toward vesting. The maximum combined purchase under this section and sections 2-123.23 and 2-123.26 shall be 5 years.

#### **§ 2-123.26 - Prior government service.**

Unless otherwise prohibited by law, and except as provided for in § 2-123.1, the time that a member previously served as a general employee with the City of Cape Coral during a period of previous employment and for which period accumulated contributions were withdrawn from the Fund, or when the general employee was not previously a member of the Plan, or the time that a member served as a general employee for any other municipal, county, state, or federal employment in the United States shall be added to his or her years of credited service; provided that:

...

- (f) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipality or county, if such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan ~~as set forth in § 2-123.13, subsection (k)(2) of the plan document.~~

#### **§ 2-123.27 - Reemployment after retirement.**

- (a) Any retiree who is retired under this system may be reemployed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Reemployment by the city shall be subject to the limitations set forth in this section.
- (b) After normal retirement. Any retiree who is retired under normal retirement pursuant to this system and who is reemployed as a general employee after that retirement and, by virtue of that reemployment, is eligible to participate in this system, shall upon being reemployed continue receipt of benefits if he is at least age sixty-two (62), otherwise the system shall discontinue receipt of benefits until he reaches age sixty-two (62). Upon reemployment, the retiree shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average final compensation, and credited service as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period and not including any period of DROP participation), and credited service as of the date of subsequent retirement. The amount of any death benefit received as a result of a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit.

- (c) Any retiree who is retired under normal retirement pursuant to this system and who is reemployed by the city after that retirement and, by virtue of that reemployment is ineligible to participate in this system, shall, during the period of such reemployment, continue to receive retirement benefits previously earned. Former DROP participants shall begin receipt of benefits under these circumstances.
- (d) After early retirement. Any retiree who is retired under early retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity, shall discontinue receipt of benefits from the system until the earlier of termination of employment or such time as the reemployed retiree reaches age sixty-two (62) ~~the date that he or she would have been eligible for normal retirement under this system had he or she continued employment and not elected early retirement.~~ **NORMAL RETIREMENT**, as used in this subsection, shall be the current normal retirement date provided for under this system. If by virtue of that reemployment, the retiree is eligible to participate in this system, the retiree shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average final compensation, credited service and early retirement reduction factor as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period), and credited service as of the date of subsequent retirement. The amount of any death benefit received as a result of a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit. Retirement pursuant to an early retirement incentive program shall be deemed early retirement for purposes of this section if the member was permitted to retire prior to the customary retirement date provided for in the system at the time of retirement.
- (e) Reemployment of terminated vested persons. Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.
- (f) DROP participants. ~~Members or~~ Retirees who are or were in the deferred retirement option plan shall, ~~following termination of employment after the DROP participation,~~ have the options provided for in this section for reemployment.
- (g) In the event a person who is receiving a disability pension benefit from the Police Pension Plan or the Firefighter Pension Plan subsequently becomes an employee of the City in a position covered by the General Employee Pension Plan, the employee agrees that the disability pension benefit will be discontinued during the term of re-employment.

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

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

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR  
SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

VOTE OF MAYOR AND COUNCILMEMBERS:

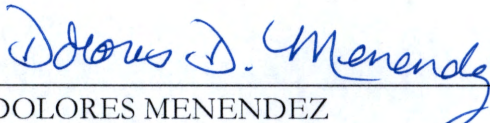
COVIELLO \_\_\_\_\_  
GUNTER \_\_\_\_\_  
CARIOSCIA \_\_\_\_\_  
STOUT \_\_\_\_\_

NELSON \_\_\_\_\_  
STOKES \_\_\_\_\_  
WILLIAMS \_\_\_\_\_  
COSDEN \_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES MENENDEZ

CITY ATTORNEY

ord/General Pension changes

Draft: 10/24/17

12/15/17

12/20/17

1/22/18

3/5/18



April 9, 2018

Ms. Ferrell Jenne, Plan Administrator  
2503 Del Prado Blvd. S.  
Suite 502  
Cape Coral, FL 33904

Re: City of Cape Coral  
Municipal General Employees' Retirement Plan

Dear Ferrell:

In response to Bonnie Scheuermann's email dated March 14, 2018, we have reviewed the most recently proposed Ordinance (identified as Ordinance 28-18) including the following proposed changes:

1. Section 2-123.1, Definitions, is being amended for IRC changes and requirements, to amend the definitions of:

- a. Actuarial Equivalent - to amend the definition to incorporate the interest rate equal to the investment return assumption set forth in the most recent actuarial valuation report approved by the Board
- b. Credited Service - to clarify IRC regulations on leave conversions
- c. Spouse - To clarify the definition in accordance with a recent US Supreme Court ruling

2. Section 2-123.4, Finances and Fund Management, is being amended to further incorporate recent IRC requirements with regard to investments in commingled funds.

3. Section 2-123.6, Benefit amounts and eligibility, is being amended to change the Normal Retirement Date to include IRC required language regarding Normal Retirement Age and Normal Retirement Date, and to clarify that the maximum cap is applied to the normal form of benefit prior to any adjustments for optional forms of payment.

4. Section 2-123.7, Death Benefits, is being amended to describe optional forms of payment available to beneficiaries.

5. Section 2-123.8, Optional Forms of Benefits, has been amended to amend subsection (b) to clarify that if proof of good health of a joint pensioner who is being replaced is not provided, the actuary will assume that the joint pensioner is deceased for purposes of calculating the revised benefit amount. Subsection (g) has been amended to allow the Board to grant permission for lump sum payments to be made in the event that the total commuted value of the monthly income payments to be paid does not exceed \$10,000.

6. Section 2-123.9, Vesting, is being amended to disclose the commencement date for members who terminate employment prior to the Normal or Early Retirement Date.

7. Section 2-123.13, Maximum Pension, has had several subsections amended to comply with IRC changes.

Ms. Ferrell Jenne  
April 9, 2018  
Page 2

8. Section 2-123.24, Deferred Retirement Option Plan, is being amended in accordance with recent direction from the IRS in connection with the issuance of several recent Favorable Determination Letters to clarify investment returns on DROP accounts and add several sections clarifying the DROP provisions as requires by the IRS. The section has also been amended to define Total Return of the Assets.

We have also amended the provisions regarding when interest is calculated and paid, which will avoid a participant's forfeiture of interest accrued during the first or second month of the quarter should the member choose the fixed interest rate option and terminate DROP participation at the end of the first or second month of the quarter.

9. Section 2-123.25, Purchase of nonqualified service credit, has been added to allow members to purchase additional participation ("air time").

10. Section 2-123.26, Prior government service, has been amended to remove a reference.

11. Section 2-123.27, Reemployment after retirement, is being amended to clarify that if a member is reemployed, benefits will be discontinued until the member attains age 62. Section (g) was added to state that if a disability retiree is re-employed by the City in a position covered by another pension plan, the disability retiree must agree to discontinue receipt of benefits during the term of re-employment.

Because the changes do not result in a change in the valuation results, it is our opinion that a formal Actuarial Impact Statement is not required in support of its adoption. However, since the Division of Retirement must be aware of the current provisions of all public pension programs, it is recommended that you send a copy of this letter and a copy of the fully executed Ordinance to each of the following offices:

Mr. Keith Brinkman  
Bureau of Local Retirement Systems  
Division of Retirement  
P. O. Box 9000  
Tallahassee, FL 32315-9000

The undersigned is familiar with the immediate and long-term aspects of pension valuations, and meets the Qualification Standards of the American Academy of Actuaries necessary to render the actuarial opinions contained herein.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglas H. Lozen", with a stylized flourish at the end.

Douglas H. Lozen, EA, MAAA

cc: Scott Christiansen, Plan Attorney

<b>Item Number:</b>	<b>A.(4)</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Public Hearings</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Ordinance 30-18 Public Hearing

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

The City desires to enter into bonds in a principal amount of not exceeding \$8,100,000 in order to finance the acquisition and construction of Fire Station 11 to be located along Burnt Store Road between Diplomat Parkway and Tropicana Parkway, and related equipment, and the acquisition and construction of various streetscape improvements in the CRA along SE 47th Terrace from Coronado Parkway to Del Prado Boulevard.

**LEGAL REVIEW:**

**EXHIBITS:**

Ordinance 30-18  
Memo  
Presentation

**PREPARED BY:**

City

Division- Department- Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Ordinance 30-18	Ordinance
▣ Memo	Backup Material
▣ Presentation	Backup Material

## ORDINANCE 30 - 18

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$8,100,000 IN AGGREGATE PRINCIPAL AMOUNT OF DEBT OBLIGATIONS TO FINANCE THE ACQUISITION AND CONSTRUCTION OF A FIRE STATION AND VARIOUS STREETSCAPE IMPROVEMENTS; PROVIDING FOR A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES TO PAY THE PRINCIPAL, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE DEBT OBLIGATIONS; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SUCH DEBT OBLIGATIONS; AND PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

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

**SECTION 1. DEFINITIONS.** When used in this Ordinance, the following terms shall have the following meanings, unless some other meaning is plainly intended:

**"Bonds"** shall mean the revenue bonds or notes or other debt obligations authorized to be issued by the City pursuant to this Ordinance or such other designation as is determined by the Resolution.

**"City"** shall mean the City of Cape Coral, Florida, a municipal corporation established by the State of Florida.

**"Council"** shall mean the City Council of the City of Cape Coral, Florida.

**"Non-Ad Valorem Revenues"** shall mean all revenues of the City derived from any source whatsoever that are allocated to and accounted for in the City's governmental funds, other than ad valorem taxation on real or personal property, which are legally available to make the payments required herein and in the Resolution, but only after provision has been made by the City for the payment of all essential or legally mandated services.

**"Ordinance"** shall mean this Ordinance enacted by the Council on the date hereof, as it may be amended and supplemented from time to time.

**"Project"** shall mean, collectively, the acquisition and construction of Fire Station 11 to be located along Burnt Store Road, between Diplomat Parkway and Tropicana Parkway, and related equipment, and the acquisition and construction of various streetscape improvements along SE 47th Terrace from Coronado Parkway to Del Prado Boulevard within the City's community redevelopment area, as described in the plans and specifications on file or to be on file with the City, as the same may be modified or amended from time to time, and which are to be financed with the proceeds of the Bonds.

**"Resolution"** shall mean the resolution of the City, or any loan agreement approved thereby, providing for the security for and repayment of the Bonds, the rights and remedies of the Bondholders and various other terms and details relating to the Bonds, as the same may be amended or supplemented from time to time.

The words "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms shall refer to this Ordinance.

Words importing the singular number include the plural number, and vice versa.



**SECTION 2. FINDINGS.** The Council hereby finds and determines that:

(A) In order to improve and maintain the health, safety and welfare of the residents of the City, it is necessary and desirable to acquire and construct the Project.

(B) It is in the best interests of the City to finance costs of the Project through the issuance of the Bonds, payable from the Non-Ad Valorem Revenues in the manner and to the extent provided herein and in the Resolution.

(C) The principal of, redemption premium, if any, and interest on the Bonds shall be payable from the Non-Ad Valorem Revenues in the manner and to the extent provided herein and in the Resolution and the City shall never use or be required to use its ad valorem taxing power for the payment of the Bonds. The Bonds shall not constitute a direct obligation of the City or a pledge of its faith and credit, nor shall the holders of the Bonds have any lien or encumbrance on any property in the City, including the Project.

**SECTION 3. AUTHORIZATION OF THE PROJECT; REIMBURSEMENT.** The City hereby authorizes the acquisition and construction of the Project and the financing thereof with proceeds of the Bonds. The City may reimburse itself from proceeds of the Bonds for any funds the City expends for the Project to the extent Bond Counsel to the City approves the reimbursement.

**SECTION 4. ISSUANCE OF THE BONDS.** The Bonds are hereby authorized to be issued in an original aggregate principal amount of not exceeding \$8,100,000. The Bonds may be issued in one or more series and may be issued as one bond or note or other debt obligation. The particular designation of the Bonds shall be established by the Resolution. The Bonds shall be issued for the purposes of providing moneys to (A) finance costs of the Project, (B) establish a debt service reserve if deemed necessary by the Council and set forth in the Resolution, (C) pay for any credit or liquidity enhancement for the Bonds if deemed necessary by the Council and set forth in the Resolution, and (D) pay the costs and expenses of issuing the Bonds. The principal of, redemption premium, if any, and interest on the Bonds shall be payable from the Non-Ad Valorem Revenues to the extent and in the manner provided herein and in the Resolution.

The Bonds shall be dated such date or dates, shall bear interest at such rate or rates, shall mature at such times and in such amounts as may be determined by the Resolution, and may be made redeemable before maturity, at the option of the City, at such price or prices and under such terms and conditions as may be fixed by the Resolution. The Council shall determine by the Resolution the form of the Bonds, the manner of executing such Bonds, and shall fix the denomination or denominations of such Bonds, the place or places and dates of payment of the principal and interest, and such other terms and provisions of the Bonds as it deems appropriate. The Bonds may be issued as capital appreciation bonds, current interest paying bonds, variable rate bonds, serial bonds, term bonds, taxable bonds, tax-exempt bonds or any combination thereof, as shall be determined by the Resolution. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery. The Council may sell the Bonds in such manner and for such price as it may determine by the Resolution to be in the best interests of the City. The Bonds may be further secured by a municipal bond insurance policy or a letter of credit or such other credit enhancement or liquidity, including any reserve account insurance or surety bond, as the Council by the Resolution deems appropriate.

Prior to the preparation of definitive Bonds of any series, the Council may, by the Resolution, under like restrictions, issue interim receipts, interim certificates, or temporary Bonds, exchangeable for definitive Bonds when such Bonds have been executed and are available for delivery. The Council may also provide for the replacement of any Bonds which shall become mutilated, or be destroyed or lost. Bonds may be issued without any

other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Ordinance.

The proceeds of Bonds shall be disbursed in such manner and under such restrictions, if any, as may be provided by the Resolution.

**SECTION 5. COVENANT TO BUDGET AND APPROPRIATE.** In the Resolution, the City shall covenant and agree to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each fiscal year, amounts sufficient to pay debt service on the Bonds when due, as provided in the Resolution. Any such covenant and agreement on the part of the City to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the City, the City shall not covenant to maintain any services or programs, now provided or maintained by the City, which generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate will not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor will it preclude the City from pledging in the future its Non-Ad Valorem Revenues, nor will it require the City to levy and collect any particular Non-Ad Valorem Revenues, nor will it give the holders of the Bonds a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. Such covenant to appropriate Non-Ad Valorem Revenues will be subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein shall have the effect of making available for the payment of scheduled debt service on the Bonds in the manner described herein and in the Resolution, Non-Ad Valorem Revenues and placing on the City a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Section 166.241, Florida Statutes, which provides, in part, that the governing body of each municipality make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, to the payment of services and programs which are for essential public purposes of the City or which are legally mandated by applicable law.

**SECTION 6. TAXING POWER NOT PLEDGED.** The Bonds issued under the provisions of this Ordinance shall not be deemed to constitute a pledge of the faith and credit of the City, but the Bonds shall be payable from the Non-Ad Valorem Revenues in the manner and to the extent provided herein and in the Resolution, unless otherwise paid by such entity as shall provide credit or liquidity enhancement on the Bonds, if any. The issuance of the Bonds under the provisions of this Ordinance shall not directly, indirectly or contingently obligate the City to levy or to pledge any form of ad valorem taxation whatever therefor. The holders of the Bonds shall never have the right to compel any exercise of the ad valorem taxing power on the part of the City to pay any of the Bonds or the interest thereon against any property of the City, nor shall the Bonds constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City.

**SECTION 7. REMEDIES OF HOLDERS OF BONDS.** The holders of the Bonds, except to the extent the rights herein given may be restricted by the Resolution, may, whether at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce and compel the performance of all duties required hereby, or by such Resolution, to be performed by the City.

**SECTION 8. ALTERNATIVE METHOD.** This Ordinance shall be deemed to provide an additional and alternative method for the doing of things authorized

hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Ordinance, being necessary for the health, safety and welfare of the inhabitants and/or property owners of the City, shall be liberally construed to effect the purposes hereof.

**SECTION 9. GENERAL AUTHORITY.** The members of the Council of the City and the officers, attorneys and other agents or employees of the City are hereby authorized to do all acts and things required of them by this Ordinance, or desirable or consistent with the requirements hereof for the full punctual and complete performance of all the terms, covenants and agreements contained herein.

**SECTION 10. 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 11. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Cape Coral, Florida.

**ADOPTED AT A REGULAR COUNCIL MEETING THIS \_\_\_\_ DAY OF MAY, 2018.**

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

VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_ DAY OF MAY, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM, CITY CLERK

APPROVED AS TO FORM:

  
DOLORES D. MENENDEZ  
CITY ATTORNEY

**MEMORANDUM**

CITY OF CAPE CORAL  
CITY MANAGER'S OFFICE

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager *JS*  
Victoria Bateman, Financial Services Director *VB*  
Paul Clinghan, Public Works Director *PC*  
David Newlan, Chief of Police *DN*  
Michael T. Russell, Interim Fire Chief/Emergency Management Director *MR*  
Michelle Hoffmann, ITS Director *MH*

Date: March 30, 2018

SUBJECT: Debt Obligation for Fire Station 11 and SE 47th Terrace Streetscape Improvements

---

Staff is recommending the City enter into a bank loan of \$8,100,000 to finance land acquisition, construction and related equipment for Fire Station 11 located at 1038 Burnt Store Road. Loan proceeds also will pay a portion of the construction costs for the SE 47th Terrace Streetscape Project.

Additional improvements to the SE 47<sup>th</sup> Terrace Streetscape Project also are being funded. The improvements include two information kiosks, cameras, license plate readers and fiber cable to support these improvements. The City is providing additional bollards to block off streets during City events, electric vehicle chargers with supporting electric service, and replacement lighting in Big John's Parking lot.

The specific uses of the bank loan are as follows:

		General Fund	CRA
Fire Station 11	\$3,750,580	X	
SE 47th Terrace Streetscape	\$4,120,122		X
Cost of issuance/fees	<u>\$ 229,298</u>	X	X
Total	\$8,100,000		

Estimated costs of added streetscape improvements – Funding Source: General Fund\*

Two Kiosks	\$200,000
Cameras	\$200,000
License Plate Readers	\$100,000
Fiber cable	\$100,000
Bollards	\$ 30,000
Electric Vehicle Chargers	\$100,000
Lighting	<u>\$ 75,000</u>
Total	\$805,000

\*At end of project, City and CRA will true up final cost appropriation.

# City of Cape Coral Bank Loan for Fire Station and CRA Streetscape

## RFP Results

May 7, 2018



RBC Capital Markets



# RFP for Bank Loan

---

- City issued RFP for \$8.1 million bank loan for:
  - \$3.8 million for fire station
  - \$4.3 million for CRA streetscape improvements
- City received 10 proposals:
  - Bank of America
  - Capital One Public Funding
  - City National
  - IBERIABANK
  - JP Morgan
  - Pinnacle Public Finance
  - PNC
  - Raymond James
  - TD Bank
  - Wells Fargo

# Recommendation

---

- Accept proposal from IBERIABANK based on combination of favorable interest rate and terms:
  - Rate of 3.05% which is fixed through closing without additional cost (no interest rate risk)
  - No covenants viewed negatively by rating agencies such as acceleration in event of default (bank can declare loan payable in full immediately) or change in interest rate due to change in corporate tax rate
  - Ability to prepay at any time without penalty

# Requested Action

---

- Final public hearing for Ordinance to authorize loan
- Adopt Resolution to select IBERIABANK as lender for loan for fire station and CRA streetscape improvements.

<b>Item Number:</b>	<b>A.(5)</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Public Hearings</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Resolution 106-18 Public Input Loan from Iberiabank to finance a Fire Station and Streetscape Improvements

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

The Resolution accepts a proposal of Iberiabank to provide the City with a loan in order to finance the acquisition and construction of a fire station and various streetscape improvements; approves the form of a loan agreement; authorizes the issuance of a promissory note pursuant to such loan agreement in the aggregate principal amount of not to exceed \$8,100,000 in order to evidence such loan; authorizing the repayment of such note from a covenant to budget and appropriate legally available non-ad valorem revenues; delegating certain authority to the Mayor, City Manager and other officers of the City for the authorization, execution and delivery of the loan agreement, promissory note, and various other documents with respect thereto.

**LEGAL REVIEW:**

**EXHIBITS:**

Resolution 106-18

Presentation - RFP Results

**PREPARED BY:**

Division-      Department- City  
Attorney

**SOURCE OF ADDITIONAL INFORMATION:****ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Resolution 106-18	Resolution
▣ Presentation - RFP Results	Backup Material



## RESOLUTION 106 - 18

A RESOLUTION OF THE CITY OF CAPE CORAL, FLORIDA ACCEPTING A PROPOSAL OF IBERIABANK TO PROVIDE THE CITY WITH A LOAN IN ORDER TO FINANCE THE ACQUISITION AND CONSTRUCTION OF A FIRE STATION AND VARIOUS STREETSCAPE IMPROVEMENTS; APPROVING THE FORM OF A LOAN AGREEMENT; AUTHORIZING THE ISSUANCE OF A PROMISSORY NOTE PURSUANT TO SUCH LOAN AGREEMENT IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$8,100,000 IN ORDER TO EVIDENCE SUCH LOAN; AUTHORIZING THE REPAYMENT OF SUCH NOTE FROM A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES; DELEGATING CERTAIN AUTHORITY TO THE MAYOR, CITY MANAGER AND OTHER OFFICERS OF THE CITY FOR THE AUTHORIZATION, EXECUTION AND DELIVERY OF THE LOAN AGREEMENT, PROMISSORY NOTE AND VARIOUS OTHER DOCUMENTS WITH RESPECT THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.

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

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to the provisions of the Florida Constitution, Chapter 166, Florida Statutes, the Charter of the City of Cape Coral, Florida, the Ordinance (as defined herein), and other applicable provisions of law.

**SECTION 2. DEFINITIONS.** When used in this Resolution, capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement (as defined herein), unless the context clearly indicates a different meaning.

**"City"** shall mean the City of Cape Coral, Florida, a municipal corporation duly organized and validly existing under the laws of the State of Florida.

**"City Manager"** shall mean the City Manager of the City and such other person as may be duly authorized to act on his or her behalf.

**"Clerk"** shall mean the City Clerk of the City, or her or his duly authorized designee.

**"Council"** shall mean the City Council of the City of Cape Coral, Florida.

**"Financial Advisor"** means the City's financial advisor, RBC Capital Markets, LLC.

**"Financial Services Director"** shall mean the Financial Services Director of the City and such other person as may be duly authorized to act on her or his behalf.

**"Loan Agreement"** shall mean the Loan Agreement to be executed between the Noteholder and the City, which shall be substantially in the form attached hereto as Exhibit B.

**"Mayor"** shall mean the Mayor of the City and in his or her absence or unavailability, the Mayor Pro Tem of the City and such other person as may be duly authorized to act on his or her behalf.

**"Non-Ad Valorem Revenues"** shall have the meaning assigned such term in the Loan Agreement.

**"Noteholder"** shall mean IBERIABANK, and its successors and assigns.

**"Ordinance"** shall mean Ordinance No. 30-18, enacted by the City on May 7, 2018, as the same may be amended and supplemented from time to time.

**"Project"** shall mean, collectively, the acquisition and construction of Fire Station 11 to be located along Burnt Store Road, between Diplomat Parkway and Tropicana Parkway, the acquisition of related equipment, and the acquisition and construction of various streetscape improvements along SE 47th Terrace from Coronado Parkway to Del Prado Boulevard within the City's community redevelopment area, as described in the plans and specifications on file or to be on file with the City, as the same may be modified or amended from time to time, and which are to be financed with the proceeds of the Series 2018 Note.

**"Series 2018 Note"** shall mean the City of Cape Coral, Florida Special Obligation Revenue Note, Series 2018, as such Series 2018 Note is more particularly described in the Loan Agreement.

The words "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms shall refer to this Resolution.

Words importing the singular number include the plural number, and vice versa.

**SECTION 3. RESOLUTION TO CONSTITUTE CONTRACT.** In consideration of the purchase and acceptance of the Series 2018 Note by the Noteholder, the provisions of this Resolution shall be a part of the contract of the City with the Noteholder, and shall be deemed to be and shall constitute a contract between the City and the Noteholder. The provisions, covenants and agreements in this Resolution set forth to be performed by or on behalf of the City shall be for the benefit, protection and security of the Noteholder.

**SECTION 4. FINDINGS.** It is hereby ascertained, determined and declared that:

(A) The City has various capital improvement needs and requirements in the form of the Project that are required to be acquired in order to improve and maintain the health, safety and welfare of the City and its inhabitants.

(B) The City has duly enacted the Ordinance, which authorized, among other things, the issuance of debt obligations for the principal purpose of financing costs of the Project.

(C) The most efficient and cost-effective method of financing costs of the Project is through the issuance of the Series 2018 Note pursuant to the Loan Agreement.

(D) The City's Financial Advisor solicited proposals from various financial institutions to provide a loan to finance costs of the Project.

(E) The Noteholder submitted its proposal to provide the City with a term loan to finance costs of the Project, which proposal was the most favorable proposal received by the City and is attached hereto as Exhibit A.

(F) The Series 2018 Note shall be repaid solely from the Non-Ad Valorem Revenues in the manner and to the extent set forth herein and in the Loan Agreement and the ad valorem taxing power of the City will never be necessary or authorized to pay said amounts.



(G) Due to the potential volatility of the market for tax-exempt obligations such as the Series 2018 Note and the complexity of the transactions relating to such Series 2018 Note, it is in the best interest of the City to issue the Series 2018 Note by a negotiated sale to the Noteholder, allowing the City to sell and issue the Series 2018 Note at the most advantageous time, rather than at a specified advertised date, thereby permitting the City to obtain the best possible price, terms and interest rate for the Series 2018 Note.

**SECTION 5. AUTHORIZATION OF FINANCING OF THE PROJECT.** The financing of the Project is hereby authorized.

**SECTION 6. ACCEPTANCE OF PROPOSAL.** The City hereby accepts the proposal of the Noteholder to provide the City with a term loan to finance costs of the Project, a copy of which proposal is attached hereto as Exhibit A. The City Manager and the Financial Services Director are each hereby authorized to execute and deliver any documents required to formally accept such proposal and the terms thereof. All actions taken by such officers or their designees and the Financial Advisor with respect to such proposal prior to the date hereof are hereby authorized and ratified. To the extent of any conflict between the provisions of this Resolution or the Loan Agreement and the proposal, the provisions of this Resolution and the Loan Agreement shall prevail.

**SECTION 7. APPROVAL OF FORM OF LOAN AGREEMENT AND SERIES 2018 NOTE.** The City hereby approves a term loan from the Noteholder in the principal amount of not to exceed \$8,100,000. The terms and provisions of the Loan Agreement in substantially the form attached hereto as Exhibit B are hereby approved, with such changes, insertions and additions as the Mayor may approve. The City hereby authorizes the Mayor to execute and deliver, and the Clerk to attest and affix the City seal to, the Loan Agreement substantially in the form attached hereto as Exhibit B, with such changes, insertions and additions as the Mayor may approve, his execution thereof being conclusive evidence of such approval. In order to evidence the loan under the Loan Agreement, it is necessary to provide for the execution of the Series 2018 Note. The Mayor and the Clerk are authorized to execute and deliver the Series 2018 Note substantially in the form attached to the Loan Agreement as Exhibit A with such changes, insertion and additions as they may approve, their execution thereof being evidence of such approval.

**SECTION 8. LIMITED OBLIGATION.** The obligation of the City to repay the Series 2018 Note is a limited and special obligation payable from Non-Ad Valorem Revenues solely in the manner and to the extent set forth in the Loan Agreement and shall not be deemed a pledge of the faith and credit or taxing power of the City and such obligation shall not create a lien on any property whatsoever of or in the City. The Non-Ad Valorem Revenues shall consist of legally available non-ad valorem revenues budgeted and appropriated by the Council to pay debt service on the Series 2018 Note, all in the manner and to the extent described in the Loan Agreement.

**SECTION 9. GENERAL AUTHORIZATION.** The Mayor, the City Manager, the Financial Services Director and the Clerk are authorized to execute and deliver such documents, instruments and contracts, whether or not expressly contemplated hereby; and the City Attorney and other employees or agents of the City are hereby authorized and directed to do all acts and things required hereby or thereby as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution.

**SECTION 10. REPEAL OF INCONSISTENT DOCUMENTS.** All ordinances, resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

**SECTION 11. EFFECTIVE DATE.** This Resolution shall become effective immediately upon its adoption.

**ADOPTED AT A REGULAR COUNCIL MEETING THIS 7TH DAY OF MAY, 2018.**

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

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO  
GUNTER  
CARIOSCIA  
STOUT

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

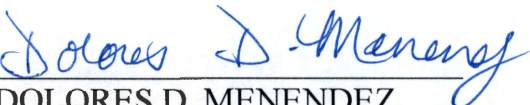
NELSON  
STOKES  
WILLIAMS  
COSDEN

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_ DAY OF MAY, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY

## **EXHIBIT A**

### **IBERIABANK Proposal**





9101 College Pointe Court  
Fort Myers, FL 33919

[www.iberiabank.com](http://www.iberiabank.com)

April 5, 2018

City of Cape Coral  
RE: Request for Proposal  
Financial Services Department  
PO Box 150027  
Cape Coral, FL 33915

To whom it may concern,

We were pleased to have the opportunity to bid on the newest Request for Proposal for the City of Cape Coral. As you know, we participated in 2015, were selected, and enjoyed the process of working the proposals to closing at that time.

We have enjoyed the relationship and hope we have proven ourselves a worthy partner for the City of Cape Coral. We would be excited to be selected and feel that we can offer a seamless and professional closing experience.

We are not new to banking Municipalities. Beyond our relationship with the City of Cape Coral, we included some references which I hope will show that we have a good aptitude for relationships similar to yours.

If we can provide any additional information please feel free to reach out.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brandon Box".

**Brandon Box**  
Executive Vice President  
Lee County Market President  
9101 College Pointe Ct.  
Fort Myers FL, 33919  
(O) 239.403.5117  
(C) 239.789.8699

**\$7,921,000-City of Cape Coral - Non-Bank Qualified Tax-Exempt Fixed Rate Loan  
Proposal**

BY AND BETWEEN

**IBERIABANK  
&  
City of Cape Coral**

April 5, 2018

<b><u>Borrower:</u></b>	City of Cape Coral
<b><u>Loan Amount:</u></b>	≈\$7,921,000.00
<b><u>Interest Rate:</u></b>	3.05% fixed
<b><u>Bank Fee:</u></b>	None
<b><u>Facility Type:</u></b>	Non-Bank Qualified, Tax Exempt Fixed Rate Loan
<b><u>Purpose:</u></b>	To fund Fire Station and Streetscape Improvements within the City's Community Redevelopment Agency
<b><u>Repayment Terms:</u></b>	Principal and Interest payments will be made quarterly beginning 7/1/2018. Fully amortizing over a 10 year term and amortization with the final payment made on 4/1/2028.
<b><u>Prepayment:</u></b>	There is no prepayment penalty
<b><u>Collateral:</u></b>	Secured by a Covenant to budget and appropriate from legally available non ad valorem revenues.
<b><u>Financial Reporting:</u></b>	Annual audited financial statements due within 150 days of FYE.
<b><u>Covenants:</u></b>	The Bank will require a review of the City's Master Loan Agreement for all Bonds to determine the City's requirement to meet any covenants. Such covenants will be included in the Bank's Loan Agreement.
<b><u>Costs:</u></b>	IBERIABANK Counsel Fee - \$6,500.
<b><u>Expiration:</u></b>	This proposal shall expire if the facility does not close by July 1st, 2018

**Bank Counsel:**

Rogers Towers, Attorneys at Law  
Irvin M. Weinstein  
1301 Riverplace Boulevard  
Jacksonville, FL 32207  
Phone 904-398-3911

**IBERIABANK REFERENCES:**

Greater Naples Fire Rescue District  
Naples, FL  
\$6,000,000 Fire Station Construction Bond, 2016  
Contact: Kingman D Schuldt-CFO  
239-348-7540

Bonita Springs Utilities, Inc.  
Bonita Springs, FL  
\$16,005,000 Bond Refunding of 2004 Issuance, 2014  
Contact: Steven A. Richard, Financial Director  
239-390-4810

Gateway Services Community Development  
Ft. Myers, FL  
\$1,350,000 Bond Issuance, 2014  
Contact: Chris Shoemaker-General Manager  
239-561-1313

Hillsborough County Port Authority  
Tampa, FL  
\$14,595,000 Bond Issuance, 2016  
Contact:

Opelousas General Hospital Authority  
\$14,000,000 in Hospital Revenue Bonds, 2009  
Opelousas General Hospital Project  
Contact: Jim Juneau, CFO 337-948-5113

Lafayette Parish School Board  
Matthew Dugas, Director of Finance  
337-521-7307

Port of New Orleans  
Ronald Wendall  
VP Finance and Administration  
504-528-3559

**Additional References:**

Jaimee Boyd  
Foley & Judell, LLP  
504-568-1249

Stephanie Ferry  
Raymond James  
225-381-3362

**IBERIABANK – LONG-TERM SENIOR DEBT RATINGS:**

IBERIABANK does not currently have long term senior debt ratings from Moody's, Standard & Poor's or Fitch because our company has no outstanding corporate bonds. However, the Bank currently enjoys a Five (5) Star rating from Bauer Financial, a very high rating of safety and soundness. In addition, we are publically traded on the NASDAQ under symbol "IBKC" and have a very strong financial position relative to our peers.

**STATEMENT AS TO EQUAL OPPORTUNITY POLICY AND PRACTICES:**

It is the policy of IBERIABANK to afford equal opportunity in all personnel practices to all associates and applicants for employment regardless of race, color, religion, sex, age, pregnancy, national origin, disability, veteran status or any other protected factor. This policy is extended to all personnel actions taken in all job titles, including but not limited to: hiring, placement, upgrading, transfer, and promotion; implementing social and recreational programs; determining rates of pay, benefits, and other forms of compensation; selection for training; discipline; layoff, termination and rehire. It is the Company's objective to obtain and promote individuals qualified and/or trainable for positions solely on the basis of job-related standards of education, training, experience, and personal qualifications. IBERIABANK also has established and maintains written affirmative action plans for minorities and women and for disabled and covered veterans, and other persons with disabilities.

Additionally IBERIABANK has recently hired a Chief Diversity Officer, Monica Sylvian, PHD. She is responsible for the Company's diversity and inclusion strategy, which includes the creation, implementation, and management of programs and initiatives designed to attract and promote a diverse workforce and foster an open and inclusive work environment.

**BUSINESS ETHICS:**

IBERIABANK is subject to regular audits and reviews by its regulatory agencies. However, the conduct of the IBERIABANK is not being investigated or litigated by any legal or administrative body.

**IBERIABANK COMPANY INFORMATION:**

IBERIABANK Corporation is a shareholder-driven company. Over the past several years, the Company has demonstrated a continued improvement in its core profitability. Efforts to improve earnings of the Company have translated into an improved stock price for the Company's shareholders. The success of IBERIABANK Corporation is due in large part to the hard work and dedication of its associates, a strong management team and Board of Directors, and a formula that focuses on client needs.

IBERIABANK, founded in 1887, is a subsidiary of IBERIABANK Corporation. With \$29.5 billion in assets (as of March 25<sup>th</sup>, 2018), IBERIABANK Corporation is the largest bank holding company headquartered in Louisiana, and employs more than 2,500 experienced banking professionals and associates.

IBERIABANK Corporation is a financial holding company with 328 combined offices, including 224 bank branch offices and 1 loan production offices in Louisiana, Arkansas, Tennessee, Alabama, Texas, Florida, Georgia, South Carolina, and New York. 30 title insurance offices in Arkansas and Louisiana, mortgage representatives in 60 locations in 10 states. The Company has 14 locations with representatives of IBERIA Wealth Advisors in five states, and one IBERIA Capital Partners, LLC office in New Orleans.

The IBERIABANK philosophy is to exceed client satisfaction by delivering unparalleled customer service at every point of contact. We are committed to offering products and services customized to meet your financial needs. Our comprehensive financial product line includes Retail, Commercial, Private Banking, Mortgage, Treasury Management, Online Banking and Investment services.

Our relationship-based approach to banking focuses on making decisions locally, close to our clients. We recognize that local decision making gives you more time for the things in life that matter most.

IBERIABANK's common stock trades on the NASDAQ Global Select Market under the symbol "IBKC."

Thank you very much for allowing us to present this proposal to the City of Cape Coral.

Regards,

A handwritten signature in dark ink, appearing to read "Brandon Box", with a stylized, cursive script.

**Brandon Box**  
Executive Vice President  
Lee County Market President  
9101 College Pointe Ct.  
Ft. Myers, FL 33919  
(O) 239.403.5117  
(C) 239.789.8699



## **EXHIBIT B**

### **Form of Loan Agreement**

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**LOAN AGREEMENT**

**BETWEEN**

**CITY OF CAPE CORAL, FLORIDA**

**AND**

**IBERIABANK**

**Dated as of May \_\_, 2018**

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This **LOAN AGREEMENT** (the "Agreement") is made and entered into as of May \_\_, 2018, by and between **CITY OF CAPE CORAL, FLORIDA**, a municipal corporation duly organized and validly existing under the laws of the State of Florida, and its successors as may be provided by law (the "City"), and **IBERIABANK**, a Louisiana banking corporation duly organized and existing under the laws of the State of Louisiana and authorized to do business in the State of Florida, and its successors and assigns (the "Noteholder");

**W I T N E S S E T H:**

**WHEREAS**, the City is authorized by provisions of the Florida Constitution, Chapter 166, Florida Statutes, the Charter of the City, the Ordinance (as defined herein) and other applicable provisions of law (collectively, the "Act") to, among other things, acquire, construct, equip, own, sell, lease, operate and maintain various capital improvements and public facilities to promote the health, welfare and economic prosperity of the residents of the City and to borrow money to finance and refinance the acquisition, construction, equipping and maintenance of such capital improvements and public facilities; and

**WHEREAS**, the City has various capital improvement needs and requirements in the form of the acquisition and construction of Fire Station 11 to be located along Burnt Store Road, between Diplomat Parkway and Tropicana Parkway, the acquisition of related equipment, and the acquisition and construction of various streetscape improvements along SE 47th Terrace from Coronado Parkway to Del Prado Boulevard within the City's community redevelopment area, as described in the plans and specifications on file or to be on file with the City, as the same may be modified or amended from time to time (collectively, the "Project"); and

**WHEREAS**, in order to finance costs of the Project through the issuance of tax-exempt debt, the financial advisor for the City, RBC Capital Markets, LLC (the "Financial Advisor"), solicited bids on behalf of the City from various financial institutions to provide a loan to the City to finance costs of the Project; and

**WHEREAS**, the proposal submitted by the Noteholder was the most favorable proposal received by the City; and

**WHEREAS**, the Noteholder is willing to make a term loan to the City, and the City is willing to incur such loan, pursuant to the terms and provisions of this Agreement in an aggregate principal amount of \$\_\_\_\_\_ to pay the costs of the Project.

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH:**

That the parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, **DO HEREBY AGREE** as follows:



## ARTICLE I

### DEFINITION OF TERMS

**SECTION 1.01. DEFINITIONS.** The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings in this Article I specified, unless the context clearly otherwise requires.

**"Act"** shall mean the Florida Constitution, Chapter 166, Florida Statutes, the Charter of the City, the Ordinance and other applicable provisions of law.

**"Agreement"** shall mean this Loan Agreement, dated as of May \_\_, 2018, between the City and the Noteholder and any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

**"Authorized Officer"** shall mean the Mayor, the City Manager, the Financial Services Director or each of his or her duly authorized designees.

**"Bond Counsel"** shall mean Nabors, Giblin & Nickerson, P.A., Tampa, Florida or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America.

**"Business Day"** shall mean any day other than a Saturday, Sunday or a day on which the Noteholder is authorized or required to be closed.

**"City"** shall mean the City of Cape Coral, Florida, a municipal corporation duly organized and validly existing under the laws of the State of Florida.

**"City Manager"** shall mean any acting, interim or permanent City Manager of the City, any assistant City Manager of the City, or any of their duly authorized designees.

**"Clerk"** shall mean the City Clerk of the City, or her or his duly authorized designee.

**"Code"** shall mean the Internal Revenue Code of 1986, as amended, and applicable rules and regulations.

**"Counterparty"** shall mean the entity entering into a Hedge Agreement with the City. Counterparty would also include any guarantor of such entity's obligations under such Hedge Agreement.

**"Debt"** means at any date (without duplication) all of the following to the extent that they are secured by or payable in whole or in part from any Non-Ad Valorem Revenues (A) all obligations of the City for borrowed money or evidenced by bonds, debentures, notes or other similar instruments; (B) all obligations of the City to pay the deferred purchase price of property or services, except trade accounts payable under normal trade terms and which arise in the ordinary course of business; (C) all obligations of the City as lessee under capitalized leases; and (D) all indebtedness of other Persons to the extent guaranteed by, or secured by, Non-Ad Valorem Revenues of the City; provided, however, if with respect to any obligation contemplated in (A), (B), or (C) above, the City has covenanted to budget and appropriate sufficient Non-Ad Valorem Revenues to satisfy such obligation but has not secured such obligation with a lien on or pledge of any Non-Ad Valorem Revenues then, and with respect to any obligation contemplated in (D) above, such obligation shall not be considered "Debt" for purposes of this Loan Agreement unless the City has actually used Non-Ad Valorem Revenues to satisfy such obligation during the immediately preceding Fiscal Year or reasonably expects to use Non-Ad Valorem Revenues to satisfy such obligation in the current or immediately succeeding Fiscal Year. After an obligation is considered "Debt" as a result of the proviso set forth in the immediately preceding sentence, it shall continue to be considered "Debt" until the City has not used any Non-Ad Valorem Revenues to satisfy such obligation for two consecutive Fiscal Years.

**"Determination of Taxability"** shall mean the circumstance of interest paid or payable on the Series 2018 Note becoming includable for federal income tax purposes in the gross income of the Noteholder as a consequence of any act or omission of the City. A Determination of Taxability will be deemed to have occurred upon (A) the receipt by the City or the Noteholder of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other official letter or correspondence from the Internal Revenue Service which holds that any interest payable on the Series 2018 Note is includable in the gross income of the Noteholder; (B) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on the Series 2018 Note is includable in the gross income of the Noteholder, or (C) receipt by the City or the Noteholder of an opinion of a Bond Counsel that any interest on the Series 2018 Note has become includable in the gross income of the Noteholder for federal income tax purposes. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the interest on the Series 2018 Note is deemed includable in the gross income of the Noteholder.

**"Financial Services Director"** shall mean the Financial Services Director of the City and such other person as may be duly authorized to act on her or his behalf.

**"Fiscal Year"** shall mean the 12-month period commencing on October 1 of any year and ending on September 30 of the immediately succeeding year.

**"Fitch"** shall mean Fitch Ratings, and any successors or assigns thereto.

**"Governmental Funds"** shall mean all of the "governmental funds" of the City as described and identified in the annual audited financial statements of the City for the applicable Fiscal Year.

**"Governmental Funds Revenues"** shall mean total revenues of the City derived from any source whatsoever and that are allocated to and accounted for in the Governmental Funds as shown in the annual audited financial statements of the City for the applicable Fiscal Year.

**"Hedge Agreement"** shall mean an agreement in writing between the City and the Counterparty pursuant to which (1) the City agrees to pay to the Counterparty an amount, either at one time or periodically, which may, but is not required to, be determined by reference to the amount of interest (which may be at a fixed or variable rate) payable on debt (or a notional amount) specified in such agreement during the period specified in such agreement and (2) the Counterparty agrees to pay to the City an amount, either at one time or periodically, which may, but is not required to, be determined by reference to the amount of interest (which may be at a fixed or variable rate) payable on debt (or a notional amount) specified in such agreement during the period specified in such agreement.

**"Hedge Payments"** shall mean any amounts payable by the City on the debt or the related notional amount under a Qualified Hedge Agreement; excluding, however, any payments due as a penalty or by virtue of termination of a Qualified Hedge Agreement or any obligation of the City to provide collateral.

**"Interest Rate"** shall mean a fixed interest rate equal to 3.05% per annum. The Interest Rate is subject to adjustment pursuant to Section 3.03 hereof.

**"Maturity Date"** shall mean April 1, 2028.

**"Mayor"** shall mean the Mayor of the City and in his or her absence or unavailability, the Mayor Pro Tem of the City and such other person as may be duly authorized to act on his or her behalf.

**"Maximum Annual Debt Service"** shall mean the maximum annual debt service to come due during any Fiscal Year of the City on the outstanding Series 2018 Note.

**"Moody's"** shall mean Moody's Investors Service, and any successor or assigns thereto.

**"Non-Ad Valorem Revenues"** shall mean all Governmental Funds Revenues other than revenues generated from ad valorem taxation on real or personal property which are legally available to make the payments required herein.

**"Noteholder"** shall mean IBERIABANK, and its successors and assigns.

**"Ordinance"** shall mean Ordinance No. 30-18, enacted by the City on May 7, 2018, as the same may be amended and supplemented from time to time.

**"Person"** shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, governmental entity or other legal entity.

**"Project"** shall mean the acquisition and construction of Fire Station 11 to be located along Burnt Store Road, between Diplomat Parkway and Tropicana Parkway, the acquisition of related equipment, and the acquisition and construction of various streetscape improvements along SE 47th Terrace from Coronado Parkway to Del Prado Boulevard within the City's community redevelopment area, as described in the plans and specifications on file or to be on file with the City, as the same may be modified or amended from time to time, and which are to be financed with a portion of the proceeds of the Series 2018 Note.

**"Qualified Hedge Agreement"** shall mean a Hedge Agreement with respect to which the City has received written notice from at least two of the Rating Agencies that the rating of the Counterparty is not less than "A," without regard to gradations or other modifiers.

**"Rating Agencies"** shall mean Fitch, Moody's and Standard and Poor's.

**"Resolution"** shall mean Resolution No. \_\_-18 adopted by the City on May 7, 2018, which among other things authorized the execution and delivery of this Loan Agreement and the issuance of the Series 2018 Note.

**"Series 2018 Note"** shall mean the City of Cape Coral, Florida Special Obligation Revenue Note, Series 2018, authorized to be issued by the Resolution and more particularly described in Article III hereof.

**"Standard and Poor's"** shall mean S&P Global Ratings, and any successors and assigns thereto.

**"State"** shall mean the State of Florida.

**"Tax Certificate"** shall mean the Certificate as to Arbitrage and certain Other Tax Matters to be executed by the City in connection with the issuance of the Series 2018 Note, as such Certificate may be amended from time to time.

**SECTION 1.02. INTERPRETATION.** Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. Any capitalized terms used in this Agreement not herein defined shall have the meaning

ascribed to such terms in the Resolution. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

**SECTION 1.03. TITLES AND HEADINGS.** The titles and headings of the articles and sections of this Agreement, which have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

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## **ARTICLE II**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS; SECURITY FOR SERIES 2018 NOTE**

**SECTION 2.01. REPRESENTATIONS BY THE CITY.** The City represents, warrants and covenants that:

(a) The City is a municipal corporation duly organized and validly existing under the Constitution and other laws of the State. Pursuant to the Ordinance and the Resolution, the City has duly authorized the execution and delivery of this Agreement, the performance by the City of all of its obligations hereunder, and the issuance of the Series 2018 Note in the aggregate principal amount of \$\_\_\_\_\_.

(b) The City has complied with all of the provisions of the constitution and laws of the State, including the Act, and has full power and authority to enter into and consummate all transactions contemplated by this Agreement or under the Series 2018 Note, and to perform all of its obligations hereunder and under the Series 2018 Note and, to the best knowledge of the City, the transactions contemplated hereby do not conflict with the terms of any statute, order, rule, regulation, judgment, decree, agreement, instrument or commitment to which the City is a party or by which the City is bound.

(c) The City is duly authorized and entitled to issue the Series 2018 Note and enter the Agreement and, when executed and delivered, the Series 2018 Note and the Agreement will each constitute a legal, valid and binding obligation of the City enforceable in accordance with its respective terms, subject as to enforceability to bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(d) There are no actions, suits or proceedings pending or, to the best knowledge of the City, threatened against or affecting the City, at law or in equity, or before or by any governmental authority, that, if adversely determined, would materially impair the ability of the City to perform the City's obligations under this Agreement or under the Series 2018 Note.

(e) The City will furnish to the Noteholder within 210 days after the close of each Fiscal Year a copy of the annual audited financial statements of the City, prepared by a certified public accountant. The City shall also provide the Noteholder with a copy of the annual budget of the City each year and any material amendments thereto within 30 days of the final adoption of such budget. With reasonable promptness the City shall provide such other data and information as may be reasonably requested by the Noteholder from time to time.

**SECTION 2.02. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE NOTEHOLDER.** The Noteholder hereby represents, warrants and agrees that it is a banking corporation duly organized and existing under the laws of the State of Louisiana, authorized to execute and deliver this Agreement and to perform its obligations hereunder, and such execution and delivery will not constitute a violation of its charter, articles of incorporation or bylaws. Pursuant to the terms and provisions of this Agreement, the Noteholder agrees to provide a term loan to the City as evidenced hereby and by the Series 2018 Note for the purpose of financing costs of the Project and paying costs relating to the issuance of the Series 2018 Note.

**SECTION 2.03. TAX COVENANT.** (a) In order to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Series 2018 Note, the City shall comply with each requirement of the Code applicable to the Series 2018 Note. In furtherance of the covenant contained in the preceding sentence, the City agrees to continually comply with the provisions of the Tax Certificate, which is incorporated fully by reference herein, as a source of guidance for achieving compliance with the Code.

(b) The City shall make any and all rebate payments required to be made to the United States Department of the Treasury in connection with the Series 2018 Note pursuant to Section 148(f) of the Code.

(c) So long as necessary in order to maintain the exclusion from gross income of interest on the Series 2018 Note for federal income tax purposes, the covenants contained in this Section shall survive the payment of the Series 2018 Note and the interest thereon, including any payment or defeasance thereof.

(d) The City shall not take or permit any action or fail to take any action which would cause the Series 2018 Note to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.

**SECTION 2.04. SERIES 2018 NOTE SHALL NOT BE INDEBTEDNESS OF THE CITY OR STATE.** The Series 2018 Note, when delivered by the City pursuant to the terms of this Agreement, shall not be or constitute an indebtedness of the City, the State of Florida or any political subdivision or agency thereof, within the meaning of any constitutional, statutory or charter limitations of indebtedness, but shall be payable solely as herein provided. The Noteholder shall never have the right to compel the exercise of the ad valorem taxing power of the City, or taxation in any form on any property therein to pay the Series 2018 Note or the interest thereon. The Series 2018 Note is a special and limited obligation secured by and payable as to principal and interest from the Non-Ad Valorem Revenues, to the extent and in the manner provided herein.

**SECTION 2.05. COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES.** The City covenants and agrees to budget and appropriate in its annual budget for each Fiscal Year in which any amounts due hereunder or with respect to the Series 2018 Note remain unpaid or outstanding, by amendment, if necessary, from Non-Ad Valorem Revenues amounts sufficient to pay principal of and interest on the Series 2018 Note when due. Such covenant and agreement on the part of the City to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the City, the City does not covenant to maintain any services or programs, now provided or maintained by the City, which generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the City from pledging in the future its Non-Ad Valorem Revenues, nor does it require the City to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Noteholder a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on the Series 2018 Note and other debt instruments). However, the covenant to budget and appropriate for the purposes and in the manner stated herein shall have the effect of making available for the payment of the Series 2018 Note, in the manner described herein, Non-Ad Valorem Revenues and placing on the City a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Section 166.241, Florida Statutes, which generally provide that the governing body of each municipality may only make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, safety and welfare of the inhabitants of the City or which are legally mandated by applicable law.

**SECTION 2.06. PAYMENT COVENANT.** The City covenants that it shall duly and punctually pay from the Non-Ad Valorem Revenues in accordance with Section 2.05 hereof, the principal of and interest on the Series 2018 Note at the dates and place and in the manner provided herein and in the Series 2018 Note according to the true intent and meaning thereof and all other amounts due under this Agreement.

**SECTION 2.07. ANTI-DILUTION.** During such time as the Series 2018 Note is outstanding hereunder or any amounts due hereunder or with respect to the

Series 2018 Note remain unpaid or outstanding, the City agrees and covenants with the Noteholder that (A) Non-Ad Valorem Revenues shall cover projected Maximum Annual Debt Service on the Series 2018 Note and maximum annual debt service on Debt by at least 1.5x; and (B) projected Maximum Annual Debt Service on the Series 2018 Note and maximum annual debt service for all Debt will not exceed 20% of Governmental Funds Revenues, exclusive of ad valorem tax revenues restricted to payment of debt service on any Debt. The calculations required by clauses (A) and (B) above shall be determined using the average of actual receipts for the prior two Fiscal Years based on the City's annual audited financial statements for such Fiscal Years. In addition, Maximum Annual Debt Service on the Series 2018 Note and maximum annual debt service on Debt shall be determined on an aggregate basis whereby the annual debt service for each is combined and the overall maximum is determined.

For the purposes of the covenants contained in this Section 2.07, maximum annual debt service on Debt means, with respect to Debt that bears interest at a fixed interest rate, the actual maximum annual debt service, and, with respect to Debt which bears interest at a variable interest rate, maximum annual debt service on such Debt shall be determined assuming that interest accrues on such Debt at the current "Bond Buyer Revenue Bond Index" as published in *The Bond Buyer* no more than two weeks prior to any such calculation; provided, however, if any Debt, whether bearing interest at a fixed or variable interest rate, constitutes Balloon Indebtedness, as defined in the immediately following sentence, maximum annual debt service on such Debt shall be determined assuming such Debt is amortized over 25 years on an approximately level debt service basis. For purposes of the foregoing sentence, "Balloon Indebtedness" means Debt, 25% or more of the original principal of which matures during any one Fiscal Year. In addition, with respect to debt service on any Debt which is subject to a Qualified Hedge Agreement, interest on such Debt during the term of such Qualified Hedge Agreement shall be deemed to be the Hedge Payments coming due during such period of time.

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## **ARTICLE III**

### **DESCRIPTION OF SERIES 2018 NOTE; PAYMENT TERMS; OPTIONAL PREPAYMENT**

**SECTION 3.01. DESCRIPTION OF THE SERIES 2018 NOTE.** (a) The City hereby authorizes the issuance and delivery of the Series 2018 Note to the Noteholder which Note shall be in an amount equal to \_\_\_\_\_ MILLION \_\_\_\_\_ THOUSAND AND 00/100 DOLLARS (\$\_\_\_\_\_) and shall be designated as the "City of Cape Coral City, Florida Special Obligation Revenue Note, Series 2018." The text of the Series 2018 Note shall be substantially in the form attached hereto as Exhibit A, with such omissions, insertions and variations as may be necessary and desirable to reflect the particular terms of the Series 2018 Note. The provisions of the form of the Series 2018 Note are hereby incorporated in this Agreement.

(b) The Series 2018 Note shall be dated the date of its delivery. The Series 2018 Note shall be executed in the name of the City by the manual signature of the Mayor and the official seal of the City shall be affixed thereto and attested by the manual signature of the Clerk. In case any one or more of the officers, who shall have signed or sealed the Series 2018 Note, shall cease to be such officer of the City before the Series 2018 Note so signed and sealed shall have been actually delivered, such Series 2018 Note may nevertheless be delivered as herein provided and may be issued as if the person who signed or sealed such Series 2018 Note had not ceased to hold such office.

(c) The Series 2018 Note shall bear interest from its date of issuance at the Interest Rate (calculated on a 30/360 day count basis) as the same may be adjusted pursuant to Section 3.03 hereof. Interest on the Series 2018 Note shall be payable quarterly on July 1, October 1, January 1 and April 1 of each year, commencing July 1, 2018 (each an "Interest Payment Date") so long as any amount under the Series 2018 Note remains outstanding. Principal of the Series 2018 Note shall be payable quarterly on July 1, October 1, January 1 and April 1 of each year, commencing July 1, 2018 (each a "Principal Payment Date"), through and including the Maturity Date. The aggregate annual principal and interest payments shall be in substantially equal amounts determined on approximately a level debt service basis and shall be set forth in the Series 2018 Note. The City Manager is authorized to establish the final debt service schedule with the assistance of the City's Financial Advisor and the agreement of the Noteholder.

(d) All payments of principal of and interest on the Series 2018 Note shall be payable in any coin or currency of the United States which, at the time of payment, is legal tender for the payment of public and private debts and shall be made to the Noteholder (i) in immediately available funds, (ii) by delivering to the Noteholder no later than the applicable Interest Payment Date or Principal Payment Date a wire



transfer), or (iii) in such other manner as the City and the Noteholder shall agree upon in writing. If any Interest Payment Date or Principal Payment Date is not a Business Day, the corresponding payment shall be due on the next succeeding Business Day. The City shall maintain books and records with respect to the identity of the holders of the Note, including a complete and accurate record of any assignment of this Agreement and the Series 2018 Note as provided in Section 3.01(f).

(e) Except as otherwise provided herein, the Noteholder shall pay for all of its costs relating to servicing the term loan. The City shall pay the fees of the Noteholder's legal counsel in the amount of \$6,500.

(f) The Noteholder's right, title and interest in and to this Agreement, the Series 2018 Note and any amounts payable by the City hereunder may be assigned and reassigned in whole only without the necessity of obtaining the consent of the City; *provided*, that any such assignment, transfer or conveyance shall be made only to an entity which is a "*qualified institutional buyer*" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, and is purchasing this Agreement and the Series 2018 Note for its own account with no present intention to resell or distribute this Agreement and the Series 2018 Note, subject to each investor's right at any time to dispose of or assign the Agreement and the Series 2018 Note as it determines to be in its best interests. No assignment, transfer or conveyance permitted by this Section 3.01(f) shall be effective until the City shall have received a written notice of assignment that discloses the name and address of such assignee. If the Noteholder notifies the City of its intent to assign and sell its right, title and interest in and to this Agreement and the Series 2018 Note as herein provided, the City agrees that it shall execute and deliver to the assignor Noteholder a notice and acknowledgement of assignment in form and substance satisfactory to the assignor Noteholder within ten (10) Business Days after its receipt of such request.

**SECTION 3.02. OPTIONAL PREPAYMENT.** (a) The Series 2018 Note may be prepaid at any time prior to the Maturity Date, at the option of the City, from any moneys legally available therefor, upon notice as provided herein, in whole or in part, by paying to the Noteholder the principal amount to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, without penalty or premium.

(b) Any prepayment of the Series 2018 Note shall be made on such date as shall be specified by the City in a notice delivered to the Noteholder not less than ten (10) days prior thereto specifying the principal amount of the Series 2018 Note to be prepaid (which shall be the total principal amount to be outstanding on the prepayment date) and the date that shall be the date of such prepayment. Notice having been given as aforesaid, the amount of the outstanding principal of the Series 2018 Note shall become due and payable on the date of prepayment stated in such notice, together with interest accrued and unpaid to the date of prepayment on the principal amount then being paid. If on the

date of prepayment moneys for the payment of the principal amount to be prepaid on the Series 2018 Note, together with interest to the date of prepayment on such principal amount, shall have been paid to the Noteholder as above provided, then from and after the date of prepayment, interest on such prepaid principal amount of the Series 2018 Note shall cease to accrue. If said money shall not have been so paid on the date of prepayment, such principal amount of the Series 2018 Note shall continue to bear interest until payment thereof at the then applicable Interest Rate. Any such failure to pay the prepayment price shall not constitute an Event of Default hereunder.

**SECTION 3.03. ADJUSTMENT TO INTEREST RATES.** In the event of a Determination of Taxability, the Interest Rate on the Series 2018 Note shall be immediately increased to such rate as shall provide the Noteholder with the same rate of return that the Noteholder would have otherwise received on the Series 2018 Note taking into account the increased taxable income of the Noteholder of the Series 2018 Note as a result of such Determination of Taxability (the "Adjusted Rate"); provided, however, such Adjusted Rate shall never exceed the maximum rate allowable by law. Immediately upon a Determination of Taxability, the City agrees to pay to the Noteholder, the Additional Amount. "Additional Amount" means (i) the difference between (A) interest on the Series 2018 Note for the period commencing on the date on which the interest on the Series 2018 Note (or portion thereof) is deemed to have lost its tax-exempt status and ending on the effective date of the adjustment of the Interest Rate to the Adjusted Rate (the "Prior Taxable Period") at a rate per annum equal to the Adjusted Rate and (B) the aggregate amount of interest paid on the Series 2018 Note during the Prior Taxable Period at the Interest Rate applicable to the Series 2018 Note prior to the adjustment to the Adjusted Rate, plus (ii) any penalties, fines, fees, costs and interest paid or payable by the Noteholder to the Internal Revenue Service by reason of such Determination of Taxability.

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## ARTICLE IV

### CONDITIONS FOR ISSUANCE OF THE SERIES 2018 NOTE

**SECTION 4.01. CONDITIONS FOR ISSUANCE.** In connection with the issuance of the Series 2018 Note, the Noteholder shall not be obligated to purchase the Series 2018 Note pursuant to this Agreement unless at or prior to the issuance thereof the City delivers to the Noteholder the following items in form and substance acceptable to the Noteholder:

- (a) A fully executed Tax Certificate;
- (b) A copy of a completed and executed Form 8038-G to be filed with the Internal Revenue Service;
- (c) An opinion of Bond Counsel addressed to the Noteholder (or addressed to the City with a reliance letter addressed to the Noteholder) in form and substance to the effect that (A) this Agreement and the Series 2018 Note have been duly authorized, executed and delivered by the City and each is an enforceable obligation against the City in accordance with its terms (enforceability of it may be subject to standard bankruptcy exceptions and the like), and (B) interest on the Series 2018 Note shall be excludable from gross income for federal income tax purposes, will not be treated as a preference item for purposes of computing the alternative minimum tax imposed by Section 55 of the Code and is not taken into account in determining the adjusted current earnings for the purpose of computing the alternative minimum tax on certain corporations (as defined for federal tax purposes); and
- (d) Such additional certificates, instruments and other documents as the Noteholder, Bond Counsel, or the City Attorney may deem necessary or appropriate.

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## **ARTICLE V**

### **EVENTS OF DEFAULT; REMEDIES**

**SECTION 5.01. EVENTS OF DEFAULT.** An "Event of Default" shall be deemed to have occurred under this Agreement if:

(a) The City shall fail to make timely payment of principal or interest when due with respect to the Series 2018 Note;

(b) Any representation or warranty of the City contained in Article II of this Agreement shall prove to be untrue in any material respect when made;

(c) Any covenant of the City contained in this Agreement shall be breached or violated for a period of thirty (30) days after the City receives notice from the Noteholder of such breach or violation, unless the Noteholder shall agree in writing, in its sole discretion, to an extension of such time prior to its expiration;

(d) There shall occur the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the commission by the City of any act of bankruptcy, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of its creditors, or appointment of a receiver for the City, or the entry by the City into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar act in any jurisdiction which may now be in effect or hereafter amended.

**SECTION 5.02. REMEDIES.** If any event of default shall have occurred and be continuing, the Noteholder or any trustee or receiver acting for the Noteholder may either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights under the Laws of the State of Florida, or granted and contained in this Agreement, and may enforce and compel the performance of all duties required by this Agreement or by any applicable statutes to be performed by the City or by any officer thereof, including, but not limited to, specific performance. No remedy herein conferred upon or reserved to the Noteholder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

## **ARTICLE VI**

### **MISCELLANEOUS**

**SECTION 6.01. AMENDMENTS, CHANGES OR MODIFICATIONS TO THE AGREEMENT.** This Agreement shall not be amended, changed or modified without the prior written consent of the Noteholder and the City.

**SECTION 6.02. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**SECTION 6.03. SEVERABILITY.** If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such provisions or sections shall not affect any other provisions or sections hereof, and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

**SECTION 6.04. TERM OF AGREEMENT.** This Agreement shall be in full force and effect from the date hereof and shall continue in effect as long as the Series 2018 Note is outstanding.

**SECTION 6.05. NOTICE OF CHANGES IN FACT.** Promptly after the City becomes aware of the same, the City will notify the Noteholder of (a) any change in any material fact or circumstance represented or warranted by the City in this Agreement or in connection with the issuance of the Series 2018 Note, and (b) any default or event which, with notice or lapse of time or both, could become a default under the Agreement, specifying in each case the nature thereof and what action the City has taken, is taking and/or proposed to take with respect thereto.

**SECTION 6.06. NOTICES.** Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent registered or certified mail, postage prepaid, to City of Cape Coral, Florida, 1015 Cultural Park Blvd., Cape Coral, Florida 33990, Attention: City Manager, and to the Noteholder, IBERIABANK, 9101 College Pointe Ct., Fort Myers, FL 33919 Attention: Brandon Box, Executive Vice President, or at such other address as shall be furnished in writing by any such party to the other, and shall be deemed to have been given as of the date so delivered or deposited in the United States mail.



**SECTION 6.07. NO THIRD-PARTY BENEFICIARIES.** This Agreement is for the benefit of the City and the Noteholder and their respective successors and assigns, and there shall be no third-party beneficiary with respect thereto.

**SECTION 6.08. APPLICABLE LAW.** The substantive laws of the State of Florida shall govern this Agreement.

**SECTION 6.09. WAIVER OF JURY TRIAL.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any proceedings relating to this Agreement.

**SECTION 6.10. INCORPORATION BY REFERENCE.** All of the terms and obligations of the Resolution are hereby incorporated herein by reference as if said Resolution was fully set forth in this Agreement and the Series 2018 Note.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be duly executed as of the date first set forth herein.

**CITY OF CAPE CORAL, FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

**IBERIABANK**

By: \_\_\_\_\_  
Title: Executive Vice President

## EXHIBIT A

\$ \_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF FLORIDA  
CITY OF CAPE CORAL, FLORIDA  
SPECIAL OBLIGATION REVENUE NOTE,  
SERIES 2018**

Interest Rate	Date of Issuance	Final Maturity Date
3.05% (subject to adjustment as provided herein)	May __, 2018	April 1, 2028

**KNOW ALL MEN BY THESE PRESENTS**, that City of Cape Coral, Florida (the "City"), for value received, hereby promises to pay, solely from the Non-Ad Valorem Revenues described in the within mentioned Agreement, to the order of IBERIABANK, or its successors or assigns (the "Noteholder"), the principal sum of \_\_\_\_\_ MILLION \_\_\_\_\_ THOUSAND AND 00/100 DOLLARS (\$\_\_\_\_\_) pursuant to that certain Loan Agreement by and between the Noteholder and the City, dated as of May \_\_, 2018 (the "Agreement"), and to pay interest on such the outstanding principal amount hereof from the Date of Issuance set forth above, or from the most recent date to which interest has been paid, at the Interest Rate per annum (calculated on a 30/360 day count basis) identified above (subject to adjustment as provided in the Agreement) on July 1, October 1, January 1 and April 1 of each year, commencing July 1, 2018, so long as any amount under this Note remains outstanding. Principal of this Note shall be payable on July 1, October 1, January 1 and April 1 of each year, commencing July 1, 2018, through and including the Maturity Date identified above. The repayment schedule for this Note is set forth in definitive form on Appendix I attached hereto. The principal and interest on this Note is payable in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts.

This Note is issued under the authority of and in full compliance with the Constitution and statutes of the State of Florida, including, particularly, Chapter 166, Florida Statutes, the Charter of the City, Ordinance No. 30-18, enacted by the City on May 7, 2018, and other applicable provisions of law, and Resolution No. \_\_\_\_-18 duly adopted by the City on May 7, 2018 (the "Resolution"), as such Resolution may be amended and supplemented from time to time, and is subject to all terms and conditions

of the Resolution and the Agreement. Any capitalized term used in this Note and not otherwise defined shall have the meaning ascribed to such term in the Agreement.

This Note is being issued to finance the acquisition, construction and equipping of a fire station, and the acquisition and construction of various streetscape improvements, as more particularly described in the Agreement. This Note is payable from the Non-Ad Valorem Revenues in the manner and to the extent provided and described in the Agreement.

This Note shall bear interest at the Interest Rate identified above on a 30/360 day count basis. Such Interest Rate is subject to adjustment as provided in Section 3.03 of the Agreement. The Noteholder shall provide to the City upon request such documentation to evidence the amount of interest due with respect to the Series 2018 Note upon any such adjustment.

Notwithstanding any provision in this Note to the contrary, in no event shall the interest contracted for, charged or received in connection with this Note (including any other costs or considerations that constitute interest under the laws of the State of Florida which are contracted for, charged or received) exceed the maximum rate of interest allowed under the State of Florida as presently in effect.

All payments made by the City hereon shall apply first to fees, costs, late charges and accrued interest, and then to the principal amount then due on this Note.

This Note may be prepaid prior to its Maturity Date identified above, at the option of the City, from any moneys legally available therefor, upon notice as provided herein, in whole or in part, by paying to the Noteholder the principal amount to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, without penalty or premium.

Any prepayment of this Note shall be made on such date as shall be specified by the City in a notice delivered to the Noteholder not less than ten (10) days prior thereto specifying the principal amount of this Note to be prepaid (which shall be the total aggregate principal amount to be outstanding on such prepayment date) and the date that shall be the date of such prepayment, all in accordance with the provisions of the Agreement. All of the prepayment provisions contained in Section 3.02 of the Agreement shall apply with respect to this Note.

This Note, when delivered by the City pursuant to the terms of the Agreement and the Resolution, shall not be or constitute an indebtedness of the City or of the State of Florida, within the meaning of any constitutional, statutory or charter limitations of indebtedness, but shall be payable from the Non-Ad Valorem Revenues, in the manner and to the extent provided in the Agreement and the Resolution. The Noteholder shall never have the right to compel the exercise of the ad valorem taxing power of the City or

the State, or taxation in any form of any property therein to pay the Note or the interest thereon.

This Note shall be and have all the qualities and incidents of a negotiable instrument under the commercial laws and the Uniform Commercial Code of the State of Florida, subject to the immediately succeeding paragraph and any provisions for registration and transfer contained in the Agreement. So long as any of this Note shall remain outstanding, the City shall maintain and keep books for the registration and transfer of this Note.

The Noteholder's right, title and interest in and to this Note and any amounts payable by the City hereunder may be assigned and reassigned in whole only without the necessity of obtaining the consent of the City; *provided*, that any such assignment, transfer or conveyance shall be made only to an entity which is a "*qualified institutional buyer*" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, and is purchasing this Note for its own account with no present intention to resell or distribute this Note, subject to each investor's right at any time to dispose of or assign the Note as it determines to be in its best interests. No assignment, transfer or conveyance permitted by the Resolution shall be effective until the City shall have received a written notice of assignment that discloses the name and address of such assignee.

**IN WITNESS WHEREOF**, the City caused this Note to be signed by the manual signature of the Mayor and the seal of the City to be affixed hereto or imprinted or reproduced hereon, and attested by the manual signature of the Acting City Clerk, and this Note to be dated the Date of Issuance set forth above.

**CITY OF CAPE CORAL, FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

**Repayment Schedule for the**  
**CITY OF CAPE CORAL, FLORIDA**  
**SPECIAL OBLIGATION REVENUE NOTE,**  
**SERIES 2018**



# City of Cape Coral Bank Loan for Fire Station and CRA Streetscape

## RFP Results

May 7, 2018



RBC Capital Markets

# RFP for Bank Loan

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- City issued RFP for \$8.1 million bank loan for:
  - \$3.8 million for fire station
  - \$4.3 million for CRA streetscape improvements
- City received 10 proposals:
  - Bank of America
  - Capital One Public Funding
  - City National
  - IBERIABANK
  - JP Morgan
  - Pinnacle Public Finance
  - PNC
  - Raymond James
  - TD Bank
  - Wells Fargo

# Recommendation

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- Accept proposal from IBERIABANK based on combination of favorable interest rate and terms:
  - Rate of 3.05% which is fixed through closing without additional cost (no interest rate risk)
  - No covenants viewed negatively by rating agencies such as acceleration in event of default (bank can declare loan payable in full immediately) or change in interest rate due to change in corporate tax rate
  - Ability to prepay at any time without penalty

# Requested Action

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- Final public hearing for Ordinance to authorize loan
- Adopt Resolution to select IBERIABANK as lender for loan for fire station and CRA streetscape improvements.

Item Number:	A.(6)
Meeting Date:	5/7/2018
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA  
REQUEST FORM**  
CITY OF CAPE  
CORAL



**TITLE:**

Ordinance 33-18 Public Hearing

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

Parking lots owned by the City located in the South Cape Downtown District are being used for the long term parking of trailers that are not attached to a vehicle. Currently the City prohibits overnight parking on certain streets and now desires to prohibit overnight parking in its parking lots so that the lots remain available to the general public during business hours of neighboring businesses.

**LEGAL REVIEW:**

**EXHIBITS:**

Ordinance 33-18  
Staff Presentation

**PREPARED BY:**



Division- Department- City  
Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▫ Ordinance 33-18	Ordinance
▫ Staff Presentation	Backup Material

AN ORDINANCE AMENDING CHAPTER 12, OFFENSES AND MISCELLANEOUS PROVISIONS, CITY OF CAPE CORAL CODE OF ORDINANCES, BY ESTABLISHING ARTICLE XII, PARKING ON PUBLIC PROPERTY, TO PROVIDE REGULATIONS FOR PARKING TRAILERS IN CITY-OWNED OR CONTROLLED PARKING LOTS IN THE SOUTH CAPE DOWNTOWN DISTRICT; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 166.021, Florida Statutes, municipalities may exercise their powers for municipal purposes and to preserve the health, safety, and general welfare of its residents, except when expressly prohibited by law; and

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

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

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 12, Offenses and Miscellaneous Provisions, Article XII, Parking on Public Property, is hereby established as follows:

## CHAPTER 12: OFFENSES AND MISCELLANEOUS PROVISIONS

### ARTICLE XII: PARKING ON PUBLIC PROPERTY

#### § 12-127 Trailer regulations in the South Cape Downtown District City parking lots.

- (a) DEFINITIONS. For the purpose of this section, the following words, terms, and phrases, when used in this section, shall have the meanings set forth herein, except where the context clearly indicates or requires a different meaning:

**CITY PARKING LOT** shall mean the off-street parking lots owned or controlled by the City of Cape Coral and located in the South Cape Downtown Zoning District.

**PARK** shall have the same meaning as defined in §316.003, Florida Statutes, as may hereafter be amended.

**STAND** shall have the same meaning as defined in §316.003, Florida Statutes, as may hereafter be amended.

**STOP** shall have the same meaning as defined in §316.003, Florida Statutes, as may hereafter be amended.

**TRAILER** shall mean any vehicle without motive power designed to be drawn by a motor vehicle regardless of hitch type and often used for or designed for carrying persons or property on its own structure. For purposes of this section, devices or equipment, such as compressors, mixers, or smokers, that are not designed for the purpose of carrying persons or property, but instead have wheels that are integrated into the body of the device or equipment shall be deemed to be trailers.

- (b) TRAILER PARKING PROHIBITION. The following regulations apply to all trailers located in a City Parking Lot except for construction trailers, as provided in Subsection (c) below.

- (1) It shall be unlawful to stop, stand, or park a trailer in any City Parking Lot located in the South Cape Downtown District between the hours of 2 a.m. and 6 a.m.

- (2) Outside of the hours between 2 a.m. and 6 a.m., it shall be unlawful to:

- A. stop, stand, or park a trailer in a City Parking Lot that is not attached to a motor vehicle:

- B. stop, stand, or park a trailer in a City Parking Lot for a period of time exceeding two (2) hours; or
  - C. stop, stand, or park a trailer in a City Parking Lot outside of spaces designated for parking. A trailer attached to a motor vehicle may utilize two parking spaces to accommodate the length of the vehicle and trailer, however, the vehicle and trailer must be entirely contained within the area so designated by lines or markings for the parking space(s).
- (3) The provisions of §12-127(b) shall be enforced, and a citation or ticket may be issued to the owner of the trailer for violations thereof, by any law enforcement officer or a parking enforcement specialist, who meets the requirements of §316.640(3)(c), Florida Statutes.
- (4) Penalty. A violation of §12-127(b) shall result in a civil penalty in an amount of thirty dollars (\$30.00). Any person receiving a citation or ticket pursuant to this section shall, within thirty (30) calendar days, pay said civil penalty or request a hearing before a designated official, as defined by Chapter 318, Florida Statutes.
- A. Any person electing to appear before a designated official for a hearing shall be deemed to have waived such persons right to pay the civil penalty set forth herein. The designated official, after a hearing, shall make a determination as to whether a violation of this section has been committed. If a violation is found, the designated official shall impose a civil penalty in the amount of one hundred dollars (\$100.00) plus court costs.
  - B. Each violation of §12-127(b) shall constitute a separate and distinct violation for which a citation or ticket may be issued.
  - C. Law enforcement officers and parking enforcement specialists are hereby authorized to tow or cause to be towed and impounded any trailer stopped, standing, or parked in violation of this §12-127(b), where signs have been posted indicating that the City Parking Lot is a location from which trailers will be removed if they are parked unlawfully. If an unlawfully parked trailer is attached to a vehicle in a City Parking Lot, said vehicle may also be removed by the police department. A trailer may also be towed and impounded if it is parked in a City Parking Lot in such a manner as to impede or block the flow of traffic or constitutes a hazard likely to endanger the public. The owner of any trailer or vehicle so towed, in addition to the payment of any fines or penalties for the unlawful parking, shall also be liable for any towing, impounding, and storage charges incurred in removing the trailer and vehicle.

(c) CONSTRUCTION TRAILERS

- (1) Notwithstanding Subsection (b) above, trailers, regardless of whether they are attached to a motor vehicle, that are being used for active construction purposes on property or buildings abutting a City Parking Lot may be located in a City Parking Lot provided the following conditions are met:
- A. a valid building permit has been issued by the City and the permit therefore is properly displayed at the premises where the construction is taking place; and
  - B. the trailer must be located in an area that is adjacent to the premises where the construction is taking place; and
  - C. the trailer must be in a location where it does not unreasonably block any pedestrian walkways or vehicular traffic, or otherwise endanger the public health, safety, or welfare.
- (2) Trailers located in a City Parking Lot pursuant to this Subsection (c) are not restricted to the time periods identified in Subsection (b) above and are not required to be contained within parking spaces.



- (3) The City shall approve the placement of the construction trailer in the process of obtaining a building permit, however, the City maintains the ability to require relocation of the trailer during construction. The approval of placement of the construction trailer is subject to revocation by the City if the construction is not progressing in a reasonable timeframe, or if the City determines that conditions have become unsafe.
- (4) Failure to comply with this §12-127(c) shall constitute a violation and shall subject the owner or operator to the code enforcement provisions and procedures provided in §2-81 through §2-96, Cape Coral Code of Ordinances. Violations of this §12-127(c) shall be punishable by a fine of not less than \$100. Each day that a violation exists shall constitute a separate and distinct violation. Trailers located in a City Parking Lot in violation of this Subsection (c) are subject to removal by the City.
- (d) Nothing contained in this section shall prohibit the City from enforcing its codes or ordinances by any other means available to the City.

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 on June 15, 2018.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
JOHN E. NACLERIO, III  
ASSISTANT CITY ATTORNEY  
Ord/Parking Regs - SC District  
4/4/18



The background features a large, semi-transparent shield logo of the Cape Coral Police Department. The word "POLICE" is arched across the top. The center of the shield depicts a tropical scene with palm trees and a boat on the water. At the bottom, it says "EST 1971 FL".

# Ordinance 33-18

# Trailer Regulation in City Parking Lots

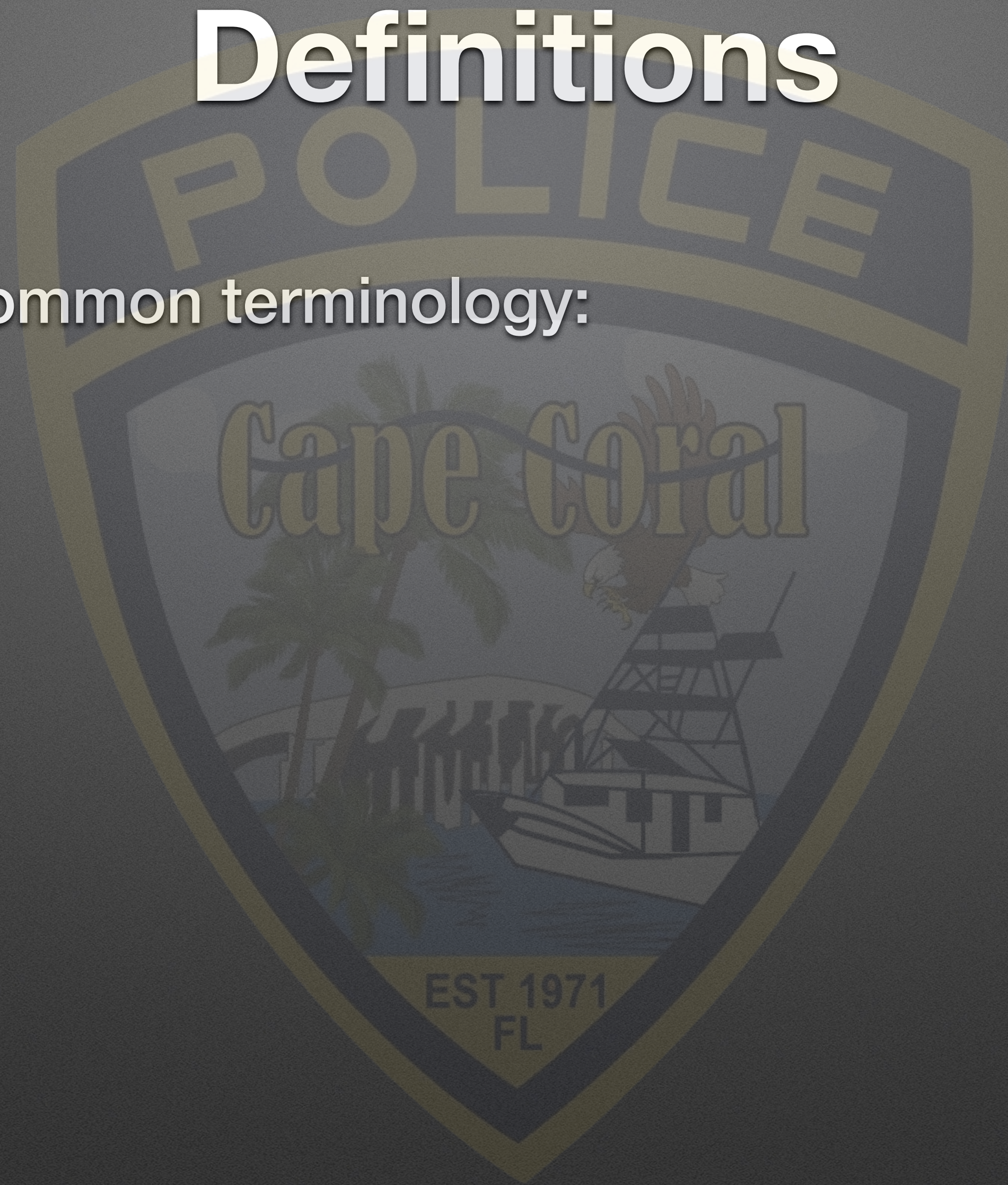
Presented by:

David M. Newlan, Chief of Police



# Definitions

- Ordinance defines common terminology:
  - City Parking Lot
  - Park
  - Stand
  - Stop
  - Trailer





# Trailer Parking Prohibition

- It shall be unlawful to stop) stand) or park a trailer in any City Parking Lot located in the South Cape Downtown District between the hours of 2 a.m. and 6 a.m.
- Outside of the hours between 2 a.m. and 6 a.m., it shall be unlawful to:
  - stop, stand, or park a trailer in a City Parking Lot that is not attached to a motor vehicle;
  - stop, stand, or park a trailer in a City Parking Lot for a period of time exceeding two (2) hours; or
  - stop, stand, or park a trailer in a City Parking Lot outside of spaces designated for parking. A trailer attached to a motor vehicle may utilize two parking spaces to accommodate the length of the vehicle and trailer, however, the vehicle and trailer must be entirely contained within the area so designated by lines or markings for the parking space(s).



# Construction Trailers

- Trailers, regardless of whether they are attached to a motor vehicle, that are being used for active construction purposes on property or buildings abutting a City Parking Lot may be located in a City Parking Lot provided the following conditions are met:
  - a valid building permit has been issued by the City and the permit therefore is properly displayed at the premises where the construction is taking place; and
  - the trailer must be located in an area that is adjacent to the premises where the construction is taking place; and
  - the trailer must be in a location where it does not unreasonably block any pedestrian walkways or vehicular traffic, or otherwise endanger the public health, safety, or welfare.
- Trailers located in a City Parking Lot pursuant to this Subsection (c) are not restricted to the time periods identified in Subsection (b) above and are not required to be contained within parking spaces.



# Construction Trailers

- The City shall approve the placement of the construction trailer in the process of obtaining a building permit, however, the City maintains the ability to require relocation of the trailer during construction. The approval of placement of the construction trailer is subject to revocation by the City if the construction is not progressing in a reasonable timeframe, or if the City determines that conditions have become unsafe.
- Failure to comply with this §12-127(c) shall constitute a violation and shall subject the owner or operator to the code enforcement provisions and procedures provided in §2-81 through §2-96. Cape Coral Code of Ordinances. Violations of this §12- 127(c) shall be punishable by a fine of not less than \$100. Each day that a violation exists shall constitute a separate and distinct violation. Trailers located in a City Parking Lot in violation of this Subsection (c) are subject to removal by the City.







<b>Item Number:</b>	<b>B.(1)</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Introductions</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Resolution 83-18 (VP 17-0019\*) Set Public Hearing Date for May 14, 2018

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**Hearing Examiner Recommendation:** The Hearing Examiner recommends that City Council approve the application for the requested vacations, subject to the conditions set forth in Hearing Examiner Recommendation Order 5-2018.

**Staff Recommendation:** Staff recommends approval.

**SUMMARY EXPLANATION AND BACKGROUND:**

A resolution providing for the vacation of plat for all platted interior lot lines and public utility and drainage easements lying within Blocks 4722-4725, Cape Coral Unit 70; property located at 3514 Chiquita Boulevard.

**LEGAL REVIEW:**

Brian R. Bartos, Assistant City Attorney

**EXHIBITS:**

Resolution 83-18 (VP 17-0019)  
 Backup materials from the March 6, 2018 Hearing Examiner Hearing  
 Letter of Opposition  
 Hearing Examiner Recommendation Order  
 Staff Presentation

**PREPARED BY:**

Division-      Department- City  
   Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

Mike Struve, Planning Team Coordinator

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Resolution 83-18 (VP 17-0019)	Resolution
▣ Back up materials from the March 6, 2018 Hearing Examiner Hearing	Backup Material
▣ Letter of Opposition	Backup Material
▣ Hearing Examiner Recommendation Order	Backup Material
▣ Staff Presentation	Backup Material

RESOLUTION 83 - 18

A RESOLUTION PROVIDING FOR THE VACATION OF PLAT FOR ALL PLATTED INTERIOR LOT LINES AND PUBLIC UTILITY AND DRAINAGE EASEMENTS LYING WITHIN BLOCKS 4722, 4723, 4724, AND 4725, CAPE CORAL UNIT 70; PROPERTY LOCATED AT 3514 CHIQUITA BOULEVARD; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Petition was filed by NEWCOM REAL PROPERTIES, LLC, for the vacation of plat on property described herein; and

WHEREAS, the Petition meets the requirements of Land Use Development Regulations, Article VIII, Section 8.11, Vacation of Plats, Streets and Other Property of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that such Petition be granted.

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

Section 1. The Petition meets the requirements of Article VIII, Section 8.11, of the Code of Ordinances of the City of Cape Coral and it is in the best interest of the public that such Petition be granted. The platted interior lot lines and public utility and drainage easements within the following described property are hereby vacated, to wit:

A TRACT OR PARCEL OF LAND BEING BLOCKS 4722 THROUGH 4725 AND PART OF SW 35TH STREET, SW 35TH TERRACE, SW 36TH STREET AND PART OF SW 34TH TERRACE, ALL LYING IN CAPE CORAL SUBDIVISION, UNIT 70 AS RECORDED IN PLAT BOOK 22, PAGES 58 THROUGH 87, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1 OF SAID BLOCK 4722; THENCE RUN N.00°00'18"E. ALONG THE WEST LINE OF SAID BLOCK 4722 AND THE EAST RIGHT-OF-WAY LINE OF SW 17TH AVENUE (60 FEET WIDE) FOR 100.12 FEET TO A POINT OF CURVATURE; THENCE RUN NORTHEASTERLY FOR 39.15 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 89° 43'43", A CHORD BEARING OF N.44°52'09"E. AND A CHORD DISTANCE OF 35.27 FEET TO A POINT OF TANGENCY ON THE SOUTH RIGHT-OF-WAY LINE OF SW 34TH STREET (60 FEET WIDE); THENCE RUN N.89°44'01"E. ALONG SAID SOUTH RIGHT-OF-WAY LINE FOR 666.46 FEET TO A POINT OF CURVATURE; THENCE RUN SOUTHEASTERLY FOR 39.25 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 89°57'50", A CHORD BEARING OF S.45°17'04"E. AND A CHORD DISTANCE OF 35.34 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF CHIQUITA BOULEVARD SOUTH (100 FEET WIDE); THENCE RUN S.00°18'09"E. ALONG SAID WEST RIGHT-OF-WAY LINE FOR 1509.66 FEET TO A POINT OF CURVATURE; THENCE RUN SOUTHWESTERLY FOR 39.40 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°18'21", A CHORD BEARING OF S.44°51'01"W. AND A CHORD DISTANCE OF 35.45 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SW 36TH TERRACE (60 FEET WIDE); THENCE RUN N.89°59' 48"W. ALONG SAID NORTH RIGHT-OF-WAY LINE FOR 674.56 FEET TO A POINT OF CURVATURE; THENCE RUN NORTHWESTERLY FOR 39.27 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°00'06", A CHORD BEARING OF N.44°59'45"W. AND A CHORD DISTANCE OF 35.36 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF THE AFORESAID SW 17TH AVENUE; THENCE RUN N.00°00'18"E. ALONG SAID EAST RIGHT-OF-WAY LINE FOR 1406.38 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 25.759 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE EAST RIGHT-OF-WAY LINE OF THE AFORESAID SW 17TH AVENUE TO BE N.00°00'18"E.

Section 2. The Applicant shall meet the following terms and conditions:

- 1. Within 60 days from the date of adoption of this vacation, the owner shall provide to the City an easement deed that provides a six-foot wide public utility and drainage easement around the perimeter of the site. This deed shall be approved by the City Property Broker prior to execution.
- 2. Prior to site plan approval, the developer shall remove or relocate the existing fire hydrant on Block 4722. Alternatively, at the sole discretion of the City, the fire hydrant may remain in place provided the developer installs a backflow preventer, check valve, or similar device on the water line within the perimeter easement at the eastern property line of the site.
- 3. This resolution shall be recorded with the Office of the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the applicant provides the City with an easement deed as described in Condition 1 above and reimburses the Department of Community Development for all recording fees associated with this resolution and the easement deed.

Section 3. This Resolution shall take effect upon its recording within the Office of the Lee County Clerk of Court by the City of Cape Coral.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM,  
CITY CLERK

APPROVED AS TO FORM:



BRIAN R. BARTOS  
ASSISTANT CITY ATTORNEY  
res/vp17-0019



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP17-0019

REQUEST TO PLANNING & ZONING COMMISSION AND COUNCIL FOR A VACATION OF PLAT

**FEE: \$843.00** – In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4) Advertising costs must be paid prior to public hearing otherwise case will be pulled from public hearing.

Following the approval of your request, the applicant shall be responsible for reimbursing the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.

OWNER OF PROPERTY

Newcom Real Properties, LLC

Address: 5707 S Cass Ave STE 1070

City: Westmont State: IL Zip 60559

Phone: 630-251-1015

APPLICANT

Newcom Real Properties, LLC

EMAIL steve@sgn-llc.com

Address: 5707 S Cass Ave STE 1070

City: Westmont State: IL Zip 60559

Phone: 630-251-1015

AUTHORIZED REPRESENTATIVE

Joe Mazurkiewicz, Jr./BJM Consulting, Inc

EMAIL joe@bjmconsult.com

Address: PO Box 101655

City: Cape Coral State: FL Zip 33910

Phone: 239-470-5778

Unit 70 Block 4722-4725 Lot(s) All Subdivision Cape Coral

Address of Property 3514 Chiquita Blvd S

Current Zoning MR Plat Book 22 , Page 85+VAC ROW #2009000071311

Strap Number 04-45-23-C2-04724.0000





DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP17-0019

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant, agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

(SIGNATURE MUST BE NOTARIZED)

Steve Newcom for Newcom Real Properties, LLC  
APPLICANT NAME (PLEASE TYPE OR PRINT)

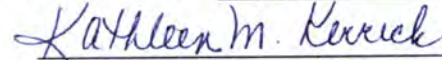
  
APPLICANT'S SIGNATURE MANAGING MEMBER

STATE OF ILLINOIS COUNTY OF DUPAGE

Sworn to (or affirmed) and subscribed before me this 9th day of October, 2017, by  
STEVEN NEWCOM who is personally known or produced PERSONALLY KNOWN  
as identification.

Exp. Date: 5/1/2020 Commission Number: 693020

Signature of Notary Public:



Printed name of Notary Public:

KATHLEEN M. KERRICK

KATHLEEN M KERRICK  
Official Seal  
Notary Public - State of Illinois  
My Commission Expires May 1, 2020



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP17-0019

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT

Joe Mazurkiewicz, Jr./BJM Consulting, Inc  
(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE PLANNING & ZONING COMMISSION/ LOCAL PLANNING AGENCY, BOARD OF ZONING ADJUSTMENTS AND APPEALS AND/OR CITY COUNCIL FOR

UNIT 70 BLOCK 4722-4725 LOT(S) All SUBDIVISION Cape Coral

OR LEGAL DESCRIPTION

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

Steve Newcom for Newcom Real Properties, LLC

PROPERTY OWNER (Please Print)

PROPERTY OWNER (Please Print)

STEVEN NEWCOM  
PROPERTY OWNER (Signature & Title)

MANAGING MEMBER

PROPERTY OWNER (Signature & Title)

STATE OF ILLINOIS, COUNTY OF

DUPAGE

Subscribed and sworn to (or affirmed) before me this

9TH

day of OCTOBER, 2017, by

STEVEN NEWCOM who is personally known or produced  
as identification.

PERSONALLY KNOWN

Exp. Date:

5/1/2020

Commission Number:

693020

Signature of Notary Public:

KATHLEEN M. KERRICK

Printed name of Notary Public:

KATHLEEN M. KERRICK

KATHLEEN M KERRICK  
Official Seal  
Notary Public - State of Illinois  
My Commission Expires May 1, 2020

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation paper.





DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP17-0019

# ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I or my representative must attend any applicable meetings scheduled for the Hearing Examiner, Planning & Zoning Commission/Local Planning Agency, and City Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

Newcom Real Properties, LLC  
CORPORATION/COMPANY NAME

Steve Newcom  
PROPERTY OWNER (PLEASE TYPE OR PRINT)

STATE OF ILLINOIS, COUNTY OF

Sworn to (or affirmed) and subscribed before me this 9th day of Oct., 2017, by  
STEVEN NEWCOM who is personally known or produced PERSONALLY KNOWN  
as identification.

[Signature]  
PROPERTY OWNER'S SIGNATURE  
MANAGING MEMBER

Exp. Date: 5/1/2020 Commission Number: 693020

Signature of Notary Public:

Printed name of Notary Public:

(SIGNATURE MUST BE NOTARIZED)

[Signature]  
KATHLEEN M. KERRICK

KATHLEEN M KERRICK  
Official Seal  
Notary Public - State of Illinois  
My Commission Expires May 1, 2020



DEPARTMENT OF COMMUNITY DEVELOPMENT

VACATION OF PLAT APPLICATION

Questions: 239-574-0776

Case # VP17-0019

**DOCUMENTARY EVIDENCE (LUDR, Section 8.3.1.C.6.f)**

A copy of all documentary evidence shall be made available to the decision-making body or the Hearing Examiner and to staff no later than two business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

I have read the above requirement and agree to comply with this provision.

Steve Newcom for Newcom real Properties, LLC  
OWNER/APPLICANT (PLEASE TYPE OR PRINT)

[Signature]  
OWNER/APPLICANT SIGNATURE MANAGING MEMBER

(SIGNATURE MUST BE NOTARIZED)

STATE OF ILLINOIS COUNTY OF DUPAGE

Sworn to (or affirmed) and subscribed before me on this 9<sup>TH</sup> day of OCTOBER 2017 by STEVEN NEWCOM, who is personally known or who has produced PERSONALLY KNOWN as identification.

Exp. Date 5/1/2020  
Commission # 693020

Kathleen M. Kerrick  
Signature of Notary Public  
KATHLEEN M. KERRICK  
Print Name of Notary Public





# BJM Consulting, Inc.

Joe Mazurkiewicz, Jr.  
President  
P O Box 101655  
Cape Coral, FL 33910

Telephone 239-470-5778  
Email: joe@bjmconsult.com

November 1, 2017

Mr. Vince Cautero, Director  
Department Community Development  
City of Cape Coral  
PO Box 150027  
Cape Coral FL 33915-0027

RE: Vacation of Internal Lot Lines and PUD's, BLK 4722 thru 4725

Dear Mr. Cautero,

BJM Consulting, Inc. represents the Newcom Real Properties, LLC the owner of all the property within Block 4722-4725. The address of the properties is: 3514 Chiquita BLVD S.

The site is located near the intersection of Chiquita BLVD S and Savona PRWY, its future land use is CAC (Commercial Activity Center), existing zoning is MR (Marketplace/Residential). The site is 25.75 +/- acres and is currently serviced by all three utilities.

We are requesting the vacation of all the internal lot lines and internal 6' PUD's to allow the development of the property as a single tract of land. The public rights of ways and adjoining PUD's were vacated by previous action of the city in Resolution 03-09 - VP - 07-00600016.

We have sent letter to all three utilities asking for their finding of no objection to this request. To the best of our knowledge there will be no impact on the utilities as there are none located within any of the internal lot lines we are requesting to be vacated.

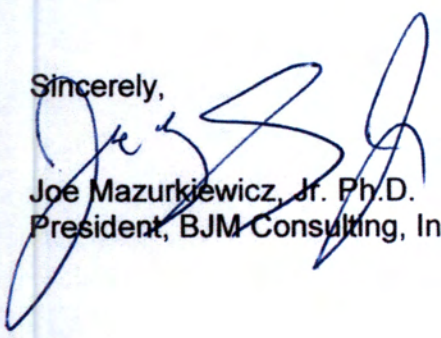
We have a purchase contract for the tract and one of the buyer's funders are requesting this action. Anything you can do to move this very simple and noncontroversial application through the process quickly will be sincerely appreciated.

We respectfully request your review and approval of this vacation application.

Please let us know if you have any questions or concerns regarding these applications.



Sincerely,



Joe Mazurkiewicz, Jr. Ph.D.  
President, BJM Consulting, Inc.

**Detail by Entity Name**

Foreign Limited Liability Company  
NEWCOM REAL PROPERTIES LLC

**Filing Information**

**Document Number** M04000000862  
**FEI/EIN Number** 20-0216479  
**Date Filed** 02/24/2004  
**State** CO  
**Status** ACTIVE

**Principal Address**

3313 SUNSET KEY CIRCLE  
UNIT #707  
PUNTA GORDA, FL 33955

Changed: 03/22/2017

**Mailing Address**

3313 SUNSET KEY CIRCLE  
UNIT #707  
PUNTA GORDA, FL 33955

Changed: 03/22/2017

**Registered Agent Name & Address**

NEWCOM, STEVEN G  
3313 SUNSET KEY CIRCLE  
UNIT # 707  
PUNTA GORDA, FL 33955

Address Changed: 04/20/2006

**Authorized Person(s) Detail****Name & Address**

Title MGRM

NEWCOM, STEVEN G  
3313 SUNSET KEY CIRCLE  
UNIT #707  
PUNTA GORDA, FL 33955

**Annual Reports**

Report Year	Filed Date
2015	03/04/2015
2016	03/14/2016
2017	03/22/2017

**Document Images**



**Property Data****STRAP: 04-45-23-C2-04724.0000 Folio ID: 10101386****Owner Of Record**

NEWCOM REAL PROPERTIES LLC  
5707 S CASS AVE STE 1070  
WESTMONT IL 60559

**Site Address**

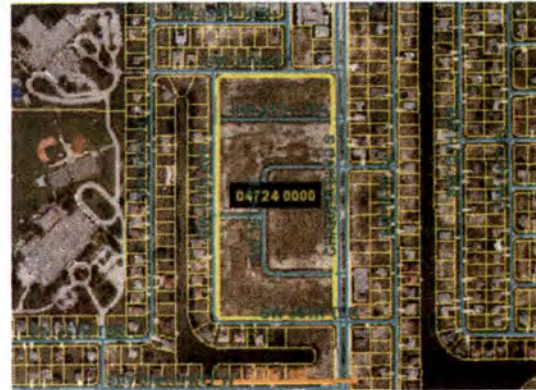
3514 CHIQUITA BLVD S  
CAPE CORAL FL 33914

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

CAPE CORAL UNIT 70  
BLKS 4722 4723 4724 +  
4725 PB 22 PG 85 +  
VAC ROW INST # 2009000071311

**Classification / DOR Code**

ACREAGE NOT AG CLASSIFIED / 99

**[ Tax Map Viewer ]****[ Pictometry Aerial Viewer ]****Image of Structure****Current Working Values**

**Just** 321,875 **As Of** 07/10/2017

**Attributes**

Land Units Of Measure	AC
Units	25.75
Frontage	0
Depth	0
Total Number of Buildings	0
Total Bedrooms / Bathrooms	0
Total Living Area	0
1st Year Building on Tax Roll	0
Historic District	No

**Property Value History**

Tax Year	Just	Market Assessed	Capped Assessed	Taxable
1992	384,100	384,100	384,100	384,100
1993	315,160	315,160	315,160	315,160
1994	315,160	315,160	315,160	315,160
1995	315,160	315,160	315,160	315,160
1996	285,620	285,620	285,620	285,620
1997	275,770	275,770	275,770	275,770
1998	275,770	275,770	275,770	275,770
1999	196,980	196,980	196,980	196,980
2000	196,980	196,980	196,980	196,980
2001	196,980	196,980	196,980	196,980
2002	196,980	196,980	196,980	196,980
2003	334,860	334,860	334,860	334,860
2004	965,190	965,190	965,190	965,190
2005	1,181,860	1,181,860	1,181,860	1,181,860
2006	1,356,730	1,356,730	1,356,730	1,356,730
2007	1,033,700	1,033,700	1,033,700	1,033,700
2008	1,033,700	1,033,700	1,033,700	1,033,700
2009	1,505,060	1,505,060	1,505,060	0
2010	1,402,303	1,402,303	1,402,303	1,402,303
2011	841,382	841,382	841,382	841,382
2012	218,875	218,875	218,875	218,875
2013	218,875	218,875	218,875	218,875
2014	283,250	283,250	240,763	240,763
2015	283,250	283,250	264,839	264,839



## Exemptions

No existing exemptions found for this property.



## Values (2017 TRIM)

Property Values		Attributes	
Just	321,875	Land Units Of Measure <sup>1</sup>	AC
Assessed	321,875	Units <sup>1</sup>	25.75
Portability Applied	0	Frontage	0
Cap Assessed	320,455	Depth	0
Taxable	320,455	Total Number of Buildings	0
Cap Difference	1,420	Total Bedrooms / Bathrooms	0
		Total Living Area <sup>1</sup>	0
		1st Year Building on Tax Roll <sup>1</sup>	0
		Historic District	Nc

## Taxing Authorities

### CITY OF CAPE CORAL / 057

Name / Code	Category	Mailing Address
LEE CO GENERAL REVENUE / 044	County	Lee County Office of Management & Budget PO BOX 398 FORT MYERS FL 33902-0398
LEE CO ALL HAZARDS PROTECTION DIST / 101	Dependent District	Lee County Office of Management & Budget PO BOX 398 FORT MYERS FL 33902-0398
LEE CO LIBRARY DIST / 052	Dependent District	Lee County Office of Management & Budget PO BOX 398 FORT MYERS FL 33902-0398
MUNICIPAL SOLID WASTE DISPOSAL MSTU / 116	Dependent District	Lee County Office of Management & Budget PO BOX 398 FORT MYERS FL 33902-0398
LEE CO HYACINTH CONTROL DIST / 051	Independent District	RUSSELL BAKER 15191 HOMESTEAD RD LEHIGH ACRES FL 33971
LEE CO MOSQUITO CONTROL DIST / 053	Independent District	RUSSELL BAKER 15191 HOMESTEAD RD LEHIGH ACRES FL 33971
WEST COAST INLAND NAVIGATION DIST / 098	Independent District	CHARLES W LISTOWSKI EXECUTIVE DIRECTOR 200 MIAMI AVE E VENICE FL 34285-2408
CITY OF CAPE CORAL / 014	Municipal	VICTORIA BATEMAN FINANCIAL SERVICES DIRECTOR PO BOX 150027 CAPE CORAL FL 33915-0027
PUBLIC SCHOOL - BY LOCAL BOARD / 012	Public Schools	AMI DESAMOURS BUDGET DEPARTMENT 2855 COLONIAL BLVD FORT MYERS FL 33966
PUBLIC SCHOOL - BY STATE LAW / 013	Public Schools	AMI DESAMOURS BUDGET DEPARTMENT 2855 COLONIAL BLVD FORT MYERS FL 33966
SFWMD-DISTRICT-WIDE / 110	Water District	MICHELLE QUIGLEY 3301 GUN CLUB RD WEST PALM BEACH, FL 33406
SFWMD-EVERGLADES CONSTRUCTION PROJECT / 084	Water District	MICHELLE QUIGLEY 3301 GUN CLUB RD WEST PALM BEACH, FL 33406
SFWMD-OKEECHOBEE BASIN / 308	Water District	MICHELLE QUIGLEY 3301 GUN CLUB RD





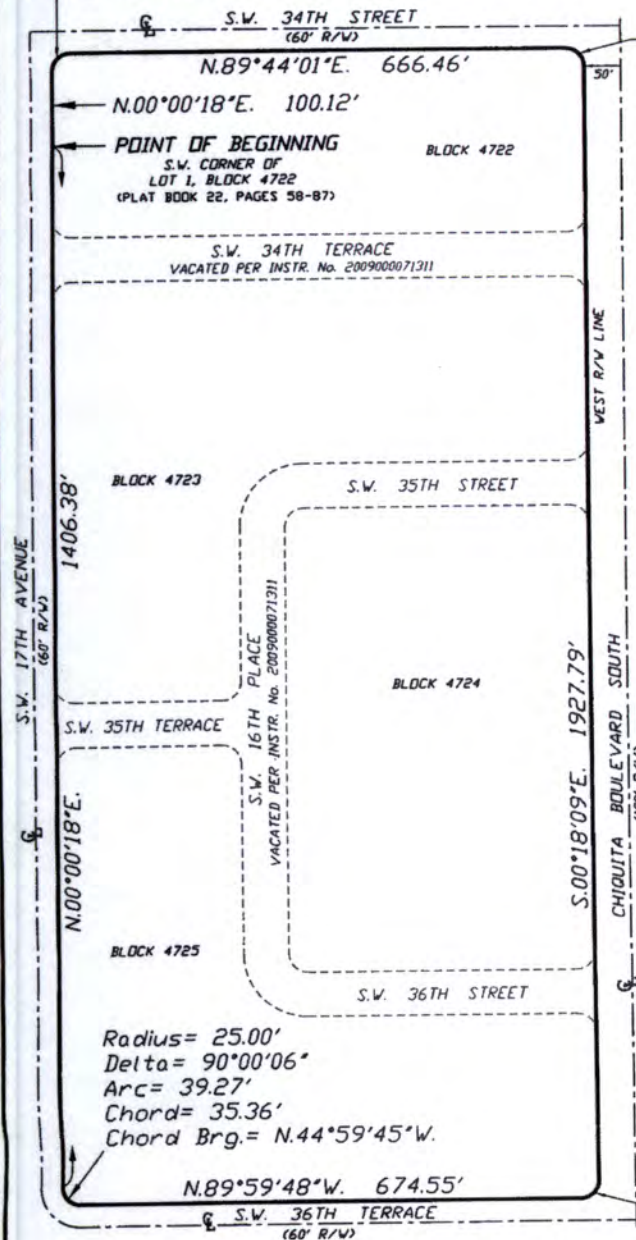


SPECIFIC PURPOSE SURVEY OF

**BLOCKS 4722 THROUGH 4725 AND PART OF  
VACATED S.W. 16TH PLACE, S.W. 34TH TERRACE,  
S.W. 35TH TERRACE, S.W. 35TH STREET,  
AND S.W. 36TH STREET  
CAPE CORAL SUBDIVISION, UNIT 70**

SECTION 4, TOWNSHIP 45 SOUTH, RANGE 23 EAST  
(PLAT BOOK 22, PAGES 58-87)  
LEE COUNTY, FLORIDA

Radius= 25.00'  
Delta= 89°43'43"  
Arc= 39.15'  
Chord= 35.27'  
Bearing= N.44°52'09"E.



Radius= 25.00'  
Delta= 89°57'50"  
Arc= 39.25'  
Chord= 35.34'  
Bearing= S.45°17'04"E.

**DESCRIPTION:**

A TRACT OR PARCEL OF LAND BEING BLOCKS 4722 THROUGH 4725 AND PART OF SW 35TH STREET, SW 35TH TERRACE, SW 36TH STREET AND PART OF SW 34TH TERRACE, ALL LYING IN CAPE CORAL SUBDIVISION, UNIT 70 AS RECORDED IN PLAT BOOK 22, PAGES 58 THROUGH 87, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

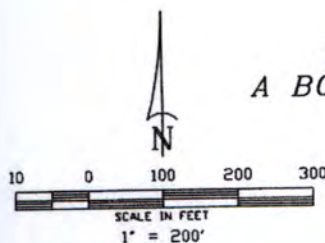
BEGINNING AT THE SOUTHWEST CORNER OF LOT 1 OF SAID BLOCK 4722; THENCE RUN N00°00'18"E. ALONG THE WEST LINE OF SAID BLOCK 4722 AND THE EAST RIGHT-OF-WAY LINE OF SW 17TH AVENUE (60 FEET WIDE) FOR 100.12 FEET TO A POINT OF CURVATURE; THENCE RUN NORTHEASTERLY FOR 39.15 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 89° 43'43", A CHORD BEARING OF N.44°52'09"E. AND A CHORD DISTANCE OF 35.27 FEET TO A POINT OF TANGENCY ON THE SOUTH RIGHT-OF-WAY LINE OF SW 34TH STREET (60 FEET WIDE); THENCE RUN N.89°44'01"E. ALONG SAID SOUTH RIGHT-OF-WAY LINE FOR 666.46 FEET TO A POINT OF CURVATURE; THENCE RUN SOUTHEASTERLY FOR 39.25 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 89°57'50", A CHORD BEARING OF S.45°17'04"E. AND A CHORD DISTANCE OF 35.34 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF CHIQUITA BOULEVARD SOUTH (100 FEET WIDE); THENCE RUN S.00°18'09"E. ALONG SAID WEST RIGHT-OF-WAY LINE FOR 1509.66 FEET TO A POINT OF CURVATURE; THENCE RUN SOUTHWESTERLY FOR 39.40 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°18'21", A CHORD BEARING OF S.44°51'01"W. AND A CHORD DISTANCE OF 35.45 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SW 36TH TERRACE (60 FEET WIDE); THENCE RUN N.89°59'48"W. ALONG SAID NORTH RIGHT-OF-WAY LINE FOR 674.55 FEET TO A POINT OF CURVATURE; THENCE RUN NORTHWESTERLY FOR 39.27 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°00'06", A CHORD BEARING OF N.44°59'45"W. AND A CHORD DISTANCE OF 35.36 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF THE AFORESAID SW 17TH AVENUE; THENCE RUN N.00°00'18"E. ALONG SAID EAST RIGHT-OF-WAY LINE FOR 1406.38 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 25.759 ACRES, MORE OR LESS.

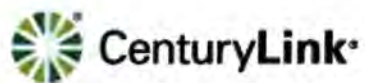
BEARINGS ARE BASED ON THE EAST RIGHT-OF-WAY LINE OF THE AFORESAID SW 17TH AVENUE TO BE N.00°00'18"E.

Radius= 25.00'  
Delta= 90°18'21"  
Arc= 39.40'  
Chord= 35.45'  
Bearing= S.44°51'01"W.

**THIS IS NOT  
A BOUNDARY SURVEY**



*John B. Harris*  
MARCH 24, 2009  
JOHN B. HARRIS  
LAND SURVEYOR #6515  
FLORIDA CERTIFICATE OF AUTHORIZATION LB #6921



**Attention:**

Joe Mazurkiewicz, Jr.  
joe@bjmconsult.com  
BJM Consulting, Inc  
P.O Box 101655  
Cape Coral, FL 33910  
Phone: (239) 470-5778

**Subject:** - Vacation of Internal Lot Lines and PUD's, BLK 4722 thru 4725

**Site Address:** 3514 Chiquita Blvd S  
Strap # 04-45-23-C2-04727.0000

Dear Joe Mazurkiewicz

In regard to the referenced property above CenturyLink has **No Objection** to the vacation of the internal 6' PUD's.

Sincerely

THANK YOU!

*Justin Lane*

OSP Engineering  
3301 Del Prado Blvd S  
Office: (239)-984-7009  
justin.lane@centurylink.com



**12600 Westlinks Drive Suite 4  
Fort Myers Fl. 33913  
Phone: 239-432-1805**

February 2, 2018

BJM Consulting  
C/O Joe Mazurkiewicz  
P.O. Box 101655  
Cape Coral, Florida 33910

Re; 3514 Chiquita Blvd.

Dear Joe Mazurkiewicz,

This letter will serve to inform you that Comcast has no objection to your proposed vacation of the address referenced above.

Should you require additional information or assistance, please feel free to contact me here at 432-1805.

Cordially,

A handwritten signature in black ink, appearing to read 'Mark Cook'.

Mark Cook  
Project Coordinator





Lee County Electric Cooperative, Inc.  
Post Office Box 3455  
North Fort Myers, FL 33918-3455  
(239) 995-2121 • Fax (239) 995-7904  
[www.lcec.net](http://www.lcec.net)

February 9, 2018

Mr. Joe Mazurkiewicz, Jr.  
BJM Consulting  
President  
P O Box 101655  
Cape Coral, FL 33910

Re: Letter of No Objection to Vacation of Interior Lot Lines 3514 S. Chiquita Boulevard, Cape Coral, FL; Owner: Newcom Real Properties, LLC; Strap#: 04-45-23-C2-04727.0000.

Dear Mr. Mazurkiewicz:

You have opened up negotiations, on behalf of your client, Newcom Real Properties, LLC, concerning the vacation of a certain interior lot lines contained within lands located on a sketch and description known as Blocks 4722 through 4725, Unit 70, Cape Coral Subdivision, according to the map or plat thereof as recorded in Plat Book 22, Pages 58 through 87, inclusive, of the Public Records of Lee County, Florida.

We have reviewed the Plat, the request submitted with sketch and description, and our internal records. LCEC has **no objection** to the vacation of the internal lot lines as submitted and reflected in the request. However, we do require in the after situation, that a 6 foot-wide perimeter easement be retained for the provision of power to the site. LCEC has facilities in the northern easement area to the northwest corner of the property to service a pump station belonging to the City of Cape Coral, and along the eastern property line travelling north and south to service other properties along the Chiquita route.

Should there be any questions please call me at 239-656-2112, or, if you prefer, I can be reached by email at [russe1.goodman@lcec.net](mailto:russe1.goodman@lcec.net).

Very truly yours,

Russel Goodman,  
SR/WA

Digitally signed by Russel Goodman, SR/WA  
DN: cn=Russel Goodman, SR/WA, o=Lee  
County Electric Co-operative, ou=Design  
and Engineering,  
email=Russel.Goodman@lcec.net, c=US  
Date: 2018.02.09 12:12:35 -05'00'

Russel Goodman, SR/WA  
Senior Right of Way Agent



PERMANENT UTILITY EASEMENT

This grant of Easement, made this 7<sup>th</sup> day of JULY, 2006, by  
and between **Newcom Real Properties, L.L.C., a Colorado Limited Liability  
Company, 10 S. Wacker Drive, Suite 1970, Chicago, Illinois, 60606** "Grantor(s)", and  
the **City of Cape Coral**, a Florida Municipal Corporation, "Grantee".

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

A parcel of land for permanent utility easement purposes situated in a  
portion of Lot 1, Block 4722, Cape Coral Subdivision, Unit 70, according to  
Plat Book 22 at Pages 58-87, of the Public Records of Lee County, Florida,  
being more particularly described in Exhibit "A", which is attached hereto  
and incorporated herein by reference.

Reserving unto the Grantor, his successors and assigns forever, the right to construct, maintain  
and place upon the property being herein conveyed landscaping and/or other surface  
improvements provided that such does not unduly interfere with the utility facilities constructed.  
If Grantee disturbs the improvements upon the Easement, the Grantor, his successors and  
assigns shall be solely responsible for the cost of disturbing and restoring any of the foregoing  
improvements in accordance with Section 3.14.5 of the City of Cape Coral Land Use and  
Development Regulations.

**In Witness** Whereof, Grantors have hereunto set their hands the day and year first above  
written.

Newcom Real Properties, L.L.C., a Colorado Limited  
Liability Company

By: [Signature]  
(Grantor Signature)

Print Name: STEVEN G. NEWCOM

Title: MANAGING MEMBER

(Corporate Seal)

[Signature]  
First Witness (Signature)  
Jennifer Durkin  
Print, Type or Stamp Name of First Witness

[Signature]  
Second Witness (Signature)  
Lauren Kniz  
Print, Type or Stamp Name of Second Witness

STATE OF: ILLINOIS

COUNTY OF: COOK

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of JULY, 2006,  
by STEVEN G. NEWCOM who is/is not personally known by me or has  
produced as identification and who did/did not take an oath.  
(Describe Identification)

My Commission Expires: 4/16/08

Notary 172-725



[Signature]  
Notary Public Signature  
KATHLEEN M. KERRICK  
Notary Public Print or Type Name

Prepared by:  
CITY OF CAPE CORAL  
P.O. BOX 150027  
CAPE CORAL FLORIDA 33915-0027  
Strap: 04-45-23-C2-04722-0010

EXHIBIT A

PUMP STATION 531  
 PARCEL IN LOT 1, BLOCK 4722, CAPE CORAL UNIT 70  
 (PLAT BOOK 22 AT PAGES 58-87, LEE COUNTY RECORDS)  
 SECTION 4, TOWNSHIP 45 SOUTH, RANGE 23 EAST  
 LEE COUNTY, FLORIDA

A TRACT OR PARCEL OF LAND BEING PART OF LOT 1, BLOCK 4722, CAPE CORAL UNIT 70 AS RECORDED IN PLAT BOOK 22 AT PAGES 58 THROUGH 87 IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, LYING IN SECTION 4, TOWNSHIP 45 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

FROM THE NORTHEAST CORNER OF SAID LOT 1 RUN S 89° 43' 47" W ALONG THE NORTH LINE OF SAID LOT 1 FOR 21.32 TO THE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING RUN S 00° 00' 04" W FOR 30.00 FEET; THENCE RUN S 89° 43' 47" W FOR 30.00 FEET TO AN INTERSECTION WITH THE WEST LINE OF SAID LOT 1; THENCE RUN N 00° 00' 04" E ALONG SAID WEST LINE FOR 5.12 FEET TO A POINT OF CURVATURE; THENCE RUN NORTHEASTERLY ALONG AN ARC OF SAID CURVE TO THE RIGHT OF RADIUS 25.00 FEET (DELTA 89° 43' 43") (CHORD BEARING N 44° 51' 56" E) (CHORD 35.27 FEET) FOR 39.15 FEET TO A POINT OF TANGENCY; THENCE RUN N 89° 43' 47" E ALONG SAID NORTH LINE OF LOT 1 FOR 5.12 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 767 SQUARE FEET, MORE OR LESS.

BEARINGS HEREINABOVE MENTIONED ARE PLANE COORDINATE FOR THE FLORIDA WEST ZONE, NAD 1983 (1990 ADJUSTMENT), WHEREIN THE NORTH LINE OF SAID LOT 1 BEARS S 89° 43' 47" W.

THIS SURVEY IS ONLY FOR THE BENEFIT OF:

MWH AMERICAS, INC.

NO OTHER PERSON OR ENTITY MAY RELY ON THIS SURVEY.

IN MY PROFESSIONAL OPINION, AS A LICENSED FLORIDA PROFESSIONAL SURVEYOR AND MAPPER I HEREBY REPORT AND CERTIFY TO THE ABOVE THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF A PARTIAL TOPOGRAPHIC SURVEY MADE AND PLATTED UNDER MY DIRECTION DATED AS SHOWN IN NOTE 1 HEREON AND MADE IN ACCORDANCE WITH CHAPTER 472.027, FLORIDA STATUTES.

*Frances L. Summerall*  
 FRANCES L. SUMMERALL (FIR THE FIRM - LB#642)  
 PROFESSIONAL LAND SURVEYOR  
 FLORIDA CERTIFICATE NO. 5652

DATE SIGNED:

1-6-06

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER AND NOT VALID WITHOUT SKETCH SHEET 2.

PARCEL IN LOT 1, BLOCK 4722, CAPE CORAL UNIT 70  
 PLAT BOOK 22 AT PAGES 58 - 87, LEE COUNTY RECORDS  
 SECTION 4, TOWNSHIP 45 SOUTH, RANGE 23 EAST,  
 CITY OF CAPE CORAL, LEE COUNTY, FLORIDA

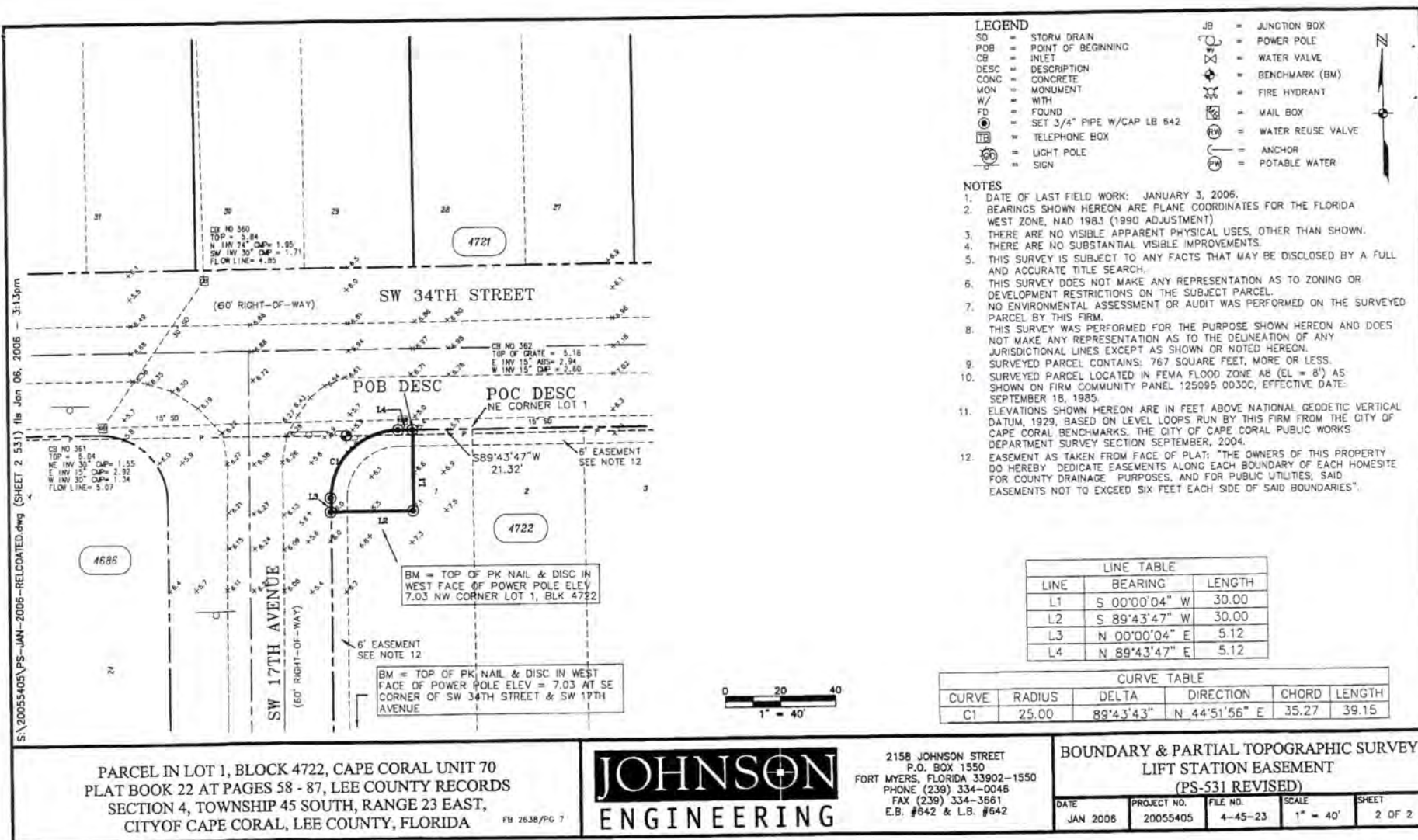
**JOHNSON**  
 ENGINEERING

2158 JOHNSON STREET  
 P.O. BOX 1550  
 FORT MYERS, FLORIDA 33902-1550  
 PHONE (239) 334-0046  
 FAX (239) 334-3661  
 E.B. #642 & L.B. #642

LEGAL DESCRIPTION  
 LIFT STATION EASEMENT  
 (PS-531)

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
JAN 2006	20055405	4-45-23	1" = 40'	1 OF 2





<b>Review Date:</b>	February 13, 2018
<b>Property Owner:</b>	Newcom Real Properties, LLC
<b>Owner Address:</b>	5707 South Cass Avenue, Suite 1070 Chicago, IL 60606
<b>Authorized Rep.</b>	Joe Mazurkiewicz, BJM Consulting
<b>Request:</b>	The applicant requests to vacate all platted easements and all lot lines in Blocks 4722, 4723, 4724, and 4725, Unit 70, Cape Coral Subdivision.
<b>Property Location:</b>	3514 Chiquita Boulevard South
<b>Prepared By:</b>	Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator
<b>Approved By:</b>	Robert H. Pederson, AICP, Planning Manager
<b>Recommendation:</b>	<b>Approval with conditions</b>
<b>Urban Service</b>	Transition

**Property Description:**

The site is 25.7 acres on the west side of Chiquita Boulevard, less than 500 feet north of Savona Parkway (Figure 1). The site is vacant except for a City lift station at the northwest corner.<sup>1</sup> Residential uses surround the site to the north, south, and west. Several commercial uses adjacent to the site are present along Chiquita Boulevard to the north and east.

The site has a Commercial Activity Center (CAC) Future Land Use Classification and Marketplace-Residential (MR) Zoning. The site is surrounded by properties with a CAC (to the south), Commercial/Professional (to the north and east), and Multi Family Residential (to the north, south, and west) Future Land Use Classifications. Zoning is more varied and includes sites with residential zoning to the north, south, and west and commercial-zoned sites to the north and east.

The site represents an assemblage of properties occupying four blocks. In 2009 this site was enlarged from the vacation of several streets that included SW 34<sup>th</sup> Terrace, SW 35<sup>th</sup> Street, SW 35<sup>th</sup> Terrace, SW 16<sup>th</sup> Place, and SW 36<sup>th</sup> Street. Besides these rights-of-way, all underlying and adjoining easements were vacated by Resolution 3-09.

**Purpose of the Request**

The letter of intent states the vacation requested to develop the property as a single tract of land. A purchase contract exists for the site and a financier of the prospective buyer has requested this action.

---

<sup>1</sup> LS-531



Cape Coral allows construction across property lines and lot lines provided all affected parcels and lots are under common ownership. Construction can also occur over platted easements that are internal to a site when the easements lack utility facilities. In both instances, the lot lines and easements remain, unless a vacation request is approved by the City Council. Allowing construction across lot lines and over easements is a practice that is not universally allowed by local governments and some jurisdictions may require easement vacations, lot line adjustments, or similar actions before authorizing construction. City staff has received inquiries in the past from banks and title companies seeking clarification and confirmation of these practices in Cape Coral.

**Figure 1. Location of the 25.7-acre site (outlined in blue). Platted lot lines requested to be vacated are outlined in black.**



### Zoning History

The site had a Commercial/Professional Future Land Use Classification that was changed to CAC by Ordinance 6-08. The zoning history of the subject blocks is more varied and is summarized in Table 1.

**Table 1. Zoning History of Blocks 4722, 4723, 4724, and 4725, Unit 70.**

Block	Lots	Future Land Use	Zoning
4722	1-34	CP to CAC – ORD 6-08	R-3 to RD – ORD 61-90 RD to MR – ORD 17-11
4723	1-47	CP to CAC – ORD 6-08	R-3 to RD – ORD 61-90 RD to C-1 – ORD 67-99 C-1 to MR – ORD 17-11
4724	Tract	CP to CAC – ORD 6-08	C-1 to MR – ORD 17-11
4725	1-50	CP to CAC – ORD 6-08	R-3 to RD – ORD 61-90 RD to MR – ORD 17-11

**Analysis:**

Staff has analyzed this request for compliance with LUDR, Section 8.11, “*Vacation of plats, rights-of-way and other property*,” and consistency with the City Comprehensive Plan.

Request to Vacate Public Utility and Drainage Easements

The applicant seeks to vacate all platted easements in Blocks 4722, 4723, 4724, and 4725. All easements are on property owned by the applicant. The utility providers (CenturyLink, Comcast, and LCEC) lack facilities in the subject easements do not object to the requested vacations. The City also lacks facilities in the easements. Staff recommends a six-foot wide easement be provided by the applicant around the perimeter of the site for future utility installation and maintenance.

Request to Vacate Internal Lot Lines

The applicant requests that all internal lot lines be vacated. This action will create a single parcel for new development. While the site can be developed lawfully consistent with City regulations with the lot lines intact, Planning staff has no objection to this request. Approval of this request may eliminate ambiguity on the part of developers, lenders, and insurers as to the immediate suitability of the site for development.

**Consistency with the Comprehensive Plan**Future Land Use Element

**Policy 1.15n.** Commercial Activity Center (CAC): The purpose of this future land use classification is to promote non-residential and mixed-use development at key locations, within close proximity to major corridors throughout the City of Cape Coral in areas where a mix of uses may be developed. The Commercial Activity Center classification is a mixed-use classification designed to minimize the need for vehicle trips through the development of both residential and non-residential uses in a single project. Furthermore, the purpose of the Commercial Activity Center is to integrate all uses through landscape, site, and architectural design standards. In addition, the Commercial Activity Center land use classification is intended to provide locations that offer employment opportunities and daily goods and services to the local community and, in some instances, attract patrons from the region. Commercial Activity Centers are intended to be pedestrian friendly and interconnected with adjacent projects – whether residential or non-residential. **Staff comment: The site has MR Zoning that is consistent with the CAC Future Land**

**Use Classification.** The site is along Chiquita Boulevard, a major City street. This policy is supportive of this request.

**Policy 5.5.** The City may consider the vacation of rights-of-way to facilitate land assembly and the development of a unified, contiguous commercial project. **Staff comment: The vacation of easements and lot lines will provide a “clean,” consolidated building site and may eliminate uncertainty on the part of the development community as to the suitability of the site for new construction. This policy is supportive of this request.**

Economic Development Element

**Policy 6.3.** The City shall foster land assembly efforts in targeted areas having fragmented land ownership patterns. Such land assembly efforts shall include, but not necessarily be limited to: and, assisting land owners in establishing real estate trusts; holding meetings or workshops concerning the benefits of a unified development plan. **Staff comment: Land assembly efforts in this instance involve vacating interior easements and lot lines to provide an unencumbered, single consolidated site. This policy is supportive of this request.**

**Recommendation:**

Staff recommends **approval** of both vacations with the following conditions.

**Conditions of Approval**

1. Within 60 days from the date of adoption of this vacation, the owner shall provide to the City an easement deed that provides a six-foot wide public utility and drainage easement around the perimeter of the site. The deed shall be approved by the City Property Broker prior to execution.
2. This resolution shall be recorded with the Office of the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the applicant provides the City with an easement deed as described in Condition #1 above, and reimburses the Department of Community Development for all recording fees associated with this resolution and the easement deed.





## NOTICE TO SURROUNDING PROPERTY OWNERS

**CASE NUMBER:** VP17-0019

**REQUEST:** Newcom Real Properties, LLC seeks a vacation of plat for all platted easements within Lots 1-34, Block 4722, Lots 1-47, Block 4723, Block 4724, and Lots 1-50, Block 4725, Unit 70 Cape Coral Subdivision, and a vacation of platted lot lines within Lots 1-34, Block 4722, Lots 1-47, Block 4723, Block 4724, and Lots 1-50, Block 4725, Unit 70 Cape Coral Subdivision; property located at 3514 Chiquita Boulevard South.

**LOCATION:** 3514 Chiquita Boulevard South

**CAPE CORAL STAFF CONTACT:** Mike Struve, AICP, LEED, Planning Team Coordinator, 239-242-3255, [mstruve@capecoral.net](mailto:mstruve@capecoral.net)

**PROPERTY OWNER(S):** Newcom Real Properties, LLC

**AUTHORIZED REPRESENTATIVE:** Joe Mazurkiewicz, Jr./BJM Consulting, Inc

**UPCOMING PUBLIC HEARING:** Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on Tuesday, March 6, 2018 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

After Hearing Examiner has made a written recommendation, the case will be scheduled for a public hearing before the City Council who will review the recommendation and make a final decision. You will receive another public hearing notice when this case is scheduled for a City Council hearing.

**DETAILED INFORMATION:** The case report and colored maps for this application are available at the City of Cape Coral website, [www.capecoral.net/publichearing](http://www.capecoral.net/publichearing) (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 A.M. and 4:30 P.M. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

**HOW TO CONTACT:** Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

**ADA PROVISIONS:** In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

Department of Community Development  
Post Office Box 150027 • Cape Coral, Florida 33915-0027  
1015 Cultural Park Blvd. • Cape Coral, Florida 33990  
Email: [planningquestions@capecoral.net](mailto:planningquestions@capecoral.net)



**APPEALS:** If a person decides to appeal any decision made by the Hearing Examiner with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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Local #  
239-335-0258

Email  
FNPLegals@gannett.com

**Customer:** CITY OF CAPE CORAL\_DEPT OF COM

**Ad No.:** 0002753168

**Address:** 1015 CULTURAL PARK BLVD  
CAPE CORAL FL 33990  
USA

**Net Amt:** \$404.21

**Run Times:** 1

**No. of Affidavits:** 1

**Run Dates:** 02/24/18

**Text of Ad:**

NOTICE OF PUBLIC HEARING

CASE NUMBER: VP17-0019

REQUEST: Newcom Real Properties, LLC seeks a vacation of plat for all platted easements within Lots 1-34, Block 4722, Lots 1-47, Block 4723, Block 4724, and Lots 1-50, Block 4725, Unit 70 Cape Coral Subdivision, and a vacation of platted lot lines within Lots 1-34, Block 4722, Lots 1-47, Block 4723, Block 4724, and Lots 1-50, Block 4725, Unit 70 Cape Coral Subdivision; property located at 3514 Chiquita Boulevard South.  
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CAPE CORAL STAFF CONTACT: Mike Struve, AICP, LEED, Planning Team Coordinator, 239-242-3255, mstruve@capecoral.net

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by order of  
/s/Rebecca van Deutekom, MMC  
City Clerk  
REF # VP17-0019  
LEGAL AD - DCD  
AD#2753168 Feb. 24, 2018

Department of Community Development  
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Newcom Real Properties, LLC

APPLICATION NO: VP17-0019

STATE OF FLORIDA     )  
                                      ) §  
COUNTY OF LEE        )

I, Vincent A. Caution, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 27<sup>th</sup> day of February, 2018.

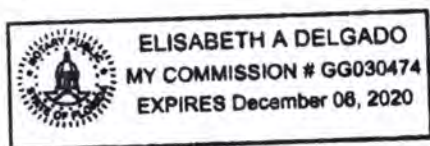


Vincent A. Caution, AICP

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of February, 2018, by Vincent A. Caution, AICP, who is personally known to me and who did not take an oath.

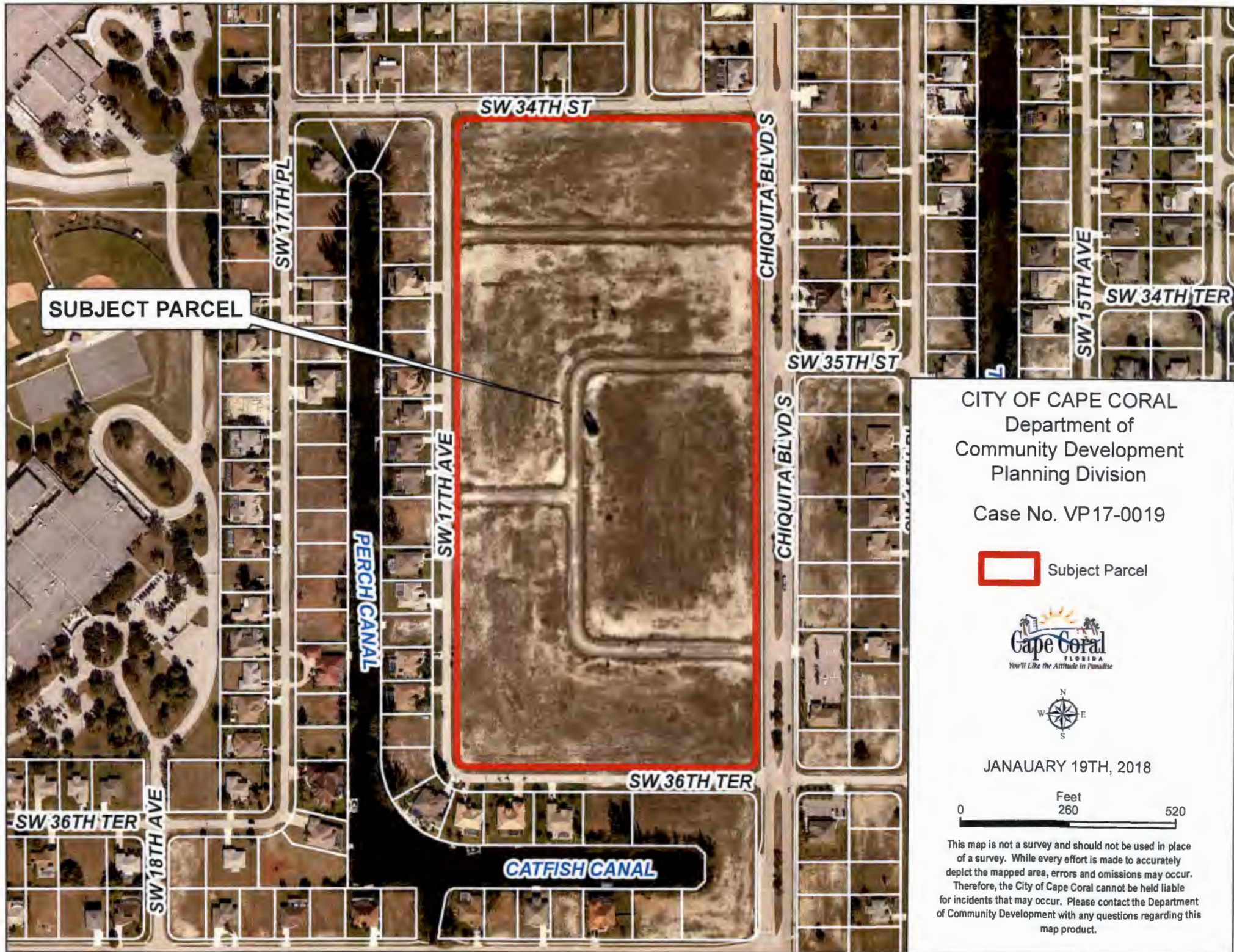
Exp. Date 12/6/20 Commission # 66030474



  
Signature of Notary Public

Elisabeth A. Delgado  
Print Name of Notary Public





CITY OF CAPE CORAL  
Department of  
Community Development  
Planning Division

Case No. VP17-0019



Subject Parcel

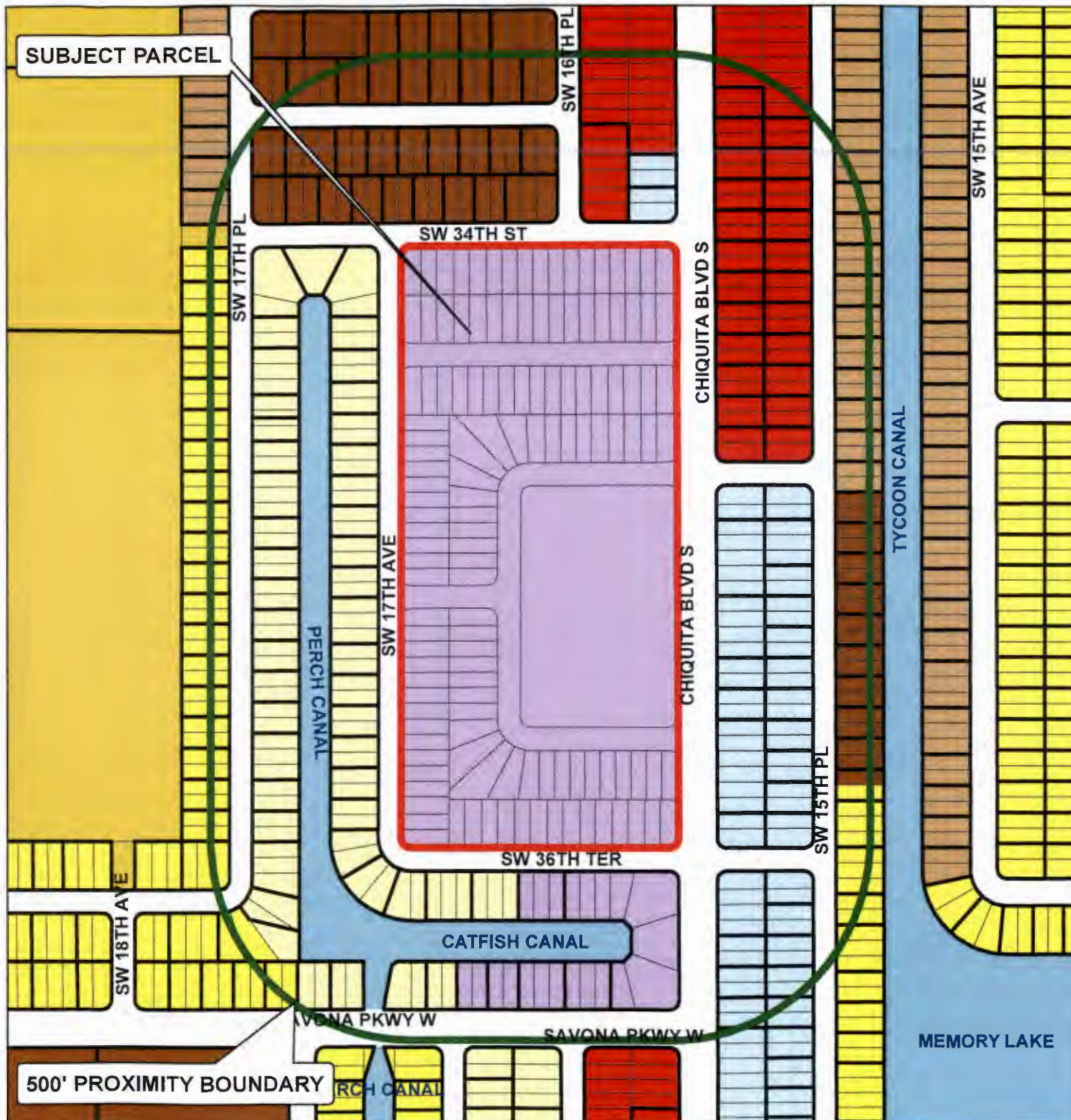


JANAUARY 19TH, 2018



This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may occur. Please contact the Department of Community Development with any questions regarding this map product.





CITY OF CAPE CORAL  
Department of  
Community Development  
Planning Division

CURRENT ZONING MAP  
500' Proximity Boundary

Case No. VP17-0019

LEGEND

500' Proximity Boundary

Subject Parcel

Zoning

C-1

MR

P-1

R-1A

R-1B

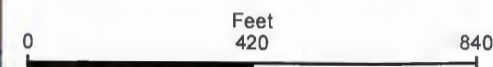
R-3

RD

RX



JANUARY 19TH, 2018



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Department of Community Development  
Planning Division  
Attn: Director

**Case Number: VP17-0019**

To Whom It May Concern:

I am writing in response to notification of the rezoning of the 25-acre lot referenced in the above case number. My husband and I are the property owners of **3530 SW 17<sup>th</sup> Ave. Cape Coral, Florida** which is part of the area that Newcom Real Properties LLC wishes to rezone for commercial use.

We are **vehemently opposed** to the rezoning of this property. We purchased this home for our retirement, with the expectation that this area would remain residential (per the zoning) and where new families would be attracted to the area due to the proximity of schools. **SW 17<sup>th</sup> Avenue** is U-shaped off Chiquita Blvd; no road runs parallel to Chiquita. Only one side of the U-shaped road goes through the neighborhood, which takes you to the three schools. It is my opinion that increased traffic from commercial development would pose a significant danger to children walking to and from school. In addition, what will happen to the Burrowing Owls, a protected species, that inhabit this parcel of land?

Newcom Real Properties has not shared their building plans. However, we do know they want the lot turned into one big parcel (asking for vacation of plat for all easements). A big box store with loading docks in the rear, requiring construction of a new access road, or a large 4 story storage unit (which already happened on Chiquita) would lower property values considerably and upset the neighborhood dynamic.

The property taxes paid to live in Cape Coral are higher than average. Because we enjoy the peaceful existence of our community, my husband and I are happy to pay these fees. This type of rezoning eradicates peaceful living.

**Please do not proceed with this rezoning. Preserve our neighborhood!**

I wish for this letter to be made part of the permanent record of these proceedings.

David & Jill McQuaide  
3530 SW 17<sup>th</sup> Ave  
Cape Coral Florida

18 MAR 5 2019

OFFICE OF THE HEARING EXAMINER, CITY OF CAPE CORAL  
HEARING EXAMINER RECOMMENDATION

**RECEIVED**

VP HEX Recommendation 5-2018  
DCD CASE # VP 17-0019  
Rendered March 6, 2018

MAR 12 2018

CITY OF CAPE CORAL  
CITY CLERKS OFFICE

**APPLICATION FOR:** Vacation of all platted easements and all lot lines in Blocks 4722, 4723, 4724, and 4725, Unit 70, Cape Coral Subdivision.

**OWNER/APPLICANT:** Newcom Real Properties, LLC.

**APPLICANT'S REPRESENTATIVE:** Joe Mazurkiewicz, BJM Consulting

**LOCATION OF PROPERTY:** 3514 Chiquita Boulevard South, Cape Coral, Florida  
Strap # 04-45-23-C2-04724.0000

**ZONING DISTRICT:** Marketplace Residential (MR)

**FUTURE LAND USE CLASSIFICATION:** Commercial Activity Center (CAC)

**URBAN SERVICE:** Transition

**HEARING DATE:** March 6, 2018

**SUMMARY OF REQUEST:** The applicant requests to vacate all platted easements and all lot lines in Blocks 4722, 4723, 4724, and 4725, Unit 70, Cape Coral Subdivision.

**I. SUMMARY OF HEARING EXAMINER RECOMMENDATION**

The Hearing Examiner recommends that City Council **approve** the application for the requested vacations, subject to the conditions set forth below.

**II. NOTICE OF HEARING**

Based on the testimony of City Staff Michael Struve at the Hearing, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of Article VIII, §8.3, Public Hearings, of the City of Cape Coral Land Use and Development Regulations ("LUDRs").

**III. PARTICIPANTS IN HEARING**

CITY STAFF: Michael Struve, AICP <sup>1</sup>

CITY CLERK'S OFFICE: Patricia Sorrels

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<sup>1</sup> Mr. Struve was recognized as an expert in land planning issues associated with this Application, based upon his prior appearances before the Hearing Examiner and his credentials which are on file with the City Clerk's Office.



APPLICANT'S REPRESENTATIVE: Joe Mazurkiewicz, BJM Consulting <sup>2</sup>

MEMBERS OF PUBLIC: Staff received four (4) telephone calls for information. In addition, staff forwarded a letter from David and Jill McQuaide, expressing their opposition to rezoning of the property.<sup>3</sup> This letter has been made part of the permanent record of the HEX proceedings, as requested by Mr. and Mrs. McQuaide. In addition, Mr. McClendon testified at public comment, asking questions about zoning and proposed use of the property.<sup>4</sup> Mr. Driscoll also testified at public comment regarding the proposed use of the property.<sup>5</sup> Both of them were referred to staff and Applicant's Representative for additional information.

#### IV. **EXHIBITS**

APPLICANT'S AND CITY STAFF'S EXHIBITS: previously submitted.

#### V. **REVIEW OF LUDR REQUIREMENTS**

Authority. The Hearing Examiner has the authority to recommend approval or denial of an application for a vacation of a plat and associated easements pursuant to LUDR §9.2.3 b.8.

Standard of Review of Evidence; Hearsay Evidence. The Hearing Examiner's recommendation is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LUDRs, upon review of the entirety of the record. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in court. In rendering this recommendation, the Hearing Examiner must consider all competent substantial evidence in the record as defined by LUDR § 8.3.1.C.3.b.

LUDR Standards. The Hearing Examiner reviewed the application in accordance with the standards set forth in LUDR § 8.11, *Vacation of plats, rights-of-way and other property*, in addition to the general standards set forth in the LUDRs and the City Comprehensive Plan.

#### VI. **TESTIMONY AT HEARING**

*Applicant's Representative's Incorporation of Staff Report and Staff Testimony*

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<sup>2</sup> Mr. Mazurkiewicz was recognized as an expert in land planning issues associated with this Application, based upon his prior appearances before the Hearing Examiner and his credentials which are on file with the City Clerk's Office.

<sup>3</sup> The Hearing Examiner notes that the subject property is being considered for vacation of lot lines of easements, and that rezoning of the property is not part of this Application and therefore not under consideration.

<sup>4</sup> This testimony was outside the scope of this hearing.

<sup>5</sup> This testimony was outside the scope of this hearing.

The Applicant's Representative incorporated the Staff Report and Staff Testimony ("Staff Input") into his presentation by reference. He requested the Hearing Examiner to recommend that City Council find the Staff Input as findings of fact, in addition to those separately presented by him.

Hearing Examiner's Recommended Findings of Fact.

All documentary and oral testimony below is accepted by the Hearing Examiner as recommended findings of fact, except as specifically noted otherwise. The Hearing Examiner recommends that the City Council accept such testimony as findings of fact to substantiate its decision regarding this Application.

VII. **DISCUSSION**

Site and Surrounding Area

Staff testified that the subject site is comprised of 25.7 acres on the west side of Chiquita Boulevard, less than 500 feet north of Savona Parkway and that it is vacant except for a City lift station at the northwest corner.<sup>6</sup> Staff testified that the site represents an assemblage of properties occupying four blocks, including vacations of SW 34<sup>th</sup> Terrace, SW 35<sup>th</sup> Street, SW 35<sup>th</sup> Terrace, SW 16<sup>th</sup> Place, and SW 36<sup>th</sup> Street in 2009, inclusive of underlying and adjacent easements. Applicant's Letter of Intent states the Applicant desires to develop the property as a single tract of land and that a purchase contract exists for the site, with a financier of the prospective buyer having requested this action.

Staff further testified that residential uses surround the site to the north, south, and west, with several commercial uses to the north and east along Chiquita Boulevard being adjacent to the site. Staff further testified that the site is surrounded by properties with a CAC (to the south), Commercial/Professional (to the north and east), and Multi Family Residential (to the north, south, and west) Future Land Use Classifications and that the zoning includes sites with residential zoning to the north, south, and west and commercial-zoned sites to the north and east. Staff provided the Table below as Table 1 in the staff report, to further illustrate the zoning districts and future land use designations of the surrounding area:

Block	Lots	Future Land Use	Zoning
4722	1-34	CP to CAC – ORD 6-08	R-3 to RD – ORD 61-90 RD to MR – ORD 17-11
4723	1-47	CP to CAC – ORD 6-08	R-3 to RD – ORD 61-90 RD to C-1 – ORD 67-99 C-1 to MR – ORD 17-11
4724	Tract	CP to CAC – ORD 6-08	C-1 to MR – ORD 17-11
4725	1-50	CP to CAC – ORD 6-08	R-3 to RD – ORD 61-90 RD to MR – ORD 17-11

<sup>6</sup> LS-531. Upon inquiry from the Hearing Examiner, staff testified that the easement deed currently in place for this Lift Station was, in staff's opinion, adequate to protect its future functioning.

*Recommendation that City Council Find That Applicant Has Complied with All Requirements for the Requested Vacations, as Set Forth in LUDR §8.11*

1. Applicant **has** color of title (LUDR §8.11.3b.1)

Staff testified that Applicant owns the subject properties.

2. A copy of the plat **has** been provided, showing the portions for which vacation is sought (LUDR §8.11.3b.2)
3. and 4. Letter of Approval from LCEC and Letters of No Objection from Century Link and Comcast (LUDR §8.11.3b.3 and LUDR §8.11.3b.4-6) **have** been obtained.

A Letter of Approval has been obtained from LCEC, letters of no objection have been received from Century Link and Comcast, and the City has no facilities in the referenced easements/right of way, other than the lift station set forth above.

5. A copy of a recent boundary survey or survey sketch of the property prepared and executed by a registered surveyor, **has been provided**, showing the area requested to be vacated; providing complete metes and bounds legal descriptions of said areas, and showing all pavement and all utility and drainage facilities in said area, including water, sewer and cable lines, utility poles, swales, ditches, manholes and catch basins. Separate drawings and metes and bounds legal descriptions will be required for each proposed vacation area when the right-of-way and easement configurations differ. (LUDR §8.11.3b.7.B)

6. No Reasonably Foreseeable Public Use of the Vacated Area. (LUDR, §8.11.3 d)

Staff testified that the requested vacations were not required from the standpoint of the City, as owners are permitted to construct over lot lines and easements if they own the parcels in questions. However, staff has no objection to the vacation and views it as an accommodation to the financing agents who may be financing the site for development purposes. The Hearing Examiner recommends a finding that, as all of the requested vacations are internal to the boundaries of the involved properties, there would be no reasonably foreseeable public use of the vacated areas.

It is recommended that, for the above reasons, the City Council finds there is **no reasonably foreseeable public use** for the requested vacations.

7. City's Retention of Easements for Utilities and/or Drainage in and Upon the Vacated Area. (LUDR, §8.11.3 d)

It is recommended that the City Council retain a perimeter easement for utilities and/or drainage in and upon the vacated areas, as set forth in the conditions below. The owner has agreed to this perimeter easement.

Consistency with the Comprehensive Plan (LUDR §8.11)

It is recommended that the City Council find that the vacation requests are consistent with Policy 5.5 of the Future Land Use Element of the City's Comprehensive Plan which states:

***Policy 5.5.*** *The City may consider the vacation of rights-of-way to facilitate land assembly and the development of a unified, contiguous commercial project.*

It is further recommended that the City Council find the vacation requests are consistent with Policy 6.3 of the Economic Development Element of the City's Comprehensive Plan which states:

***Policy 6.3.*** *The City shall foster land assembly efforts in targeted areas having fragmented land ownership patterns. Such land assembly efforts shall include, but not necessarily be limited to: and, assisting land owners in establishing real estate trusts; holding meetings or workshops concerning the benefits of a unified development plan.*

Accordingly, it is recommended that City Council find that granting the requested vacations, as conditioned below, **would be consistent** with the City Comprehensive Plan, Land Use Development Regulations, and all other applicable law.

VIII. **RECOMMENDED CONDITIONS OF APPROVAL**

City staff testified regarding recommendations for conditions of approval, set forth below. Applicant's Representative testified that Applicant has no objection to these conditions.

The Hearing Examiner **recommends** that these conditions of approval be adopted as part of the City Council's approval of Applicant's request:

1. Removal or Relocation of Existing Fire Hydrant/Alternative Backflow Preventer, Check Valve or Similar Device. Prior to site plan approval, the developer shall remove or relocate the existing fire hydrant on Block 4722. Alternatively, at the sole discretion of the City, the fire hydrant may remain in place provided the developer installs a backflow preventer, check valve, or similar device on the water line within the perimeter easement at the eastern property line of the site.
2. Provision of Easement Deed to City. Within 60 days from the date of adoption of this vacation, the owner shall provide to the City an



easement deed that provides a six-foot wide public utility and drainage easement around the perimeter of the site. The deed shall be approved by the City Property Broker prior to execution.

3. Recording of Resolution. This resolution shall be recorded with the Office of the Lee County Clerk of Court by the City of Cape Coral. This resolution shall not be effectuated until the applicant provides the City with an easement deed as described in Condition #2 above, and reimburses the Department of Community Development for all recording fees associated with this resolution and the easement deed.
4. Compliance with Zoning District Standards and Requirements and Inclusion of LUDRs, City Ordinances and Other Applicable Law. Applicant shall comply with all standards and requirements for the zoning district in which the property is located and all other requirements set forth in the LUDRs, City ordinances and all other applicable laws and regulations, which are incorporated herein by reference.

The Hearing Examiner hereby **RECOMMENDS APPROVAL** of the request for the above-referenced Vacations filed by Applicant, **WITH THE CONDITIONS** set forth above.

This Recommendation takes effect on the date specified below.

**HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA**

  
\_\_\_\_\_  
ANNE DALTON, ESQUIRE

3/6/18  
\_\_\_\_\_  
DATE

ATTEST:  
  
\_\_\_\_\_  
CITY CLERK

# **RESOLUTION 83-18**

## **VP 17-0019**

**Cape Coral City Council Meeting**  
**Final Public Hearing**

**May 14, 2018**

# VP 17-0019

**Owner:** Newcom Real Properties, LLC

**Rep:** Joe Mazurkiewicz, BJM Consulting

**Request:** The applicant seeks to vacate all platted easements and all interior lot lines in Blocks 4722, 4723, 4724, and 4725, Unit 70.

**Location:** 3514 Chiquita Boulevard South





SUBJECT PARCEL


CITY OF CAPE CORAL  
Department of  
Community Development  
Planning Division

CURRENT ZONING MAP  
500' Proximity Boundary

Case No. VP17-0019


LEGEND


 500' Proximity Boundary

 Subject Parcel

Zoning

 C-1


 MR

 P-1

 R-1A

 R-1B

 R-3

 RD

 RX



JANUARY 19TH, 2018

Feet  
420

840

0



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 occur. Please contact the Department of Community Development with any questions regarding this map product.

500' PROXIMITY BOUNDARY

# Background

- ◎ The site is 25.7 acres.
- ◎ The site is vacant except for a City lift station.
- ◎ In 2009, the site was enlarged by the vacation of several streets: SW 34<sup>th</sup> Terrace, SW 35<sup>th</sup> Street, SW 35<sup>th</sup> Terrace, SW 16<sup>th</sup> Place, and SW 36<sup>th</sup> Street.
- ◎ Applicant seeks to vacate all platted easements and interior lot lines.

# **Analysis (LUDR, Section 8.11)**

## **Vacation of Platted Easements**

- ⦿ **All easements are on property owned by the applicant.**
- ⦿ **The utility providers lack facilities in these easements.**
- ⦿ **The vacation of these easements may improve the suitability of the site for development.**
- ⦿ **Staff recommends a six-foot wide easement be provided around the perimeter of the site.**

# Analysis

## Vacation of Lots Lines

- ⦿ Vacation will provide for a single, consolidated site.
- ⦿ No objection from the utility providers.
- ⦿ Staff has no objection to this request.
- ⦿ The vacation of lot lines may eliminate ambiguity as to the readiness of the site for development.



# Recommendations

## Planning Division

Staff recommends **approval**.

## Hearing Examiner

A public hearing was held on March 6, 2018. The Hearing Examiner recommends **approval** with staff conditions. There were two speakers at public input.

## Correspondence

Four phone calls. One letter in opposition.

<b>Item Number:</b>	<b>B.(2)</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Introductions</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Ordinance 9-18 Set Public Hearing Date for June 4, 2018

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 8, Fire Prevention and Emergency Management, Article II, Fire Prevention, by amending Section 8-10, City of Cape Coral Fire Prevention and Protection Code Adopted; Amendments to Fire Codes, to be consistent with the current edition of the National Fire Codes; Establishing Section 8-14, Burn Ban Implementation Procedures, providing procedures to ban open burning when extreme dry conditions warrant a ban; by amending Article IV, Emergency Management, to provide for the declaration of a state of local emergency in preparation for or response to an emergency or disaster; to prohibit the sale of beer in the Alcoholic Beverage Prohibition; to amend Removal of Debris to include conditions affecting public health and safety; amending termination provisions.

**LEGAL REVIEW:**

Brian R. Bartos, Assistant City Attorney

**EXHIBITS:**

Memo - revised  
Ordinance 9-18 - revised  
PowerPoint Presentation

**PREPARED BY:**

Division- Department- City  
Attorney

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Memo - revised	Backup Material
▣ Ordinance 9-18 - revised	Backup Material
▣ PowerPoint Presentation	Backup Material



REVISED  
5-4-18

CAPE CORAL FIRE DEPARTMENT  
OFFICE OF THE INTERIM FIRE CHIEF

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager *JS*  
Ryan W. Lamb, Acting Interim Fire Chief *RWL*

DATE: May 4, 2018

SUBJECT: Ordinance 9-18: Amend City of Cape Coral Code of Ordinances Chapter 8;  
Introduction at the Regular Council Meeting on May 7, 2018

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The reason for this action is to request approval to amend the City of Cape Coral Code of Ordinances, Chapter 8, Fire Prevention and Emergency Management, addressing the following: adoption of the Florida Fire Prevention Code; establishment of Burn Ban implementation procedures; and amendments to states of local emergency.

Below is a summary of several areas included in the requested amendments to Chapter 8:

1. Adoption of the *Florida Fire Prevention Code*:  
The City adopts the current Florida Fire Prevention Code every three years, in accordance with *Florida State Statute 633.0215 (3)(b)*. Ordinance 9-18 will amend *Code of Ordinances, Chapter 8, Article II, Section 8-10*, to adopt the current *Florida Fire Prevention Code, 6<sup>th</sup> Edition*.
2. Establishment of Burn Ban Implementation Procedures:  
Ordinance 9-18 will amend *Code of Ordinances, Chapter 8, Article II*, establishing *Section 8-14, Burn Ban Implementation Procedures*. The Burn Ban will allow the City Manager to sign an Executive Order prohibiting all open burning in the City when dry weather conditions result in a Keetch-Byram Drought Index reading at 600 or higher, and will also allow for the enforcement of the ban. Prohibition of open burning will not include barbecue grills or pits when conducted safely and on the owner's property, provided the fuel area does not exceed three (3) feet in diameter and two (2) feet in height.
3. Amendments to States of Local Emergency:  
A review of approximately sixty (60) municipalities was conducted to determine best practices during states of local emergency. Ordinance 9-18 will amend *Code of*



*Ordinances, Chapter 8, Article IV*, to be in-line with other local governments. The revisions include, but are not limited to:

- Language clean-up
- Clarification of intent
- *Section 8-25* will authorize the City Manager to declare a state of local emergency in preparation for or response to all potential local emergencies or disasters, at any time (no longer limited to hurricanes between June 1 and November 30)
- *Section 8-28* will include beer in the alcoholic beverage prohibition
- *Section 8-31* will expand the types of debris and the timeframe within which the City Manager may authorize its collection, thus expediting the process to return the City to normalcy
- *Section 8-33* will align *Chapter 8* with Florida Statutes to terminate a state of local emergency, when declared in the event of overt acts of violence or the imminent threat of such violence, 72 hours from its commencement

If you have questions or require additional information, please contact Acting Interim Fire Chief Lamb at 242-3601 (x3601).

JS:RWL:lak

ORDINANCE 9 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 8, FIRE PREVENTION AND EMERGENCY MANAGEMENT, ARTICLE II, FIRE PREVENTION, BY AMENDING SECTION 8-10, CITY OF CAPE CORAL FIRE PREVENTION AND PROTECTION CODE ADOPTED; AMENDMENTS TO FIRE CODES; TO BE CONSISTENT WITH THE CURRENT EDITION OF THE NATIONAL FIRE CODES; ESTABLISHING SECTION 8-14, BURN BAN IMPLEMENTATION PROCEDURES, PROVIDING PROCEDURES TO BAN OPEN BURNING WHEN EXTREME DRY CONDITIONS WARRANT A BAN; BY AMENDING ARTICLE IV, EMERGENCY MANAGEMENT, TO PROVIDE FOR THE DECLARATION OF A STATE OF LOCAL EMERGENCY IN PREPARATION FOR OR RESPONSE TO AN EMERGENCY OR DISASTER; TO PROHIBIT THE SALE OF BEER IN THE ALCOHOLIC BEVERAGE PROHIBITION; TO AMEND REMOVAL OF DEBRIS TO INCLUDE CONDITIONS AFFECTING PUBLIC HEALTH AND SAFETY; AMENDING TERMINATION PROVISIONS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the National Fire Protection Association and the Florida Fire Prevention Code have been amended; and

WHEREAS, the City of Cape Coral desires to amend the local amendments to the Florida Fire Prevention Code as permitted; and

WHEREAS, the City of Cape Coral finds it necessary to protect the health, safety, and welfare of its citizens and their property when extreme dry weather conditions exist.

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

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 8, Article II, is hereby amended as follows:

CHAPTER 8: - FIRE PREVENTION AND EMERGENCY MANAGEMENT

ARTICLE I: - GENERAL PROVISIONS

§ 8-1 - False fire alarm.

It shall be unlawful for any person to give a false alarm of fire within this city.

ARTICLE II: - FIRE PREVENTION CODE

§§ 8-2—8-8. - Reserved.

§ 8-9 - Purpose and scope; enforcement.

(a) Purpose and scope. This code shall be known as the Cape Coral Fire Prevention Code. The Cape Coral Fire Prevention Code is established to provide the City of Cape Coral with rules and regulations to improve public safety by promoting the control of fire hazards; regulating the installation, use and maintenance of equipment; regulating the use of structures, premises and open areas; providing for the abatement of fire and life safety hazards; establishing the responsibilities and procedures for code enforcement; and establishing the standards for compliance and achievement of these objectives.

(b) Enforcement. The City of Cape Coral Fire Prevention Code shall be enforced by the Fire Chief/Emergency Management Director of the City of Cape Coral Fire Department or his or her designee. Enforcement of parking violations described in the Fire Prevention Code shall be enforced by the Chief of Police of the City of Cape Coral or his or her designee.

**§ 8-10 - City of Cape Coral Fire Prevention and Protection Code adopted; amendments to Fire Codes.**

(a) Adoption. The Florida Fire Prevention Code is hereby adopted by the City of Cape Coral. The standards and code sections of the "National Fire Codes", as published by the National Fire Protection Association (NFPA), as adopted by the rules of the Division of the State Fire Marshal, § 69A-3.012, 69A-60.005, or referenced by the most current edition of NFPA 1 or NFPA 101 adopted by the state's Fire Marshal, known as the Florida Fire Prevention Code, and those listed below by standard number and edition and as amended herein, are hereby adopted by reference and made a part of the "City of Cape Coral Fire Prevention and Protection Code", intended to protect the health, safety, common interest and convenience of the citizens, visitors and residents of the City of Cape Coral, Florida.

(b) Amendments to Fire Codes. The Florida Fire Prevention Code, 56th Edition", based on NFPA 1 and NFPA 101, 2012/2015 Edition, and as amended from time to time, and as permitted by the Florida Fire Prevention Code, is hereby amended by local amendment as follows:

(1) Chapter 1, Administration, Section 1.3, Application, Subsection 1.3.2.1, is hereby amended to read as follows:

1.3.2.1 Details regarding processes, methods, specifications, equipment testing and maintenance, design standards, performance, installation, or other pertinent criteria contained in those standards and codes listed in Chapter 2 of this code and those adopted pursuant to the Cape Coral Fire Prevention and Protection Code Section 8 shall be considered a part of this code.

(2) Chapter 1, Administration, Section 1.3., Application, Subsection 1.3.3, Conflicts, Sub-subsection 1.3.3.1, is hereby amended to read as follows:

1.3.3.1 In the event of any conflict between the provisions of the code adopted by this article and applicable provisions of this Code of Ordinances, state law or city ordinances, rules and regulations, the most restrictive provisions of this Code of Ordinances, state law or city ordinances, rules and regulations shall prevail and be controlling.

(3) Chapter 3, Definitions, is hereby amended to include the following definitions:

Engine Company Assistance or Testing: Any situation where an Engine Company is required for assistance, including, but not limited to, fire pump acceptance tests, special events or functions, and other non-emergency assistance that may be applicable.

(4) Chapter 3, Definitions, Subsection 3.3, General Definitions, Sub-subsection 3.3.423122 is hereby amended as follows:

3.3.122 Fire lane means any driveway, road, or unobstructed area, which may be used by the fire department for the movement of fire vehicles or firefighting operations. If the fire lane serves a multi-story building, road surface shall be pavement, concrete or similar surface material designed to accommodate fire apparatus with a minimum weight of 36 tons.

(5) Chapter 10, General Safety Requirements, Section 10.3, Occupancy, Subsection 10.3.1, is hereby amended to read as follows:

10.3.1 No new construction or existing building shall be occupied in whole or in part in violation of the provision of this code or other applicable City of Cape Coral Code of Ordinances or Land Use and Development Regulations. All tenants and occupants shall obtain a "Certificate of Use" from the Cape Coral Department of Community Development with release by the City of Cape Coral Fire Department prior to the occupancy and use of a new or existing building as evidence of compliance with the Cape Coral Fire Prevention Code. Such original certificate shall be displayed in a prominent location within the structure, building or portion, thereof.

Exemption: Residential dwellings are exempt from the requirement of obtaining a "Certificate of Use."

(6) Chapter 10, General Safety Requirements, Section 10.4410, Open Flame, Candles, Open Fires, and Incinerators, Subsection 10.4410.1, Permits, is hereby amended to read as follows:

**10.4410.1 Permits:** Permits are required and shall comply with Section 1.12.

**Bonfires and Outdoor Rubbish Fires:** Kindling or maintaining any open fire or a fire in any public street, alley, road, or other public or private ground requires a fee permit. Instructions and stipulations of permit shall be adhered to.

**Exemption:** Cooking fires and small recreational fires not intended for vegetation or rubbish disposal when conducted safely and on the owner's property. Notwithstanding the above provisions, for 30 days commencing with the declaration of a state of emergency by the Governor of the State of Florida, because of extended drought and the resulting potential for wildfires, which includes all or parts of Lee County, there shall become effective a prohibition against kindling, creating or maintaining any campfire, bonfire, open or barrel burning of trash, discarding of lighted smoking materials outdoors, smoking in city parks, and the sale or use of sparklers. The use of open barbecues or barbecue pits utilizing charcoal or wood shall be prohibited within 600 yards of any unimproved property, woods, or marsh area within the City of Cape Coral. The prohibitions expressly provided herein may be extended by resolution duly adopted by the State Fire Marshal's office.

For this section only, the definition of a recreational fire is the noncommercial burning of materials, other than rubbish for pleasure, religious, ceremonial, cooking, or similar purpose, in which the fuel burned is not contained in an incinerator, a barbecue grill, or a barbecue pit, and the total fuel area is not exceeding 3 ft. (0.9 m) in diameter and 2 ft. (0.6 m) in height.

(7) Chapter 10, General Safety Requirements, Section 10.4410, Open Flame, Candles, Open Fires, and Incinerators, Subsection 10.4410.1, Permits, Sub-subsection 10.4410.1.1 is hereby amended to read as follows:

10.4410.1.1: Permits shall not be required for cooking fires and small recreational fires not intended for vegetation or rubbish disposal when conducted safely and on the owner's property. The use of open barbecues or barbecue pits utilizing charcoal or wood shall be prohibited within 600 yards of any unimproved property, woods, or marsh area within the City of Cape Coral. The prohibitions expressly provided herein may be extended by resolution duly adopted by the State Fire Marshal's office.

(8) Chapter 10, General Safety Requirements, Section 10.4410, Open Flame, Candles, Open Fires, and Incinerators, Subsection 10.4410.2, is hereby amended to read as follows:

10.4410.2: Notwithstanding the above provisions, for 30 days commencing with the declaration of a state of emergency by the Governor of the State of Florida, because of extended drought and the resulting potential for wildfires, which includes all or parts of Lee County, there shall become effective a prohibition against kindling, creating or maintaining any campfire, bonfire, open or barrel burning of trash, discarding of lighted smoking materials outdoors, smoking in city parks, and the sale or use of sparklers.

(9) Chapter 10, General Safety Requirements, Section 10.4514, Special Outdoor Events, Carnivals, and Fairs, Subsection 10.4514.1, Permits, Sub-subsection 10.4514.1.1, is hereby created to read as follows:

10.4514.1.1: The authority having jurisdiction is hereby authorized to assess and collect reasonable compensation for services rendered to public assemblages and events covered by the provisions of Section 10.4514, as it may deem necessary in accordance with the applicable services resolution of the governing body.

(10) Chapter 10, General Safety Requirements, Section 10.4514, Special Outdoor Events, Carnivals, and Fairs, Subsection 10.4514.3, Life Safety Evaluation, Sub-subsections 10.4514.3.1 and 10.4514.3.2 are hereby amended to include the following:

10.4514.3.1 Where the authority having jurisdiction determines that the gathering of persons in a structure or the nature of the performance, exhibition, display, contest, or activity presents or is predicted to present unusual and significant impact on public safety, including access to buildings, structures, fire hydrants, fire lanes and the like, or other provisions of public safety services, including fire protection and emergency medical services, the authority having jurisdiction shall have the authority to order the development to prescribe a plan for the provision of safety services which provides reasonable degree of safety for the attendees, participants and other affected members of the public.



~~10.4514.3.2~~ 14.3.2 The plan shall address such items as, but not be limited to, emergency vehicle ingress and egress, fire protection, emergency medical services, fire and safety inspections, public assembly areas and the directing of attendees and vehicles, vendor and food concession distribution, and the need for the presence of law enforcement, fire, and medical services personnel at the event. Said plan shall be submitted to the authority having jurisdiction a minimum of three weeks prior to the starting date of the event.

(11) Chapter 13, Fire Protection Systems, Section 13.2, Standpipe Systems, Subsection 13.2.1, General, Sub-subsections 13.2.1.1 and 13.2.1.2 are hereby created to read as follows:

13.2.1.1 Fire Department valves on standpipe systems shall not be pressure-reducing valves. Pressure restricting devices shall be installed on any valve with pressure in excess of 175 PSI. Pressuring restricting devices shall be so as to be readily removable, leaving hose threads acceptable to the authority having jurisdiction.

13.2.1.2 All Fire Department connections serving a high rise building, shall be located within 50 ft. (15.25m) of a fire hydrant and within 50 ft. (15.25m) of a fire department vehicle access road. Actual locations of fire department connections shall be as approved by the authority having jurisdiction.

Exemption: Fire Department connections supplying fire sprinkler systems in accordance with NFPA 13R that are not a part of a standpipe system.

(12) Chapter 13, Fire Protection Systems, Section 13.3, Automatic Sprinklers, Subsection 13.3.1, General, Sub-subsection 13.3.1.1 is hereby amended by creating 13.3.1.1.1 as follows:

13.3.1.1.1 All fire sprinkler systems shall activate one or more monitored audio/visual device located on the exterior of the building. The number and location of the device(s) shall be approved by the authority having jurisdiction.

Exemption: Single-Family dwellings, duplexes (two family dwellings), and any structure containing less than seven (7) sprinkler heads connected to domestic water supply.

(13) Chapter 13, Fire Protection Systems, Section 13.4, Fire Pumps, Subsection 13.4.2, Equipment Protection, 13.4.2.1, General Requirements, is hereby amended by creating 13.4.2.1.1.1 as follows:

13.4.2.1.1.1 Access directly into fire pump rooms shall be provided from the exterior of buildings

Exemption: Single-Family dwellings and duplexes (two family dwellings).

(14) Chapter 13, Fire Protection Systems, Section, 13.7, Detection, Alarm, and Communications Systems, Subsection 13.7.2, Where Required, Sub-subsection 13.7.2.2~~729~~, Special Structures and High-Rise Buildings, 13.7.2.2~~729~~.2.2, is hereby amended to read as follows:

13.7.2.2~~729~~.2.2 All structures meeting the definitions of high rise buildings shall install two-way telephone communication service and shall be provided for fire department use. This system shall be in accordance with NFPA 72, National Fire Alarm Code. The communications system shall operate between the central control station and every elevator car, every elevator lobby, and each floor level of exit stairs.

(15) Chapter 18, Fire Department Access and Water Supply, Section 18.2 Fire Department Access, Subsection 18.2.1, is hereby amended to read as follows:

18.2.1 All buildings that a fire department may be called to protect that are not readily accessible to an adjacent local street shall be provided with a suitable fire lane or parallel access drive unless the analysis of the fire official indicates the fire access is unnecessary. Such fire access is necessary for all buildings three (3) or more stories in height which are not adjacent to a local street.

(a) Parking spaces adjacent to structures that in the opinion of the fire official may hinder or delay fire fighting forces in the performance of their duties are prohibited. Limited designated parking spaces may be approved by the fire official when alternative

arrangements are made prior to construction, which must include automatic fire suppression systems.

(b) The fire official may require additional fire lanes around commercial buildings when his or her analysis indicates additional access to the building is needed.

(16) Chapter 18, Fire Department Access and Water Supply, Section 18.2, Fire Department Access, Subsection 18.2.2, Access to Structures or Areas, and ~~sub-subsection 18.2.2.1, Access Boxes,~~ and 18.2.2.2, Access to Gated Subdivisions or Developments are hereby amended as follows:

~~18.2.2.1 Access Box(es). The Authority Having Jurisdiction (AHJ) shall have the authority to require access box(es) to be installed in an accessible location where access to or within a structure or area is difficult because of security. The access box(es) shall be an approved type listed in accordance with UL 1037.~~

18.2.2.2.1 All non-electronic access control gates to structures and properties that may require emergency services that restrict the free ingress and egress of emergency vehicles and are not constantly attended 24 hours a day shall be provided with a key box acceptable to the Fire Official.

18.2.2.2.2 This section is intended to apply to all gate installations except those serving an individual single-family residence.

~~Exemption: Gates serving an individual single-family residence.~~

~~(17) Chapter 18, Fire Department Access and Water Supply, Section 18.2, Fire Department Access, Subsection 18.2.2, Access to Structures or Areas, Sub-subsection 18.2.2.2, Access to Gated Subdivisions or Developments, is hereby amended by creating 18.2.2.2.2, 18.2.2.2.3, and 18.2.2.2.4 as follows:~~

18.2.2.2.2 All electronic access control gate to structures and properties that may require emergency services that restrict the free ingress and egress of emergency vehicles and are not constantly attended 24 hours per day shall be provided with an electronic transmitter/receiver system capable of being programmed with a unique activation code and frequency approved by the authority having jurisdiction. Such code or frequency shall not be used by or provided to other gate users. Existing installations shall comply within 180 days subsequent to the notification date by the authority having jurisdiction.

All electronic access control gates shall be compatible with the City of Cape Coral transmitters. Said transmitters are carried only within emergency service vehicles.

18.2.2.2.3 All electronic access control gates shall have a battery backup with a fail safe override.

18.2.2.2.4 All electronic gates are required to receive a building permit with fire review prior to installation.

~~(18) Chapter 18, Fire Department Access and Water Supply, Section 18.3, Water Supplies and Fire Hydrants, Subsection 18.3.1 is hereby amended by creating Sub-subsections 18.3.1.1.1, 18.3.1.1.2, 18.3.1.2, 18.3.1.3, and 18.3.1.4, as follows:~~

18.3.1.1.1 The Fire Department Connection (F.D.C.) shall be located not less than forty (40) feet from buildings and in an area accessible to fire apparatus, preferably adjacent to the street right-of-way or easement serving as the means of vehicular ingress to, and egress from, the building.

18.3.1.1.2 Unless a fire hydrant exists that satisfies the requirements of the Florida Fire Prevention Code, and this section, a fire hydrant shall be installed within two hundred fifty (250) feet of the parcel boundary of the building, and the entire building must be within five hundred (500) feet of a fire hydrant. A fire hydrant shall be required on the same side of the right-of-way (ROW) that the building abuts if the combined paved surface of the roadway is greater than thirty-five (35) feet in width, or if the ROW contains two lanes, or more, of vehicular traffic in a single direction. Fire hydrants shall be provided on potable water lines six (6) inches, or larger, in diameter that meet the minimum fire flow requirements. Fire hydrants for firefighting purposes shall be prohibited on irrigation water lines. The City's Fire Marshal may authorize exceptions to the above requirements for buildings that contain fire sprinklers that comply with NFPA 13.

~~18.3.1.2 Adopt 2012 NFPA 1 or subsequent edition Annex E in total.~~

18.3.1.3~~2~~ New structures not capable of delivering the required fire flow shall provide automatic sprinkler systems in accordance with NFPA 13, 13R or 13D, 2010 or subsequent editions as applicable.

Owners and developers shall make provisions to install water lines and fire hydrants to meet spacing and fire flow requirements. Where fire mains exist but do not meet the fire flow requirements, alternative arrangements may be made, prior to construction, with the authority having jurisdiction. Failure to meet the fire flow requirements or coming to an agreement on alternative arrangements shall be grounds for refusal for the City to issue building permits.

Exemption: All single-family and duplex (two-family) dwellings and new single-family and duplex (two family) subdivisions that do not contain clubhouses, commercial, or professional structures.

18.3.1.4~~3~~ Where buildings are constructed with the furthest point of the structure being one hundred fifty (150) feet or more from a public street, such buildings shall require private mains and fire hydrants that meet the required fire flow with spacing to be determined by the fire official. The spacing of hydrants shall not exceed 500 feet between hydrants. Hydrant spacing and required fire flow may be amended by the fire official if, by prior arrangement with the fire official, automatic fire suppression systems are installed in all buildings on the premises.

(4918) Chapter 18, Fire Hydrants, Section 18.5, Marking of Hydrants is hereby amended by creating Sub-subsections 18.5.710.1.1 and 18.5.710.1.2, as follows:

18.5.710.1.1 An approved Florida Department of Transportation (FDOT) blue reflective day/night raised pavement marker (RPM) will be used for rapid location of all fire hydrants in the city. The FDOT Traffic Engineering Manual Topic No. 750-000-005 Section 4.3 will be the standard guideline used for the placement and location of the blue marker on the roadway. Fire hydrants located on State roads will be maintained by the State. Fire hydrants located on County roads will be maintained by the County. The city will maintain all other fire hydrants excluding private fire hydrants.

18.5.710.1.2 All private fire hydrants will use the same FDOT guideline, and will be identified with a FDOT blue reflective day/night raised pavement marker (RPM) by the contractor during installation or on the required annual testing of the hydrant per NFPA 25 standards.

...

**§8-14 – Burn Ban Implementation Procedures.**

**(a) Purpose and intent.**

The City of Cape Coral finds and declares that the provisions of this Part are necessary to protect the health, safety and welfare for the City of Cape Coral citizens and their property when extreme dry weather conditions due to lack of normal precipitation increases the threat of fire, thereby threatening the safety of life and property. Outside burning in unauthorized areas during dry weather conditions increases the danger of wildfires throughout the City. The purpose and intent of this Part is to provide an orderly and expeditious procedure for implementing a ban on open burning when extreme dry weather conditions warrant such a ban.

**(b) Burn ban.**

(1) The City Manager shall have the power, duty and responsibility to sign an Executive Order prohibiting all open burning in the City of Cape Coral when dry weather conditions result in a Keetch-Byram Drought Index reading at 600 or higher. Unless otherwise provided, the burn ban shall take effect upon the City Manager signing the Executive Order.

(2) OPEN BURNING, for purposes of this section, shall mean kindling, creating, or maintaining any campfire, bonfire, open or barrel burning of trash, discarding of lighted smoking materials outdoors, smoking in city parks, and the sale or use of sparklers. The use of open barbecues or barbecue pits utilizing charcoal or wood shall be prohibited within 600 yards of any unimproved property, woods, or marsh areas. OPEN BURNING does not include small

recreation fires not intended for vegetation or rubbish disposal, or barbecue grills or pits that contain a total fuel area not exceeding 3 feet (0.9 m) in diameter and 2 feet (0.6 m) in height, when conducted safely and on the owner's property.

(3) The burn ban shall not apply to burning done by, or under the direct supervision of, authorized County or municipal personnel or with the authorization of the Florida Department of Agriculture and Consumer Services, Florida Forest Services. The use of barbecues utilizing charcoal, wood, or propane gas shall not be prohibited during a declared burn ban pursuant to this section.

(4) The burn ban prohibition will continue to be in effect in seven (7) day increments for as long as the Keetch-Byram Drought Index is at or above 600, unless rescinded as provided in this Section.

(5) This burn ban prohibition will be lifted after the Keetch-Byram Drought Index has fallen below 600 for at least seven (7) consecutive days.

(6) If the Keetch-Byram Drought Index falls below 600 for at least seven (7) consecutive days calling for the rescinding of the Executive Order, and the City Manager is unavailable, the Fire Chief is delegated the authority to rescind the Executive Order with notification to the City Manager.

(7) The Cape Coral Fire Marshal and Law Enforcement are authorized to enforce the Burn Ban.

(c) Public notice.

Upon notification by the Fire Chief, the Public Affairs Office shall promptly provide notification to the public of the implementation or cessation of a burn ban pursuant to this section through a press release to newspapers and television, the use of social media, and the City website.

(d) Applicability.

This Part applies to and is effective within the incorporated areas of the City of Cape Coral.

(e) Penalty.

Any person who violates any provision of this section may be punished either by imprisonment for a term not to exceed 60 days or a fine not to exceed \$500.00 or by both.

SECTION 2. The City of Cape Coral Code of Ordinances, Chapter 8, Article IV, is hereby amended as follows:

**§ 8-25 - Declaration; time limits.**

~~The City Manager shall have the power, duty, and responsibility to declare a state of local emergency between June 1 and November 30 each year when the National Hurricane Center and/or the city's duly contracted weather consultant has predicted that hurricane force winds, flooding, and/or other adverse weather conditions resulting from an anticipated hurricane will affect the City of Cape Coral in not more than 72 hours in preparation for or response to an emergency or disaster.~~

The City Manager shall inform the City Council of the reasons for and status of events requiring the declaration of a state of local emergency either prior to the declaration of emergency or as soon thereafter as practicable. Upon the declaration of a state of local emergency, the City Manager, or his or her designee, shall post a written notice of such declaration at conspicuous place(s) in the Cape Coral City Hall, and shall, as promptly as practicable, file in the office of the City Clerk a notice of a declared state of local emergency. The City Manager, or his or her designee, shall notify the local media, city employees, and residents as soon as possible and in the manner most practicable and expeditious.

**§ 8-26 - Powers during emergency.**

(a) The City Manager shall be empowered during a state of local emergency:



(1) To implement emergency plans and procedures and take such other prompt and necessary action to save lives and protect property, including but not limited to, the authority to compel and direct timely local evacuation, if necessary.

(2) Pursuant to the established "Comprehensive Emergency Operations Management Plan" (CEMP EOP) of the city, declare that the CEMP EOP is in effect, as appropriate.

(3) To obligate emergency expenditures for payment from the emergency reserve fund when such action is necessary to protect and preserve the public health, safety, health, and welfare of the public. All such transfers and obligations shall be reported to the City Council at the first opportunity following such action, but no later than 30 days after such occurrence.

(4) To act, on behalf of the city, in any matter provided by F.S. § 252.38(2) and (3), as amended.

(5) To determine a threat to public health and safety that may result from the generation of widespread debris throughout the city, ~~that such debris constitutes a hazardous environment for all modes of movement and transportation of the residents as well as emergency aid and relief services, endangerment to all properties in the city, an environment conducive to breeding disease and vermin, and greatly increased risk of fire, and that it is in the public interest to collect and remove disaster debris from all property whether public lands, public or private roads, and gated communities to eliminate an immediate threat to life, public health and safety to reduce the threat of additional damage to improved property and to promote economic recovery of the community at large.~~

(6) To authorize the city of its contracted agent(s) right of access to private roads or gated communities as needed by emergency vehicles such as, but not limited to, police, fire, medical care, debris removal, and sanitation to alleviate immediate threats to public health and safety.

(b) The granting of power, duty, and responsibility to the City Manager to declare a state of local emergency shall not be construed to abrogate the power and authority to the City Council to declare a state of local emergency in accordance with the City Charter and state law.

...

#### **§ 8-28 - Alcoholic beverage prohibition.**

(a) During any state of local emergency lawfully declared by either the City Council or the City Manager, the City Council authorizes the City Manager to suspend or regulate the sale of, or offer to sell, alcoholic beverages, ~~with the exception of beer~~, within the City of Cape Coral.

(b) Any person who knowingly violates any provision of this section shall, upon conviction, be punished according to law and shall be subject to a fine not exceeding the sum of \$500, or imprisonment in the Lee County Jail for a period not exceeding 60 days, or by fine and imprisonment.

#### **§ 8-29 - Unconscionable pricing.**

(a) As used in this section:

**COMMODITY** means any goods, services, materials, merchandise, supplies, equipment, resources or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products and lumber necessary for consumption or use as a direct result of the emergency.

(b) It is prima facie evidence that a price is unconscionable if:

(1) The amount charged represents a gross disparity between the price of the commodity or rental or lease of any dwelling unit or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit or self-storage facility

was rented, leased, sold or offered for rent or sale in the usual course of business during the 30 days immediately prior to a declaration of a state of local emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or national or international market trends; or

(2) The amount charged grossly exceeds the average price at which the same or similar commodity was readily obtainable in the trade area during the 30 days immediately prior to a declaration of local emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or national or international market trends.

(3) Upon a declaration of a state of local emergency by the Governor, the City Council of the City of Cape Coral, Cape Coral City Manager or the Board of County Commissioners for Lee County that affects the City of Cape Coral and/or Lee County, it shall be unlawful for a person or his or her agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of local emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions or equipment that is necessary for consumption or use as a direct result of the emergency. This prohibition shall remain in effect until all declarations expire or are terminated.

(4) It is unlawful and a violation of this section for any person to impose unconscionable prices for the rental or lease of any dwelling unit or self storage facility during a period of declared state of local emergency.

(5) A price increase approved by an appropriate government agency shall not be a violation of this section.

(6) This section shall not apply to sales by growers, producers or processors of raw or processed food products, except for retail sales of the products to the ultimate consumer within the area of the declared state of local emergency.

(7) All state law enforcement officers and Code Enforcement Officers shall have the power to investigate compliance with, and enforcement requirements of this section and incident thereto may subpoena witnesses, administer oaths and require the production of records.

(8) Any person, who knowingly violates any provision of this section shall, upon conviction, be punished according to law and shall be subject to a fine not exceeding the sum of \$500, or imprisonment in the Lee County Jail for a period not exceeding 60 days, or by fine and imprisonment.

#### **§ 8-30 - Curfew.**

(a) During any state of local emergency lawfully declared by either the City Council or the City Manager, the City Council authorizes the City Manager to impose a general curfew throughout Cape Coral for the hours determined by the City Manager when deemed necessary by the City Manager in order to protect the public health, safety, and welfare of the public as the result of conditions related to a hurricane. The curfew may include, but not be limited to, the prohibition of or restriction on pedestrian and vehicular movement, except for the provision of designated, essential services, including, but not limited to, such as fire, police, emergency medical services and hospital services, including the transportation of patients thereto, utility emergency repairs and emergency calls by physicians. Local services designated as essential services shall ~~are requested to~~ do everything possible to provide identification for their employees.

(b) Any person, who knowingly violates any provision of this section shall, upon conviction, be punished according to law and shall be subject to a fine not exceeding the sum of \$500, or imprisonment in the Lee County Jail for a period not exceeding 60 days, or by fine and imprisonment.

**§ 8-31 - Removal of debris.**

~~During, and subsequent of, a declared state of local emergency, the City Manager shall have the power to authorize the collection, removal, and disposal of emergency and disaster-generated debris and wreckage resulting from a declared disaster from all property whether public lands, public or private roads, private vacant property, or gated communities to ensure a safe and sanitary living and functioning conditions, and to protect improved property from immediate threat. Debris includes all hazardous conditions created that impact all modes of movement and transportation of the residents as well as emergency services, and endangers properties and waterways in the city. Debris also includes conditions created that increase an environment conducive to breeding disease and vermin, and greatly increases risk of fire, and that is in the public interest to remove and dispose. Debris collection, removal, and disposal is not limited to the timeframe of the state of local emergency, but shall be accomplished expeditiously to ensure protection of the health, safety, and welfare of the community, and the restoration of normalcy to promote economic recovery of the community at large.~~

**§ 8-32 - Time periods tolled.**

During a state of local emergency, all procedural and notice time periods affecting the normal functions of the city, to the extent such requirements cannot be complied with due to the emergency, shall be temporarily suspended for a period of seven days from the declaration of local emergency. Such functions include, but are not limited to, permitting, code enforcement matters, municipal approvals, and scheduled public meetings. When necessary, seven-day time extensions may be permitted by approval of the City Council.

**§ 8-33 - State of local emergency terminated.**

(a) A state of local emergency declared by the City Manager pursuant to this article shall be terminated upon the first to occur of any of the following:

(1) A certification by the City Manager that the conditions leading to or causing the emergency ~~or disaster~~ no longer exist and the city agencies, departments, and staff are able to manage the situation without extraordinary assistance; or

(2) A vote of the City Council declaring the state of local emergency has ended; or

(3) The expiration of seven days from the commencement of the state of local emergency, unless such period is extended by the City Council as authorized by state law. A state of local emergency declared in the event of overt acts of violence or the imminent threat of such violence pursuant to sections 870.041 – 870.048, Florida Statutes, shall terminate seventy-two (72) hours from its commencement, unless extended by the City Council by duly enacted ordinance or resolution in a regular or special meeting.

(b) Notice of the termination of the state of local emergency declaration shall be made to the public by the City Manager by the same means as notice of the declaration of the state of local emergency.

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

**SECTION 4. Effective Date.** This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO \_\_\_\_\_  
GUNTER \_\_\_\_\_  
CARIOSCIA \_\_\_\_\_  
STOUT \_\_\_\_\_

NELSON \_\_\_\_\_  
STOKES \_\_\_\_\_  
WILLIAMS \_\_\_\_\_  
COSDEN \_\_\_\_\_

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:



BRIAN R. BARTOS  
ASSISTANT CITY ATTORNEY  
ord\Fire Prevention





# ORDINANCE 9-18



# ACCOMPLISHES

- **ANNUAL ADOPTION OF THE FIRE PREVENTION CODE**
- **ADDITION OF A CITY BURN BAN**
- **UPDATES TO EMERGENCY MANAGEMENT**

# **FIRE CODE**

- **FLORIDA FIRE PREVENTION CODE**

- **FLORIDA STATE STATUTE 633.0215 (3)(B):**
- **“ANY LOCAL AMENDMENT TO THE FLORIDA FIRE PREVENTION CODE ADOPTED BY A LOCAL GOVERNMENT SHALL BE EFFECTIVE ONLY UNTIL THE ADOPTION OF THE NEW EDITION OF THE FLORIDA FIRE PREVENTION CODE, WHICH SHALL BE EVERY THIRD YEAR. AT SUCH TIME, THE STATE FIRE MARSHAL SHALL ADOPT SUCH AMENDMENT AS PART OF THE FLORIDA FIRE PREVENTION CODE OR RESCIND THE AMENDMENT. THE STATE FIRE MARSHAL SHALL IMMEDIATELY NOTIFY THE RESPECTIVE LOCAL GOVERNMENT OF THE RESCISSION OF THE AMENDMENT AND THE REASON FOR THE RESCISSION. AFTER RECEIVING SUCH NOTICE, THE RESPECTIVE LOCAL GOVERNMENT MAY READOPT THE RESCINDED AMENDMENT. INCORPORATION OF LOCAL AMENDMENTS AS REGIONAL AND LOCAL CONCERNS AND VARIATIONS SHALL BE CONSIDERED AS ADOPTION OF AN AMENDMENT PURSUANT TO THIS SECTION.”**

# BURN BAN

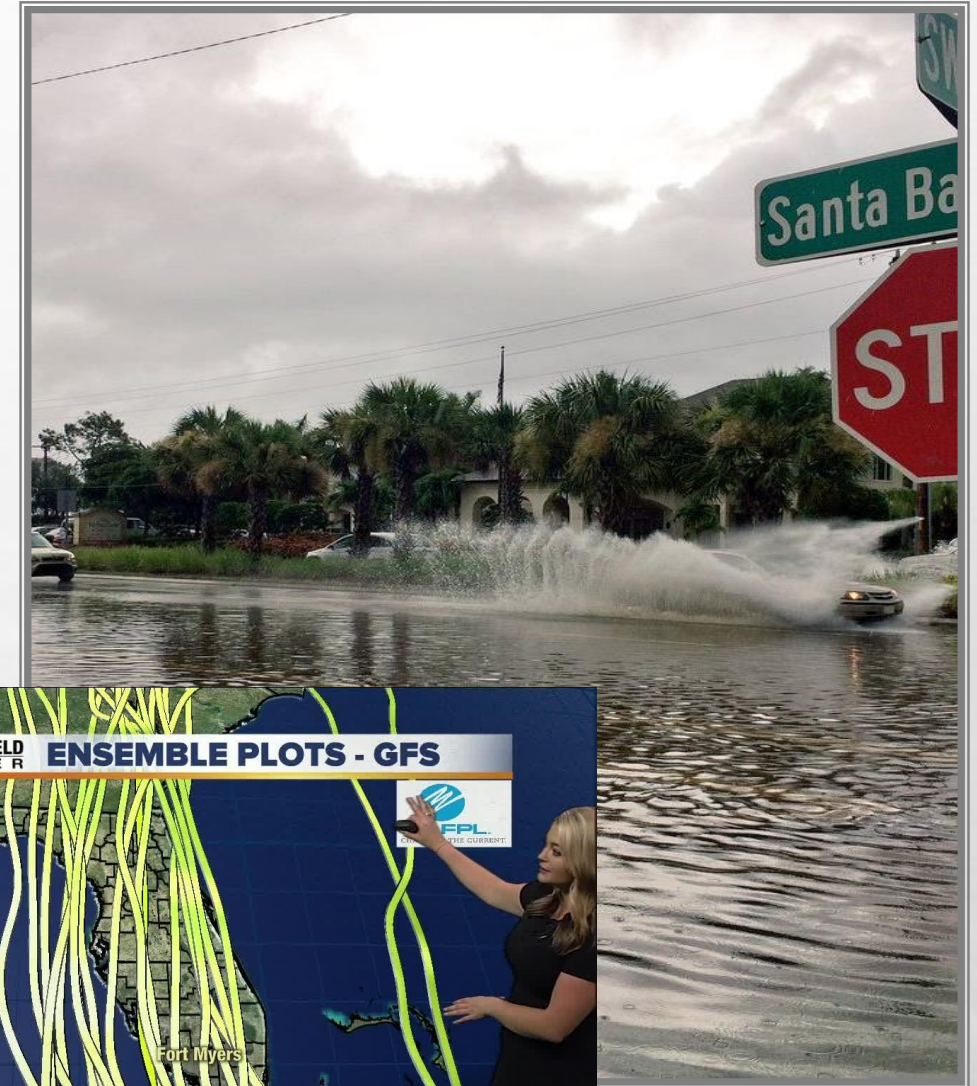


- **90% OF ALL WILDFIRES ARE MAN-MADE AND THEREFORE PREVENTABLE**
- **DROUGHT INDEX OF 600**
- **EMBERS CAN TRAVEL 1 MILE**
- **ENFORCEABLE**



# EMERGENCY MANAGEMENT

- SURVEYED 60 FLORIDA MUNICIPALITIES FOR BEST PRACTICES
- INCLUDES ALL TYPES OF POSSIBLE LOCAL EMERGENCIES
- UPDATES THE ALCOHOL PROHIBITION
- CLEANS UP DEBRIS LANGUAGE
- UPDATES THE TERMINATION OF LOCAL STATES OF EMERGENCY



# **RECOMMENDATION**

**THE FIRE DEPARTMENT RECOMMENDS APPROVAL OF ORDINANCE 9-18**

<b>Item Number:</b>	<b>B.(3)</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>ORDINANCES/RESOLUTIONS - Introductions</b>

**AGENDA  
REQUEST FORM  
CITY OF CAPE  
CORAL**



**TITLE:**

Ordinance 34-18 Set Public Hearing Date for June 4, 2018

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

Recently an ordinance limiting the parking of trailers in public parking lots in the South Cape District was presented to the City Council. In that ordinance the definition of TRAILER was established that was more comprehensive than the definition included in the Code section being amended in this ordinance. Therefore, the definition of TRAILER is being amended to be consistent. Also, the penalty provision is being amended to provide different fines and also to allow cars and cars with trailers to be towed on any streets where signs have been posted.

The Code section being amended currently provides a list of streets where the parking of commercial vehicles and trailers on public streets at any time except for loading and unloading is prohibited. This list is being expanded to cover additional streets in the South Cape District.

**LEGAL REVIEW:**

**EXHIBITS:**

Ordinance 34-18  
Staff Presentation

**PREPARED BY:**

Division-      Department- City  
Attorney

**SOURCE OF ADDITIONAL INFORMATION:****ATTACHMENTS:**

	<b>Description</b>	<b>Type</b>
▣	Ordinance 34-18	Backup Material
▣	Staff Presentation	Backup Material



ORDINANCE 34 - 18

AN ORDINANCE AMENDING CHAPTER 12, "OFFENSES AND MISCELLANEOUS PROVISIONS", CITY OF CAPE CORAL CODE OF ORDINANCES, BY AMENDING ARTICLE II, "OFFENSES CREATING NUISANCES", SECTION 12-23 TO PROVIDE REGULATIONS FOR PARKING COMMERCIAL VEHICLES AND TRAILERS ON CERTAIN PUBLIC STREETS POSTED WITH SIGNS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 166.021, Florida Statutes, municipalities may exercise their powers for municipal purposes and to preserve the health, safety, and general welfare of its residents, except when expressly prohibited by law; and

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

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

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 12, Article II, Section 12-23 is hereby amended to read as follows:

**CHAPTER 12: OFFENSES AND MISCELLANEOUS PROVISIONS**

**ARTICLE II: OFFENSES CREATING NUISANCES**

**§ 12-23 Operation of motor-driven vehicles in certain places prohibited, exceptions; ~~overnight parking regulations on certain public streets, prohibited.~~**

- (a) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

...

**TRAILER.** Any vehicle without motive power designed ~~for carrying persons or property on its own structure and designed~~ to be drawn by a motor vehicle regardless of hitch type and often used for or designed for carrying persons or property on its own structure. For purposes of this section, devices or equipment, such as compressors, ~~or~~ mixers, or smokers, that are not designed for the purpose of carrying persons or property, but instead have wheels that are integrated into the body of the device or equipment shall be deemed to be ~~TRAILERS~~ trailers.

...

- (g) *Parking of commercial vehicles and trailers prohibited.* Unless the trailer or commercial vehicle is being parked temporarily for loading or unloading property or goods, it shall be unlawful for any person at any time to park a commercial vehicle or trailer on streets posted with signs reading as follows, "NO PARKING OF COMMERCIAL VEHICLES OR TRAILERS EXCEPT FOR LOADING OR UNLOADING." The following streets shall be posted as noted herein:

...

(6) S.E. 46th Lane from ~~Coronado Parkway~~ S.E. 6<sup>th</sup> Avenue to S.E. 17th Place;

(7) S.E. 47th Street from ~~Coronado Parkway~~ S.E. 6<sup>th</sup> Avenue to S.E. 17th Place;

...

(27) S.E. 15th Avenue from S.E. 44th Street to ~~S.E. 46th Street~~ Cape Coral Parkway East;

...

(29) Orchid Boulevard from S.E. 44th Street to S.E. 46th Street; ~~and~~

(30) S.W. 47th Terrace from Santa Barbara Boulevard to S.W. 2nd Avenue;

(31) S.E. 4<sup>th</sup> Place from Country Club Boulevard to S.E. 47<sup>th</sup> Terrace;

(32) S.E. 5<sup>th</sup> Avenue from Country Club Boulevard to S.E. 47<sup>th</sup> Terrace; and

(33) S.E. 46<sup>th</sup> Terrace from S.E. 6<sup>th</sup> Avenue to Coronado Parkway.

- (h) *Penalties.* ~~Any person found guilty of a violation of this section shall be subject to a fine of not less than \$100, nor more than \$250. A violation of this section shall result in a civil~~

penalty in an amount of thirty dollars (\$30.00). Any person receiving a citation or ticket pursuant to this section shall, within thirty (30) calendar days, pay said civil penalty or request a hearing before a designated official, as defined by Chapter 318, Florida Statutes.

- (1) Any person electing to appear before a designated official for a hearing shall be deemed to have waived such persons right to pay the civil penalty set forth herein. The designated official, after a hearing, shall make a determination as to whether a violation of this section has been committed. If a violation is found, the designated official shall impose a civil penalty in the amount of one hundred dollars (\$100.00) plus court costs.
- (2) Each violation of this section shall constitute a separate and distinct violation for which a citation or ticket may be issued.
- (3) Law enforcement officers and parking enforcement specialists are hereby authorized to tow or cause to be towed and impounded any trailer or vehicle parked in violation of this section, where signs have been posted indicating that the street is a location from which trailers and vehicles will be removed if they are parked unlawfully. If an unlawfully parked trailer is attached to a vehicle on a posted street, said vehicle may also be removed by the police department. The owner of any trailer or vehicle so towed, in addition to the payment of any fines or penalties for the unlawful parking, shall also be liable for any towing, impounding, and storage charges incurred in removing the trailer and vehicle.

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

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

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

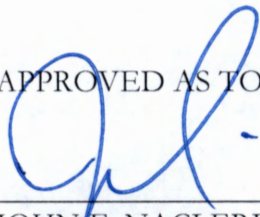
VOTE OF MAYOR AND COUNCILMEMBERS:

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

ATTESTED TO AND FILED IN MY OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
REBECCA VAN DEUTEKOM  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JOHN E. NACLERIO, III  
ASSISTANT CITY ATTORNEY  
ord/OnStreetParking Regs SC District  
5/1/18





# **Ordinance 34-18**

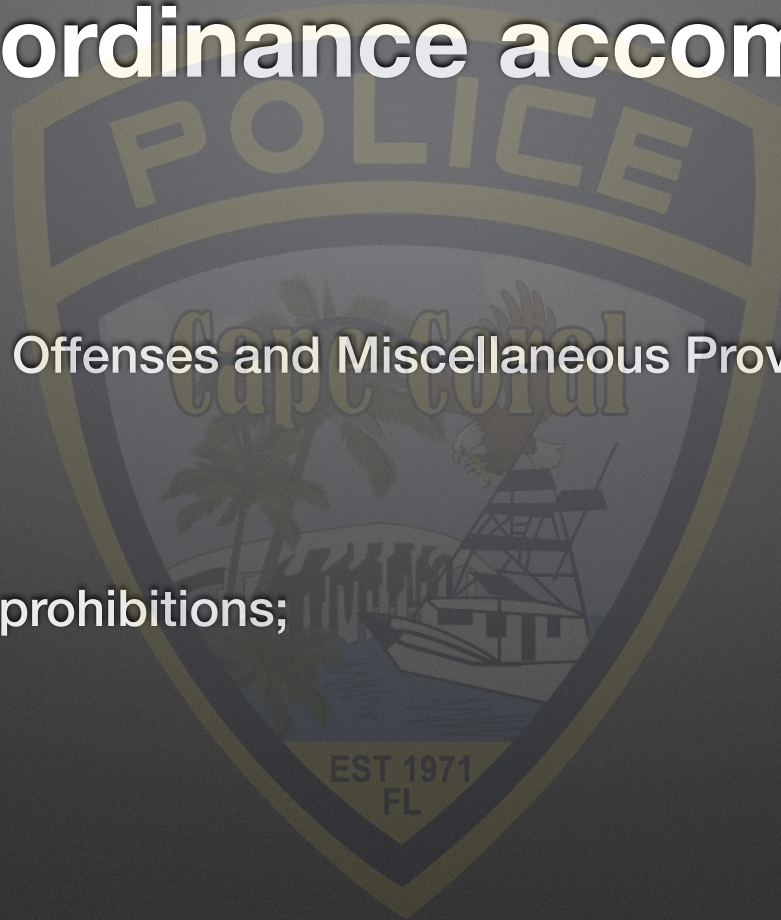
# **Regulation of On-Street Trailer Parking**

Presented by:  
David M. Newlan, Chief of Police



# What the ordinance accomplishes...

- Amends Chapter 12: Offenses and Miscellaneous Provisions;
- Defines “Trailer;”
- Establishes specific prohibitions;
- Penalties.





# On-Street Trailer Parking Prohibition

- Parking of commercial vehicle and trailers prohibited. Unless the trailer or commercial vehicle is being parked temporarily for loading or unloading property or goods, it shall be unlawful for any person at any time to park a commercial vehicle or trailer on streets posted with signs reading as follows, "NO PARKING OF COMMERCIAL VEHICLES OR TRAILERS EXCEPT FOR LOADING OR UNLOADING."
- Amended restricted parking locations.



# Penalties

The background of the slide features a large, semi-transparent shield logo of the Cape Coral Police Department. The word "POLICE" is arched across the top, and "Cape Coral" is written in a stylized font across the middle. Below the name, there is a depiction of a lighthouse and palm trees, with "FL" at the bottom.

- A violation of this section shall result in a civil penalty in an amount of thirty dollars (\$30.00).
- Law enforcement officers and parking enforcement specialists authorized to tow violators.
- The owner of any trailer or vehicle so towed, in addition to the payment of any fines or penalties for the unlawful parking, shall also be liable for any towing, impounding, and storage charges incurred in removing the trailer and vehicle.





<b>Item Number:</b>	<b>10.A.</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>UNFINISHED BUSINESS</b>

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

Water Quality - Update

**REQUESTED ACTION:**

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?

2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below.

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

**LEGAL REVIEW:**

**EXHIBITS:**

Water Quality Memo

**PREPARED BY:**

Division- Department-

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

**Description**

☐ Water Quality Memo

**Type**

Backup Material





<b>Item Number:</b>	<b>10.A.</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>UNFINISHED BUSINESS</b>

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL

**TITLE:**

Water Quality - Update

**REQUESTED ACTION:****STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?

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**PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:****SUMMARY EXPLANATION AND BACKGROUND:****LEGAL REVIEW:****EXHIBITS:****PREPARED BY:**

Division-

Department-

**SOURCE OF ADDITIONAL INFORMATION:****REVIEWERS:****Department**

City Clerk

**Reviewer**

Bruns, Kimberly

**Action**

Approved

**Date**

2/27/2018 - 4:54 PM

MEMORANDUM

CITY OF CAPE CORAL  
PUBLIC WORKS DEPARTMENT

TO: John Szerlag, City Manager

FROM: Paul Clinghan, Public Works Director *PRC*  
Maya Robert, Environmental Resources Manager *MR*

DATE: May 4, 2018

SUBJECT: Lake Okeechobee Level and Release Information 05/04/2018

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As of Friday, May 4th, 2018, the elevation of Lake Okeechobee was 13.03 feet. Inflows into the lake were 215 cfs and total outflows were 2,397 cfs. Current discharges were 766 and 101 cfs at S-77 and S-79, respectively. Salinities in the river near Fort Myers were 15.17 PSU. Salinities at Shell Point were 32.93 PSU.

During this past week, the Corps released at an average flow of 839 cfs, which is within the recommended range of 800 to 1,000 cfs. This higher flow reduced salinity at Fort Myers below 12 PSU for the first time in several weeks; bringing it closer to the recommended values for an ecosystem that benefits tape grass and oysters.

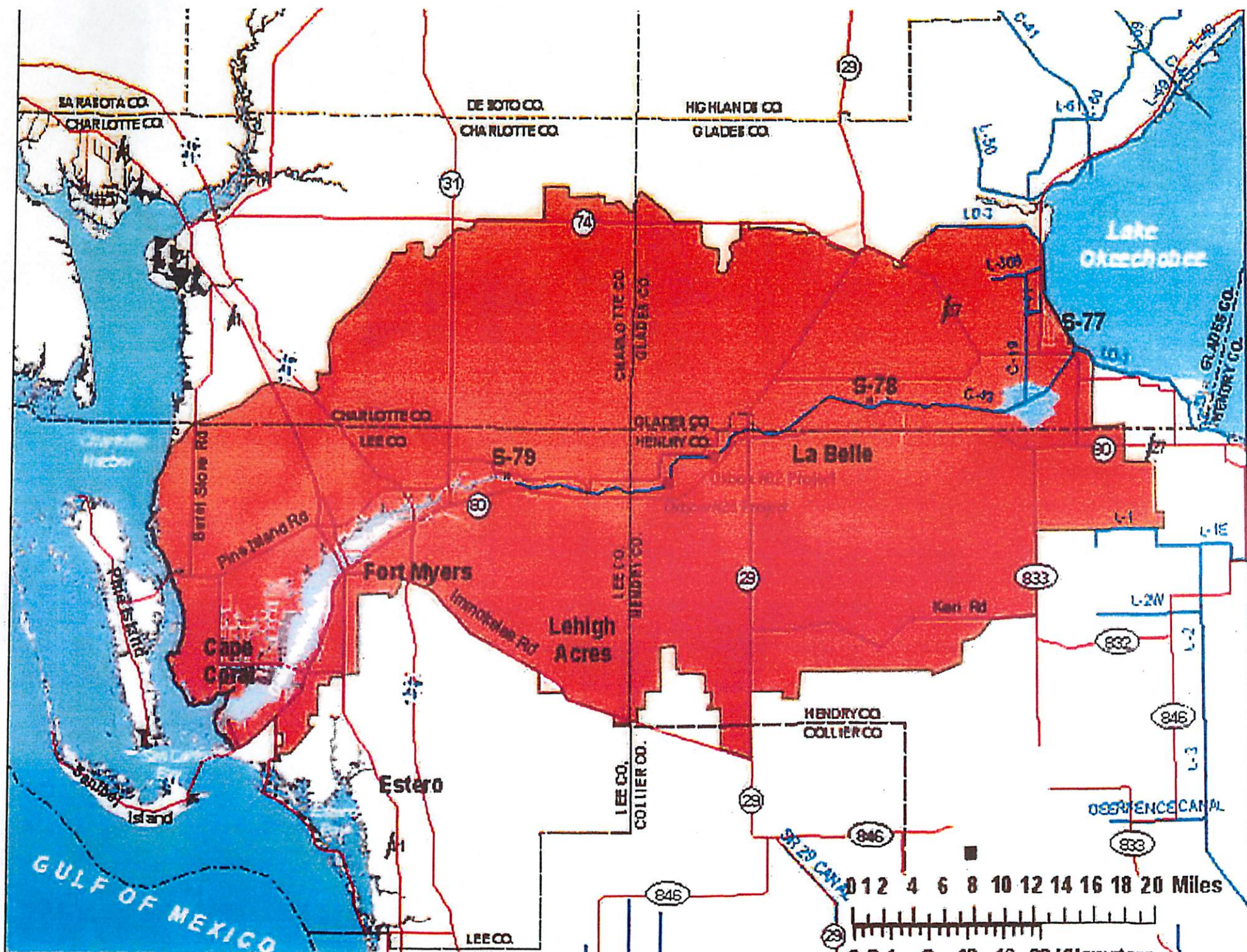
A Red tide bloom persists in Southwest Florida and continues to impact birds, sea turtles, and caused fish kills and respiratory irritation along coastal beaches of Lee County.

For the week of April 30, in the Lee County weekly check, blue-green algae was present at one sampling location upstream of the Franklin Lock.

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

PC/MR: ol (Weekly Lake Okeechobee Level and Release Information 05/04/2018)  
Attachment; Caloosahatchee River Locks map





<b>Item Number:</b>	<b>10.C.</b>
<b>Meeting Date:</b>	<b>5/7/2018</b>
<b>Item Type:</b>	<b>UNFINISHED BUSINESS</b>

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

Southwest Florida Regional Planning Council Membership

**REQUESTED ACTION:**

Staff Direction

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

**LEGAL REVIEW:**

**EXHIBITS:**

**PREPARED BY:**

PT Division- Department- Council  
Offices

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Staff Info Previously Provided to Council	Backup Material
<input type="checkbox"/> ROI Cape Coral - Provided by Margaret Wuerstle	Backup Material



- Value of RPC with cost estimates - Provided by Margaret Wuerstle Backup Material

## Phyllis Demarco

**From:** Jay Murphy  
**Sent:** Thursday, April 05, 2018 6:03 PM  
**To:** John Szerlag  
**Cc:** Victoria Bateman; Connie Barron  
**Subject:** SWFLRPC

In regards to the Southwest Florida Regional Planning Council (RPC) we offer the following resolution,

We find no reason to forego the payment of the assessments owed to date. Accordingly, a check request in the amount of \$49,952 should be prepared by the Council's CAB at the earliest possible time. This will bring the City Council current through the end of the second quarter of FY 2018 (March 31, 2018). We further ask Council to make a declaratory statement relative to its position on its RPC membership post June 30, 2018, prior to the end of the current quarter. Doing so provides staff with direction and Finance time to identify the appropriate funding source for the necessary budget transfer should Council chose to remain a member.

This resolution is based on these facts,

- o In FY 2017,
  - The City paid the RPC \$15,000, funded in whole by grant funds, to conduct the Climate Change

### SWFLREGIONAL PLANNING

Payment Type	Payment Number	Payment Date	Payee Number	Payment Amount
PK	522579	05/17/2013	845631	7,500.00
PK	584292	09/20/2013	845631	15.00
PK	590978	04/18/2014	845631	7,500.00
PK	596203	09/19/2014	845631	5,000.00
PK	598066	11/07/2014	845631	500.00
PK	641856	06/30/2017	845631	24,976.00
PK	644259	08/25/2017	845631	15,000.00
				<u>60,491.00</u>

Resiliency Strategy Study. No further action is required.

- On 10/1/16, 1/1/17 the RPC invoiced the City \$12,488 for its Quarterly Assessment, a total of \$24,976, which were both approved by then-Mayor Sawicki.
- A lengthy discussion was held by Council on November 21, 2016 relative to the RPC and issues related to who pays, and various options. No finite answer on not paying.
- On May 31, 2017 P.O. 42066 was issued in the name of the RPC for \$49,952, as requested by the Council's CAB, Pearl Taylor.
- o There is a note in my predecessor files that states "FY17 Invoice we will be paying".
  - On June 30, 2017, \$24,976 was paid to the RPC (payment number 641856), leaving a like balance for the remainder of the fiscal year.
- o There is no further financial activity for FY 17. We did remain active on the RPC through the entire period, and as stated previously the RPC did complete a study during the year and was paid under a separate account. The following table is reflective of all financial transactions involving the RPC
- o In FY 2018,
  - There Council chose to budget \$50,000 for SWFLRPC for the current fiscal year. It can be argued that this amounts to its approval of the RPC.
  - However, Council subsequently used \$10,600 of the funds for the National League of Cities, leaving a balance of \$39,400.

- Councilmember Cosden was appointed the City's representative and has faithfully attended the RPC meetings during the current fiscal year.
- Having just completed the second quarter, our current assessment due to the RPC is \$24,976.
- At the conclusion of this third quarter our assessment will then total \$37,464.
- If Council chooses to remain a member after June 30, 2018, a budget transfer of ~\$10,542 will be necessary.

It is my understanding the City Attorney is responding under separate cover concerning the membership question. The abbreviated version of that response involves a November 2017 Attorney General opinion to the SWFLRPC. In the opinion, the AG advises that counties have no option to opt out, and to the contrary municipalities there is no requirement for municipalities to belong. How that is further interpreted is within the purview of the City Attorney.

Jay Murphy







Jay Murphy | Business Manager | City Manager's Office  
[jmurphy@capecoral.net](mailto:jmurphy@capecoral.net) | 239.574.0458  
 1015 Cultural Park Boulevard S. | P.O. Box 150027  
 Cape Coral, FL 33915-0027

## MEMORANDUM

### CITY OF CAPE CORAL DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: Mayor Coviello and Council members

FROM: John Szerlag, City Manager  
Vincent A. Cautero, Community Development Director   
Robert H. Pederson, Planning Manager   
Dana Brunett, Economic Development Manager   
Wyatt Daltry, Planning Team Coordinator 

DATE: April 5, 2018

SUBJECT: Southwest Florida Regional Planning Council Membership – Pros and Cons

---

#### **Background**

The City of Cape Coral has been a member of the Southwest Florida Regional Planning Council (RPC) since the 1970's. A steady erosion of RPC responsibilities over the last ten years has resulted in other local communities considering leaving the RPC.

Staff has prepared the following summary of the pros and cons of the City continuing to be a member:

#### **Pros**

- The RPC provides a venue for regional collaboration on issues affecting SW Florida.
- Provides an opportunity for Cape Coral elected officials to meet other elected officials from other communities, discuss similar concerns, and identify best practices used by those communities.
- Provides an option for regional mediation for land use and planning conflicts.
- RPCs traditionally assisted smaller local communities on matters beyond staff expertise.
- The RPC provides an opportunity to speak to State or Federal entities with "one voice" for issues affecting the region such as hurricane preparedness, sea level rise, or environmental protection.
- The RPC Develops the Comprehensive Economic Development Strategy (CEDS) document. Projects included in this document can qualify for grant funds through the Economic Development Administration (EDA).
- The RPC can provide economic impact analysis for projects proposed in our region.



**Cons**

- The major purpose of RPC's over the years – DRI review – has been effectively eliminated through a long-running effort by the Legislature to erode their responsibilities, particularly over the last 10 years. RPC's may not exist much longer as a result.
- RPC budget cuts and staff turnover have eliminated what assistance, aside from sea level rise or hurricane preparedness, that the Council could provide that is beyond our existing staff's expertise.
- The role of RPC's in Florida has diminished over the last 10 years. For instance, the RPC has not taken the opportunity to lead the region in discussions with state or federal policymakers regarding regional issues.

VC/RP/DB/WD

Grant Funding Divided by County Population

SWFRPC 2012-2018 Return on Investment Analysis (Without DRI Revenues)								
County	County Assessments	EDA Planning	LECP/HMEP	TD	Other Grants	Total Grants	Net Gain	ROI
Charlotte	332,078	76,739	78,913		516,333	671,985	339,907	102.4%
Collier	701,882	158,823	163,323		3,262,068	3,584,213	2,882,331	410.7%
Glades	26,934	5,815	5,979	60,985	87,044	159,823	132,889	493.4%
Hendry	80,233	17,353	17,845	182,004	605,316	822,517	742,284	925.2%
Lee	1,347,306	310,327	319,119	10,036	3,279,987	3,919,469	2,572,163	190.9%
<b>Cape Coral</b>	<b>101,096</b>	<b>77,582</b>	<b>79,780</b>	<b>2,509</b>	<b>819,997</b>	<b>979,867</b>	<b>878,771</b>	<b>869.2%</b>
Sarasota	722,063	180,944	186,071		699,109	1,066,124	344,061	47.6%
<b>Total</b>	<b>3,210,496</b>	<b>750,000</b>	<b>771,250</b>	<b>253,025</b>	<b>8,449,856</b>	<b>10,224,130</b>	<b>7,013,635</b>	<b>218.5%</b>

SWFRPC 2012-2018 Return on Investment Analysis (With DRI Revenues)									
County	County Assessments	EDA Planning	LECP/HMEP	TD	Other Grants	Total Grants	DRI Fees	Net Gain	ROI
Charlotte	332,078	76,739	78,913		516,333	671,985	79,347	419,254	126.3%
Collier	701,882	158,823	163,323		3,262,068	3,584,213	81,192	2,963,523	422.2%
Glades	26,934	5,815	5,979	60,985	87,044	159,823		132,889	493.4%
Hendry	80,233	17,353	17,845	182,004	605,316	822,517		742,284	925.2%
Lee	1,347,306	310,327	319,119	10,036	3,279,987	3,919,469	66,400	2,638,563	195.8%
<b>Cape Coral</b>	<b>101,096</b>	<b>77,582</b>	<b>79,780</b>	<b>2,509</b>	<b>819,997</b>	<b>979,867</b>		<b>878,771</b>	<b>869.2%</b>
Sarasota	722,063	180,944	186,071		699,109	1,066,124	592,425	936,486	129.7%
<b>Total</b>	<b>3,210,496</b>	<b>750,000</b>	<b>771,250</b>	<b>253,025</b>	<b>8,449,856</b>	<b>10,224,130</b>	<b>819,365</b>	<b>7,833,000</b>	<b>244.0%</b>

## SWFRPC Projects and Assistance for the City of Cape Coral

- 1) Prepared the Hurricane evacuation routes for our region \$9141/year
- 2) Prepared the Hurricane direction and storm surge maps \$9141/year
- 3) Staff to the Local Emergency Planning Committee responsible for providing training for the first responders in our region. This is funded by the State to all the regional planning councils
- 4) Post Disaster Coordinator position funded by EDA for 2 years to help region better prepare for future disasters
- 5) Prepared the Cape Coral Climate Change Vulnerability Assessment- \$15,000
- 6) Prepared the Cape Coral Climate Change and Resiliency Strategy - \$15,600 + \$15,000 match
- 7) Assistance over the years to City Staff on planning and natural resource issues in the Evaluation and Appraisal Report, hurricane planning, wildlife and listed species issues, certain road projects, and the water supply project connecting a reservoir mine pit to the Cape Coral Canal system to provide canal water for irrigation and fire safety. – est. \$20,000
- 8) Our region is a Federal Economic Development District and staff prepared the Comprehensive Economic Development (CEDS) Plan. Any applications for Federal EDA money will go through the RPC to determine if the project is consistent with the CEDS Plan. (Currently NOFO for \$600 million in EDA post disaster supplemental funds released) New- Dollar value yet to be determined
- 9) In last 6 years the SWFRPC has brought in over \$8 million in funding for projects in this region  
Cape Coral portion est. \$11,660
- 10) **The Broadband Plan** does include Cape Coral (Charlotte, Collier, Lee):  
[http://www.swfrpc.org/content/Resources/Publications/SWFL\\_BB\\_Plan.pdf](http://www.swfrpc.org/content/Resources/Publications/SWFL_BB_Plan.pdf)
- 11) **Solar Ready Florida** includes Cape Coral (Charlotte, Collier, Glades, Hendry, Lee, Sarasota).  
<http://www.solarreadyflorida.com/about.html>
- 12) **Florida Energy Assurance Study** (Statewide) includes Cape Coral.  
[http://www.swfrpc.org/content/Resources/Publications/Energy\\_Assurance\\_031513\\_Final.pdf](http://www.swfrpc.org/content/Resources/Publications/Energy_Assurance_031513_Final.pdf)
- 13) **Florida Energy Resiliency Report** (statewide) includes Cape Coral.  
[http://www.swfrpc.org/content/Resources/Publications/Energy\\_Resiliency.pdf](http://www.swfrpc.org/content/Resources/Publications/Energy_Resiliency.pdf)
- 14) Staff performs the Lee County Hazard Analysis inspections and reports \$1400/year
- 15) The SWFRPC is the only forum for local leaders to meet monthly and discuss regional issues
- 16) Currently working on a Regional Transportation Map and a Regional Development Opportunity Map

**Item Number: 11.A.**  
**Meeting Date: 5/7/2018**  
**Item Type: NEW BUSINESS**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

FLC Board of Directors Selection (Brought forward by Mayor Pro Tem Williams)

**REQUESTED ACTION:**

Appoint

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

**LEGAL REVIEW:**

**EXHIBITS:**

**PREPARED BY:**

CG Division- Department- Council  
Offices

**SOURCE OF ADDITIONAL INFORMATION:**

N/A



**Item Number: 11.B.**  
**Meeting Date: 5/7/2018**  
**Item Type: NEW BUSINESS**

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Burnt Store Road Right-of-Way Committee Discussion (Brought forward by Councilmember Cosden)

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

**LEGAL REVIEW:**

**EXHIBITS:**

**PREPARED BY:**

PT Division- Department- Council  
Offices

**SOURCE OF ADDITIONAL INFORMATION:**

**Item Number:** 11.C.  
**Meeting Date:** 5/7/2018  
**Item Type:** NEW BUSINESS

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Reinstatement of Parks Master Plan Stakeholders Group (Brought forward by City Manager)

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

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

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

**SUMMARY EXPLANATION AND BACKGROUND:**

**LEGAL REVIEW:**

**EXHIBITS:**

Memo - Reinstatement of Parks Master Plan Stakeholder Group

**PREPARED BY:**

Division- Department-

**SOURCE OF ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

**Description**


☐ Memo

**Type**

Backup Material

MEMORANDUM

CITY OF CAPE CORAL  
CITY MANAGER'S OFFICE

TO: Mayor Coviello and Council Members  
FROM: John Szerlag, City Manager   
DATE: May 3, 2018  
SUBJECT: Reinstatement of Parks Master Plan Stakeholder Group

---

Negotiations are going well with Mr. Bill McHale of the Ryan Company regarding the purchase of the old golf course property. I hope to have a term sheet covering all issues of sale before hiatus. As such, I'm requesting authorization to reinstate the original Parks Master Plan Stakeholder Group for reason of developing recommendations for use of the 175-acre parcel. This scope of work would also take into consideration possible impacts on the Yacht Club, Festival Park, and Four Freedoms Park. Further, I am proposing that facilitation of this assignment to the Stakeholders will be conducted by in-house staff as opposed to going outside for a consultant.

For informational purposes, I am including a list of the original Stakeholder Group with the exception of those members that are no longer residents or do not wish to participate.

As always, please feel free to contact me should you have any questions.

JS:pd

Attachment – List of Parks Master Plan Stakeholders

C: Parks Master Plan Stakeholder Group  
Kerry Runyon, Parks and Recreation Director  
Vincent Cautero, Community Development Director  
Chad Boyko, Principal Planner

## **Parks Master Plan Stakeholder Group Members**

- Linda Prince
- Judy Jenkins
- Carolyn Conant
- Danielle Sharp
- Sharolyn Hunter
- Wayne Kirkwood
- Pascha Donaldson
- Elmer Tabor
- Joann Elardo
- Joe Mazurkiewicz
- Gary Aubuchon

Lynn Pippinger – awaiting response

Dolores Bertolini – awaiting response