

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 SPECIAL MEETING OF THE
CAPE CORAL CITY COUNCIL**

June 18, 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

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

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

5. CITIZENS INPUT TIME

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

6. BUSINESS

A. Consent Agenda - Resolution 117-18 Approve Amendment #1 to contract CON-DCD16-73/GM between the City of Cape Coral and Redevelopment Management Associates, LLC, for additional services, Phase II, for the Bimini Basin Redevelopment Project which consist of Implementation and Investment Attraction; Negotiation Services; and Development Opportunity Promotion in the amount of \$75,000; And Authorize the City Manager or designee

to execute the amendment. The project would be increased from \$120,000, approved via Resolution 10-17 on January 23, 2017, to \$195,000; Department: Department of Community Development (DCD); Dollar Value: \$75,000; (Government Services)

- B. Consent Agenda - Resolution 119-18 Ratify award by Lee County to Wright Construction Group, Inc. as the lowest responsive responsible bidder, per the Joint Purchase Agreement (JPA) adopted on March 16, 2015 via Resolution 32-15, for the City's Utility Work for Phase II, Burnt Store Road Widening - Middle Segment Utility Casing installation, in the amount of \$314,038, plus a City Controlled contingency of \$75,000 for a total project cost of \$389,038; And authorize the City Manager or Designee to execute purchase order, change orders and/or supplemental agreements required by the Joint Purchase Agreement; Department: Utilities; Dollar amount: \$389,038; (Water & Sewer Fund)
- C. Consent Agenda - Resolution 120-18 Award Bid# ITB-UT18-62/KR Coating Systems for Pre-Stressed Potable Water Storage Tanks located at the North Reverse Osmosis (NRO) Water Treatment Plant (WTP) and Southwest RO (SWRO) WTP to provide refurbishment of the tanks to Worth Contracting, Inc. of Jacksonville, FL , as the lowest, responsive and responsible bidder in the amount of \$351,566 with a 10% City controlled contingency of \$35,157 for a total project cost of \$386,723 and authorize the City Manager or designee to execute the contract, amendments and change orders; Department: Utilities; Dollar Value: \$386,723; (Water and Sewer Fund)
- D. Consent Agenda - Resolution 121-18 Approve a Single/Sole Source with Tencarva Machinery Company, LLC, dba Hudson Pump & Equipment for the purchase of twenty (20) SmartCover® Systems™ products for monitoring wastewater flows in the sewer collection system for \$80,980, the price includes the first year of recurring support service charges of \$7,280 for the twenty (20) units. Authorize the City Manager or Designee to execute the purchase order, related documents and/or supplemental agreements. Tencarva Machinery Company, LLC, dba Hudson Pump and Equipment, Inc. is the sole authorized dealer for SmartCOVER® & SmartFLOE™ technology products and monitoring systems; Department: Utilities; Dollar Value: \$80,980; (Water & Sewer Fund)
- E. Consent Agenda - Resolution 125-18 Approve the purchase and installation of playground equipment from Bliss Products and Services, Inc. piggybacking Manatee County School District Contract #16-0025-MR-3, at a total cost of \$179,858, in accordance with City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) Purchases of Goods or Services from Contracts Awarded by other Governmental or Not-for-Profit Entities by Competitive Bid or Request for Proposals; And authorize the City Manager or Designee to execute the contract, contract amendment,

purchase order and any related documents. Department: Parks and Recreation Dollar value: \$179,858 (Capital Fund).

- F. Consent Agenda - Resolution 126-18 Approve the purchase of Personal Protective Equipment (PPE) (Firefighting protective coats and pants - Bunker Gear), from Municipal Equipment Company, at the unit prices stated, not to exceed budgetary limit, piggybacking Lake County Contract #17-0606H in accordance with City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) Purchases of Goods or Services from Contracts Awarded by other Governmental or Not-for-Profit Entities by Competitive Bid or Request for Proposals; And authorize the City Manager or Designee to execute the purchase order; Department: Fire Department; Dollar Value: \$138,963; (General Fund)
- G. Consent Agenda - Resolution 127-18 Approve the Single Source to Rexel USA Inc., for the Purchase and Service of Allen Bradley and Rockwell components utilized by the Utilities Department's Water Reclamation and Water Production Division for Fiscal Year 2018 and Fiscal Year 2019, not to exceed budgetary limits and authorize the City Manager or Designee to execute the purchase orders. Rexel USA Inc. is the only authorized representative for Rockwell Automation that can sell Allen-Bradley and Rockwell software products along with related services in the geographic area; Department: Utilities; Combined Total Dollar Amount: \$200,000; (Water & Sewer Fund—FY2018 \$80,000 and FY2019 \$120,000).
- H. Consent Agenda - Resolution 132-18 Adopting State Housing Initiative Partnership (SHIP) subrecipient agreements between the City of Cape Coral and Cape Coral Housing Development, Goodwill Industries, and Habitat for Humanity of Lee and Hendry Counties
- I. Consent Agenda - Resolution 133-18 Acceptance of State Financial Assistance Grant Funding to retrofit the mobile command center vehicle with new technology upgrades; Department Police; Dollar Value \$176,250; Cash Match of \$82,150; (Police Department Federal Forfeiture Fund)
- J. Consent Agenda - Resolution 134-18 UEP North 2 FDEP Total Maximum Daily Loading (TMDL) Grants to assist with offsetting existing North 2 UEP Stormwater Improvement costs and will enhance water quality in the City's canal system and Pine Island Sound; Department: Public Works (UEP); FDEP Grant Dollar Value: \$1,900,000; (Fund: N/A)
- K. Consent Agenda - Resolution 135-18 Approval to offer relocation reimbursement, if applicable, as allowed in the City Code of Ordinances, section § 2-25.4, when hiring 22 School Resource Officer (SRO) positions in the Police Department in which the recruitment efforts will be conducted in FY2018 and the expenses will be incurred in FY2019 for a not to exceed amount of \$55,000 (up to \$2,500/out-of-state relocation, \$1,500/in state relocation); The SRO positions were approved via Resolution 115-18 on May 14,

2018. Department: Human Resources; Total Dollar Amount: \$55,000; (General Fund – FY2019)

- L. Consent Agenda - Resolution 136-18 Approval of Interlocal Agreement with Lee County School Board to establish School Resource Officer Program
- M. Consent Agenda - Resolution 138-18 Rescind Bid CON UT18-41/KR awarded to Douglas N. Higgins under Resolution 105-18 dated May 14, 2018; Department: Utilities; Dollar Value: N/A; (Fund: N/A)
- N. Personnel Action - Resolution 137-18 Approval of new position classification of Senior Public Works Manager: Human Resources; Dollar Value: no budgetary impact (General Fund).
- O. Unfinished Business - Water Quality - Update
- P. ADDENDUM: Unfinished Business - LCEC Franchise Agreement discussion (Brought forward by Mayor Coviello)
- Q. ADDENDUM: New Business - Waste Pro Ride Along that occurred on June 11, 2018 (Brought forward by Councilmember Nelson)

7. ORDINANCES/RESOLUTIONS - PUBLIC HEARINGS

- A. Ordinance 36-18 Public Hearing
WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 2, Administration, Article II, Fees, by establishing Division 9, Impact Fee Deferral Pilot Program; providing definitions; establishing a Single-Family Impact Fee Deferral Program; providing program eligibility and procedures; requiring developer agreements; requiring owner agreements; providing for expiration or extension of the Impact Fee Pilot Program. (Applicant: Brought forward by City Management.)
- B. Ordinance 38-18 Public Hearing
WHAT THE ORDINANCE ACCOMPLISHES:
An Ordinance ordering and calling for a Bond Referendum Election to be held on November 6, 2018 in the City of Cape Coral, Florida to determine if the qualified electors residing in the City approve the issuance by the City of General Obligation Bonds which shall mature not later than Fifteen (15) Years from their date of issuance in an aggregate principal amount not exceeding \$60,000,000 payable from Ad Valorem Taxes levied in amounts sufficient to pay Debt Service on such Bonds on all taxable property within the City to finance costs relating to the acquisition, construction and equipping of Various Parks, Natural Areas, Recreational and Athletic Facilities; Trails, Boating, Fishing and Swimming Facilities, and Wildlife Habitat and Shoreline Protection Improvements; providing severability and an effective date. (Applicant: Brought forward by City Management.)

C. Ordinance 39-18 Public Hearing for Transmittal

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending Policy 1.15 of the Future Land Use Element to establish the Seven Islands Sub-District Land Use Classification. (Applicant: City of Cape Coral)

Planning & Zoning Recommendation: At their June 6, 2018 meeting, Planning & Zoning voted (7-0) to recommend transmittal. City Management Recommendation: City Management recommends transmittal.

D. Ordinance 40-18 (LU 18-0002) Public Hearing for Transmittal

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map to designate a parcel of land classified as Mixed Use (MX) Land Use as comprising the Seven Islands Sub-District. (Applicant: City of Cape Coral)

Planning & Zoning Recommendation: At their June 6, 2018 meeting, Planning & Zoning voted (7-0) to recommend transmittal. City Management Recommendation: City Management recommends transmittal.

E. Ordinance 41-18 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Code of Ordinances, Chapter 10, "Land, Waterway Use Restrictions," by establishing Article V, "Mooring Fields"; providing for General Conditions, Bimini Basin Mooring Field Rules, Responsibilities of Tenants for All Mooring Fields, Amenities and Services for All Mooring Fields, Leasing Requirements for All Mooring Fields, Speed Limits, Severe Storm or Hurricane Plans for All Mooring Fields, Plans for Future Expansion for all Mooring Fields, and Managed Mooring Areas. (Applicant: Brought forward by City Management.)

8. ORDINANCES/RESOLUTIONS - INTRODUCTIONS

A. Ordinance 42-18/LU 18-0001 Set Public Hearing for July 30, 2018

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map from Commercial/Professional (CP) to Single-Family Residential (SF) Land Use for property described as Lots 1-28 and 55-82, Block 3170, Cape Coral Unit 66; property located north of SW 28th Street, south of SW 26th Street, east of SW 9th Avenue, and west of SW 8th Court. (Applicant: Sullico II, LLC)

Planning & Zoning Recommendation: At their June 6, 2018 meeting, Planning & Zoning voted (6-1) to recommend approval of the Ordinance.

City Management Recommendation: City Management recommends approval.

- B. Ordinance 43-18/LU 17-0012 Set Public Hearing for Transmittal for July 30, 2018

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map from Mixed Use Preserve (MUP), Class III, Type D to Multi-Family Residential (MF) and from Urban Services Reserve Area to Urban Services Transition Area for a parcel lying in a portion of the Southwest Quarter of Section 29, Township 44 South, Range 23 East, Lee County Florida; property located northeast of Veterans Parkway and to the west of the Sandoval Subdivision. (Applicant: MSI Holdings, LLC)

Planning & Zoning Recommendation: At their June 6, 2018 meeting, Planning & Zoning voted (5-2) to recommend approval of the Ordinance.

City Management Recommendation: City Management recommends approval.

9. TIME AND PLACE OF FUTURE MEETINGS

- A. A Regular Meeting of the Cape Coral City Council is Scheduled for Monday, July 23, 2018 at 4:30 p.m. in Council Chambers

10. MOTION TO ADJOURN

This agenda should not be viewed as containing definitive information on matters of law with respect to ordinance and resolution summaries.

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.A.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 117-18 Approve Amendment #1 to contract CON-DCD16-73/GM between the City of Cape Coral and Redevelopment Management Associates, LLC, for additional services, Phase II, for the Bimini Basin Redevelopment Project which consist of Implementation and Investment Attraction; Negotiation Services; and Development Opportunity Promotion in the amount of \$75,000; And Authorize the City Manager or designee to execute the amendment. The project would be increased from \$120,000, approved via Resolution 10-17 on January 23, 2017, to \$195,000; Department: Department of Community Development (DCD); Dollar Value: \$75,000; (Government Services)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

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

ELEMENT A: INCREASE ECONOMIC DEVELOPMENT AND REDEVELOPMENT IN THE CITY

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. On January 23, 2017 Council Approved Resolution 10-17 to award contract CON-DCD16-73/GM, for the Bimini Basin Redevelopment Project Management to Redevelopment Management Associates, LLC.
2. Phase I, initial scope has been completed which resulted in the completion of an implementation strategy and Plan
3. Staff is recommending continuing with Phase II, which consist of Implementation and Investment Attraction; Negotiation Services; and Development Opportunity Promotion
4. If approved, Phase II cost would be \$75,000 and the term of the contract is until the completion and acceptance of the deliverables. The project would be increased from \$120,000 to \$195,000.
5. Funding Information: Account #184006.631399 General Fund/Government Services

LEGAL REVIEW:

Amendment reviewed by Legal

EXHIBITS:

Recommendation Memo

Resolution 117-18

Resolution 10-17 (including original contract)

PREPARED BY:

Wanda

Roop

Division- Procurement

Department- Finance

SOURCE OF ADDITIONAL INFORMATION:**ATTACHMENTS:**

Description	Type
▣ Memo	Backup Material
▣ Resolution 117-18	Backup Material
▣ Resolution 10-17 (includes original contract)	Backup Material

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 
Connie Barron, Public Affairs Manager 
Dana Brunett, Economic Development Manager 

DATE: June 12, 2018

SUBJECT: Bimini Basin Redevelopment Project – Implementation Management

EXECUTIVE SUMMARY

Staff is recommending the City Council enter into an agreement for services with RMA, LLC (Redevelopment Management Associates) to perform the second phase of the Bimini Basin Redevelopment Project.

BACKGROUND

As the Council is aware, RMA conducted phase one of the project, which resulted in the completion of an Implementation Strategy and Plan. This report was prepared after RMA officials met with property owners in the Bimini Basin area; stakeholders; staff; and community leaders. Public workshops were conducted. In preparation of their final work product, RMA also reviewed the work performed by the graduate students at the University of South Florida in 2014-15. Their work included a stakeholders' charrette.

The second phase will consist of three components: Implementation and Investment Attraction; Negotiation Services; and Development Opportunity Promotion. We hope to have investment partners within one year. That said, it is difficult to accurately forecast a timeframe due to outside influences such as market conditions, private ownership and development of P3 options.

STRATEGIC PLAN

Element A: Increase Economic Development and Redevelopment in the city.

FUNDING

The cost for this work will be \$74,800.00. Funds are available in the Government Services account of the General Fund.

RECOMMENDATION

Staff recommends the Council approve the Agreement with RMA, LLC.

VC:eh (memo bimini basin implementation 05162018.docx)

CITY OF CAPE CORAL
BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT
Contract # CON-DCD16-73/GM
AMENDMENT #1

This Amendment #1 ("Amendment") is made by the City of Cape Coral, Florida, hereinafter called "**City**", and **Redevelopment Management Associates, LLC**, hereinafter called "**Consultant**", located at 2302 East Atlantic Boulevard in Pompano Beach, Florida 33062, parties to the Contract #CON-DCD16-73/GM for **Bimini Basin Redevelopment Project - Implementation Management** services, dated January 26, 2017.

The contract is amended as follows:

Scope of Services

Paragraph 4 of the contract is amended to add the services provided in the Consultant's proposal for services dated May 11, 2018, labeled as "**Exhibit A**", and attached to this amendment.

Paragraph 7 of the contract is amended to add this Amendment #1 as part of the Contract Documents.

Compensation

The not to exceed amount in paragraph 4 is increased from One Hundred Twenty Thousand Dollars (\$120,000) to One Hundred Ninety-Five Thousand Dollars (\$195,000) pursuant to the fees for each task outlined in the Consultant's proposal for services dated May 11, 2018, labeled as "**Exhibit A**", and attached to this amendment.

All other terms, conditions, and specifications of Contract # CON-DCD16-73/GM not changed by this Amendment #1 remain as originally written in contract #CON-DCD16-73/GM.

CITY OF CAPE CORAL
BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT
Contract # CON-DCD16-73/GM
AMENDMENT #1

IN WITNESS, WHEREOF, the parties hereto have executed this Amendment #1 to be effective as of the last signature date shown below.

CONSULTANT:

Redevelopment Management Associates, LLC



Kim Briesemeister, Principal

Kim Briesemeister

Printed Name

5/25/18

Date

WITNESS:



Signature

Diane Templeton

Printed Name

5/25/18

Date

CITY OF CAPE CORAL:

A. John Szerlag,
City Manager


Date

ATTEST: (City Seal)

Rebecca van Deutekom, MMC
City Clerk

Date

CITY LEGAL REVIEW:



Dolores D. Menendez, Esq.
City Attorney

5/18/18

EXHIBIT A



REINVENTING YOUR CITY

May 11, 2018

SCOPE OF SERVICES

City of Cape Coral("Client")
C/O John Szerlag, City Manager
1015 Cultural Park Blvd. Cape Coral, FL 33990
P: 239.242.3667
E : jszerlag@capecoral.net

and

Redevelopment Management Associates, LLC (RMA)("Consultant")
C/O Kim Briesemeister, Principal
2302 East Atlantic Blvd.
Pompano Beach, FL 33062
P: 954.695.0754
E: kim@rma.us.com

RE: Bimini Basin Redevelopment Project – Implementation Management

Dear Mr. Szerlag:

Redevelopment Management Associates, LLC (RMA) ("Consultant") is pleased to provide this Scope of Services to the City of Cape Coral ("Client") for Implementation Management consulting services related to the project referred to as the Bimini Basin Redevelopment Project.

Background

RMA assisted the Client with Project Management services for the development of the Bimini Basin Implementation Plan, utilizing a proven approach to successfully achieve a balance between the desires of the City, the citizens and the business and development communities. RMA is committed to providing continued assistance with Implementation Management of the Bimini Basin Redevelopment Project. Please review the Scope of Services to confirm the tasks meet your expectations.

SCOPE OF SERVICES

1.0 Implementation and Investment Attraction

Consultant will work to attract development and business investment to the Bimini Basin area that is consistent with the Bimini Basin Implementation Plan, and assist the City of Cape Coral with implementation of actions included in said plan that furthers the attraction of private investment.

- 1.1** Facilitate introductions, meetings, or conversations between major Property Owners and real estate professionals, business prospects, and developers.
- 1.2** Manage and respond to inquiries or concerns regarding the Bimini Basin Implementation Plan.
- 1.3** Update the Market Assessment and Investment Driver Analysis (Land, Labor, Capital, Markets, Regulation) as necessary for project success.
- 1.4** Make recommendations for advertising placement as necessary to promote Bimini Basin opportunities. Content and placement shall be provided by Client.
- 1.5** Advise the City on actions and timelines necessary to implement the Bimini Basin plan recommendations to enhance the area's market position.

2.0 Provide Negotiating Services to facilitate investment in the Bimini Basin area:

Consultant will provide negotiating agreements, actions and services to facilitate development and business investment in the Bimini Basin area that is consistent with the Bimini Basin Plan.

- 2.1** Develop Term Sheets as necessary.
- 2.2** Assist the Client with financial elements of the project, including the specific financial obligations of the private and public-sector entities.
- 2.3** Present the draft business terms of the agreement in coordination with legal counsel, for discussion and presentation of the terms of the agreement, to the City/CRA Board.

- 2.4 At the direction of the client, evaluate the financial feasibility of the identified potential development programs, including sample schedule, timing and proformas for the development programs.
- 2.5 At the direction of the client, estimate the fiscal impact of the project on ad valorem tax collections and TIF.

3.0 Additional Property Acquisition: Consultant may provide additional real estate services to assist the Client in acquisition or disposition of properties in relation to the Bimini Basin area and other potential areas. This is an optional task at the sole direction of the City.

4.0 Development Opportunity Promotion: The 2018 Florida ICSC Conference will be held at the Orange County Convention Center in Orlando on August 26 - August 28, 2018. As an additional task, if desired, Consultant will represent the Client to potential brokers and developers who attend the annual conference. This is an optional task at the sole direction of the City. RMA may present Bimini Basin opportunities at additional events and trade shows as directed by the City.

- 4.1 Present development opportunities at the conference and trade show.
- 4.2 Consultant representative will be intimately involved in the Bimini Basin project and will have knowledge of development opportunities.
- 4.3 Promotion of Client development opportunities during the conference and trade show, as well as other networking opportunities throughout the conference.

Compensation: The fee for services shall be a lump sum fee, for each task, to be paid monthly based on percentage complete.

<i>Task 1.0: Implementation and Investment Attraction</i>	
Tasks 1.1, 1.2 and 1.5	Hourly, not to exceed \$25,000
Task 1.3	\$400 per month
Task 1.4	\$1,000
<i>Task 2.0: Negotiating Services</i>	
Tasks 2.1-2.3	Hourly, not to exceed \$40,000
Task 2.4	\$3,000 per development program
Task 2.5	\$2,500 per development program
<i>Task 3.0: Additional Property Acquisition</i>	Hourly or Commission*

Task 4.0: Development Opportunity Promotion

\$2,500 per event

**In the event Consultant collects a standard real estate brokerage fee on behalf of the client, then there will be no charge to the Client for that related task.*

Graphic Design/Collateral Development: Upon separate Client request, not included in this scope, Consultant will produce graphic materials related to promotion opportunities and/or public meetings related to the Bimini Basin project.

Reimbursable Expenses: Costs considered reimbursable include all third-party design services requested by the Client, renderings, additional printed materials or duplicate copies of presentation materials and reports. Marketing for public meetings will be completed by the Client or will be submitted as a reimbursable expense by the Consultant.

Fee Schedule: The fee schedule for hourly services is attached.

We look forward to working with the City of Cape Coral on this project.

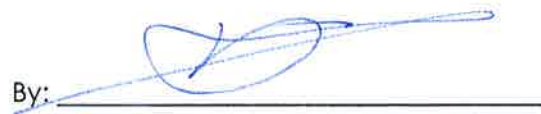
AGREED TO AND ACCEPTED BY:

CLIENT

By: _____
John Szerlag, City Manager
City of Cape Coral

Date: _____

CONSULTANT

By:  _____
Kim Briesemeister, Principal
RMA, LLC

Date: 5/25/18

RMA Rate Schedule

PROFESSIONAL SERVICE	HOURLY RATE
RMA INTERNAL	
Bookkeeper	\$90.00
Business Development Coordinator	\$90.00
Budget & Operations Analyst	\$105.00
Finance	\$160.00
Controller	\$170.00
Director of Administration	\$185.00
Director of Operations	\$185.00

PROFESSIONAL SERVICE	HOURLY RATE
BUSINESS ATTRACTION & MARKETING	
Graphic Designer	\$85.00
Creative Director	\$150.00
Director of Digital Solutions	\$150.00
Marketing Assistant	\$85.00
Marketing Coordinator	\$100.00
Marketing Manager	\$125.00
Sr. Marketing Manager	\$150.00
Tourism Specialist	\$150.00
Director - Business Attraction & Marketing	\$185.00
CONSTRUCTION	
Construction Inspector	\$95.00
Construction Manager	\$145.00
Construction Director	\$180.00
ECONOMIC DEVELOPMENT	
Economic Develop Assistant	\$85.00
Economic Develop Coordinator	\$115.00
Economic Develop Manager	\$150.00
Director - Economic Development	\$185.00
ENGINEERING	
Engineer	\$95.00
Engineer I	\$125.00
Engineer II	\$150.00
Sr. Engineer	\$195.00
REAL ESTATE	
Director - Real Estate	\$185.00

PROFESSIONAL SERVICE	HOURLY RATE
GOVERNMENT MANAGEMENT & ADMIN	
Administrative Assistant	\$80.00
CRA Clerk	\$80.00
Sr. Admin Assistant	\$105.00
Sr. Redevelopment Associate	\$195.00
Managing Director	\$205.00
Principal	\$230.00
PROJECT MANAGEMENT	
Project Coordinator	\$95.00
Project Manager I	\$125.00
Project Manager II	\$145.00
Sr. Project Manager	\$180.00
URBAN DESIGN & PLANNING	
GIS/CAD Operator	\$95.00
Landscape Architect I	\$105.00
Landscape Architect II	\$120.00
Landscape Architect III	\$135.00
Sr. Landscape Architect	\$155.00
Planning Assistant	\$105.00
Planner I	\$115.00
Planner II	\$125.00
Sr. Planner	\$150.00
Urban Design Assistant	\$105.00
Urban Designer I	\$115.00
Urban Designer II	\$125.00
Sr. Urban Designer	\$150.00
Director-Urban Design & Planning	\$185.00



REINVENTING YOUR CITY

RESOLUTION 117 - 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL APPROVING AMENDMENT #1 TO CONTRACT #CON-DCD16-73/GM FOR PHASE II OF THE BIMINI BASIN REDEVELOPMENT PROJECT BETWEEN THE CITY OF CAPE CORAL AND REDEVELOPMENT MANAGEMENT ASSOCIATES, LLC, IN ORDER TO MODIFY THE SCOPE OF SERVICES AND INCREASE THE CONTRACT AMOUNT; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE CONTRACT AMENDMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on January 23, 2017, the City Council adopted Resolution 10-17, approving Agreement #CON-DCD16-73/GM between the City of Cape Coral and Redevelopment Management Associates, LLC, for Bimini Basin Redevelopment Project Management in the amount of \$120,000, subject to a City-controlled contingency amount not to exceed ten (10) percent of the total amount of the contract; and

WHEREAS, Redevelopment Management Associates, LLC, has completed the scope of Phase I of the project, resulting in the completion of an Implementation Strategy and Plan; and

WHEREAS, Amendment #1 to Agreement #CON-DCD16-73/GM modifies the scope of the Bimini Basin Redevelopment Project Management Agreement to continue with Phase II of the project, which includes Implementation and Investment Attraction, Negotiation Services, and Development Opportunity Promotion, at an additional cost of \$75,000; and

WHEREAS, the City Council desires to approve Amendment #1 to Agreement #CON-DCD16-73/GM between the City of Cape Coral and Redevelopment Management Services, LLC, for Phase II of the Bimini Basin Redevelopment Project.

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

Section 1. The City Council hereby approve Amendment #1 to Agreement #CON-DCD16-73/GM between the City of Cape Coral and Redevelopment Project Management Services, LLC, for Phase II of the Bimini Basin Redevelopment Project, to include Implementation and Investment Attraction, Negotiation Services, and Development Opportunity Promotion, increasing the contract price in the amount of \$75,000, and authorizes the City Manager to execute Amendment #1, attached hereto as Exhibit 1.

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

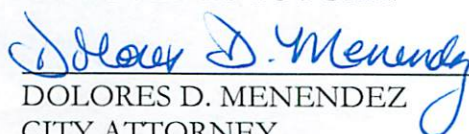
VOTE OF MAYOR AND COUNCILMEMBERS:

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
Contract Amendment-Sweet Sparkman Architects

CITY OF CAPE CORAL
BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT
Contract # CON-DCD16-73/GM
AMENDMENT #1

This Amendment #1 ("Amendment") is made by the City of Cape Coral, Florida, hereinafter called "**City**", and Redevelopment Management Associates, LLC, hereinafter called "**Consultant**", located at 2302 East Atlantic Boulevard in Pompano Beach, Florida 33062, parties to the Contract #CON-DCD16-73/GM for **Bimini Basin Redevelopment Project - Implementation Management** services, dated January 26, 2017.

The contract is amended as follows:

Scope of Services

Paragraph 4 of the contract is amended to add the services provided in the Consultant's proposal for services dated May 11, 2018, labeled as "**Exhibit A**", and attached to this amendment.

Paragraph 7 of the contract is amended to add this Amendment #1 as part of the Contract Documents.

Compensation

The not to exceed amount in paragraph 4 is increased from One Hundred Twenty Thousand Dollars (\$120,000) to One Hundred Ninety-Five Thousand Dollars (\$195,000) pursuant to the fees for each task outlined in the Consultant's proposal for services dated May 11, 2018, labeled as "**Exhibit A**", and attached to this amendment.


All other terms, conditions, and specifications of Contract # CON-DCD16-73/GM not changed by this Amendment #1 remain as originally written in contract #CON-DCD16-73/GM.

CITY OF CAPE CORAL
BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT
Contract # CON-DCD16-73/GM
AMENDMENT #1

IN WITNESS, WHEREOF, the parties hereto have executed this Amendment #1 to be effective as of the last signature date shown below.

CONSULTANT:

Redevelopment Management Associates, LLC

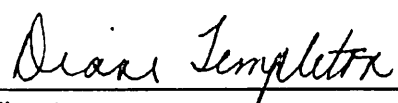


Kim Briesemeister, Principal

Kim Briesemeister
Printed Name

5/25/18
Date

WITNESS:



Signature

Diane Templeton
Printed Name

5/25/18
Date

CITY OF CAPE CORAL:

A. John Szerlag,
City Manager


Date

ATTEST: (City Seal)

Rebecca van Deutekom, MMC
City Clerk

Date

CITY LEGAL REVIEW:



for Dolores D. Menendez, Esq.
City Attorney

5/18/18

EXHIBIT A



REINVENTING YOUR CITY

May 11, 2018

SCOPE OF SERVICES

City of Cape Coral("Client")
C/O John Szerlag, City Manager
1015 Cultural Park Blvd. Cape Coral, FL 33990
P: 239.242.3667
E : jszerlag@capecoral.net

and

Redevelopment Management Associates, LLC (RMA)("Consultant")
C/O Kim Briesemeister, Principal
2302 East Atlantic Blvd.
Pompano Beach, FL 33062
P: 954.695.0754
E: kim@rma.us.com

RE: Bimini Basin Redevelopment Project – Implementation Management

Dear Mr. Szerlag:

Redevelopment Management Associates, LLC (RMA) ("Consultant") is pleased to provide this Scope of Services to the City of Cape Coral ("Client") for Implementation Management consulting services related to the project referred to as the Bimini Basin Redevelopment Project.

Background

RMA assisted the Client with Project Management services for the development of the Bimini Basin Implementation Plan, utilizing a proven approach to successfully achieve a balance between the desires of the City, the citizens and the business and development communities. RMA is committed to providing continued assistance with Implementation Management of the Bimini Basin Redevelopment Project. Please review the Scope of Services to confirm the tasks meet your expectations.

SCOPE OF SERVICES

1.0 Implementation and Investment Attraction

Consultant will work to attract development and business investment to the Bimini Basin area that is consistent with the Bimini Basin Implementation Plan, and assist the City of Cape Coral with implementation of actions included in said plan that furthers the attraction of private investment.

- 1.1** Facilitate introductions, meetings, or conversations between major Property Owners and real estate professionals, business prospects, and developers.
- 1.2** Manage and respond to inquiries or concerns regarding the Bimini Basin Implementation Plan.
- 1.3** Update the Market Assessment and Investment Driver Analysis (Land, Labor, Capital, Markets, Regulation) as necessary for project success.
- 1.4** Make recommendations for advertising placement as necessary to promote Bimini Basin opportunities. Content and placement shall be provided by Client.
- 1.5** Advise the City on actions and timelines necessary to implement the Bimini Basin plan recommendations to enhance the area's market position.

2.0 Provide Negotiating Services to facilitate Investment in the Bimini Basin area:

Consultant will provide negotiating agreements, actions and services to facilitate development and business investment in the Bimini Basin area that is consistent with the Bimini Basin Plan.

- 2.1** Develop Term Sheets as necessary.
- 2.2** Assist the Client with financial elements of the project, including the specific financial obligations of the private and public-sector entities.
- 2.3** Present the draft business terms of the agreement in coordination with legal counsel, for discussion and presentation of the terms of the agreement, to the City/CRA Board.

- 2.4 At the direction of the client, evaluate the financial feasibility of the identified potential development programs, including sample schedule, timing and proformas for the development programs.
- 2.5 At the direction of the client, estimate the fiscal impact of the project on ad valorem tax collections and TIF.

3.0 Additional Property Acquisition: Consultant may provide additional real estate services to assist the Client in acquisition or disposition of properties in relation to the Bimini Basin area and other potential areas. This is an optional task at the sole direction of the City.

4.0 Development Opportunity Promotion: The 2018 Florida ICSC Conference will be held at the Orange County Convention Center in Orlando on August 26 - August 28, 2018. As an additional task, if desired, Consultant will represent the Client to potential brokers and developers who attend the annual conference. This is an optional task at the sole direction of the City. RMA may present Bimini Basin opportunities at additional events and trade shows as directed by the City.

4.1 Present development opportunities at the conference and trade show.

4.2 Consultant representative will be intimately involved in the Bimini Basin project and will have knowledge of development opportunities.

4.3 Promotion of Client development opportunities during the conference and trade show, as well as other networking opportunities throughout the conference.

Compensation: The fee for services shall be a lump sum fee, for each task, to be paid monthly based on percentage complete.

Task 1.0: Implementation and Investment Attraction

Tasks 1.1, 1.2 and 1.5	Hourly, not to exceed \$25,000
Task 1.3	\$400 per month
Task 1.4	\$1,000

Task 2.0: Negotiating Services

Tasks 2.1-2.3	Hourly, not to exceed \$40,000
Task 2.4	\$3,000 per development program
Task 2.5	\$2,500 per development program

Task 3.0: Additional Property Acquisition

Hourly or Commission*

Task 4.0: Development Opportunity Promotion

\$2,500 per event

**In the event Consultant collects a standard real estate brokerage fee on behalf of the client, then there will be no charge to the Client for that related task.*

Graphic Design/Collateral Development: Upon separate Client request, not included in this scope, Consultant will produce graphic materials related to promotion opportunities and/or public meetings related to the Bimini Basin project.

Reimbursable Expenses: Costs considered reimbursable include all third-party design services requested by the Client, renderings, additional printed materials or duplicate copies of presentation materials and reports. Marketing for public meetings will be completed by the Client or will be submitted as a reimbursable expense by the Consultant.

Fee Schedule: The fee schedule for hourly services is attached.

We look forward to working with the City of Cape Coral on this project.


AGREED TO AND ACCEPTED BY:

CLIENT

By: _____
John Szerlag, City Manager
City of Cape Coral

Date: _____

CONSULTANT

By:  _____
Kim Briesemeister, Principal
RMA, LLC

Date: 5/25/18

RMA Rate Schedule

PROFESSIONAL SERVICE	HOURLY RATE	PROFESSIONAL SERVICE	HOURLY RATE	PROFESSIONAL SERVICE	HOURLY RATE
RMA INTERNAL		BUSINESS ATTRACTION & MARKETING		GOVERNMENT MANAGEMENT & ADMIN	
Bookkeeper	\$90.00	Graphic Designer	\$85.00	Administrative Assistant	\$80.00
Business Development Coordinator	\$90.00	Creative Director	\$150.00	CRA Clerk	\$80.00
Budget & Operations Analyst	\$105.00	Director of Digital Solutions	\$150.00	Sr. Admin Assistant	\$105.00
Finance	\$160.00	Marketing Assistant	\$85.00	Sr. Redevelopment Associate	\$195.00
Controller	\$170.00	Marketing Coordinator	\$100.00	Managing Director	\$205.00
Director of Administration	\$185.00	Marketing Manager	\$125.00	Principal	\$230.00
Director of Operations	\$185.00	Sr. Marketing Manager	\$150.00	PROJECT MANAGEMENT	
		Tourism Specialist	\$150.00	Project Coordinator	\$95.00
		Director - Business Attraction & Marketing	\$185.00	Project Manager I	\$125.00
		CONSTRUCTION		Project Manager II	\$145.00
		Construction Inspector	\$95.00	Sr. Project Manager	\$180.00
		Construction Manager	\$145.00	URBAN DESIGN & PLANNING	
		Construction Director	\$180.00	GIS/CAD Operator	\$95.00
		ECONOMIC DEVELOPMENT		Landscape Architect I	\$105.00
		Economic Develop Assistant	\$85.00	Landscape Architect II	\$120.00
		Economic Develop Coordinator	\$115.00	Landscape Architect III	\$135.00
		Economic Develop Manager	\$150.00	Sr. Landscape Architect	\$155.00
		Director - Economic Development	\$185.00	Planning Assistant	\$105.00
		ENGINEERING		Planner I	\$115.00
		Engineer	\$95.00	Planner II	\$125.00
		Engineer I	\$125.00	Sr. Planner	\$150.00
		Engineer II	\$150.00	Urban Design Assistant	\$105.00
		Sr. Engineer	\$195.00	Urban Designer I	\$115.00
		REAL ESTATE		Urban Designer II	\$125.00
		Director - Real Estate	\$185.00	Sr. Urban Designer	\$150.00
				Director-Urban Design & Planning	\$185.00



REINVENTING YOUR CITY

Bimini Basin Redevelopment Project Management

Contract # CON-DCD16-73/GM

THIS CONTRACT is made this 26 day of JANUARY, 2017 by and between the CITY OF CAPE CORAL, FLORIDA, hereinafter called "CITY", and Redevelopment Management Associates, LLC, doing business as a limited liability corporation, hereinafter called "FIRM".

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

1. The FIRM **will provide** Bimini Basin Redevelopment Project Management services in accordance with the Contract Documents.
2. The FIRM **will furnish** all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the services described in the Contract Documents. Time is of the essence in the performance of this Contract.
3. The FIRM **will commence** work as required by the CONTRACT DOCUMENTS within 10 calendar days after the receipt of the written Notice to Proceed.
4. The FIRM **agrees** to perform all of the WORK described in the CONTRACT DOCUMENTS for the following **not to exceed** amount of One Hundred Twenty Thousand Dollars (\$120,000) plus any City required additional services at the hourly rate as listed on the FIRM'S Scope of Services (Exhibit A) during the term of the contract.
5. The term of the contract will expire at the conclusion of the project's agreed upon final completion.
6. This Contract **may be terminated** by the CITY for its convenience upon thirty (30) days prior written notice to the FIRM. In the event of termination, the FIRM shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract. Such amount shall be paid by the CITY after inspection of the work to determine the extent of performance under this Contract, whether completed or in progress.
7. The Term "**Contract Documents**" shall include this Contract, clarifications, addendums, Firm's Bid/Scope of Services except when it conflicts with any other contractual provision, the Notice to Proceed, Certificates, and the Bid Package prepared and issued by the City. In the event of conflict between any provision of any other document referenced herein as part of the contract and this Contract, the terms of this Contract shall control.
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 FIRM.
9. **Disclosure:** The FIRM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the FIRM to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation,

**BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT
CONTRACT # CON-DCD16-73/GM**

individual or firm, other than a bona fide employee working solely for the FIRM, 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 Community Development Director, or his representative, shall administer this Contract for the CITY.
11. **Governing Law:** The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, each party shall be responsible to pay for its own reasonable costs and attorney's fees.
12. **Amendments:** No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties.
13. **Payments:** Firm shall invoice the City monthly. City shall make payment and Firm 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 Firm in writing of its objection to the amount of such invoice, together with City's determination of the proper amount of such invoice. City shall pay any undisputed portion of such invoice within such thirty (30) day period.

If City shall give such notice to the Firm 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 Firm the amount so determined, less any amounts previously paid by City with respect to such invoice. In the event it is determined that City has overpaid such invoice, the Firm shall promptly refund to the City the amount of such overpayment.

14. **Firm's Representations:** In order to induce CITY to enter into the Contract FIRM makes the following representations:

FIRM 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.

FIRM 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 FIRM for such purposes.

FIRM has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents. FIRM has given CITY written notice of all conflicts, errors or discrepancies that have been

BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT CONTRACT # CON-DCD16-73/GM

discovered in the CONTRACT DOCUMENTS and the written resolution thereof by CITY is acceptable to FIRM.

15. **Indemnity:** To the extent permitted by law (F.S. 768.28), the FIRM 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 FIRM and any persons employed or utilized by FIRM in the performance of this Contract.
16. **Damage Liability:** The awarded FIRM shall be responsible for all claims filed for damage to private property, windows, screen enclosures, real estate signs, etc. Additionally, the FIRM shall be responsible for damage to all public property or utility property, fire hydrants, catch basins, guy wires telephone pedestals, etc. Copies of all damage claims shall be submitted to the Procurement Division.
17. **Invalid Provision:** The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
18. **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 Firm's personnel, sub-contractors, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

Firm shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Firm shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Firm on the Project. Firm 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 Record:** The City is a public agency subject to Chapter 119, Florida Statutes. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICABILITY OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT , CONTACT THE CUSTODIAN OF PUBLIC RECORDS, AT (239) 574-0411, ctyclk@capecoral.net, City of Cape Coral, 1015 Cultural Park Boulevard, Cape Coral, FL 33990.** The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:
 - Keep and maintain public records required by the public agency to perform the service;
 - Upon request from the City's custodian of public records, at no cost to the City, provide the City with a copy of the records in paper or electronic form as requested

BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT CONTRACT # CON-DCD16-73/GM

by the City or allow the City, its employees, or agents to inspect or copy the records at no cost within a reasonable time.

- Ensure that public records that are exempt or confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency;
- Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

The failure of Contractor to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Contract.

20. **Insurance:** Unless otherwise specified, FIRM shall, at its own expense, carry and maintain the following minimum insurance coverage, as well as any insurance coverage required by law:
- A. Worker's Compensation Insurance with limits that comply with statutory requirements and Employer's Liability Insurance with a lower limit of \$1,000,000 per occurrence, including, without limitation, coverage for Occupational Diseases, to provide for the payment of benefits to its employees employed on or in connection with the Work covered by this Agreement and/or to their dependents.
 - B. Commercial General Liability Insurance (on an occurrence basis), with a minimum combined single limit for Bodily Injury, including Death of \$1,000,000 per occurrence and for Property Damage of at least \$1,000,000 per occurrence.
 - C. Business Auto Liability Insurance with minimum Bodily Injury and Death Limit per accident of \$1,000,000 and a minimum Property Damage Limit per accident of \$1,000,000.
 - D. Professional Liability (Errors and Omissions) with 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.
 - E. Firm shall require its subfirms to provide for such benefits and carry and maintain the foregoing types of insurance at no expense to CITY. CITY shall be named as

**BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT
CONTRACT # CON-DCD16-73/GM**

an "Additional Insured" under the Firm's General Liability Insurance Policy with OWNER.

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

FIRM agrees that such benefits shall be provided and such insurance carried and maintained until the Work has been completed and accepted by CITY.

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

21. **Unauthorized Aliens:** The employment of unauthorized aliens by any Firm is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the Firm knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-Firms as well as the Firm as well.
22. **Entire Agreement:** This Contract constitutes the entire an exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

(balance of page blank)

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

6

**BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT
CONTRACT # CON-DCD16-73/GM**

**EXHIBIT A
SCOPE OF SERVICES**

Bimini Basin Redevelopment Project Management

SCOPE OF SERVICES

Task 1.0 Background Review

Our first step is to understand the goals and objectives of the City for both redevelopment and new development. This process entails careful analysis of the City's prior planning efforts, vision, and other relevant material.

1.1 Identify any missing data or materials necessary for feasibility analysis.

1.2 Review Land Use Development Regulations and the CRA regulations pertaining to the project site.

1.3 Conduct a site visit and tour, and review the work conducted by USF graduate students.

1.4 A meeting with City staff to review goals, necessary and missing data, and approach and outcomes including telephone conferences as necessary (possibly weekly). (Section 1 of RFP Scope)

Deliverable: Summary of previous plans, entitlements, and site visit/meeting.

Meeting Included in Task 1:

- *Client Kick-off Meeting with City Staff*

City's Responsibility:

- Provide existing maps, GIS layers and other related material for existing infrastructure and right-of-way

Task 2.0 Market Assessment and Situational Analysis

The economic development team conducts a general market assessment to understand the market demand and/or potential for the study areas where development, revitalization, and growth is desired. This analysis will review the real estate and housing markets, consumer supply and demand, and existing conditions. The economic development assessment will evaluate all sectors of the local economy in the study area and surrounding marketplace, including commercial (retail, restaurant, office), industrial, and residential (including housing affordability and housing programs). The assessment will identify opportunities to attract investment to the area, while also increasing household wealth and resisting gentrification. RMA will provide one draft and one set of revisions of the assessment based on staff comments of the Market Assessment.

2.1 Trade Area Review - This is a review of the various trade areas in which the Bimini Basin competes for investment and customers. It is the precursor to the Market Assessment and sets

the framework for that assessment's approach. It identifies the realistic markets for success during the rest of the project and implementation.

2.2 Investment Driver Analysis (Land, Labor, Capital, Markets, Regulation) - This analysis includes the following items:

Land - Identify opportunities for land assemblage. (Section 4 of RFP Scope)

Markets – Identify primary, secondary, and tertiary consumer markets, including retail, wholesale, and visitor and workforce markets. Additionally, identify market conditions and trends for consumer spending for each identified market segment. This analysis will include:

1. Demographic, psychographic, and consumer behavior of the target markets,
2. Purchasing power for the target markets,
3. Estimates of retail capacity and surplus/leakage for each retail sector,
4. Market trend history and 3-5, 5-7 and 7-10 market trend projections.

Capital & Regulation - Identify City Resources to support future development. (Section 3 of RFP Scope)

This includes a review of the capital sources that are available for private and public investment and economic growth in the project area and in some cases the larger trade areas. It evaluates things like bank deposits, credit availability, retail sales and business income, public investments, etc. The main purpose of the capital piece is to identify how money impacts (or doesn't impact) economic growth, and what the public sector partners can do to improve the role of capital in Bimini Basin growth. Regulation is the same – it is to understand how regulation encourages or impedes economic growth in the area, to identify reputational and perception issues associated with the regulatory environment from an investment perspective, and to start to identify what the public sector can realistically do to improve the regulatory environment to encourage investment.

Capital & Regulation - Infrastructure review. (Section 3 of RFP Scope)

2.3 Develop Market Demand and Market Potential Estimates for commercial and residential investment.

Deliverable: Market Assessment

RMA will prepare a market assessment report that will include a market summary and an analysis of opportunities and barriers to attracting and retaining businesses and residents in the area.

This will be provided in word and pdf format. It includes demographics, psychographics, spending estimates, gap analysis, development demand and potential estimates. It is the evaluation of the conditions of the real estate market (Land), the workforce and job market (Labor), finance (Capital), the trade area Markets, and regulations. This assessment will identify factors that impact each driver of investment and identify if said factor:

1. Can be directly influenced by the City to benefit economic growth;
2. Can be positively influenced by the City through indirect actions; or
3. Cannot be influenced by the City.

Task 3.0 Public Input

Public input is critical to redevelopment success. RMA will develop and implement a public engagement strategy with staff, attend and lead community workshops, and conduct an open house with formal and informal public input opportunities. As a way to collect public input through a digital platform, RMA will prepare both a community and business survey and analyze the results. Public input that is collected will be incorporated in the Bimini Basin Redevelopment Plan along with professional recommendations.

3.1 All day open house, with three formal presentations and public input sessions, and additional time for one-on-one conversation between stakeholders and the team.

3.2 Community Survey

These will be questions that provide additional insight into the area, its needs, challenges and assets.

3.3 Business Survey

3.4 One-on-One City meetings with elected officials and staff (up to 12 meetings plus telephone conferences as needed) (Section 3 of RFP Scope)

3.5 Coordinate One-on-One meetings with major Property Owners and Stakeholders (10 meetings) (Section 3 of RFP Scope)

3.6 Gather information on Common Business Climate Themes

The information will be determined by the process. The common business climate themes are those things that keep rising to the top that we keep hearing over and over as we meet with stakeholders, residents, businesses, property owners, and prospective investors. These are some of the items that either need to be capitalized on or addressed in order to be successful.

3.7 Gather information on Economic Growth Opportunities

The specific information will be an outcome of the input, and we will frame the input into those things that are most important to preserve, to enhance, to expose, to invest in and to capitalize on, for economic growth and investment.

3.8 Manage and respond to inquiries or concerns regarding the Bimini Basin Plan. (Section 1 of RFP Scope)

Deliverable: Summary of Public Input

Meetings Included in Task 3:

- *One (1) all day 10-hour Open House*
- *Twelve (12) One-on-One City Meetings*
- *Ten (10) One-on-One Property/Stakeholder Meetings*

City's Responsibility:

- Provide notices, advertising, and outreach for the public meeting/open house.

Task 4.0 Feasibility Analysis

Based on the information gathered in Tasks 2 and 3, the Economic Development, Urban Design, Business Attraction and Real Estate teams will perform a feasibility analysis that evaluates the development options for the study area and a feasibility analysis which will identify realistic scenarios that will meet the CRA and City's objectives.

4.1 Develop three (3) realistic basic development programs for the site. (This task does not include renderings) The aerial view outlining the site is attached.

4.2 Evaluate the financial feasibility of the identified potential development programs, including financial feasibility and proformas as well as a sample schedule and projected timelines for the development programs. (Section 2 of RFP Scope)

- a. The proforma will include development program, development costs; and an operating finance plan that includes revenues and expenses, looking at various return on investment measures, to determine feasibility and identify opportunities to enhance feasibility and attract private investment. This will include evaluation of potential financing mechanisms that are identified by RMA and the City.
- b. A schedule and timeline will be provided to estimate the length of the development process, to estimate operating and capital needs, project stabilization, fiscal and tax impacts, and renewal and replacement.

4.3 Identify challenges to development within the special flood hazard area. (Section 3 of RFP Scope)

4.4 Estimate the fiscal impact of the project on ad valorem tax collections and TIF (Tax Incremental Financing) revenues.

Deliverable: Financial Feasibility Analysis Summary Report

This scope will include the following:

- **Three (3) Financial Feasibility Scenarios**

Task 5.0 Strategy Development and Implementation

RMA will provide an implementation strategy which includes the CRA that identifies the specific action needed, priority, timeframe, lead agencies/organizations, cost estimates and funding sources. The action steps identified in the strategy can result in need for further analysis of future land acquisitions and development agreements by the City (beyond the scope of this agreement), grants and other resources, business attraction strategy and redevelopment and economic development incentives. RMA will provide the client with a Bimini Basin Implementation Plan that includes the financial feasibility assessment of the Bimini Basin area and the additional redevelopment opportunities, including redevelopment, regulatory, and incentive strategies that

can enhance the climate to attract additional investment to the area. The report will identify actions that the City can realistically take to foster economic development, redevelopment, business attraction, job retention, and improve the economic condition of local households. The plan will also include an evaluation of the incentives and alternate financing strategies that may be available for redevelopment in the study area, including incentives currently under consideration by the city. RMA will provide one draft and one set of revisions of the analysis and presentation based on staff comments of the Bimini Basin Implementation Plan. A digital copy in Microsoft Office, IN Design, and PDF of the booklet will be provided.

5.1 Identify actions the City can take to enhance the marketability of the area for a private development partner, including concepts for amendments to the land development regulations.

5.2 Identify Economic Development/Marketing Goals & Strategies.

5.3 Develop an Implementation Plan. (Tactics & Budget)

5.4 Coordinate with Public Works and Utilities to identify real estate requirements for infrastructure to include cost estimates.

(Section 3 of RFP Scope)

5.5 Identify parameters to develop design concepts. (Section 4 of RFP Scope)

5.6 Identify best practices, sources and resources to secure potential development partners for Bimini Basin projects. (Section 4 of RFP Scope)

Deliverable: Draft Bimini Basin Implementation Plan

Meeting Included in Task 5:

- Up to three (3) Client meeting to review draft Bimini Basin Implementation Plan as needed.

City's Responsibility:

- Review the proposed draft of the Bimini Basin Redevelopment Plan and provide written comments and requested changes within 15 days of submittal of draft.

This scope does not include the following:

- **Conceptual plans and renderings illustrating the development potential based on the market analysis for each parcel in the study area.**
- **Detailed parking analysis to understand the existing inventory and/or deficiency/surplus.**
- **Strike thru and/or underline of specific sections of the code that may need to be amended.**

- **Design alternatives of existing parks and open spaces and/or community facilities.**
- **Design manual to include specific design standards for signage, landscaping and building design.**

Task 6.0 Final Plan and Presentation

6.1 Develop PowerPoint presentation

6.2 City Staff Meeting to review plan

6.3 CRA Board and CRA Advisory Board Presentation

6.4 City Council Presentation

Deliverable: Final Bimini Basin Implementation Plan and Presentation

Meetings Included in Scope:

- Attendance at one (1) staff meeting to review the final draft of the Bimini Basin Redevelopment Plan (one draft and one revised public hearing draft), up to two staff members attending meeting)
- Attendance at one CRA Board workshop and meeting including drafting of PowerPoint presentation. (up to four staff members attending meeting)
- Attendance at one CRA Advisory Board workshop and meeting including drafting of PowerPoint presentation. (up to four staff members attending meeting)
- Attendance at one final City Council Meeting for adoption including drafting of power-point presentation. (up to five staff members attending meeting)

City Staff Responsibility:

- Prepare mailing list, label and mail notices for the submittal for approval and adoption meetings, if applicable. Any signs that must be posted for meeting will also be the responsibility of staff.
- Copies made by RMA to be reimbursed by Client (applicable to all tasks).

Compensation: The fee for services shall be a lump sum fee, for each task, to be paid monthly based on percentage complete.

Not to exceed \$120,000

<i>Task 1.1-1.4: Background Review (lump sum).....</i>	<i>\$9,000</i>
<i>Task 2.1-2.3: Market Assessment and Situation Analysis (lump sum)</i>	<i>\$12,500</i>
<i>Task 3.1-3.7: Public Input (lump sum).....</i>	<i>\$25,000</i>
<i>Task 3.8: Public Input (hourly component not to exceed).....</i>	<i>\$6,000</i>
<i>Task 4.1-4.6: Feasibility Analysis (lump sum).....</i>	<i>\$21,000</i>
<i>Task 5.1-5.3: Strategy Development and Implementation.....</i>	<i>\$20,000</i>
<i>Task 5.4-5.6: Strat. Dev 7 Imp (hourly component not to exceed).....</i>	<i>\$11,500</i>
<i>Task 6.1-6.4: Final Plan and Presentation (lump sum).....</i>	<i>\$15,000</i>

Reimbursable Expenses: Costs considered reimbursable include all third-party design services requested by the Client, renderings, additional printed materials or duplicate copies of presentation materials and reports. Marketing for public meetings will be completed by the City of Cape Coral or will be submitted as a reimbursable expense by the Consultant. Travel expenses are included in the total cost quoted.

Additional Services: Additional services may include, but are not limited to: additional document revisions not mentioned in the above scope of work; additional community outreach/planning meetings/workshops, City Council Planning Workshops, one-on-one meetings with stakeholders, developers (not already included in this scope), P&Z Board members, or City Council members; and public hearings. Those meetings and any other tasks, such as a market and economic analysis, are not included above will be billed at the hourly rate per the RMA contract.

Fee Schedule: The fee schedule for hourly services is as follows:

Business Attraction & Marketing

GIS/CAD Operator	\$ 95.00
Graphic Designer	\$ 85.00
Creative Director	\$150.00
Director of Digital Solutions	\$150.00
Marketing Assistant	\$ 85.00
Marketing Coordinator	\$100.00
Marketing Manager	\$125.00
Sr. Marketing Manager	\$150.00
Tourism Specialist	\$150.00
Director – Business Attraction & Marketing	\$185.00

Construction

Construction Inspector	\$ 95.00
------------------------	----------

Bimini Basin Redevelopment Project Management
Scope of Services

Construction Manager	\$145.00
Construction Director	\$180.00

Economic Development

Economic Develop Assistant	\$ 85.00
Economic Develop Coordinator	\$115.00
Economic Develop Manager	\$150.00
Director – Economic Development	\$185.00

Engineering

Engineer	\$ 95.00
Engineer I	\$125.00
Engineer II	\$150.00
Sr. Engineer	\$195.00

Government Management & Administration

Administrative Assistant	\$ 80.00
CRA Clerk	\$ 80.00
Sr. Admin Assistant	\$105.00
Sr. Redevelopment Associate	\$195.00
Managing Director	\$205.00
Principal	\$230.00

Project Management

Project Coordinator	\$ 95.00
Project Manager I	\$125.00
Project Manager II	\$145.00
Sr. Project Manager	\$180.00

Real Estate

Real Estate Coordinator	\$115.00
Real Estate Manager	\$150.00
Director – Real Estate	\$185.00

Urban Design & Planning

Landscape Architect I	\$105.00
Landscape Architect II	\$120.00
Landscape Architect III	\$135.00

Bimini Basin Redevelopment Project Management
Scope of Services

Sr. Landscape Architect	\$155.00
Planning Assistant	\$105.00
Planner I	\$115.00
Planner II	\$125.00
Sr. Planner	\$150.00
Urban Design Assistant	\$105.00
Urban Designer I	\$115.00
Urban Designer II	\$125.00
Sr. Urban Designer	\$150.00
Director - Urban Design & Planning	\$185.00

RMA Internal

Bookkeeper	\$ 90.00
Business Development Coordinator	\$ 90.00
Budget & Operations Analyst	\$105.00
Finance	\$160.00
Controller	\$170.00
Director of Administration	\$185.00
Director of Operations	\$185.00

Reimbursable Expenses

Postage and Shipping	Actual Cost
Copies 8 1/2 x 11 black and white	.05
Copies 8 1/2 x 11 color	.25
Copies 8 1/2 x 14 black and white	.10
Copies 8 1/2 x 14 color	.30
Copies 11 x 14 black and white	.20
Copies 11 x 14 color	.35
Reproduction (Blue/White Prints)	Actual Cost
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Permit Fees	Actual Cost
CD/DVD	Actual Cost
Aerials	Actual Cost
Courier Service	Actual Cost
Sub-consultant Fees on their Letterhead	Actual Cost – No Markup



Item Number: 6.B.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 119-18 Ratify award by Lee County to Wright Construction Group, Inc. as the lowest responsive responsible bidder, per the Joint Purchase Agreement (JPA) adopted on March 16, 2015 via Resolution 32-15, for the City's Utility Work for Phase II, Burnt Store Road Widening - Middle Segment Utility Casing installation, in the amount of \$314,038, plus a City Controlled contingency of \$75,000 for a total project cost of \$389,038; And authorize the City Manager or Designee to execute purchase order, change orders and/or supplemental agreements required by the Joint Purchase Agreement; Department: Utilities; Dollar amount: \$389,038; (Water & Sewer Fund)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

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

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

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. On March 16, 2015, via Resolution 32-15, the City of Cape Coral and Lee County entered into a Joint Purchase Agreement (JPA) for installation of utility pipe casing for future utility pipes to be completed by the County's contractor(s) for the Burnt Store Road widening project with the City assuming all costs for the City's "Utility Work" as described in the JPA. Installation of pipe casing now, will prevent future disturbance of the new roadway.
2. On February 06, 2018, Lee County issued competitive solicitation #B108113LAC for the continuation of Burnt Store Road Widening, middle segment, from Diplomat Parkway to Tropicana Parkway which included the bid alternate, for the City of Cape Coral's pipe casing work.
3. On March 15, 2018, Lee County received eight (8) responses to the bid solicitation.
4. Wright Construction Group, Inc. was deemed the lowest responsive responsive bidder

meeting all specifications.

5. On May 15, 2018, Lee County Board of County Commissioners approved the award to Wright Construction Group, Inc., including the bid alternate for the City of Cape Coral Utilities casing installation in the amount of \$314,038.
6. The bid alternate price of \$314,038 is for all material and installation of pipe casing for the middle segment of Burnt Store Road Widening, Phase II, plus a \$75,000 City Controlled Contingency for a total project cost of \$389,038.
7. The Department Director is requesting, \$75,000 for 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.
8. This Item is a budgeted item.
9. Funding: Account No ADM-58 Burnt Store Casing Phase II – Capital Improvements Project (JDE Account Number 4050176.662601 with an unencumbered balance of \$600,000. Construction Capital Improvements

LEGAL REVIEW:

EXHIBITS:

Department Memo

Resolution 119-18

Resolution 32-15: Joint Purchase Agreement

PREPARED BY:

Wanda
Roop

Division- Procurement

Department- Finance

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▣ Department Memo	Backup Material
▣ Resolution 119-18	Resolution
▣ Resolution 32-15 – Joint Purchase Agreement	Backup Material

MEMORANDUM

CITY OF CAPE CORAL
UTILITIES DEPARTMENT

TO: Wanda Roop, Procurement Manager

FROM: Jeff Pearson, Utilities Director
Gino Notarianni, Senior Project Manager *-Jm*

DATE: May 21, 2018

SUBJECT: Burnt Store Road Middle Segment – Diplomat Parkway to Tropicana Parkway
Recommendation to Award Memorandum

Summary

On March 16, 2015, the City of Cape Coral (City) and Lee County (County) entered into a JOINT PROJECT AGREEMENT (JPA) to reconstruct or otherwise modify a portion of the Lee County Highway System designed by the COUNTY as Capital Improvement Project #4088, also known as 'BURNT STORE ROAD WIDENING INTERIM 4-LANE IMPROVEMENT'. The current 4-lane widening project will ultimately extend from Gator Slough south to Pine Island Road.

Recommendation

On May 15, 2018 the COUNTY formally awarded the Burnt Store Road Widening Interim 4-Lane Improvements Middle Segment, which included the City utility casing installation work as a bid alternate to be paid by the CITY, the low bidder was Wright Construction Group, Inc. The CITY has expressed its desire to assume all costs incurred, with this bid alternate, for the portion of the CITY'S utility casing installation work. Therefore, the Utilities Department is requesting Council to approve the Lee County Bid Alternate (Section 000A), which also includes City controlled contingency, for the dollar amount of **Three Hundred Eighty-Nine Thousand Thirty-Eight Dollars and Zero Cents (\$389,038.00)**. Funding for the Burnt Store Road Middle Segment Utility Casing Installation will come from the Utilities ADM-58 Burnt Store Casings Phase II Capital Improvements Project (JDE Account Number 40050176.662601), which has an unencumbered balance of \$600,000.00.

Attachment(s): Burnt Store Road Widening Middle Segment – Utility Casing Bid Alternate

AGENDA ITEM REPORT

DATE: May 15, 2018
DEPARTMENT: Transportation
REQUESTER: Randy Cerchie
TITLE: Approve Burnt Store Road Widening - Middle Segment

I. MOTION REQUESTED

- A. Approve award of Formal Bid No. B180113LAC, Burnt Store Road Widening – Middle Segment to Wright Construction Group, Inc., the responsible bidder with the lowest responsive bid, to provide services to complete widening of the middle segment of Burnt Store Road in the total amount of \$6,742,595.11.
- B. Authorize the Chair to execute the contract documents on behalf of the Board of County Commissioners.
- C. Authorize an additional \$635,355.71 (10% of the base bid contract amount) in contingency funds to cover possible unforeseen expenses that may arise during the project.
- D. Authorize the Director of Procurement Management to approve Change Orders as needed for completion of the project in an amount not to exceed the total contingency funds.
- E. Approve a Budget Transfer from Reserves in Fund #30721, Cape and Midpoint Surplus Tolls in the amount of \$2,600,000.00.
- F. Approve a Budget Amendment Resolution in Fund #30700 in the amount of \$2,500,000.00 to recognize grant revenue from FDOT through the Transportation Regional Incentive Program and \$389,038.00 from the City of Cape Coral for utility work and amend the FY 2017/18-2021/22 CIP accordingly.

II. ITEM SUMMARY

Approve award of a contract to Wright Construction Group, Inc. to provide services to complete widening of the middle segment of Burnt Store Road in the total amount of \$6,742,595.11.

III. BACKGROUND AND IMPLICATIONS OF ACTION**A) Board Action and Other History**

The Lee County Department of Transportation submitted a request to Procurement Management to obtain bids for the project known as B180113LAC, Burnt Store Road Widening – Middle Segment, to contract with a qualified contractor to provide necessary services to complete widening from Diplomat Parkway to Tropicana Parkway. Detailed work under this contract consists of widening an existing two-lane undivided arterial roadway to a four-lane divided arterial roadway including construction of segments of roadway, one bridge, under-bridge lighting, drainage improvements, bike lanes, concrete sidewalk, embankment, sod and utility casing for the City of Cape Coral Utilities. Utility casing for the City of Cape Coral is being completed through this project as alternate work under a joint project agreement executed between Lee County and the City of Cape Coral on March 16, 2015. The utility work is included in the awarded bid in the amount of \$389,038 and will be reimbursed by the City.

On the bidding deadline of March 15, 2018, the Procurement Management Department received eight bids. The bids were reviewed by the Department of Transportation and Procurement Management, and it is recommended that award be made to Wright Construction, Inc., the responsible bidder with the lowest responsive bid, in the total amount of \$6,742,595.11. Staff is also requesting that the Board approve an additional \$635,355.71 (10% of the base bid contract amount) in contingency funds to cover possible unforeseen expenses that may arise during the project.

B) Policy Issues

C) BoCC Goals

D) Analysis

E) Options

IV. FINANCIAL INFORMATION

A)	Current year dollar amount of item:	\$6,742,595.11
B)	Is this item approved in the current budget?	Yes
C)	Is this a revenue or expense item?	Expense
D)	Is this Discretionary or Mandatory?	Discretionary
E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	No
F)	Fund: Cape and Midpoint Surplus Tolls/FDOT Grant/ City of Cape Coral Program: DOT Capital Projects Project: Burnt Store Road Account Strings: 20408830721, 22408830700	
G)	Fund Type?	Other Cape and Midpoint Surplus Tolls/FDOT Grant/City of Cape Coral
H)	Comments:	

V. RECOMMENDATION

Approve

VI. TIMING/IMPLEMENTATION

VII. FOLLOW UP

ATTACHMENTS:

Description	Upload Date	Type
Award Recommendation	4/30/2018	Backup Material
Bid Results Summary	4/30/2018	Backup Material
Budget Amendment Resolution	4/30/2018	Resolution
Budget Transfer of Funds	4/30/2018	Transfer of Funds
Notice of Intended Decision	4/30/2018	Backup Material
Contract Part 1	4/30/2018	Contract
Contract Part 2	4/30/2018	Contract
Contract Part 3	4/30/2018	Contract
Contract Part 4	4/30/2018	Contract

REVIEWERS:

Department	Reviewer	Action	Date
Transportation	Turner, Nicole	Rejected	4/27/2018 - 2:04 PM
Transportation	Bayliss, Denise	Approved	4/30/2018 - 1:14 PM
Transportation	Tucker, Mary	Approved	5/1/2018 - 7:39 AM

Transportation	Cerchie, Randy	Approved	5/1/2018 - 9:09 AM
Budget Services	Guttry, Angela	Approved	5/2/2018 - 12:05 PM
Budget Services	Winton, Peter	Approved	5/2/2018 - 1:07 PM
County Attorney	Lira, Louis C.	Approved	5/2/2018 - 2:41 PM
County Manager	Meurer, Doug	Approved	5/2/2018 - 4:40 PM

M E M O R A N D U M
FROM
DEPARTMENT

DATE: March 27, 2018

TO: PROCUREMENT MANAGEMENT

FROM Vince Miller

RE: RECOMMENDATION OF BID AWARD

PROJECT NAME: B180113LAC, Burnt Store Road Widening – Middle Segment

BID NO: B180113LAC PROJECT MANAGER: Vince Miller

A review by this office of Wright Construction, Inc. has been completed. The following has been reviewed and verified:

- ☒ Due Diligence Check Completed with not outstanding deficiencies.
- ☒ Qualification form completed and satisfactory.
- ☒ Bid Schedule price verification checked by Consultant with no errors present.

Based upon final review the apparent low bidder is qualified to provide the requested services and / or products and it is recommended that the Contract be awarded to the above said bidder for:

The total price of: \$6,742,595.11.

If the total awarded Contract Price is to include alternate bid items indicate which "alternate bid items" are recommended to be included in the award and amounts.

<u>Alternate</u>	<u>Amount</u>
Section 000A Bid Alternate	\$389,038.00

☒ If applicable, obtain and attach a copy of the project Consultants recommendation – **On File**.

If recommending other than the apparent low bidder, specify justification: _____

Funds are available/will be made available in account string: 20408830721

Any additional required information to be included on the Agenda Item Report for award (ie; transfer of funds, budget amendment, etc.): Request a 10% contingency of the base bid with Board approval (\$635,355.71).

CMO:039
3/19/2009

RESOLUTION 119 – 18

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING THE LEE COUNTY BID AWARD TO WRIGHT CONSTRUCTION GROUP, INC., FOR THE CITY'S BURNT STORE MIDDLE SEGMENT UTILITY CASING INSTALLATION WORK, PURSUANT TO THE JOINT PROJECT AGREEMENT – UTILITY INSTALLATION BY HIGHWAY CONTRACTOR BETWEEN LEE COUNTY AND THE CITY OF CAPE CORAL; PROVIDING FOR APPROVAL OF A CONTINGENCY AMOUNT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Lee County is reconstructing or otherwise modifying a portion of Burnt Store Road between Gator Slough and Pine Island Road, known as the "Burnt Store Road Widening Interim 4-Lane Improvement"; and

WHEREAS, the City is currently expanding utilities to the north of Pine Island Road; and

WHEREAS, in an effort to avoid conflict between the City's utilities expansion and the County's road widening, on March 16, 2015, the City Council adopted Resolution 32-15, approving a Joint Project Agreement – Utility Installation by Highway Contractor, to provide that Lee County will include in its construction contract certain utility work requested by the City to be performed by Lee County's highway contractor during the "Burnt Store Road Widening Interim 4-Lane Improvement," with the City to assume all costs incurred for the utility work; and

WHEREAS, the Joint Project Agreement provides that Lee County shall bid all City Utility Work as an alternate to the highway reconstruction and shall coordinate with the City on the award of the bid alternate to the lowest responsible bidder; and

WHEREAS, on February 6, 2016, Lee County issued competitive solicitation #B108113LAC for the Burnt Store Widening – Middle Segment, including the City Utility Casing Installation work for the middle segment as a bid alternate to be paid by the City; and

WHEREAS, on May 15, 2018, the Lee County Board of Commissioners approved the award to Wright Construction Group, Inc., as the lowest responsible responsive bidder, including the bid alternate for the City Utility Casing Installation in the amount of \$314,038; and

WHEREAS, the Utilities Department is requesting Council approval of the Lee County Bid Alternate for the portion of the City Utility Casing Installation in the amount of \$314,038, subject to a City-controlled contingency of \$75,000; and

WHEREAS, the City Council desires to approve the Lee County Bid Award to Wright Construction Group, Inc., for the City's Burnt Store Road Middle Segment Utility Casing Installation, pursuant to the Joint Project Agreement – Utility Installation by Highway Contractor between the City of Cape Coral and Lee County.

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

Section 1. The City Council hereby approves the Lee County Bid Award to Wright Construction Group, Inc., including the bid alternate to be paid by the City for the City's Burnt Store Road Middle Segment Utility Casing Installation, pursuant to the Joint Project Agreement – Utility Installation by Highway Contractor between the City of Cape Coral and Lee County, in the amount of \$314,038, subject to a City-controlled contingency of \$75,000.

Section 2. The City Council hereby authorizes the City Manager or his designee to execute any purchase orders, change orders, or supplemental agreements as required by the Joint Project Agreement.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS SPECIAL 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/Ratify Lee County Bid Award-Wright Construction

RESOLUTION 32 - 15

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING THE JOINT PROJECT AGREEMENT - UTILITY INSTALLATION BY HIGHWAY CONTRACTOR BETWEEN LEE COUNTY AND THE CITY OF CAPE CORAL; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Lee County is preparing to reconstruct or otherwise modify a portion of Burnt Store Road between Gator Slough and Pine Island Road, known as the "Burnt Store Road Widening Interim 4-Lane Improvement"; and

WHEREAS, the City is currently expanding utilities to the south of Pine Island Road and will expand utilities to the north of Pine Island Road in the future; and

WHEREAS, in an effort to avoid future conflict between the City's utilities expansion and the County's road widening, the City and Lee County desire to enter into a Joint Project Agreement - Utility Installation by Highway Contractor, to provide that Lee County will include in its construction contract certain utility work requested by the City to be performed by Lee County's highway contractor during the "Burnt Store Road Widening Interim 4-Lane Improvement," with the City to assume all costs incurred for the utility work; and

WHEREAS, Lee County and the City have determined that it serves a public purpose and is in the public interest to enter into a Joint Project Agreement providing for such work; and

WHEREAS, the City Council desires to approve the Joint Project Agreement - Utility Installation by Highway Contractor between the City of Cape Coral and Lee County.

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

Section 1. The City Council hereby approves the Joint Project Agreement - Utility Installation by Highway Contractor between the City of Cape Coral and Lee County. A copy of the Agreement is attached hereto and incorporated by reference.

Section 2. The City Council hereby authorizes the Mayor to execute the Joint Project Agreement - Utility Installation by Highway Contractor between the City of Cape Coral and Lee County.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS 16th DAY OF March, 2015.


MARNI L. SAWICKI, MAYOR

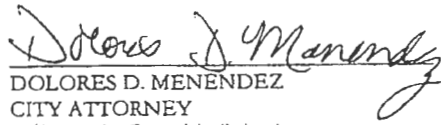
VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	<u>aye</u>
BURCH	<u>aye</u>
CARIOSCIA	<u>aye</u>
NESTA	<u>aye</u>
LEON	<u>aye</u>
ERBRICK	<u>aye</u>
WILLIAMS	<u>aye</u>
DONNELL	<u>aye</u>

ATTESTED TO AND FILED IN MY OFFICE THIS 23rd DAY OF March,
2015.


REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:


DOLORES D. MENENDEZ
CITY ATTORNEY
res/Approve Lee County Joint Project Agreement
03/03/15

**Lee County
and
City of Cape Coral**

JOINT PROJECT AGREEMENT

UTILITY INSTALLATION BY HIGHWAY CONTRACTOR

THIS AGREEMENT, made and entered into this 16th day of March, 2015, by and between LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", and CITY OF CAPE CORAL, an incorporated municipality within Lee County, hereinafter referred to as "CITY".

WITNESSETH:

WHEREAS, COUNTY is reconstructing or otherwise modifying a portion of the Lee County Highway System designed by COUNTY as Capital Improvement Project #4088, and known as 'BURNT STORE ROAD WIDENING INTERIM 4-LANE IMPROVEMENT', which calls for the addition of CITY utilities to include: casing pipe for future potable water, irrigation water, sewer facilities and miscellaneous electrical conduit along said highway; County shall provide the City the right to maintain, repair, replace the casing pipes located within the County right-of-way from the County, and

Agree, the City will have the right to maintain, repair, etc.; however, not without prior approval. A permit per Lee County Administrative Code AC 11-12 will be required. We waive the permit fee and bond requirements for other governmental entities.

WHEREAS, the casing pipe will be pre-purchased by the CITY and furnished to the COUNTY for installation by the highway contractor; and

WHEREAS, the engineering plans for the said construction, reconstruction, or other modifications to the CITY'S facilities as described will be prepared by the CITY and will be reviewed by both CITY and COUNTY, said above-described utility relocation hereinafter to be designated as the CITY'S "Utility Work", and

WHEREAS, the term "Cost of Utility Work" shall include the total dollar amount to be paid by the CITY properly attributable to such work; and

WHEREAS, CITY has expressed its desire to assume all costs incurred for the portion of the CITY'S "Utility Work", and

WHEREAS, CITY has requested COUNTY to include in said Construction Contract certain plans and specifications to meet CITY requirements; and

WHEREAS, COUNTY and CITY have determined that it serves a public purpose and is in the public interest to enter into a JOINT PROJECT AGREEMENT providing for such work.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt whereof is hereby acknowledge, and in further consideration of the mutual covenants hereinafter contained, it is agreed by the parties as follows:

1. COUNTY and CITY shall participate in a JOINT PROJECT, the scope of which will cover CITY Utility Facilities within the limits of the project as included in the plans and estimate of the construction contract, more specifically described as the construction of CITY casing pipe to be pre-purchased by the CITY and furnished to the COUNTY for installation by the highway contractor for future potable water, irrigation water and sewer facilities along said highway water and sewer lines along Burnt Store Road between SR 78 (Pine Island Road) and Alligator Slough.
2. COUNTY'S design consultant will, at CITY'S request and expense, incorporate the design and plans for all of CITY'S necessary Utility Work specified above, into the COUNTY'S plans and will furnish to both COUNTY and CITY complete original plans on standard size sheet 11" x 17", all suitable for the Utility Work. Final Utility Work plans shall be complete in every detail and will include a "Summary of Quantities" sheet and construction cost estimate. It will be the responsibility of CITY to coordinate the development of the CITY'S Utility Work plans with COUNTY'S design consultant.
3. All of the work on the JOINT PROJECT shall be performed according to the plans and specifications of both COUNTY and CITY, which plans and specifications are, by reference hereto, made a part hereof.
4. CITY, at its expense, will furnish all engineering inspection and supervision for the installation of pipe, valves and appurtenances, placement of pipe bedding, and all pipe testing of the CITY'S Utility Work, and will also furnish COUNTY with progress reports for daily records, approved quantities and amounts for weekly, monthly and final estimates.
5. COUNTY shall bid all CITY Utility Work as an alternate to the highway reconstruction and shall coordinate with CITY on the award of the bid alternate to the lowest responsible bidder. The coordination of CITY'S Utility Work with that of the highway contractor, their subcontractors, other utility relocation contractors associated with this project and/or other COUNTY contractors and other utilities and/or their contractors will be the responsibility of COUNTY, and CITY shall

cooperate fully in the matter. All information required for Change Orders or Supplemental Agreements pertaining to CITY'S Utility Work or otherwise related to subject matter of this Agreement shall be promptly furnished to COUNTY by CITY. CITY must approve Change Orders or Supplemental Agreements pertaining to CITY'S Utility Work.

6. COUNTY will provide the necessary engineering supervision to assure construction is in compliance with the plans and specifications herein above referred to, and shall receive all bids for and let all contracts for said CITY Utility Work, all at the sole expense of CITY. CITY shall have the right to reject any bids on the portion of the CITY'S Utility Work with just cause, which shall include but not be limited to an "unbalanced bid", to the detriment of the CITY, for the purpose of this Agreement an "unbalanced bid" shall include: excessive unit pricing, other unfair pricing for materials or labor, or a disproportionate allocation of cost to the CITY for the actual construction performed. COUNTY shall make all reasonable efforts to meet CITY'S Disadvantaged Business Enterprise (DBE) contractor participation goals for the CITY'S Utility Work performed pursuant to this Agreement.
7. All adjustments, relocations, repairs and incidentals required to be performed to the existing CITY Utilities within this project and not included in this Contract, will be the sole responsibility of the CITY. All such work shall be coordinated with the construction of this project in a manner that will not cause delay to the highway contractor.
8. CITY agrees that it will, upon the execution of this Agreement and notification of the costs (bid) for CITY'S Utility Work, set aside and hold in trust in an appropriate Cape Coral Utilities Account, the proposed (bid) cost, plus a 10% CITY controlled contingency, of the COUNTY'S highway contractor's bid amount to perform the CITY'S Utility Work. Every thirty (30) days the COUNTY will submit an invoice to the CITY detailing the CITY'S Utility Work performed. Upon review and approval of the invoice by the CITY, the CITY will pay said invoice within 30 days and transfer funds to the COUNTY.
9. Upon completion and acceptance of the work, CITY shall own, control, maintain and be responsible for all CITY Utility Facilities involved. CITY further agrees that it will maintain and keep in repair, or cause to be maintained and kept in repair, all of such constructed CITY facilities or utilities within the right-of-way of said COUNTY road and to comply with all provisions of applicable law.
10. Upon completion of the work, COUNTY shall, at the earliest date practicable, furnish CITY with two (2) copies of its final and complete billing of all costs incurred in connection with the work performed hereunder, such statement to follow as closely as possible the order of the items contained in the CITY'S portion of the Construction Contract. The final billing shall show the description and site of the project; the date on which the first work was performed; the date on which the earliest item of billed expenses was incurred; the date on which the last work was performed or the last item of billed expenses was incurred; and the location where

the records and accounts bill can be audited. Adequate reference shall be made in the billing to COUNTY records, accounts or other relevant documents. All cost records and accounts shall be subject to audit by a representative of either COUNTY or CITY.

11. (A) This Agreement constitutes the entire understanding between the PARTIES, and any previous Agreements whether written or oral, shall be superceded by the Agreement.
- (B) This Agreement may be amended upon the concurrence of both PARTIES and executed with the same formalities as this original Agreement.
- (C) The Parties agree that by execution of this Interlocal Agreement, no Party will be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability as provided for by Section 768.28, Florida Statutes.
- (D) This Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- (E) The term of this Agreement shall be from the date first written above, and shall continue until terminated by either party. Either party may terminate this Agreement by giving the other Party ninety (90) days written notice.

IN WITNESS WHEREOF, the PARTIES hereto have caused these presents to be executed by their duly authorized officers and their official seals hereto affixed, the day and year first above written.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement on the dates shown below to be effective the day and year first shown above.

CITY OF CAPE CORAL, FLORIDA
A Municipal Corporation

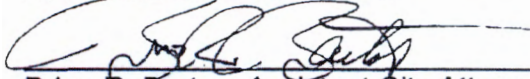
ATTEST:

By: Marni Sawicki
Marni Sawicki, Mayor

Rebecca van Deutekom
Rebecca van Deutekom, MMC, City Clerk

Date: 3/17/15

APPROVED AS TO FORM:


Brian R. Bartos, Assistant City Attorney

ATTEST:
CHARLIE GREEN, CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney

Item Number: 6.C.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 120-18 Award Bid# ITB-UT18-62/KR Coating Systems for Pre-Stressed Potable Water Storage Tanks located at the North Reverse Osmosis (NRO) Water Treatment Plant (WTP) and Southwest RO (SWRO) WTP to provide refurbishment of the tanks to Worth Contracting, Inc. of Jacksonville, FL , as the lowest, responsive and responsible bidder in the amount of \$351,566 with a 10% City controlled contingency of \$35,157 for a total project cost of \$386,723 and authorize the City Manager or designee to execute the contract, amendments and change orders; Department: Utilities; Dollar Value: \$386,723; (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? 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. The proposed project includes cleaning, surface preparation and painting one (1) twelve (12) million gallon and three (3) five (5) million gallon above ground pre-stressed concrete potable water storage tanks. The proposed work will extend the useful life of this critical infrastructure.
2. On March 28, 2018, the City advertised for competitive solicitations for Coating Systems for Pre-Stressed Concrete Water Storage Tanks located at the North Reverse Osmosis (NRO) Water Treatment Plant (WTP) and the Southwest RO (SWRO) WTP.
3. On May 1, 2018, the City received three (3) bids from the following firms listed in alphabetical order CL Coatings, LLC: Royal Bridge, Inc. and Worth Contracting, Inc.
4. Worth Contracting, Inc. of Jacksonville, Florida was deemed the lowest responsive and responsible bidder meeting all the requirements as outlined in the bid documents.
5. 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.

6. The contract amount is for \$351,566, plus a request for 10% City controlled contingency of \$35,157 for a project total of \$386,723.
7. If approved, the term of this Contract shall be for 180 days substantial completion.
8. This Item is a budgeted item.
9. Funding: Account No: 4050194.662601 and 4050195.662601 – NRO-11 GST Exterior Coatings, FY2017 and SRO-15 Facility Refurbs, FY2017 Budget (W&S Capital Fund)

LEGAL REVIEW:

Contract reviewed by Legal

EXHIBITS:

Department Memo

Resolution 120-18

Bid Tabulation – ITB-UT18-62/KR

PREPARED BY:

Wanda

Roop

Division- Procurement

Department- Finance

SOURCE OF ADDITIONAL INFORMATION:

Jeff Pearson, Utilities Director

ATTACHMENTS:

Description	Type
▣ Recommendation Memo	Backup Material
▣ Resolution 120-18	Resolution
▣ Bid Tabulation – ITB-UT18-62/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: May 14, 2018

SUBJECT: Utilities Department's Recommendation of Award for the Coating Systems for Pre-Stressed Concrete Water Storage Tanks, ITB-UT18-62/KR

Project Scope:

The proposed project shall generally be comprised of cleaning, conducting surface preparation and painting one (1) twelve (12) million gallon and three (3) five (5) million gallon above ground prestressed concrete potable water storage tanks. The twelve (12) million gallon above ground prestressed concrete potable water storage tank is located at the North Reverse Osmosis (North RO) Water Treatment Plant (WTP) and the three (3) five (5) million gallon above ground prestressed concrete potable water storage tanks are located at the Southwest Reverse Osmosis (Southwest RO) WTP.

Project Bids:

On Tuesday, May 1, 2018, the City of Cape Coral received three (3) Bids from contractors for the Coating Systems for Pre-Stressed Concrete Water Storage Tanks, ITB-UT18-62/KR. Bids were received from CL Coatings, LLC from Mokena, IL; Worth Contracting, Inc. from Jacksonville, FL; and, Royal Bridge, Inc. out of Palm Harbor, FL. 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)

CL Coatings, LLC	\$401,310.00
Royal Bridge, Inc.	\$416,000.00
Worth Contracting, Inc.	\$351,566.00

CL Coatings also included an alternate bid of \$336,210.00 for a coating product that was not specified in the Bid Package nor approved as an alternate prior to the acceptance of bids. 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 Worth Contracting, Inc. of Jacksonville, Florida is the lowest responsive, responsible bidder for the Coating Systems for Pre-Stressed Concrete Water Storage Tanks, ITB-UT18-62/KR. The Utilities Department concurs with the Procurement Department's determination that Worth Contracting, Inc. is the lowest responsive, responsible bidder. The Utilities Department therefore recommends award of the project to Worth Contracting, Inc., for the Total Estimated Construction Cost of \$351,566.00 for Coating Systems for Pre-Stressed Concrete Water Storage Tanks, ITB-UT18-62/KR. References were checked by the Utilities Department as a part of the review process.

Contingency Funds:

In conjunction with recommending the award of the Coating Systems for Pre-Stressed Concrete Water Storage Tanks 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 cleaning, performing any necessary repairs and coating four existing pre-stressed concrete water storage tanks. 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 4050194.662601, NRO-11, GST Exterior Coating, FY2017 budget and Business Unit 4050195.662601, SRO-15 Facility Refurbs, FY2017 Budget, These Business Units have unencumbered balances of \$150,000.00 and \$338,915.00 respectively. Additional funding to cover the requested City controlled contingency amount of 10% (\$35,156.60), when added to the total bid amount (\$351,566.00) totals \$386,722.60.

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:
Coating Systems for Pre-Stressed Concrete Water Storage Tanks
ITB-UT18-62/KR

RESOLUTION 120 – 18

A RESOLUTION OF THE CITY OF CAPE CORAL AWARDING A BID FOR COATING SYSTEMS FOR PRE-STRESSED CONCRETE WATER TANKS TO WORTH CONTRACTING, INC.; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT DOCUMENTS BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING FOR APPROVAL OF A CONTINGENCY AMOUNT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 28, 2018, INVITATION TO BID ITB-UT18-62/KR was issued for Coating Systems for Pre-Stressed Water Storage Tanks located at the North Reverse Osmosis Water Treatment Plant and the Southwest Reverse Osmosis Water Treatment Plant; and

WHEREAS, having received three bids, the City Manager recommends the award of the bid to Worth Contracting, 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 \$351,566, subject to a City-controlled contingency amount not to exceed ten (10) percent.

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

Section 1. The City Council hereby awards the bid for Coating Systems for Pre-Stressed Water Storage Tanks located at the North Reverse Osmosis Water Treatment Plant and the Southwest Reverse Osmosis Water Treatment Plant to Worth Contracting, Inc., in the amount of \$351,566, subject to a City-controlled contingency amount not to exceed ten (10) percent.

Section 2. The City Council hereby approves Contract CON-UT18-62/KR between the City of Cape Coral and Worth Contracting, Inc., for Coating Systems for Pre-Stressed Water Storage Tanks located at 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 1.

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

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS SPECIAL 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/Bid Award-Worth Contracting

City of Cape Coral

Coating Systems Pre-Stressed Concrete Water Storage Tanks CON-UT18-62/KR

THIS CONTRACT is made this ____ day of _____, 2018 by and between the CITY OF CAPE CORAL, FLORIDA, hereinafter called "CITY", and a Florida Profit Corporation, hereinafter called "CONTRACTOR", with entity name and principle address as follows:

Worth Contracting, Inc.
2112 Jernigan Road
Jacksonville, Florida 32207

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

1. The CONTRACTOR will provide the following services for the Coating Systems for Pre-Stressed Concrete Water Tanks located the North Reverse Osmosis Water Treatment Plant and Southwest Reverse Osmosis Water Treatment Plan as outlined in the Contract Documents, which is generally described as follows:

The work shall generally be comprised of cleaning, conducting surface preparation and painting one (1) twelve (12) million gallon and three (3) five (5) million gallon above ground prestressed concrete potable water storage tanks. The twelve (12) million gallon above ground prestressed concrete potable water storage tank is located at the North Reverse Osmosis (North RO) Water Treatment Plant (WTP) and the three (3) five (5) million gallon above ground prestressed concrete potable water storage tanks are located at the Southwest Reverse Osmosis (Southwest RO) WTP.

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 work as required by the CONTRACT DOCUMENTS immediately upon receipt of a signed Purchase Order and issuance of a Notice to Proceed and will conclude when City staff determines all required work has been satisfactorily completed. The work shall be substantially completed within 180 calendar days after Notice to Proceed is given for Coating Systems for the Pre-Stressed Concrete Water Storage Tanks located at the North Reverse Osmosis Water Treatment Plant and Southwest Reverse Osmosis Water Treatment Plant as outlined in the bid documents, drawings and specifications.
4. **Liquidated Damages** – The liquidated damages will be \$350.00 per day and will commence for each consecutive calendar day beyond the 180th consecutive calendar day, after the Notice to Proceed date. The liquidated damages will be \$350.00 per day for each tank that has not been completed within the 180 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 the City of Cape Coral for Coatings for Pre-Stressed Concrete Water Tanks located at the North Reverse Osmosis Water Treatment Plant and Southwest Reverse Osmosis, Water Treatment Plant, for the total price of \$351,566.00 as provided in the bid proposal form. The total price is stated in the contract documents and attached as the Bid Proposal Form – Exhibit - Attachment "D".

6. The **term** of this agreement shall be for 180 calendar days for substantial completion and shall be ready for final payment within 210 calendar days, of when the Notice to Proceed has been given.
7. 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.
8. 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.
9. **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.
10. **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.
11. **Administration of Agreement:** The Utilities Director or their representative shall administer this agreement for 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 agreement shall be valid unless in writing and signed by the parties.
14. **Payment Procedures:**

Pursuant to Florida Statute §218.735 "Timely payment for purchases of construction services", the City shall make payment and Contractor shall be in receipt of all sums properly invoiced within twenty-five (25) calendar days of the City's receipt of such invoice unless, within a twenty (20) calendar day period, City notifies Contractor in writing of its objection to the amount of such invoice, together with City's determination of the proper amount of such invoice. City shall pay any undisputed portion of such invoice within such twenty-five (25) calendar day period.

If City shall give such notice to the Contractor within such twenty (20) calendar day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, City shall promptly pay the Contractor the amount so determined, less any amounts previously paid by City with respect to such invoice. In the event, it is determined that City has overpaid such invoice, the Contractor shall promptly refund to the City the amount of such overpayment.

15. **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.

16. **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.
17. **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.
18. **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.
19. **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.

20. **Unauthorized Aliens:** The employment of unauthorized aliens by any Contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly

employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this ITB. This also applies to any sub-contractors used by the Contractor.

21. **Entire Agreement:** This Contract constitutes the entire and exclusive agreement between the parties and supersedes all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.
22. **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/\$2,000,000 aggregate. 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.

Excess Liability Insurance: The Excess Liability Insurance Policy in the amount of \$2,000,000 Combined single limit bodily injury/property damage in excess of the Commercial General Liability Insurance and business automobile insurance

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 insurance 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-UT18-62/KR" under the "Description of Operations", with the project title of "Coating Systems for Pre-Stressed Water Storage Tanks".

23. **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.
24. **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.
25. **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.
26. **Annual Appropriation**
Pursuant to FL Statute §166.241, the City's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the City Council. This Contract is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the City if the City Council reduces or eliminates appropriations.
27. **Warranty and Guarantee** - All major pieces of equipment, must be provided with a warranty/guarantee from the equipment manufacturer. The manufacturer's warranty period shall be concurrent with the Contractor's for one (1) year, unless specified, commencing at the time of final acceptance by the Owner. Warranty/Guarantee as outlined in the bid documents and provided with the attached form – post contract execution to the Owner. Shown in bid documents as Exhibit "I" – Warranty – Guarantee Form.
28. **Entire Agreement:** This Contract constitutes the entire and exclusive agreement between the parties and supersedes 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 duly authorized officials this Agreement which shall be deemed an original on the date last signed as below written.

CITY:

CITY:

ATTEST:

City of Cape Coral, Florida

Signature

Signature

Rebecca van Deutekom, MMC
Name

A. John Szerlag
Name

City Clerk
Title

City Manager
Title

Date

Date

CITY LEGAL REVIEW:

Dolores Menendez, Esq.

City Attorney
Title

Date

CONTRACTOR:
Worth Contracting, Inc.
Company

GC LICENSE # CGC056635

State of Florida Contractor License Number

KATHERINE GARCES WORTH
Qualifying Agent Name

Authorized Signature

JOSEPH C. WORTH III, VICE-PRESIDENT
Typed/Printed Name

MAY 21, 2018
Date



CONTRACTOR-ADDRESS FOR PROVIDING NOTICES:

Worth Contracting, Inc.
Company

2112 JERNIGAN ROAD
Street

JACKSONVILLE, FLORIDA 32207
City, State, Zip Code

JOSEPH C. WORTH III
Contact Person Name

(Attach-D)

ITB-UT18-62/KR

ORIGINAL

BID PROPOSAL FORM
PAGE 1 OF 3

COATING SYSTEMS FOR
WATER STORAGE TANKS

(LOCATED AT THE NORTH REVERSE OSMOSIS WATER TREATMENT PLANT
&
SOUTHWEST REVERSE OSMOSIS WATER TREATMENT PLANT)

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 # 01

Addendum # 02

Addendum # 03

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.

(Attach D)

BID PROPOSAL FORM
PAGE 2 OF 3
COATING SYSTEMS FOR WATER STORAGE TANKS
ITB-UT18-62/KR

(1) Item No.	(2) Item Description	(3) Est. Qty. (A)	(4) Unit	(5) Unit Price (B)	(6) TOTAL ITEM COST (A x B)
COATING SYSTEM FOR NORTH REVERSE OSMOSIS WATER TREATMENT PLANT PRESTRESSED CONCRETE WATER STORAGE TANK:					
1.	NRO WTP - Exterior Cleaning and Coating - Twelve (12) Million Gallon Above Ground Prestressed Concrete Water Storage Tank with a Dome-Shaped Prestressed Concrete Roof System	1	LS	\$136,984.00	\$136,984.00
COATING SYSTEM FOR SOUTHWEST REVERSE OSMOSIS WATER TREATMENT PLANT PRESTRESSED CONCRETE WATER STORAGE TANKS:					
2.	TANK NO. 1: SWRO WTP - Exterior Cleaning and Coating - Five (5) Million Gallon Above Ground Prestressed Concrete Water Storage Tanks with a Dome-Shaped Prestressed Concrete Roof System	1	LS	\$76,694.00	\$76,694.00
3.	TANK NO. 2: SWRO WTP - Exterior Cleaning and Coating - Five (5) Million Gallon Above Ground Prestressed Concrete Water Storage Tanks with a Dome-Shaped Prestressed Concrete Roof System	1	LS	\$76,694.00	\$76,694.00
4.	TANK NO. 3: SWRP WTP - Exterior Cleaning and Coating - Five (5) Million Gallon Above Ground Prestressed Concrete Water Storage Tanks with a Dome-Shaped Prestressed Concrete Roof System	1	LS	\$59,694.00	\$59,694.00
GENERAL BID ITEMS:					
5.	Allowance for Local Government Permits and Fees - Cleaning and Coating Above Ground Prestressed Concrete Water Storage Tanks with Dome-Shaped Prestressed Concrete Roof Systems - NRO WTP & SWRO WTP	1	LS	\$1,500.00	\$1,500.00
TOTAL COMBINED CONSTRUCTION COST FOR CLEANING AND COATING ABOVE GROUND PRESTRESSED CONCRETE WATER STORAGE TANKS WITH DOME-SHAPED PRESTRESSED CONCRETE ROOF SYSTEMS AT THE NORTH REVERSE OSMOSIS WATER TREATMENT PLANT & SOUTHWEST REVERSE OSMOSIS WATER TREATMENT PLANT (Summation of Line Item Nos. 1 thru 5 (Column 6))					\$351,566.00

(TOTAL COMBINED CONSTRUCTION COST FOR THE COATING SYSTEMS FOR PRESTRESSED CONCRETE WATER STORAGE TANKS AT THE NRO WTP & SWRO WTP INCLUDING ALLOWANCES IN WORDS)

(Attach D)

ITB-UT18-62/KR

BID PROPOSAL FORM
PAGE 3 OF 3

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.

Worth Contracting, Inc.
COMPANY


SIGNATURE

2112 Jemigan Road
ADDRESS

Joseph C. Worth III
NAME (PRINTED)

Jacksonville
CITY, STATE, ZIP CODE

Vice-President
TITLE

904-396-6363
PHONE NUMBER

May 01, 2018
DATE

904-396-1888
FAX NUMBER

wci@worthcontractinginc.
E-MAIL ADDRESS

Federal Employer Identification Number or Social Security Number 59-1969760
(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: _____

DATE: May 01, 2018 Company Name: Worth Contracting, Inc.

ITB-UT18-62/KR											
Coating Systems-Pre-Stressed Concrete Water Storage Tanks											
Bid Due - May 1, 2018 - 1:30 PM and 2:00 PM Bid Opening - City Hall - Room 220A											
Bid Tabulation Detail Line Items				CL Coatings, LLC Mokena, IL 60448		Worth Contracting, Inc. Jacksonville, FL 32207		Royal Bridge, Inc. Palm Harbor, FL 34683		CL Coatings, LLC Mokena, IL 60448	
ITEM	DESCRIPTION	ESTIMATED QUANTITY (A)	UNIT	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)	UNIT PRICE (B)	TOTAL ITEM COST (AxB)
Coating System for North RO WTP (Line One):				TNEMEC COATING		TNEMEC COATING		TNEMEC COATING		ALTERNATE COATING- Sherwin Williams	
1	NRO WTP - Exterior Cleaning and Coating – Twelve (12) Million Gallon Above Ground Prestressed Concrete Water Storage Tank with a Dome-Shaped Prestressed Concrete Roof System	1	LS	\$148,140.00	\$148,140.00	\$136,984.00	\$136,984.00	\$171,020.00	\$171,020.00	\$124,020.00	\$124,020.00
Coating System for Southwest RO WTP (Lines Two through Four):											
2	TANK NO. 1: SWRO WTP - Exterior Cleaning and Coating - Five (5) Million Gallon Above Ground Prestressed Concrete Water Storage Tanks with a Dome-Shaped Prestressed Concrete Roof System	1	LS	\$83,890.00	\$83,890.00	\$76,694.00	\$76,694.00	\$81,160.00	\$81,160.00	\$70,230.00	\$70,230.00
3	TANK NO. 2: SWRO WTP -Exterior Cleaning and Coating – Five (5) Million Gallon Above Ground Prestressed Concrete Water Storage Tanks with a Dome-Shaped Prestressed Concrete Roof System	1	LS	\$83,890.00	\$83,890.00	\$76,694.00	\$76,694.00	\$81,160.00	\$81,160.00	\$70,230.00	\$70,230.00
4	TANK NO. 3: SWRP WTP - Exterior Cleaning and Coating – Five (5) Million Gallon Above Ground Prestressed Concrete Water Storage Tanks with a Dome-Shaped Prestressed Concrete Roof System	1	LS	\$83,890.00	\$83,890.00	\$59,694.00	\$59,694.00	\$81,160.00	\$81,160.00	\$70,230.00	\$70,230.00
General Bid Items (ALLOWANCES):				:							
5	Allowance for Local Government Permits and Fees	1	LS	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
TOTAL COMBINED CONSTRUCTION COST ➡				\$401,310.00		\$351,566.00		\$416,000.00		\$336,210.00	
COATING TYPE				TNEMEC COATING		TNEMEC COATING		TNEMEC COATING		ALTERNATE COATING- Sherwin Williams	
				Non-Responsive				Non-Responsive		Non-Responsive	

Item Number: 6.D.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 121-18 Approve a Single/Sole Source with Tencarva Machinery Company, LLC, dba Hudson Pump & Equipment for the purchase of twenty (20) SmartCover® Systems™ products for monitoring wastewater flows in the sewer collection system for \$80,980, the price includes the first year of recurring support service charges of \$7,280 for the twenty (20) units. Authorize the City Manager or Designee to execute the purchase order, related documents and/or supplemental agreements. Tencarva Machinery Company, LLC, dba Hudson Pump and Equipment, Inc. is the sole authorized dealer for SmartCOVER® & SmartFLOE™ technology products and monitoring systems; Department: Utilities; Dollar Value: \$80,980; (Water & Sewer Fund)

REQUESTED ACTION:

STRATEGIC PLAN INFO:

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

ELEMENT 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. The City relies on the use of telemetry support systems to assist in monitoring the function and operation of lift stations, wells, re-pump stations, water and sewer treatment plants. Presently there is no remote wastewater monitoring capability within the City's gravity sewer collection system. These systems will provide the Utilities Department with an early warning system for Sanitary Sewer Overflows (SSO's) and will assist Utilities Staff with identifying real and potential system flow issues that can help prevent raw sewage sewer spills from entering the environment.

2. SmartCOVER® & SmartFLOE™ technology products and monitoring systems provide real time data with satellite based technology, which is more dependable than land based systems during times of severe weather conditions.
3. Tencarva Machinery Company, LLC, dba Hudson Pump and Equipment, Inc. is the sole authorized dealer for SmartCOVER® & SmartFLOE™ technology products.
4. As part of the review process, an intent to Sole Source is issued by the City to determine if there are any other vendors. On January 2018, Sarasota County advertised an intent to sole source with Tencarva Machinery Company, LLC for monitoring system technology products for open channel water conveyance systems on Bid Sync. Bid Sync is a national bidding service with approximately 3,600 firms that are contacted for solicitations. Sarasota County's solicitation returned no other vendor responses; Based on this information, Staff recommends awarding to Tencarva Machinery Company, LLC, d.b.a. Hudson Pump and Equipment, Inc.
5. This purchase is pursuant to Section 2-144 (C) (2) (c) of the City of Cape Coral Code of Ordinances that authorizes the City to award contracts without competition upon the determination of the Procurement Manager that there is only one source for the required supply, service or construction item.
6. Section 2-144 (c) (2) (a) states that a purchase can be categorized as a Single Sole purchase when there are multiple distributors of the item, however, the manufacturer may have designated exclusive territorial sales boundaries.
7. If approved, this request is to purchase twenty (20) SmartCover monitoring units for \$80,980.00, the price includes the first year of recurring support service charges of \$7,280 for the twenty (20) units. The recurring support service charge will start the next fiscal year and become a budgeted item thereafter.
8. Funding information: 4050137.662601 FY17 ADM-20 Inflow and Infiltration Sanitary Sewer lining, Repair and Remediation, with an unencumbered balance of \$155,230

LEGAL REVIEW:

EXHIBITS:

Department Memo
Resolution 121-18
Sarasota County Intent to Sole Source documents

PREPARED BY:

Wanda Division- Procurement Department- Finance
Roop

SOURCE OF ADDITIONAL INFORMATION:


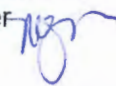
ATTACHMENTS:

Description	Type
□ Department Memo	Backup Material
□ Resolution 121-18	Resolution
□ Sarasota County Intent to Sole Source Documents	Backup Material

MEMORANDUM

CITY OF CAPE CORAL UTILITIES DEPARTMENT

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

FROM: Jeff Pearson, Utilities Director 
Pat Long, Water Reclamation Manager
David Vallandingham, Utilities Collection and Distribution Manager 
Marty Mantell, Senior Project Manager 

DATE: May 14, 2018

SUBJECT: Sole Source with Tencarva Machinery Company LLC dba Hudson Pump & Equipment – SmartCover® Systems™ for Open Channel Water Conveyance Systems.

Overview

In the course of operating the City's utilities' infrastructure, the City relies on the use of telemetry support systems to assist in monitoring the function and operations of lift stations, wells, re-pump stations, water and wastewater treatment plant systems. Presently, there is no remote wastewater monitoring capability within the City's gravity sewer collection system. This was highlighted during the twenty plus inch rain event of August 2017 and then again after Hurricane Irma in September 2017. As a result of these two weather events, the city experienced multiple Sanitary Sewer Overflows (SSO's), first from massive amounts of inflow, and then from prolonged periods of power outage.

SmartCOVER® & SmartFLOE® technology products are monitoring systems that provide real-time data from sites within the gravity collection system, remotely, using telemetry support. These devices are attached to the underside of manhole covers and lift station hatches. They are self-contained, and measure levels and flow rates as well as capturing data which can be used for future analysis. The technology is satellite based, making it more dependable than land based systems in times of inclement weather events.

The primary use for these devices will be to provide a proactive early warning of impending SSO's, identifying real and potential system flow issues.

In addition to providing immediate warning of a potential SSO, this effort would enhance and compliment the Inflow and Infiltration abatement programs by providing trend data on the gravity sewer system. This trend data would help to identify blockages or increases in groundwater inflow.

Another feature of these devices is portability, making the devices easy to move to different locations within the City's wastewater collection system. This will aid in pinpointing issues, thereby allowing more efficient use of maintenance and repair resources. Additionally, these devices can be used to supplement or temporarily replace lift station telemetry in an emergency situation.

This technology has been successfully piloted and implemented by the City of Sarasota and the Manatee County gravity wastewater collection systems. These products are also in use in the Miami-Dade sanitary sewer collection system.

Funding

This project will be funded from business unit number 4050137.662601 FY17 ADM-20 Inflow and Infiltration Sanitary Sewer Lining, Repair, and Remediation, which has an unencumbered balance of \$190,298.50.

Additional funding (year two and beyond) for web site maintenance, licensing, and support at approximately \$7,200.00 per year will be through operations accounts, not to exceed budgetary limits.

Recommendation

In January 2018, Sarasota County put out an advertisement of intent to sole source, and Tencarva Machinery Company, LLC dba Hudson Pump & Equipment was the only supplier that responded to the advertisement.

The Utilities Department recommends the use of Tencarva Machinery Company LLC dba Hudson Pump & Equipment, as a sole source vendor for this project since they are the only licensed provider of SmartCover® Systems™ for open channel water conveyance systems in the state of Florida. This system would play an important part of the City's vision, strategic goals and all around best management practices enhancing the wastewater system infrastructure upkeep and fostering of a better and safe community for our residents.

RESOLUTION 121 – 18

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING THE SERVICES OF TENCARVA MACHINERY COMPANY, LLC, DBA HUDSON PUMP & EQUIPMENT AS THE SINGLE SOURCE PROVIDER FOR THE PURCHASE OF TWENTY SMARTCOVER MONITORING SYSTEMS AND SUBSCRIPTION FOR RECURRING COMPREHENSIVE SUPPORT SERVICE; PROVIDING FOR THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE PURCHASE ORDER; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City relies on the use of telemetry support systems to assist in monitoring the function and operation of lift stations, wells, re-pump stations, water and wastewater treatment plant systems in the course of operating the utilities infrastructure; and

WHEREAS, presently, there is no remote wastewater monitoring capability within the City's gravity sewer collection system; and

WHEREAS, SmartCOVER and SmartFLOE technology products are monitoring systems that provide real-time data from sites within the gravity collection system remotely; and

WHEREAS, the primary use for such devices is to provide a proactive warning of impending sanitary sewer overflows; and

WHEREAS, the Utilities Department is requesting approval for the purchase of twenty (20) SmartCOVER Monitoring Systems from Tencarva Machinery Company, LLC dba Hudson Pump & Equipment, at a cost of \$80,980, along with a recurring support service subscription at an annual cost of \$7,280; and

WHEREAS, Section 2-144(c) of the City of Cape Coral Code of Ordinances authorizes the City to award contracts without competition upon the determination of the Procurement Manager that there is only one source for the required supply, service or construction item; and

WHEREAS, the Procurement Manager has determined that the remote wastewater monitoring system technology products are only available from one source, Tencarva Machinery Company, LLC dba Hudson Pump & Equipment, as the only licensed provider of SmartCOVER and SmartFLOW technology products and monitoring systems in the state of Florida; and

WHEREAS, the City Manager recommends approval of Tencarva Machinery Company, LLC dba Hudson Pump & Equipment, as the single source provider for the purchase of twenty (20) SmartCOVER Monitoring Systems, at a cost of \$80,980, along with a recurring comprehensive support service subscription at an annual cost of \$7,280.

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

Section 1. The City Council hereby approves the services of Tencarva Machinery Company, LLC dba Hudson Pump & Equipment, as the single source provider for the purchase of twenty (20) SmartCOVER Monitoring Systems, at a cost of \$80,980, along with a recurring comprehensive support service subscription at an annual cost of \$7,280, and authorizes the City Manager or his designee to execute the purchase order, any supplemental agreements or related documents.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS SPECIAL 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/Single Source-Tencarva Machinery

SARASOTA COUNTY GOVERNMENT
Public Utilities

TO: Jonathan R. Lewis, County Administrator

THROUGH: Scott N. Schroyer, Public Utilities Director

FROM: Michael Mylett, Manager, Utility Operations, Public Utilities

DATE: January 31, 2018

SUBJECT: Sole Source with Tencarva Machinery Company LLC dba Hudson Pump & Equipment

RECOMMENDED ACTION:

To authorize the County Administrator, or designee, to approve individual purchases with Tencarva Machinery Company LLC dba Hudson Pump & Equipment to provide SmartFLOE and SmartCOVER monitoring system technology products for open channel water conveyance systems, in a cumulative amount not-to-exceed \$100,000.00 per fiscal year.

BACKGROUND AND ANALYSIS:

During the course of operating Sarasota County's utilities infrastructure, the County requires the use of telemetry support systems to assist in monitoring functioning operations of the open channel water conveyance systems. SmartCOVER & SmartFLOE technology products are monitoring systems that provide visibility of sites remotely using telemetry support. This technology monitors gravity portions of the wastewater collections system and identifies problem areas with the collection system. The primary use for these devices is to provide early warning of impending sanitary sewer overflows (SSO). This technology has been successfully piloted and adapted for use in the City of Sarasota and Manatee County gravity system.

The devices are attached to the underside of manholes and lift station hatches. They are self-contained, and measure flow rates as well as capturing the data which can be used for future analysis. The technology is satellite based, making it more dependable than land based systems in times of inclement events.

The SmartCOVER and Smart FLOE systems are patented and proprietary systems designed and manufactured by Hadronex Inc and are protected under US Patents 7,292,143, 7,948,215, 7,944,352 and 7,598,630. Tencarva is the authorized representative. City of Sarasota and Manatee County also have these units in use and procured under an exemption.

On January 17, 2018, the County advertised an Intent to Sole Source (ISS) No. 1801-008 for monitoring system technology products for open channel water conveyance systems. Notice of this ISS was made through BidSync to 3,610 vendors. Seventeen vendors viewed the ISS and no bids were received. On January 25, 2018, the Procurement Official Designee approved Sole Source No. 1723 with Tencarva Machinery Company LLC dba Hudson Pump & Equipment to provide SmartFLOE and SmartCOVER monitoring systems devices for the County's open channel water conveyance systems.

RELEVANT PRIOR ACTION:

January 25, 2018 - The Procurement Official Designee approved Sole Source No. 1723 with Tencarva Machinery Company LLC dba Hudson Pump & Equipment, in the cumulative amount of \$100,000.00 per fiscal year.

FUNDING STATEMENT:

Requests for purchase orders for these products will be verified from the requesting department's funding Budget prior to the purchase of goods.

ATTACHMENTS:

1. Proposed Sole Source No. 1723
2. Intent to Sole Source No. 1801-008

Sole Source Form

Confirm Number
SS 1723

Status
APPROVED

A. Vendor Information

Vendor Legal Name *
TENCARVA MACHINERY COMPANY LLC DBA HUDSON PUMP & EQUIPMENT

Vendor Fictitious Name

B. Estimated Expenditures

Estimated Expenditure Type *
FISCAL/CONTRACT YEAR

Estimated Expenditure Amount *
\$100,000.00

C. Description

1. Provide a detailed description of the products/services being procured: *

SmartCOVER & SmartFLOE monitoring systems for open channel water conveyance systems. They are designed to monitor and acquire water level data below manhole covers, lift station hatches or any type of open channel flows using ultrasonic technology. The data is transmitted via satellite to a secure web browser where the we can track and analyze the data.

2. Product/Service Usage:

These units are monitoring systems that provide visibility of sites remotely. These self-contained units are able to measure uninterrupted flow rates and capture data for future analysis. They mount on the underside of manhole covers. They can be used for CIP project prioritization, operations, monitoring, and capacity planning. The primary use for these devices is to provide early warning of impending sanitary sewer overflows (SSO).

Information Technology *
NO

D. Justification

1. Identify the criteria that qualifies this purchase as a sole source: *

PROPRIETARY

2. Explain how this purchase meets the identified sole source criteria: *

The SmartCover and Smart FLOE systems are patented and proprietary systems designed and manufactured by Hadronex Inc and are protected under US Patents 7,292,143, 7,948,215, 7,944,352 and 7,598,630. Tencarva is the authorized representative. City of Sarasota and Manatee County also have these units in use and procured under an exemption.

3. Are there other vendors who can supply a similar product or service? *

NO

4. Explain why it is in the County's best interest to use this product/service rather than issuing a competitive solicitation: *

The County is in need of a this technology to monitor gravity portions of the wastewater collection system to identify and monitor problem areas within the collection system. This technology has been successfully piloted and adapted for use in the City of Sarasota and Manatee County. This technology is satellite based therefore, more reliable than land based systems, given the geographic location of Sarasota County. This company has proven that their technology works in this area and has proven the high level of customer service necessary to be valuable to the County.

E. Attachments (5)

PR - Correspondence

PR - Correspondence - SS 1723 - - - TENCARVA MACHINERY COMPANY LLC DBA HUDSON PUMP & EQUIPMENT

PR - Email Correspondence

PR - Email Correspondence - SS 1723 - - - TENCARVA MACHINERY COMPANY LLC DBA HUDSON PUMP & EQUIPMENT

PR - Fee Schedule

PR - Memo

Missing: Attached document has been deleted.

PR - Memo - SS 1723 - - - TENCARVA MACHINERY COMPANY LLC DBA HUDSON PUMP & EQUIPMENT

PR - Quote

PR - Quote - SS 1723 - - - TENCARVA MACHINERY COMPANY LLC DBA HUDSON PUMP & EQUIPMENT

F. Requestor Information**Submitter (or Backup) ***

JILL DALLMANN

Submitter Phone

941-861-0951

Manager Name *

MIKE MYLETT

Director Name

SCOTT SCHROYER

Department

PUBLIC UTILITIES

Division

PU - WATER/WASTEWATER

Procurement Approval

Procurement Analyst Name
DONNA BITTING

Date
01/22/2018

Procurement Official or Designee Name
JENNIFER SLUSARZ

Date
01/25/2018

Start Date
01/25/2018

End Date
01/24/2019



The Procurement Official has authorized budgeted expenditures of up to \$50,000 prior to authorization by the County Administrator or Board of County Commissioners, as applicable, pursuant to Chapter 7.10 of the Procurement Manual.

Authorization for Sole Source between \$50,0001 and \$100,000 per fiscal year, contract year or project:

**Authorization between \$50,001 and \$100,000
IN A CUMULATIVE AMOUNT NOT TO EXCEED**

**Cumulative Amount Not to
Exceed**
\$100,000.00

per

- ☐ Contract Year
☒ Fiscal Year
☐ Project

Authorization for Sole Source exceeding \$100,000 per fiscal year, contract year, or project:

**Authorization above \$100,000
N/A \$100,000 OR LESS**

COUNTY ADMINISTRATOR AUTHORIZATION

Vendor Name: TENCARVA MACHINERY COMPANY LLC dba HUDSON PUMP & EQUIPMENT

The Procurement Official, or Designee, is authorized to approve Purchase Orders under:

Sole Source

Number: SS 1723

In a cumulative amount not-to-exceed: \$ 100,000.00

Per: ☒ Fiscal Year ☐ Contract Year ☐ Project

Jonathan R. Lewis, County Administrator

Date

Approved as to form and correctness:

BY: _____

COUNTY ATTORNEY

Bid #1801-008 - SmartFLOE Flow Estimation System

Creation Date **Jan 16, 2018**

End Date **Jan 19, 2018 5:00:00 PM EST**

Start Date **Jan 16, 2018 5:22:22 PM EST**

Awarded Date **Jan 22, 2018**

1801-008-01-01 SmartFLOE Flow Estimation System						
Supplier		Unit Price	Qty/Unit	Total Price	Attch.	Docs
				No Bids		
Agency Product Code:			Supplier Notes:			
Agency Notes:						

**All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received may be available for inspection at that time.

Print

Close

Item Number: 6.E.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 125-18 Approve the purchase and installation of playground equipment from Bliss Products and Services, Inc. piggybacking Manatee County School District Contract #16-0025-MR-3, at a total cost of \$179,858, in accordance with City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) Purchases of Goods or Services from Contracts Awarded by other Governmental or Not-for-Profit Entities by Competitive Bid or Request for Proposals; And authorize the City Manager or Designee to execute the contract, contract amendment, purchase order and any related documents. Department: Parks and Recreation Dollar value: \$179,858 (Capital Fund).

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

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

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. The City of Cape Coral Parks and Recreation was awarded a Land and Water Conservation Fund grant to upgrade Saratoga Lake Park which includes replacement of the playground and fitness equipment. The grant was approved by Council on May 9, 2016 via Resolution 60-16.
2. If approved, the purchase includes a new playground, turf surface and fitness equipment at a quoted price of \$179,857.50. Parts can no longer be obtained for the existing playground due to age.
3. Staff recommends piggybacking the Manatee County School District contract, issued via a competitive solicitation, Bid #16-0025 on June 18, 2015, for Park and Playground Equipment.
4. This request is in accordance with City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) of the Procurement Ordinance *"Purchases of Goods or Services from Contracts Awarded by other Governmental Entities or Not by Profit Entities by Competitive Bid"*.

- 5. This is a budgeted item.
- 6. Funding Source: Capital Business unit 3111900

LEGAL REVIEW:

Legal reviewed the contract

EXHIBITS:

Department Recommendation
Resolution 125-18

PREPARED BY:

Wanda Division- Procurement Department- Finance
Roop

SOURCE OF ADDITIONAL INFORMATION:

Kerry Runyon, Parks and Recreation Director


ATTACHMENTS:

Description	Type
▣ Department Recommendation	Backup Material
▣ Resolution 125-18	Resolution

MEMORANDUM

CITY OF CAPE CORAL PARKS AND RECREATION DEPARTMENT

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

FROM: Kerry Runyon, Parks and Recreation Director 

DATE: June 6, 2018

SUBJECT: Bliss Products and Services, Inc. and Saratoga Lake Park

Background

The City of Cape Coral was awarded a Land and Water Conservation Fund grant via Resolution 60-16 approved May 9, 2016 to upgrade Saratoga Lake Park which includes a new kayak/canoe launch, repair of restrooms, and replacement of the playground and fitness equipment.

The Parks Division is requesting approval for the purchase of a playground from Bliss Products and Services, Inc. piggybacking Manatee County Schools Bid MCSD No 16-0025MR, in the amount of \$179,857.50. This request includes a new playground, turf surface, and fitness equipment. Parts can no longer be obtained for the existing playground due to age.

Recommendation

The Parks and Recreation Department recommends Bliss Products and Services, Inc. due to the comparison of the current market on playgrounds and they are still competitive based on trend, market, pricing, and age group of playground structures.

Funds Availability

Funds for this project have been budgeted in the Saratoga Lake Improvements Capital Budget in Business Unit 3111900 Account #653109.

Land and Water Conservation Fund Grant	\$143,000
City of Cape Coral Grant Match	\$143,000

If you have any questions and/or need any additional information on a specific item(s), please let me know.

KR/kep

RESOLUTION 125 – 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING A CONTRACT BETWEEN THE CITY OF CAPE CORAL AND BLISS PRODUCTS AND SERVICES, INC., FOR THE PURCHASE AND INSTALLATION OF PLAYGROUND EQUIPMENT, FITNESS EQUIPMENT AND TURF SURFACE AT SARATOGA LAKE PARK IN ACCORDANCE WITH MANATEE COUNTY SCHOOL DISTRICT CONTRACT #16-0025-MR-3; AUTHORIZING SUBSEQUENT EXECUTION OF THE CONTRACT BY THE CITY MANAGER; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 9, 2016, the City Council adopted Resolution 60-16, accepting a Land and Water Conservation Fund Grant to fund improvements at Saratoga Lake Park; and

WHEREAS, due to the age of the playground structures at Saratoga Lake Park, replacement parts are no longer available; and

WHEREAS, the Manatee County School District conducted a competitive solicitation via Bid #16-0025 for Park and Playground Equipment. Multiple vendors responded to the bid and the contract was awarded to Bliss Products and Services, Inc.; 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 Manatee County School District contract; and

WHEREAS, the City Manager recommends the City approve the Contract with Bliss Products and Services, Inc., in accordance with Manatee County School District Contract #16-0025-MR-3, in the amount of \$179,858.

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

Section 1. The City Council hereby approves the Contract for the purchase and installation of playground equipment, fitness equipment, and turf surface with Bliss Products and Services, Inc., in accordance with Manatee County School District Contract #16-0014-MR-3, in the amount of \$179,858.

Section 2. The City Council hereby authorizes the City Manager to execute the Contract between the City of Cape Coral and Bliss Products and Services, Inc. A copy of the Contract is attached hereto as Exhibit 1.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS SPECIAL 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/Piggyback Manatee County School District-Bliss Products

CITY OF CAPE CORAL
SARATOGA LAKE PARK PLAYGROUND
CONTRACT PB-PR18-102/KS

THIS CONTRACT is made this _____ day of _____, 2018 by and between the **CITY OF CAPE CORAL, FLORIDA**, hereinafter called "**CITY**", and **BLISS PRODUCTS AND SERVICES, INC.**, located at 6831 S. Sweetwater Road, Lithia Springs, GA 30122, hereinafter called "**CONTRACTOR**".

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

1. The CONTRACTOR will provide and install Playground Equipment, Fitness Equipment Turf Surface at Saratoga Lake Park located at 170 S.E. 4th Terrace, Cape Coral, FL 33990 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 will commence work as required by the CONTRACT DOCUMENTS within 10 calendar days after the receipt of the written Notice to Proceed or Purchase Order and will complete the same in 30 calendar days. However, if the contractor requires additional time due to unforeseen circumstances to complete the project, the Contractor must request an extension in writing prior to the expiration date detailing the reason for the request. The requested extension must be approved in writing by an authorized City representative. This contract may not be renewed.
4. The CONTRACTOR agrees to perform all WORK described in the CONTRACT DOCUMENTS for the following amount \$179,857.50 as listed on the CONTRACTOR'S Proposal during the term of the contract, more specifically "EXHIBIT A" hereto and made part hereof.
5. 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. 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

In the event of conflict between any provision of any other document referenced herein as part of the contract and this Contract, the terms of this Contract shall control.
7. **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.
8. **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.
9. **Administration of Contract:** The Parks and Recreation Director, or his representative, shall administer this Contract for the CITY.

CITY OF CAPE CORAL
SARATOGA LAKE PARK PLAYGROUND
CONTRACT PB-PR18-102/KS

10. **Governing Law:** The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, each party shall be responsible to pay for its own reasonable costs and attorney fees.
11. **Amendments:** No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties.
12. **Payments:** CITY shall make payment and CONTRACTOR shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice unless, within a fifteen (15) day period, CITY notifies CONTRACTOR in writing of its objection to the amount of such invoice, together with CITY'S determination of the proper amount of such invoice. CITY shall pay any undisputed portion of such invoice within such thirty (30) day period. If CITY shall give such notice to the CONTRACTOR within such fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, CITY shall promptly pay the CONTRACTOR the amount so determined, less any amounts previously paid by CITY with respect to such invoice. In the event it is determined that CITY has overpaid such invoice, the CONTRACTOR shall promptly refund to the CITY the amount of such overpayment.
13. **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.
- CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- CONTRACTOR has given CITY written notice of all conflicts, errors or discrepancies that have been discovered in the CONTRACT DOCUMENTS and the written resolution thereof by CITY is acceptable to CONTRACTOR.
14. **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
SARATOGA LAKE PARK PLAYGROUND
CONTRACT PB-PR18-102/KS

15. **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.
16. **Liquidated Damages:** Liquidated damages of **\$200.00** per calendar day will be assessed against contractor's final invoice for each day beyond the completion date that work is not completed unless waived by the City.
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. 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.

CITY OF CAPE CORAL
SARATOGA LAKE PARK PLAYGROUND
CONTRACT PB-PR18-102/KS

- c. Business Auto Policy: Shall have minimum limits of \$1,000,000.00 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.
- d. CONTRACTOR shall require its subcontractors to provide for such benefits and carry and maintain the foregoing types of insurance at no expense to CITY.
- e. CITY shall be named as an "Additional Insured" under the CONTRACTOR'S General Liability Insurance Policy with respect to the services performed by the CONTRACTOR.
- f. Prior to commencing any Work under this Agreement, 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.
- g. 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
SARATOGA LAKE PARK PLAYGROUND
CONTRACT PB-PR18-102/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:

[Signature] 6/11/18
for Dolores Menendez Date
City Attorney

WITNESS CONTRACTOR:

Signature: *[Signature]*

Typed Name: DONNA MOORE

Title: OFFICE MANAGER

CONTRACTOR:

Bliss Products and Services, Inc.

Signature: *[Signature]*

Typed Name: GREGG BLISS

Title: PRESIDENT

Date: 11 JUN 18

GLB

EXHIBIT A



Bliss Products and Services, Inc
6831 S. Sweetwater Rd.
Lithia Springs, GA 30122
(800) 248-2547
(770) 920-1915 Fax

Quote #41791
Sales Rep: Jim Carruthers
jcarruthers@blissproducts.com
O: (239) 248-7023
F: (770) 920-1915
C: (239) 248-7023

CITY OF CAPE CORAL

Date 05-02-2018

Project 2018 LAKE SARATOGA

Bill To	Ship To	Contact
CITY OF CAPE CORAL	Saratoga Lake Park	KEN DAVIS
PO BOX 150027	170 SE 4 Terrace	Phone: (239) 574-0823
CAPE CORAL, FL, 33915	Cape Coral, FL 33990	
T: (239) 574-0823		
F: (239) 574-0842		

Approximate Ship Date	Ship Via	Terms
4-6 WEEKS	BEST WAY	Net 30

Vendor	Part #	Description	Qty	Unit Price	Extended Price
INS	INSTALL	INSTALLATION OF FITNESS EQUIPMENT ONLY PER MANATEE COUNTY SCHOOLS BID MCSD No 16-0025MR	1	\$4,000.00	\$4,000.00
INS	INSTALLATION	INSTALLATION OF PLAYGROUND EQUIPMENT ONLY. PER MANATEE COUNTY SCHOOLS BID MCSD No 16-0025MR. THIS ALSO INCLUDES PERMITTING *INCLUDES DUMPSTER FOR TRASH DISPOSAL*	1	\$23,050.00	\$23,050.00
PPS	645-95384	PLAYGROUND STRUCTURES FOR BOTH 2-5 AND 5-12 YEARS. WITH INTEGRATED SHADE. ****BOTH STRUCTURES ARE BASICS COLOR PALETTE*****	1	\$110,085.00	\$110,085.00
PPS	DISCOUNT	DISCOUNT PER MANATEE COUNTY SCHOOLS BID MCSD No 16-0025MR	1	-\$29,200.00	-\$29,200.00
PPS	313199	Owner's Kit Ship To : City of Cape Coral Parks Ready Room 1750 Everest Pkwy Cape Coral FL 33904 ATTN: Ken Davis	2	\$0.00	\$0.00
STE	ENGINEERING		1	\$500.00	\$500.00
UPLAY	UP1675	CAPTAINS CHAIR FITNESS WITH INGROUND MOUNT. DESIGNED FOR CORE FITNESS.	1	\$3,023.00	\$3,023.00
UPLAY	UP1685	SIT UP / BACK EXTENSION FITNESS PIECE DESIGNED FOR CORE FITNESS	1	\$3,788.00	\$3,788.00
UPLAY	UP176	BALANCE PLANK. DESIGNED BALANCE /FLEXIBILITY	1	\$456.00	\$456.00
UPLAY	UP1655	LAT PULL DOWN DESIGNED FOR MUSCLE FITNESS	1	\$3,750.00	\$3,750.00
UPLAY	UP1665	CHEST PRESS DESIGNED FOR MUSCLE FITNESS	1	\$3,616.00	\$3,616.00
UPLAY	UP1615	UPRIGHT CYCLE DESIGNED FOR AEROBIC FITNESS.	1	\$3,661.00	\$3,661.00

GEB

Vendor	Part #	Description	Qty	Unit Price	Extended Price
UPLAY	DISCOUNT	PER MANATEE SCHOOLS BID MCSD No 16-0025MR	1	-\$2,000.00	-\$2,000.00
XGS	18484	PLAYGROUND TURF SURFACE INSTALLED WITH UP TO 4" OF AGGREGATE SUB BASE, INFILL, PADS, ADHESIVE AND GEOTEXTILE FABRIC:	1	\$58,310.00	\$58,310.00
XGS	DISCOUNT	PER MANATEE SCHOOLS BID MCSD No. 16-0025MR	1	-\$9,834.25	-\$9,834.25

Sub Total \$173,204.75

Freight 6,652.75

Taxable \$0.00
Subtotal

Tax 0.00

Financing as low as \$4,172.69 / month may be available pending credit approval.

Grand \$179,857.50
Total

Quote valid for 30 days unless otherwise noted.

Installation prices are based on truck access to the site and normal soil conditions. Any buried rock or debris may be cause for additional charges. Any Site preparation or demolition not specified above must be completed prior to installation of the equipment. Site restoration, unless otherwise noted, is not included. Please refer to your installation agreement for further details. Sales tax if applicable is not included. Sales tax exempt certificate will be required for exemption. All orders are subject to approval and acceptance by the manufacturer.

Complete Terms and Conditions can be found at BlissProducts.com/termsandconditions.html

GER

Item Number: 6.F.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 126-18 Approve the purchase of Personal Protective Equipment (PPE) (Firefighting protective coats and pants - Bunker Gear), from Municipal Equipment Company, at the unit prices stated, not to exceed budgetary limit, piggybacking Lake County Contract #17-0606H in accordance with City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) Purchases of Goods or Services from Contracts Awarded by other Governmental or Not-for-Profit Entities by Competitive Bid or Request for Proposals; And authorize the City Manager or Designee to execute the purchase order; Department: Fire Department; Dollar Value: \$138,963; (General Fund)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

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

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

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. The Fire Department replacement plan includes replacing bunker gear (firefighting protective coats and pants) every ten (10) years in accordance with the National Fire Protection Association (NFPA 1851), as well as issuing gear to new hires.,
2. Lake County awarded by competitive bid, to Municipal Equipment Co., LLC., Contract #17-0606H, for Fire Equipment and Supplies which includes the Firefighting protective coats and pants (Bunker Gear)
3. The Fire Department has vetted the type and manufacturer of the gear through the department's Health and Safety Committee and recommends the purchase. The Janesville Personal Protective Equipment (PPE) is for structural and proximity firefighting. This PPE provides optimal thermal protection, permits the release of body heat to prevent exhaustion, and is equipped with all the current NFPA (National Fire Protection Association) recommended features.

4. If approved, the purchase will be for Firefighting Protective Coats and Pants, personal protective equipment (PPE) for structural and proximity firefighting which will replace older gear. The cost for each set is \$2,526.60.
5. This purchase is in accordance with City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) of the Procurement Ordinance *“Purchases of Goods or Services from Contracts Awarded by other Governmental Entities or Not by Profit Entities by Competitive Bid.”*
6. This is a budgeted item.
7. Funding Information: Account: 122301.652112 Fire Operations/Uniforms (Personal Protective Gear)

LEGAL REVIEW:

Legal review is not required as purchase orders will be issued

EXHIBITS:

Department Recommendation Memo
Resolution 126-18
Award Document from Lake County
Quote from Municipal Equipment Company

PREPARED BY:

Wanda Division- Procurement Department- Finance
Roop

SOURCE OF ADDITIONAL INFORMATION:

Ryan Lamb, Fire Chief

ATTACHMENTS:

Description	Type
▣ Department Recommendation	Backup Material
▣ Resolution 126-18	Resolution
▣ Award Document from Lake County	Backup Material
▣ Quote from Municipal Equipment Company	Backup Material



CAPE CORAL FIRE DEPARTMENT

OFFICE OF THE INTERIM FIRE CHIEF

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

FROM: Ryan W. Lamb, Acting Interim Fire Chief *RWL*

DATE: May 17, 2018

SUBJECT: Purchases over \$50,000 – Municipal Equipment Company, LLC

This memorandum outlines information to support the purchase of Personal Protective Equipment (PPE) for Cape Coral Fire Department (CCFD) Certified personnel.

Background:

CCFD is requesting approval to purchase 55 sets of PPE bunker gear from Municipal Equipment Company, LLC. in accordance with the National Fire Protection Association (NFPA 1851) standard for replacing gear every 10 years, as well as issuing gear to new hires. The request to purchase 55 sets includes 46 replacement sets and 9 sets for the budgeted new hire firefighters.

Recommendation:

We recommend piggybacking on Lake County, FL Contract #17-0606H, expiration date June 30, 2018, with Municipal Equipment Company, LLC. The fire department has vetted the type and manufacturer of bunker gear through the Department's Health and Safety Committee, and recommends Janesville V-Force's PPE products.

Funding Availability:

This budgeted purchase in the amount of \$138,963.00 will be funded by Fire Operations Uniforms (PPG):122301.652112.

RWL/SRO:tlh

RESOLUTION 126 - 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING THE PURCHASE OF PERSONAL PROTECTIVE EQUIPMENT (FIREFIGHTING PROTECTIVE COAT AND PANTS-BUNKER GEAR) FROM MUNICIPAL EQUIPMENT COMPANY, LLC, UNDER LAKE COUNTY CONTRACT #17-0606H; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Fire Department replacement plan includes replacing bunker gear (firefighting protective coat and pants) every ten years, in accordance with the National Fire Protection Association (NFPA 1851), as well as issuing gear to new hires; and

WHEREAS, Lake County awarded, by competitive bid, Contract #17-0606H for Fire Equipment and Supplies, which includes firefighting protective coats and pants (bunker gear) to Municipal Equipment Company, LLC; and

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

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

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

WHEREAS, the City Manager recommends the use of the Lake County contract with Municipal Equipment Company, LLC, for the purchase of Personal Protective Equipment (bunker gear) at the unit prices awarded.

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 Personal Protective Equipment (bunker gear) from Municipal Equipment Company, LLC, at the prices offered to Lake County, by City purchase order, in the amount of \$138,963.

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

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 SPECIAL 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/Piggyback Lake County-Municipal Equipment Company



CONTRACT NO. 17-0606H

Fire Equipment Parts – Supplies - Service

LAKE COUNTY, FLORIDA, a political subdivision of the state of Florida, its successors and assigns through its Board of County Commissioners (hereinafter "County") does hereby accept, with noted modifications, if any, the bid of Municipal Equipment Company LLC (hereinafter "Contractor") to supply fire equipment parts, supplies, and services to the County pursuant to County Bid number 17-0606 (hereinafter "Bid"), addenda nos. 1 and 2, opening date 12/13/2016 and Contractor's Bid response thereto with all County Bid provisions governing.

A copy of the Contractor's signed Bid is attached hereto and incorporated herein, thus making it a part of this Contract except that any items not awarded have been struck through.

No financial obligation under this contract shall accrue against the County until a specific purchase transaction is completed pursuant to the terms and conditions of this contract.

Contractor shall submit the documents hereinafter listed prior to commencement of this Contract: Insurance Certificate – an acceptable insurance certificate (in accordance with Section 1.8 of Bid) must be received and approved by County Risk Management prior to any purchase transactions against the contract.

The County's Procurement Services Manager shall be the sole judge as to the fact of the fulfillment of this Contract, and upon any breach thereof, shall, at his or her option, declare this contract terminated, and for any loss or damage by reason of such breach, whether this Contract is terminated or not, said Contractor and their surety for any required bond shall be liable.

This Contract is effective from July 1, 2017 through June 30, 2018 except the County reserves the right to terminate this Contract immediately for cause and/or lack of funds and with thirty (30) day written notice for the convenience of the County. This Contract provides for four (4) one year renewals at Lake County's sole option at the terms noted in the Bid.

Any and all modifications to this Contract must be in writing signed by the County's Procurement Services Manager.

LAKE COUNTY, FLORIDA

By: 
Senior Contracting Officer

Date: 3-21-2017

Distribution: Original-Bid File
Copy-Contractor
Copy-Department

"Earning Community Confidence Through Excellence in Service"

Office of Procurement Services
Tavares, Florida 32778-7800

315 W. Main, Suite 441
Ph (352) 343-9839

P.O. Box 7800
Fax (352) 343-9473

SECTION 5 - ATTACHMENTS

ITB Number: 17-0606

FOLD A TANK	10%	N/A	No
GEMTOR	12%	N/A	No
GLASSMASTER WEHR	5%	N/A	No
GLOBE	No Bid		
GLOVE CORP	No Bid		
GORMAN RUPP PUMPS	No Bid		
HALE FIRE PUMPS	22%	N/A	YES
HANNAY RIBBLS	5%	N/A	No
HARRINGTON	20%	N/A	No
HAZARD CONTROL	No Bid		
HEBERT	5%	N/A	No
HOLMATRO	No Bid		
HONEYWELL PRO	No Bid		
HUMAT	1%	N/A	No
HUSKY	No Bid		
HYDRA SHIELD	No Bid		
IMPERIAL HOSE	No Bid		
IOWA AMERICAN	No Bid		
JANISVILLE	35%	N/A	YES
JUSTRITE	No Bid		
JVMFG	No Bid		
KAPPLER	No Bid		
KENDALL PRODUCTS	No Bid		
KOCHER	20%	N/A	YES
KOHLER MFG CO	10%	N/A	No
KUSSMAUL	5%	N/A	YES
LACROSSE BOOTS	No Bid		
LIFE LINERS	No Bid		
LIONS UNIFORMS	30%	N/A	No



Order # **Quote**
400941-00

Entered Date	Taken By	Page #
4/7/18	DW01	1
PO #	Requested Ship Date	
	4/9/18	

Bill To CITY OF CAPE CORAL
SENT VIA EMAIL
P.O. BOX 150027
CAPE CORAL, FL 33915-0027

Correspondence To Municipal Equipment Company, LLC
2049 West Central Boulevard
Orlando, FL 32805

Customer # 3050

Ship To CAPE CORAL FIRE RESCUE
815 NICHOLAS PARKWAY
CAPE CORAL, FL 33990

Instructions

Ship Point	Via	Shipped	Terms
MUNICIPAL EQUIPMENT - FLORIDA	Fedex		NET 30 DAYS

Line	Product and Description	Order Quantity	Qty UM	Unit Price	Price UM	Amount (Net)
1	CVBM-32 JANESVILLE V-FORCE BI-SWING COAT, PER SPECIFICATION LIST PRICE \$2704.00 LIST - 35% 340-034	55	each	1,386.00	each	76,230.00
2	PVFM JANESVILLE V-FORCE LOW RISE PANT WITH SUSPENDER AND BL031 BELT LOOPS, PER SPECIFICATION LIST PRICE \$2055.00 LIST - 35% 340-034	55	each	1,100.00	each	60,500.00
3	BHS013 JANESVILLE 2" WIDE KEVLAR BELT LIST PRICE \$75.00 LIST - 35% 340-034	55	each	40.60	each	2,233.00
4	M Memo:	1	EA	0.00	EA	0.00

Order # **Quote**
400941-00

Line	Product and Description	Order Quantity	Qty UM	Unit Price	Price UM	Amount (Net)
5	M	1	EA	0.00	EA	0.00
	Memo:					
	PER LAKE COUNTY CONTRACT# 17-0606H					
	PRICES QUOTED INCLUDE FREIGHT					
5	Lines Total	167.00				Subtotal 138,963.00
						Total 138,963.00

Item Number: 6.G.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 127-18 Approve the Single Source to Rexel USA Inc., for the Purchase and Service of Allen Bradley and Rockwell components utilized by the Utilities Department's Water Reclamation and Water Production Division for Fiscal Year 2018 and Fiscal Year 2019, not to exceed budgetary limits and authorize the City Manager or Designee to execute the purchase orders. Rexel USA Inc. is the only authorized representative for Rockwell Automation that can sell Allen-Bradley and Rockwell software products along with related services in the geographic area; Department: Utilities; Combined Total Dollar Amount: \$200,000; (Water & Sewer Fund–FY2018 \$80,000 and FY2019 \$120,000).

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. Rexel USA Inc. is the only authorized representative for Rockwell Automation that can sell Allen-Bradley and Rockwell software products along with related services in our geographic area.
2. This equipment is critical to operations and continued reliability of the Utilities Department's Water Reclamation Division and Water Production Division. If the City purchased Allen-Bradley products from an unauthorized source, the City may not receive the latest product versions and would not be covered by the manufacturer's warranty. Rexel USA Inc. is the only authorized provider of component and technical support for Rockwell/Allen-Bradley process control Supervisory Control and Data Acquisition (SCADA) equipment and the sole source provider for these services in our area.
3. The Utilities Department will continue to annually research companies, components and equipment that have the capability to meet the Utilities Department requirements.
4. The purchase and repairs for fiscal year 2018 and estimated dollar value is \$80,000. For fiscal year 2019, the estimated dollar value is \$120,000, for a combined total dollar value of

\$200,000

5. This request is in accordance with Section 2-144 (C) (2) (a) of the City of Cape Coral Code of Ordinances which authorizes the City to award contracts without competition upon the determination of the Procurement Manager, that there is only one source for the required supply, service or construction item.
6. Section 2-144 (c) (2) (a) states that a purchase can be categorized as a Single Sole purchase when there are multiple distributors of the item, however, the manufacturer may have designated exclusive territorial sales boundaries.
7. The City Manager or designee shall have the authority to approve and execute any authorized contract amendment, renewals or purchase orders provided that any such renewal, amendment or purchase order does not exceed the current budget level during any one-year period.
8. Funding Information: Water & Sewer Fund – Budgeted item in FY18; Budget for FY19 - Upon approval of FY2019 budget.

LEGAL REVIEW:

Purchase orders will be issued

EXHIBITS:

Department Memo
Resolution 127-18

PREPARED BY:

Wanda Division- Procurement Department- Finance
Roop

SOURCE OF ADDITIONAL INFORMATION:

Jeff Pearson, Utilities Director

ATTACHMENTS:

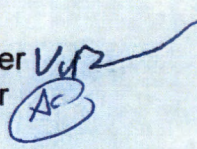

Description	Type
▣ Department Memo	Backup Material
▣ Resolution 127-18	Resolution

MEMORANDUM

**CITY OF CAPE CORAL
UTILITIES DEPARTMENT**

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

FROM: Jeff Pearson, Utilities Director
Patrick Long, Water Reclamation Manager
Andy Fenske, Water Production Manager



DATE: May 17, 2018

SUBJECT: Sole Source Purchase – Rexel USA, Inc. for Rockwell/Allen-Bradley

The Utilities Department, Water Reclamation and Water Production Division(s), are requesting an increase in the sole source spending amount for Rexel USA, Inc. in Fiscal Year (FY)18 from the previously approved \$37,176.30 to an amount not to exceed \$80,000. The increase is required in order to purchase the remaining necessary Allen-Bradley and Rockwell components and services required by the Water and Wastewater Treatment Divisions. We are also requesting to spend an amount not to exceed \$120,000.00 which is within proposed budgetary limitations for FY19, to purchase from this sole source vendor continuing services and additional parts as necessary to maintain and improve the system(s) currently in place within both Water Reclamation and Water Production.

This equipment is critical to the operational reliability of all facilities. Rexel is the only authorized provider of components and technical support for Rockwell/Allen-Bradley process control Supervisory Control and Data Acquisition (SCADA) equipment and the sole source for these services in our area.

Funds are available in Business Unit (BU) 401023, 401026, 401027, and 401028 utilizing accounts 646102 (Equipment Repair and Maintenance), 652116 (Small Equipment Purchase), 664101 (Capital Equipment), and 652121 (Computer Equipment and Accessories).

JP/PL:hck (Sole Source Purchase – Rexel USA, Inc. for Rockwell/Allen-Bradley)
Attachment

C: Tim Bennett, Utilities Programmer Analyst
Carlos Rodriguez Salgado, Utilities Programmer Analyst
Marco Parra, Utilities Programmer Analyst

RESOLUTION 127 – 18

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING THE SERVICES OF REXEL USA, INC., AS THE SINGLE SOURCE PROVIDER FOR THE PURCHASE OF ALLEN-BRADLEY AND ROCKWELL COMPONENTS AND SERVICES FOR THE WATER RECLAMATION AND WATER PRODUCTION DIVISIONS FOR FISCAL YEARS 2018 AND 2019; PROVIDING FOR THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE PURCHASE ORDERS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Water Reclamation and Water Production Divisions of the Utilities Department utilize Allen-Bradley and Rockwell components for the maintenance of and improvements to the City's Water Reclamation and Water Production systems; and

WHEREAS, the Water Reclamation and Water Production Divisions are requesting approval for the purchase of Allen-Bradley and Rockwell components and services necessary for maintenance and improvements in the amount of \$80,000 for Fiscal Year 2018 and in the amount of \$120,000 for Fiscal Year 2019 from Rexel USA, Inc.; and

WHEREAS, the equipment is critical to the operational reliability of all facilities; and

WHEREAS, Section 2-144(c) of the City of Cape Coral Code of Ordinances authorizes the City to award contracts without competition upon the determination of the Procurement Manager that there is only one source for the required supply, service or construction item; and

WHEREAS, the Procurement Manager has determined that the Allen-Bradley and Rockwell components and services are available from only one source, Rexel USA, Inc., as the only authorized provider of components and technical support for Rockwell/Allen-Bradley process control Supervisory Control and Data Acquisition (SCADA) equipment in this area; and

WHEREAS, the City Manager recommends approval of Rexel USA, Inc., as the single source provider for the purchase of Allen-Bradley and Rockwell components and services required by the Water Reclamation and Water Production Divisions, in the amount of \$80,000 for Fiscal Year 2018 and \$120,000 for Fiscal Year 2019.

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

Section 1. The City Council hereby approves the services of Rexel USA, Inc., as the single source provider for the purchase of Allen-Bradley and Rockwell components and services required by the Water Reclamation and Water Production Divisions, in the amount of \$80,000 for Fiscal Year 2018 and \$120,000 for Fiscal Year 2019, and authorizes the City Manager or his designee to execute the purchase orders.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS SPECIAL 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/Single Source-Rexel USA

Item Number: 6.H.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 132-18 Adopting State Housing Initiative Partnership (SHIP) subrecipient agreements between the City of Cape Coral and Cape Coral Housing Development, Goodwill Industries, and Habitat for Humanity of Lee and Hendry Counties

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

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

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

N/A

SUMMARY EXPLANATION AND BACKGROUND:

1. The City receives State Housing Initiative Partnership (SHIP) grant funds from the State of Florida on an annual basis.
2. Funds are awarded and expended based on the City's Local Housing Assistance Plan.
3. Funds being committed include the 2017/2018 allocation and the 2018/2019 allocation.
4. Funds will be expended to repair homes for low income homeowners, provide affordable single-family homes to low income households, provide disaster assistance for low income households who incurred damage due to Hurricane Irma, and repairs to a special needs rental complex.
5. Under statute, funds must be committed by June 30, 2018.

LEGAL REVIEW:

EXHIBITS:

Resolution 132-18

PREPARED BY:

Amy

Planning

Community

Yearsley

Division- Division

Department- Development

SOURCE OF ADDITIONAL INFORMATION:

Amy Yearsley

Housing Coordinator

ATTACHMENTS:

Description

▫ Resolution 132-18

Type

Resolution

RESOLUTION 132 - 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL AUTHORIZING SUBRECIPIENT AGREEMENTS FOR THE STATE FISCAL YEAR 2017-2018 AND STATE FISCAL YEAR 2018-2019 STATE HOUSING INITIATIVE PARTNERSHIP GRANT PROGRAM FUNDS BETWEEN THE CITY OF CAPE CORAL AND CAPE CORAL HOUSING DEVELOPMENT CORPORATION, BETWEEN THE CITY OF CAPE CORAL AND SOUTHWEST FLORIDA GWI HOUSING II, INC., AND BETWEEN THE CITY OF CAPE CORAL AND HABITAT FOR HUMANITY OF LEE AND HENDRY COUNTIES, INC.; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS; AUTHORIZING THE CITY MANAGER TO APPROVE MODIFICATIONS TO THE AGREEMENTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has received \$790,717 in Fiscal Year 2017-2018 State Housing Initiative Partnership Program Funds from the State of Florida; and

WHEREAS, the City has received \$250,505 in Fiscal Year 2018-2019 State Housing Initiative Partnership Program Funds from the State of Florida; and

WHEREAS, in accordance with the City's Local Housing Assistance Plan, the City of Cape Coral issued a Notice of Available Funding for State Housing Initiative Partnership Program funds in the Fort Myers New-Press; and

WHEREAS, requests were received from Cape Coral Housing Development Corporation, Habitat for Humanity of Lee and Hendry Counties, Inc., and Southwest Florida GWI Housing II, Inc.; and

WHEREAS, subrecipient agreements represent the contractual obligation between the subrecipient and the City of Cape Coral regarding the expenditure of grant funds; and

WHEREAS, the City of Cape Coral desires to enter into the following sub-recipient agreements: (1) with Cape Coral Housing Development Corporation for FY2017-2018 rehabilitation of existing homes for resale to eligible homebuyers; (2) with Cape Coral Housing Development Corporation for FY2017-2018 owner-occupied rehabilitation for eligible homeowners; (3) with Cape Coral Housing Development Corporation for FY2017-2018 new construction for eligible homebuyers; (4) with Cape Coral Housing Development Corporation for FY2017-2018 SHIP subrecipient administration; (5) with Cape Coral Housing Development Corporation for FY2018-2019 owner-occupied rehabilitation for eligible homeowners; (6) with Cape Coral Housing Development Corporation for FY2017-2018 for owner-occupied rehabilitation for persons with special needs; (7) with Cape Coral Housing Development Corporation for FY2018-2019 SHIP subrecipient administration; (8) with Southwest Florida GWI Housing II, Inc., for special needs rental property capital improvements; (9) with Habitat for Humanity of Lee and Hendry Counties, Inc., for FY2017-2018 rehabilitation of existing single-family homes for resale to eligible homebuyers; (10) with Habitat for Humanity of Lee and Hendry Counties, Inc., for FY 2017-2018 new construction to eligible homebuyers; (11) with Habitat for Humanity of Lee and Hendry Counties for FY2017-2018 disaster relief for eligible homeowners; and (12) with Habitat for Humanity of Lee and Hendry Counties, Inc., for FY 2018-2019 new construction to eligible homebuyers, all attached hereto and incorporated by reference.

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

Section 1. The City Council hereby approves the following sub-recipient agreements:

(1) with Cape Coral Housing Development Corporation for FY2017-2018 rehabilitation of existing homes for resale to eligible homebuyers; (2) with Cape Coral Housing Development Corporation for FY2017-2018 owner-occupied rehabilitation for eligible homeowners; (3) with Cape Coral Housing Development Corporation for FY2017-2018 new construction for sale to eligible homebuyers; (4) with Cape Coral Housing Development Corporation for FY2017-2018 SHIP subrecipient administration; (5) with Cape Coral Housing Development Corporation for FY2018-2019 owner-occupied rehabilitation for eligible homeowners; (6) with Cape Coral Housing Development Corporation for FY2017-2018 for owner-occupied rehabilitation for persons with special needs; (7) with Cape Coral Housing Development Corporation for FY2018-2019 SHIP subrecipient administration; (8) with Southwest Florida GWI Housing II, Inc., for special needs rental property

capital improvements; (9) with Habitat for Humanity of Lee and Hendry Counties, Inc., for FY2017-2018 rehabilitation of existing single-family homes for resale to eligible homebuyers; (10) with Habitat for Humanity of Lee and Hendry Counties, Inc., for FY 2017-2018 new construction for sale to eligible homebuyers; (11) with Habitat for Humanity of Lee and Hendry Counties for FY2017-2018 disaster relief for eligible homeowners; and (12) with Habitat for Humanity of Lee and Hendry Counties, Inc., for FY 2018-2019 new construction for sale to eligible homebuyers, all attached hereto and incorporated by reference.

Section 2. The City Council authorizes the City Manager to execute the subrecipient agreements.

Section 3. The City Council authorizes the City Manager to administratively approve any further modifications to the subrecipient agreements that do not increase or decrease funding levels previously approved by Council.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS SPECIAL 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\SHIP Subrecipient Agreements

CSFA #: 52.901 – State Housing Initiatives Partnership Program
Contract Type: SHIP FY 2017-2018
JDE: 28401032.634115.227119
Strategy: Rehabilitation/Resale
Agency: Cape Coral Housing Development

**SUBRECIPIENT AGREEMENT
BETWEEN
THE CITY OF CAPE CORAL
and
CAPE CORAL HOUSING DEVELOPMENT CORPORATION**

THIS CONTRACT entered this ____ day of _____ 2018, between THE CITY OF CAPE CORAL hereinafter referred to as **CITY** and CAPE CORAL HOUSING DEVELOPMENT CORPORATION a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "**SUBRECIPIENT**".

WHEREAS, **CITY** believes it to be in the public interest to provide certain activities to the residents of Cape Coral through the **SUBRECIPIENT** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **CITY** and the **SUBRECIPIENT** agree as follows:

ARTICLE I SCOPE OF SERVICES

The **CITY** has awarded the following amounts for each program listed in Attachment 2 Statement of Work. The **SUBRECIPIENT** will be responsible for implementing these program(s) for the residents of Cape Coral. Program(s) must be implemented in accordance with the approved proposal(s) and exhibits/attachments.

ARTICLE II TERM OF CONTRACT

This contract shall be effective **upon execution** and ends **June 30th, 2020** unless terminated as specified in Article VIII, Suspension/Termination.

ARTICLE III COMPENSATION AND REPORTS

A. Contract Payment

Payments will be made by the **CITY** to the **SUBRECIPIENT** and the **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$71,432 during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination. Funding is contingent upon the **CITY** receiving the related State funds.

B. Deferred Payment/Return of Funds

The **SUBRECIPIENT** agrees to return to the **CITY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered city funds and must be refunded to the **CITY** within thirty (30) calendar days of receiving notice from the **CITY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **CITY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **CITY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **CITY** to defer payment to the **SUBRECIPIENT** for noncompliance with contract deliverables or during the period of a city audit or monitoring due to questionable items. If because of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to the City of Cape Coral or a repayment agreement is accepted by the City.

C. Required Reports

1. Financial and Compliance Audit Requirements in Attachment 1
2. A General Progress Report at least quarterly.

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **SUBRECIPIENT** agrees to permit employees duly authorized by the **CITY** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **SUBRECIPIENT** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the **CITY** may deliver to the **SUBRECIPIENT** a written report regarding the way goods or services are being provided. The **SUBRECIPIENT** will rectify all noted deficiencies within the specified period indicated in the monitoring report or provide the **CITY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **CITY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

SUBRECIPIENT must supply **CITY** with copies of all monitoring reports of programs which are also funded by the **CITY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **SUBRECIPIENT** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **CITY** deems necessary.

The City of Cape Coral Internal Auditor, the Federal or State grantor agency (if applicable), Cape Coral employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **SUBRECIPIENT** or **CPA** that are pertinent to the contract to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **CITY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

C. Records

The **SUBRECIPIENT** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit of the **SUBRECIPIENT'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing internal controls if required, and management's response to such letter if required, must be submitted to the **CITY** no later than **180** days following the end of the **SUBRECIPIENT'S** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Cape Coral either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

The **SUBRECIPIENT** agrees to comply with all **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS** as specified in Attachment 1.

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **CITY**.

ARTICLE V **MODIFICATIONS**

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties. Budget and programmatic changes shall not require further City Council action but must be agreed upon by the two parties and revisions included as modifications to this contract.

ARTICLE VI **CONTRACTOR STATUS**

A. **Independent Contractor**

It is mutually agreed that the **SUBRECIPIENT** is an independent contractor and not an agent or employee of the **CITY**.

B. **Subcontracts**

Primary roles and responsibilities of **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any **CITY** funded program component that is subcontracted by **SUBRECIPIENT** must have a written contract upon execution of this contract. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. **Indemnification**

The **SUBRECIPIENT** will defend, hold harmless, and indemnify the **CITY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **CITY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **SUBRECIPIENT**, or by reason of the intentional or negligent act of the **SUBRECIPIENT** or its agents, representatives and/or employees.

The **SUBRECIPIENT** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **CITY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **CITY** in any such action or proceedings.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **SUBRECIPIENT** and not of the **CITY**.

B. **Insurance**

The **SUBRECIPIENT** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **SUBRECIPIENT** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **SUBRECIPIENT** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any **CITY** accident or occurrence that may arise or be claimed to have arisen against the **SUBRECIPIENT**. The **SUBRECIPIENT** must furnish an appropriate Certificate of Insurance (**Exhibit**) naming the City of Cape Coral as Certificate Holder and Additional insured. The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENTS** liability and that the **CITY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities, but are merely minimums.

C. Bonding

The **SUBRECIPIENT** must provide fidelity bonding for all employees that handle **SUBRECIPIENT'S** funds. The amount of the bond must be equivalent to the highest daily cash balance of the **SUBRECIPIENT**.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **CITY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **CITY** and the **CITY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

B. Termination by CITY

The **CITY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by certified mail following a determination by the Cape Coral City Council, at its sole discretion, that such cancellation is in the best interest of the people of the **CITY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

C. Termination by SUBRECIPIENT

The **SUBRECIPIENT** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **CITY** by certified mail of such and specifying the effective date.

CITY's obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided. The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **SUBRECIPIENT** assures and certifies the following:

- A.** That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, Lee County, and the municipality as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **CITY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.

- B.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D.** That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.
- E.** That it will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- F.** That it shall report any unusual incidents involving funded activities to the **CITY**, in writing, within five (5) calendar days of the occurrence or the **CITY** may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the **SUBRECIPIENT** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **SUBRECIPIENT** services that are underwritten in any way by the **CITY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **SUBRECIPIENT** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96-ABUSE).
- G.** That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- H.** That it will notify the **CITY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for city funds.
- I.** That it will acknowledge support for programs funded by the City of Cape Coral.
- J.** That it will notify the **CITY** of any SIGNIFICANT changes to the **SUBRECIPIENT** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

ARTICLE X NOTICES

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

CITY:
Community Development Director
City of Cape Coral Department of Community Development
PO Box 150027
Cape Coral, Florida 33915-0027

SUBRECIPIENT:
Executive Director
Cape Coral Housing Development Corporation
609 SE 9th TER
Cape Coral, Florida 33990

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **SUBRECIPIENT** to the **CITY**. The notification shall be attached to originals of this contract.

ARTICLE XI SPECIAL PROVISIONS

None.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and Attachment I: Financial and Compliance Audit Requirements, Attachment II: Scope of Work, and Attachment III: Public Records, and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **SUBRECIPIENT** and **CITY** have caused this contract, to be executed by their undersigned officials as duly authorized.

SUBRECIPIENT:

By: Bonnie Schnell
Name (typed)

Signature of authorized officer

Executive Director
Title

Date

CITY: CITY OF CAPE CORAL

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager
Title

Date

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1

FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Cape Coral. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law 98-502), the Single Audit Act Amendments of 1996 (Public Law 104-156), and 29 CFR, part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report is transmitted directly to AWI by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600. Rules of the Auditor General.

Audit Requirements for States, Local Governments and Nonprofit Organizations:

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (P.L. 98-502), the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations".

Single Audit – Single Audit means an audit that includes both the entity's financial statements and the Federal awards requirements as described in OMB Circular A-133. A State single audit means an audit of a non-state entity's financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

Program-Specific Audit – A Program-Specific Audit means an audit of one Federal program as provided for in OMB Circular A-133. Additionally, a state program-specific audit means an audit of one state project in accordance with the requirements of FS 216.3491.

No Audit Exemption:

Even when cumulative (all programs considered) Federal and/or State award expenditures are less than \$500,000 in a fiscal year, an audit is required.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources).

ATTACHMENT 2 –STATEMENT OF WORK

In accordance with SHIP Technical Bulletin 2016-01(number 1), this agency is being classified as a SUBRECIPIENT. The agency serves an administrative function and is awarded funds.

1. PROJECT DESCRIPTION

The Project, as approved for grant assistance, shall consist of the following authorized scope of Project work:

Activity 1. Rehabilitation/Resale (PROGRAM) – Rehabilitation of existing single-family homes for sale to very-low ($\leq 50\%$ AMI) or low income ($\leq 80\%$ AMI) homebuyers. The maximum award per unit for this activity may not exceed the maximum assistance level approved in the City of Cape Coral Local Housing Assistance Plan for corresponding years.

2. SCOPE OF WORK

The agency will conduct these activities at their office located at 609 SE 9th Ter, Cape Coral, Florida, 33990. The agency will maintain staffing as described below in Section 4 to conduct these activities.

Activity 1.

The SUBRECIPIENT is responsible for the following activities:

- Work write-up and cost estimate
- Management of bidding
- Management of contractor eligibility
- Contractor performance
- Management payment to contractors
- Compliance with SHIP regulations (including but not limited to environmental, home inspection, home warranty, etc.)
- Maintenance and securing of properties
- Financial tracking of all work performed and accounting for expenditures per home
- Financial tracking of non-construction costs (including but not limited to taxes, insurance, security, maintenance, etc.)

3. BUDGET

The amount of program funds awarded under this grant is \$71,432. The Grantor is not obligated or authorized to award any funds in addition to this amount.

	Allocation Year	JDE Account	Allocation	Expenditure Deadline
Activity 1 Rehabilitation Resale	2017-2018	28401032.634115.227119	\$50,000	6/30/2020
TOTAL			\$50,000	

	Allocation Year	JDE Account	Program Income as of 6/1/2018	Expenditure Deadline
Activity 1 Rehabilitation Resale	Program Income Received and Reallocated in FY 2017-2018 as of 6/1/2018	28401032.634115.227119	\$21,432	6/30/2020
TOTAL			\$21,432	

4. **FEES**

	Allocation Year	FEE
Activity 1 Rehabilitation Resale	2017-2018	7% of TOTAL SHIP INVESTMENT DIRECT COST WORK WRITE UP (\$500) DIRECT COST INSPECTION (\$35)

5. **STAFFING**

The agency shall maintain staffing levels as follows:

Executive Director

Client Coordinator

Changes to staffing levels shall require notification to the City of Cape Coral. Personnel changes shall not constitute a change requiring notice to the City of Cape Coral.

6. **LEVELS OF ACCOMPLISHMENT**

At minimum of one (1) household shall be assisted during the contract period.

7. **REPORTING**

The SUBRECIPIENT shall on a quarterly basis provide the City of Cape Coral a report indicating applications received during the quarter, applicants awarded funds during the quarter, closed files during the quarter.

8. **RECORD REQUIREMENTS/DOCUMENTATION**

The SUBRECIPIENT shall maintain the following and provide to the Grantor proof or make available the following, as applicable, for each beneficiary.

SHIP Program Recipient Profile

APPLICATION DOCUMENTS:

- a. Authorization for Release of Information Form
- b. Income Verification Form(s)
- c. Income Certification Form
- d. Proof that Household Includes One or More Members with Special Needs/Developmental Disabilities (when applicable)
- e. Application for Program Assistance
- f. Letter of Commitment

CONSTRUCTION DOCUMENTS:

- a. Work Write -up, Scope and Cost Estimate
- b. Contractor(s) Bid or Proposal
- c. Bid Tabulation
- d. Contract between the SUBRECIPIENT and awarded Contractor
- e. Notice to Proceed
- f. Notice of Commencement
- g. Copy of General Contractor's License
- h. General Contractor Information Sheet
- i. General Contractor Liability Insurance
- j. List of Subcontractors and Material Supplier
- k. Change Orders (if applicable)
- l. Notification of Work Completed
- m. Work Inspection Reports
- n. Certificate of Completion (if applicable)
- o. One Year Warranty on All Workmanship for the Homeowner

- p. Affidavit of Lien Waivers from the General Contractor and Subcontractors (Release of Liens)
- q. Itemized List and Invoices for in-kind Goods and Services
- r. Itemized List and Invoices for SHIP subsidy
- s. Final Payment Certification Form
- t. Final Payment Received Form
- u. Copy of the Permits issued by the City of Cape Coral or another Permitting Agency as applicable

CLOSING DOCUMENTS:

- a. Application for mortgage documents
- b. Preliminary Good Faith Estimate of Cash to Close
- c. Mortgage Commitment Letter
- d. Fully Executed Real Estate Purchase Contract
- e. Appraisal Report
- f. First Time Homebuyer Workshop Certificate
- g. Home Inspection Report
- h. Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
- i. All Recorded Mortgage and Note Document(s)
- j. Proof of Homeownership Insurance listing the City of Cape Coral as additional insured/loss payee

9. **OTHER PROGRAM REQUIREMENTS**

- a. The SUBRECIPIENT will be required to return program income funds to the City of Cape Coral. Upon receipt by the City, these funds, less 5% retained by the City of Cape Coral administrative activities, will be rebudgeted to the SUBRECIPIENT from which it was received for the strategy it was received provided the SUBRECIPIENT is still under contract with the City for these services. If the original strategy is not funded in the fiscal year the funding is received the funds will be allocated to the SUBRECIPIENT who initially assisted the client for another eligible strategy.
- b. Reimbursement requests to the City of Cape Coral shall be submitted in a timely manner and include all required source documentation as defined by the City of Cape Coral.
- c. The SUBRECIPIENT will be required to immediately return program income funds to the City of Cape Coral.
- d. The value of home ownership units must not exceed the maximum amount specified in the applicable Local Housing Assistance Plan (LHAP), and must meet affordability requirements in order to qualify as eligible.
- e. The SUBRECIPIENT is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, the City of Cape Coral or similar organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.
- f. The Grantor agrees to provide drawdowns to the SUBRECIPIENT, upon receipt and verification of the SUBRECIPIENT's request and documentation for project costs pursuant to and as defined in Subsection 1. a.
- g. The SUBRECIPIENT agrees to perform all necessary requirements to assist the Grantor in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the City of Cape Coral Local Housing Assistance Plan. The SUBRECIPIENT is responsible for coordinating inspections of properties funded with SHIP funds if requested by Grantor.
- h. The Grantor shall be provided access to all contracts of the SUBRECIPIENT for the procurement of goods and/or services relating to the project work described in Subsection 1. a. and all change orders or amendments, but said

access shall not be construed as acceptance by or imposition of upon the Grantor of any financial liability in connection with said contracts.

- i. The SUBRECIPIENT shall ensure that clear/marketable title is obtained for all properties to be purchased, conveyed, or made a part of in any way, a subsidy request package submitted to the Grantor for assistance.
- j. The Grantor shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a to ensure compliance with the objectives, requirements, and limitations of the City's SHIP Program. The following documentation must be maintained on file for each beneficiary or unit produced by the SUBRECIPIENT for a period of seven (7) years following the effective date of contract. The following documentation at a minimum must be available for inspections at all reasonable times by the Grantor or their assigns:
 - o Applicant Intake Forms
 - o Income Verification and Certification Forms
 - o Release of Information/Acknowledgment of SHIP terms signed by beneficiary
 - o Good Faith Estimate
 - o Final Appraisal of Property
 - o Loan Application or copy of lender Application
 - o Verification of Deposit of beneficiary
 - o Verification of Employment for beneficiary
 - o Certificate of Completion/Occupancy
- k. The SUBRECIPIENTS shall ensure compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907, Florida Administrative Code 67-37, and the Cape Coral Local Housing Assistance Plan as amended, and in particular:
 - o Income limits
 - o Definition of Affordability
 - o Definition of Persons with Special Needs
 - o Definition of Persons with Developmental Disability
 - o Non-discrimination
 - o Maximum production or purchase cost
 - o Maximum SHIP funds per unit
 - o Compliance reporting as required per project

ATTACHMENT 3 PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyck@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral.
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

CSFA #: 52.901 – State Housing Initiatives
Partnership Program
Contract Type: SHIP FY 2017-2018
JDE: 28401032.634115.227108
Strategy: Owner Occupied Rehabilitation General
Agency: Cape Coral Housing Development

**SUBRECIPIENT
AGREEMENT BETWEEN
THE CITY OF CAPE CORAL
and
CAPE CORAL HOUSING DEVELOPMENT CORPORATION**

THIS CONTRACT entered this ____ day of _____ 2018, between THE CITY OF CAPE CORAL hereinafter referred to as **CITY** and CAPE CORAL HOUSING DEVELOPMENT CORPORATION a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "**SUBRECIPIENT**".

WHEREAS, **CITY** believes it to be in the public interest to provide certain activities to the residents of Cape Coral through the **SUBRECIPIENT** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **CITY** and the **SUBRECIPIENT** agree as follows:

ARTICLE I SCOPE OF SERVICES

The **CITY** has awarded the following amounts for each program listed in Attachment 2 Statement of Work. The **SUBRECIPIENT** will be responsible for implementing these program(s) for the residents of Cape Coral: Program(s) must be implemented in accordance with the approved proposal(s) and exhibits/attachments.

ARTICLE II TERM OF CONTRACT

This contract shall be effective **upon execution** and ends **June 30th, 2020** unless terminated as specified in Article VIII, Suspension/Termination.

ARTICLE III COMPENSATION AND REPORTS

A. Contract Payment

Payments will be made by the **CITY** to the **SUBRECIPIENT** and the **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$160,156 during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination. Funding is contingent upon the **CITY** receiving the related State funds.

B. Deferred Payment/Return of Funds

The **SUBRECIPIENT** agrees to return to the **CITY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered city funds and must be refunded to the **CITY** within thirty (30) calendar days of receiving notice from the **CITY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **CITY** will charge interest of one (1) percent

per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **CITY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **CITY** to defer payment to the **SUBRECIPIENT** for noncompliance with contract deliverables or during the period of a city audit or monitoring due to questionable items. If as a result of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to the City of Cape Coral or a repayment agreement is accepted by the City.

C. Required Reports

1. **Financial and Compliance Audit Requirements in Attachment 1**
2. **A General Progress Report at least monthly.**

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **SUBRECIPIENT** agrees to permit employees duly authorized by the **CITY** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **SUBRECIPIENT** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the **CITY** may deliver to the **SUBRECIPIENT** a written report regarding the manner in which goods or services are being provided. The **SUBRECIPIENT** will rectify all noted deficiencies within the specified period of time indicated in the monitoring report or provide the **CITY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **CITY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

SUBRECIPIENT must supply **CITY** with copies of all monitoring reports of programs which are also funded by the **CITY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **SUBRECIPIENT** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **CITY** deems necessary.

The City of Cape Coral Internal Auditor, the Federal or State grantor agency (if applicable), Cape Coral employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **SUBRECIPIENT** or **CPA** that are pertinent to the contract in order to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **CITY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

C. Records

The **SUBRECIPIENT** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit of the **SUBRECIPIENT'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing internal controls if required, and management's response to such letter if required, must be submitted to the **CITY** no later than **180** days following the end of the **SUBRECIPIENT'S** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Cape Coral either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

The **SUBRECIPIENT** agrees to comply with all **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS** as specified in Attachment 1.

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **CITY**.

ARTICLE V **MODIFICATIONS**

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties. Budget and programmatic changes shall not require further City Council action but must be agreed upon by the two parties and revisions included as modifications to this contract.

ARTICLE VI **CONTRACTOR STATUS**

A. **Independent Contractor**

It is mutually agreed that the **SUBRECIPIENT** is an independent contractor and not an agent or employee of the **CITY**.

B. **Subcontracts**

Primary roles and responsibilities of **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any **CITY** funded program component that is subcontracted by **SUBRECIPIENT** must have a written contract upon execution of this contract. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. **Indemnification**

The **SUBRECIPIENT** will defend, hold harmless, and indemnify the **CITY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **CITY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **SUBRECIPIENT**, or by reason of the intentional or negligent act of the **SUBRECIPIENT** or its agents, representatives and/or employees.

The **SUBRECIPIENT** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **CITY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **CITY** in any such action or proceedings.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **SUBRECIPIENT** and not of the **CITY**.

B. Insurance

The **SUBRECIPIENT** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **SUBRECIPIENT** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **SUBRECIPIENT** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any **CITY** accident or occurrence that may arise or be claimed to have arisen against the **SUBRECIPIENT**. The **SUBRECIPIENT** must furnish an appropriate Certificate of Insurance (**Exhibit**) naming the City of Cape Coral as Certificate Holder and Additional insured. The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENTS** liability and that the **CITY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities, but are merely minimums.

C. Bonding

The **SUBRECIPIENT** must provide fidelity bonding for all employees that handle **SUBRECIPIENT'S** funds. The amount of the bond must be equivalent to the highest daily cash balance of the **SUBRECIPIENT**.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **CITY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **CITY** and the **CITY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

B. Termination by CITY

The **CITY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by certified mail following a determination by the Cape Coral City Council, at its sole discretion, that such cancellation is in the best interest of the people of the **CITY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

C. Termination by SUBRECIPIENT

The **SUBRECIPIENT** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **CITY** by certified mail of such and specifying the effective date.

CITY's obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided. The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **SUBRECIPIENT** assures and certifies the following:

- A.** That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, Lee County, and the municipality as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **CITY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.

- B.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D.** That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.
- E.** That it will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- F.** That it shall report any unusual incidents involving funded activities to the **CITY**, in writing, within five (5) calendar days of the occurrence or the **CITY** may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the **SUBRECIPIENT** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **SUBRECIPIENT** services that are underwritten in any way by the **CITY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **SUBRECIPIENT** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96-ABUSE).
- G.** That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- H.** That it will notify the **CITY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for city funds.
- I.** That it will acknowledge support for programs funded by the City of Cape Coral.
- J.** That it will notify the **CITY** of any SIGNIFICANT changes to the **SUBRECIPIENT** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

ARTICLE X NOTICES

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

CITY:
Community Development Director
City of Cape Coral Department of Community Development
PO Box 150027
Cape Coral, Florida 33915-0027

SUBRECIPIENT:
Executive Director
Cape Coral Housing Development Corporation
609 SE 9th TER
Cape Coral, Florida 33990

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **SUBRECIPIENT** to the **CITY**. The notification shall be attached to originals of this contract.

ARTICLE XI SPECIAL PROVISIONS

None.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and Attachment I: Financial and Compliance Audit Requirements, Attachment II: Statement of Work, and Attachment III: Public Records, and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **SUBRECIPIENT** and **CITY** have caused this contract, to be executed by their undersigned officials as duly authorized.

SUBRECIPIENT:

By: Bonnie Schnell
Name (typed)

Signature of authorized officer

Executive Director
Title

Date

CITY: CITY OF CAPE CORAL

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager
Title

Date

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1

FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Cape Coral. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law 98-502), the Single Audit Act Amendments of 1996 (Public Law 104-156), and 29 CFR, part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report is transmitted directly to AWI by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600. Rules of the Auditor General.

Audit Requirements for States, Local Governments and Nonprofit Organizations:

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (P.L. 98-502), the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations".

Single Audit – Single Audit means an audit that includes both the entity's financial statements and the Federal awards requirements as described in OMB Circular A-133. A State single audit means an audit of a non-state entity's financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

Program-Specific Audit – A Program-Specific Audit means an audit of one Federal program as provided for in OMB Circular A-133. Additionally, a state program-specific audit means an audit of one state project in accordance with the requirements of FS 216.3491.

No Audit Exemption:

Even when cumulative (all programs considered) Federal and/or State award expenditures are less than \$500,000 in a fiscal year, an audit is required.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources).

ATTACHMENT 2

STATEMENT OF WORK

In accordance with SHIP Technical Bulletin 2016-01(number 1), this agency is being classified as a SUBRECIPIENT. The agency serves an administrative function and is awarded funds.

1. PROJECT DESCRIPTION

Activity 1. Owner Occupied Rehabilitation (OOR): The Subrecipient will utilize SHIP funds to provide repairs of existing single-family homes for very-low and low income-homeowners. Assistance to moderate income homeowners shall require City approval. The purpose of this program is to assist eligible homeowners with the cost of repairing health, safety, welfare related issues in their home. Qualifying items include but are not limited to: Roof, HVAC, Plumbing, Electrical, Code Enforcement Issues.

2. SCOPE OF WORK

The agency will conduct these activities at their office located at 609 SE 9th Ter, Cape Coral, Florida, 33990. The agency will maintain staffing as described below in Section 4 to conduct these activities.

Activities 1

The SUBRECIPIENT is responsible for the following activities:

- Work write-up and cost estimate
- Management of bidding
- Management of contractor eligibility
- Contractor performance
- Management payment to contractors
- Compliance with SHIP regulations (including but not limited to environmental, home inspection, home warranty, etc.)
- Maintenance and securing of properties
- Financial tracking of all work performed and accounting for expenditures per home
- Financial tracking of non-construction costs (including but not limited to taxes, insurance, security, maintenance, etc.)
- Reimbursement request for funding to the City of Cape Coral

3. BUDGET

The amount of funds awarded under this grant is \$160,156; the breakdown of the funds is provided in the table below. The Grantor is not obligated or authorized to award any funds in addition to this amount.

	Allocation Year	JDE Account	Allocation	Expenditure Deadline
Activity 1	2017-2018	28401032.634115.227108	\$100,000	6/30/2020
TOTAL			\$100,000	

	Allocation Year	JDE Account	Program Income as of 6/1/18	Expenditure Deadline
Activity 1	2017-2018 Program Income Received/Reallocated as of 6/1/18	28401032.634115.227108	\$60,156	6/30/2020

			TOTAL	\$60,156

4. FEES

Activity	Allocation Year	Fee
Activity 1	2017-2018	7% of Total SHIP Investment Direct Cost Work Write Up (\$300) Direct Cost Inspections (\$35)

4. STAFFING

The agency shall maintain staffing levels as follows:

Executive Director

Client Coordinator

Changes to staffing levels shall require notification to the City of Cape Coral. Personnel changes shall not constitute a change requiring notice to the City of Cape Coral.

5. LEVELS OF ACCOMPLISHMENT

A total of five (5) households shall be assisted during the contract period. At least three (3) households must be at or below 50% the area median income.

6. REPORTING

The SUBRECIPIENT shall on a quarterly basis provide the City of Cape Coral a report indicating applications received during the quarter, applicants awarded funds during the quarter, closed files during the quarter.

7. RECORD REQUIREMENTS/DOCUMENTATION

The SUBRECIPIENT shall maintain the following and provide to the Grantor proof or make available the following, as applicable, for each beneficiary.

SHIP Program Recipient Profile

APPLICATION DOCUMENTS:

- a. Authorization for Release of Information Form
- b. Income Verification Form(s)
- c. Income Certification Form
- d. Application for Program Assistance
- e. Letter of Commitment

CONSTRUCTION DOCUMENTS:

- a. Work Write Up, Scope and Cost Estimate
- b. Contractor(s) Bid or Proposal
- c. Bid Tabulation
- d. Contract between the SUBRECIPIENT, Homeowner and Contractor
- e. Notice to proceed (if applicable)
- f. Notice of Commencement (if applicable)
- g. Copy of Contractor's License
- h. Contractor Liability Insurance
- i. Change Orders (if applicable)
- j. Notifications of work completed
- k. Work Inspection Reports
- l. Certificate of Completion (if applicable)
- m. Itemized list and invoices for SHIP subsidy

- n. One Year Warranty on all Workmanship for the Homeowner
- o. Affidavits of Lien waivers from the general contractor and all subcontractors (Release of Liens)
- p. Copy of the permits issued by the City of Cape Coral or another Permitting Agency (as applicable)

CLOSING DOCUMENTS:

- a. Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
- b. All Recorded Mortgage and Note Document(s)
- c. Proof of Homeownership Insurance listing the City of Cape Coral as additional insured/loss payee

8. OTHER PROGRAM REQUIREMENTS

- a. The SUBRECIPIENT will be required to return program income funds to the City of Cape Coral. Upon receipt by the City, these funds, less 5% retained by the City of Cape Coral administrative activities, will be rebudgeted to the SUBRECIPIENT from which it was received for the strategy it was received provided the SUBRECIPIENT is still under contract with the City for these services. If the original strategy is not funded in the fiscal year the funding is received the funds will be allocated to the SUBRECIPIENT who initially assisted the client for another eligible strategy.
- b. Reimbursement requests to the City of Cape Coral shall be submitted in a timely manner and include all required source documentation as defined by the City of Cape Coral.
- c. The SUBRECIPIENT will be required to immediately return program income funds to the City of Cape Coral.
- d. The value of home ownership units must not exceed the maximum amount specified in the applicable Local Housing Assistance Plan (LHAP), and must meet affordability requirements in order to qualify as eligible.
- e. The SUBRECIPIENT is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, the City of Cape Coral or similar organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.
- f. The Grantor agrees to provide drawdowns to the SUBRECIPIENT, upon receipt and verification of the SUBRECIPIENT's request and documentation for project costs pursuant to and as defined in Subsection 1. a.
- g. The SUBRECIPIENT agrees to perform all necessary requirements to assist the Grantor in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the City of Cape Coral Local Housing Assistance Plan. The SUBRECIPIENT is responsible for coordinating inspections of properties funded with SHIP funds if requested by Grantor.
- h. The Grantor shall be provided access to all contracts of the SUBRECIPIENT for the procurement of goods and/or services relating to the project work described in Subsection 1. a. and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the Grantor of any financial liability in connection with said contracts.
- i. The SUBRECIPIENT shall ensure that clear/marketable title is obtained for all properties to be purchased, conveyed, or made a part of in any way, a subsidy request package submitted to the Grantor for assistance.
- j. The Grantor shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a to ensure compliance with the objectives, requirements, and limitations of the City's SHIP Program. The following documentation must be maintained on file for each beneficiary or unit produced by the SUBRECIPIENT for a period of seven (7) years following the effective date of contract. The following documentation at a minimum must be available for inspections at all reasonable times by the Grantor or their assigns:

- Applicant Intake Forms
 - Income Verification and Certification Forms
 - Release of Information/Acknowledgment of SHIP terms signed by beneficiary
 - Verification of Employment for beneficiary
 - Itemized List and Invoices for SHIP subsidy
 - Contract between the SUBRECIPIENT, Homeowner and Contractor
 - Certificate of Completion (if applicable)
- k. The SUBRECIPIENTS shall ensure compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907, Florida Administrative Code 67-37, and the Cape Coral Local Housing Assistance Plan as amended, and in particular:
- Income limits
 - Definition of Affordability
 - Non-discrimination
 - Maximum production or purchase cost
 - Maximum SHIP funds per unit
 - Compliance reporting as required per project

ATTACHMENT 3

PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyck@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral.
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency

CSFA #: 52.901 – State Housing Initiatives Partnership Program
Contract Type: SHIP FY 2017-2018
JDE: 28401032.634115.227141
Strategy: New Construction
Agency: Cape Coral Housing Development

**SUBRECIPIENT AGREEMENT
BETWEEN
THE CITY OF CAPE CORAL
and
CAPE CORAL HOUSING DEVELOPMENT CORPORATION**

THIS CONTRACT entered this ____ day of _____ 2018, between THE CITY OF CAPE CORAL hereinafter referred to as **CITY** and CAPE CORAL HOUSING DEVELOPMENT CORPORATION a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "**SUBRECIPIENT**".

WHEREAS, **CITY** believes it to be in the public interest to provide certain activities to the residents of Cape Coral through the **SUBRECIPIENT** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **CITY** and the **SUBRECIPIENT** agree as follows:

ARTICLE I SCOPE OF SERVICES

The **CITY** has awarded the following amounts for each program listed in Attachment 2 Statement of Work. The **SUBRECIPIENT** will be responsible for implementing these program(s) for the residents of Cape Coral: Program(s) must be implemented in accordance with the approved proposal(s) and exhibits/attachments.

ARTICLE II TERM OF CONTRACT

This contract shall be effective **upon execution** and ends **June 30th, 2020** or otherwise stated herein unless terminated as specified in Article VIII, Suspension/Termination.

ARTICLE III COMPENSATION AND REPORTS

A. Contract Payment

Payments will be made by the **CITY** to the **SUBRECIPIENT** and the **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$172,724 during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination. Funding is contingent upon the **CITY** receiving the related State funds.

B. Deferred Payment/Return of Funds

The **SUBRECIPIENT** agrees to return to the **CITY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered city funds and must be refunded to the **CITY** within thirty (30) calendar days of receiving notice from the **CITY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **CITY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **CITY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **CITY** to defer payment to the **SUBRECIPIENT** for noncompliance with contract deliverables or during the period of a city audit or monitoring due to questionable items. If as a result of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to the City of Cape Coral or a repayment agreement is accepted by the City.

C. Required Reports

1. Financial and Compliance Audit Requirements in Attachment 1
2. A General Progress Report at least quarterly

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **SUBRECIPIENT** agrees to permit employees duly authorized by the **CITY** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **SUBRECIPIENT** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the **CITY** may deliver to the **SUBRECIPIENT** a written report regarding the manner in which goods or services are being provided. The **SUBRECIPIENT** will rectify all noted deficiencies within the specified period of time indicated in the monitoring report or provide the **CITY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **CITY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

SUBRECIPIENT must supply **CITY** with copies of all monitoring reports of programs which are also funded by the **CITY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **SUBRECIPIENT** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **CITY** deems necessary.

The City of Cape Coral Internal Auditor, the Federal or State grantor agency (if applicable), Cape Coral employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **SUBRECIPIENT** or **CPA** that are pertinent to the contract in order to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **CITY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

C. Records

The **SUBRECIPIENT** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit of the **SUBRECIPIENT'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing internal controls if required, and management's response to such letter if required, must be submitted to the **CITY** no later than 180 days following the end of the **SUBRECIPIENT'S** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Cape Coral either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

The **SUBRECIPIENT** agrees to comply with all **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS** as specified in Attachment 1.

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **CITY**.

ARTICLE V **MODIFICATIONS**

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties. Budget and programmatic changes shall not require further City Council action but must be agreed upon by the two parties and revisions included as modifications to this contract.

ARTICLE VI **CONTRACTOR STATUS**

A. **Independent Contractor**

It is mutually agreed that the **SUBRECIPIENT** is an independent contractor and not an agent or employee of the **CITY**.

B. **Subcontracts**

Primary roles and responsibilities of **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any **CITY** funded program component that is subcontracted by **SUBRECIPIENT** must have a written contract upon execution of this contract. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. **Indemnification**

The **SUBRECIPIENT** will defend, hold harmless, and indemnify the **CITY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **CITY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **SUBRECIPIENT**, or by reason of the intentional or negligent act of the **SUBRECIPIENT** or its agents, representatives and/or employees.

The **SUBRECIPIENT** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **CITY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **CITY** in any such action or proceedings.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **SUBRECIPIENT** and not of the **CITY**.

B. **Insurance**

The **SUBRECIPIENT** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **SUBRECIPIENT** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **SUBRECIPIENT** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any **CITY** accident or occurrence that may arise or be

claimed to have arisen against the **SUBRECIPIENT**. The **SUBRECIPIENT** must furnish an appropriate Certificate of Insurance (**Exhibit**) naming the City of Cape Coral as Certificate Holder and Additional insured. The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENTS** liability and that the **CITY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities, but are merely minimums.

C. Bonding

The SUBRECIPIENT must provide fidelity bonding for all employees that handle SUBRECIPIENT'S funds. The amount of the bond must be equivalent to the highest daily cash balance of the SUBRECIPIENT.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **CITY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **CITY** and the **CITY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

B. Termination by CITY

The **CITY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by certified mail following a determination by the Cape Coral City Council, at its sole discretion, that such cancellation is in the best interest of the people of the **CITY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

C. Termination by SUBRECIPIENT

The **SUBRECIPIENT** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **CITY** by certified mail of such and specifying the effective date.

CITY's obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided. The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **SUBRECIPIENT** assures and certifies the following:

- A.** That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, Lee County, and the municipality as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **CITY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.
- B.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D.** That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.

- E.** That it will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- F.** That it shall report any unusual incidents involving funded activities to the **CITY**, in writing, within five (5) calendar days of the occurrence or the **CITY** may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the **SUBRECIPIENT** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **SUBRECIPIENT** services that are underwritten in any way by the **CITY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **SUBRECIPIENT** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96-ABUSE).
- G.** That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- H.** That it will notify the **CITY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for City funds.
- I.** That it will acknowledge support for programs funded by the City of Cape Coral.
- J.** That it will notify the **CITY** of any SIGNIFICANT changes to the **SUBRECIPIENT** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

ARTICLE X NOTICES

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

CITY:

Community Development Director
City of Cape Coral Department of Community Development
PO Box 150027
Cape Coral, Florida 33915-0027

SUBRECIPIENT:

Executive Director
Cape Coral Housing Development Corporation
609 SE 9th TER
Cape Coral, Florida 33990

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **SUBRECIPIENT** to the **CITY**. The notification shall be attached to originals of this contract.

ARTICLE XI SPECIAL PROVISIONS

None.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and Attachment I: Financial and Compliance Audit Requirements, Attachment II: Statement of Work, and Attachment III: Public Records and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **SUBRECIPIENT** and **CITY** have caused this contract, to be executed by their undersigned officials as duly authorized.

SUBRECIPIENT:

By: Bonnie Schnell
Name (typed)

Signature of authorized officer

Executive Director
Title

Date

CITY: CITY OF CAPE CORAL

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager
Title

Date

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1

FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Cape Coral. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law 98-502), the Single Audit Act Amendments of 1996 (Public Law 104-156), and 29 CFR, part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report is transmitted directly to AWI by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600. Rules of the Auditor General.

Audit Requirements for States, Local Governments and Nonprofit Organizations:

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (P.L. 98-502), the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations".

Single Audit – Single Audit means an audit that includes both the entity's financial statements and the Federal awards requirements as described in OMB Circular A-133. A State single audit means an audit of a non-state entity's financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

Program-Specific Audit – A Program-Specific Audit means an audit of one Federal program as provided for in OMB Circular A-133. Additionally, a state program-specific audit means an audit of one state project in accordance with the requirements of FS 216.3491.

No Audit Exemption:

Even when cumulative (all programs considered) Federal and/or State award expenditures are less than \$500,000 in a fiscal year, an audit is required.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources).

ATTACHMENT 2

STATEMENT OF WORK

In accordance with SHIP Technical Bulletin 2016-01(number 1), this agency is being classified as a SUBRECIPIENT. The agency serves an administrative function and is awarded funds.

1. PROJECT DESCRIPTION

The Project, as approved for grant assistance, shall consist of the following authorized scope of Project work:

Activity #1 – New Construction. New construction of existing single-family homes for sale to very-low ($\leq 50\%$ AMI) or low income ($\leq 80\%$ AMI) homebuyers. The maximum award per unit for this activity may not exceed the maximum assistance level approved in the City of Cape Coral Local Housing Assistance Plan for corresponding years.

2. SCOPE OF WORK

ACTIVITY #1

The SUBRECIPIENT is responsible for the following activities:

- Management of bidding
- Management of contractor eligibility
- Contractor performance
- Management payment to contractors
- Compliance with SHIP regulations (including but not limited to environmental, home inspection, home warranty, etc.)
- Maintenance and securing of properties
- Financial tracking of all work performed and accounting for expenditures per home
- Financial tracking of non-construction costs (including but not limited to taxes, insurance, security, maintenance, etc.)
- Reimbursement request for funding to the City of Cape Coral

3. BUDGET

The amount of program funds awarded under this grant is \$172,724. The Grantor is not obligated or authorized to award any funds in addition to this amount.

	Allocation Year	JDE Account	Allocation	Expenditure Deadline
Activity 1 New Construction	2017-2018	28401032.634115.227141	\$155,700	6/30/2020
TOTAL			\$155,700	

	Allocation Year	JDE Account	Program Income as of 6/1/2018	Expenditure Deadline
Activity 1 New Construction*	2017-2018 Program Income Received and Reallocated as of 6/1/2018	28401032.634115.227141	\$17,024	6/30/2020
TOTAL			\$17,024	

4. FEES

	Allocation Year	FEE
Activity 1 New Construction	2017-2018	7% OF DEVELOPMENT COST DIRECT COST INSPECTION

5. STAFFING

The agency shall maintain staffing levels as follows:

Executive Director

Client Coordinator

Changes in staffing levels shall require notification to the City of Cape Coral. Personnel changes shall not constitute a change requiring notice to the City of Cape Coral.

6. LEVELS OF ACCOMPLISHMENT

A total of two (2) households shall be assisted during the contract period.

7. REPORTING

The SUBRECIPIENT shall on a quarterly basis provide the City of Cape Coral a report indicating applications received during the quarter, applicants awarded funds during the quarter and closed files during the quarter.

8. RECORD REQUIREMENTS/DOCUMENTATION

A. The Grantor shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a to ensure compliance with the objectives, requirements, and limitations of the City's SHIP Program. The following documentation must be maintained on file for each beneficiary or unit produced by the SUBRECIPIENT for a period of seven (7) years following the effective date of contract. The following documentation at a minimum must be available for inspections at all reasonable times by the Grantor or their assigns:

- Applicant Intake Forms
- Income Verification and Certification Forms
- Release of Information/Acknowledgment of SHIP terms signed by beneficiary
- Good Faith Estimate
- Final Appraisal of Property
- Loan Application or copy of lender Application
- Verification of Deposit of beneficiary
- Verification of Employment for beneficiary
- Certificate of Occupancy

B. The SUBRECIPIENT shall provide to the Grantor proof or make available the following, as applicable, for each beneficiary.

SHIP PROGRAM RECIPIENT PROFILE FORM

APPLICATION DOCUMENTS:

Authorization for Release of Information Form

Income Verification Form(s)

Income Certification Form

Proof of Property Ownership

Application for Program Assistance

Letter of Commitment

Homeownership Training Course Certificate

CONSTRUCTION DOCUMENTS:

Contractor(s) Bid or Proposal

Bid Tabulation

Contract between SUBRECIPIENT and General Contractor
 Notice to Proceed
 Notice of Commencement
 Copy of General Contractor's License
 General Contractor Information Sheet
 General Contractor Liability Insurance
 List of Subcontractors and Material Supplier
 Change Orders (if applicable)
 Work Inspection Reports
 Final Inspection Report
 Certificate of Occupancy
 One Year Warranty on all Workmanship for the Homeowner
 Construction Payment Requests
 Change Orders (if applicable)
 Final Payment Certification Form
 Affidavit of Lien Waivers from the General Contractor and all Subcontractors (Release of Liens)
 Copy of the Permits issued by the City of Cape Coral or another Permitting Agency (if applicable)

CLOSING DOCUMENTS:

Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
 HUD 1 Settlement or Loan Closing Statement
 All Recorded Mortgage and Note Document(s)
 Title Policy for Title Insurance on the Cape Coral SHIP Mortgage
 Appraisal

9. OTHER PROGRAM REQUIREMENTS

- A. The SUBRECIPIENT will be required to return program income funds to the City of Cape Coral. Upon receipt by the City, these funds, less 5% retained by the City of Cape Coral administrative activities, will be rebudgeted to the SUBRECIPIENT from which it was received for the strategy it was received provided the SUBRECIPIENT is still under contract with the City for these services. If the original strategy is not funded in the fiscal year the funding is received the funds will be allocated to the SUBRECIPIENT who initially assisted the client for another eligible strategy.
- B. The purchase price of home ownership units must not exceed the maximum amount specified in the applicable Local Housing Assistance Plan (LHAP), and must meet affordability requirements in order to qualify as eligible.
- C. The SUBRECIPIENT is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, the City of Cape Coral or similar organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.
- D. The Grantor agrees to provide drawdowns to the SUBRECIPIENT, upon receipt and verification of the SUBRECIPIENT's request and documentation for project costs pursuant to and as defined in Subsection 1. a.
- E. The SUBRECIPIENT agrees to perform all necessary requirements to assist the Grantor in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the Cape Coral Local Housing Assistance Plan. The SUBRECIPIENT is responsible for coordinating inspections of properties funded with SHIP funds if requested by the Grantor.
- F. The Grantor shall be provided access to all contracts of the SUBRECIPIENT for the procurement of goods and/or services relating to the project work described in Subsection 1. a. and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the Grantor of any financial liability in connection with said contracts.
- G. The SUBRECIPIENT shall be responsible for ensuring that all builders/contractors utilized are licensed appropriately and capable of performing all necessary work. The SUBRECIPIENT will further be responsible to ensure that all applicable permits, inspections, and fees are obtained and paid (as required for the respective scope of work). The SUBRECIPIENT shall further serve as the agent for the homebuyer in all communications with the selected builder/contractor and ensure a timely completion of construction proceedings, as the buyer's agent.

- H. The SUBRECIPIENT shall ensure that clear/marketable title is obtained for all properties to be purchased, conveyed, or made a part of in any way, a subsidy request package submitted to the Grantor for assistance.
- I. All projects must be in compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907, Florida Administrative Code 67-37, and the Cape Coral Local Housing Assistance Plan as amended, and in particular:
 - o Income limits
 - o Definition of Affordability
 - o Non-discrimination
 - o Maximum production or purchase cost
 - o Maximum SHIP funds per unit
 - o Compliance reporting as required per project

ATTACHMENT 3

PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyclk@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral.
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

CSFA #: 52.901 – State Housing Initiatives
Partnership Program
Contract Type: SHIP FY 2017-2018
JDE: 28401032.634115. 227146
Strategy: SHIP Subrecipient Administration
Agency: Cape Coral Housing Development

**SUBRECIPIENT AGREEMENT
BETWEEN
THE CITY OF CAPE CORAL
and
CAPE CORAL HOUSING DEVELOPMENT CORPORATION**

THIS CONTRACT entered this ____ day of _____ 2018, between THE CITY OF CAPE CORAL hereinafter referred to as **CITY** and CAPE CORAL HOUSING DEVELOPMENT CORPORATION a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "**SUBRECIPIENT**".

WHEREAS, **CITY** believes it to be in the public interest to provide certain activities to the residents of Cape Coral through the **SUBRECIPIENT** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **CITY** and the **SUBRECIPIENT** agree as follows:

ARTICLE I SCOPE OF SERVICES

The **CITY** has awarded the following amounts for each program listed in Attachment 2 Statement of Work. The **SUBRECIPIENT** will be responsible for implementing these program(s) for the residents of Cape Coral. Program(s) must be implemented in accordance with the approved proposal(s) and exhibits/attachments.

ARTICLE II TERM OF CONTRACT

This contract shall be effective **upon execution** and ends **12 months from the execution date** unless terminated as specified in Article VIII, Suspension/Termination.

ARTICLE III COMPENSATION AND REPORTS

A. Contract Payment

Payments will be made by the **CITY** to the **SUBRECIPIENT** and the **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$42,888 during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination. Funding is contingent upon the **CITY** receiving the related State funds.

B. Deferred Payment/Return of Funds

The **SUBRECIPIENT** agrees to return to the **CITY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered city funds and must be refunded to the **CITY** within thirty (30) calendar days of receiving notice from the **CITY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **CITY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **CITY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **CITY** to defer payment to the **SUBRECIPIENT** for noncompliance with contract deliverables or during the period of a city audit or monitoring due to questionable items. If because of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to the City of Cape Coral or a repayment agreement is accepted by the City.

C. Required Reports

1. Financial and Compliance Audit Requirements in Attachment 1
2. A General Progress Report at least quarterly.

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **SUBRECIPIENT** agrees to permit employees duly authorized by the **CITY** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **SUBRECIPIENT** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the **CITY** may deliver to the **SUBRECIPIENT** a written report regarding the way goods or services are being provided. The **SUBRECIPIENT** will rectify all noted deficiencies within the specified period indicated in the monitoring report or provide the **CITY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **CITY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

SUBRECIPIENT must supply **CITY** with copies of all monitoring reports of programs which are also funded by the **CITY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **SUBRECIPIENT** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **CITY** deems necessary.

The City of Cape Coral Internal Auditor, the Federal or State grantor agency (if applicable), Cape Coral employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **SUBRECIPIENT** or **CPA** that are pertinent to the contract to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **CITY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

C. Records

The **SUBRECIPIENT** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit of the **SUBRECIPIENT'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing

internal controls if required, and management's response to such letter if required, must be submitted to the **CITY** no later than **180** days following the end of the **SUBRECIPIENT'S** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Cape Coral either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

The **SUBRECIPIENT** agrees to comply with all **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS** as specified in Attachment 1.

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **CITY**.

ARTICLE V **MODIFICATIONS**

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties. Budget and programmatic changes shall not require further City Council action but must be agreed upon by the two parties and revisions included as modifications to this contract.

ARTICLE VI **CONTRACTOR STATUS**

A. **Independent Contractor**

It is mutually agreed that the **SUBRECIPIENT** is an independent contractor and not an agent or employee of the **CITY**.

B. **Subcontracts**

Primary roles and responsibilities of **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any **CITY** funded program component that is subcontracted by **SUBRECIPIENT** must have a written contract upon execution of this contract. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. **Indemnification**

The **SUBRECIPIENT** will defend, hold harmless, and indemnify the **CITY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **CITY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **SUBRECIPIENT**, or by reason of the intentional or negligent act of the **SUBRECIPIENT** or its agents, representatives and/or employees.

The **SUBRECIPIENT** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **CITY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **CITY** in any such action or proceedings.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **SUBRECIPIENT** and not of the **CITY**.

B. **Insurance**

The **SUBRECIPIENT** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **SUBRECIPIENT** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **SUBRECIPIENT** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any **CITY** accident or occurrence that may arise or be claimed to have arisen against the **SUBRECIPIENT**. The **SUBRECIPIENT** must furnish an appropriate Certificate of Insurance (**Exhibit**) naming the City of Cape Coral as Certificate Holder and Additional insured. The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENTS** liability and that the **CITY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities, but are merely minimums.

C. Bonding

The **SUBRECIPIENT** must provide fidelity bonding for all employees that handle **SUBRECIPIENT'S** funds. The amount of the bond must be equivalent to the highest daily cash balance of the **SUBRECIPIENT**.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **CITY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **CITY** and the **CITY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

B. Termination by CITY

The **CITY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by certified mail following a determination by the Cape Coral City Council, at its sole discretion, that such cancellation is in the best interest of the people of the **CITY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

C. Termination by SUBRECIPIENT

The **SUBRECIPIENT** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **CITY** by certified mail of such and specifying the effective date.

CITY's obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided. The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **SUBRECIPIENT** assures and certifies the following:

- A.** That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, Lee County, and the municipality as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **CITY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.

- B.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D.** That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.
- E.** That it will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- F.** That it shall report any unusual incidents involving funded activities to the **CITY**, in writing, within five (5) calendar days of the occurrence or the **CITY** may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the **SUBRECIPIENT** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **SUBRECIPIENT** services that are underwritten in any way by the **CITY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **SUBRECIPIENT** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96-ABUSE).
- G.** That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- H.** That it will notify the **CITY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for city funds.
- I.** That it will acknowledge support for programs funded by the City of Cape Coral.
- J.** That it will notify the **CITY** of any SIGNIFICANT changes to the **SUBRECIPIENT** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

ARTICLE X NOTICES

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

CITY:
Community Development Director
City of Cape Coral Department of Community Development
PO Box 150027
Cape Coral, Florida 33915-0027

SUBRECIPIENT:
Executive Director
Cape Coral Housing Development Corporation
609 SE 9th TER
Cape Coral, Florida 33990

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **SUBRECIPIENT** to the **CITY**. The notification shall be attached to originals of this contract.

ARTICLE XI SPECIAL PROVISIONS

None.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and Attachment I: Financial and Compliance Audit Requirements, Attachment II: Statement of Work, and Attachment III: Public Records, and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **SUBRECIPIENT** and **CITY** have caused this contract, to be executed by their undersigned officials as duly authorized.

SUBRECIPIENT:

By: Bonnie Schnell
Name (typed)

Signature of authorized officer

Executive Director
Title

Date _____

CITY: CITY OF CAPE CORAL

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager
Title

Date _____

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title:

Date: _____

ATTACHMENT 1

FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Cape Coral. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law 98-502), the Single Audit Act Amendments of 1996 (Public Law 104-156), and 29 CFR, part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report is transmitted directly to AWI by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600. Rules of the Auditor General.

Audit Requirements for States, Local Governments and Nonprofit Organizations:

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (P.L. 98-502), the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133 "Audits of States Local Governments, and Non-Profit Organizations".

Single Audit – Single Audit means an audit that includes both the entity's financial statements and the Federal awards requirements as described in OMB Circular A-133. A State single audit means an audit of a non-state entity's financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

Program-Specific Audit – A Program-Specific Audit means an audit of one Federal program as provided for in OMB Circular A-133. Additionally, a state program-specific audit means an audit of one state project in accordance with the requirements of FS 216.3491.

No Audit Exemption:

Even when cumulative (all programs considered) Federal and/or State award expenditures are less than \$500,000 in a fiscal year, an audit is required.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources).

ATTACHMENT 2

STATEMENT OF WORK

In accordance with SHIP Technical Bulletin 2016-01(number 1), this agency is being classified as a SUBRECIPIENT. The agency serves an administrative function and is awarded funds.

1. PROJECT DESCRIPTION

The Project, as approved for grant assistance, shall consist of the following authorized scope of Project work:

Activity 1. ADMINISTRATION

The SUBRECIPIENT will use SHIP administrative funds to administer activities on the behalf of the City of Cape Coral related to the following projects: Rehabilitation/Resale, Owner Occupied Rehabilitation (OOR), New Construction, and Client Counseling.

The SUBRECIPIENT will serve as a resource for SHIP related questions from the public and will respond to citizens inquiries regarding referrals for housing programs.

2. SCOPE OF WORK

The agency will conduct these activities at their office located at 609 SE 9th Ter, Cape Coral, Florida, 33990. The agency will maintain staffing as described below in Section 4 to conduct these activities.

Activity 1.

The SUBRECIPIENT is responsible for the following activities:

- Outreach and Marketing
- Maintaining Wait List in accordance with Local Housing Assistance Plan
- Screening and intake of potential clients
- Counseling/Credit Rebuilding
- Case file preparation and management
- Income verification of potential clients
- Income certification of clients
- Review of properties for compliance with SHIP regulations
- Coordination with primary lender
- Payment at closing
- Preparation and filing of all agreements including the mortgage note and mortgage
- Reimbursement request for funding to the City of Cape Coral
- Management of case file for required retention period
- Accounting for all payoff funds for return to the City of Cape Coral (if applicable)

3. BUDGET

The amount of program funds awarded under this grant is \$42,888. The Grantor is not obligated or authorized to award any funds in addition to this amount.

	Allocation Year	JDE Account	Allocation	Expenditure Deadline
Activity 1 Administration	2017-2018	28401032.634115.227146	\$42,888	12 months from contract execution date
TOTAL			\$42,888	

4. **STAFFING**

The agency shall maintain staffing levels as follows:

Executive Director
Client Coordinator

Changes to staffing levels shall require notification to the City of Cape Coral. Personnel changes shall not constitute a change requiring notice to the City of Cape Coral.

5. **REPORTING**

The SUBRECIPIENT shall on a quarterly basis provide the City of Cape Coral a report indicating applications received during the quarter, applicants awarded funds during the quarter, closed files during the quarter.

6. **RECORD REQUIREMENTS/DOCUMENTATION**

The SUBRECIPIENT shall maintain the following and provide to the Grantor proof or make available the following, as applicable, for each beneficiary.

SHIP Program Recipient Profile

APPLICATION DOCUMENTS:

- a. Authorization for Release of Information Form
- b. Income Verification Form(s)
- c. Income Certification Form
- d. Proof that Household Includes One or More Members with Special Needs/Developmental Disabilities (when applicable)
- e. Application for Program Assistance
- f. Letter of Commitment

CLOSING DOCUMENTS:

- a. Application for mortgage documents
- b. Preliminary Good Faith Estimate of Cash to Close
- c. Mortgage Commitment Letter
- d. Fully Executed Real Estate Purchase Contract
- e. Appraisal Report
- f. First Time Homebuyer Workshop Certificate
- g. Home Inspection Report
- h. Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
- i. All Recorded Mortgage and Note Document(s)
- j. Proof of Homeownership Insurance listing the City of Cape Coral as additional insured/loss payee
- k. Title Policy for Title Insurance on the Cape Coral SHIP Mortgage

7. **OTHER PROGRAM REQUIREMENTS**

- a. Reimbursement requests to the City of Cape Coral shall be submitted in a timely manner and include all required source documentation as defined by the City of Cape Coral. Payments will be made at 1/12 of the total grant amount for twelve months.
- b. The SUBRECIPIENT will be required to immediately return program income funds to the City of Cape Coral.
- c. The value of home ownership units must not exceed the maximum amount specified in the applicable Local Housing Assistance Plan (LHAP), and must meet affordability requirements in order to qualify as eligible.
- d. The SUBRECIPIENT is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, the City of Cape Coral or similar

organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.

- e. The Grantor agrees to provide drawdowns to the SUBRECIPIENT, upon receipt and verification of the SUBRECIPIENT's request and documentation for project costs pursuant to and as defined in Subsection 1. a.
- f. The SUBRECIPIENT agrees to perform all necessary requirements to assist the Grantor in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the City of Cape Coral Local Housing Assistance Plan. The SUBRECIPIENT is responsible for coordinating inspections of properties funded with SHIP funds if requested by Grantor.
- g. The Grantor shall be provided access to all contracts of the SUBRECIPIENT for the procurement of goods and/or services relating to the project work described in Subsection 1. a. and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the Grantor of any financial liability in connection with said contracts.
- h. The SUBRECIPIENT shall ensure that clear/marketable title is obtained for all properties to be purchased, conveyed, or made a part of in any way, a subsidy request package submitted to the Grantor for assistance.
- i. The Grantor shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a to ensure compliance with the objectives, requirements, and limitations of the City's SHIP Program. The following documentation must be maintained on file for each beneficiary or unit produced by the SUBRECIPIENT for a period of seven (7) years following the effective date of contract. The following documentation at a minimum must be available for inspections at all reasonable times by the Grantor or their assigns:
 - o Applicant Intake Forms
 - o Income Verification and Certification Forms
 - o Release of Information/Acknowledgment of SHIP terms signed by beneficiary
 - o Good Faith Estimate
 - o Final Appraisal of Property
 - o Loan Application or copy of lender Application
 - o Verification of Deposit of beneficiary
 - o Verification of Employment for beneficiary
 - o Certificate of Occupancy
- j. The SUBRECIPIENTS shall ensure compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907, Florida Administrative Code 67-37, and the Cape Coral Local Housing Assistance Plan as amended, and in particular:
 - o Income limits
 - o Definition of Affordability
 - o Definition of Persons with Special Needs
 - o Definition of Persons with Developmental Disability
 - o Non-discrimination
 - o Maximum production or purchase cost
 - o Maximum SHIP funds per unit
 - o Compliance reporting as required per project

ATTACHMENT 3

PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyck@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency

CSFA #: 52.901 – State Housing Initiatives Partnership Program
Contract Type: SHIP FY 2018-2019
JDE: 28401033.634115.227108
Strategy: Owner Occupied Rehabilitation General
Agency: Cape Coral Housing Development

**SUBRECIPIENT
AGREEMENT BETWEEN
THE CITY OF CAPE CORAL
and
CAPE CORAL HOUSING DEVELOPMENT CORPORATION**

THIS CONTRACT entered this ____ day of _____ 2018, between THE CITY OF CAPE CORAL hereinafter referred to as **CITY** and CAPE CORAL HOUSING DEVELOPMENT CORPORATION a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "**SUBRECIPIENT**".

WHEREAS, **CITY** believes it to be in the public interest to provide certain activities to the residents of Cape Coral through the **SUBRECIPIENT** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **CITY** and the **SUBRECIPIENT** agree as follows:

ARTICLE I SCOPE OF SERVICES

The **CITY** has awarded the following amounts for each program listed in Attachment 2 Statement of Work. The **SUBRECIPIENT** will be responsible for implementing these program(s) for the residents of Cape Coral: Program(s) must be implemented in accordance with the approved proposal(s) and exhibits/attachments.

ARTICLE II TERM OF CONTRACT

This contract shall be effective **upon execution** and ends **June 30th, 2021** unless terminated as specified in Article VIII, Suspension/Termination.

ARTICLE III COMPENSATION AND REPORTS

A. Contract Payment

Payments will be made by the **CITY** to the **SUBRECIPIENT** and the **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$100,353 during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination. Funding is contingent upon the **CITY** receiving the related State funds.

B. Deferred Payment/Return of Funds

The **SUBRECIPIENT** agrees to return to the **CITY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered city funds and must be refunded to the **CITY** within thirty (30) calendar days of receiving notice from the **CITY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **CITY** will charge interest of one (1) percent

per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **CITY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **CITY** to defer payment to the **SUBRECIPIENT** for noncompliance with contract deliverables or during the period of a city audit or monitoring due to questionable items. If as a result of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to the City of Cape Coral or a repayment agreement is accepted by the City.

C. Required Reports

1. **Financial and Compliance Audit Requirements in Attachment 1**
2. **A General Progress Report at least monthly.**

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **SUBRECIPIENT** agrees to permit employees duly authorized by the **CITY** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **SUBRECIPIENT** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the **CITY** may deliver to the **SUBRECIPIENT** a written report regarding the manner in which goods or services are being provided. The **SUBRECIPIENT** will rectify all noted deficiencies within the specified period of time indicated in the monitoring report or provide the **CITY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **CITY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

SUBRECIPIENT must supply **CITY** with copies of all monitoring reports of programs which are also funded by the **CITY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **SUBRECIPIENT** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **CITY** deems necessary.

The City of Cape Coral Internal Auditor, the Federal or State grantor agency (if applicable), Cape Coral employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **SUBRECIPIENT** or **CPA** that are pertinent to the contract in order to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **CITY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

C. Records

The **SUBRECIPIENT** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit of the **SUBRECIPIENT'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing internal controls if required, and management's response to such letter if required, must be submitted to the **CITY** no later than **180** days following the end of the **SUBRECIPIENT'S** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Cape Coral either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

The **SUBRECIPIENT** agrees to comply with all **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS** as specified in Attachment 1.

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **CITY**.

ARTICLE V **MODIFICATIONS**

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties. Budget and programmatic changes shall not require further City Council action but must be agreed upon by the two parties and revisions included as modifications to this contract.

ARTICLE VI **CONTRACTOR STATUS**

A. **Independent Contractor**

It is mutually agreed that the **SUBRECIPIENT** is an independent contractor and not an agent or employee of the **CITY**.

B. **Subcontracts**

Primary roles and responsibilities of **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any **CITY** funded program component that is subcontracted by **SUBRECIPIENT** must have a written contract upon execution of this contract. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. **Indemnification**

The **SUBRECIPIENT** will defend, hold harmless, and indemnify the **CITY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **CITY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **SUBRECIPIENT**, or by reason of the intentional or negligent act of the **SUBRECIPIENT** or its agents, representatives and/or employees.

The **SUBRECIPIENT** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **CITY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **CITY** in any such action or proceedings.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **SUBRECIPIENT** and not of the **CITY**.

B. Insurance

The **SUBRECIPIENT** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **SUBRECIPIENT** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **SUBRECIPIENT** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any **CITY** accident or occurrence that may arise or be claimed to have arisen against the **SUBRECIPIENT**. The **SUBRECIPIENT** must furnish an appropriate Certificate of Insurance (**Exhibit**) naming the City of Cape Coral as Certificate Holder and Additional insured. The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENTS** liability and that the **CITY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities, but are merely minimums.

C. Bonding

The **SUBRECIPIENT** must provide fidelity bonding for all employees that handle **SUBRECIPIENT'S** funds. The amount of the bond must be equivalent to the highest daily cash balance of the **SUBRECIPIENT**.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **CITY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **CITY** and the **CITY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

B. Termination by CITY

The **CITY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by certified mail following a determination by the Cape Coral City Council, at its sole discretion, that such cancellation is in the best interest of the people of the **CITY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

C. Termination by SUBRECIPIENT

The **SUBRECIPIENT** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **CITY** by certified mail of such and specifying the effective date.

CITY's obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided. The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **SUBRECIPIENT** assures and certifies the following:

- A.** That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, Lee County, and the municipality as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **CITY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.

- B.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D.** That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.
- E.** That it will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- F.** That it shall report any unusual incidents involving funded activities to the **CITY**, in writing, within five (5) calendar days of the occurrence or the **CITY** may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the **SUBRECIPIENT** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **SUBRECIPIENT** services that are underwritten in any way by the **CITY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **SUBRECIPIENT** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96-ABUSE).
- G.** That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- H.** That it will notify the **CITY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for city funds.
- I.** That it will acknowledge support for programs funded by the City of Cape Coral.
- J.** That it will notify the **CITY** of any SIGNIFICANT changes to the **SUBRECIPIENT** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

ARTICLE X NOTICES

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

CITY:
Community Development Director
City of Cape Coral Department of Community Development
PO Box 150027
Cape Coral, Florida 33915-0027

SUBRECIPIENT:
Executive Director
Cape Coral Housing Development Corporation
609 SE 9th TER
Cape Coral, Florida 33990

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **SUBRECIPIENT** to the **CITY**. The notification shall be attached to originals of this contract.

ARTICLE XI SPECIAL PROVISIONS

None.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and Attachment I: Financial and Compliance Audit Requirements, Attachment II: Statement of Work, and Attachment III: Public Records, and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **SUBRECIPIENT** and **CITY** have caused this contract, to be executed by their undersigned officials as duly authorized.

SUBRECIPIENT:

By: Bonnie Schnell
Name (typed)

Signature of authorized officer

Executive Director
Title

Date

CITY: CITY OF CAPE CORAL

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager
Title

Date

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1

FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Cape Coral. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law 98-502), the Single Audit Act Amendments of 1996 (Public Law 104-156), and 29 CFR, part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report is transmitted directly to AWI by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600. Rules of the Auditor General.

Audit Requirements for States, Local Governments and Nonprofit Organizations:

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (P.L. 98-502), the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations".

Single Audit – Single Audit means an audit that includes both the entity's financial statements and the Federal awards requirements as described in OMB Circular A-133. A State single audit means an audit of a non-state entity's financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

Program-Specific Audit – A Program-Specific Audit means an audit of one Federal program as provided for in OMB Circular A-133. Additionally, a state program-specific audit means an audit of one state project in accordance with the requirements of FS 216.3491.

No Audit Exemption:

Even when cumulative (**all programs considered**) Federal and/or State award expenditures are less than \$500,000 in a fiscal year, an audit is required.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources).

ATTACHMENT 2

STATEMENT OF WORK

In accordance with SHIP Technical Bulletin 2016-01(number 1), this agency is being classified as a SUBRECIPIENT. The agency serves an administrative function and is awarded funds.

1. PROJECT DESCRIPTION

Activity 1. Owner Occupied Rehabilitation (OOR): The Subrecipient will utilize SHIP funds to provide repairs of existing single-family homes for very-low and low income-homeowners. Assistance to moderate income homeowners shall require City approval. The purpose of this program is to assist eligible homeowners with the cost of repairing health, safety, welfare related issues in their home. Qualifying items include but are not limited to: Roof, HVAC, Plumbing, Electrical, Code Enforcement Issues.

2. SCOPE OF WORK

The agency will conduct these activities at their office located at 609 SE 9th Ter, Cape Coral, Florida, 33990. The agency will maintain staffing as described below in Section 4 to conduct these activities.

Activities 1

The SUBRECIPIENT is responsible for the following activities:

- Work write-up and cost estimate
- Management of bidding
- Management of contractor eligibility
- Contractor performance
- Management payment to contractors
- Compliance with SHIP regulations (including but not limited to environmental, home inspection, home warranty, etc.)
- Maintenance and securing of properties
- Financial tracking of all work performed and accounting for expenditures per home
- Financial tracking of non-construction costs (including but not limited to taxes, insurance, security, maintenance, etc.)
- Reimbursement request for funding to the City of Cape Coral

3. BUDGET

The amount of funds awarded under this grant is \$100,353; the breakdown of the funds is provided in the table below. The Grantor is not obligated or authorized to award any funds in addition to this amount.

	Allocation Year	JDE Account	Allocation	Expenditure Deadline
Activity 1	2018-2019	28401033.634115.227108	\$100,353	6/30/2021
TOTAL			\$100,353	

4. FEES

Activity	Allocation Year	Fee
Activity 1	2018-2019	7% of Total SHIP Investment Direct Cost Work Write Up (\$300) Direct Cost Inspections (\$35)

4. **STAFFING**

The agency shall maintain staffing levels as follows:

Executive Director
Client Coordinator

Changes to staffing levels shall require notification to the City of Cape Coral. Personnel changes shall not constitute a change requiring notice to the City of Cape Coral.

5. **LEVELS OF ACCOMPLISHMENT**

A minimum of two (2) households shall be assisted during the contract period. At least one must be at or below 50% the area median income.

6. **REPORTING**

The SUBRECIPIENT shall on a quarterly basis provide the City of Cape Coral a report indicating applications received during the quarter, applicants awarded funds during the quarter, closed files during the quarter.

7. **RECORD REQUIREMENTS/DOCUMENTATION**

The SUBRECIPIENT shall maintain the following and provide to the Grantor proof or make available the following, as applicable, for each beneficiary.

SHIP Program Recipient Profile

APPLICATION DOCUMENTS:

- a. Authorization for Release of Information Form
- b. Income Verification Form(s)
- c. Income Certification Form
- d. Application for Program Assistance
- e. Letter of Commitment

CONSTRUCTION DOCUMENTS:

- a. Work Write Up, Scope and Cost Estimate
- b. Contractor(s) Bid or Proposal
- c. Bid Tabulation
- d. Contract between the SUBRECIPIENT, Homeowner and Contractor
- e. Notice to proceed (if applicable)
- f. Notice of Commencement (if applicable)
- g. Copy of Contractor's License
- h. Contractor Liability Insurance
- i. Change Orders (if applicable)
- j. Notifications of work completed
- k. Work Inspection Reports
- l. Certificate of Completion (if applicable)
- m. Itemized list and invoices for SHIP subsidy
- n. One Year Warranty on all Workmanship for the Homeowner
- o. Affidavits of Lien waivers from the general contractor and all subcontractors (Release of Liens)
- p. Copy of the permits issued by the City of Cape Coral or another Permitting Agency (as applicable)

CLOSING DOCUMENTS:

- a. Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
- b. All Recorded Mortgage and Note Document(s)
- c. Proof of Homeownership Insurance listing the City of Cape Coral as additional insured/loss payee

8. **OTHER PROGRAM REQUIREMENTS**

- a. The SUBRECIPIENT will be required to return program income funds to the City of Cape Coral. Upon receipt by the City, these funds, less 5% retained by the City of Cape Coral administrative activities, will be rebudgeted to the SUBRECIPIENT from which it was received for the strategy it was received provided the SUBRECIPIENT is still under contract with the City for these services. If the original strategy is not funded in the fiscal year the funding is received the funds will be allocated to the SUBRECIPIENT who initially assisted the client for another eligible strategy.
- b. Reimbursement requests to the City of Cape Coral shall be submitted in a timely manner and include all required source documentation as defined by the City of Cape Coral.
- c. The value of home ownership units must not exceed the maximum amount specified in the applicable Local Housing Assistance Plan (LHAP), and must meet affordability requirements in order to qualify as eligible.
- d. The SUBRECIPIENT is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, the City of Cape Coral or similar organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.
- e. The Grantor agrees to provide drawdowns to the SUBRECIPIENT, upon receipt and verification of the SUBRECIPIENT's request and documentation for project costs pursuant to and as defined in Subsection 1. a.
- f. The SUBRECIPIENT agrees to perform all necessary requirements to assist the Grantor in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the City of Cape Coral Local Housing Assistance Plan. The SUBRECIPIENT is responsible for coordinating inspections of properties funded with SHIP funds if requested by Grantor.
- g. The Grantor shall be provided access to all contracts of the SUBRECIPIENT for the procurement of goods and/or services relating to the project work described in Subsection 1. a. and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the Grantor of any financial liability in connection with said contracts.
- h. The SUBRECIPIENT shall ensure that clear/marketable title is obtained for all properties to be purchased, conveyed, or made a part of in any way, a subsidy request package submitted to the Grantor for assistance.
- i. The Grantor shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a to ensure compliance with the objectives, requirements, and limitations of the City's SHIP Program. The following documentation must be maintained on file for each beneficiary or unit produced by the SUBRECIPIENT for a period of seven (7) years following the effective date of contract. The following documentation at a minimum must be available for inspections at all reasonable times by the Grantor or their assigns:
 - o Applicant Intake Forms
 - o Income Verification and Certification Forms
 - o Release of Information/Acknowledgment of SHIP terms signed by beneficiary
 - o Verification of Employment for beneficiary
 - o Itemized List and Invoices for SHIP subsidy
 - o Contract between the SUBRECIPIENT, Homeowner and Contractor
 - o Certificate of Completion (if applicable)
- j. The SUBRECIPIENTS shall ensure compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907, Florida Administrative Code 67-37, and the Cape Coral Local Housing Assistance Plan as amended, and in particular:

- Income limits
- Definition of Affordability
- Non-discrimination
- Maximum production or purchase cost
- Maximum SHIP funds per unit
- Compliance reporting as required per project

ATTACHMENT 3 PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyclk@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral.
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency

CSFA #: 52.901 – State Housing Initiatives Partnership Program
Contract Type: SHIP FY 2018-2019
JDE: 28401033.634115.227144
Strategy: Owner Occupied Rehabilitation Special Needs
Agency: Cape Coral Housing Development

**SUBRECIPIENT
AGREEMENT BETWEEN
THE CITY OF CAPE CORAL
and
CAPE CORAL HOUSING DEVELOPMENT CORPORATION**

THIS CONTRACT entered this ____ day of _____ 2018, between THE CITY OF CAPE CORAL hereinafter referred to as **CITY** and CAPE CORAL HOUSING DEVELOPMENT CORPORATION a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "**SUBRECIPIENT**".

WHEREAS, **CITY** believes it to be in the public interest to provide certain activities to the residents of Cape Coral through the **SUBRECIPIENT** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **CITY** and the **SUBRECIPIENT** agree as follows:

ARTICLE I SCOPE OF SERVICES

The **CITY** has awarded the following amounts for each program listed in Attachment 2 Statement of Work. The **SUBRECIPIENT** will be responsible for implementing these program(s) for the residents of Cape Coral: Program(s) must be implemented in accordance with the approved proposal(s) and exhibits/attachments.

ARTICLE II TERM OF CONTRACT

This contract shall be effective **upon execution** and ends **June 30th, 2021** unless terminated as specified in Article VIII, Suspension/Termination.

ARTICLE III COMPENSATION AND REPORTS

A. Contract Payment

Payments will be made by the **CITY** to the **SUBRECIPIENT** and the **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$50,101 during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination. Funding is contingent upon the **CITY** receiving the related State funds.

B. Deferred Payment/Return of Funds

The **SUBRECIPIENT** agrees to return to the **CITY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered city funds and must be refunded to the **CITY** within thirty (30) calendar days of receiving notice from the **CITY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **CITY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **CITY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **CITY** to defer payment to the **SUBRECIPIENT** for noncompliance with contract deliverables or during the period of a city audit or monitoring due to questionable items. If as a result of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to the City of Cape Coral or a repayment agreement is accepted by the City.

C. Required Reports

1. **Financial and Compliance Audit Requirements in Attachment 1**
2. **A General Progress Report at least monthly.**

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **SUBRECIPIENT** agrees to permit employees duly authorized by the **CITY** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **SUBRECIPIENT** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the **CITY** may deliver to the **SUBRECIPIENT** a written report regarding the manner in which goods or services are being provided. The **SUBRECIPIENT** will rectify all noted deficiencies within the specified period of time indicated in the monitoring report or provide the **CITY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **CITY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

SUBRECIPIENT must supply **CITY** with copies of all monitoring reports of programs which are also funded by the **CITY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **SUBRECIPIENT** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **CITY** deems necessary.

The City of Cape Coral Internal Auditor, the Federal or State grantor agency (if applicable), Cape Coral employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **SUBRECIPIENT** or **CPA** that are pertinent to the contract in order to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **CITY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

C. Records

The **SUBRECIPIENT** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit of the **SUBRECIPIENT'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing internal controls if required, and management's response to such letter if required, must be submitted to the **CITY** no later than **180** days following the end of the **SUBRECIPIENT'S** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Cape Coral either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

The **SUBRECIPIENT** agrees to comply with all **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS** as specified in Attachment 1.

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **CITY**.

ARTICLE V **MODIFICATIONS**

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties. Budget and programmatic changes shall not require further City Council action but must be agreed upon by the two parties and revisions included as modifications to this contract.

ARTICLE VI **CONTRACTOR STATUS**

A. **Independent Contractor**

It is mutually agreed that the **SUBRECIPIENT** is an independent contractor and not an agent or employee of the **CITY**.

B. **Subcontracts**

Primary roles and responsibilities of **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any **CITY** funded program component that is subcontracted by **SUBRECIPIENT** must have a written contract upon execution of this contract. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. **Indemnification**

The **SUBRECIPIENT** will defend, hold harmless, and indemnify the **CITY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **CITY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **SUBRECIPIENT**, or by reason of the intentional or negligent act of the **SUBRECIPIENT** or its agents, representatives and/or employees.

The **SUBRECIPIENT** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **CITY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **CITY** in any such action or proceedings.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **SUBRECIPIENT** and not of the **CITY**.

B. **Insurance**

The **SUBRECIPIENT** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **SUBRECIPIENT** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **SUBRECIPIENT** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any **CITY** accident or occurrence that may arise or be claimed to have arisen against the **SUBRECIPIENT**. The **SUBRECIPIENT** must furnish an appropriate Certificate of Insurance (**Exhibit**) naming the City of Cape Coral as Certificate Holder and Additional insured. The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENTS** liability and that the **CITY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities, but are merely minimums.

C. Bonding

The **SUBRECIPIENT** must provide fidelity bonding for all employees that handle **SUBRECIPIENT'S** funds. The amount of the bond must be equivalent to the highest daily cash balance of the **SUBRECIPIENT**.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **CITY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **CITY** and the **CITY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

B. Termination by CITY

The **CITY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by certified mail following a determination by the Cape Coral City Council, at its sole discretion, that such cancellation is in the best interest of the people of the **CITY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

C. Termination by SUBRECIPIENT

The **SUBRECIPIENT** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **CITY** by certified mail of such and specifying the effective date.

CITY's obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided. The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **SUBRECIPIENT** assures and certifies the following:

- A.** That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, Lee County, and the municipality as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **CITY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.

- B.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D.** That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.
- E.** That it will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- F.** That it shall report any unusual incidents involving funded activities to the **CITY**, in writing, within five (5) calendar days of the occurrence or the **CITY** may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the **SUBRECIPIENT** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **SUBRECIPIENT** services that are underwritten in any way by the **CITY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **SUBRECIPIENT** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96-ABUSE).
- G.** That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- H.** That it will notify the **CITY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for city funds.
- I.** That it will acknowledge support for programs funded by the City of Cape Coral.
- J.** That it will notify the **CITY** of any SIGNIFICANT changes to the **SUBRECIPIENT** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

ARTICLE X NOTICES

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

CITY:
Community Development Director
City of Cape Coral Department of Community Development
PO Box 150027
Cape Coral, Florida 33915-0027

SUBRECIPIENT:
Executive Director
Cape Coral Housing Development Corporation
609 SE 9th TER
Cape Coral, Florida 33990

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **SUBRECIPIENT** to the **CITY**. The notification shall be attached to originals of this contract.

ARTICLE XI SPECIAL PROVISIONS

None.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and Attachment I: Financial and Compliance Audit Requirements, Attachment II: Statement of Work, and Attachment III: Public Records, and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **SUBRECIPIENT** and **CITY** have caused this contract, to be executed by their undersigned officials as duly authorized.

SUBRECIPIENT:

By: Bonnie Schnell
Name (typed)

Signature of authorized officer

Executive Director
Title

Date

CITY: CITY OF CAPE CORAL

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager
Title

Date

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1

FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Cape Coral. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law 98-502), the Single Audit Act Amendments of 1996 (Public Law 104-156), and 29 CFR, part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report is transmitted directly to AWI by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600. Rules of the Auditor General.

Audit Requirements for States, Local Governments and Nonprofit Organizations:

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (P.L. 98-502), the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations".

Single Audit – Single Audit means an audit that includes both the entity's financial statements and the Federal awards requirements as described in OMB Circular A-133. A State single audit means an audit of a non-state entity's financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

Program-Specific Audit – A Program-Specific Audit means an audit of one Federal program as provided for in OMB Circular A-133. Additionally, a state program-specific audit means an audit of one state project in accordance with the requirements of FS 216.3491.

No Audit Exemption:

Even when cumulative (all programs considered) Federal and/or State award expenditures are less than \$500,000 in a fiscal year, an audit is required.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources).

ATTACHMENT 2

STATEMENT OF WORK

In accordance with SHIP Technical Bulletin 2016-01(number 1), this agency is being classified as a SUBRECIPIENT. The agency serves an administrative function and is awarded funds.

1. PROJECT DESCRIPTION

Activity 1. Owner Occupied Rehabilitation (OOR) – Special Needs: The Subrecipient will utilize SHIP funds to provide repairs of existing single-family homes for **persons with special needs** as defined in s.420.0004, Florida Statutes. The first priority of these special needs funds must be to use them for persons with developmental disabilities as defined in s. 393.063, Florida Statutes, with an emphasis on home modifications, including technological enhancements and devices, which will allow homeowners to remain independent in their own homes and maintain their homeownership.

2. SCOPE OF WORK

The agency will conduct these activities at their office located at 609 SE 9th Ter, Cape Coral, Florida, 33990. The agency will maintain staffing as described below in Section 4 to conduct these activities.

The SUBRECIPIENT is responsible for the following activities:

- Verification that Household Includes One or More Members with Special Needs/Developmental Disabilities
- Work write-up and cost estimate
- Management of bidding
- Management of contractor eligibility
- Contractor performance
- Management payment to contractors
- Compliance with SHIP regulations (including but not limited to environmental, home inspection, home warranty, etc.)
- Maintenance and securing of properties
- Financial tracking of all work performed and accounting for expenditures per home
- Financial tracking of non-construction costs (including but not limited to taxes, insurance, security, maintenance, etc.)

3. BUDGET

The amount of funds awarded under this grant is \$50,101; the breakdown of the funds is provided in the table below. The Grantor is not obligated or authorized to award any funds in addition to this amount.

	Allocation Year	JDE Account	Allocation	Expenditure Deadline
Activity 1	2018-2019	28401033.634115. 227144	\$50,101	6/30/2021
TOTAL			\$50,101	

4. FEES

Activity	Allocation Year	Fee
Activity 1	2018-2019	7% of Total SHIP Investment Direct Cost Work Write Up (\$300) Direct Cost Inspections (\$35)

4. STAFFING

The agency shall maintain staffing levels as follows:

Executive Director

Client Coordinator

Changes to staffing levels shall require notification to the City of Cape Coral. Personnel changes shall not constitute a change requiring notice to the City of Cape Coral.

5. **LEVELS OF ACCOMPLISHMENT**

A minimum of one (1) household shall be assisted during the contract period.

6. **REPORTING**

The SUBRECIPIENT shall on a quarterly basis provide the City of Cape Coral a report indicating applications received during the quarter, applicants awarded funds during the quarter, closed files during the quarter.

7. **RECORD REQUIREMENTS/DOCUMENTATION**

The SUBRECIPIENT shall maintain the following and provide to the Grantor proof or make available the following, as applicable, for each beneficiary.

SHIP Program Recipient Profile

APPLICATION DOCUMENTS:

- a. Authorization for Release of Information Form
- b. Income Verification Form(s)
- c. Income Certification Form
- d. Proof that Household Includes One or More Members with Special Needs/Developmental Disabilities (when applicable)
- e. Application for Program Assistance
- f. Letter of Commitment

CONSTRUCTION DOCUMENTS:

- a. Work Write Up, Scope and Cost Estimate
- b. Contractor(s) Bid or Proposal
- c. Bid Tabulation
- d. Contract between the SUBRECIPIENT, Homeowner and Contractor
- e. Notice to proceed (if applicable)
- f. Notice of Commencement (if applicable)
- g. Copy of Contractor's License
- h. Contractor Liability Insurance
- i. Change Orders (if applicable)
- j. Notifications of work completed
- k. Work Inspection Reports
- l. Certificate of Completion (if applicable)
- m. Itemized list and invoices for SHIP subsidy
- n. One Year Warranty on all Workmanship for the Homeowner
- o. Affidavits of Lien waivers from the general contractor and all subcontractors (Release of Liens)
- p. Copy of the permits issued by the City of Cape Coral or another Permitting Agency (as applicable)

CLOSING DOCUMENTS:

- a. Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
- b. All Recorded Mortgage and Note Document(s)
- c. Proof of Homeownership Insurance listing the City of Cape Coral as additional insured/loss payee

8. **OTHER PROGRAM REQUIREMENTS**

- a. The SUBRECIPIENT will be required to return program income funds to the City of Cape Coral. Upon receipt by the City, these funds, less 5% retained by the City of Cape Coral administrative activities, will be rebudgeted to the SUBRECIPIENT from which it was received for the strategy it was received provided the SUBRECIPIENT is still under contract with the City for these services. If the original strategy is not funded in the fiscal year the funding is received the funds will be allocated to the SUBRECIPIENT who initially assisted the client for another eligible strategy.
- b. Reimbursement requests to the City of Cape Coral shall be submitted in a timely manner and include all required source documentation as defined by the City of Cape Coral.
- c. The value of home ownership units must not exceed the maximum amount specified in the applicable Local Housing Assistance Plan (LHAP), and must meet affordability requirements in order to qualify as eligible.
- d. The SUBRECIPIENT is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, the City of Cape Coral or similar organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.
- e. The Grantor agrees to provide drawdowns to the SUBRECIPIENT, upon receipt and verification of the SUBRECIPIENT's request and documentation for project costs pursuant to and as defined in Subsection 1. a.
- f. The SUBRECIPIENT agrees to perform all necessary requirements to assist the Grantor in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the City of Cape Coral Local Housing Assistance Plan. The SUBRECIPIENT is responsible for coordinating inspections of properties funded with SHIP funds if requested by Grantor.
- g. The Grantor shall be provided access to all contracts of the SUBRECIPIENT for the procurement of goods and/or services relating to the project work described in Subsection 1. a. and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the Grantor of any financial liability in connection with said contracts.
- h. The SUBRECIPIENT shall ensure that clear/marketable title is obtained for all properties to be purchased, conveyed, or made a part of in any way, a subsidy request package submitted to the Grantor for assistance.
- i. The Grantor shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a to ensure compliance with the objectives, requirements, and limitations of the City's SHIP Program. The following documentation must be maintained on file for each beneficiary or unit produced by the SUBRECIPIENT for a period of seven (7) years following the effective date of contract. The following documentation at a minimum must be available for inspections at all reasonable times by the Grantor or their assigns:
 - o Applicant Intake Forms
 - o Income Verification and Certification Forms
 - o Release of Information/Acknowledgment of SHIP terms signed by beneficiary
 - o Proof that Household Includes One or More Members with Special Needs/Developmental Disabilities (when applicable)
 - o Itemized List and Invoices for SHIP subsidy
 - o Contract between the SUBRECIPIENT, Homeowner and Contractor
 - o Verification of Deposit of beneficiary
 - o Verification of Employment for beneficiary
 - o Certificate of Occupancy
- j. The SUBRECIPIENTS shall ensure compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907, Florida Administrative Code 67-37, and the Cape Coral Local Housing Assistance Plan as amended, and in particular:

- Income limits
- Definition of Affordability
- Definition of Persons with Special Needs
- Definition of Persons with Developmental Disability
- Non-discrimination
- Maximum production or purchase cost
- Maximum SHIP funds per unit
- Compliance reporting as required per project

ATTACHMENT 3 PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyck@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral.
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency

CSFA #: 52.901 – State Housing Initiatives Partnership Program
Contract Type: SHIP FY 2018-2019
JDE: 28401033.634115. 227146
Strategy: SHIP Subrecipient Administration
Agency: Cape Coral Housing Development

**SUBRECIPIENT AGREEMENT
BETWEEN
THE CITY OF CAPE CORAL
and
CAPE CORAL HOUSING DEVELOPMENT CORPORATION**

THIS CONTRACT entered this ____ day of _____ 2018, between THE CITY OF CAPE CORAL hereinafter referred to as **CITY** and CAPE CORAL HOUSING DEVELOPMENT CORPORATION a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "**SUBRECIPIENT**".

WHEREAS, **CITY** believes it to be in the public interest to provide certain activities to the residents of Cape Coral through the **SUBRECIPIENT** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **CITY** and the **SUBRECIPIENT** agree as follows:

ARTICLE I SCOPE OF SERVICES

The **CITY** has awarded the following amounts for each program listed in Attachment 2 Statement of Work. The **SUBRECIPIENT** will be responsible for implementing these program(s) for the residents of Cape Coral. Program(s) must be implemented in accordance with the approved proposal(s) and exhibits/attachments.

ARTICLE II TERM OF CONTRACT

This contract shall be effective **upon execution** and ends **12 months from the execution date** unless terminated as specified in Article VIII, Suspension/Termination.

ARTICLE III COMPENSATION AND REPORTS

A. Contract Payment

Payments will be made by the **CITY** to the **SUBRECIPIENT** and the **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$42,888 during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination. Funding is contingent upon the **CITY** receiving the related State funds.

B. Deferred Payment/Return of Funds

The **SUBRECIPIENT** agrees to return to the **CITY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered city funds and must be refunded to the **CITY** within thirty (30) calendar days of receiving notice from the **CITY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **CITY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **CITY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **CITY** to defer payment to the **SUBRECIPIENT** for noncompliance with contract deliverables or during the period of a city audit or monitoring due to questionable items. If because of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to the City of Cape Coral or a repayment agreement is accepted by the City.

C. Required Reports

1. Financial and Compliance Audit Requirements in Attachment 1
2. A General Progress Report at least quarterly.

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **SUBRECIPIENT** agrees to permit employees duly authorized by the **CITY** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **SUBRECIPIENT** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the **CITY** may deliver to the **SUBRECIPIENT** a written report regarding the way goods or services are being provided. The **SUBRECIPIENT** will rectify all noted deficiencies within the specified period indicated in the monitoring report or provide the **CITY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **CITY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

SUBRECIPIENT must supply **CITY** with copies of all monitoring reports of programs which are also funded by the **CITY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **SUBRECIPIENT** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **CITY** deems necessary.

The City of Cape Coral Internal Auditor, the Federal or State grantor agency (if applicable), Cape Coral employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **SUBRECIPIENT** or **CPA** that are pertinent to the contract to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **CITY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

C. Records

The **SUBRECIPIENT** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit of the **SUBRECIPIENT'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing

internal controls if required, and management's response to such letter if required, must be submitted to the **CITY** no later than **180** days following the end of the **SUBRECIPIENT'S** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Cape Coral either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

The **SUBRECIPIENT** agrees to comply with all **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS** as specified in Attachment 1.

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **CITY**.

ARTICLE V **MODIFICATIONS**

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties. Budget and programmatic changes shall not require further City Council action but must be agreed upon by the two parties and revisions included as modifications to this contract.

ARTICLE VI **CONTRACTOR STATUS**

A. **Independent Contractor**

It is mutually agreed that the **SUBRECIPIENT** is an independent contractor and not an agent or employee of the **CITY**.

B. **Subcontracts**

Primary roles and responsibilities of **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any **CITY** funded program component that is subcontracted by **SUBRECIPIENT** must have a written contract upon execution of this contract. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. **Indemnification**

The **SUBRECIPIENT** will defend, hold harmless, and indemnify the **CITY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **CITY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **SUBRECIPIENT**, or by reason of the intentional or negligent act of the **SUBRECIPIENT** or its agents, representatives and/or employees.

The **SUBRECIPIENT** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **CITY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **CITY** in any such action or proceedings.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **SUBRECIPIENT** and not of the **CITY**.

B. **Insurance**

The **SUBRECIPIENT** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **SUBRECIPIENT** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **SUBRECIPIENT** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any **CITY** accident or occurrence that may arise or be claimed to have arisen against the **SUBRECIPIENT**. The **SUBRECIPIENT** must furnish an appropriate Certificate of Insurance (**Exhibit**) naming the City of Cape Coral as Certificate Holder and Additional insured. The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENTS** liability and that the **CITY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities, but are merely minimums.

C. Bonding

The **SUBRECIPIENT** must provide fidelity bonding for all employees that handle **SUBRECIPIENT'S** funds. The amount of the bond must be equivalent to the highest daily cash balance of the **SUBRECIPIENT**.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **CITY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **CITY** and the **CITY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

B. Termination by CITY

The **CITY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by certified mail following a determination by the Cape Coral City Council, at its sole discretion, that such cancellation is in the best interest of the people of the **CITY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

C. Termination by SUBRECIPIENT

The **SUBRECIPIENT** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **CITY** by certified mail of such and specifying the effective date.

CITY's obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided. The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **SUBRECIPIENT** assures and certifies the following:

- A.** That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, Lee County, and the municipality as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **CITY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.

- B.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D.** That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.
- E.** That it will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- F.** That it shall report any unusual incidents involving funded activities to the **CITY**, in writing, within five (5) calendar days of the occurrence or the **CITY** may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the **SUBRECIPIENT** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **SUBRECIPIENT** services that are underwritten in any way by the **CITY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **SUBRECIPIENT** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96-ABUSE).
- G.** That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- H.** That it will notify the **CITY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for city funds.
- I.** That it will acknowledge support for programs funded by the City of Cape Coral.
- J.** That it will notify the **CITY** of any SIGNIFICANT changes to the **SUBRECIPIENT** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

ARTICLE X NOTICES

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

CITY:
Community Development Director
City of Cape Coral Department of Community Development
PO Box 150027
Cape Coral, Florida 33915-0027

SUBRECIPIENT:
Executive Director
Cape Coral Housing Development Corporation
609 SE 9th TER
Cape Coral, Florida 33990

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **SUBRECIPIENT** to the **CITY**. The notification shall be attached to originals of this contract.

ARTICLE XI SPECIAL PROVISIONS

None.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and Attachment I: Financial and Compliance Audit Requirements, Attachment II: Statement of Work, and Attachment III: Public Records, and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **SUBRECIPIENT** and **CITY** have caused this contract, to be executed by their undersigned officials as duly authorized.

SUBRECIPIENT:

By: Bonnie Schnell
Name (typed)

Signature of authorized officer

Executive Director
Title

Date

CITY: CITY OF CAPE CORAL

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager
Title

Date

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1

FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Cape Coral. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law 98-502), the Single Audit Act Amendments of 1996 (Public Law 104-156), and 29 CFR, part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report is transmitted directly to AWI by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600. Rules of the Auditor General.

Audit Requirements for States, Local Governments and Nonprofit Organizations:

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (P.L. 98-502), the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133 "Audits of States Local Governments, and Non-Profit Organizations".

Single Audit – Single Audit means an audit that includes both the entity's financial statements and the Federal awards requirements as described in OMB Circular A-133. A State single audit means an audit of a non-state entity's financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

Program-Specific Audit – A Program-Specific Audit means an audit of one Federal program as provided for in OMB Circular A-133. Additionally, a state program-specific audit means an audit of one state project in accordance with the requirements of FS 216.3491.

No Audit Exemption:

Even when cumulative (all programs considered) Federal and/or State award expenditures are less than \$500,000 in a fiscal year, an audit is required.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources).

ATTACHMENT 2

STATEMENT OF WORK

In accordance with SHIP Technical Bulletin 2016-01(number 1), this agency is being classified as a SUBRECIPIENT. The agency serves an administrative function and is awarded funds.

1. PROJECT DESCRIPTION

The Project, as approved for grant assistance, shall consist of the following authorized scope of Project work:

Activity 1. ADMINISTRATION

The SUBRECIPIENT will use SHIP administrative funds to administer activities on the behalf of the City of Cape Coral related to the following projects: Rehabilitation/Resale, Owner Occupied Rehabilitation (OOR), New Construction, and Client Counseling.

The SUBRECIPIENT will serve as a resource for SHIP related questions from the public and will respond to citizens inquireis regarding referrals for housing programs.

2. SCOPE OF WORK

The agency will conduct these activities at their office located at 609 SE 9th Ter, Cape Coral, Florida, 33990. The agency will maintain staffing as described below in Section 4 to conduct these activities.

Activity 1.

The SUBRECIPIENT is responsible for the following activities:

- Outreach and Marketing
- Maintaining Wait List in accordance with Local Housing Assistance Plan
- Screening and intake of potential clients
- Counseling/Credit Rebuilding
- Case file preparation and management
- Income verification of potential clients
- Income certification of clients
- Review of properties for compliance with SHIP regulations
- Coordination with primary lender
- Payment at closing
- Preparation and filing of all agreements including the mortgage note and mortgage
- Reimbursement request for funding to the City of Cape Coral
- Management of case file for required retention period
- Accounting for all payoff funds for return to the City of Cape Coral (if applicable)

3. BUDGET

The amount of program funds awarded under this grant is \$42,888. The Grantor is not obligated or authorized to award any funds in addition to this amount.

	Allocation Year	JDE Account	Allocation	Expenditure Deadline
Activity 1 Administration	2018-2019	28401033.634115.227146	\$42,888	12 months from contract execution date
TOTAL			\$42,888	

4. **STAFFING**

The agency shall maintain staffing levels as follows:

Executive Director
Client Coordinator

Changes to staffing levels shall require notification to the City of Cape Coral. Personnel changes shall not constitute a change requiring notice to the City of Cape Coral.

5. **REPORTING**

The SUBRECIPIENT shall on a quarterly basis provide the City of Cape Coral a report indicating applications received during the quarter, applicants awarded funds during the quarter, closed files during the quarter.

6. **RECORD REQUIREMENTS/DOCUMENTATION**

The SUBRECIPIENT shall maintain the following and provide to the Grantor proof or make available the following, as applicable, for each beneficiary.

SHIP Program Recipient Profile

APPLICATION DOCUMENTS:

- a. Authorization for Release of Information Form
- b. Income Verification Form(s)
- c. Income Certification Form
- d. Proof that Household Includes One or More Members with Special Needs/Developmental Disabilities (when applicable)
- e. Application for Program Assistance
- f. Letter of Commitment

CLOSING DOCUMENTS:

- a. Application for mortgage documents
- b. Preliminary Good Faith Estimate of Cash to Close
- c. Mortgage Commitment Letter
- d. Fully Executed Real Estate Purchase Contract
- e. Appraisal Report
- f. First Time Homebuyer Workshop Certificate
- g. Home Inspection Report
- h. Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
- i. All Recorded Mortgage and Note Document(s)
- j. Proof of Homeownership Insurance listing the City of Cape Coral as additional insured/loss payee
- k. Title Policy for Title Insurance on the Cape Coral SHIP Mortgage

7. **OTHER PROGRAM REQUIREMENTS**

- a. Reimbursement requests to the City of Cape Coral shall be submitted in a timely manner and include all required source documentation as defined by the City of Cape Coral. Payments will be made at 1/12 of the total grant amount for twelve months.
- b. The SUBRECIPIENT will be required to immediately return program income funds to the City of Cape Coral.
- c. The value of home ownership units must not exceed the maximum amount specified in the applicable Local Housing Assistance Plan (LHAP), and must meet affordability requirements in order to qualify as eligible.

- d. The SUBRECIPIENT is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, the City of Cape Coral or similar organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.
- e. The Grantor agrees to provide drawdowns to the SUBRECIPIENT, upon receipt and verification of the SUBRECIPIENT's request and documentation for project costs pursuant to and as defined in Subsection 1. a.
- f. The SUBRECIPIENT agrees to perform all necessary requirements to assist the Grantor in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the City of Cape Coral Local Housing Assistance Plan. The SUBRECIPIENT is responsible for coordinating inspections of properties funded with SHIP funds if requested by Grantor.
- g. The Grantor shall be provided access to all contracts of the SUBRECIPIENT for the procurement of goods and/or services relating to the project work described in Subsection 1. a. and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the Grantor of any financial liability in connection with said contracts.
- h. The SUBRECIPIENT shall ensure that clear/marketable title is obtained for all properties to be purchased, conveyed, or made a part of in any way, a subsidy request package submitted to the Grantor for assistance.
- i. The Grantor shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a to ensure compliance with the objectives, requirements, and limitations of the City's SHIP Program. The following documentation must be maintained on file for each beneficiary or unit produced by the SUBRECIPIENT for a period of seven (7) years following the effective date of contract. The following documentation at a minimum must be available for inspections at all reasonable times by the Grantor or their assigns:
 - o Applicant Intake Forms
 - o Income Verification and Certification Forms
 - o Release of Information/Acknowledgment of SHIP terms signed by beneficiary
 - o Good Faith Estimate
 - o Final Appraisal of Property
 - o Loan Application or copy of lender Application
 - o Verification of Deposit of beneficiary
 - o Verification of Employment for beneficiary
 - o Certificate of Occupancy
- j. The SUBRECIPIENTS shall ensure compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907, Florida Administrative Code 67-37, and the Cape Coral Local Housing Assistance Plan as amended, and in particular:
 - o Income limits
 - o Definition of Affordability
 - o Definition of Persons with Special Needs
 - o Definition of Persons with Developmental Disability
 - o Non-discrimination
 - o Maximum production or purchase cost
 - o Maximum SHIP funds per unit
 - o Compliance reporting as required per project

ATTACHMENT 3 PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyck@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency

CSFA #: 52.901 – State Housing Initiatives
Partnership Program
Contract Type: SHIP FY 2017-2018
Strategy : Special Needs Rental
Agency : Southwest Florida GWI Housing II
JDE: 28401032.634115.227117

**AGREEMENT BETWEEN
THE CITY OF CAPE CORAL
And
SOUTHWEST FLORIDA GWI HOUSING II, INC.**

THIS CONTRACT entered this ____ day of _____ 2018, between THE CITY OF CAPE CORAL hereinafter referred to as **CITY** and SOUTHWEST FLORIDA GWI HOUSING II, Inc., a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "**PROVIDER**".

WHEREAS, **CITY** believes it to be in the public interest to provide certain activities to the residents of Cape Coral through the **PROVIDER** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **CITY** and the **PROVIDER** agree as follows:

ARTICLE I **SCOPE OF SERVICES**

The **CITY** has awarded the following amounts for each program listed below. The **PROVIDER** will be responsible for implementing these program(s) for the residents of Cape Coral: Program(s) must be implemented in accordance with the approved proposal(s) and exhibits/attachments.

ARTICLE II **TERM OF CONTRACT**

This contract shall be effective **upon execution** and ends **June 30th, 2020** unless terminated as specified in Article VIII, Suspension/Termination.

ARTICLE III **COMPENSATION AND REPORTS**

A. **Contract Payment**

Payments will be made by the **CITY** to the **PROVIDER** and the **PROVIDER** agrees to accept as full compensation the total amount not to exceed \$146,115 during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination. Funding is contingent upon the **CITY** receiving the related State funds.

B. **Deferred Payment/Return of Funds**

The **PROVIDER** agrees to return to the **CITY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered city funds and must be refunded to the **CITY** within thirty (30) calendar days of receiving notice from the **CITY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **CITY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **PROVIDER** will be required to reimburse the **CITY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **CITY** to defer payment to the **PROVIDER** for noncompliance with contract deliverables or during the period of a city audit or monitoring due to questionable items. If as a result of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to the City of Cape Coral or a repayment agreement is accepted by the City.

C. Required Reports

1. **Financial and Compliance Audit Requirements in Attachment 1**
2. **A General Progress Report at least monthly.**

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **PROVIDER** agrees to permit employees duly authorized by the **CITY** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **PROVIDER** and/or interview any clients and employees of the **PROVIDER** to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **PROVIDER** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **PROVIDER** of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the **CITY** may deliver to the **PROVIDER** a written report regarding the manner in which goods or services are being provided. The **PROVIDER** will rectify all noted deficiencies within the specified period of time indicated in the monitoring report or provide the **CITY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **PROVIDER'S** failure to correct or justify the deficiencies within the time specified by the **CITY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

PROVIDER must supply **CITY** with copies of all monitoring reports of programs which are also funded by the **CITY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **PROVIDER** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **CITY** deems necessary.

The City of Cape Coral Internal Auditor, the Federal or State grantor agency (if applicable), Cape Coral employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **PROVIDER** or **CPA** that are pertinent to the contract in order to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **CITY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a **PROVIDER'S** personnel for the purpose of interview and discussion related to such documents.

C. Records

The **PROVIDER** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **PROVIDER** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit of the **PROVIDER'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing

internal controls if required, and management's response to such letter if required, must be submitted to the **CITY** no later than **180** days following the end of the **PROVIDER'S** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Cape Coral either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

The **PROVIDER** agrees to comply with all **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS** as specified in Attachment 1.

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **CITY**.

ARTICLE V **MODIFICATIONS**

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties. Budget and programmatic changes shall not require further City Council action but must be agreed upon by the two parties and revisions included as modifications to this contract.

ARTICLE VI **CONTRACTOR STATUS**

A. **Independent Contractor**

It is mutually agreed that the **PROVIDER** is an independent contractor and not an agent or employee of the **CITY**.

B. **Subcontracts**

Primary roles and responsibilities of **PROVIDER** cannot be subcontracted. It is mutually agreed that any **CITY** funded program component that is subcontracted by **PROVIDER** must have a written contract upon execution of this contract. The **PROVIDER** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. **Indemnification**

The **PROVIDER** will defend, hold harmless, and indemnify the **CITY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **CITY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **PROVIDER**, or by reason of the intentional or negligent act of the **PROVIDER** or its agents, representatives and/or employees.

The **PROVIDER** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **CITY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **CITY** in any such action or proceedings.

The **PROVIDER** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **PROVIDER** and not of the **CITY**.

The obligations for indemnification under the CITY Mortgage Note shall be suspended and be of no force and effect during any period of time from and after the date of any transfer of title to the Project by foreclosure, deed in lieu of foreclosure, or a comparable version of any lien on the Project conveying title to the U.S. Department of Housing & Urban Development (HUD) or to the United States

Government acting as assignee of HUD. Any indemnification shall expressly be limited to the liability insurance coverage or a distribution approved by HUD from surplus cash or residual receipts.

B. Insurance

The **PROVIDER** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **PROVIDER** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **PROVIDER** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any **CITY** accident or occurrence that may arise or be claimed to have arisen against the **PROVIDER**. The **PROVIDER** must furnish an appropriate Certificate of Insurance (**Exhibit**) naming the City of Cape Coral as Certificate Holder and Additional insured. The **PROVIDER** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **PROVIDER** agrees that this insurance requirement shall not relieve or limit **PROVIDER'S** liability and that the **CITY** does not in any way represent that the insurance required is sufficient or adequate to protect the **PROVIDER'S** interests or liabilities, but are merely minimums.

C. Bonding

The **PROVIDER** must provide fidelity bonding for all employees that handle **PROVIDER'S** funds. The amount of the bond must be equivalent to the highest daily cash balance of the **PROVIDER**.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **CITY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **PROVIDER** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **CITY** and the **CITY** shall have no further funding obligation to the **PROVIDER** with regard to those unpaid funds.

B. Termination by CITY

The **CITY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **PROVIDER** by certified mail following a determination by the Cape Coral City Council, at its sole discretion, that such cancellation is in the best interest of the people of the **CITY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice. In the event the termination notice imposes further obligations on the **PROVIDER**, then notice to HUD is required.

C. Termination by PROVIDER

The **PROVIDER** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **CITY** by certified mail of such and specifying the effective date.

CITY's obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **PROVIDER** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **PROVIDER**, its successors, transferees, and assignees for the period during which services are provided. The **PROVIDER** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **PROVIDER** assures and certifies the following:

- A. That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, Lee County, and the municipality as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **CITY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **PROVIDER**.
- B. That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C. That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D. That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.
- E. That it will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- F. That it shall report any unusual incidents involving funded activities to the **CITY**, in writing, within five (5) calendar days of the occurrence or the **CITY** may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the **PROVIDER** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **PROVIDER** services that are underwritten in any way by the **CITY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **PROVIDER** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96-ABUSE).
- G. That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- H. That it will notify the **CITY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **PROVIDER'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for city funds.
- I. That it will acknowledge support for programs funded by the City of Cape Coral.
- J. That it will notify the **CITY** of any SIGNIFICANT changes to the **PROVIDER** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

ARTICLE X NOTICES

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

CITY:
Community Development Director
City of Cape Coral Department of Community Development
PO Box 150017
Cape Coral, Florida 33915-0027

PROVIDER:
President/CEO
Southwest Florida GWI Housing II, Inc.
5100 Tice Street
Fort Myers, Florida 33905

HUD:
U.S. Department of Housing & Urban Development
Brickell Plaza, Federal Building
909 S.E. 1st Avenue, Room 500
Miami, FL 33131

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **PROVIDER** to the **CITY**. The notification shall be attached to originals of this contract.

ARTICLE XI SPECIAL PROVISIONS

Notwithstanding anything in the CITY documents to the contrary, for so long as HUD is the Insurer or Holder of the Capital Advance Note, secured by by the HUD Mortgage for the development identified as HUD Project Number 066-HD049:

The provisions of any “due on sale” shall not be applicable to HUD, in the course of HUD exercising any of its remedies under the HUD Capital Advance Program Mortgage, Note, or any instruments of security, including but not limited to, HUD’s approval and transfer of physical assets (TPA). Any obligation for repayment can be made only from residual receipts to the extent available after approval by HUD; or PROVIDER makes payments form its own funds which may not come from the HUD funding;

This Agreement may not impose any requirements that interfere or conflict with the HUD Mortgage, Regulatory Agreement, Use Agreement and any other instruments of security (hereafter “HUD Instruments of Security”) or the HUD requirements concerning the operation of the PROVIDER; and

No default can be declared under the CITY documents without HUD approval;

In the event of any conflict between the CITY’s documents and the HUD Instruments of Security, then the HUD Instruments of Security shall prevail.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and Attachment I: Financial and Compliance Audit Requirements, Attachment II: Statement of Work, and Attachment III: Public Records, and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **PROVIDER** and **CITY** have caused this contract, to be executed by their undersigned officials as duly authorized.

PROVIDER:

By: Rick Evanchyk
Name (typed)

Signature of authorized officer

President/CEO
Title

Date

CITY: CITY OF CAPE CORAL

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager
Title

Date

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1

FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Cape Coral. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law 98-502), the Single Audit Act Amendments of 1996 (Public Law 104-156), and 29 CFR, part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report is transmitted directly to AWI by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600. Rules of the Auditor General.

Audit Requirements for States, Local Governments and Nonprofit Organizations:

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (P.L. 98-502), the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations".

Single Audit – Single Audit means an audit that includes both the entity's financial statements and the Federal awards requirements as described in OMB Circular A-133. A State single audit means an audit of a non-state entity's financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

Program-Specific Audit – A Program-Specific Audit means an audit of one Federal program as provided for in OMB Circular A-133. Additionally, a state program-specific audit means an audit of one state project in accordance with the requirements of FS 216.3491.

No Audit Exemption:

Even when cumulative (all programs considered) Federal and/or State award expenditures are less than \$500,000 in a fiscal year, an audit is required.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources).

ATTACHMENT 2

STATEMENT OF WORK

1. a. The Project, as approved for grant assistance, shall consist of the following authorized scope of Project work:

The provider will utilize SHIP funds for capital improvements to upgrade the property located at 4626 Skyline Blvd, Cape Coral, FL 33914, commonly known as Laurel Oaks. This multifamily property consists of twelve (12) total units, (10 one bedroom and two, two-bedroom) of supportive housing for persons who are physically disabled and who have household incomes defined as very low. The proposed project will provide for hurricane safety, reduce energy costs for both residents and the project, and reduce long-term operating costs. The scope of work includes:

Metal Roof	\$96,475
Energy Star Rated Stoves	\$6,840
Hurricane Resistant Doors	\$10,200
Overhead cost	\$16,600
 Total Construction Cost	 130,115
 Administrative/Legal Costs:	 \$16,000
 TOTAL PROJECT COST:	 \$146,115

- b. The amount of funds awarded under this grant is \$146,115; The Grantor is not obligated or authorized to award any funds in addition to this amount.
 - c. The fees paid to the provider for the proposed scope of Project work are as follows:

Developer will receive \$16,000 administrative/legal fee for preparing and overseeing SHIP grant.
 - d. The provider must use funds awarded under this contract to serve **persons with special needs** as defined in s.420.0004, Florida Statutes. The first priority of these special needs funds must be to use them for persons with developmental disabilities as defined in s. 393.063, Florida Statutes.
 - e. The Provider is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, the City of Cape Coral or similar organizations in order to ensure compliance with local and state regulations governing the State Housing Initiatives Partnership Program.
2. The Grantor agrees to provide drawdowns to the Provider, upon receipt and verification of the Provider's request and documentation for project costs pursuant to and as defined in Subsection 1. a.
 3. The Provider is hereby placed on notice that when public funds are expended by an agency, then all the financial, business, and membership records pertaining to the public agency from which or on whose behalf the payments are made, of the person, corporation, foundation, trust, association, group, or organization to whom such payments are made shall be public records and subject to the provisions of Florida Statutes, Chapter 119 Public Records.

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Before any person is granted access to the records related to these funds (except governmental agencies or their agents who are entitled to access to the records specified in this paragraph for the purposes of auditing federal, state, or local housing programs or housing assistance programs), please seek the advice of your legal counsel or contact the City of Cape Coral Planning Division who shall seek counsel from the office of the City Attorney. Home addresses, telephone numbers, social security numbers, photographs, and places of employment of the certain personnel, spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from public record. Medical history records, bank account numbers, credit card numbers, telephone numbers, and information related to health or property insurance furnished by an individual to any agency pursuant to federal, state, or local housing assistance programs are confidential and exempt. Any other information produced or received by any private or public entity in direct connection with federal, state, or local housing assistance programs, unless the subject of another federal or state exemption, is subject to public records requests.

A person who has custody of a public record and who asserts that an exemption or special law applies to a particular public record or part of such record shall delete or excise from the record only that portion of the record with respect to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and examination.

The Provider shall comply with Florida's Public Records Law. Specifically, the Provider shall:

- Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;
- Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in chapter 119, FS, or as otherwise provided by law;
- Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law;
- Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Provider upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the agency;
- Notify the City if a request for public record was submitted and will provide the specifics of the request.

4. The Provider agrees to perform all necessary requirements to assist the Grantor in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the City of Cape Coral Local Housing Assistance Plan. The Provider is responsible for coordinating inspections of properties funded with SHIP funds if requested by Grantor.
5. The Grantor shall be provided access to all contracts of the Provider for the procurement of goods and/or services relating to the project work described in Subsection 1. a. and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the Grantor of any financial liability in connection with said contracts.
6. The Provider shall be responsible for ensuring that all builders/contractors utilized are licensed appropriately and capable of performing all necessary work. The Provider will further be responsible to ensure that all applicable permits, inspections, and fees are obtained and paid (as required for the respective scope of work).
7. The Grantor shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a to ensure compliance with the objectives, requirements, and limitations of the City's SHIP Program. Documentation must be maintained on file for each beneficiary or unit produced by the provider for a period of fifteen (15) years following effective date of contract.

8. The Provider shall provide to the Grantor proof of the following prior to receiving final payment:
 - a. Applicant Intake Forms
 - b. Income Verification and Certification Forms
 - c. Verification of Disability
 - d. Release of Information/Acknowledgment of SHIP terms signed by beneficiary
 - e. Proof of affordability of units. Monthly rents cannot exceed 30 percent of an amount representing the percentage of the median anticipated annual income adjusted for family size for the household. In addition, all rental units must be rented at affordable rates (i.e.: rents will not exceed those limits adjusted for the number of bedrooms published by the Florida Housing Finance Corporation)
 - f. Certificate of Occupancy
9. All projects must be in compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907, Florida Administrative Code 67-37, and the Cape Coral Local Housing Assistance Plan as amended, and in particular:
 - a. Income limits
 - b. Definition of Affordability
 - c. Definition of Persons with Special Needs
 - d. Definition of Persons with Developmental Disability
 - e. Non-discrimination
 - f. Maximum SHIP funds per unit
 - g. Compliance reporting as required per project
10. The Provider shall provide to the Grantor proof or make available the following, as applicable, for each beneficiary.
 - a. SHIP Program Recipient Profile form
 - b. Certificate of Hazard Insurance naming City of Cape Coral as co-insured
 - c. Budget and Actual expended Summary per unit form
 - d. Proof of Affordability of Units
 - e. Verification of Disability

CONSTRUCTION DOCUMENTS:

- a. Cost Estimate and Work Write-up (in a Form Acceptable to the City)
- b. Contractor(s) Bid or Proposal
- c. Executed Contract
- d. Work Inspection Reports
- e. Construction Payment Requests
- f. Certificate of Occupancy or Completion
- g. Final Payment Release
- h. Change Orders (if applicable)

CLOSING DOCUMENTS:

- a. Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
- b. Release of Liens

ATTACHMENT 3 PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyclk@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral.
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

CSFA #: 52.901 – State Housing Initiatives Partnership Program
Contract Type: SHIP FY 2017-2018
JDE: 28401032.634115.227118
Strategy: Rehabilitation/Resale
Agency: Habitat for Humanity

**SUBRECIPIENT AGREEMENT
BETWEEN
THE CITY OF CAPE CORAL
and
HABITAT FOR HUMANITY OF LEE AND HENDRY COUNTIES, INC.**

THIS CONTRACT entered this ____ day of _____ 2018, between THE CITY OF CAPE CORAL hereinafter referred to as **CITY** and HABITAT FOR HUMANITY OF LEE AND HENDRY COUNTIES, INC. a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "**SUBRECIPIENT**".

WHEREAS, **CITY** believes it to be in the public interest to provide certain activities to the residents of Cape Coral through the **SUBRECIPIENT** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **CITY** and the **SUBRECIPIENT** agree as follows:

ARTICLE I SCOPE OF SERVICES

The **CITY** has awarded the following amounts for each program listed in Attachment 2 Statement of Work. The **SUBRECIPIENT** will be responsible for implementing these program(s) for the residents of Cape Coral. Program(s) must be implemented in accordance with the approved proposal(s) and exhibits/attachments.

ARTICLE II TERM OF CONTRACT

This contract shall be effective **upon execution** and ends **June 30th, 2020** unless terminated as specified in Article VIII, Suspension/Termination.

ARTICLE III COMPENSATION AND REPORTS

A. Contract Payment

Payments will be made by the **CITY** to the **SUBRECIPIENT** and the **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$50,000 during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination. Funding is contingent upon the **CITY** receiving the related State funds.

B. Deferred Payment/Return of Funds

The **SUBRECIPIENT** agrees to return to the **CITY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered city funds and must be refunded to the **CITY** within thirty (30) calendar days of receiving notice from the **CITY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **CITY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **CITY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **CITY** to defer payment to the **SUBRECIPIENT** for noncompliance with contract deliverables or during the period of a city audit or monitoring due to questionable items. If because of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to the City of Cape Coral or a repayment agreement is accepted by the City.

C. Required Reports

1. Financial and Compliance Audit Requirements in Attachment 1
2. A General Progress Report at least quarterly.

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **SUBRECIPIENT** agrees to permit employees duly authorized by the **CITY** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **SUBRECIPIENT** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the **CITY** may deliver to the **SUBRECIPIENT** a written report regarding the way goods or services are being provided. The **SUBRECIPIENT** will rectify all noted deficiencies within the specified period indicated in the monitoring report or provide the **CITY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **CITY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

SUBRECIPIENT must supply **CITY** with copies of all monitoring reports of programs which are also funded by the **CITY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **SUBRECIPIENT** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **CITY** deems necessary.

The City of Cape Coral Internal Auditor, the Federal or State grantor agency (if applicable), Cape Coral employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **SUBRECIPIENT** or **CPA** that are pertinent to the contract to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **CITY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

C. Records

The **SUBRECIPIENT** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit of the **SUBRECIPIENT'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing

internal controls if required, and management's response to such letter if required, must be submitted to the **CITY** no later than **180** days following the end of the **SUBRECIPIENT'S** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Cape Coral either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

The **SUBRECIPIENT** agrees to comply with all **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS** as specified in Attachment 1.

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **CITY**.

ARTICLE V **MODIFICATIONS**

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties. Budget and programmatic changes shall not require further City Council action but must be agreed upon by the two parties and revisions included as modifications to this contract.

ARTICLE VI **CONTRACTOR STATUS**

A. **Independent Contractor**

It is mutually agreed that the **SUBRECIPIENT** is an independent contractor and not an agent or employee of the **CITY**.

B. **Subcontracts**

Primary roles and responsibilities of **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any **CITY** funded program component that is subcontracted by **SUBRECIPIENT** must have a written contract upon execution of this contract. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. **Indemnification**

The **SUBRECIPIENT** will defend, hold harmless, and indemnify the **CITY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **CITY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **SUBRECIPIENT**, or by reason of the intentional or negligent act of the **SUBRECIPIENT** or its agents, representatives and/or employees.

The **SUBRECIPIENT** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **CITY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **CITY** in any such action or proceedings.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **SUBRECIPIENT** and not of the **CITY**.

B. **Insurance**

The **SUBRECIPIENT** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **SUBRECIPIENT** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **SUBRECIPIENT** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any **CITY** accident or occurrence that may arise or be claimed to have arisen against the **SUBRECIPIENT**. The **SUBRECIPIENT** must furnish an appropriate Certificate of Insurance (**Exhibit**) naming the City of Cape Coral as Certificate Holder and Additional insured. The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENTS** liability and that the **CITY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities, but are merely minimums.

C. Bonding

The **SUBRECIPIENT** must provide fidelity bonding for all employees that handle **SUBRECIPIENT'S** funds. The amount of the bond must be equivalent to the highest daily cash balance of the **SUBRECIPIENT**.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **CITY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **CITY** and the **CITY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

B. Termination by CITY

The **CITY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by certified mail following a determination by the Cape Coral City Council, at its sole discretion, that such cancellation is in the best interest of the people of the **CITY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

C. Termination by SUBRECIPIENT

The **SUBRECIPIENT** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **CITY** by certified mail of such and specifying the effective date.

CITY's obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided. The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **SUBRECIPIENT** assures and certifies the following:

- A.** That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, Lee County, and the municipality as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **CITY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.

- B.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D.** That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.
- E.** That it will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- F.** That it shall report any unusual incidents involving funded activities to the **CITY**, in writing, within five (5) calendar days of the occurrence or the **CITY** may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the **SUBRECIPIENT** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **SUBRECIPIENT** services that are underwritten in any way by the **CITY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **SUBRECIPIENT** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96-ABUSE).
- G.** That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- H.** That it will notify the **CITY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for city funds.
- I.** That it will acknowledge support for programs funded by the City of Cape Coral.
- J.** That it will notify the **CITY** of any SIGNIFICANT changes to the **SUBRECIPIENT** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

ARTICLE X NOTICES

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

CITY:
Community Development Director
City of Cape Coral Department of Community Development
PO Box 150027
Cape Coral, Florida 33915-0027

SUBRECIPIENT:
President/Chief Executive Officer
Habitat for Humanity of Lee and Hendry Counties, Inc.
1288 North Tamiami Trail
North Fort Myers, Florida 33903

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **SUBRECIPIENT** to the **CITY**. The notification shall be attached to originals of this contract.

ARTICLE XI SPECIAL PROVISIONS

None.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and Attachment I: Financial and Compliance Audit Requirements, Attachment II: Statement of Work, and Attachment III: Public Records, and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **SUBRECIPIENT** and **CITY** have caused this contract, to be executed by their undersigned officials as duly authorized.

SUBRECIPIENT:

By: Katherine Green
Name (typed)

Signature of authorized officer

President/Chief Executive Officer
Title

Date _____

CITY: CITY OF CAPE CORAL

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager
Title

Date

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1

FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Cape Coral. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law 98-502), the Single Audit Act Amendments of 1996 (Public Law 104-156), and 29 CFR, part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report is transmitted directly to AWI by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600. Rules of the Auditor General.

Audit Requirements for States, Local Governments and Nonprofit Organizations:

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (P.L. 98-502), the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations".

Single Audit – Single Audit means an audit that includes both the entity's financial statements and the Federal awards requirements as described in OMB Circular A-133. A State single audit means an audit of a non-state entity's financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

Program-Specific Audit – A Program-Specific Audit means an audit of one Federal program as provided for in OMB Circular A-133. Additionally, a state program-specific audit means an audit of one state project in accordance with the requirements of FS 216.3491.

No Audit Exemption:

Even when cumulative (all programs considered) Federal and/or State award expenditures are less than \$500,000 in a fiscal year, an audit is required.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources).

ATTACHMENT 2

STATEMENT OF WORK

In accordance with SHIP Technical Bulletin 2016-01(number 1), this agency is being classified as a SUBRECIPIENT. The agency serves an administrative function and is awarded funds.

1. PROJECT DESCRIPTION

The Project, as approved for grant assistance, shall consist of the following authorized scope of Project work:

Activity 1. Rehabilitation/Resale (PROGRAM) – Rehabilitation of existing single-family homes for sale to very-low ($\leq 50\%$ AMI) or low income ($\leq 80\%$ AMI) homebuyers. The maximum award per unit for this activity may not exceed the maximum assistance level approved in the City of Cape Coral Local Housing Assistance Plan for corresponding years.

2. SCOPE OF WORK

Activity 1.

The SUBRECIPIENT is responsible for the following activities:

- Work write-up and cost estimate
- Management of bidding
- Management of contractor eligibility
- Contractor performance
- Management payment to contractors
- Compliance with SHIP regulations (including but not limited to environmental, home inspection, home warranty, etc.)
- Maintenance and securing of properties
- Financial tracking of all work performed and accounting for expenditures per home
- Financial tracking of non-construction costs (including but not limited to taxes, insurance, security, maintenance, etc.)
- Reimbursement request for funding to the City of Cape Coral
- Outreach and Marketing
- Maintaining Wait List in accordance with Local Housing Assistance Plan
- Screening and intake of potential clients
- Counseling
- Case file preparation and management
- Income verification of potential clients
- Income certification of clients
- Review of properties for compliance with SHIP regulations
- Coordination with primary lender
- Payment at closing
- Preparation and filing of all agreements including the mortgage note and mortgage
- Reimbursement request for funding to the City of Cape Coral
- Management of case file for required retention period
- Accounting for all payoff funds for return to the City of Cape Coral (if applicable).

3. **BUDGET**

The amount of program funds awarded under this grant is \$50,000. The Grantor is not obligated or authorized to award any funds in addition to this amount.

	Allocation Year	JDE Account	Allocation	Expenditure Deadline
Activity 1. Rehabilitation Resale	2017-2018	28401032.634115.227118	\$50,000	6/30/2020
TOTAL			\$50,000	

4. **STAFFING**

The agency shall maintain staffing levels to ensure activity delivery.

5. **LEVELS OF ACCOMPLISHMENT**

A total of one (1) household shall be assisted during the contract period.

6. **REPORTING**

The SUBRECIPIENT shall on a quarterly basis provide the City of Cape Coral a report indicating applications received during the quarter, applicants awarded funds during the quarter, closed files during the quarter.

7. **RECORD REQUIREMENTS/DOCUMENTATION**

The SUBRECIPIENT shall maintain the following and provide to the Grantor proof or make available the following, as applicable, for each beneficiary.

SHIP Program Recipient Profile

APPLICATION DOCUMENTS:

- a. Authorization for Release of Information Form
- b. Income Verification Form(s)
- c. Income Certification Form
- d. Proof that Household Includes One or More Members with Special Needs/Developmental Disabilities (when applicable)
- e. Application for Program Assistance
- f. Letter of Commitment

CONSTRUCTION DOCUMENTS:

- a. Work Write -up, Scope and Cost Estimate
- b. Contractor(s) Bid or Proposal
- c. Notice to Proceed
- d. Notice of Commencement
- e. List of Subcontractors and Material Supplier
- f. Change Orders (if applicable)
- g. Notification of Work Completed
- h. Work Inspection Reports
- i. Certificate of Completion (if applicable)
- j. One Year Warranty on All Workmanship for the Homeowner
- k. Affidavit of Lien Waivers from the Subcontractors (Release of Liens)
- l. Itemized List and Invoices for in-kind Goods and Services
- m. Itemized List and Invoices for SHIP subsidy
- n. Final Payment Certification Form
- o. Final Payment Received Form

- p. Copy of the Permits issued by the City of Cape Coral or another Permitting Agency as applicable

CLOSING DOCUMENTS:

- a. Application for mortgage documents
- b. Preliminary Good Faith Estimate of Cash to Close
- c. Mortgage Commitment Letter
- d. Fully Executed Real Estate Purchase Contract
- e. Appraisal Report
- f. First Time Homebuyer Workshop Certificate
- g. Home Inspection Report
- h. Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
- i. All Recorded Mortgage and Note Document(s)
- j. Proof of Homeownership Insurance listing the City of Cape Coral as additional insured/loss payee

8. OTHER PROGRAM REQUIREMENTS

- a. Reimbursement requests to the City of Cape Coral shall be submitted in a timely manner and include all required source documentation as defined by the City of Cape Coral.
- b. The SUBRECIPIENT will be required to immediately return program income funds to the City of Cape Coral.
- c. The value of home ownership units must not exceed the maximum amount specified in the applicable Local Housing Assistance Plan (LHAP), and must meet affordability requirements in order to qualify as eligible.
- d. The SUBRECIPIENT is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, the City of Cape Coral or similar organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.
- e. The Grantor agrees to provide drawdowns to the SUBRECIPIENT, upon receipt and verification of the SUBRECIPIENT's request and documentation for project costs pursuant to and as defined in Subsection 1. a.
- f. The SUBRECIPIENT agrees to perform all necessary requirements to assist the Grantor in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the City of Cape Coral Local Housing Assistance Plan. The SUBRECIPIENT is responsible for coordinating inspections of properties funded with SHIP funds if requested by Grantor.
- g. The Grantor shall be provided access to all contracts of the SUBRECIPIENT for the procurement of goods and/or services relating to the project work described in Subsection 1. a. and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the Grantor of any financial liability in connection with said contracts.
- h. The SUBRECIPIENT shall ensure that clear/marketable title is obtained for all properties to be purchased, conveyed, or made a part of in any way, a subsidy request package submitted to the Grantor for assistance.
- i. The Grantor shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a to ensure compliance with the objectives, requirements, and limitations of the City's SHIP Program. The following documentation must be maintained on file for each beneficiary or unit produced by the SUBRECIPIENT for a period of seven (7) years following the effective date of contract. The following documentation at a minimum must be available for inspections at all reasonable times by the Grantor or their assigns:
 - o Applicant Intake Forms

- Income Verification and Certification Forms
 - Release of Information/Acknowledgment of SHIP terms signed by beneficiary
 - Good Faith Estimate
 - Final Appraisal of Property
 - Loan Application or copy of lender Application
 - Verification of Deposit of beneficiary
 - Verification of Employment for beneficiary
 - Certificate of Completion/Occupancy
- j. The SUBRECIPIENTS shall ensure compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907, Florida Administrative Code 67-37, and the Cape Coral Local Housing Assistance Plan as amended, and in particular:
- Income limits
 - Definition of Affordability
 - Definition of Persons with Special Needs
 - Definition of Persons with Developmental Disability
 - Non-discrimination
 - Maximum production or purchase cost
 - Maximum SHIP funds per unit
 - Compliance reporting as required per project

ATTACHMENT 3 PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyclk@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral.
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

CSFA #: 52.901 – State Housing Initiatives Partnership Program
Contract Type: SHIP FY 2017-2018
JDE: 28401032.634115.227145
Strategy: New Construction
Agency: Habitat for Humanity

**SUBRECIPIENT AGREEMENT
BETWEEN
THE CITY OF CAPE CORAL
and
HABITAT FOR HUMANITY OF LEE AND HENDRY COUNTIES, INC.**

THIS CONTRACT entered this ____ day of _____ 2018, between THE CITY OF CAPE CORAL hereinafter referred to as **CITY** and HABITAT FOR HUMANITY OF LEE AND HENDRY COUNTIES, INC. a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "**SUBRECIPIENT**".

WHEREAS, **CITY** believes it to be in the public interest to provide certain activities to the residents of Cape Coral through the **SUBRECIPIENT** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **CITY** and the **SUBRECIPIENT** agree as follows:

ARTICLE I SCOPE OF SERVICES

The **CITY** has awarded the following amounts for each program listed in Attachment 2 Statement of Work. The **SUBRECIPIENT** will be responsible for implementing these program(s) for the residents of Cape Coral: Program(s) must be implemented in accordance with the approved proposal(s) and exhibits/attachments.

ARTICLE II TERM OF CONTRACT

This contract shall be effective **upon execution** and ends **June 30th, 2020** or otherwise stated herein unless terminated as specified in Article VIII, Suspension/Termination.

ARTICLE III COMPENSATION AND REPORTS

A. Contract Payment

Payments will be made by the **CITY** to the **SUBRECIPIENT** and the **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed **the amount of the contract** during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination. Funding is contingent upon the **CITY** receiving the related State funds.

B. Deferred Payment/Return of Funds

The **SUBRECIPIENT** agrees to return to the **CITY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered city funds and must be refunded to the **CITY** within thirty (30) calendar days of receiving notice from the **CITY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **CITY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **CITY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **CITY** to defer payment to the **SUBRECIPIENT** for noncompliance with contract deliverables or during the period of a city audit or monitoring due to questionable items. If as a result of the audit or monitoring, unallowable or unsupported costs are found, no further payments will be made until the full amount of overpayment is remitted to the City of Cape Coral or a repayment agreement is accepted by the City.

C. Required Reports

1. Financial and Compliance Audit Requirements in Attachment 1
2. A General Progress Report at least quarterly

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **SUBRECIPIENT** agrees to permit employees duly authorized by the **CITY** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **SUBRECIPIENT** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the **CITY** may deliver to the **SUBRECIPIENT** a written report regarding the manner in which goods or services are being provided. The **SUBRECIPIENT** will rectify all noted deficiencies within the specified period of time indicated in the monitoring report or provide the **CITY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **CITY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

SUBRECIPIENT must supply **CITY** with copies of all monitoring reports of programs which are also funded by the **CITY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **SUBRECIPIENT** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **CITY** deems necessary.

The City of Cape Coral Internal Auditor, the Federal or State grantor agency (if applicable), Cape Coral employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **SUBRECIPIENT** or **CPA** that are pertinent to the contract in order to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **CITY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

C. Records

The **SUBRECIPIENT** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit of the **SUBRECIPIENT'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing internal controls if required, and management's response to such letter if required, must be submitted to the **CITY** no later than 180 days following the end of the **SUBRECIPIENT'S** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Cape Coral either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

The **SUBRECIPIENT** agrees to comply with all **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS** as specified in Attachment 1.

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **CITY**.

ARTICLE V **MODIFICATIONS**

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties. Budget and programmatic changes shall not require further City Council action but must be agreed upon by the two parties and revisions included as modifications to this contract.

ARTICLE VI **CONTRACTOR STATUS**

A. Independent Contractor

It is mutually agreed that the **SUBRECIPIENT** is an independent contractor and not an agent or employee of the **CITY**.

B. Subcontracts

Primary roles and responsibilities of **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any **CITY** funded program component that is subcontracted by **SUBRECIPIENT** must have a written contract upon execution of this contract. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. Indemnification

The **SUBRECIPIENT** will defend, hold harmless, and indemnify the **CITY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **CITY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **SUBRECIPIENT**, or by reason of the intentional or negligent act of the **SUBRECIPIENT** or its agents, representatives and/or employees.

The **SUBRECIPIENT** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **CITY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **CITY** in any such action or proceedings.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **SUBRECIPIENT** and not of the **CITY**.

B. Insurance

The **SUBRECIPIENT** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **SUBRECIPIENT** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **SUBRECIPIENT** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any **CITY** accident or occurrence that may arise or be

claimed to have arisen against the **SUBRECIPIENT**. The **SUBRECIPIENT** must furnish an appropriate Certificate of Insurance (**Exhibit**) naming the City of Cape Coral as Certificate Holder and Additional insured. The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENTS** liability and that the **CITY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities, but are merely minimums.

C. Bonding

The SUBRECIPIENT must provide fidelity bonding for all employees that handle SUBRECIPIENT'S funds. The amount of the bond must be equivalent to the highest daily cash balance of the SUBRECIPIENT.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **CITY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **CITY** and the **CITY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

B. Termination by CITY

The **CITY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by certified mail following a determination by the Cape Coral City Council, at its sole discretion, that such cancellation is in the best interest of the people of the **CITY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

C. Termination by SUBRECIPIENT

The **SUBRECIPIENT** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **CITY** by certified mail of such and specifying the effective date.

CITY's obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided. The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **SUBRECIPIENT** assures and certifies the following:

- A.** That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, Lee County, and the municipality as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **CITY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.
- B.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D.** That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.

- E.** That it will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- F.** That it shall report any unusual incidents involving funded activities to the **CITY**, in writing, within five (5) calendar days of the occurrence or the **CITY** may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the **SUBRECIPIENT** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **SUBRECIPIENT** services that are underwritten in any way by the **CITY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **SUBRECIPIENT** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96-ABUSE).
- G.** That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- H.** That it will notify the **CITY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for City funds.
- I.** That it will acknowledge support for programs funded by the City of Cape Coral.
- J.** That it will notify the **CITY** of any SIGNIFICANT changes to the **SUBRECIPIENT** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

ARTICLE X NOTICES

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

CITY:
Community Development Director
City of Cape Coral Department of Community Development
PO Box 150027
Cape Coral, Florida 33915-0027

SUBRECIPIENT:
President/Chief Executive Officer
Habitat for Humanity of Lee and Hendry Counties, Inc.
1288 North Tamiami Trail
North Fort Myers, Florida 33903

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **SUBRECIPIENT** to the **CITY**. The notification shall be attached to originals of this contract.

ARTICLE XI SPECIAL PROVISIONS

None.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and Attachment I: Financial and Compliance Audit Requirements, Attachment II: Statement of Work, and Attachment III: Public Records, and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **SUBRECIPIENT** and **CITY** have caused this contract, to be executed by their undersigned officials as duly authorized.

SUBRECIPIENT:

By: Katherine Green
Name (typed)

Signature of authorized officer

President/Chief Executive Officer
Title

Date

CITY: CITY OF CAPE CORAL

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager
Title

Date

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1

FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Cape Coral. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law 98-502), the Single Audit Act Amendments of 1996 (Public Law 104-156), and 29 CFR, part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report is transmitted directly to AWI by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600. Rules of the Auditor General.

Audit Requirements for States, Local Governments and Nonprofit Organizations:

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (P.L. 98-502), the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations".

Single Audit – Single Audit means an audit that includes both the entity's financial statements and the Federal awards requirements as described in OMB Circular A-133. A State single audit means an audit of a non-state entity's financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

Program-Specific Audit – A Program-Specific Audit means an audit of one Federal program as provided for in OMB Circular A-133. Additionally, a state program-specific audit means an audit of one state project in accordance with the requirements of FS 216.3491.

No Audit Exemption:

Even when cumulative (all programs considered) Federal and/or State award expenditures are less than \$500,000 in a fiscal year, an audit is required.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources).

ATTACHMENT 2

STATEMENT OF WORK

In accordance with SHIP Technical Bulletin 2016-01(number 1), this agency is being classified as a SUBRECIPIENT. The agency serves an administrative function and is awarded funds.

1. PROJECT DESCRIPTION

The Project, as approved for grant assistance, shall consist of the following authorized scope of Project work:

Activity #1 – New Construction. New construction of existing single-family homes for sale to very-low ($\leq 50\%$ AMI) or low income ($\leq 80\%$ AMI) homebuyers. The maximum award per unit for this activity may not exceed the maximum assistance level approved in the City of Cape Coral Local Housing Assistance Plan for corresponding years.

2. SCOPE OF WORK

ACTIVITY #1

The SUBRECIPIENT is responsible for the following activities:

- Management of bidding
- Management of contractor eligibility
- Contractor performance
- Management payment to contractors
- Compliance with SHIP regulations (including but not limited to environmental, home inspection, home warranty, etc.)
- Maintenance and securing of properties
- Financial tracking of all work performed and accounting for expenditures per home
- Financial tracking of non-construction costs (including but not limited to taxes, insurance, security, maintenance, etc.)
- Reimbursement request for funding to the City of Cape Coral
- Outreach and Marketing
- Screening and intake of potential clients
- Maintenance of Waiting List
- Credit Rebuilding
- Case file preparation and management
- Income verification of potential clients
- Income certification of clients
- Coordination with primary lender
- Payment at closing with client
- Preparation and filing of all agreements including the mortgage note and mortgage
- Management of case file for all of the years a mortgage is in place on subject properties
- Accounting for all payoff funds for return to the City of Cape Coral

3. BUDGET

The amount of program funds awarded under this grant is \$155,701. The Grantor is not obligated or authorized to award any funds in addition to this amount.

	Allocation Year	JDE Account	Allocation	Expenditure Deadline
Activity 1 New Construction	2017-2018	28401032.634115.227145	\$155,701	6/30/2020
TOTAL			\$155,701	

4. STAFFING

The agency shall maintain adequate staffing for program delivery. Personnel changes shall not constitute a change requiring notice

Changes in staffing levels shall require notification to the City of Cape Coral. Personnel changes shall not constitute a change requiring notice to the City of Cape Coral.

5. LEVELS OF ACCOMPLISHMENT

A minimum of two (2) households shall be assisted during the contract period.

6. REPORTING

The SUBRECIPIENT shall on a quarterly basis provide the City of Cape Coral a report indicating applications received during the quarter, applicants awarded funds during the quarter and closed files during the quarter.

7. RECORD REQUIREMENTS/DOCUMENTATION

A. The Grantor shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a to ensure compliance with the objectives, requirements, and limitations of the City's SHIP Program. The following documentation must be maintained on file for each beneficiary or unit produced by the SUBRECIPIENT for a period of seven (7) years following the effective date of contract. The following documentation at a minimum must be available for inspections at all reasonable times by the Grantor or their assigns:

- Applicant Intake Forms
- Income Verification and Certification Forms
- Release of Information/Acknowledgment of SHIP terms signed by beneficiary
- Good Faith Estimate
- Final Appraisal of Property
- Loan Application or copy of lender Application
- Verification of Deposit of beneficiary
- Verification of Employment for beneficiary
- Certificate of Occupancy

B. The SUBRECIPIENT shall provide to the Grantor proof or make available the following, as applicable, for each beneficiary.

SHIP PROGRAM RECIPIENT PROFILE FORM

APPLICATION DOCUMENTS:

Authorization for Release of Information Form
Income Verification Form(s)
Income Certification Form
Proof of Property Ownership
Application for Program Assistance
Letter of Commitment
Homeownership Training Course Certificate

CONSTRUCTION DOCUMENTS:

Contractor(s) Bid or Proposal
Bid Tabulation
Notice to Proceed
Notice of Commencement
List of Subcontractors and Material Supplier
Change Orders (if applicable)
Work Inspection Reports
Final Inspection Report

Certificate of Occupancy
One Year Warranty on all Workmanship for the Homeowner
Construction Payment Requests
Final Payment Certification Form
Affidavit of Lien Waivers from all Subcontractors (Release of Liens)
Copy of the Permits issued by the City of Cape Coral or another Permitting Agency (if applicable)

CLOSING DOCUMENTS:

Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
HUD 1 Settlement or Loan Closing Statement
All Recorded Mortgage and Note Document(s)
Title Policy for Title Insurance on the Cape Coral SHIP Mortgage
Appraisal

8. OTHER PROGRAM REQUIREMENTS

- A. The SUBRECIPIENT will be required to return program income funds to the City of Cape Coral. Upon receipt by the City, these funds, less 5% retained by the City of Cape Coral administrative activities, will be rebudgeted to the SUBRECIPIENT from which it was received for the strategy it was received provided the SUBRECIPIENT is still under contract with the City for these services.
- B. The purchase price of home ownership units must not exceed the maximum amount specified in the applicable Local Housing Assistance Plan (LHAP), and must meet affordability requirements in order to qualify as eligible.
- C. The SUBRECIPIENT is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, the City of Cape Coral or similar organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.
- D. The Grantor agrees to provide drawdowns to the SUBRECIPIENT, upon receipt and verification of the SUBRECIPIENT's request and documentation for project costs pursuant to and as defined in Subsection 1. a.
- E. The SUBRECIPIENT agrees to perform all necessary requirements to assist the Grantor in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the Cape Coral Local Housing Assistance Plan. The SUBRECIPIENT is responsible for coordinating inspections of properties funded with SHIP funds if requested by the Grantor.
- F. The Grantor shall be provided access to all contracts of the SUBRECIPIENT for the procurement of goods and/or services relating to the project work described in Subsection 1. a. and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the Grantor of any financial liability in connection with said contracts.
- G. The SUBRECIPIENT shall be responsible for ensuring that all builders/contractors utilized are licensed appropriately and capable of performing all necessary work. The SUBRECIPIENT will further be responsible to ensure that all applicable permits, inspections, and fees are obtained and paid (as required for the respective scope of work). The SUBRECIPIENT shall further serve as the agent for the homebuyer in all communications with the selected builder/contractor and ensure a timely completion of construction proceedings, as the buyer's agent.
- H. The SUBRECIPIENT shall ensure that clear/marketable title is obtained for all properties to be purchased, conveyed, or made a part of in any way, a subsidy request package submitted to the Grantor for assistance.
- I. All projects must be in compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907, Florida Administrative Code 67-37, and the Cape Coral Local Housing Assistance Plan as amended, and in particular:
 - o Income limits
 - o Definition of Affordability
 - o Non-discrimination
 - o Maximum production or purchase cost
 - o Maximum SHIP funds per unit
 - o Compliance reporting as required per project.

ATTACHMENT 3 PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyclk@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral.
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

CSFA	#: <u>52.901 – State Housing Initiatives Partnership Program</u>
Contract Type:	<u>SHIP FY 2017-2018</u>
JDE:	<u>28401032.634115.</u>
Strategy:	<u>Disaster Relief</u>
Agency:	<u>Habitat for Humanity</u>

**AGREEMENT BETWEEN CITY OF CAPE
CORAL and HABITAT FOR HUMANITY OF
LEE AND HENDRY COUNTIES, INC. for
the State Housing Initiatives Partnership
Program (SHIP) 17/18 Disaster Relief
Strategy**

THIS AGREEMENT is entered this ____ day of _____, 20__ by and between the City of Cape Coral hereinafter referred to as "Local Government" and Habitat for Humanity of Lee and Hendry Counties, Inc. a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "Subrecipient".

I. RECITALS

WHEREAS, on September 10, 2017, Florida Governor Rick Scott issued a Disaster Assistance Declaration (FEMA-4337-DR): and

WHEREAS, the Local Government wishes to engage the Subrecipient to assist the Local Government in utilizing its SHIP funds to carry out a part of the Local Government's Disaster Strategy. The amount of the award is \$60,144 and is pursuant to the terms and condition in this Subrecipient Agreement (the "Agreement"); and

WHEREAS, the funds made available for use by the Subrecipient under this Agreement constitute a sub award of the Local Government's SHIP award, the use of which must be in accordance with requirements imposed by the SHIP Statute 420.907-9079 and the SHIP rule at 67.37; and

WHEREAS, the Local Government will carry out the program in accordance with the Local Government Housing Assistance Plan Disaster Strategy, Program Policies and Procedures and this agreement;

WHEREAS, the Subrecipient has legal authority to enter this agreement, and by signing this agreement, to assure the Local Government that it will comply with all the requirements of the sub award described herein; and

NOW, THEREFORE, in consideration of the need for recovery from Hurricane Irma and the premises and mutual covenants described herein, the parties mutually agree to the terms described in this Agreement.

II. GENERAL AWARD INFORMATION

The sub award from the Local Government to the Subrecipient, which is described below, is for the purpose of carrying out a portion of a Federal award described in section I of this agreement, and creates a relationship with the Subrecipient. This agreement must be updated to reflect any changes to the award and the following award information:

Local Government:

John Szerlag
City Manager
City of Cape Coral

PO Box 150027
Cape Coral, FL 33915-0027
(239) 574-0450

Subrecipient:

Katherine Green
President/Chief Executive Officer
Habitat for Humanity of Lee and Hendry
Counties, Inc.
1288 North Tamiami Trail
Cape Coral, FL 33903
(239) 652-0434

Activity Description: Repairs of owner-occupied units damaged by hurricane Irma.

Subaward Period of Performance: This contract shall be effective upon execution and ends September 30th, 2019.

Total Amount of the Award awarded to the Subrecipient by the Local Government: \$60,144

Amount of funds obligated by this agreement: \$60,144

A. SCOPE OF SERVICE

The Subrecipient will utilize SHIP funds to repair damage of existing single-family homes for very-low and low income homeowners caused by and related to Hurricane Irma.

B. ELIGIBLE USE OF FUNDS

As a condition of receiving this sub award, the Subrecipient shall administer the SHIP funds which includes performing all of the work described in this section. The Subrecipient shall complete the activities in a manner satisfactory to the Local Government and consistent with the terms of conditions of this agreement and applicable Rules and Statutes.

Prohibited Activities

The Subrecipient may only carry out the activities described in this agreement. The Subrecipient is prohibited from charging to the subaward the costs of ineligible activities.

Program Delivery (Eligible Activities)

Activity #1: repair damage of existing single-family homes for very-low and low income homeowners caused by and related to Hurricane Irma.

General Administration of Subaward

The SUBRECIPIENT shall maintain the following and provide to the Local Government proof or make available the following, as applicable, for each beneficiary.

SHIP Program Recipient Profile

APPLICATION DOCUMENTS:

- a. Authorization for Release of Information Form
- b. Income Verification Form(s)
- c. Income Certification Form
- d. Application for Program Assistance
- e. Letter of Commitment

CONSTRUCTION DOCUMENTS:

- a. Work Write Up, Scope and Cost Estimate
- b. Subcontractor(s) Bid or Proposal for work that is performed by licensed subcontractors
- c. Bid Tabulation
- d. Contract between the SUBRECIPIENT and Homeowner for repair work
- e. Notice to proceed (if applicable)
- f. Notice of Commencement (if applicable)
- g. Contractor i.e. Subrecipient Liability Insurance
- h. Change Orders (if applicable)
- i. Notifications of work completed
- j. Work Inspection Reports
- k. Certificate of Completion (if applicable)
- l. Itemized list and invoices for SHIP subsidy
- m. One Year Warranty on all Workmanship for the Homeowner
- n. Affidavits of Lien waivers from the general contractor and all subcontractors (Release of Liens)
- o. Copy of the permits issued by the City of Cape Coral or another Permitting Agency (as applicable)

CLOSING DOCUMENTS:

- a. Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
- b. All Recorded Mortgage and Note Document(s)
- c. Proof of Homeownership Insurance listing the City of Cape Coral as additional insured/loss payee

A. Compliance with governing Regulations

All activities funded with SHIP funds must comply with the governing regulations and the locally approved Local Housing Assistance Plan.

The SHIP Statute can be found at [SHIP Statute](#)

The SHIP Rule can be found at [SHIP Rule](#)

The Local Housing Assistance Plan [City of Cape Coral LHAP 2016-2019](#)

B. Levels of Accomplishment –Performance Goals and Timelines

The Subrecipient shall complete the activities required under this agreement in accordance with the following timeframes and performance goals associated with each of the activities:

Activity	Goal	Deadline
Activity #1	3 Units	09/30/2018

Maximum award per unit is \$20,000.

Minimum of 3 units will be repaired by 09/30/2019.

C. Staffing

The Subrecipient shall supervise and direct the completion of all activities under this agreement. Any changes in the Key Personnel assigned or their responsibilities under the activities are subject to the prior approval of the Local Government.

Personnel changes shall not constitute a change requiring notice to the City of Cape Coral.

III. PERFORMANCE MONITORING & REPORTING

A. Monitoring

The Local Government shall monitor the performance of the Subrecipient to ensure Subrecipient compliance with all of the requirements of this agreement, including the timeframes and performance goals associated with the activities. Substandard performance as determined by the Local Government will constitute noncompliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within 30 days after being notified by the Local Government, the Local Government may impose additional conditions on the Subrecipient and its use of SHIP funds, suspend or terminate this agreement, or initiate other remedies for noncompliance as appropriate and permitted by law.

B. Reporting

The Subrecipient shall submit regular quarterly progress and financial reports to the Local

Government indicating applications received during the quarter, applicants awarded funds during the quarter, closed files during the quarter.

IV. PERIOD OF PERFORMANCE AND TERM

The period of performance for Subrecipient, meaning the time during which the Subrecipient may incur new encumbrances to carry out activities under this agreement, shall start on the date of the execution of this contract and end on the 30th day of September, 2019._

This agreement and its terms and conditions shall remain in effect during any period that the Subrecipient has control over the SHIP funds awarded under this agreement

V. BUDGET

The Subrecipient shall complete all activities in this agreement in accordance with the following budget. Any amendments to the budget must be approved in writing by both the Local Government and the Subrecipient.

A. Budget Table

	Allocation Year	JDE Account	Allocation	Activity delivery fee and administrative cost
Activity 1	2017-2018	28401032.634115.	\$60,144	None. The total amount allocated to Subrecipient by this contract (\$60,144) will be used for direct assistance to clients.

B. Program Income

Program income is defined at 420.9071 Definitions (24) "Program income" means the proceeds derived from interest earned on or investment of the local housing distribution and other funds deposited into the local housing assistance trust fund, proceeds from loan repayments, recycled funds, and all other income derived from use of funds deposited in the local housing assistance trust fund. It does not include recaptured funds as defined in subsection (25).

If the activity undertaken by the Subrecipient generates program income as defined above, the program income must be returned to the local government within 30 days of receipt.

VI. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Local Government under this agreement shall not exceed \$60,144. Funding is contingent upon the Local Government receiving the related State funds.

The Subrecipient shall submit to the Local Government requests for payments of activities under this agreement and consistent with the approved budget (the "Request for Payment"). Each Request for Payment shall be broken down into requested draws against the budget line items specified in Section VI.

The Local Government shall pay to the Subrecipient funds available under this agreement based upon information submitted by the Subrecipient for allowable costs permitted under this agreement and consistent with the approved budget. With the exception of advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements.

Payment will be made upon submission by the Subrecipient of a properly executed Request for Payment, together with all supporting invoices, bills, time sheets, and other documents necessary to justify the payment.

VII. AMENDMENT AND TERMINATION

A. Amendments

The Local Government or Subrecipient may amend this agreement at any time provided that such amendments make specific reference to this agreement, are approved by the Local Government's governing body, and are signed in writing by a duly authorized representative of the Local Government and the Subrecipient. Such amendments shall not invalidate this agreement, nor relieve or release the Local Government or Subrecipient from its obligations under this agreement. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the Program, including purpose or beneficiaries; ii) extending the time of the agreement. iii) revision that would result in the need for additional funding.

The Local Government may, in its discretion, amend this agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this agreement, such modifications will be incorporated only by written amendment signed by both Local Government and Subrecipient.

B. Suspension or Termination

The Local Government may terminate this agreement, in whole or in part, upon 3 days' notice, whenever it determines that the Subrecipient has failed to comply with any term, condition, requirement, or provision of this agreement. Failure to comply with any terms of this agreement, include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this agreement;

3. Ineffective or improper use of funds provided under this agreement; or
4. Submission by the Subrecipient to the Local Government reports that are incorrect or incomplete in any material respect.

The Local Government shall promptly notify the Subrecipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect. Upon termination, the Local Government retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient shall return to the Local Government any improper expenditures no later than thirty (30) days after the date of termination. The Local Government may, at its sole discretion, allow Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled provided that said costs meet the provisions of this agreement.

VIII. OTHER REQUIREMENTS TO COMPLY WITH STATE STATUTES, RULES AND THE TERMS AND CONDITIONS OF THE AWARD

The SHIP funds available to the Subrecipient through this agreement constitute a subaward of the Local Government's distribution under the SHIP program. This agreement includes terms and conditions of the Local Government's SHIP award that are imposed on the Subrecipient, and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this agreement.

A. Duplication of Benefits

The Subrecipient shall not carry out any of the activities under this agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5155) and described in Appropriations Act.

B. Drug-Free Workplace

Drug-free workplace. Subrecipients must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the governmentwide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

C. Insurance & Bonding

The Subrecipient shall comply with the following insurance and bonding requirements:

Insurance

The SUBRECIPIENT agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the SUBRECIPIENT against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the SUBRECIPIENT in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any Local Government accident or occurrence that may arise or be claimed to have arisen against the SUBRECIPIENT. The SUBRECIPIENT must furnish an appropriate Certificate of Insurance naming the City of Cape Coral as Certificate Holder and Additional insured. The SUBRECIPIENT agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The SUBRECIPIENT agrees that this insurance requirement shall not relieve or limit SUBRECIPIENTS liability and that the Local Government does not in any way represent that the insurance required is sufficient or adequate to protect the SUBRECIPIENT'S interests or liabilities, but are merely minimums.

Bonding

The SUBRECIPIENT must provide fidelity bonding for all employees that handle SUBRECIPIENT'S funds. The amount of the bond must be equivalent to the highest daily cash balance of the SUBRECIPIENT.

D. Audit Requirements

In the event that the Subrecipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Subrecipient, the Subrecipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the Subrecipient shall consider all sources of state financial assistance, including state financial assistance received from the Local Government other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

In connection with the audit requirements addressed in this section, the Subrecipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

The Eligible Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of

all issues, or the expiration of the ten-year period, whichever occurs later.

E. Disclosure

The Eligible Subrecipient shall maintain records in accordance with Florida's Public Information Law (F.S. 119).

F. Financial & Program Management

The Subrecipient shall maintain all financial records with adequate internal controls to permit the accurate, complete and timely disclosure of financial results. Internal controls are the combination of policies, procedures, job responsibilities, personnel and records that together create accountability in an organization's financial system and safeguard its cash, property and other assets.

Through its system of internal controls, an organization can ensure that:

- Resources are used for authorized purposes and in a manner consistent with applicable laws, regulations and policies;
- Resources are protected against waste, mismanagement or loss; and
- Information on the source, amount and use of funds are reliable, secured and up-to-date and that this information is disclosed in the appropriate reports and records.

G. Documentation and Record Keeping

1. Records to be Maintained

The Eligible Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the ten-year period, whichever occurs later.

2. Access to Records

The Local Government, Florida Housing Finance Corporation and its monitors shall have access to all records related to this award of funds.

3. Record Retention and Transmission of Records to the Local Government

Prior to close out of this agreement, the Subrecipient must transmit to the Local Government records sufficient for the Local Government to demonstrate that all costs under this agreement met the requirements of the award.

4. Client Data and Other Sensitive Information

The Subrecipient is required to maintain data demonstrating client eligibility for activities provided under this agreement. Such data may include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of activities provided.

H. Close-out

The Eligible Sub Recipient's obligation to the Local Government shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to, making final payments and determining the custodianship of records.

I. Nondiscrimination

In accordance with the provisions of ss. 760.20-760.37, it is unlawful to discriminate on the basis of race, creed, religion, color, age, sex, marital status, familial status, national origin, or handicap in the award application process for eligible housing.

J. Conflict of Interest

The Subrecipient shall comply with all applicable federal, State and local Conflict of interest laws.

K. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The eligible Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The City/County shall be exempt from payment of all Unemployment Compensation, FICA, retirement benefits, life and/or medical insurance and Workers' Compensation Insurance, as the eligible Subrecipient is an independent Contractor.

IX. OTHER REQUIREMENTS

The SUBRECIPIENT will defend, hold harmless, and indemnify the Local Government from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the Local Government may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the SUBRECIPIENT, or by reason of the intentional or negligent act of the SUBRECIPIENT or its agents, representatives and/or employees.

The SUBRECIPIENT further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the Local Government in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the Local Government in any such action or proceedings.

The SUBRECIPIENT further agrees that it is responsible for any and all claims arising from the

hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the SUBRECIPIENT and not of the Local Government.

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

Local Government:
Community Development Director
City of Cape Coral Department of Community Dev

PO Box 150027
Cape Coral, Florida 33915-0027

Subrecipient:
President/CEO
Habitat for Humanity of Lee and Hendry
Counties, Inc.
1288 North Tamiami Trail
North Fort Myers, Florida 33903

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of SUBRECIPIENT to the Local Government. The notification shall be attached to originals of this contract.

See attachment 1 to this contract.

This contract and its attachments, and any exhibits referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

THE UNDERSIGNED, as authorized officials on behalf of the parties, have executed this Contract, which shall be effective as of the date of execution hereof on behalf of the Local Government.

SUBRECIPIENT:

By: Katherine Green
Name (typed)

Signature of authorized officer

President/Chief Executive Officer
Title

Date

LOCAL GOVERNMENT:

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager
Title

Date

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1 PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyclk@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral.
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

CSFA #: 52.901 – State Housing Initiatives Partnership Program
Contract Type: SHIP FY 2018-2019
JDE: 28401033.634115.227145
Strategy: New Construction
Agency: Habitat for Humanity

**SUBRECIPIENT AGREEMENT
BETWEEN
THE CITY OF CAPE CORAL
and
HABITAT FOR HUMANITY OF LEE AND HENDRY COUNTIES, INC.**

THIS CONTRACT entered this ____ day of _____, 2018, between THE CITY OF CAPE CORAL hereinafter referred to as **CITY** and HABITAT FOR HUMANITY OF LEE AND HENDRY COUNTIES, INC. a Florida Not-for-Profit Corporation existing under the laws of the State of Florida and, hereinafter referred to as "**SUBRECIPIENT**".

WHEREAS, **CITY** believes it to be in the public interest to provide certain activities to the residents of Cape Coral through the **SUBRECIPIENT** according to this contract, the agency's intent as stated in the proposal and attachments and/or exhibits and all other terms and conditions as specified.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein **CITY** and the **SUBRECIPIENT** agree as follows:

ARTICLE I SCOPE OF SERVICES

The **CITY** has awarded the following amounts for each program listed in Attachment 2 Statement of Work. The **SUBRECIPIENT** will be responsible for implementing these program(s) for the residents of Cape Coral: Program(s) must be implemented in accordance with the approved proposal(s) and exhibits/attachments.

ARTICLE II TERM OF CONTRACT

This contract shall be effective **upon execution** and ends **June 30th, 2021** or otherwise stated herein unless terminated as specified in Article VIII, Suspension/Termination.

ARTICLE III COMPENSATION AND REPORTS

A. Contract Payment

Payments will be made by the **CITY** to the **SUBRECIPIENT** and the **SUBRECIPIENT** agrees to accept as full compensation the total amount not to exceed \$75,000 during the term of this contract, subject to the provisions of Article III B. Deferred Payment/Return of Funds, and Article VIII, Suspension/Termination. Funding is contingent upon the **CITY** receiving the related State funds.

B. Deferred Payment/Return of Funds

The **SUBRECIPIENT** agrees to return to the **CITY** any overpayments due to funds disallowed pursuant to the terms of this contract. Such funds shall be considered city funds and must be refunded to the **CITY** within thirty (30) calendar days of receiving notice from the **CITY** in writing regarding the overpayment. Should repayment not be made in a timely manner, the **CITY** will charge interest of one (1) percent per month compounded on the outstanding balance after forty (40) calendar days after the date of notification or discovery. The **SUBRECIPIENT** will be required to reimburse the **CITY** for any acts of non-compliance resulting in disallowed costs or fines.

It is at the option of the **CITY** to defer payment to the **SUBRECIPIENT** for noncompliance with contract deliverables or during the period of a city audit or monitoring due to questionable items. If as a result of the audit or monitoring, unallowable or unsupported costs are

found, no further payments will be made until the full amount of overpayment is remitted to the City of Cape Coral or a repayment agreement is accepted by the City.

C. Required Reports

1. Financial and Compliance Audit Requirements in Attachment 1
2. A General Progress Report at least quarterly

ARTICLE IV AUDITS, MONITORING, AND RECORDS

A. Monitoring

The **SUBRECIPIENT** agrees to permit employees duly authorized by the **CITY** and the Federal or State grantor agency (if applicable) or any representatives to inspect all records, papers, documents, facility's goods and services of the **SUBRECIPIENT** and/or interview any clients and employees of the **SUBRECIPIENT** to be assured of satisfactory performance of the terms and conditions of this contract to the extent permitted by the law after giving the **SUBRECIPIENT** reasonable notice. The monitoring is a limited scope review of the contract and agency management and does not relieve the **SUBRECIPIENT** of its obligation to manage the grant in accordance with applicable rules and sound management practices.

Following such monitoring the **CITY** may deliver to the **SUBRECIPIENT** a written report regarding the manner in which goods or services are being provided. The **SUBRECIPIENT** will rectify all noted deficiencies within the specified period of time indicated in the monitoring report or provide the **CITY** with a reasonable and acceptable justification for not correcting the noted shortcomings. The **SUBRECIPIENT'S** failure to correct or justify the deficiencies within the time specified by the **CITY** may result in the withholding of payments, being deemed in noncompliance, or termination of this contract.

SUBRECIPIENT must supply **CITY** with copies of all monitoring reports of programs which are also funded by the **CITY**, including agency response, within thirty (30) days of receipt.

B. Audit and Inspections

The **SUBRECIPIENT** will make all records referenced in Article IV. C., and all items included on financial statements available for audit or inspection purposes at any time during normal business hours and as often as **CITY** deems necessary.

The City of Cape Coral Internal Auditor, the Federal or State grantor agency (if applicable), Cape Coral employees, or any duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of **SUBRECIPIENT** or **CPA** that are pertinent to the contract in order to make audits, examinations, excerpts, transcripts and copies of such documents. If contract non-compliance or material weaknesses in the organization is noted, the **CITY** or other authorized representatives have the right to unlimited access to records during an audit or inspection. This includes timely and reasonable access to a **SUBRECIPIENT'S** personnel for the purpose of interview and discussion related to such documents.

C. Records

The **SUBRECIPIENT** shall retain all financial, client demographic, and programmatic records, supporting documentation, statistical records and other records which are necessary to document service provision, client demographics, expenditures, income and assets of the **SUBRECIPIENT** by funding source, program, and functional expenses category during the term of this contract and five (5) years from the date of contract expiration. If any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the expiration of the 5-year period, the records shall be retained for one (1) year after the final resolution of the action and final resolution of all issues that arise from such action.

D. Independent Audit

An original, bound annual audit of the **SUBRECIPIENT'S** financial statements in accordance with FASB 117, or current GAGA Standards as applicable including the auditor's opinion, requisite reports on internal control and compliance if required, management letter addressing internal controls if required, and management's response to such letter if required, must be submitted to the **CITY** no later than **180** days following the end of the **SUBRECIPIENT'S** fiscal year along with any corrective action plan if applicable.

The audit must be conducted by an independent licensed certified public accountant who has received an unmodified opinion on their current Peer Review and must be in accordance with Auditing Standards Generally Accepted in the United States, and generally accepted Government Auditing Standards, OMB Circular A-133, "Audits of Institutions of Higher Education and other Non-Profit Organizations" if applicable, the Florida Single Audit Act (F.S. 215.97) if applicable, and the Auditor General rule 10.550 if applicable. The audit must detail the programs or service areas that are funded by Cape Coral either in the statement of functional expenses, revenues and expenditures, footnotes, schedule of federal awards and state financial assistance or as supplemental data in the financial statements. The statement should be consistent with programs detailed in the corresponding proposal(s) and exhibit(s).

The **SUBRECIPIENT** agrees to comply with all **FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS** as specified in Attachment 1.

Failure to submit the report within the required time frame will result in the withholding of payment, or termination of the contract by the **CITY**.

ARTICLE V **MODIFICATIONS**

Modifications of provisions of this contract shall only be valid when they have been reduced to writing and duly signed and dated by both parties. Budget and programmatic changes shall not require further City Council action but must be agreed upon by the two parties and revisions included as modifications to this contract.

ARTICLE VI **CONTRACTOR STATUS**

A. **Independent Contractor**

It is mutually agreed that the **SUBRECIPIENT** is an independent contractor and not an agent or employee of the **CITY**.

B. **Subcontracts**

Primary roles and responsibilities of **SUBRECIPIENT** cannot be subcontracted. It is mutually agreed that any **CITY** funded program component that is subcontracted by **SUBRECIPIENT** must have a written contract upon execution of this contract. The **SUBRECIPIENT** must ensure each subcontractor conforms to the terms and conditions of this contract and must be subject to indemnification as stated in Article VII.

ARTICLE VII **RISK MANAGEMENT**

A. **Indemnification**

The **SUBRECIPIENT** will defend, hold harmless, and indemnify the **CITY** from and against any and all liability, loss, claims, damages, costs, attorneys' fees, and expenses of whatever kind or nature which the **CITY** may sustain, incur, or be required to pay either by reason of the loss or improper use of any monies disbursed or to be disbursed hereunder including but not limited to fraud, embezzlement, or dishonesty on the part of any person represented or employed by the **SUBRECIPIENT**, or by reason of the intentional or negligent act of the **SUBRECIPIENT** or its agents, representatives and/or employees.

The **SUBRECIPIENT** further agrees that it will, at its own expense, defend any and all claims, actions, suits, or proceedings that may be brought against the **CITY** in connection with the above and satisfy, pay, and discharge any and all judgments or other resolution of claims that may be entered against the **CITY** in any such action or proceedings.

The **SUBRECIPIENT** further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the **SUBRECIPIENT** and not of the **CITY**.

B. **Insurance**

The **SUBRECIPIENT** agrees to provide and maintain during the term of this contract Commercial General Liability insurance insuring the **SUBRECIPIENT** against any and all claims, demands, or causes of action whatsoever for injuries received or damage to property incurred in the performance of the terms of this Contract or the use, occupation, management, or control of any facility herein provided for and the improvements thereto. Such a policy of insurance will insure the **SUBRECIPIENT** in an amount not less than \$300,000 to cover any and all bodily injury, personal injury. And/or property damage claim connected with any **CITY** accident or occurrence that may arise or be claimed to have arisen against the **SUBRECIPIENT**. The **SUBRECIPIENT** must furnish an appropriate Certificate of Insurance (**Exhibit**)

naming the City of Cape Coral as Certificate Holder and Additional insured. The **SUBRECIPIENT** agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess. The **SUBRECIPIENT** agrees that this insurance requirement shall not relieve or limit **SUBRECIPIENTS** liability and that the **CITY** does not in any way represent that the insurance required is sufficient or adequate to protect the **SUBRECIPIENT'S** interests or liabilities, but are merely minimums.

C. Bonding

The SUBRECIPIENT must provide fidelity bonding for all employees that handle SUBRECIPIENT'S funds. The amount of the bond must be equivalent to the highest daily cash balance of the SUBRECIPIENT.

ARTICLE VIII SUSPENSION/TERMINATION

A. Suspension

The **CITY** reserves the right to suspend funding for failure to comply with the requirements of this contract.

In the event **SUBRECIPIENT** ceases operation for any reason or files for protection from creditors under bankruptcy law, any remaining unpaid portion of this contract, less funds for expenditures already incurred, shall be retained by the **CITY** and the **CITY** shall have no further funding obligation to the **SUBRECIPIENT** with regard to those unpaid funds.

B. Termination by CITY

The **CITY** may at any time and for any reason cancel this contract by giving twenty-four (24) hours written notice to the **SUBRECIPIENT** by certified mail following a determination by the Cape Coral City Council, at its sole discretion, that such cancellation is in the best interest of the people of the **CITY**. From the date of cancellation, neither party shall have any further obligation unless specified in the termination notice.

C. Termination by SUBRECIPIENT

The **SUBRECIPIENT** may at any time and for any reason cancel this contract by giving seventy-two (72) hours prior written notice to the **CITY** by certified mail of such and specifying the effective date.

CITY's obligation to make any payments under any provision of this contract shall cease on the effective date of termination.

ARTICLE IX ASSURANCE, CERTIFICATIONS, AND COMPLIANCE

The **SUBRECIPIENT** agrees that compliance with these assurances and certifications constitutes a condition of continued receipt of or benefit from funds provided through this contract, and that it is binding upon the **SUBRECIPIENT**, its successors, transferees, and assignees for the period during which services are provided. The **SUBRECIPIENT** further assures that all contractors, subcontractors, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of statutes, regulations, guidelines and standards. By acceptance of this funding, the **SUBRECIPIENT** assures and certifies the following:

- A.** That it will comply with all applicable laws, ordinances and regulations of the United States, the State of Florida, Lee County, and the municipality as said laws, ordinances and regulations exist and are amended from time to time. In entering into this contract, the **CITY** does not waive the requirements of any county or local ordinance or the requirements of obtaining any permits or licenses that are normally required to conduct business or activity contemplated by the **SUBRECIPIENT**.
- B.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in housing on the basis of race, color, national origin, sex, religion, disability or familial status.
- C.** That it will comply with Chapter 760, Florida Statutes which prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, disability or marital status.
- D.** That it will administer its programs under procedures, supervision, safeguards, and such other methods as may be necessary to prevent fraud and abuse, and that it will target its services to those who most need them.

- E. That it will comply with the Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
- F. That it shall report any unusual incidents involving funded activities to the **CITY**, in writing, within five (5) calendar days of the occurrence or the **CITY** may terminate this contract. Unusual incidents include, but are not limited to those events which are reported to local police authorities by the **SUBRECIPIENT** or any person whose report requires any type of response by local law enforcement authorities; those events which result in physical injury to a person receiving **SUBRECIPIENT** services that are underwritten in any way by the **CITY**; or, those incidents or events which result in a report to or investigation arising from a call to the Florida Abuse Hotline. In accordance with Chapter 415, Florida Statute, an employee of the **SUBRECIPIENT** who knows or has reasonable cause to suspect that a child, aged person, or disabled adult has been abused, neglected, or exploited, shall immediately report such knowledge or suspicion to the Florida Abuse Hotline on the statewide toll-free number (1-800-96-ABUSE).
- G. That it will comply with Chapter 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature, State or County agencies.
- H. That it will notify the **CITY** immediately of any funding source changes and/or additions from other sources that are different from that shown in the **SUBRECIPIENT'S** proposal. This notification must include a statement as to how this change in funding affects provision of service as well as the use of and continued need for City funds.
- I. That it will acknowledge support for programs funded by the City of Cape Coral.
- J. That it will notify the **CITY** of any SIGNIFICANT changes to the **SUBRECIPIENT** organization to include articles of incorporation and bylaws within ten (10) working days of the effective date.

ARTICLE X **NOTICES**

Official notices concerning this contract shall be directed to the following authorized representatives, or his/her designee:

CITY:
Community Development Director
City of Cape Coral Department of Community Development
PO Box 150027
Cape Coral, Florida 33915-0027

SUBRECIPIENT:
President/Chief Executive Officer
Habitat for Humanity of Lee and Hendry Counties, Inc.
1288 North Tamiami Trail
North Fort Myers, Florida 33903

In the event that different representatives are designated by either party after execution of this contract, notice of the name and address of the new representative will be rendered in writing by authorized officer of **SUBRECIPIENT** to the **CITY**. The notification shall be attached to originals of this contract.

ARTICLE XI **SPECIAL PROVISIONS**

None.

ARTICLE XII ALL TERMS AND CONDITIONS INCLUDED

This contract and Attachment I: Financial and Compliance Audit Requirements, Attachment II: Statement of Work, and Attachment III: Public Records, and any **exhibits** referenced in said attachments, together with any documents incorporated by reference, contain all the terms and conditions agreed upon by the parties. There are no provisions terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of this contract is legally determined unlawful or unenforceable, the remainder of the contract shall remain in full force and effect and such terms or provisions shall be stricken.

IN WITNESS THEREOF, **SUBRECIPIENT** and **CITY** have caused this contract, to be executed by their undersigned officials as duly authorized.

SUBRECIPIENT:

By: Katherine Green
Name (typed)

Signature of authorized officer

President/Chief Executive Officer

Title

Date

CITY: CITY OF CAPE CORAL

By: John Szerlag
Name (typed)

Signature of authorized officer

City Manager

Title

Date

NOTARY:

By: _____
Notary of Public (Signature)

Name (Typed)

ATTEST: CITY CLERK

By: _____

Title: _____

Date: _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

By: _____

Title: _____

Date: _____

ATTACHMENT 1

FINANCIAL AND COMPLIANCE AUDIT REQUIREMENTS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained Federal and/or State funding from Cape Coral. Each subrecipient is responsible for complying with the Single Audit Act of 1984 (Public Law 98-502), the Single Audit Act Amendments of 1996 (Public Law 104-156), and 29 CFR, part 96, of the Department of Labor Regulations that implements Office of Management and Budget (OMB) Circular A-133. Also, each subrecipient is responsible for complying with the Florida Single Audit Act (FS 216.3491) (as applicable).

NOTE: Subrecipients/Contractors that are State Departments, State Universities and/or State Community Colleges are audited annually by the Office of the State Auditor General, and are not required to have additional independent audits performed as outlined by this Attachment. Additionally, copies of the State Auditor General's audit report is transmitted directly to AWI by that office. No further actions are required by the entities (as Contractors) referenced in this paragraph.

The Contractor agrees to have an annual financial and compliance audit as specified by The Single Audit Act of 1996 and OMB Circular A-133. **An annual audit is required if the Subrecipient/Contractor has Federal expenditures of \$500,000 or more in a fiscal year. This includes all Federal funds received from all funding sources, not just the funds awarded under this contract.** The audits are to be performed by independent auditors in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States, and in compliance with OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

The Contractor agrees to have an annual State financial and compliance audit, if the total expenditures are \$500,000 or more in a fiscal year (i.e. state financial assistance provided to carry out a state project) in accordance with auditing standards as stated in the Rules of the Auditor General. The Contractor must have a single audit or project-specific audit for such fiscal year in accordance with section 216.3491, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600. Rules of the Auditor General.

Audit Requirements for States, Local Governments and Nonprofit Organizations:

Non-federal organizations that expend \$500,000 or more in a fiscal year in Federal awards (**all Federal funding sources must be considered**) must have a single audit or a program-specific audit conducted for that fiscal year in accordance with current Government Auditing Standards issued by the Comptroller General of the United States, and in compliance with The Single Audit Act of 1984 (P.L. 98-502), the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations".

Single Audit – Single Audit means an audit that includes both the entity's financial statements and the Federal awards requirements as described in OMB Circular A-133. A State single audit means an audit of a non-state entity's financial statements and state awards. A Single Audit also includes a report on Internal Controls and a report on Program Compliance.

Program-Specific Audit – A Program-Specific Audit means an audit of one Federal program as provided for in OMB Circular A-133. Additionally, a state program-specific audit means an audit of one state project in accordance with the requirements of FS 216.3491.

No Audit Exemption:

Even when cumulative (all programs considered) Federal and/or State award expenditures are less than \$500,000 in a fiscal year, an audit is required.

The cost of audits conducted in accordance with the Single Audit Act and/or the provisions of Section 216.3491, Florida Statutes, must be paid from non-Federal/non-State funds (i.e., the cost of such an audit must be paid from subrecipient/contractor funds obtained from other than Federal/State sources).

ATTACHMENT 2

STATEMENT OF WORK

In accordance with SHIP Technical Bulletin 2016-01(number 1), this agency is being classified as a SUBRECIPIENT. The agency serves an administrative function and is awarded funds.

1. PROJECT DESCRIPTION

The Project, as approved for grant assistance, shall consist of the following authorized scope of Project work:

Activity #1 – New Construction. New construction of existing single-family homes for sale to very-low ($\leq 50\%$ AMI) or low income ($\leq 80\%$ AMI) homebuyers. The maximum award per unit for this activity may not exceed the maximum assistance level approved in the City of Cape Coral Local Housing Assistance Plan for corresponding years.

2. SCOPE OF WORK

ACTIVITY #1

The SUBRECIPIENT is responsible for the following activities:

- Management of bidding
- Management of contractor eligibility
- Contractor performance
- Management payment to contractors
- Compliance with SHIP regulations (including but not limited to environmental, home inspection, home warranty, etc.)
- Maintenance and securing of properties
- Financial tracking of all work performed and accounting for expenditures per home
- Financial tracking of non-construction costs (including but not limited to taxes, insurance, security, maintenance, etc.)
- Reimbursement request for funding to the City of Cape Coral
- Outreach and Marketing
- Screening and intake of potential clients
- Maintenance of Waiting List
- Credit Rebuilding
- Case file preparation and management
- Income verification of potential clients
- Income certification of clients
- Coordination with primary lender
- Payment at closing with client
- Preparation and filing of all agreements including the mortgage note and mortgage
- Management of case file for all of the years a mortgage is in place on subject properties
- Accounting for all payoff funds for return to the City of Cape Coral

3. BUDGET

The amount of program funds awarded under this grant is \$75,000. The Grantor is not obligated or authorized to award any funds in addition to this amount.

	Allocation Year	JDE Account	Allocation	Expenditure Deadline
Activity 1 New Construction	2018-2019	28401033.634115.227145	\$75,000	6/30/2021
TOTAL			\$75,000	

4. STAFFING

The agency shall maintain adequate staffing for program delivery. Personnel changes shall not constitute a change requiring notice

Changes in staffing levels shall require notification to the City of Cape Coral. Personnel changes shall not constitute a change requiring notice to the City of Cape Coral.

5. LEVELS OF ACCOMPLISHMENT

A minimum of one (1) household shall be assisted during the contract period.

6. REPORTING

The SUBRECIPIENT shall on a quarterly basis provide the City of Cape Coral a report indicating applications received during the quarter, applicants awarded funds during the quarter and closed files during the quarter.

7. RECORD REQUIREMENTS/DOCUMENTATION

A. The Grantor shall be provided access to all detailed plans, specifications and home buyer incomes relating to the project and records relating thereto describe in subsection 1-a to ensure compliance with the objectives, requirements, and limitations of the City's SHIP Program. The following documentation must be maintained on file for each beneficiary or unit produced by the SUBRECIPIENT for a period of seven (7) years following the effective date of contract. The following documentation at a minimum must be available for inspections at all reasonable times by the Grantor or their assigns:

- Applicant Intake Forms
- Income Verification and Certification Forms
- Release of Information/Acknowledgment of SHIP terms signed by beneficiary
- Good Faith Estimate
- Final Appraisal of Property
- Loan Application or copy of lender Application
- Verification of Deposit of beneficiary
- Verification of Employment for beneficiary
- Certificate of Occupancy

B. The SUBRECIPIENT shall provide to the Grantor proof or make available the following, as applicable, for each beneficiary.

SHIP PROGRAM RECIPIENT PROFILE FORM

APPLICATION DOCUMENTS:

Authorization for Release of Information Form
Income Verification Form(s)
Income Certification Form
Proof of Property Ownership
Application for Program Assistance
Letter of Commitment
Homeownership Training Course Certificate

CONSTRUCTION DOCUMENTS:

Contractor(s) Bid or Proposal
Bid Tabulation
Notice to Proceed
Notice of Commencement
List of Subcontractors and Material Supplier
Change Orders (if applicable)
Work Inspection Reports

Final Inspection Report
Certificate of Occupancy
One Year Warranty on all Workmanship for the Homeowner
Construction Payment Requests
Final Payment Certification Form
Affidavit of Lien Waivers from all Subcontractors (Release of Liens)
Copy of the Permits issued by the City of Cape Coral or another Permitting Agency (if applicable)

CLOSING DOCUMENTS:

Recorded SHIP Lien Document(s) with Recapture Provisions showing the City of Cape Coral as mortgagor
HUD 1 Settlement or Loan Closing Statement
All Recorded Mortgage and Note Document(s)
Title Policy for Title Insurance on the Cape Coral SHIP Mortgage
Appraisal

8. OTHER PROGRAM REQUIREMENTS

- A. The SUBRECIPIENT will be required to return program income funds to the City of Cape Coral. Upon receipt by the City, these funds, less 5% retained by the City of Cape Coral administrative activities, will be rebudgeted to the SUBRECIPIENT from which it was received for the strategy it was received provided the SUBRECIPIENT is still under contract with the City for these services.
- B. The purchase price of home ownership units must not exceed the maximum amount specified in the applicable Local Housing Assistance Plan (LHAP), and must meet affordability requirements in order to qualify as eligible.
- C. The SUBRECIPIENT is expected to make every reasonable effort to participate in program training activities offered by the Florida Housing Finance Corporation, the Florida Housing Coalition, the City of Cape Coral or similar organizations in order to ensure compliance with local and State regulations governing the State Housing Initiatives Partnership Program.
- D. The Grantor agrees to provide drawdowns to the SUBRECIPIENT, upon receipt and verification of the SUBRECIPIENT's request and documentation for project costs pursuant to and as defined in Subsection 1. a.
- E. The SUBRECIPIENT agrees to perform all necessary requirements to assist the Grantor in implementing its monitoring responsibilities, which include on-site inspections of the project to determine compliance with applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including the requirements of the State Housing Initiatives Partnership (SHIP) and the Cape Coral Local Housing Assistance Plan. The SUBRECIPIENT is responsible for coordinating inspections of properties funded with SHIP funds if requested by the Grantor.
- F. The Grantor shall be provided access to all contracts of the SUBRECIPIENT for the procurement of goods and/or services relating to the project work described in Subsection 1. a. and all change orders or amendments, but said access shall not be construed as acceptance by or imposition of upon the Grantor of any financial liability in connection with said contracts.
- G. The SUBRECIPIENT shall be responsible for ensuring that all builders/contractors utilized are licensed appropriately and capable of performing all necessary work. The SUBRECIPIENT will further be responsible to ensure that all applicable permits, inspections, and fees are obtained and paid (as required for the respective scope of work). The SUBRECIPIENT shall further serve as the agent for the homebuyer in all communications with the selected builder/contractor and ensure a timely completion of construction proceedings, as the buyer's agent.
- H. The SUBRECIPIENT shall ensure that clear/marketable title is obtained for all properties to be purchased, conveyed, or made a part of in any way, a subsidy request package submitted to the Grantor for assistance.
- I. All projects must be in compliance with the rules and regulations of the State Housing Initiatives Partnership Program as authorized by Florida Statutes, Chapter 420.907, Florida Administrative Code 67-37, and the Cape Coral Local Housing Assistance Plan as amended, and in particular:
 - o Income limits
 - o Definition of Affordability
 - o Non-discrimination
 - o Maximum production or purchase cost
 - o Maximum SHIP funds per unit
 - o Compliance reporting as required per project

ATTACHMENT 3 PUBLIC RECORDS

This attachment outlines audit requirements for non-federal entities or subrecipients, hereinafter known as the Contractor. This attachment shall apply when the Contractor has obtained State funding from Cape Coral and is acting on behalf of the City of Cape Coral.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CAPE CORAL CITY CLERK'S OFFICE LOCATED AT CULTURAL PARK BLVD. CAPE CORAL, 33990, 239-574-0411, ctyclk@capecoral.net.

A. GENERALLY, A CONTRACTOR SHALL:

1. Keep and maintain public records required by the City of Cape Coral to perform the service.
2. Upon request from the City of Cape Coral's custodian of public records, provide the City of Cape Coral with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City of Cape Coral.
4. Upon completion of the contract, transfer, at no cost, to the City of Cape Coral all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Cape Coral, upon request from the City of Cape Coral's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

Item Number:	6.I.
Meeting Date:	6/18/2018
Item Type:	BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 133-18 Acceptance of State Financial Assistance Grant Funding to retrofit the mobile command center vehicle with new technology upgrades; Department Police; Dollar Value \$176,250; Cash Match of \$82,150; (Police Department Federal Forfeiture Fund)

REQUESTED ACTION:

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:

1. Funding in the amount of \$176,250 is provided for the Florida Department of Law Enforcement.
2. Funding is available July 1, 2018 - June 30, 2019.
3. Funds will be used to retrofit the mobile command center vehicle with new technology upgrades and to paint the exterior of the vehicle.
4. A cash match of \$82,150.05 will be funded through the Department of Justice Asset Forfeiture/Equitable Sharing Program. Matching funds is a permissible use of funds.
5. The Police Department is requesting approval for the Chief of Police to execute the award documents.

LEGAL REVIEW:

EXHIBITS:

Memo
Resolution 133-18
Email with instructions

PREPARED BY:

Shannon Division- Administration Department- Police
Northorp

SOURCE OF ADDITIONAL INFORMATION:**ATTACHMENTS:**


Description	Type
▣ Memo	Backup Material
▣ Resolution 133-18	Resolution
▣ Email with instructions	Backup Material



CAPE CORAL POLICE DEPARTMENT

Office of the Chief of Police

TO: John Szerlag, City Manager

FROM: David Newlan, Chief of Police 

DATE: May 29, 2018

SUBJECT: State Financial Assistance Grant

In October 2017, the Police Department worked with the City's state lobbyists to complete and submit a *Local Funding Initiative Request* to the Florida Senate through Senator Benacquisto and an *Appropriations Project Request* to the House of Representatives through Representative Eagle, requesting funding in the amount of \$176,250 with a cash match, to retrofit/update the outdated and obsolete electronics within the Mobile Command Center Vehicle (MCCV).

Senator Benacquisto sponsored this project through Senate Form 1618. While Representative Eagle sponsored the project through House Bill (HB) 3079. Over the past several months the MCCV project moved through the budget process making its way into the final State budget. On March 16, 2018, the Governor signed the State budget, approving the MCCV project.

The MCCV is a multipurpose vehicle that can be deployed to prepare for and respond to a wide variety of emergencies both locally, regionally, and if the circumstances warranted it, on a state level. The activities and services that will be provided are numerous which include, but are not limited to: mobile emergency operations center for natural disaster recovery, active violent situations, planned special events, crime scene investigations and special operations. The MCCV will allow personnel to not only communicate with and work alongside internal city departments, more importantly, they will be able to do so with other entities such as, the Emergency Operations Center, fire, aviation, marine and bordering law enforcement agencies. In essence, it allows the Police Department to be completely mobile.

On April 11, 2018, the Department received notification from the Florida Department of Law Enforcement that they received an appropriation of \$176,250 in pass-through funding for the Police Department to implement the Public Safety Mobile Command Center Vehicle project. The funding is allocated for the State Fiscal Year 2018-2019, with a contract period of July 1, 2018 – June 30, 2019. On April 30, 2018, the State Financial

John Szerlag, City Manager – State Financial Assistance Grant

May 29, 2018

Page 2 of 2

Assistance Grant application was completed and sent to the Florida Department of Law Enforcement for review and approval. On May 29, 2018, the Department received the contract for execution.

To complete the project, the Police Department will utilize \$82,150.05, in federal forfeiture funds, with a total project cost of \$258,400.05. The total cost will include the necessary retrofit/technology upgrades, repainting the vehicle, and removal of current vehicle wraps and decals.

DN:sn

RESOLUTION 133 – 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL ACCEPTING THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT PUBLIC SAFETY MOBILE COMMAND CENTER VEHICLE PROGRAM GRANT AWARD IN THE AMOUNT OF \$176,250, WITH MATCHING FUNDS REQUIRED BY THE CITY; AUTHORIZING THE CHIEF OF POLICE TO EXECUTE THE GRANT AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral applied for and has been awarded grant funding in the amount of \$176,250, with matching funds in the amount of \$82,150, for the Public Safety Mobile Command Center Vehicle Project from the Florida Department of Law Enforcement; and

WHEREAS, the City's cash match will be funded through the Department of Justice Asset Forfeiture/Equitable Sharing Program; and

WHEREAS, the City Council desires to accept the Florida Department of Law Enforcement Public Safety Mobile Command Center Vehicle Project Grant Award and to authorize the Chief of Police to execute the Grant Award Agreement, attached hereto as Exhibit 1.

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

Section 1. The City Council hereby accepts the Florida Department of Law Enforcement Public Safety Mobile Command Center Vehicle Project Grant Award in the amount of \$176,250. Matching funds in the amount of \$82,150 will be funded through the Department of Justice Asset Forfeiture/Equitable sharing Program.

Section 2. The Chief of Police is authorized to execute the Grant Award Agreement, attached hereto as Exhibit 1.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS SPECIAL COUNCIL SESSION THIS _____ DAY OF _____, 2018.

JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	STOKES	_____
CARIOSCLA	_____	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\Grant-FDLE Command Center Vehicle

**State of Florida
Office of Criminal Justice Grants
Florida Department of Law Enforcement
2331 Phillips Road
Tallahassee, Florida 32308**

GRANT AWARD

Recipient: City of Cape Coral obo Cape Coral Police Department

Grant Period: From: 7/1/2018 To: 6/30/2019

Project Title: Public Safety Mobile Command Center Vehicle

Grant Number: 2019-SFA-GAA-36-5P-001

Awarded Funds: \$176,250

CSFA Catalog Number: **CSFA #**

This agreement is entered into by and between the Department and Recipient shown above, and

WHEREAS the Department pursuant to Chapter 2018-9, Laws of Florida, Section 4, Specific Appropriation 1229, Grants and Aids to local governments and non-state entities, for a single non-recurring grant provided to the Recipient for the period and purpose shown above to disburse funds under this agreement, and

WHEREAS the Recipient represents that it is fully qualified, possesses the requisite skills, knowledge, qualifications and experience to carry out the state project identified herein, and does offer to perform such services, and

Failure to comply with provisions of this agreement, or failure to meet minimum performance specified in the agreement will result in required corrective action up to and including project costs being disallowed, withholding of funds and/or termination of the project, as specified within the terms of the agreement and 215.97 F.S.

The proviso language from the General Appropriations Act (GAA) is copied below and provides information on the legislative intent for use of these funds:

From the funds in Specific Appropriation 1229, \$176,250 in nonrecurring general revenue fund is provided to Cape Coral Police Department for the Public Safety Mobile Command Center Vehicle project.

This award is subject to enclosed special conditions.

S0001 Prior to drawdown of funds for contractual services, City of Cape Coral must submit a copy of any third-party subcontracts related to the agreement.

Scope of Work

The Cape Coral Police Department will use grant funds to modify the Mobile Command Center Vehicle (MCCV) with digital capabilities and new technologies that will allow the Department to utilize it as a fully functional mobile station. The modifications will involve the following parts and systems of the existing MCCV:

- Chassis
- Cabinets
- AC Electrical System
- AC Wiring Requirements
- DC Electrical System and Lighting
- Audio & Video
- Mast & Mast Mounted Equipment
- Computer Network and Equipment
- Miscellaneous Electronics
- Miscellaneous Other
- Telephone System

Project Timeline

This project is a fixed capital outlay project with the proposed timeline for Recipient activities:

- July-September 2018 Purchase order created and approved
- October-December 2018 Equipment ordered and modifications scheduled
- January-March 2019 Modifications take place, equipment tested, invoiced paid
- April-June 2019 MCCV is used as needed, project close-out

Project Deliverables

Total payments for all deliverables will not exceed the maximum grant award amount of \$176,250.

Deliverable 1: Modify the Recipient's existing Mobile Command Center Vehicle.	
Minimum Performance Criteria	Delivery and acceptance of the command vehicle as described in the scope of work.
Financial Consequences:	Only those expenditures incurred in accordance with the deliverable will be reimbursed.
Deliverable Price:	Total payments for this deliverable will be approximately \$176,250.

Performance Reports

Supporting documentation for performance must be maintained by Recipient and made available upon request for monitoring purposes. Examples of supporting documentation include but are not limited to third-party agreements, equipment inventory lists, invoices, purchase orders, and proof of purchase, etc.

Recipient shall provide monthly Performance Reports to the Department attesting to the progress towards deliverables and to validate the required minimum acceptable level of service performed. Performance Reports are due 15 days after the end of each reporting period. (Example: If the reporting period is July 1-31, the Performance Report is due August 15th).

Recipient will respond to the questions listed below in the monthly Performance Reports. Information provided by the Recipient will be used by the Department for processing payments, verifying deliverables, and to compile reports on project progress to the Legislature and Executive Office of the Governor.

Performance Reports must address and/or contain the following:

1. Provide a narrative describing the activities and accomplishments achieved during the reporting period.
2. Provide a summary of the percent completed toward the modification activities.

3. Describe any progress or barriers encountered related to achieving those goals during the reporting period and how these obstacles will impact the successful completion of the project.
4. Report the number of times and types of incidents the when the MCCV is deployed.

Payment Requirements & Financial Claim Reports

This is a cost reimbursement agreement with the ability to advance. The Recipient must maintain original supporting documentation for all funds expended and received under this agreement in sufficient detail for proper pre- and post-audit and to verify work performed was in accordance with the deliverable(s) and not eligible for payment under another state or federal funding source. Payment shall be contingent upon the Department's grant manager receiving and accepting the invoice and supporting documentation. Supporting documentation includes, but is not limited to, quotes, procurement documents, purchase orders, original receipts, invoices, canceled checks or EFT records, bank statements, etc.

Claim Reports shall validate the receipt of goods and services and verify the Recipient's compliance with 69I-40.002, F.A.C. All expenditures for state financial assistance must comply with the Reference Guide for State Expenditures published by the Florida Department of Financial Services. The Department will administer and disburse funds under this agreement in accordance with ss. 215.97, 215.971, 215.981 and 215.985, F.S.

The Department will fund the Recipient for allowable expenditures incurred during the eligible reporting period according to the terms and conditions, subject to the availability of funds and satisfactory performance of all terms by the Recipient. The State of Florida's performance and obligation to pay under this agreement is contingent upon an appropriation by the Legislature.

Recipient shall provide monthly Claim Reports to the Department due 30 days after the end of each reporting period. All Claim Reports must be approved and signed by the Recipient's chief financial official and include a certification that costs claimed are true and valid costs incurred in accordance with the agreement.

The State Chief Financial Officer (CFO) reserves the right to require further documentation on an as needed basis.

Using the forms provided in conjunction with this agreement, Claim Reports must clearly identify the dates of services, a description of the specific contract deliverables provided during the reporting period, the quantity provided, and the payment amount specified in the agreement. Except for advances, deliverables must be received and accepted prior to payment and are subject to subsequent audit and review to the satisfaction of the Department. The Department's determination of acceptable expenditures shall be conclusive.

The final Claim for Payment shall be submitted to the Department no more than 30 days after the end date of the grant. Any payment due under the terms of this agreement may be withheld until performance of services and all reports due from the Recipient and necessary adjustments have been approved by the Department. Before the final payment will be processed, the Recipient shall submit to the Department all outstanding project reports and must have satisfied all special conditions. Failure to comply with these provisions shall result in forfeiture of reimbursement.

Appendix A: Administration

Changes to the following points of contact and chief officials below must be submitted to FDLE Office of Criminal Justice Grants in writing.

Chief Official	
Name	David Newlan
Title	Chief of Police
Address	1100 Cultural Park Blvd., Cape Coral, FL 33991
Phone	239-574-0623
Email	dnewlan@capecoral.net

Programmatic Contact	
Name	Michael Torregrossa
Title	Captain
Address	1100 Cultural Park Blvd., Cape Coral, FL 33991
Phone	239-574-0669
Email	mtorregr@capecoral.net

Grant/Contract Manager	
Name	Shannon Northorp
Title	Grant Writer/Coordinator
Address	1100 Cultural Park Blvd., Cape Coral, FL 33990
Phone	239-574-0675
Email	snorthor@capecoral.net

Chief Financial Officer	
Name	Victoria Bateman
Title	Finance Director
Address	1015 Cultural Park Blvd., Cape Coral, FL 33990
Phone	239-574-0491
Email	vbateman@capecoral.net

Official Payee	
Name	Marjorie Bowen
Title	Senior Accountant
Address	1015 Cultural Park Blvd., Cape Coral, FL 33990
Phone	239-574-0482
Email	mbowen@capecoral.net
FEID #	59-1312996

Appendix B: Budget

The following describes the proposed budget for the project. All amounts noted in budget are estimates based on preliminary quotes or prior program activities. Deviations from this budget that exceed 10% of the total amount in any budget category must be approved by FDLE Office of Criminal Justice Grants Bureau Chief in writing prior to payment.

Budget Category	Total
A. Personnel (Salary/Overtime)	\$0
B. Fringe Benefits	\$0
C. Travel	\$0
D. Equipment	\$0
E. Supplies	\$0
F. Construction	\$0
G. Subawards / Subgrants	\$0
H. Procurement Contracts	\$176,250
I. Other Costs	\$0
TOTAL	\$176,250

Budget Narrative:

H. Procurement Contracts

The Recipient will procure a vendor to modify the Mobile Command Center Vehicle. The total estimated modification cost is \$237,608. \$176,250 is allocated through State Financial Assistance (SFA) grant and the remaining \$61,358 is a city match.

Due to the fact that this project is a modification, the original equipment manufacturer (OEM), will be utilized making this a sole source purchase. Procurement rules and regulations per ordinance 68-07 will be followed. This project will be billed as a lump-sum invoice when complete.

Appendix C: Standard Conditions

The following terms and conditions will be binding upon approval of the grant award and completion of the Certificate of Acceptance by the Recipient. The Recipient will maintain required registrations and certifications for eligibility under this program.

The Department and the Recipient agree that they do not contemplate the development, transfer or receipt of intellectual property as a part of this agreement.

The Recipient certifies with respect to this agreement that it possesses the legal authority to receive the funds to be provided under this agreement and that, if applicable, its governing body has authorized, by resolution or otherwise, the execution and acceptance of this agreement with all covenants and assurances contained herein. The Recipient also certifies that the undersigned possesses the authority to legally execute and bind Recipient to the terms of this agreement.

If a project is not operational within 30 days of the original start date of the award period, the Recipient must report by letter to the Department the steps taken to initiate the project, the reasons for delay, and the expected start date. If a project is not operational within 60 days of the original start date of the award period, the Recipient must submit a second statement to the Department explaining the implementation delay.

Upon receipt of the 90 day letter, the Department shall determine if the reason for delay is justified or shall, at its discretion, require additional project documentation and justifications throughout the award period. The Department will also require the Recipient provide a revised project timeline that includes all anticipated project activities, tasks, and estimated completion date(s).

I. PAYMENTS

Overpayments

Any funds paid in excess of the amount to which the Recipient is entitled under the terms and conditions of the agreement must be refunded to the Department.

Any balance of unobligated cash that have been advanced or paid that is not authorized to be retained for direct program costs in a subsequent period must be refunded to the state.

II. PROJECT AND GRANT MANAGEMENT

Personnel Changes

In the event there is a change in Chief Officials or Project Director for the Recipient or any contact information to include mailing address, phone

number, email or title change, the Recipient must notify the FDLE grant manager.

Obligation of Grant Funds

Grant funds shall not under any circumstances be obligated prior to the effective date, or subsequent to the termination date, of the period of performance. Only project costs incurred on or after the effective date, and on or prior to the termination date of the Recipient's project are eligible for reimbursement. All payments must be completed within thirty (30) days of the end of the grant period of performance.

Financial Management

The Recipient must have a financial management system in place that is able to record and report on the receipt, obligation, and expenditure of grant funds. An adequate accounting system must be able to separately track receipts, expenditures, assets, and liabilities for awards, programs, and subrecipients.

The Recipient shall maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices.

Recipient must have written procedures for procurement transactions.

Travel

Cost for travel shall be reimbursed at the Recipient's travel rate, but the total per travel voucher shall not exceed rates established in State of Florida Travel Guidelines, s. 112.061, F.S.

Subcontracts

Recipient agrees that all employees, subcontractors, or agents performing work under the agreement shall be properly trained individuals who meet or exceed any specified training qualifications.

Recipient agrees to be responsible for all work performance and all expenses incurred in fulfilling the obligations of this agreement, and will not assign the responsibility for this agreement to another party. If the Recipient subcontracts any or all of the work required under this agreement, a copy of the executed subcontract must be forwarded to the Department within thirty (30) days after execution of the subcontract. The Recipient agrees to include in the subcontract that (i) the subcontractor is bound by all applicable state and federal laws and regulations, and (ii) the subcontractor shall hold the Department and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this agreement, to the extent allowed and required by law.

Grant Adjustments

Recipients must submit a grant adjustment to the FDLE grant manager for major substantive changes such as: scope modifications or changes to project activities, target populations, service providers, implementation schedules, project director, designs or research plans set forth in the approved agreement, and for any budget changes that affect a cost category that was not included in the original budget.

Recipients may transfer up to 10% of the total budget between current, approved budget categories without prior approval, as long as the funds are transferred to an existing line item. Adjustments are required when there will be a transfer of 10% or more of the total budget between budget categories.

Under no circumstances can transfers of funds increase the total award.

Requests for changes to the grant agreement must be signed by the Recipient or implementing agency's chief official or the chief official's designee.

All requests for changes must be submitted no later than thirty (30) days prior to grant expiration date.

III. MANDATORY DISCLOSURES

Conflict of Interest

The Recipient will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

Recipients must disclose in writing any potential conflict of interest to the Department.

Violations of Criminal Law

The Recipient must disclose all violations of state or federal criminal law involving fraud, bribery or gratuity violations potentially affecting the grant award.

Convicted Vendors

The Recipient shall disclose to the Department if it, or any of its affiliates, as defined in s. 287.133(1)(a) F.S., is on the convicted vendor list. A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any activities listed in the agreement for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

Vendors on Scrutinized Companies Lists

If this agreement is in the amount of \$1 million or more, Recipient certifies upon executing this agreement, that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, F.S., or engaged in business operations in

Cuba or Syria. In the event that federal law ceases to authorize the states to adopt and enforce the contracting prohibition identified herein, this provision shall be null and void.

Discriminatory Vendors

The Recipient shall disclose to the Department if it or any of its affiliates, as defined by s. 287.134(1)(a), F.S. appears on the discriminatory vendors list. An entity or affiliate placed on the discriminatory vendor list pursuant to s. 287.134, F.S. may not a) submit a bid, proposal, or reply on a contract or agreement to provide any goods or services to a public entity; b) submit a bid, proposal, or reply on a contract or agreement with a public entity for the construction or repair of a public building or public work; c) submit bids, proposals, or replies on leases of real property to a public entity; d) be awarded or perform work as a contractor, subcontractor, Recipient, supplier, subrecipient, or consultant under a contract or agreement with any public entity; or e) transact business with any public entity.

Reporting Potential Fraud, Waste, Abuse, and Similar Misconduct

The Recipient must promptly refer to the Department of Law Enforcement, Office of Criminal Justice Grants any credible evidence that a principal, employee, agent, contractor, subcontractor, or other person has either 1) submitted a claim for grant funds that violates the False Claims Act; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds.

Restrictions and certifications regarding non-disclosure agreements and related matters

Recipients or contracts/subcontracts under this award may not require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits, restricts or purports to prohibit or restrict, the reporting of waste, fraud or abuse in accordance with law, to an investigative or law enforcement representative of a state or federal department or agency authorized to receive such information.

The Recipient certifies that if is informed or notified of any subrecipient, or contractor/subcontractor has been requiring their employees to execute agreements or statements that prohibit the reporting of fraud, waste, or abuse that it will immediately cease all further obligations of award funds to the entity and will immediately notify the Department. The Recipient will not resume obligations until expressly authorized to do so from the Department.

IV. COMPLIANCE WITH STATUTES, RULES, AND REGULATIONS

In performing its obligations under this agreement, the Recipient shall without exception be aware of and comply with all State and Federal laws, rules and

regulations relating to its performance under this agreement as they may be enacted or amended from time-to-time, as well as any court or administrative order, judgment, settlement or compliance agreement involving the Department which by its nature affects the services provided under this agreement. The following are examples of rules and regulations that govern Recipient's performance under this agreement.

Civil Rights

The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.) and shall not discriminate against any employee (or applicant for employment) in the performance of this agreement because of race, color, religion, sex, national origin, disability, age, or marital status. These requirements shall apply to all contractors, subcontractors, subgrantees or others with whom it arranges to provide services or benefits to clients or employees in connection with its programs and activities.

Lobbying Prohibited

The Recipient shall comply with the provisions of ss. 11.062 and 216.347, F.S., which prohibit the expenditure of funds for the purpose of lobbying the Legislature, judicial branch, or a State agency. No funds or other resources received from the Department in connection with this agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

Public Records

As required by s. 287.058(1)(c), F.S., the Recipient shall allow public access to all documents, papers, letters, or other public records as defined in s. 119.011(12), F.S. as prescribed by s. 119.07(1) F.S., made or received by the Recipient in conjunction with this agreement, except that public records which are made confidential by law must be protected from disclosure. It is expressly understood that the Recipient's failure to comply with this provision shall constitute an immediate breach of contract, for which the Department may unilaterally terminate this agreement.

Timely Payment of Subcontractors

To the extent that a subcontract provides for payment after Recipient's receipt of payment from the Department, the Recipient shall make payments to any subcontractor within 7 working days after receipt of full or partial payments from the Department in accordance with s. 287.0585, F.S., unless otherwise stated in the agreement between the Recipient and subcontractor. Failure to pay within seven (7) working days will result in a penalty that shall be charged against the Recipient and paid by the Recipient to the subcontractor in the amount of one-half of one percent (.005) of the amount due per day from the expiration of the period allowed for payment. Such

penalty shall be in addition to actual payments owed and shall not exceed fifteen (15%) percent of the outstanding balance due.

Legal Authorization

The Recipient certifies with respect to this agreement that it possesses the legal authority to receive the funds to be provided under this agreement and that, if applicable, its governing body has authorized, by resolution or otherwise, the execution and acceptance of this agreement with all covenants and assurances contained herein. The Recipient also certifies that the undersigned possesses the authority to legally execute and bind Recipient to the terms of this agreement.

Independent Contractor, Subcontracting and Assignments

In performing its obligations under this agreement, the Recipient shall at all times be acting in the capacity of an independent contractor and not as an officer, employee, or agent of the State of Florida. Neither the Recipient nor any of its agents, employees, subcontractors or assignees shall represent to others that it is an agent of or has the authority to bind the Department by virtue of this agreement, unless specifically authorized in writing to do so.

Notice of Legal Actions

The Recipient shall notify the Department of potential or actual legal actions taken against the Recipient related to services provided through this agreement or that may impact the Recipient's ability to complete the deliverables outlined herein, or that may adversely impact the Department. The Department's Grant Manager will be notified within 10 days of Recipient becoming aware of such actions or potential actions or from the day of the legal filing, whichever comes first.

Property

In accordance with s. 287.05805, F.S., any State funds provided for the purchase of or improvements to real property are contingent upon the Recipient granting to the State a security interest in the property at least to the amount of the State funds provided for at least five (5) years from the date of purchase or the completion of the improvements or as further required by law.

Background Check

Whenever a background screening for employment or a background security check is required by law for employment, unless otherwise provided by law, the provisions of Chapter 435 F.S., shall apply.

All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of the subsection, security background investigations shall include, but not be

limited to, employment history checks, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile record checks through the Florida Department of Law Enforcement, and federal criminal record checks through the Federal Bureau of Investigation, and may include local criminal record checks through local law enforcement agencies.

V. RECORDS, AUDITS AND DATA SECURITY

Records, Retention

Retention of all financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this agreement shall be maintained by the Recipient during the term of this agreement and retained for a period of five (5) years after completion of the agreement or longer when required by law. In the event an audit is required under this agreement, records shall be retained for a minimum period of five (5) years after the audit report is issued or until resolution of any audit findings or litigation based on the terms of this agreement, at no additional cost to the Department.

Upon demand, at no additional cost to the Department, the Recipient will facilitate the duplication and transfer of any records or documents during the term of this agreement and the required five (5) year retention period. No record may be withheld, nor may the Recipient attempt to limit the scope of any of the foregoing inspections, reviews, copying, transfers or audits based on any claim that any record is exempt from public inspection or is confidential, proprietary or trade secret in nature; provided, however, that this provision does not limit any exemption to public inspection or copying to any such record.

These records shall be made available at all reasonable times for inspection, review, copying, or audit by State, or other personnel duly authorized by the Department.

Audits

The Recipient shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by The Office of the Inspector General (s. 20.055, F.S.).

In the event that the Recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Recipient, the Recipient must have a State single or project-specific audit for such fiscal year in accordance with s. 215.97, F.S.; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the Recipient shall consider all sources of state financial assistance, including state

financial assistance received from the Department of Law Enforcement, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.

The schedule of expenditures should disclose the expenditures by contract/agreement number for each contract with the Department in effect during the audit period. All questioned costs and liabilities due the Department shall be fully disclosed in the audit report package with reference to the specific contract number.

If the Recipient expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of s. 215.97, F.S., is not required. In the event that the Recipient expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of s. 215.97, F.S., the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

Pursuant to s. 215.97(8), F.S., State agencies may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with s. 215.97, F.S.. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.

Any reports, management letters, or other information required to be submitted to the Department pursuant to this agreement shall be submitted within nine (9) months after the end of the Recipient's fiscal year or within 30 days of the recipient's receipt of the audit report, whichever occurs first, unless otherwise required by Florida Statutes:

Copies of financial reporting packages required by of this agreement shall be submitted by or on behalf of the Recipient directly to each of the following:

The Department of Law Enforcement at:

ATTN: Petrina T. Herring
Florida Department of Law Enforcement
Office of Criminal Justice Grants
Post Office Box 1489
Tallahassee, Florida 32302-1489

The Auditor General's Office at:

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Monitoring

The Recipient agrees to comply with the Department's grant monitoring guidelines, protocols, and procedures; and to cooperate with the Department on all grant monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, site visits, and/or Florida Department of Financial Services contract reviews and Expanded Audits of Payment (EAP).

The Recipient agrees to provide the Department all documentation necessary to complete monitoring of the award and verify expenditures in accordance with s. 215.971, F.S. Further, the Recipient agrees to abide by reasonable deadlines set by the Department for providing requested documents. Failure to cooperate with grant monitoring activities may result in sanctions affecting the Recipient's award, including, but not limited to: withholding and/or other restrictions on the recipient's access to funds, and/or referral to the Office of the Inspector General for audit review.

Property Management

The Recipient shall establish and administer a system to protect, preserve, use, maintain, and dispose of any property furnished to it by the Department or purchased pursuant to this agreement.

Recipient's Confidential and Exempt Information

By executing this agreement, the Recipient acknowledges that, having been provided an opportunity to review all provisions hereof, all provisions of this agreement not specifically identified in writing by the Recipient prior to execution hereof as "confidential" or "exempt" will be posted by the Department on the public website maintained by the Department of Financial Services pursuant to s. 215.985, F.S. The Recipient agrees that, upon written request of the Department, it shall promptly provide to the Department a written statement of the basis for the exemption applicable to each provision identified by the Recipient as "confidential" or "exempt", including the statutory citation to an exemption created or afforded by statute, and state with particularity the reasons for the conclusion that the provision is exempt or confidential.

Any claim by Recipient of trade secret (proprietary) confidentiality for any information contained in Recipient's documents (reports, deliverables or work papers, etc., in paper or electronic form) submitted to the Department in connection with this agreement cannot be waived, unless the claimed confidential information is submitted in accordance with the following two paragraphs.

The Recipient must clearly label any portion of the documents, data, or records submitted that it considers exempt from public inspection or disclosure pursuant to Florida's Public Records Law as trade secret. The labeling will include a justification citing specific statutes and facts that authorize exemption of

the information from public disclosure. If different exemptions are claimed to be applicable to different portions of the protected information, the Recipient shall include information correlating the nature of the claims to the particular protected information.

The Department, when required to comply with a public records request including documents submitted by the Recipient, may require the Recipient to expeditiously submit redacted copies of documents marked as trade secret in accordance with this section. Accompanying the submission shall be an updated version of the justification, correlated specifically to redacted information, either confirming that the statutory and factual basis originally asserted remain unchanged or indicating any changes affecting the basis for the asserted exemption from public inspection or disclosure. The redacted copy must exclude or obliterate only those exact portions that are claimed to be trade secret. If the Recipient fails to promptly submit a redacted copy, the Department is authorized to produce the records sought without any redaction of proprietary or trade secret information.

VI. PENALTIES, TERMINATION, DISPUTE RESOLUTION, LIABILITY AND COMMUNICATION

Financial Penalties for Failure to Take Corrective Action

Corrective action plans may be required for noncompliance, nonperformance, or unacceptable performance under this Agreement. Penalties may be imposed for failures to implement or to make acceptable progress on such corrective action plans.

Termination

The Department reserves the right to unilaterally cancel this agreement for refusal by the Recipient to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Recipient in conjunction with this agreement, unless the records are exempt pursuant to Article I, Section 24(a), of the Florida Constitution and s. 119.07(1), F.S.

The Department shall be the final authority as to the appropriation, availability and adequacy of funds. In the event the Recipient fails to fully comply with the terms and conditions of this agreement, the Department may terminate the agreement upon written notice. Such notice may be issued without providing an opportunity for cure if it specifies the nature of the noncompliance and states that provision for cure would adversely affect the interests of the State or is not permitted by law or regulation. Otherwise, notice of termination will be issued after the Recipient's failure to fully cure such noncompliance within the time specified in a written notice of noncompliance issued by the Department specifying the nature of the noncompliance and the actions required to cure such noncompliance. In

addition, the Department may employ the default provisions in Rule 60A-1.006(3), F.A.C., but is not required to do so in order to terminate the agreement. The Department's failure to demand performance of any provision of this agreement shall not be deemed a waiver of such performance. The Department's waiver of any one breach of any provision of this agreement shall not be deemed to be a waiver of any other breach and neither event shall be construed to be a modification of the terms and conditions of this agreement. The provisions herein do not limit the Department's right to remedies at law or in equity. The validity of this agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this agreement, in any subsequent submission or response to Department request, or in any submission or response to fulfill the requirements of this agreement, and such information, representations, and materials are incorporated by reference. The lack of accuracy thereof or any material changes shall, at the option of the Department and with thirty (30) days written notice to the Recipient, cause the termination of this agreement and the release of the Department from all its obligations to the Recipient. This agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this agreement shall lie in Leon County. If any provision hereof is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict, and shall be deemed severable, but shall not invalidate any other provision of this agreement.

No waiver by the Department of any right or remedy granted hereunder or failure to insist on strict performance by the Recipient shall affect or extend or act as a waiver of any other right or remedy of the Department hereunder, or affect the subsequent exercise of the same right or remedy by the Department for any further or subsequent default by the Recipient. Any power of approval or disapproval granted to the Department under the terms of this agreement shall survive the terms and life of this agreement as a whole.

The agreement may be executed in any number of counterparts, any one of which may be taken as an original.

In the event of termination, the Recipient will be compensated for any work satisfactorily completed through the date of termination or an earlier date of suspension of work.

Disputes and Appeals

The Department shall make its decision in writing when responding to any disputes, disagreements, or questions of fact arising under this agreement and shall distribute its response to all concerned parties. The Recipient shall proceed diligently with the

performance of this agreement according to the Department's decision. If the Recipient appeals the Department's decision, the appeal also shall be made in writing within twenty-one (21) calendar days to the Department's clerk (agency clerk). The Recipient's right to appeal the Department's decision is contained in Chapter 120, F.S., and in procedures set forth in Fla. Admin. Code R.28-106.104. Failure to appeal within this time frame constitutes a waiver of proceedings under Chapter 120, F.S. After receipt of a petition for alternative dispute resolution the Department and the Recipient shall attempt to amicably resolve the dispute through negotiations. Timely delivery of a petition for alternative dispute resolution and completion of the negotiation process shall be a condition precedent to any legal action by the Recipient concerning this agreement.

Liability

Unless the Recipient is a "state agency or subdivision" as defined by Section 768.28, Florida Statutes, the Recipient shall be solely responsible to parties with whom it shall deal in carrying out the terms of this agreement, and shall save the Department harmless against all claims of whatever nature by third parties arising out of the performance of work under this agreement. For purposes of this agreement, Recipient agrees that it is not an employee or agent of the Department, but is an independent contractor.

Nothing herein shall be construed as consent by a state agency of the State of Florida to be sued by third parties in any matter arising out of any contract.

Nothing in this agreement shall be construed to affect in any way the Recipient rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in s. 768.28, F.S.

Section VI: Signatures

In witness whereof, the parties affirm they each have read and agree to the conditions set forth in this agreement, have read and understand the agreement in its entirety and have executed this agreement by their duty authorized officers on the date, month and year set out below.

Corrections on this page, including strikeouts, whiteout, etc. are not permitted.

**State of Florida
Department of Law Enforcement
Office of Criminal Justice Grants**

Signature: _____

Typed Name and Title: Petrina T. Herring, Bureau Chief

Date: _____

**Recipient Organization
The City of Cape Coral obo Cape Coral Police Department**

Signature: _____

Typed Name and Title: David Newlan, Chief of Police

Date: _____

From: [Zirkelbach, Chanda](#)
To: [Shannon Northrop](#)
Cc: [Terrell, Danielle](#)
Subject: SFA Contract for review
Date: Tuesday, May 29, 2018 3:44:23 PM
Attachments: [CCPD_MCCV_Award_Contract_5.29.18.docx](#)

May 29, 2019

Good Afternoon Shannon,

Attached is the FY 2018-2019 State Financial Assistance contract for the City of Cape Coral - Public Safety Mobile Command Center Vehicle grant. The grant number will be 2019-SFA-GAA-36-5P-001. We are waiting for the CSFA number to be issued by the Department of Financial Services. We will add the CSFA number to the front page of the contract when issued.

Next Steps:

Please review the attached contract and share with your legal department and chain of command. If there are no questions or changes, please route for signatures.

Please Note:

If you would like an original signed copy, please print two (or more) copies of the signature page. Once your organization's signatures are complete, please mail back to me at the address provided below. Once I received the signed contract, I will route for my Chief's final signature, then mail the final executed copy of the contract, award letter and the claim reimbursement packet

As always, I am here to help and answer any questions. Thanks for all that you do for our community!

Best Regards,

Chanda Zirkelbach
Office of Criminal Justice Grants
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, FL 32302
850-617-1256

Physical Address:
2331 Phillips Road
Tallahassee, FL 32308

Item Number: 6.J.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 134-18 UEP North 2 FDEP Total Maximum Daily Loading (TMDL) Grants to assist with offsetting existing North 2 UEP Stormwater Improvement costs and will enhance water quality in the City's canal system and Pine Island Sound; Department: Public Works (UEP); FDEP Grant Dollar Value: \$1,900,000; (Fund: N/A)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

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

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:

N/A

SUMMARY EXPLANATION AND BACKGROUND:

The City has been working with the Florida Department of Environmental Protection (FDEP) on the attached Total Maximum Daily Load (TMDL) grants to secure funding for non-point source storm water improvements within the North 2 Utility Extension Project (UEP) area totaling \$1.9 Million Dollars.

All three grants provide additional funding for replacement of existing open throat catch basins with new raised grate inlets with bleeder holes. The new stormwater structures consist of double orifice bleeders at the swale flow-line with a grated top overflow. This design encourages surface runoff infiltration and reduces direct flow into the canal system.

All three grants have a 50-50 required City match. The matching funds for the West project will be used directly for the purchase of bioswale material. The Central and East project grants will be

used for the purchase of catch basins. These grants do not overlap with any past awarded North 2 UEP grants. The anticipated completion of the North 2 UEP, including the catch basins and bioswales, will be April 2020.

LEGAL REVIEW:

EXHIBITS:

Memorandum - UEP North 2 FDEP Total Maximum Daily Load Grants
Resolution 134-18

PREPARED BY:

Amy	Division-	Utilities	
Burdier		Administration	Department- Utilities

SOURCE OF ADDITIONAL INFORMATION:

Paul Clinghan, Public Works Director
Kevin Higginson, Utilities Extension Manager
Jeff Pearson, Utilities Director

ATTACHMENTS:

	Description	Type
▣	Memorandum - UEP North 2 FDEP TMDL Grants	Backup Material
▣	Resolution 134-18	Resolution

MEMORANDUM
CITY OF CAPE CORAL
PUBLIC WORKS DEPARTMENT

TO: John Szerlag, City Manager

FROM: Audrie Goodwin, P.E., Senior Engineer *AG*

THRU: Kevin Higginson, P.E., Utilities Extension Manager *KH*
Paul Clinghan, P.E., Public Works Director *PC*
Jeff Pearson, Utilities Director *JP*

DATE: May 29, 2018

SUBJECT: North 2 UEP FDEP TMDL Grant

The Utilities Extension Office respectfully requests your authorization and signature of our TMDL East, TMDL West and TMDL Central grants, totaling \$1.9M, which will help offset North 2 UEP Stormwater costs and enhance water quality in the City's canal system and Pine Island Sound.

The City has been working with the Florida Department of Environmental Protection (FDEP) on the attached Total Maximum Daily Load (TMDL) grants to secure funding for non-point storm water issues within the North 2 Utility Extension Project (UEP). Attached are three TMDL grants, including the West (Contracts 1-2), Central (Contracts 3-7) and East (Contracts 8-11) areas of the North 2 UEP.

All three grants provide funding for replacement of existing open throat catch basins with new raised grate inlets with bleeder holes. These new structures consist of double orifice bleeders at the swale flowline with a grated top overflow. The smaller catch basin inflow orifice will encourage surface water discharges to pond and percolate through the ground instead of directly flowing into the catch basin/canal system. The proposed improvements are expected to reduce nutrients in the City's Canal system, Matlacha Pass and Charlotte Harbor Estuary.

In addition to the inlet replacements, the West grant will also fund installation of bioswales in select areas. The bioswales will include a layer of soil with sod cover and denitrification media for additional filtration and nutrient load reduction.

All three grants have a 50% City match. The grant match for the West project will be used directly for the purchase of bioswale material while Central and East will be for the purchase of catch basins. These grants do not overlap with any past awarded North 2 UEP grants.

The anticipated completion of the North 2 UEP, including the catch basins and bioswales, will be in April 2020.

amg/AMG

C: Stephanie Smith, Design and Construction Manager
Terri Hall, Senior Assistant to the City Manager

RESOLUTION 134 – 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE CORAL ACCEPTING THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL MAXIMUM DAILY LOAD (TMDL) GRANTS FOR NORTH 2 UEP CATCH BASIN REPLACEMENT IN THE TOTAL AMOUNT OF \$1.9 MILLION, WITH MATCHING FUNDS REQUIRED BY THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT AGREEMENTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral applied for and has been awarded grant funding in the total amount of \$1.9 million, with a 50 percent matching funds requirement, for non-point storm water issues within the North 2 Utility Extension Project from the Florida Department of Environmental Protection; and

WHEREAS, the three grants provide additional funding for replacement of existing open throat catch basins with new raised grate inlets with bleeder holes in order to reduce the direct flow of surface water discharges into the canal system; and

WHEREAS, the City Council desires to approve the Florida Department of Environmental Protection Grant Agreement #NS021 for North 2 UEP Catch Basin Replacement (Central) in the amount of \$500,000; Grant Agreement #NS031 for North 2 UEP Catch Basin Replacement (East) in the amount of \$800,000; and Grant Agreement #NS032 for North 2 UEP Catch Basin Replacement and Bioswales (West) in the amount of \$600,000, and to authorize the City Manager to execute the Grant Award Agreements, attached hereto as Exhibits 1, 2 and 3, respectively.

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

Section 1. The City Council hereby approves the Florida Department of Environmental Protection Grant Agreement #NS021 for North 2 UEP Catch Basin Replacement (Central) in the amount of \$500,000; Grant Agreement #NS031 for North 2 UEP Catch Basin Replacement (East) in the amount of \$800,000; and Grant Agreement #NS032 for North 2 UEP Catch Basin Replacement and Bioswales (West) in the amount of \$600,000, all with a 50 percent City matching funds requirement.

Section 2. The City Manager is authorized to execute the Grant Award Agreements, attached hereto as Exhibits 1, 2 and 3.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS SPECIAL 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\Grant-FDEP North 2 UEP

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project)	Agreement Number
North 2 UEP- Catch Basin Replacement (Central)	NS021

2. Parties	State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard Tallahassee, Florida 32399-3000	(Department)
------------	--	--------------

Grantee Name: City of Cape Coral	Entity Type: Local Government
Grantee Address: 1015 Cultural Park Boulevard Cape Coral, FL 33990	FEID: 59-1312996 (Grantee)

3. Agreement Begin Date: Upon Execution	Date of Expiration: June 30, 2021
---	---

4. Project Number: <i>(If different from Agreement Number)</i>	Project Location(s): City of Cape Coral
Project Description: The Grantee will replace existing open throat catch basins with double 3" orifice bleeders as new control structures.	

5. Total Amount of Funding:	Funding Source?	Award #s or Line Item Appropriations:	Amount per Source(s):
\$500,000.00	<input checked="" type="checkbox"/> State <input type="checkbox"/> Federal	Line Item 1607, GAA, FY 2017-2018	\$500,000.00
	<input type="checkbox"/> State <input type="checkbox"/> Federal		
	<input type="checkbox"/> State <input type="checkbox"/> Federal		
	<input type="checkbox"/> State <input type="checkbox"/> Federal		

6. Department's Grant Manager Name: Emily Brown or successor Address: 3900 Commonwealth Blvd MS# 3570, Room 432AA Tallahassee, FL, 32399 Phone: 850-245-2946 Email: Emily.Brown@dep.state.fl.us	Grantee's Grant Manager Name: James Breakfield or successor Address: PO Box 150027 Cape Coral, FL, 33915 Phone: 239-574-0588 Email: jbreakfi@capecoral.net
--	---

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

<input checked="" type="checkbox"/> Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
<input checked="" type="checkbox"/> Attachment 2: Special Terms and Conditions
<input checked="" type="checkbox"/> Attachment 3: Grant Work Plan
<input checked="" type="checkbox"/> Attachment 4: Public Records Requirements
<input checked="" type="checkbox"/> Attachment 5: Special Audit Requirements
<input type="checkbox"/> Attachment 6: Program-Specific Requirements
<input type="checkbox"/> Attachment 7: Grant Award Terms (Federal)
<input type="checkbox"/> Attachment 8: Federal Regulations and Terms (Federal)
<input type="checkbox"/> Additional Attachments (if necessary):
<input checked="" type="checkbox"/> Exhibit A: Progress Report Form
<input type="checkbox"/> Exhibit B: Disclosure of Lobbying Activities (Federal)
<input type="checkbox"/> Exhibit C: DEP Property Reporting Form
<input checked="" type="checkbox"/> Exhibit D: Payment Request Summary Form
<input checked="" type="checkbox"/> Exhibit E: Quality Assurance Requirements
<input type="checkbox"/> Exhibit F: Advance Payment Terms and Interest Earned Memo
<input type="checkbox"/> Additional Exhibits (if necessary):

8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	
Federal Award Date to Department:	
Total Federal Funds Obligated by this Agreement:	
Federal Awarding Agency:	
Award R&D?	<input type="checkbox"/> Yes <input type="checkbox"/> N/A

IN WITNESS WHEREOF, this Agreement is being executed by the Parties and is effective on the date in the Agreement Begin Date above or the last date signed below, whichever is later.

9. **City of Cape Coral**

GRANTEE

Grantee Name

By _____
(Authorized Signature) Date Signed

Print Name and Title of Person Signing

10. **State of Florida Department of Environmental Protection** **DEPARTMENT**

By _____
Secretary or Designee Date Signed

Print Name and Title of Person Signing

☒ Additional signatures attached on separate page.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any preprinted terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions between the documents that make up the Agreement, the order of precedence for the documents is as follows:
 - i. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - ii. Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication between the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following: an increase or decrease in the Agreement funding amount; a change in the Grantee's match requirements; a change in the expiration date of the Agreement; and/or changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed ten percent (10%) of the total budget as last approved by the Department. A change order to this Agreement may be used when task timelines within the current authorized Agreement period change, and/or when the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than ten percent (10%) of the total budget as last approved by the Department, or without limitation to changes to approved fund transfers between budget categories for the purchases of meeting match requirements. This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to the Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by the Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time whether the services or qualifications offered by the Grantee meet the Agreement requirements. Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable/minimum requirement does not foreclose the Department's remedies in the event those performance standards that cannot be readily measured at the time of delivery are not met.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by the Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at the Grantee's expense. If the Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to the Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at the Grantee's sole expense. The Grantee shall only invoice the Department for deliverables that are completed in accordance with the Grant Work Plan. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to the Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which the Grantee may remedy the objections noted by the Department. The Grantee's failure to make adequate or acceptable said deliverables after a reasonable opportunity to do so may constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. These consequences for nonperformance shall not be considered penalties.
- b. Corrective Action Plan. If the Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, the Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by the Grantee to the Department. The Department shall provide the Grantee with a written request for a CAP that specifies the outstanding deficiencies. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) calendar days of the date of the written request from the Department. The CAP shall be sent to the Grant Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Grantee shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon the Department's notice of acceptance of a proposed CAP, the Grantee shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, the Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by the Department or steps taken by the Grantee shall preclude the Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Grant Manager.
 - iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by the Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by the Department, the Department agrees to pay the Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.). To obtain the applicable interest rate, please refer to:
<http://www.myfloridacfo.com/Division/AA/Vendors/default.htm>.
- b. Taxes. The Department is exempted from payment of State sales and use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by the Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Grantee shall not use the Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of the Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on **Exhibit D, Payment Request Summary Form**. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: http://www.myfloridacfo.com/aadir/reference_guide/.
- e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by the Department pursuant to the Grant Work Plan shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed.
- f. Interim Payments. Interim payments may be made by the Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by the Department's Grant Manager.
- g. Final Payment Request. A final payment request should be submitted to the Department no later than sixty (60) calendar days following the completion date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the completion date of the Agreement.
- h. Annual Appropriation Contingency. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement 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 Department if the Legislature reduces or eliminates appropriations.
- i. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If the Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by the Grantee exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) calendar days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from the Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) calendar days of written notification. Interest shall be charged on

the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$1,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.

- i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to the Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from the Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, the Grantee shall request the advance written approval from the Department's Grant Manager of the fixed price negotiated by the Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of the Department Grant Manager's approval of the fixed-price amount, the Grantee may proceed in finalizing the fixed-price subcontract.
 - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, the Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.
- e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$1,000 or more. Match or reimbursement for the Grantee's direct purchase of equipment is subject to specific approval of the Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Property Reporting Form.
- f. Rental/Lease of Equipment – Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of the Grantee's contract obligations to its subcontractor, the Department shall not reimburse any of the following types of charges: cell phone usage, attorney's fees or court costs, civil or administrative penalties, or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, the Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on **Exhibit A, Progress Report Form**, to the Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) calendar days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by the Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if the Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement to a maximum percentage described in the Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. The Department reserves the right to withhold payment of retainage for Grantee's failure to respond to or correct identified deficiencies within the timeframe stipulated in the Grant Work Plan. The Department shall provide written notification to Grantee of identified deficiencies and the Department's intent to withhold retainage. Grantee's failure to rectify the identified deficiency within the timeframe stated in the Department's notice will result in forfeiture of retainage by Grantee.
- c. If Grantee fails to perform the requested work, or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment for the work and the retainage called for under the entire Grant Work Plan. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed.
- d. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- e. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:
 - i. Commercial General Liability Insurance.
The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$200,000 each individual's claim and \$300,000 each occurrence.
 - ii. Workers' Compensation and Employer's Liability Coverage.
The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Agreement.
 - iii. Commercial Automobile Insurance.
If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage
 - iv. Other Insurance.
Additional insurance may be required by federal law, where applicable, if any work proceeds over or adjacent to water, including but not limited to Jones Act, Longshoreman's and Harbor Worker's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits of not less than \$300,000 each. Questions concerning required coverage should be directed to the U.S. Department of Labor (<http://www.dol.gov/owcp/dlhw/lscontac.htm>) or to the parties' insurance carrier.
- b. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as

described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.

- c. Exceptions to Additional Insured Requirements. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured. Further, notwithstanding the requirements above, if Grantee is self-insured, then the Department of Environmental Protection, its employees, and officers do not need to be listed as additional insureds.
- d. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- e. Proof of Insurance. Upon execution of this Agreement, the Grantee shall provide the Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from the Department, the Grantee shall furnish the Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- f. Failure to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, the Grantee shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) calendar days after the cancellation of coverage.

13. Termination.

- a. Termination for Convenience. The Department may terminate the Agreement in whole or in part by giving 30 days' written notice to the Grantee, when the Department determines, in its sole discretion, that it is in the State's interest to do so. The Department shall notify the Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee shall not furnish any service or deliverable after it receives the notice of termination, unless otherwise instructed in the notice. The Grantee shall not be entitled to recover any cancellation charges or lost profits. If the Agreement is terminated before performance is completed, the Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described below occur or in the event that the Grantee fails to fulfill any of its other obligations under this Agreement. The Grantee shall continue work on any portion of the Agreement not terminated. If, after termination, it is determined that the Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination, and except as otherwise directed by the Department, the Grantee shall stop performing services on the date, and to the extent specified, in the notice.

14. Notice of Default.

If the Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, without limitation, any of the events of default listed below, the Department shall provide notice to the Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, the Grantee will be found in default, and the Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of the Department or outside the reasonable control of the Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by the Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding.

- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information.
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement; and
- i. One or more of the following circumstances, uncorrected for more than 30 calendar days unless, within the specified 30-day period, the Grantee (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by the Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of the Grantee's business or property; and/or
 - iv. An action by the Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide the Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, the Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle the Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Grantee. In case of any delay the Grantee believes is excusable, the Grantee shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if the Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date the Grantee first had reason to believe that a delay could result.

THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Grantee shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the Department, in which case the Department may (1) accept allocated performance or deliveries from the Grantee, provided that the Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by the Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate the Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that the Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of the Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon the Department giving the Grantee (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by the Department in any legal action without the Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. – b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require the Department to hold harmless or indemnify the Grantee, insure or assume liability for the Grantee's negligence, waive the Department's sovereign immunity under the laws of Florida, or otherwise impose liability on the Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make the Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit the Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it at law or in equity and upon notice to the Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by the Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of the Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:
 - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Scrutinized Companies.

Grantee certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, Grantee agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement for cause if the Grantee, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Grantee, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

25. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between the Grantee and the State, the Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with Sections 11.062 and 216.347, F.S.

26. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, the Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of the Department's Inspector General, or other authorized State official, the Grantee shall provide any type of information the Inspector General deems relevant to the Grantee's integrity or responsibility. Such information may include, but shall not be limited to, the Grantee's business or financial records, documents, or files of any type or form that refer to or relate to the Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

27. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its Subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in **Attachment 5, Special Audit Requirements**. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If the Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, the Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, the Grantee shall utilize the guidance provided under 2 CFR §200.330 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, the Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, the Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State and Federal guidelines (including cost allocation guidelines). The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) calendar days of such request.
- e. No Commingling of Funds. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, the Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If the Department finds that these funds have been commingled, the Department shall have the right to demand a refund, either in whole or in part, of the funds provided to the Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from the Department shall refund, and shall forthwith pay to the Department, the amount of money demanded by the Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the Department by the Grantee to the date repayment is made by the Grantee to the Department.
 - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by the Department, from another source(s), the Grantee shall reimburse the Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by the Grantee to the date repayment is made to the Department.

28. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

29. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of the Department.

30. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by the Grantee and may not be subcontracted or assigned without the prior written consent of the Department.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to the Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve the Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny the Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of the Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for the Grantee to meet the required delivery schedule.

31. Guarantee of Parent Company.

If the Grantee is a subsidiary of another corporation or other business entity, the Grantee asserts that its parent company will guarantee all of the obligations of the Grantee for purposes of fulfilling the obligations of the Agreement. In the event the Grantee is sold during the period the Agreement is in effect, the Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of the Grantee.

32. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

33. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of the Grantee, its agents, servants, and employees, nor shall the Grantee disclaim its own negligence to the Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If the Department consents to a subcontract, the Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

34. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

35. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of the Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

36. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of the Department. In the event of any assignment, the Grantee remains secondarily liable for performance of the Agreement, unless the Department

expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to the Grantee of its intent to do so.

37. Prohibited Local Government Construction Preferences.

Pursuant to Section 255.0991, F.S., for a competitive solicitation for construction services in which 50 percent (50%) or more of the cost will be paid from state-appropriated funds that have been appropriated at the time of the competitive solicitation, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

- i. The contractor's maintaining an office or place of business within a particular local jurisdiction;
- ii. The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or
- iii. The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

For any competitive solicitation that meets the criteria of this section, a state college, county, municipality, school district, or other political subdivision of the state shall disclose in the solicitation document that any applicable local ordinance or regulation does not include any preference that is prohibited by this section.

38. Prohibited Governmental Actions for Public Works Projects.

Pursuant to Section 255.0992, F.S., state and political subdivisions that contract for public works projects are prohibited from imposing restrictive conditions on certain contractors, subcontractors, or material suppliers and prohibited from restricting qualified bidders from submitting bids.

- a. "Political subdivision" means separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair or improvement of public works.
- b. "Public works project" means an activity of which fifty percent (50%) or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of construction, maintenance, repair, renovation, remodeling or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.
- c. Except as required by federal or state law, the state or political subdivision that contracts for a public works project may not require that a contractor, subcontractor or material supplier or carrier engaged in such project:
 - i. Pay employees a predetermined amount of wages or prescribe any wage rate;
 - ii. Provide employees a specified type, amount, or rate of employee benefits;
 - iii. Control, limit, or expand staffing; or
 - iv. Recruit, train, or hire employees from designated, restricted, or single source.
- d. For any competitive solicitation that meets the criteria of this section, the state or political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project, except for those vendors listed under Section 287.133 and Section 287.134, F.S.
- e. Contracts executed under Chapter 337, F.S. are exempt from these prohibitions.

39. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

DWRA Additional Signatures

DEP Grant Manager

DEP QC Reviewer

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
GRANT AGREEMENT
SPECIAL TERMS AND CONDITIONS
AGREEMENT # NS021**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is the North 2 UEP – Catch Basin Replacement (Central) project. The Project is defined in more detail in the Attachment 3, Grant Work Plan.

2. Duration.

a. Reimbursement Period.

The reimbursement period for this Agreement is the same as the term of the Agreement.

b. Extensions. There are extensions available for this Project.

c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

a. Compensation. This is a cost reimbursement agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.

b. Invoicing. Invoicing will occur as indicated in Attachment 3.

c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Costs Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
<input type="checkbox"/>	<input type="checkbox"/>	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
<input type="checkbox"/>	<input type="checkbox"/>	a. Fringe Benefits, N/A.
<input type="checkbox"/>	<input type="checkbox"/>	b. Indirect Costs, N/A.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Contractual (Subcontractors)
<input type="checkbox"/>	<input type="checkbox"/>	Travel
<input type="checkbox"/>	<input type="checkbox"/>	Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Rental/Lease of Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Miscellaneous/Other Expenses
<input type="checkbox"/>	<input type="checkbox"/>	Land Acquisition

No Equipment purchases shall be funded under this Agreement.

There will be no Land Acquisitions funded under this Agreement.

5. Match Requirements.

The Agreement requires at least a 50% match on the part of the Grantee. Therefore, the Grantee is responsible for providing \$500,000 through cash or third party in-kind towards the work funded under this Agreement.

The Grantee may claim allowable project expenditures made on or after July 1, 2017 for purposes of meeting its match requirement as identified above.

Each payment request submitted shall document all matching funds and/or match efforts (i.e., in-kind services) provided during the period covered by each request. The final payment will not be processed until the match requirement has been met.

If, upon completion of this Project, actual Project costs are less than the total estimated Project costs, and there are no pending payment requests, the Grantee's required match may be reduced proportionately, as long as at least a 50% match of the actual total cost of the Project is provided by the Grantee and the reduced amount satisfies statutory and program requirements.

6. Quality Assurance Requirements.

The Grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet Project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. All sampling and analyses performed under this Agreement must conform with the requirements set forth in Chapter 62-160, Florida Administrative Code, and the Quality Assurance Requirements for Department Agreements, attached hereto and made part hereof as Exhibit E, Quality Assurance Requirements for Contracts and Grants, if applicable. If the Project does not involve environmentally-related measurements or data generation, this Attachment shall not be required and shall be intentionally excluded.

7. Additional Lobbying Requirements for Federally-Funded Agreements

This Agreement is not federally funded.

8. Miscellaneous Contract Terms.

a. Retainage.

Retainage is permitted under this agreement. Retainage may be up to a maximum of 10% of the total amount of the Agreement.

b. Subcontracting.

The Grantee may subcontract work under this Agreement without the prior written consent of the Grant Manager except for certain fixed-price subcontracts pursuant to this Agreement, which require prior approval. The Grantee shall submit a copy of the executed subcontract to the Department prior to submitting any invoices for subcontracted work. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

c. State-owned land.

The work will not be performed on State-owned land.

d. Office of Policy and Budget Reporting.

There are no special Office of Policy and Budget reporting requirements for this Agreement.

9. Additional Terms.

ATTACHMENT 3 GRANT WORK PLAN

PROJECT TITLE: North 2 UEP – Catch Basin Replacement (Central)

PROJECT LOCATION: The Project will be located in the Central area of the North 2 Utilities Extension Project (UEP), north of Pine Island Road, within the City of Cape Coral in Lee County (26.64361111 dd Latitude, -82.04861111 dd Longitude). See Figure 1 for a location map.

PROJECT BACKGROUND: The City of Cape Coral adopted the UEP in 2015 to replace the previous system of septic tanks and shallow groundwater wells. The goal of this project is to upgrade stormwater treatment and to expand City access to water, sewer, and irrigation, using a combination of State Revolving Funds, local, and State funds.

PROJECT DESCRIPTION: The Grantee will replace all existing open throat catch basins with new control structures. These new structures will consist of double orifice bleeders at the swale flowline with a grated top overflow. The smaller catch basin inflow orifice will encourage surface water discharges to pond and percolate through the ground instead of directly flowing into the catch basin/canal system. The proposed improvements will reduce nutrients in the City's canal system, Matlacha Pass and Charlotte Harbor Estuary. This catch basin project is a part of the larger North 2 UEP project which will replace approximately 1,500 catch basins throughout the utility contracts.

TASKS and DELIVERABLES:

Task 1: Construction

Task Description: The Grantee will replace approximately 620 existing stormwater catch basins using the proposed double orifice bleeder inlets with grated overflow, in accordance with the construction contract documents.

Deliverables: Construction completed to date as described in this task, as evidenced by these deliverables: 1) Dated color photographs of on-going work representing the time period covered in the payment request; 2) signed acceptance and brief description of the completed work to date by the Grantee; 3) written verification that the Grantee has received record drawings and any required final inspection report(s) for the project (as applicable); and 4) signed statement from a Florida Licensed Professional Engineer indicating construction has been completed in accordance with the construction contract documents (as applicable).

Performance Standard: The Department's Grant Manager will review the deliverables to verify that they meet the specifications in the Grant Work Plan and this task description.

Payment Request Schedule: The deliverables must be submitted and accepted prior to each payment request and may be submitted no more frequently than quarterly.

Task 2: Quality Assurance Project Plan

Task Description: The Grantee will prepare, submit, and receive approval on a Quality Assurance Project Plan (QAPP) prior to commencement of any monitoring associated with the project. The QAPP must specify the sampling procedures, locations, instruments, and parameters to be sampled. The Grantee will use the format provided by the Department's Grant Manager, if applicable.

Deliverable 2a: Draft QAPP submitted electronically in Word format to the Department's Grant Manager. Upon request, the Grantee will provide a paper copy of the Draft QAPP to the Department's Grant Manager.

Performance Standard: The Department's Grant Manager will ensure review of the draft QAPP for compliance with this Agreement and the quality assurance requirements, to ensure sufficient monitoring is planned to measure project effectiveness, and provide comments to the Grantee as needed prior to Final QAPP submittal.

Deliverable 2b: Final Department-approved QAPP submitted electronically in Word format to the Department's Grant Manager. Upon request, the Grantee will provide a paper copy of the Final QAPP to the Department's Grant Manager.

Performance Standard: The Department's Grant manager will review the Final QAPP to ensure that draft comments have been taken into consideration and the Final QAPP is in compliance with this Agreement and the quality assurance requirements.

Task 3: Monitoring

Task Description: The Grantee will conduct monitoring in accordance with the Department-approved QAPP for this project (see Task 2).

Deliverables: Summary of completed monitoring activities (dates completed, sampling conducted and any not conducted and why), monitoring results along with interpretation of those results (as expected or not as expected) submitted electronically, along with the draft or final (when submitting final request) laboratory report and sampling logs to the Department's Grant Manager. Upon request, the Grantee will provide a paper copy or copies to the Department's Grant Manager.

Performance Standard: The Department's Grant Manager will review the monitoring results for completion and compliance with QAPP requirements.

Task 4: Public Education

Task Description: The Grantee will provide public education information about the project and its environmental benefits in the following formats: newsletter(s), website posting(s), sign(s) installed at the project location and workshop(s).

Deliverable 4a 1) Copy of draft print-ready newsletter submitted to the Department's Grant Manager for review and approval prior to final printing and distribution; 2) provide the active link for the website as designed or updated with project information to the Department's Grant Manager with expectation that draft material is provided for review prior to finalization; 3) copy of draft kiosk/sign(s) text and graphics submitted to the Department's Grant Manager for review and approval prior to final printing and distribution; and 4) draft materials for public presentations and educational meetings submitted to the Department's Grant Manager for review and approval prior to when presentations and/or meetings are held. Deliverables should be submitted as electronic copies unless otherwise requested by the Department's Grant Manager.

Performance Standard: The Department's Grant Manager must approve draft materials prior to public distribution. The Department's Grant Manager will review the draft deliverables and provide comments to the Grantee as needed.

Deliverable 4b: Completed public education activities to date as described in this task, as evidenced by: 1) Copy of the final printed materials with number distributed and where; 2) incorporate any suggested changes to the website or information posted there and provide documentation to demonstrate the website's

service functionality; 3) dated photograph(s) of installed kiosk/sign(s) as approved; and 4) copy of meeting or workshop notices, agenda(s), meeting minutes or notes, and sign-in sheets. Deliverables should be submitted as electronic copies unless otherwise requested by the Department's Grant Manager.

Performance Standard: The Department's Grant manager will review the final deliverables to ensure the draft comments have been taken into consideration.

Payment Request Schedule: The deliverables [of paragraph 4b] must be submitted and accepted prior to each payment request and may be submitted upon completion of the task.

Task 5: Final Report

Task Description: The Grantee will prepare a Final Report summarizing the results of the project, including all tasks in the Grant Work Plan. The Final Report must include at a minimum:

- Project location and background, project description and timeline, grant award amount and anticipated benefits.
- Financial summary of actual costs versus the budget, along with any changes required to the budget. Include any match or locally pledged contributions provided, along with other related project work performed outside of this Agreement to identify the overall project cost.
- Discussion of project schedule versus actual completion, including changes required to the schedule, unexpected site conditions and adjustments, significant unexpected delays and corrections, and/or other significant deviations from the original project plan.
- Summary of activities completed as well as those not completed and why, as well as a brief summary of any additional phases yet to be completed.
- Photo documentation of work performed (before, during and after), appropriate figures (site location, site plan(s), etc.), appropriate tables summarizing data/information relevant to Grant Work Plan tasks, and appropriate attachments relevant to the project.
- Discussion of whether the anticipated benefits have been/will be realized (e.g., why a Best Management Practice (BMP) approach did or did not exceed the expected removal efficiency).
- Summary of monitoring activities completed and any not completed and why, monitoring results, and an interpretation of data based on planned versus realized results.

Deliverable 5a: An electronic copy of the draft Final Report in Word format submitted to the Department's Grant Manager for review prior to submission of the Final Report. Upon request, the Grantee will provide a paper copy of the draft Final Report.

Performance Standard: The Department's Grant Manager will review the submitted draft Final Report to verify that it meets the specifications in the Grant Work Plan and this task description, and provide any comments to the Grantee for consideration of incorporation into the Final Report.

Deliverable 5b: An electronic copy of the Final Report, with all suggested changes incorporated, in Word or PDF format submitted to the Department's Grant Manager for review and approval. Upon request, the Grantee will provide a paper copy of the Final Report.

Performance Standard: The Department's Grant Manager will review the deliverables to ensure that they meet the specifications in the Grant Work Plan and this task description.

PROJECT TIMELINE: The tasks must be completed and all deliverables received by the corresponding task end date.

Task/ Deliverable No.	Task or Deliverable Title	Task Start Date	Task End Date
1	Construction of Project	July 1, 2017	April 20, 2020
2	Quality Assurance Project Plan		
2a	Draft QAPP	July 1, 2017	March 1, 2018
2b	Final QAPP	July 1, 2017	April 1, 2018
3	Monitoring	Oct. 18, 2017	May 1, 2020
4	Public Education		
4a	Draft Deliverables	July 1, 2017	April 20, 2020
4b	Final Deliverables	July 1, 2017	June 1, 2020
5	Final Report		
5a	Draft Final Report	April 20, 2019	May 1, 2020
5b	Final Report	April 20, 2019	June 1, 2020

BUDGET DETAIL BY TASK:

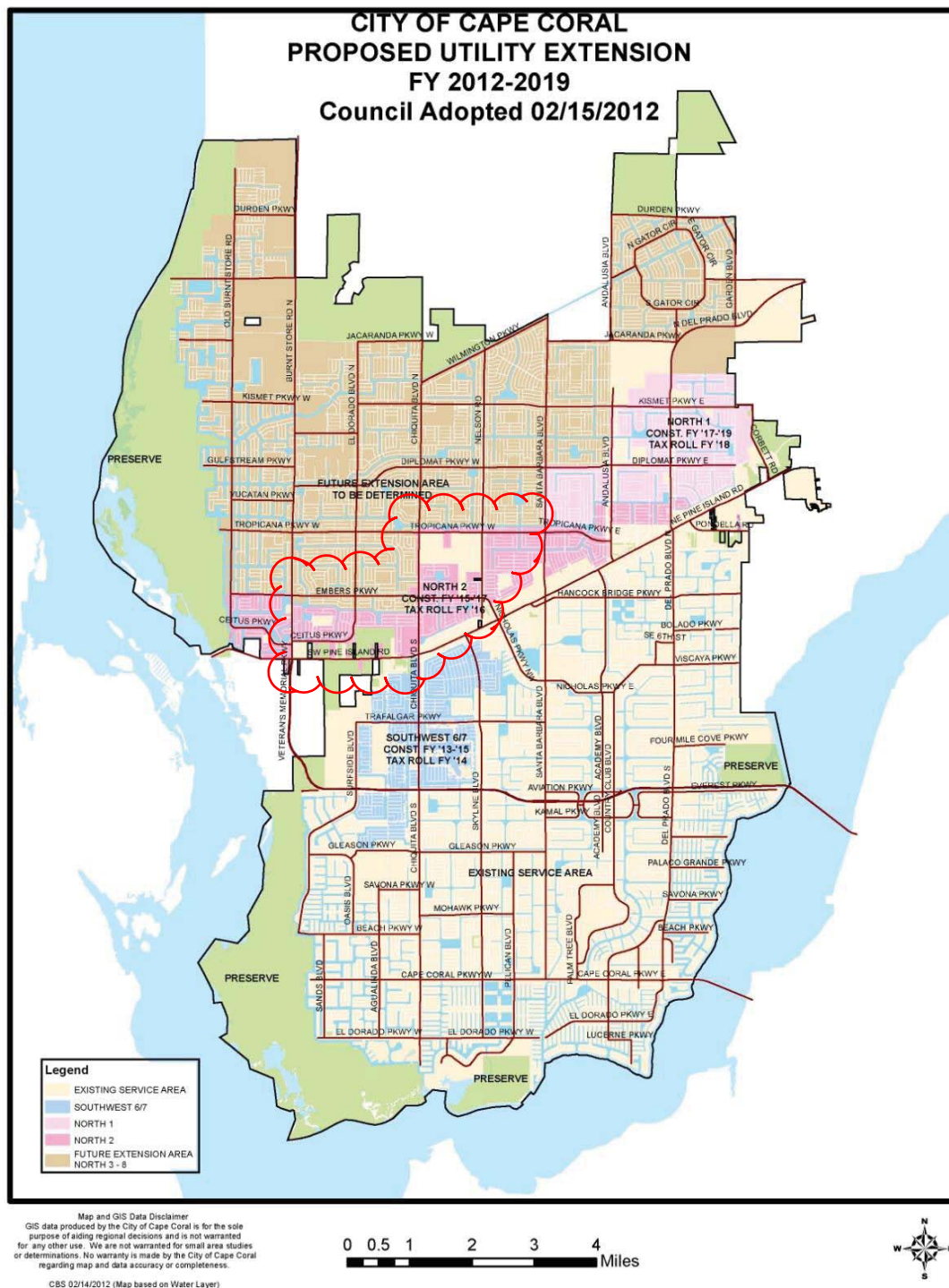
Task No.	Budget Category	Budget Amount	Match Amount
1	Contractual Services	\$500,000	\$490,000
	Total for Task:	\$500,000	\$490,000
2	No Funds Associated with this Task		
3	No Funds Associated with this Task		
4	Contractual Services	\$0	\$10,000
	Total for Task:	\$0	\$10,000
5	No Funds Associated with this Task		
Percentage Match		50%	50%

Budget Narrative: A quarter of the match, \$500,000, must come from a local source; \$125,000 must come from a local source.

PROJECT BUDGET SUMMARY: Cost reimbursable grant funding must not exceed the category totals for the project as indicated below. Match funding shall be provided in the categories indicated below.

Category Totals	Grant Funding, Not to Exceed, \$	Match Funding, \$
Contractual Services Total	\$500,000	\$500,000
Total:	\$500,000	\$500,000
Percentage Match:	50%	50%

Figure 1: Location Map



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Public Records Requirements

Attachment 4

1. Public Records

- a. If the Agreement exceeds \$35,000.00, and if the Grantee is acting on behalf of the Department in its performance of services under the Agreement, the Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if the Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If the Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply:

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to the Department.
- e. Upon completion of the contract, transfer, at no cost, to the Department all Public Records in possession of the contractor or keep and maintain Public Records required by the Department to perform the service. If the contractor transfers all Public Records to the Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department’s custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.
- f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE**

**CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF
PUBLIC RECORDS AT:**

Telephone: (850) 245-2118

Email: public.services@dep.state.fl.us

Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public
Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

ATTACHMENT 5

SPECIAL AUDIT REQUIREMENTS

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the contract/agreement*) to the recipient (*which may be referred to as the "Contractor", "Grantee" or other name in the contract/agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, 2 CFR Part 200, Subpart F, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, and/or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised (for fiscal year start dates prior to December 26, 2014), or as defined in 2 CFR §200.330 (for fiscal year start dates after December 26, 2014).

1. In the event that the recipient expends \$500,000 (\$750,000 for fiscal year start dates after December 26, 2014) or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F. An audit of the recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F.
3. If the recipient expends less than \$500,000 (or \$750,000, as applicable) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, is not required. In the event that the recipient expends less than \$500,000 (or \$750,000, as applicable) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at www.cfda.gov

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2)(n), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this Attachment indicates state financial assistance awarded through the Department of Environmental Protection by this Agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F and required by PART I of this Attachment shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised, and 2 CFR §200.501(a) (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, and 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised, and 2 CFR §200.512.

2. Pursuant to Section .320(f), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, the recipient shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, and any management letters issued by the auditor, to the Department of Environmental Protection at one the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

3. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Attachment 5

Electronically:
FDEPSingleAudit@dep.state.fl.us

B. The Auditor General's Office at the following address:

State of Florida Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

5. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with OMB Circular A-133, as revised and 2 CFR Part 200, Subpart F, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of **5** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **3** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

EXHIBIT - 1

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

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program Number	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	General Appropriations Line Item 1607	2017-2018	37.039	Statewide Surface Water and Wastewater Projects	\$500,000	140076

Total Award	\$500,000
-------------	-----------

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [www.cfda.gov] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
Progress Report Form**

Exhibit A

DEP Agreement No.:	NS021		
Grantee Name:			
Grantee Address:			
Grantee's Grant Manager:		Telephone No.:	
Reporting Period:			
Project Number and Title:			
<p>Provide the following information for all tasks and deliverables identified in the Grant Work Plan: a summary of project accomplishments for the reporting period; a comparison of actual accomplishments to goals for the period; if goals were not met, provide reasons why; provide an update on the estimated time for completion of the task and an explanation for any anticipated delays and identify by task.</p> <p>NOTE: Use as many pages as necessary to cover all tasks in the Grant Work Plan.</p> <p><u>The following format should be followed:</u></p> <p>Task 1:</p> <p>Progress for this reporting period:</p> <p>Identify any delays or problems encountered:</p>			

This report is submitted in accordance with the reporting requirements of DEP Agreement No. NS021 and accurately reflects the activities associated with the project.

Signature of Grantee's Grant Manager

Date

EXHIBIT D
PAYMENT REQUEST SUMMARY FORM

Payment Request No. _____ DEP Agreement No. NS021 Date _____

Performance Period (Start date - End date): _____

Deliverables completed to support payment request (attach additional pages as needed):

Task/Deliverable	Task Budget
Number(s): _____	Amount: \$ _____ -

Grantee:
(Name & Mailing Address) _____

Grantee Contact: _____
(Name & Phone)

GRANT EXPENDITURES SUMMARY SECTION

CATEGORY OF EXPENDITURE (As authorized)	AMOUNT OF THIS REQUEST	TOTAL CUMULATIVE PAYMENT REQUESTS	MATCHING FUNDS FOR THIS REQUEST	TOTAL CUMULATIVE MATCHING FUNDS
Salaries/Wages	\$ -	\$ -	\$ -	\$ -
Fringe Benefits	\$ -	\$ -	\$ -	\$ -
Indirect Cost	\$ -	\$ -	\$ -	\$ -
Contractual (Subcontractors)	\$ -	\$ -	\$ -	\$ -
Travel	\$ -	\$ -	\$ -	\$ -
Equipment (Direct Purchases)	\$ -	\$ -	\$ -	\$ -
Rental/Lease of Equipment	\$ -	\$ -	\$ -	\$ -
Miscellaneous/Other Expenses	\$ -	\$ -	\$ -	\$ -
Land Acquisition	\$ -	\$ -	\$ -	\$ -
TOTAL AMOUNT	\$	\$	\$	\$
TOTAL BUDGET (ALL TASKS)	\$		\$	
Less Total Cumulative Payment Requests of:	\$		\$	
TOTAL REMAINING (ALL TASKS)	\$		\$	

GRANTEE CERTIFICATION

Complete Grantee's Certification of Payment Request on Page 2 to certify that the amount being requested for reimbursement above was for items that were charged to and utilized only for the above cited grant activities.

Grantee's Certification of Payment Request

I, _____, on behalf of
(Print name of Grantee's Grant Manager designated in the Agreement)

_____, do hereby certify for
(Print name of Grantee)

DEP Agreement No. _____ and Payment Request No. _____ that:

- ☒ The disbursement amount requested is for allowable costs for the project described in Attachment 3 of the Agreement.
- ☒ All costs included in the amount requested have been satisfactorily purchased, performed, received, and applied toward completing the project; such costs are documented by invoices or other appropriate documentation as required in the Agreement.
- ☒ The Grantee has paid such costs under the terms and provisions of contracts relating directly to the project; and the Grantee is not in default of any terms or provisions of the contracts.

Check all that apply:

- ☐ All permits and approvals required for the construction, which is underway, have been obtained.
- ☐ Construction up to the point of this disbursement is in compliance with the construction plans and permits.
- ☐ The Grantee's Grant Manager relied on certifications from the following professionals that provided services for this project during the time period covered by this Certification of Payment Request, and such certifications are included:

Professional Service Provider (Name / License No.)	Period of Service (mm/dd/yy – mm/dd/yy)

_____ Grantee's Grant Manager's Signature	_____ Grantee's Fiscal Agent Signature
_____ Print Name	_____ Print Name
_____ Telephone Number	_____ Telephone Number

INSTRUCTIONS FOR COMPLETING PAYMENT REQUEST SUMMARY FORM

PAYMENT REQUEST NO.: This is the number of your payment request, not the quarter number.

DEP AGREEMENT NO.: This is the number on your grant agreement.

DATE: This is the date that you are submitting the payment request.

PERFORMANCE PERIOD: This is the beginning and ending date of the performance period for the Task/Deliverable that the request is for (this must be within the timeline shown for the Task/Deliverable in the Agreement).

TASK/DELIVERABLE NO.: Identify the number of the Task/Deliverable that you are requesting payment for and/or claiming match for (must agree with the current Grant Work Plan). *Note:* If payment request includes more than one Task/Deliverable, additional pages should identify each Task/Deliverable Number, its corresponding budget amount, and the amount requested.

TASK BUDGET AMOUNT: List the Task budget amount as identified in the Grant Work Plan for the corresponding Task/Deliverable. *Note:* If payment request includes more than one Task/Deliverable, additional pages should identify each Task/Deliverable Number, its corresponding budget amount, and the amount requested.

GRANTEE: Enter the name of the Grantee's agency and the address to which you want the state warrant sent.

GRANTEE CONTACT: List the name and telephone number for the Grantee's grant manager or other point of contact regarding the payment request submittal.

GRANT EXPENDITURES SUMMARY SECTION:

"AMOUNT OF THIS REQUEST" COLUMN: Enter by authorized category of expenditure the amount for which you are requesting reimbursement for this task. This must agree with the currently approved budget in the current Grant Work Plan of your grant Agreement. Do not claim expenses in a budget category that does not have an approved budget. Do not claim items that are not specifically identified in the current Grant Work Plan. Enter the column total on the "*TOTAL AMOUNT*" line. Enter the amount of all Tasks on the "*TOTAL BUDGET (ALL TASKS)*" line. Enter the total cumulative amount of this request **and** all previous payments on the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" line. Deduct the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" from the "*TOTAL BUDGET (ALL TASKS)*" for the amount to enter on the "*TOTAL REMAINING (ALL TASKS)*" line.

"TOTAL CUMULATIVE PAYMENT REQUESTS" COLUMN: Enter the cumulative amounts that have been requested to date for reimbursement by budget category. The final request should show the total of all requests; first through the final request (this amount cannot exceed the approved budget amount for that budget category for the Task(s) you are reporting on). Enter the column total on the "*TOTAL PAYMENT REQUEST*" line. **Do not enter anything in the shaded areas.**

"MATCHING FUNDS" COLUMN: Enter the amount to be claimed as match for the performance period for the Task(s) you are reporting on. This needs to be shown under specific budget categories according to the currently approved Grant Work Plan. Enter the total on the "*TOTAL AMOUNT*" line for this column. Enter the match budget amount on the "*TOTAL BUDGET (ALL TASKS)*" line for this column. Enter the total cumulative amount of this and any previous match claimed on the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" line for this column. Deduct the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" from the "*TOTAL BUDGET (ALL TASKS)*" for the amount to enter on the "*TOTAL REMAINING (ALL TASKS)*" line.

"TOTAL CUMULATIVE MATCHING FUNDS" COLUMN: Enter the cumulative amounts you have claimed to date for match by budget category. Put the total of all on the line titled "*TOTAL PAYMENT REQUEST.*" The final request should show the total of all claims, first claim through the final claim, etc. **Do not enter anything in the shaded areas.**

GRANTEE'S CERTIFICATION: Check all boxes that apply. Identify any licensed professional service providers that certified work or services completed during the period included in the request for payment. **Must be signed by both the Grantee's Grant Manager as identified in the grant agreement and the Grantee's Fiscal Agent.**

Documentation for match claims must meet the same requirements as those expenditures for reimbursement.

Complete one table per Task containing Contractual Reimbursement Requests
Add rows as needed for each table. Add tables as needed, if more than two tasks are in the invoice.
Enter the contractual sum for each task into the Invoice Summary spreadsheet.
*Include the match amount if match is required in the Agreement and is included in the invoice

Task/Deliverable #:								
Performance Period - Date Range	Sub-contractor Name	Subcontractor Invoice Number	Sub-contractor Invoice Date	Check Number	Check Amount	Amount requested for reimbursement	Amount to credit towards Match*	Comments

Task/Deliverable #:								
Performance Period - Date Range	Sub-contractor Name	Subcontractor Invoice Number	Sub-contractor Invoice Date	Check Number	Check Amount	Amount requested for reimbursement	Amount to credit towards Match*	Comments

EQUIPMENT AND SUPPLY/EXPENSE DETAIL

Complete one table for each task containing Equipment and Supply/Expense Reimbursement Request:
 Add rows as needed for each table. Add tables as needed, if more than two tasks are in the invoice
 Enter the Equipment and Supplies/Expense sums for each task into the Invoice Summary spreadsheet
 *Include the match amount if match is required in the Agreement and is included in the invoice

Task/Deliverable #:									
Performance Period - Date Range	Vendor Name	Invoice/Receipt Number	Invoice/Receipt Date	Check Number	Check Amount	Supplies/Expense Amount requested for reimbursement	Equipment Amount Requested for Reimbursement	Supplies/Expense Amount to credit towards Match*	Equipment Amount to credit towards Match*
Supplies/Expense Totals for Task # _____:						\$ -	\$ -	\$ -	\$ -

Task/Deliverable #:									
Performance Period - Date Range	Vendor Name	Invoice/Receipt Number	Invoice/Receipt Date	Check Number	Check Amount	Supplies/Expense Amount requested for reimbursement	Equipment Amount Requested for Reimbursement	Supplies/Expense Amount to credit towards Match*	Equipment Amount to credit towards Match*
Supplies/Expense Totals for Task # _____:						\$ -	\$ -	\$ -	\$ -

Complete one table for each task containing Salary and Fringe Reimbursement Requests

Add rows as needed for each table. Add tables as needed, if more than two tasks are in the invoice.

Enter the Salary and Fringe sums for each task into the Invoice Summary spreadsheet.

*Include the match amount if match is required in the Agreement and is included in the invoice.

[illegible]

Instructions for Completing Request for Payment - Part II

Include the Grantee Name, Payment Request No., and DEP Agreement Number. List vendor invoices that are associated with the Project by Task/Deliverable.

- 1 **Invoice Amount:** Amount of Invoice being submitted for reimbursement.
- 2 **Local Share or Other Funding or Amount Not Requested:** Portion of invoice paid for by Grantee.
Requested Amount: Subtract Grantee's Local Share or Other Funding or Amount Not Requested **(2)** from Invoice Amount **(1)**.
- 3 **Deliverable Number:** Must identify completed deliverable(s) for each invoice. If invoice covers multiple deliverables, that invoice would be listed multiple times, a line item for each deliverable with any portion not applicable to that Task/Deliverable identified under **(2)**.
- 4

Submittal Instructions

Instructions for E-mailing:

The program now accepts reimbursement requests electronically. When scanning please be sure that the minimum scan resolution must be 300 DPI (dots per inch). When reimbursement requests are sent electronically, please do not also send a hard copy by postal mail.

Please redact all sensitive financial information from the invoices and other supporting documentation to be submitted with this Payment Request Form.

Remit Payment Request by E-mail to the Department's Grant Manager

Be sure the E-mail payment request includes the following:

Subject: Project Number_Disbursement Number: example – LP14025_Disb_1

Attachments:

- 1) Exhibit D Payment Request Summary
- 2) Request for Payment Part II Reimbursement Detail
- 3) Copies of invoices
- 4) Other supporting documentation, as needed

For questions or concerns regarding these forms or if you would like the payment request forms listed above in electronic format please contact the Department's Grant Manager.

EXHIBIT E
Department of Environmental Protection
Quality Assurance Requirements for Contracts and Grants

1. GENERAL REQUIREMENTS AND DEFINITIONS

- a. As applicable to the scope of services described in the contract work plan or other statement of work for this contract, the sampling, field testing and laboratory analyses performed under this contract shall conform to the requirements set forth in Chapter 62-160, Florida Administrative Code (F.A.C.) and "Requirements for Field and Analytical Work Performed for the Department of Environmental Protection under Contract" (DEP-QA-002/02), February 2002.
- b. Hereinafter, "DEP" or "Department" refers to the Florida Department of Environmental Protection.
- c. "Sample" and "sampling" refers to samples that shall be either collected or analyzed under the terms of this contract.

2. REQUIREMENTS FOR LABORATORIES

- a. All applicable laboratory testing activities shall be performed by laboratories certified by the Florida Department of Health Environmental Laboratory Certification Program (DoH ELCP) for all applicable matrix/method/analyte combinations to be measured for this contract. Laboratory certification requirements are described in rule 62-160.300, F.A.C. Certification is not required for laboratory tests outside of the scope of DoH ELCP accreditation as determined according to 62-160.300(5)(c), F.A.C.
- b. For samples collected from a non-potable water matrix, the certification requirement is met if the laboratory is certified for the contracted analyte(s) in at least one method utilizing an analytical technology appropriate for the contract, as determined by the Department according to 62-160.300(1)(c), F.A.C.
- c. If the laboratory is not certified for some or all of the proposed test measurements, the laboratory shall apply for certification within one month of contract execution. The laboratory shall attempt to become fully certified for all applicable matrix/method/analyte combinations to be performed for the contract by maintaining active coordination with the DoH ELCP throughout the application process. Regardless of when the laboratory receives certification, the laboratory shall implement all applicable standards of the National Environmental Laboratory Accreditation Conference (NELAC 2003 Quality Systems standards, as adopted) upon contract execution.
- d. Laboratories shall maintain certification as specified in item 2.a above during the life of the contract. Should certification for an analyte or test method be lost, all affected tests shall be immediately sub-contracted to a laboratory with current DoH ELCP certification in the appropriate matrix/method/analyte combination(s). The contractor shall notify the DEP contract manager in writing before any change to a sub-contracted laboratory is made.
- e. The DoH ELCP certificate number (certified laboratory identification number) for each contracted (and sub-contracted) laboratory shall be listed in the required contract QA plan (see Section 6 below) in association with the analytical tests to be performed by each laboratory analyzing samples for the contract.
- f. Each certified laboratory analyzing contracted samples shall ensure that an acceptable demonstration of capability (DOC) is performed as described in the 2003 NELAC Quality Systems standards (NELAC 2003, Section 5.5.4.2.2 and Appendix C). In addition, each certified laboratory that performs any of the proposed matrix/method/analyte combination(s) approved for the contract shall have the requisite DOC documentation and supporting laboratory records on file for the applicable combinations. The DOCs performed shall meet the requirements for precision, accuracy, method detection limit (MDL) and/or practical quantitation limit (PQL), as specified in each applicable laboratory test method, Standard Operating Procedure (SOP) or Quality Manual, or as listed in the contract QA plan (section 6, below). Alternative limits for detection and quantitation other than MDL and PQL shall be determined, if applicable to the laboratory. DOCs performed for the contracted analytes shall include any modifications to the test method or SOP that have been approved by DEP according to 62-160.330(3), F.A.C., if

applicable. If requested by the Department, documentation that supports the DOC for a specified analyte and test method shall be made available for review.

- g. The contracted (and/or subcontracted) laboratory shall report PQLs and MDLs or other specified limits of detection and quantitation with the results of sample analyses. MDLs and/or PQLs shall only be required for test methods that are technically amenable to the determination of MDLs and/or PQLs. For those test methods where the determination of MDLs and/or PQLs are not technically feasible, the laboratory shall report a value or increment representing the lower limit of the working range of the test method, however determined by the laboratory. The laboratory shall indicate whether the reported limit represents a limit of detection or quantitation. In all cases, limits of detection and quantitation other than MDLs and PQLs shall be explicitly defined and evaluated by the laboratory. All limits shall be as listed in the applicable laboratory test method, SOP or Quality Manual, or as listed in the contract QA plan (Section 6, below). The reported MDLs and PQLs (or other limits per above) shall meet the analytical sensitivity and quantitation objectives for the contract.
- h. Additional laboratory quality control expectations:
 - (i) The selected laboratory test methods listed in the QA Plan shall provide results that meet applicable contract data quality objectives.
 - (ii) All laboratory testing procedures shall follow the analytical methods as approved in the contract QA plan (see Section 6).
 - (iii) The laboratory shall adhere to the quality control requirements specified in the laboratory test methods and this Attachment.
 - (iv) The laboratory shall calculate all sample results according to the procedures specified in the analytical test methods approved in the contract QA plan.

3. FIELD ACTIVITIES

- a. All sample collection and field testing activities shall be performed in accordance with the Department's "Standard Operating Procedures for Field Activities" (DEP-SOP-001/01, March 1, 2014). The specific standard operating procedures (SOPs) to be used for this contract shall be cited in the contract QA plan (see Section 6).
- b. Field-Generated Quality Control (QC) Blanks are defined in DEP SOP FQ 1000 (subparts FQ 1211 – FQ 1214) and shall be composed and analyzed for sample collection activities associated with this contract according to the requirements of part FQ 1230 (sections 1. – 2.3.1), DEP SOP FS 2100 (Part FS 2110, sec. 2.1.1.2) and/or DEP SOP FS 2400 (Part FS 2430, sec. 2.1.1.2), as applicable to the analytes and matrices to be collected using the sampling equipment specified in the contract QA plan (section 6 below).
 - (i) If an analyte detected in the sample is also found in any field-generated QC blank that is associated with the sample, the contractor shall investigate and attempt to determine the cause of the QC blank contamination. If any contracted sample results are qualified as in (ii) below, the outcome of this investigation shall be reported to the DEP contract manager and shall include a discussion of the corrective measures taken to minimize future occurrences of QC blank contamination associated with the collection of samples for this contract.
 - (ii) If an analyte detected in the sample is also found in any field-generated QC blank that is associated with the sample, the analytical result reported for the affected sample shall be qualified as an estimated value, unless the analyte concentration in the blank is less than or equal to 10% of the reported sample concentration. The "G" data qualifier code shall be reported with the sample result for any blank concentration exceeding the above "10%" criterion for the affected analyte (see Table 1, Chapter 62-160, F.A.C.).

4. REPORTING, DOCUMENTATION AND RECORDS RETENTION

- a. All laboratory and field records described or listed in Rules 62-160.240 and 62-160.340, F.A.C. shall be retained for a minimum of five years after the generation (or completion) of the records applicable to the contract. Longer retention times as specified in the contract shall supersede.
- b. All field and laboratory data and supporting information shall be reported for this contract according to applicable requirements in 62-160.340(3) through 62-160.340(8), F.A.C.

- c. Any other documentation and reports associated with work performed for this contract shall be likewise retained and shall include relevant information for the procedures described in sections 2 and 3, above.
- d. Any documentation or reports specifically identified in this contract as deliverable work products shall be retained as in 4.a., above.
- e. All field and laboratory records that are associated with work performed under this contract shall be organized so that any information can be quickly and easily retrieved for inspection, copying or distribution.
- f. The Department reserves the right to request some or all of the laboratory or field information in an electronic format specified by the Department, as specified in the contract, and/or as described in the approved contract QA plan (section 6). Also see subsection k., below.
- g. Any certified laboratory reports issued for contracted sample analyses using certified methods shall be generated in accordance with NELAC Quality Systems requirements (NELAC 2003, section 5.5.10).
- h. Upon request by the Department contract manager or as required by the contract, copies of the original laboratory reports shall be submitted to the contract manager.
- i. In addition to any reports of sample results provided per contract deliverable requirements and subsections b., e., f. and g., above, the contractor shall submit any of the laboratory information and/or records associated with the contracted analyses as described in this section (section 4) upon request by DEP, including any of the following:
 - ▶ Laboratory sample identification (ID) and associated Field ID
 - ▶ Analytical/test method
 - ▶ Parameter/analyte name
 - ▶ Analytical result (including dilution factor)
 - ▶ Result unit
 - ▶ Applicable DEP Data Qualifier Codes per Table 1 of Chapter 62-160, F.A.C.
 - ▶ Result comment(s) to include corrective/preventive actions taken for any failed QC measure (e.g., QC sample result, calibration failure) or other problem related to the analysis of the samples
 - ▶ Date and time of sample preparation (if applicable)
 - ▶ Date and time of sample analysis
 - ▶ Results of laboratory verification of field preservation of received samples
 - ▶ Sample matrix
 - ▶ DoH ELCP certification number for each laboratory (must be associated with the test results generated by each laboratory analyzing samples under this contract)
 - ▶ MDL, Limit of Detection (LOD) or other defined limit of detection
 - ▶ PQL, Limit of Quantitation (LOQ) or other defined limit of quantification
 - ▶ Field and laboratory QC blank results:
 - Laboratory QC blank analysis results as required by the method and the NELAC Quality Systems standards (e.g., method blank)
 - Results for trip blanks, field blanks and equipment blanks, as applicable to the project and as specified in the QA Plan (see Section 6)
 - ▶ Results for field duplicates (or replicates)
 - ▶ Results for other QC and calibration verification results, as applicable to the specific test methods used for the contracted analyses:
 - Results of sample matrix spikes, laboratory duplicates or matrix spike duplicates
 - Results of surrogate spike analyses
 - Results of laboratory control samples (LCS)
 - Results of calibration verifications
 - Acceptance criteria used to evaluate each reported quality control measure

- j. Unequivocal documentation links between each reported laboratory quality control measure (e.g., QC blanks, matrix spikes, LCS, duplicates, calibration verification) and the associated sample result(s) shall be maintained for all contracted analyses.
- k. In addition to any field information provided per contract deliverable requirements, and subsections b., e., f. and g., above, the contractor shall submit any of the field information and/or records associated with the contracted samples as described in this section (section 4) upon request by DEP, including any of the following:
 - ▶ Site name and location information
 - ▶ Field ID for each sample container and the associated analytes (test methods) for which the container was collected
 - ▶ Date and time of sample collection
 - ▶ Sample collection depth, if applicable
 - ▶ Sample collection method identified by the DEP SOP number, where applicable
 - ▶ If performed, indicate samples that were filtered
 - ▶ Field test measurement results:
 - DEP SOP number (FT-series), where applicable
 - Parameter name
 - Result
 - Result unit
 - Applicable Data Qualifier Codes per Table 1 of Chapter 62-160, F.A.C.
 - ▶ Narrative comments providing explanations, descriptions and/or discussions of: field conditions impacting QC for sample collections, unacceptable field measurements, field-testing meter calibration verification failures, or other problems related to the sampling event, and corrective/preventive actions taken for the items noted (e.g., for blank contamination or meter calibration failure).
- l. The Department reserves the right to request some or all of the laboratory or field information in a format as specified in the contract, and/or as described in the approved contract QA plan (section 6). Required formats are specified in **Attachment 3, Grant Work Plan**.

5. **AUDITS**

- a. AUDITS BY THE DEPARTMENT – Pursuant to Rule 62-160.650, F.A.C., the Department may conduct audits of field and laboratory activities. In addition to allowing Department representatives to conduct onsite audits of contracted work in the field or at contractor (or subcontractor) facilities, upon request by the Department, field and laboratory records pertinent to the contracted research as described per section 4, above shall be provided by the contractor. If an audit by the Department results in a determination that the reported data are not usable for the purpose(s) of the contract, do not meet the data quality objectives specified by the contract, do not meet other applicable Department criteria described in the contract, its attachments, the QA Plan (see section 6, below) or these QA Requirements, do not applicable meet data validation criteria outlined in Rule 62-160.670, F.A.C.; or, are not otherwise suitable for the intended use of the data (however applicable), the DEP contract manager shall pursue remedies available to the Department, including those outlined in section 8, below.
- b. PLANNING REVIEW AUDITS –
 - (i) Initial: Prior to the completion of the sampling and analysis events and after the second completed sampling and analysis event but no later than fourth, or as described in **Attachment 3**, the contractor and all subcontractors shall review the contract QA plan (see Section 6 below) relative to the completed field and laboratory activities to determine if data quality objectives are being met, identify any improvements to be made to project activities, and refine the sampling and/or analytical design or schedule, if applicable. Within one month of the review, a summary of the review, including any corrective action plans or amendments to the contract QA plan, shall be sent to the DEP contract manager, and a copy of all submitted documents shall be maintained with the permanent project records.

- (ii) Ongoing: Planning reviews as described in subsection (i) above shall occur annually thereafter for the remainder of the contract, if applicable to the duration of the contract.
- c. QUALITY SYSTEMS AUDITS – The contractor and all subcontractors shall ensure that any required laboratory and field quality system audits are performed according to the respective Quality Manuals or other relevant internal quality assurance documents for each contracted and sub-contracted entity. The results of these audits shall be documented in the contractor's and subcontractors' records. Copies of the above audit reports or results shall be provided to the DEP contract manager upon request. Copies of audit records for internal audits conducted per DEP SOP FA 1000 (subpart FA 4200) or NELAC Quality Systems requirements (NELAC 2003, section 5.4.13) shall be similarly provided.
- d. STATEMENTS OF USABILITY – As a part of the audit process and the final report, the contractor shall provide statements about data usability as necessary to address the topics in subsections (i) – (iii) below, relative to the contract data quality objectives and any data quality indicators that may be specified in the contract, its attachments, the QA Plan (see section 9, below), or these QA Requirements.
 - (i) All applicable data quality acceptance and usability criteria for the contract, as specified in the procedures, test methods, QA plan, Quality Manual(s), other contract attachments, or these QA Requirements shall be met.
 - (ii) All quality control measures shall be evaluated according to the acceptance criteria listed in the applicable procedures, test methods, QA plan, Quality Manual(s), other contract attachments or these QA Requirements.
 - (iii) All sample results shall be evaluated according to all applicable usability criteria specified in the procedures, test methods, QA plan, Quality Manual(s), other contract attachments, or these QA Requirements.

6. QA PLAN

- a. The contractor shall submit the contract QA plan identified in **Attachment 3** to the DEP contract manager in accordance with the schedule set forth in **Attachment 3** and **prior to the commencement of field and laboratory activities**. Failure to submit the QA plan in this required timeframe shall result in a delay of approval to begin work until the document has been submitted to the Department and approved (or conditionally approved) by the DEP contract manager.
- b. The contractor may submit a version of the QA plan to the Department for approval no more than three times. If the contractor fails to obtain approval for the QA Plan after the third (final) submission to the Department, the DEP contract manager may suspend or terminate the contract.
- c. The DEP contract agreement number shall appear on the title page of the submitted QA plan. Within 45 days or as specified in **Attachment 3**, of receipt of the QA plan by the Department, the Department shall review and either approve the QA plan or provide comments to the contractor as to why the QA plan is not approved. If further revisions are needed, the contractor shall then have 15 days or as specified in **Attachment 3**, from the receipt of review comments to respond. The Department shall respond to all revisions to the QA plan within 30 days, or as specified in **Attachment 3** of receipt of any revisions.
- d. If the review of the QA plan by the Department is delayed beyond sixty (60) days after the QA plan is received by the Department, through no fault of the contractor, the contractor shall have the option, after the QA plan is approved, of requesting and receiving an extension in the term of the contract for a time period not to exceed the period of delayed review and approval. This option must be exercised at least sixty (60) days prior to the current termination date of the contract.
- e. Work may not begin for specific contract tasks until approval has been received by the contractor from the DEP contract manager. Sampling and analysis for the contract may not begin until the contract QA plan has been approved (or conditionally approved).

- f. Once approved, the contractor and subcontractor(s) shall follow the procedures and methods described in the contract QA plan and any other relevant quality assurance documents, including, but not limited to :
 - ▶ Ensuring that all stated quality control measures are collected, analyzed and evaluated for acceptability;
 - ▶ Using only the protocols approved in the QA plan; and
 - ▶ Using only the equipment approved in the QA plan.
 - g. If any significant changes in sampling project design, changes in the project analyte list, changes in procedures or test methods, changes in equipment, changes in subcontractor organizations or changes in key personnel occur, the contractor shall submit appropriate revisions of the QA Plan to the DEP contract manager for review. The proposed revisions may not be implemented until they have been approved (or conditionally approved) by the DEP contract manager. If the contractor fails to submit the required revisions, the DEP contract manager may suspend or terminate the contract. QA plan revisions or amendments shall be provided as one or more of the following, as described in **Attachment 3**:
 - (i) Provided in a new contract QA plan;
 - (ii) Provided as amended sections of the current contract QA plan;
 - (iii) Documented through written or electronic correspondence with the DEP contract manager and incorporated into the approved contract QA plan by reference or other linkage.
7. **DELIVERABLES**
- a. The following lists the expected deliverables that are associated with the quality assurance requirements of this contract:
 - (i) Reports of planning review audits as specified in item 5.b. above.
 - (ii) Statements of usability as specified in item 5.d. above.
 - (iii) Contract QA plan, per Section 6, above.
8. **CONSEQUENCES**
- a. Failure to comply with any requirement of this attachment (and any included addenda) may result in:
 - (i) Immediate termination of the contract.
 - (ii) Withheld payment for the affected activities.
 - (iii) Contract suspension until the requirement(s) has been met.
 - (iv) A request to refund already disbursed payments.
 - (v) A request to redo work affected by the non-compliant activity.
 - (vi) Other remedies available to the Department.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project) North 2 UEP - Catch Basin Replacement (East)	Agreement Number NS031
---	----------------------------------

2. Parties State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard Tallahassee, Florida 32399-3000	(Department)
Grantee Name: City of Cape Coral	Entity Type: Local Government
Grantee Address: 1015 Cultural Park Boulevard Cape Coral, FL 33990	FEID: 59-1312996 (Grantee)

3. Agreement Begin Date: Upon Execution	Date of Expiration: June 30, 2021
---	---

4. Project Number: <i>(If different from Agreement Number)</i>	Project Location(s): Cape Coral, Florida
Project Description: The Grantee intends to replace existing open throat catch basins with new control structures.	

5. Total Amount of Funding: \$800,000.00	Funding Source?	Award #s or Line Item Appropriations:	Amount per Source(s):
	<input checked="" type="checkbox"/> State <input type="checkbox"/> Federal	Line Item 1601, GAA, FY 2016-2017	\$800,000.00
	<input type="checkbox"/> State <input type="checkbox"/> Federal		
	<input type="checkbox"/> State <input type="checkbox"/> Federal		
	<input type="checkbox"/> State <input type="checkbox"/> Federal		

6. Department's Grant Manager Name: Emily Brown <div style="text-align:right"><small>or successor</small></div> Address: 3900 Commonwealth Blvd., MS#3570 Tallahassee, Florida 32399 Phone: (850) 245-2946 Email: Emily.Brown@Dep.State.FL.US	Grantee's Grant Manager Name: James Breakfield, P.E. <div style="text-align:right"><small>or successor</small></div> Address: P.O. Box 150027 Cape Coral, Florida 33915 Phone: (239) 574-0588 Email: jbreakfi@capecoral.net
--	--

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

<input checked="" type="checkbox"/> Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
<input checked="" type="checkbox"/> Attachment 2: Special Terms and Conditions
<input checked="" type="checkbox"/> Attachment 3: Grant Work Plan
<input checked="" type="checkbox"/> Attachment 4: Public Records Requirements
<input checked="" type="checkbox"/> Attachment 5: Special Audit Requirements
<input type="checkbox"/> Attachment 6: Program-Specific Requirements
<input type="checkbox"/> Attachment 7: Grant Award Terms (Federal)
<input type="checkbox"/> Attachment 8: Federal Regulations and Terms (Federal)
<input type="checkbox"/> Additional Attachments (if necessary):
<input checked="" type="checkbox"/> Exhibit A: Progress Report Form
<input type="checkbox"/> Exhibit B: Disclosure of Lobbying Activities (Federal)
<input type="checkbox"/> Exhibit C: DEP Property Reporting Form
<input checked="" type="checkbox"/> Exhibit D: Payment Request Summary Form
<input checked="" type="checkbox"/> Exhibit E: Quality Assurance Requirements
<input type="checkbox"/> Exhibit F: Advance Payment Terms and Interest Earned Memo
<input type="checkbox"/> Additional Exhibits (if necessary):

8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	
Federal Award Date to Department:	
Total Federal Funds Obligated by this Agreement:	
Federal Awarding Agency:	
Award R&D?	<input type="checkbox"/> Yes <input type="checkbox"/> N/A

IN WITNESS WHEREOF, this Agreement is being executed by the Parties and is effective on the date in the Agreement Begin Date above or the last date signed below, whichever is later.

9. **City of Cape Coral**

GRANTEE

Grantee Name

By _____
(Authorized Signature) Date Signed

Print Name and Title of Person Signing

10. **State of Florida Department of Environmental Protection** **DEPARTMENT**

By _____
Secretary or Designee Date Signed

Print Name and Title of Person Signing

☒ Additional signatures attached on separate page.

DWRA Additional Signatures

DEP Grant Manager

DEP QC Reviewer

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any preprinted terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions between the documents that make up the Agreement, the order of precedence for the documents is as follows:
 - i. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - ii. Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication between the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following: an increase or decrease in the Agreement funding amount; a change in the Grantee's match requirements; a change in the expiration date of the Agreement; and/or changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed ten percent (10%) of the total budget as last approved by the Department. A change order to this Agreement may be used when task timelines within the current authorized Agreement period change, and/or when the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than ten percent (10%) of the total budget as last approved by the Department, or without limitation to changes to approved fund transfers between budget categories for the purchases of meeting match requirements. This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to the Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by the Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time whether the services or qualifications offered by the Grantee meet the Agreement requirements. Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable/minimum requirement does not foreclose the Department's remedies in the event those performance standards that cannot be readily measured at the time of delivery are not met.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by the Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at the Grantee's expense. If the Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to the Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at the Grantee's sole expense. The Grantee shall only invoice the Department for deliverables that are completed in accordance with the Grant Work Plan. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to the Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which the Grantee may remedy the objections noted by the Department. The Grantee's failure to make adequate or acceptable said deliverables after a reasonable opportunity to do so may constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. These consequences for nonperformance shall not be considered penalties.
- b. Corrective Action Plan. If the Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, the Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by the Grantee to the Department. The Department shall provide the Grantee with a written request for a CAP that specifies the outstanding deficiencies. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) calendar days of the date of the written request from the Department. The CAP shall be sent to the Grant Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Grantee shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon the Department's notice of acceptance of a proposed CAP, the Grantee shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, the Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by the Department or steps taken by the Grantee shall preclude the Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Grant Manager.
 - iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by the Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by the Department, the Department agrees to pay the Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.). To obtain the applicable interest rate, please refer to:
<http://www.myfloridacfo.com/Division/AA/Vendors/default.htm>.
- b. Taxes. The Department is exempted from payment of State sales and use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by the Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Grantee shall not use the Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of the Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on **Exhibit D, Payment Request Summary Form**. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: http://www.myfloridacfo.com/aadir/reference_guide/.
- e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by the Department pursuant to the Grant Work Plan shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed.
- f. Interim Payments. Interim payments may be made by the Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by the Department's Grant Manager.
- g. Final Payment Request. A final payment request should be submitted to the Department no later than sixty (60) calendar days following the completion date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the completion date of the Agreement.
- h. Annual Appropriation Contingency. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement 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 Department if the Legislature reduces or eliminates appropriations.
- i. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If the Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by the Grantee exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) calendar days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from the Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) calendar days of written notification. Interest shall be charged on

the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$1,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.

- i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to the Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from the Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, the Grantee shall request the advance written approval from the Department's Grant Manager of the fixed price negotiated by the Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of the Department Grant Manager's approval of the fixed-price amount, the Grantee may proceed in finalizing the fixed-price subcontract.
 - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, the Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.
- e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$1,000 or more. Match or reimbursement for the Grantee's direct purchase of equipment is subject to specific approval of the Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Property Reporting Form.
- f. Rental/Lease of Equipment – Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of the Grantee's contract obligations to its subcontractor, the Department shall not reimburse any of the following types of charges: cell phone usage, attorney's fees or court costs, civil or administrative penalties, or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, the Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on **Exhibit A, Progress Report Form**, to the Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) calendar days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by the Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if the Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement to a maximum percentage described in the Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. The Department reserves the right to withhold payment of retainage for Grantee's failure to respond to or correct identified deficiencies within the timeframe stipulated in the Grant Work Plan. The Department shall provide written notification to Grantee of identified deficiencies and the Department's intent to withhold retainage. Grantee's failure to rectify the identified deficiency within the timeframe stated in the Department's notice will result in forfeiture of retainage by Grantee.
- c. If Grantee fails to perform the requested work, or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment for the work and the retainage called for under the entire Grant Work Plan. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed.
- d. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- e. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:
 - i. Commercial General Liability Insurance.
The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$200,000 each individual's claim and \$300,000 each occurrence.
 - ii. Workers' Compensation and Employer's Liability Coverage.
The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Agreement.
 - iii. Commercial Automobile Insurance.
If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage
 - iv. Other Insurance.
Additional insurance may be required by federal law, where applicable, if any work proceeds over or adjacent to water, including but not limited to Jones Act, Longshoreman's and Harbor Worker's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits of not less than \$300,000 each. Questions concerning required coverage should be directed to the U.S. Department of Labor (<http://www.dol.gov/owcp/dlhwc/lscntac.htm>) or to the parties' insurance carrier.
- b. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as

described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.

- c. Exceptions to Additional Insured Requirements. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured. Further, notwithstanding the requirements above, if Grantee is self-insured, then the Department of Environmental Protection, its employees, and officers do not need to be listed as additional insureds.
- d. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- e. Proof of Insurance. Upon execution of this Agreement, the Grantee shall provide the Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from the Department, the Grantee shall furnish the Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- f. Failure to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, the Grantee shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) calendar days after the cancellation of coverage.

13. Termination.

- a. Termination for Convenience. The Department may terminate the Agreement in whole or in part by giving 30 days' written notice to the Grantee, when the Department determines, in its sole discretion, that it is in the State's interest to do so. The Department shall notify the Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee shall not furnish any service or deliverable after it receives the notice of termination, unless otherwise instructed in the notice. The Grantee shall not be entitled to recover any cancellation charges or lost profits. If the Agreement is terminated before performance is completed, the Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described below occur or in the event that the Grantee fails to fulfill any of its other obligations under this Agreement. The Grantee shall continue work on any portion of the Agreement not terminated. If, after termination, it is determined that the Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination, and except as otherwise directed by the Department, the Grantee shall stop performing services on the date, and to the extent specified, in the notice.

14. Notice of Default.

If the Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, without limitation, any of the events of default listed below, the Department shall provide notice to the Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, the Grantee will be found in default, and the Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of the Department or outside the reasonable control of the Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by the Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding.

- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information.
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement; and
- i. One or more of the following circumstances, uncorrected for more than 30 calendar days unless, within the specified 30-day period, the Grantee (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by the Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of the Grantee's business or property; and/or
 - iv. An action by the Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide the Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, the Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle the Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Grantee. In case of any delay the Grantee believes is excusable, the Grantee shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if the Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date the Grantee first had reason to believe that a delay could result.

THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Grantee shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the Department, in which case the Department may (1) accept allocated performance or deliveries from the Grantee, provided that the Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by the Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate the Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that the Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of the Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon the Department giving the Grantee (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by the Department in any legal action without the Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. – b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require the Department to hold harmless or indemnify the Grantee, insure or assume liability for the Grantee's negligence, waive the Department's sovereign immunity under the laws of Florida, or otherwise impose liability on the Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make the Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit the Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it at law or in equity and upon notice to the Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by the Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of the Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:
 - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Scrutinized Companies.

Grantee certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, Grantee agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement for cause if the Grantee, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Grantee, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

25. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between the Grantee and the State, the Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with Sections 11.062 and 216.347, F.S.

26. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, the Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of the Department's Inspector General, or other authorized State official, the Grantee shall provide any type of information the Inspector General deems relevant to the Grantee's integrity or responsibility. Such information may include, but shall not be limited to, the Grantee's business or financial records, documents, or files of any type or form that refer to or relate to the Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

27. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its Subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in **Attachment 5, Special Audit Requirements**. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If the Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, the Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, the Grantee shall utilize the guidance provided under 2 CFR §200.330 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, the Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, the Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State and Federal guidelines (including cost allocation guidelines). The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) calendar days of such request.
- e. No Commingling of Funds. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, the Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If the Department finds that these funds have been commingled, the Department shall have the right to demand a refund, either in whole or in part, of the funds provided to the Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from the Department shall refund, and shall forthwith pay to the Department, the amount of money demanded by the Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the Department by the Grantee to the date repayment is made by the Grantee to the Department.
 - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by the Department, from another source(s), the Grantee shall reimburse the Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by the Grantee to the date repayment is made to the Department.

28. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

29. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of the Department.

30. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by the Grantee and may not be subcontracted or assigned without the prior written consent of the Department.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to the Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve the Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny the Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of the Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for the Grantee to meet the required delivery schedule.

31. Guarantee of Parent Company.

If the Grantee is a subsidiary of another corporation or other business entity, the Grantee asserts that its parent company will guarantee all of the obligations of the Grantee for purposes of fulfilling the obligations of the Agreement. In the event the Grantee is sold during the period the Agreement is in effect, the Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of the Grantee.

32. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

33. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of the Grantee, its agents, servants, and employees, nor shall the Grantee disclaim its own negligence to the Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If the Department consents to a subcontract, the Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

34. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

35. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of the Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

36. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of the Department. In the event of any assignment, the Grantee remains secondarily liable for performance of the Agreement, unless the Department

expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to the Grantee of its intent to do so.

37. Prohibited Local Government Construction Preferences.

Pursuant to Section 255.0991, F.S., for a competitive solicitation for construction services in which 50 percent (50%) or more of the cost will be paid from state-appropriated funds that have been appropriated at the time of the competitive solicitation, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

- i. The contractor's maintaining an office or place of business within a particular local jurisdiction;
- ii. The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or
- iii. The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

For any competitive solicitation that meets the criteria of this section, a state college, county, municipality, school district, or other political subdivision of the state shall disclose in the solicitation document that any applicable local ordinance or regulation does not include any preference that is prohibited by this section.

38. Prohibited Governmental Actions for Public Works Projects.

Pursuant to Section 255.0992, F.S., state and political subdivisions that contract for public works projects are prohibited from imposing restrictive conditions on certain contractors, subcontractors, or material suppliers and prohibited from restricting qualified bidders from submitting bids.

- a. "Political subdivision" means separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair or improvement of public works.
- b. "Public works project" means an activity of which fifty percent (50%) or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of construction, maintenance, repair, renovation, remodeling or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.
- c. Except as required by federal or state law, the state or political subdivision that contracts for a public works project may not require that a contractor, subcontractor or material supplier or carrier engaged in such project:
 - i. Pay employees a predetermined amount of wages or prescribe any wage rate;
 - ii. Provide employees a specified type, amount, or rate of employee benefits;
 - iii. Control, limit, or expand staffing; or
 - iv. Recruit, train, or hire employees from designated, restricted, or single source.
- d. For any competitive solicitation that meets the criteria of this section, the state or political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project, except for those vendors listed under Section 287.133 and Section 287.134, F.S.
- e. Contracts executed under Chapter 337, F.S. are exempt from these prohibitions.

39. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
GRANT AGREEMENT
SPECIAL TERMS AND CONDITIONS
AGREEMENT # NS031**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is the North 2 UEP – Catch Basin Replacement (East). The Project is defined in more detail in the Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement is the same as the term of the Agreement.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

- a. Compensation. This is a cost reimbursement agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur as indicated in Attachment 3.
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Costs Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
<input type="checkbox"/>	<input type="checkbox"/>	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
<input type="checkbox"/>	<input type="checkbox"/>	a. Fringe Benefits, N/A.
<input type="checkbox"/>	<input type="checkbox"/>	b. Indirect Costs
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Contractual (Subcontractors)
<input type="checkbox"/>	<input type="checkbox"/>	Travel
<input type="checkbox"/>	<input type="checkbox"/>	Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Rental/Lease of Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Miscellaneous/Other Expenses
<input type="checkbox"/>	<input type="checkbox"/>	Land Acquisition

No Equipment purchases shall be funded under this Agreement.

There will be no Land Acquisitions funded under this Agreement.

5. Match Requirements.

The Agreement requires at least a 50% match on the part of the Grantee, of which at least 25% (\$200,000) must come from a local funding source. Therefore, the Grantee is responsible for providing \$800,000 through cash or third party in-kind towards the work funded under this Agreement.

The Grantee may claim allowable project expenditures made on or after July 1, 2016 for purposes of meeting its match requirement as identified above.

Each payment request submitted shall document all matching funds and/or match efforts (i.e., in-kind services) provided during the period covered by each request. The final payment will not be processed until the match requirement has been met.

If, upon completion of this Project, actual Project costs are less than the total estimated Project costs, and there are no pending payment requests, the Grantee's required match may be reduced proportionately, as long as at least a 50% match of the actual total cost of the Project is provided by the Grantee and the reduced amount satisfies statutory and program requirements.

6. Quality Assurance Requirements.

The Grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet Project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. All sampling and analyses performed under this Agreement must conform with the requirements set forth in Chapter 62-160, Florida Administrative Code, and the Quality Assurance Requirements for Department Agreements, attached hereto and made part hereof as Exhibit E, Quality Assurance Requirements for Contracts and Grants, if applicable. If the Project does not involve environmentally-related measurements or data generation, this Attachment shall not be required and shall be intentionally excluded.

7. Additional Lobbying Requirements for Federally-Funded Agreements

This Agreement is not federally funded.

8. Miscellaneous Contract Terms.

a. Retainage.

No retainage is required under this Agreement.

b. Subcontracting.

The Grantee may subcontract work under this Agreement without the prior written consent of the Grant Manager except for certain fixed-price subcontracts pursuant to this Agreement, which require prior approval. The Grantee shall submit a copy of the executed subcontract to the Department prior to submitting any invoices for subcontracted work. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

c. State-owned land.

The work will not be performed on State-owned land.

d. Office of Policy and Budget Reporting.

There are no special Office of Policy and Budget reporting requirements for this Agreement.

9. Additional Terms.

ATTACHMENT 3 GRANT WORK PLAN

PROJECT TITLE: North 2 UEP – Catch Basin Replacement (East)

PROJECT LOCATION: The Project will be located in the East area of the North 2 Utilities Extension Project (UEP), North of Pine Island Road, within the City of Cape Coral in Lee County (26.64361111 dd Latitude, -82.04861111 dd Longitude). See Figure 1 for a location map.

PROJECT BACKGROUND: The City of Cape Coral adopted the UEP in 2015 to replace the previous system of septic tanks and shallow groundwater wells. The goal of this project is to upgrade stormwater treatment and to expand City access to water, sewer, and irrigation, using a combination of State Revolving Funds, local, and State funds.

PROJECT DESCRIPTION: The Grantee intends to replace all existing open throat catch basins with new control structures. These new structures shall consist of double orifice bleeders at the swale flowline with a grated top overflow. The smaller catch basin inflow orifice will encourage surface water discharges to pond and percolate through the ground instead of directly flowing into the catch basin/canal system. The proposed improvements will reduce nutrients in the City's Canal system, Matlacha Pass and Charlotte Harbor Estuary. This catch basin project is a part of the larger North 2 UEP project, which will replace approximately 1,500 catch basins throughout the utility contracts.

TASKS and DELIVERABLES:

Task 1: Construction

Task Description: The Grantee will replace approximately 580 existing storm water catch basins using the proposed double orifice bleeder inlets with grated overflow, in accordance with the construction contract documents.

Deliverables: Construction completed to date as described in this task, as evidenced by these deliverables: 1) Dated color photographs of on-going work representing the time period covered in the payment request; 2) signed acceptance and brief description of the completed work to date by the Grantee; 3) written verification that the Grantee has received record drawings and any required final inspection report(s) for the project (as applicable); and 4) signed statement from a Florida Licensed Professional Engineer indicating construction has been completed in accordance with the construction contract documents (as applicable).

Performance Standard: The Department's Grant Manager will review the deliverables to verify that they meet the specifications in the Grant Work Plan and this task description.

Payment Request Schedule: The deliverables must be submitted and accepted prior to each payment request and may be submitted no more frequently than quarterly.

Task 2: Quality Assurance Project Plan

Task Description: The Grantee will prepare, submit, and receive approval on a Quality Assurance Project Plan (QAPP) prior to commencement of any monitoring associated with the project. The QAPP must specify the sampling procedures, locations, instruments, and parameters to be sampled. The Grantee will use the format provided by the Department's Grant Manager, if applicable.

Deliverable 2a: Draft QAPP submitted electronically in Word format to the Department's Grant Manager. Upon request, the Grantee will provide a paper copy of the Draft QAPP to the Department's Grant Manager.

Performance Standard: The Department's Grant Manager will ensure review of the draft QAPP for compliance with this Agreement and the quality assurance requirements, to ensure sufficient monitoring is planned to measure project effectiveness, and provide comments to the Grantee as needed prior to Final QAPP submittal.

Deliverable 2b: Final Department-approved QAPP submitted electronically in Word format to the Department's Grant Manager. Upon request, the Grantee will provide a paper copy of the Final QAPP to the Department's Grant Manager.

Performance Standard: The Department's Grant manager will review the Final QAPP to ensure that draft comments have been taken into consideration and the Final QAPP is in compliance with this Agreement and the quality assurance requirements.

Task 3: Monitoring

Task Description: The Grantee will conduct monitoring in accordance with the Department-approved QAPP for this project (see Task #2).

Deliverables: Summary of completed monitoring activities (dates completed, sampling conducted and any not conducted and why), monitoring results along with interpretation of those results (as expected or not as expected) submitted electronically, along with the draft or final (when submitting final request) laboratory report and sampling logs to the Department's Grant Manager. Upon request, the Grantee will provide a paper copy or copies to the Department's Grant Manager.

Performance Standard: The Department's Grant Manager will review the monitoring results for completion and compliance with QAPP requirements.

Task 4: Public Education

Task Description: The Grantee will provide public education information about the project and its environmental benefits in the following formats: newsletter(s), website posting(s), sign(s) installed at the project location, and workshop(s).

Deliverable 4a: 1) Copy of draft print-ready newsletter submitted to the Department's Grant Manager for review and approval prior to final printing and distribution; 2) provide the active link for the website as designed or updated with project information to the Department's Grant Manager with expectation that draft material is provided for review prior to finalization; 3) copy of draft kiosk/sign(s) text and graphics submitted to the Department's Grant Manager for review and approval prior to final printing and distribution; and 4) draft materials for public presentations and educational meetings submitted to the Department's Grant Manager for review and approval prior to when presentations and/or meetings are held.

Performance Standard: The Department's Grant Manager must approve draft materials prior to public distribution. The Department's Grant Manager will review the draft deliverables and provide comments to the Grantee as needed.

Deliverable 4b: Completed public education activities to date as described in this task, as evidenced by: 1) Copy of the final printed materials with number distributed and where; 2) incorporate any suggested changes to the website or information posted there and provide documentation to demonstrate the website's service functionality; 3) dated photograph(s) of installed kiosk/sign(s) as approved; and 4) copy of meeting or workshop notices, agenda(s), meeting minutes or notes, and sign-in sheets.

Performance Standard: The Department's Grant manager will review the final deliverables to ensure the draft comments have been taken into consideration.

Payment Request Schedule: The deliverables [of paragraph 4b] must be submitted and accepted prior to each payment request and may be submitted upon completion of the task.

Task 5: Final Report

Task Description: The Grantee will prepare a Final Report summarizing the results of the project, including all tasks in the Grant Work Plan. The Final Report must include at a minimum:

- Project location and background, project description and timeline, grant award amount and anticipated benefits.
- Financial summary of actual costs versus the budget, along with any changes required to the budget. Include any match or locally pledged contributions provided, along with other related project work performed outside of this Agreement to identify the overall project cost.
- Discussion of project schedule versus actual completion, including changes required to the schedule, unexpected site conditions and adjustments, significant unexpected delays and corrections, and/or other significant deviations from the original project plan.
- Summary of activities completed as well as those not completed and why, as well as a brief summary of any additional phases yet to be completed.
- Photo documentation of work performed (before, during and after), appropriate figures (site location, site plan(s), etc.), appropriate tables summarizing data/information relevant to Grant Work Plan tasks, and appropriate attachments relevant to the project.
- Discussion of whether the anticipated benefits have been/will be realized (e.g., why a Best Management Practice (BMP) approach did or did not exceed the expected removal efficiency).
- Summary of monitoring activities completed and any not completed and why, monitoring results, and an interpretation of data based on planned versus realized results.

Deliverable 5a: An electronic copy of the draft Final Report in Word format submitted to the Department's Grant Manager for review prior to submission of the Final Report. Upon request, the Grantee will provide a paper copy of the draft Final Report.

Performance Standard: The Department's Grant Manager will review the submitted draft Final Report to verify that it meets the specifications in the Grant Work Plan and this task description, and provide any comments to the Grantee for consideration of incorporation into the Final Report.

Deliverable 5b: An electronic copy of the Final Report, with all suggested changes incorporated, in Word or PDF format submitted to the Department's Grant Manager for review and approval. Upon request, the Grantee will provide a paper copy of the Final Report.

Performance Standard: The Department's Grant Manager will review the deliverables to ensure that they meet the specifications in the Grant Work Plan and this task description.

PROJECT TIMELINE: The tasks must be completed and all deliverables received by the corresponding task end date.

Task/ Deliverable No.	Task or Deliverable Title	Task Start Date	Task End Date
1	Construction of Project	July 1, 2016	April 20, 2020
2	Quality Assurance Project Plan		
2a	Draft QAPP	July 1, 2016	January 1, 2018
2b	Final QAPP	July 1, 2016	February 1, 2018
3	Monitoring	Upon QAPP Approval	May 1, 2020
4	Public Education		
4a	Draft Deliverables	July 1, 2016	April 20, 2020
4b	Final Deliverables	July 1, 2016	June 1, 2020
5	Final Report		
5a	Draft Final Report	April 20, 2019	May 1, 2020
5b	Final Report	April 20, 2019	June 1, 2020

BUDGET DETAIL BY TASK:

Task No.	Budget Category	Budget Amount	Match Amount
1	Contractual Services	\$800,000	\$790,000
	Total for Task:	\$800,000	\$790,000
2	No Funds Associated with this Task		
3	No Funds Associated with this Task		
4	Contractual Services	\$0	\$10,000
	Total for Task:	\$0	\$10,000
5	No Funds Associated with this Task		
Percentage Match		50%	50%

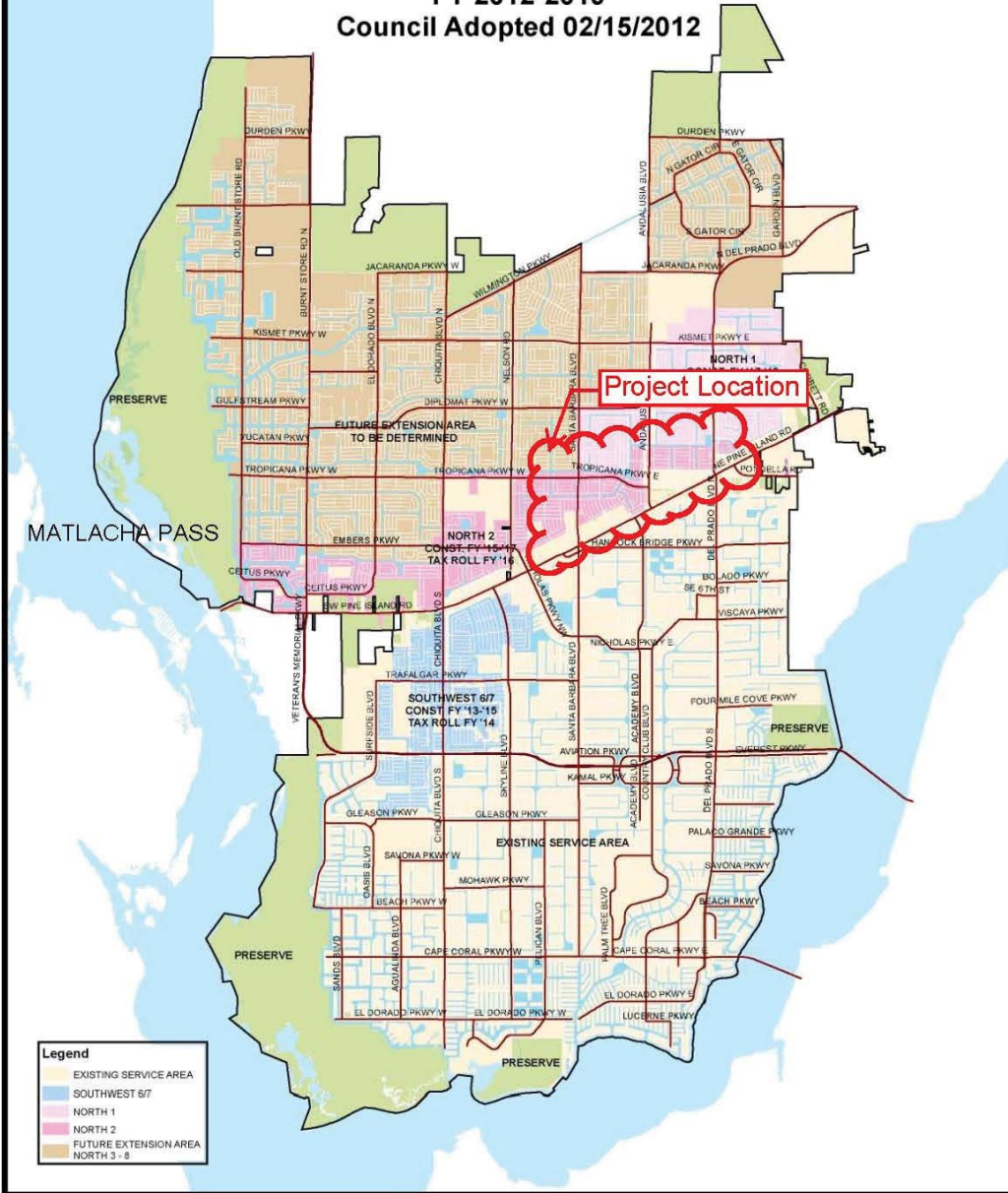
Budget Narrative: A quarter of the match, \$800,000, must come from a local source; \$200,000 must come from a local source.

PROJECT BUDGET SUMMARY: Cost reimbursable grant funding must not exceed the category totals for the project as indicated below. Match funding shall be provided in the categories indicated below.

Category Totals	Grant Funding, Not to Exceed, \$	Match Funding, \$
Contractual Services Total	\$800,000	\$800,000
Total:	\$800,000	\$800,000
Percentage Match:	50%	50%

FIGURE 1: Location Map

**CITY OF CAPE CORAL
PROPOSED UTILITY EXTENSION
FY 2012-2019
Council Adopted 02/15/2012**



Map and GIS Data Disclaimer
GIS data produced by the City of Cape Coral is for the sole purpose of aiding regional decisions and is not warranted for any other use. We are not warranted for small area studies or determinations. No warranty is made by the City of Cape Coral regarding map and data accuracy or completeness.
CBS 02/14/2012 (Map based on Water Layer)

**NORTH 2 UEP
CATCH BASIN REPLACEMENTS AND
ENHANCED SWALES
LOCATION MAP**

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Public Records Requirements

Attachment 4

1. Public Records

- a. If the Agreement exceeds \$35,000.00, and if the Grantee is acting on behalf of the Department in its performance of services under the Agreement, the Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if the Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If the Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply:

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to the Department.
- e. Upon completion of the contract, transfer, at no cost, to the Department all Public Records in possession of the contractor or keep and maintain Public Records required by the Department to perform the service. If the contractor transfers all Public Records to the Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department’s custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.
- f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE**

**CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF
PUBLIC RECORDS AT:**

Telephone: (850) 245-2118

Email: public.services@dep.state.fl.us

Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public
Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

ATTACHMENT 5

SPECIAL AUDIT REQUIREMENTS

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the contract/agreement*) to the recipient (*which may be referred to as the "Contractor", Grantee" or other name in the contract/agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, 2 CFR Part 200, Subpart F, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, and/or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised (for fiscal year start dates prior to December 26, 2014), or as defined in 2 CFR §200.330 (for fiscal year start dates after December 26, 2014).

1. In the event that the recipient expends \$500,000 (\$750,000 for fiscal year start dates after December 26, 2014) or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F. An audit of the recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F.
3. If the recipient expends less than \$500,000 (or \$750,000, as applicable) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, is not required. In the event that the recipient expends less than \$500,000 (or \$750,000, as applicable) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at www.cfda.gov

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2)(n), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this Attachment indicates state financial assistance awarded through the Department of Environmental Protection by this Agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F and required by PART I of this Attachment shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised, and 2 CFR §200.501(a) (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, and 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised, and 2 CFR §200.512.
2. Pursuant to Section .320(f), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, the recipient shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, and any management letters issued by the auditor, to the Department of Environmental Protection at one the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

3. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

B. The Auditor General's Office at the following address:

State of Florida Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

5. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with OMB Circular A-133, as revised and 2 CFR Part 200, Subpart F, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of **5** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **3** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

EXHIBIT – 1

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

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	
State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program Number	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:					
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	State Appropriation Category
Original Agreement	General Revenue Fund, Line Item 1601	2016-2017	37.039	Statewide Surface Water and Wastewater Projects	140076
Total Award				\$800,000	

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [www.cfda.gov] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
Progress Report Form**

Exhibit A

DEP Agreement No.:	NS031		
Grantee Name:	City of Cape Coral		
Grantee Address:			
Grantee's Grant Manager:		Telephone No.:	
Reporting Period:			
Project Number and Title:			
<p>Provide the following information for all tasks and deliverables identified in the Grant Work Plan: a summary of project accomplishments for the reporting period; a comparison of actual accomplishments to goals for the period; if goals were not met, provide reasons why; provide an update on the estimated time for completion of the task and an explanation for any anticipated delays and identify by task.</p> <p>NOTE: Use as many pages as necessary to cover all tasks in the Grant Work Plan.</p> <p><u>The following format should be followed:</u></p> <p>Task 1:</p> <p>Progress for this reporting period:</p> <p>Identify any delays or problems encountered:</p>			

This report is submitted in accordance with the reporting requirements of DEP Agreement No. NS031 and accurately reflects the activities associated with the project.

Signature of Grantee's Grant Manager

Date

EXHIBIT D
PAYMENT REQUEST SUMMARY FORM

Payment Request No. _____ DEP Agreement No. _____ Date _____

Performance Period (Start date - End date): _____

Deliverables completed to support payment request (attach additional pages as needed):

Task/Deliverable	Task Budget
Number(s): _____	Amount: \$ _____ -

Grantee:
(Name & Mailing Address) _____

Grantee Contact: _____
(Name & Phone)

GRANT EXPENDITURES SUMMARY SECTION

CATEGORY OF EXPENDITURE (As authorized)	AMOUNT OF THIS REQUEST	TOTAL CUMULATIVE PAYMENT REQUESTS	MATCHING FUNDS FOR THIS REQUEST	TOTAL CUMULATIVE MATCHING FUNDS
Salaries/Wages	\$ -	\$ -	\$ -	\$ -
Fringe Benefits	\$ -	\$ -	\$ -	\$ -
Indirect Cost	\$ -	\$ -	\$ -	\$ -
Contractual (Subcontractors)	\$ -	\$ -	\$ -	\$ -
Travel	\$ -	\$ -	\$ -	\$ -
Equipment (Direct Purchases)	\$ -	\$ -	\$ -	\$ -
Rental/Lease of Equipment	\$ -	\$ -	\$ -	\$ -
Miscellaneous/Other Expenses	\$ -	\$ -	\$ -	\$ -
Land Acquisition	\$ -	\$ -	\$ -	\$ -
TOTAL AMOUNT	\$	\$	\$	\$
TOTAL BUDGET (ALL TASKS)	\$		\$	
Less Total Cumulative Payment Requests of:	\$		\$	
TOTAL REMAINING (ALL TASKS)	\$		\$	

GRANTEE CERTIFICATION

Complete Grantee's Certification of Payment Request on Page 2 to certify that the amount being requested for reimbursement above was for items that were charged to and utilized only for the above cited grant activities.

Grantee's Certification of Payment Request

I, _____, on behalf of
(Print name of Grantee's Grant Manager designated in the Agreement)

_____, do hereby certify for
(Print name of Grantee)

DEP Agreement No. _____ and Payment Request No. _____ that:

- ☒ The disbursement amount requested is for allowable costs for the project described in Attachment 3 of the Agreement.
- ☒ All costs included in the amount requested have been satisfactorily purchased, performed, received, and applied toward completing the project; such costs are documented by invoices or other appropriate documentation as required in the Agreement.
- ☒ The Grantee has paid such costs under the terms and provisions of contracts relating directly to the project; and the Grantee is not in default of any terms or provisions of the contracts.

Check all that apply:

- ☐ All permits and approvals required for the construction, which is underway, have been obtained.
- ☐ Construction up to the point of this disbursement is in compliance with the construction plans and permits.
- ☐ The Grantee's Grant Manager relied on certifications from the following professionals that provided services for this project during the time period covered by this Certification of Payment Request, and such certifications are included:

Professional Service Provider (Name / License No.)	Period of Service (mm/dd/yy – mm/dd/yy)

_____ Grantee's Grant Manager's Signature	_____ Grantee's Fiscal Agent Signature
_____ Print Name	_____ Print Name
_____ Telephone Number	_____ Telephone Number

INSTRUCTIONS FOR COMPLETING PAYMENT REQUEST SUMMARY FORM

PAYMENT REQUEST NO.: This is the number of your payment request, not the quarter number.

DEP AGREEMENT NO.: This is the number on your grant agreement.

DATE: This is the date that you are submitting the payment request.

PERFORMANCE PERIOD: This is the beginning and ending date of the performance period for the Task/Deliverable that the request is for (this must be within the timeline shown for the Task/Deliverable in the Agreement).

TASK/DELIVERABLE NO.: Identify the number of the Task/Deliverable that you are requesting payment for and/or claiming match for (must agree with the current Grant Work Plan). *Note:* If payment request includes more than one Task/Deliverable, additional pages should identify each Task/Deliverable Number, its corresponding budget amount, and the amount requested.

TASK BUDGET AMOUNT: List the Task budget amount as identified in the Grant Work Plan for the corresponding Task/Deliverable. *Note:* If payment request includes more than one Task/Deliverable, additional pages should identify each Task/Deliverable Number, its corresponding budget amount, and the amount requested.

GRANTEE: Enter the name of the Grantee's agency and the address to which you want the state warrant sent.

GRANTEE CONTACT: List the name and telephone number for the Grantee's grant manager or other point of contact regarding the payment request submittal.

GRANT EXPENDITURES SUMMARY SECTION:

"AMOUNT OF THIS REQUEST" COLUMN: Enter by authorized category of expenditure the amount for which you are requesting reimbursement for this task. This must agree with the currently approved budget in the current Grant Work Plan of your grant Agreement. Do not claim expenses in a budget category that does not have an approved budget. Do not claim items that are not specifically identified in the current Grant Work Plan. Enter the column total on the "*TOTAL AMOUNT*" line. Enter the amount of all Tasks on the "*TOTAL BUDGET (ALL TASKS)*" line. Enter the total cumulative amount of this request **and** all previous payments on the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" line. Deduct the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" from the "*TOTAL BUDGET (ALL TASKS)*" for the amount to enter on the "*TOTAL REMAINING (ALL TASKS)*" line.

"TOTAL CUMULATIVE PAYMENT REQUESTS" COLUMN: Enter the cumulative amounts that have been requested to date for reimbursement by budget category. The final request should show the total of all requests; first through the final request (this amount cannot exceed the approved budget amount for that budget category for the Task(s) you are reporting on). Enter the column total on the "*TOTAL PAYMENT REQUEST*" line. **Do not enter anything in the shaded areas.**

"MATCHING FUNDS" COLUMN: Enter the amount to be claimed as match for the performance period for the Task(s) you are reporting on. This needs to be shown under specific budget categories according to the currently approved Grant Work Plan. Enter the total on the "*TOTAL AMOUNT*" line for this column. Enter the match budget amount on the "*TOTAL BUDGET (ALL TASKS)*" line for this column. Enter the total cumulative amount of this and any previous match claimed on the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" line for this column. Deduct the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" from the "*TOTAL BUDGET (ALL TASKS)*" for the amount to enter on the "*TOTAL REMAINING (ALL TASKS)*" line.

"TOTAL CUMULATIVE MATCHING FUNDS" COLUMN: Enter the cumulative amounts you have claimed to date for match by budget category. Put the total of all on the line titled "*TOTAL PAYMENT REQUEST.*" The final request should show the total of all claims, first claim through the final claim, etc. **Do not enter anything in the shaded areas.**

GRANTEE'S CERTIFICATION: Check all boxes that apply. Identify any licensed professional service providers that certified work or services completed during the period included in the request for payment. **Must be signed by both the Grantee's Grant Manager as identified in the grant agreement and the Grantee's Fiscal Agent.**

Documentation for match claims must meet the same requirements as those expenditures for reimbursement.

Contract #:

Payment Request #:

Complete the table below. Use the drop down lists to add categories. Enter one Task number per row and one Category per column.

Select only the categories that are in the contract task budget.

Also complete the **Contractual Detail** spreadsheet if the contractual category is funded in the Agreement/Task.

Also, complete the **Equip-Supplies-Expense** spreadsheet if the contractual category is funded in the Agreement/Task.

Also complete the **Salary/Fringe Detail** spreadsheet if the salary and fringe categories are funded in the Agreement/Task.

*Include the match amount if match is required in the Agreement and is included in the invoice.

Formulas are included in some of the spreadsheet cells, denoted with a \$:

[illegible]

CONTRACTUAL DETAIL

Complete one table per Task containing Contractual Reimbursement Requests
 Add rows as needed for each table. Add tables as needed, if more than two tasks are in the invoice.
 Enter the contractual sum for each task into the Invoice Summary spreadsheet.
 *Include the match amount if match is required in the Agreement and is included in the invoice

Task/Deliverable #:

Performance Period - Date Range	Sub-contractor Name	Subcontractor Invoice Number	Sub-contractor Invoice Date	Check Number	Check Amount	Amount requested for reimbursement	Amount to credit towards Match*	Comments
Contractual Total for Task # ____ :					\$	-	\$	-

Task/Deliverable #:

Performance Period - Date Range	Sub-contractor Name	Subcontractor Invoice Number	Sub-contractor Invoice Date	Check Number	Check Amount	Amount requested for reimbursement	Amount to credit towards Match*	Comments
Contractual Total for Task # ____ :					\$	-	\$	-

Complete one table for each task containing Salary and Fringe Reimbursement Requests

Add rows as needed for each table. Add tables as needed, if more than two tasks are in the invoice.

Enter the Salary and Fringe sums for each task into the Invoice Summary spreadsheet.

*Include the match amount if match is required in the Agreement and is included in the invoice.

[illegible]

Instructions for Completing Request for Payment - Part II

Include the Grantee Name, Payment Request No., and DEP Agreement Number. List vendor invoices that are associated with the Project by Task/Deliverable.

- 1 **Invoice Amount:** Amount of Invoice being submitted for reimbursement.
- 2 **Local Share or Other Funding or Amount Not Requested:** Portion of invoice paid for by Grantee.
Requested Amount: Subtract Grantee's Local Share or Other Funding or Amount Not Requested **(2)** from Invoice Amount **(1)**.
- 3 **Deliverable Number:** Must identify completed deliverable(s) for each invoice. If invoice covers multiple deliverables, that invoice would be listed multiple times, a line item for each deliverable with any portion not applicable to that Task/Deliverable identified under **(2)**.
- 4

Submittal Instructions

Instructions for E-mailing:

The program now accepts reimbursement requests electronically. When scanning please be sure that the minimum scan resolution must be 300 DPI (dots per inch). When reimbursement requests are sent electronically, please do not also send a hard copy by postal mail.

Please redact all sensitive financial information from the invoices and other supporting documentation to be submitted with this Payment Request Form.

Remit Payment Request by E-mail to the Department's Grant Manager

Be sure the E-mail payment request includes the following:

Subject: Project Number_Disbursement Number: example – LP14025_Disb_1

Attachments:

- 1) Exhibit D Payment Request Summary
- 2) Request for Payment Part II Reimbursement Detail
- 3) Copies of invoices
- 4) Other supporting documentation, as needed

For questions or concerns regarding these forms or if you would like the payment request forms listed above in electronic format please contact the Department's Grant Manager.

EXHIBIT E
Department of Environmental Protection
Quality Assurance Requirements for Contracts and Grants

1. GENERAL REQUIREMENTS AND DEFINITIONS

- a. As applicable to the scope of services described in the contract work plan or other statement of work for this contract, the sampling, field testing and laboratory analyses performed under this contract shall conform to the requirements set forth in Chapter 62-160, Florida Administrative Code (F.A.C.) and "Requirements for Field and Analytical Work Performed for the Department of Environmental Protection under Contract" (DEP-QA-002/02), February 2002.
- b. Hereinafter, "DEP" or "Department" refers to the Florida Department of Environmental Protection.
- c. "Sample" and "sampling" refers to samples that shall be either collected or analyzed under the terms of this contract.

2. REQUIREMENTS FOR LABORATORIES

- a. All applicable laboratory testing activities shall be performed by laboratories certified by the Florida Department of Health Environmental Laboratory Certification Program (DoH ELCP) for all applicable matrix/method/analyte combinations to be measured for this contract. Laboratory certification requirements are described in rule 62-160.300, F.A.C. Certification is not required for laboratory tests outside of the scope of DoH ELCP accreditation as determined according to 62-160.300(5)(c), F.A.C.
- b. For samples collected from a non-potable water matrix, the certification requirement is met if the laboratory is certified for the contracted analyte(s) in at least one method utilizing an analytical technology appropriate for the contract, as determined by the Department according to 62-160.300(1)(c), F.A.C.
- c. If the laboratory is not certified for some or all of the proposed test measurements, the laboratory shall apply for certification within one month of contract execution. The laboratory shall attempt to become fully certified for all applicable matrix/method/analyte combinations to be performed for the contract by maintaining active coordination with the DoH ELCP throughout the application process. Regardless of when the laboratory receives certification, the laboratory shall implement all applicable standards of the National Environmental Laboratory Accreditation Conference (NELAC 2003 Quality Systems standards, as adopted) upon contract execution.
- d. Laboratories shall maintain certification as specified in item 2.a above during the life of the contract. Should certification for an analyte or test method be lost, all affected tests shall be immediately sub-contracted to a laboratory with current DoH ELCP certification in the appropriate matrix/method/analyte combination(s). The contractor shall notify the DEP contract manager in writing before any change to a sub-contracted laboratory is made.
- e. The DoH ELCP certificate number (certified laboratory identification number) for each contracted (and sub-contracted) laboratory shall be listed in the required contract QA plan (see Section 6 below) in association with the analytical tests to be performed by each laboratory analyzing samples for the contract.
- f. Each certified laboratory analyzing contracted samples shall ensure that an acceptable demonstration of capability (DOC) is performed as described in the 2003 NELAC Quality Systems standards (NELAC 2003, Section 5.5.4.2.2 and Appendix C). In addition, each certified laboratory that performs any of the proposed matrix/method/analyte combination(s) approved for the contract shall have the requisite DOC documentation and supporting laboratory records on file for the applicable combinations. The DOCs performed shall meet the requirements for precision, accuracy, method detection limit (MDL) and/or practical quantitation limit (PQL), as specified in each applicable laboratory test method, Standard Operating Procedure (SOP) or Quality Manual, or as listed in the contract QA plan (section 6, below). Alternative limits for detection and quantitation other than MDL and PQL shall be determined, if applicable to the laboratory. DOCs performed for the contracted analytes shall include any modifications to the test method or SOP that have been approved by DEP according to 62-160.330(3), F.A.C., if

applicable. If requested by the Department, documentation that supports the DOC for a specified analyte and test method shall be made available for review.

- g. The contracted (and/or subcontracted) laboratory shall report PQLs and MDLs or other specified limits of detection and quantitation with the results of sample analyses. MDLs and/or PQLs shall only be required for test methods that are technically amenable to the determination of MDLs and/or PQLs. For those test methods where the determination of MDLs and/or PQLs are not technically feasible, the laboratory shall report a value or increment representing the lower limit of the working range of the test method, however determined by the laboratory. The laboratory shall indicate whether the reported limit represents a limit of detection or quantitation. In all cases, limits of detection and quantitation other than MDLs and PQLs shall be explicitly defined and evaluated by the laboratory. All limits shall be as listed in the applicable laboratory test method, SOP or Quality Manual, or as listed in the contract QA plan (Section 6, below). The reported MDLs and PQLs (or other limits per above) shall meet the analytical sensitivity and quantitation objectives for the contract.
- h. Additional laboratory quality control expectations:
 - (i) The selected laboratory test methods listed in the QA Plan shall provide results that meet applicable contract data quality objectives.
 - (ii) All laboratory testing procedures shall follow the analytical methods as approved in the contract QA plan (see Section 6).
 - (iii) The laboratory shall adhere to the quality control requirements specified in the laboratory test methods and this Attachment.
 - (iv) The laboratory shall calculate all sample results according to the procedures specified in the analytical test methods approved in the contract QA plan.

3. FIELD ACTIVITIES

- a. All sample collection and field testing activities shall be performed in accordance with the Department's "Standard Operating Procedures for Field Activities" (DEP-SOP-001/01, March 1, 2014). The specific standard operating procedures (SOPs) to be used for this contract shall be cited in the contract QA plan (see Section 6).
- b. Field-Generated Quality Control (QC) Blanks are defined in DEP SOP FQ 1000 (subparts FQ 1211 – FQ 1214) and shall be composed and analyzed for sample collection activities associated with this contract according to the requirements of part FQ 1230 (sections 1. – 2.3.1), DEP SOP FS 2100 (Part FS 2110, sec. 2.1.1.2) and/or DEP SOP FS 2400 (Part FS 2430, sec. 2.1.1.2), as applicable to the analytes and matrices to be collected using the sampling equipment specified in the contract QA plan (section 6 below).
 - (i) If an analyte detected in the sample is also found in any field-generated QC blank that is associated with the sample, the contractor shall investigate and attempt to determine the cause of the QC blank contamination. If any contracted sample results are qualified as in (ii) below, the outcome of this investigation shall be reported to the DEP contract manager and shall include a discussion of the corrective measures taken to minimize future occurrences of QC blank contamination associated with the collection of samples for this contract.
 - (ii) If an analyte detected in the sample is also found in any field-generated QC blank that is associated with the sample, the analytical result reported for the affected sample shall be qualified as an estimated value, unless the analyte concentration in the blank is less than or equal to 10% of the reported sample concentration. The "G" data qualifier code shall be reported with the sample result for any blank concentration exceeding the above "10%" criterion for the affected analyte (see Table 1, Chapter 62-160, F.A.C.).

4. REPORTING, DOCUMENTATION AND RECORDS RETENTION

- a. All laboratory and field records described or listed in Rules 62-160.240 and 62-160.340, F.A.C. shall be retained for a minimum of five years after the generation (or completion) of the records applicable to the contract. Longer retention times as specified in the contract shall supersede.
- b. All field and laboratory data and supporting information shall be reported for this contract according to applicable requirements in 62-160.340(3) through 62-160.340(8), F.A.C.

- c. Any other documentation and reports associated with work performed for this contract shall be likewise retained and shall include relevant information for the procedures described in sections 2 and 3, above.
- d. Any documentation or reports specifically identified in this contract as deliverable work products shall be retained as in 4.a., above.
- e. All field and laboratory records that are associated with work performed under this contract shall be organized so that any information can be quickly and easily retrieved for inspection, copying or distribution.
- f. The Department reserves the right to request some or all of the laboratory or field information in an electronic format specified by the Department, as specified in the contract, and/or as described in the approved contract QA plan (section 6). Also see subsection k., below.
- g. Any certified laboratory reports issued for contracted sample analyses using certified methods shall be generated in accordance with NELAC Quality Systems requirements (NELAC 2003, section 5.5.10).
- h. Upon request by the Department contract manager or as required by the contract, copies of the original laboratory reports shall be submitted to the contract manager.
- i. In addition to any reports of sample results provided per contract deliverable requirements and subsections b., e., f. and g., above, the contractor shall submit any of the laboratory information and/or records associated with the contracted analyses as described in this section (section 4) upon request by DEP, including any of the following:
 - ▶ Laboratory sample identification (ID) and associated Field ID
 - ▶ Analytical/test method
 - ▶ Parameter/analyte name
 - ▶ Analytical result (including dilution factor)
 - ▶ Result unit
 - ▶ Applicable DEP Data Qualifier Codes per Table 1 of Chapter 62-160, F.A.C.
 - ▶ Result comment(s) to include corrective/preventive actions taken for any failed QC measure (e.g., QC sample result, calibration failure) or other problem related to the analysis of the samples
 - ▶ Date and time of sample preparation (if applicable)
 - ▶ Date and time of sample analysis
 - ▶ Results of laboratory verification of field preservation of received samples
 - ▶ Sample matrix
 - ▶ DoH ELCP certification number for each laboratory (must be associated with the test results generated by each laboratory analyzing samples under this contract)
 - ▶ MDL, Limit of Detection (LOD) or other defined limit of detection
 - ▶ PQL, Limit of Quantitation (LOQ) or other defined limit of quantification
 - ▶ Field and laboratory QC blank results:
 - Laboratory QC blank analysis results as required by the method and the NELAC Quality Systems standards (e.g., method blank)
 - Results for trip blanks, field blanks and equipment blanks, as applicable to the project and as specified in the QA Plan (see Section 6)
 - ▶ Results for field duplicates (or replicates)
 - ▶ Results for other QC and calibration verification results, as applicable to the specific test methods used for the contracted analyses:
 - Results of sample matrix spikes, laboratory duplicates or matrix spike duplicates
 - Results of surrogate spike analyses
 - Results of laboratory control samples (LCS)
 - Results of calibration verifications
 - Acceptance criteria used to evaluate each reported quality control measure

- j. Unequivocal documentation links between each reported laboratory quality control measure (e.g., QC blanks, matrix spikes, LCS, duplicates, calibration verification) and the associated sample result(s) shall be maintained for all contracted analyses.
- k. In addition to any field information provided per contract deliverable requirements, and subsections b., e., f. and g., above, the contractor shall submit any of the field information and/or records associated with the contracted samples as described in this section (section 4) upon request by DEP, including any of the following:
 - ▶ Site name and location information
 - ▶ Field ID for each sample container and the associated analytes (test methods) for which the container was collected
 - ▶ Date and time of sample collection
 - ▶ Sample collection depth, if applicable
 - ▶ Sample collection method identified by the DEP SOP number, where applicable
 - ▶ If performed, indicate samples that were filtered
 - ▶ Field test measurement results:
 - DEP SOP number (FT-series), where applicable
 - Parameter name
 - Result
 - Result unit
 - Applicable Data Qualifier Codes per Table 1 of Chapter 62-160, F.A.C.
 - ▶ Narrative comments providing explanations, descriptions and/or discussions of: field conditions impacting QC for sample collections, unacceptable field measurements, field-testing meter calibration verification failures, or other problems related to the sampling event, and corrective/preventive actions taken for the items noted (e.g., for blank contamination or meter calibration failure).
- l. The Department reserves the right to request some or all of the laboratory or field information in a format as specified in the contract, and/or as described in the approved contract QA plan (section 6). Required formats are specified in **Attachment 3, Grant Work Plan**.

5. **AUDITS**

- a. AUDITS BY THE DEPARTMENT – Pursuant to Rule 62-160.650, F.A.C., the Department may conduct audits of field and laboratory activities. In addition to allowing Department representatives to conduct onsite audits of contracted work in the field or at contractor (or subcontractor) facilities, upon request by the Department, field and laboratory records pertinent to the contracted research as described per section 4, above shall be provided by the contractor. If an audit by the Department results in a determination that the reported data are not usable for the purpose(s) of the contract, do not meet the data quality objectives specified by the contract, do not meet other applicable Department criteria described in the contract, its attachments, the QA Plan (see section 6, below) or these QA Requirements, do not applicable meet data validation criteria outlined in Rule 62-160.670, F.A.C.; or, are not otherwise suitable for the intended use of the data (however applicable), the DEP contract manager shall pursue remedies available to the Department, including those outlined in section 8, below.
- b. PLANNING REVIEW AUDITS –
 - (i) Initial: Prior to the completion of the sampling and analysis events and after the second completed sampling and analysis event but no later than fourth, or as described in **Attachment 3**, the contractor and all subcontractors shall review the contract QA plan (see Section 6 below) relative to the completed field and laboratory activities to determine if data quality objectives are being met, identify any improvements to be made to project activities, and refine the sampling and/or analytical design or schedule, if applicable. Within one month of the review, a summary of the review, including any corrective action plans or amendments to the contract QA plan, shall be sent to the DEP contract manager, and a copy of all submitted documents shall be maintained with the permanent project records.

- (ii) Ongoing: Planning reviews as described in subsection (i) above shall occur annually thereafter for the remainder of the contract, if applicable to the duration of the contract.
- c. QUALITY SYSTEMS AUDITS – The contractor and all subcontractors shall ensure that any required laboratory and field quality system audits are performed according to the respective Quality Manuals or other relevant internal quality assurance documents for each contracted and sub-contracted entity. The results of these audits shall be documented in the contractor's and subcontractors' records. Copies of the above audit reports or results shall be provided to the DEP contract manager upon request. Copies of audit records for internal audits conducted per DEP SOP FA 1000 (subpart FA 4200) or NELAC Quality Systems requirements (NELAC 2003, section 5.4.13) shall be similarly provided.
- d. STATEMENTS OF USABILITY – As a part of the audit process and the final report, the contractor shall provide statements about data usability as necessary to address the topics in subsections (i) – (iii) below, relative to the contract data quality objectives and any data quality indicators that may be specified in the contract, its attachments, the QA Plan (see section 9, below), or these QA Requirements.
 - (i) All applicable data quality acceptance and usability criteria for the contract, as specified in the procedures, test methods, QA plan, Quality Manual(s), other contract attachments, or these QA Requirements shall be met.
 - (ii) All quality control measures shall be evaluated according to the acceptance criteria listed in the applicable procedures, test methods, QA plan, Quality Manual(s), other contract attachments or these QA Requirements.
 - (iii) All sample results shall be evaluated according to all applicable usability criteria specified in the procedures, test methods, QA plan, Quality Manual(s), other contract attachments, or these QA Requirements.

6. **QA PLAN**

- a. The contractor shall submit the contract QA plan identified in **Attachment 3** to the DEP contract manager in accordance with the schedule set forth in **Attachment 3** and ***prior to the commencement of field and laboratory activities***. Failure to submit the QA plan in this required timeframe shall result in a delay of approval to begin work until the document has been submitted to the Department and approved (or conditionally approved) by the DEP contract manager.
- b. The contractor may submit a version of the QA plan to the Department for approval no more than three times. If the contractor fails to obtain approval for the QA Plan after the third (final) submission to the Department, the DEP contract manager may suspend or terminate the contract.
- c. The DEP contract agreement number shall appear on the title page of the submitted QA plan. Within 45 days or as specified in **Attachment 3**, of receipt of the QA plan by the Department, the Department shall review and either approve the QA plan or provide comments to the contractor as to why the QA plan is not approved. If further revisions are needed, the contractor shall then have 15 days or as specified in **Attachment 3**, from the receipt of review comments to respond. The Department shall respond to all revisions to the QA plan within 30 days, or as specified in **Attachment 3** of receipt of any revisions.
- d. If the review of the QA plan by the Department is delayed beyond sixty (60) days after the QA plan is received by the Department, through no fault of the contractor, the contractor shall have the option, after the QA plan is approved, of requesting and receiving an extension in the term of the contract for a time period not to exceed the period of delayed review and approval. This option must be exercised at least sixty (60) days prior to the current termination date of the contract.
- e. Work may not begin for specific contract tasks until approval has been received by the contractor from the DEP contract manager. Sampling and analysis for the contract may not begin until the contract QA plan has been approved (or conditionally approved).

- f. Once approved, the contractor and subcontractor(s) shall follow the procedures and methods described in the contract QA plan and any other relevant quality assurance documents, including, but not limited to :
 - ▶ Ensuring that all stated quality control measures are collected, analyzed and evaluated for acceptability;
 - ▶ Using only the protocols approved in the QA plan; and
 - ▶ Using only the equipment approved in the QA plan.
 - g. If any significant changes in sampling project design, changes in the project analyte list, changes in procedures or test methods, changes in equipment, changes in subcontractor organizations or changes in key personnel occur, the contractor shall submit appropriate revisions of the QA Plan to the DEP contract manager for review. The proposed revisions may not be implemented until they have been approved (or conditionally approved) by the DEP contract manager. If the contractor fails to submit the required revisions, the DEP contract manager may suspend or terminate the contract. QA plan revisions or amendments shall be provided as one or more of the following, as described in **Attachment 3**:
 - (i) Provided in a new contract QA plan;
 - (ii) Provided as amended sections of the current contract QA plan;
 - (iii) Documented through written or electronic correspondence with the DEP contract manager and incorporated into the approved contract QA plan by reference or other linkage.
7. **DELIVERABLES**
- a. The following lists the expected deliverables that are associated with the quality assurance requirements of this contract:
 - (i) Reports of planning review audits as specified in item 5.b. above.
 - (ii) Statements of usability as specified in item 5.d. above.
 - (iii) Contract QA plan, per Section 6, above.
8. **CONSEQUENCES**
- a. Failure to comply with any requirement of this attachment (and any included addenda) may result in:
 - (i) Immediate termination of the contract.
 - (ii) Withheld payment for the affected activities.
 - (iii) Contract suspension until the requirement(s) has been met.
 - (iv) A request to refund already disbursed payments.
 - (v) A request to redo work affected by the non-compliant activity.
 - (vi) Other remedies available to the Department.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project)	Agreement Number
North 2 UEP - Catch Basin Replacement and Bioswales (West)	NS032

2. Parties	State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard Tallahassee, Florida 32399-3000	(Department)
------------	---	--------------

Grantee Name: City of Cape Coral	Entity Type: Local Government
Grantee Address: 1015 Cultural Park Boulevard Cape Coral, FL 33990	FEID: 59-1312996 (Grantee)

3. Agreement Begin Date: Upon Execution	Date of Expiration: June 30, 2021
---	---

4. Project Number: (If different from Agreement Number)	Project Location(s):
NS032	Cape Coral, Florida

Project Description: **The Grantee intends to replace all existing open throat catch basins with new control structures. In addition, bioswales will be installed along runs of fully developed lots in select areas to increase filtration resulting in improved nutrient reduction for those areas.**

5. Total Amount of Funding:	Funding Source?	Award #s or Line Item Appropriations:	Amount per Source(s):
\$600,000.00	<input checked="" type="checkbox"/> State <input type="checkbox"/> Federal	Line Item 1601, GAA, FY 2016-2017	\$600,000.00
	<input type="checkbox"/> State <input type="checkbox"/> Federal		
	<input type="checkbox"/> State <input type="checkbox"/> Federal		
	<input type="checkbox"/> State <input type="checkbox"/> Federal		

6. Department's Grant Manager Name: Emily Brown <div style="text-align:right">or successor</div> Address: 3900 Commonwealth Blvd., MS#3570 Tallahassee, Florida 32399 Phone: (850) 245-2946 Email: Emily.Brown@dep.state.fl.us	Grantee's Grant Manager Name: James Breakfield, P.E. <div style="text-align:right">or successor</div> Address: P.O. Box 150027 Cape Coral, Florida 33915 Phone: (239) 574-0588 Email: jbreakfi@capecoral.net
---	---

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

<input checked="" type="checkbox"/> Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
<input checked="" type="checkbox"/> Attachment 2: Special Terms and Conditions
<input checked="" type="checkbox"/> Attachment 3: Grant Work Plan
<input checked="" type="checkbox"/> Attachment 4: Public Records Requirements
<input checked="" type="checkbox"/> Attachment 5: Special Audit Requirements
<input type="checkbox"/> Attachment 6: Program-Specific Requirements
<input type="checkbox"/> Attachment 7: Grant Award Terms (Federal)
<input type="checkbox"/> Attachment 8: Federal Regulations and Terms (Federal)
<input type="checkbox"/> Additional Attachments (if necessary):
<input checked="" type="checkbox"/> Exhibit A: Progress Report Form
<input type="checkbox"/> Exhibit B: Disclosure of Lobbying Activities (Federal)
<input type="checkbox"/> Exhibit C: DEP Property Reporting Form
<input checked="" type="checkbox"/> Exhibit D: Payment Request Summary Form
<input checked="" type="checkbox"/> Exhibit E: Quality Assurance Requirements
<input type="checkbox"/> Exhibit F: Advance Payment Terms and Interest Earned Memo
<input type="checkbox"/> Additional Exhibits (if necessary):

8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	
Federal Award Date to Department:	
Total Federal Funds Obligated by this Agreement:	
Federal Awarding Agency:	
Award R&D?	<input type="checkbox"/> Yes <input type="checkbox"/> N/A

IN WITNESS WHEREOF, this Agreement is being executed by the Parties and is effective on the date in the Agreement Begin Date above or the last date signed below, whichever is later.

9. **City of Cape Coral**

GRANTEE

Grantee Name

By _____
(Authorized Signature) Date Signed

Print Name and Title of Person Signing

10. **State of Florida Department of Environmental Protection** **DEPARTMENT**

By _____
Secretary or Designee Date Signed

Print Name and Title of Person Signing

☒ Additional signatures attached on separate page.

DWRA Additional Signatures

DEP Grant Manager

DEP QC Reviewer

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any preprinted terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions between the documents that make up the Agreement, the order of precedence for the documents is as follows:
 - i. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - ii. Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication between the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following: an increase or decrease in the Agreement funding amount; a change in the Grantee's match requirements; a change in the expiration date of the Agreement; and/or changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed ten percent (10%) of the total budget as last approved by the Department. A change order to this Agreement may be used when task timelines within the current authorized Agreement period change, and/or when the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than ten percent (10%) of the total budget as last approved by the Department, or without limitation to changes to approved fund transfers between budget categories for the purchases of meeting match requirements. This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to the Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by the Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time whether the services or qualifications offered by the Grantee meet the Agreement requirements. Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable/minimum requirement does not foreclose the Department's remedies in the event those performance standards that cannot be readily measured at the time of delivery are not met.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by the Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at the Grantee's expense. If the Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to the Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at the Grantee's sole expense. The Grantee shall only invoice the Department for deliverables that are completed in accordance with the Grant Work Plan. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to the Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which the Grantee may remedy the objections noted by the Department. The Grantee's failure to make adequate or acceptable said deliverables after a reasonable opportunity to do so may constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. These consequences for nonperformance shall not be considered penalties.
- b. Corrective Action Plan. If the Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, the Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by the Grantee to the Department. The Department shall provide the Grantee with a written request for a CAP that specifies the outstanding deficiencies. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) calendar days of the date of the written request from the Department. The CAP shall be sent to the Grant Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Grantee shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon the Department's notice of acceptance of a proposed CAP, the Grantee shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, the Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by the Department or steps taken by the Grantee shall preclude the Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Grant Manager.
 - iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by the Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by the Department, the Department agrees to pay the Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.). To obtain the applicable interest rate, please refer to:
<http://www.myfloridacfo.com/Division/AA/Vendors/default.htm>.
- b. Taxes. The Department is exempted from payment of State sales and use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by the Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Grantee shall not use the Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of the Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on **Exhibit D, Payment Request Summary Form**. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: http://www.myfloridacfo.com/aadir/reference_guide/.
- e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by the Department pursuant to the Grant Work Plan shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed.
- f. Interim Payments. Interim payments may be made by the Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by the Department's Grant Manager.
- g. Final Payment Request. A final payment request should be submitted to the Department no later than sixty (60) calendar days following the completion date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the completion date of the Agreement.
- h. Annual Appropriation Contingency. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement 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 Department if the Legislature reduces or eliminates appropriations.
- i. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If the Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by the Grantee exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) calendar days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from the Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) calendar days of written notification. Interest shall be charged on

the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$1,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.

- i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to the Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from the Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, the Grantee shall request the advance written approval from the Department's Grant Manager of the fixed price negotiated by the Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of the Department Grant Manager's approval of the fixed-price amount, the Grantee may proceed in finalizing the fixed-price subcontract.
 - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, the Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.
- e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$1,000 or more. Match or reimbursement for the Grantee's direct purchase of equipment is subject to specific approval of the Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Property Reporting Form.
- f. Rental/Lease of Equipment – Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of the Grantee's contract obligations to its subcontractor, the Department shall not reimburse any of the following types of charges: cell phone usage, attorney's fees or court costs, civil or administrative penalties, or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, the Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on **Exhibit A, Progress Report Form**, to the Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) calendar days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by the Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if the Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement to a maximum percentage described in the Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. The Department reserves the right to withhold payment of retainage for Grantee's failure to respond to or correct identified deficiencies within the timeframe stipulated in the Grant Work Plan. The Department shall provide written notification to Grantee of identified deficiencies and the Department's intent to withhold retainage. Grantee's failure to rectify the identified deficiency within the timeframe stated in the Department's notice will result in forfeiture of retainage by Grantee.
- c. If Grantee fails to perform the requested work, or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment for the work and the retainage called for under the entire Grant Work Plan. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed.
- d. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- e. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:
 - i. Commercial General Liability Insurance.
The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$200,000 each individual's claim and \$300,000 each occurrence.
 - ii. Workers' Compensation and Employer's Liability Coverage.
The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Agreement.
 - iii. Commercial Automobile Insurance.
If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage
 - iv. Other Insurance.
Additional insurance may be required by federal law, where applicable, if any work proceeds over or adjacent to water, including but not limited to Jones Act, Longshoreman's and Harbor Worker's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits of not less than \$300,000 each. Questions concerning required coverage should be directed to the U.S. Department of Labor (<http://www.dol.gov/owcp/dlhw/lscontac.htm>) or to the parties' insurance carrier.
- b. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as

described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.

- c. Exceptions to Additional Insured Requirements. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured. Further, notwithstanding the requirements above, if Grantee is self-insured, then the Department of Environmental Protection, its employees, and officers do not need to be listed as additional insureds.
- d. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- e. Proof of Insurance. Upon execution of this Agreement, the Grantee shall provide the Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from the Department, the Grantee shall furnish the Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- f. Failure to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, the Grantee shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) calendar days after the cancellation of coverage.

13. Termination.

- a. Termination for Convenience. The Department may terminate the Agreement in whole or in part by giving 30 days' written notice to the Grantee, when the Department determines, in its sole discretion, that it is in the State's interest to do so. The Department shall notify the Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee shall not furnish any service or deliverable after it receives the notice of termination, unless otherwise instructed in the notice. The Grantee shall not be entitled to recover any cancellation charges or lost profits. If the Agreement is terminated before performance is completed, the Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described below occur or in the event that the Grantee fails to fulfill any of its other obligations under this Agreement. The Grantee shall continue work on any portion of the Agreement not terminated. If, after termination, it is determined that the Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination, and except as otherwise directed by the Department, the Grantee shall stop performing services on the date, and to the extent specified, in the notice.

14. Notice of Default.

If the Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, without limitation, any of the events of default listed below, the Department shall provide notice to the Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, the Grantee will be found in default, and the Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of the Department or outside the reasonable control of the Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by the Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding.

- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information.
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement; and
- i. One or more of the following circumstances, uncorrected for more than 30 calendar days unless, within the specified 30-day period, the Grantee (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by the Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of the Grantee's business or property; and/or
 - iv. An action by the Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide the Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, the Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle the Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Grantee. In case of any delay the Grantee believes is excusable, the Grantee shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if the Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date the Grantee first had reason to believe that a delay could result.

THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Grantee shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the Department, in which case the Department may (1) accept allocated performance or deliveries from the Grantee, provided that the Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by the Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate the Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that the Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of the Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon the Department giving the Grantee (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by the Department in any legal action without the Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. – b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require the Department to hold harmless or indemnify the Grantee, insure or assume liability for the Grantee's negligence, waive the Department's sovereign immunity under the laws of Florida, or otherwise impose liability on the Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make the Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit the Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it at law or in equity and upon notice to the Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by the Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of the Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:
 - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Scrutinized Companies.

Grantee certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, Grantee agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement for cause if the Grantee, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Grantee, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

25. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between the Grantee and the State, the Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with Sections 11.062 and 216.347, F.S.

26. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, the Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of the Department's Inspector General, or other authorized State official, the Grantee shall provide any type of information the Inspector General deems relevant to the Grantee's integrity or responsibility. Such information may include, but shall not be limited to, the Grantee's business or financial records, documents, or files of any type or form that refer to or relate to the Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

27. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its Subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in **Attachment 5, Special Audit Requirements**. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If the Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, the Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, the Grantee shall utilize the guidance provided under 2 CFR §200.330 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, the Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, the Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State and Federal guidelines (including cost allocation guidelines). The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) calendar days of such request.
- e. No Commingling of Funds. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, the Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If the Department finds that these funds have been commingled, the Department shall have the right to demand a refund, either in whole or in part, of the funds provided to the Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from the Department shall refund, and shall forthwith pay to the Department, the amount of money demanded by the Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the Department by the Grantee to the date repayment is made by the Grantee to the Department.
 - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by the Department, from another source(s), the Grantee shall reimburse the Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by the Grantee to the date repayment is made to the Department.

28. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

29. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of the Department.

30. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by the Grantee and may not be subcontracted or assigned without the prior written consent of the Department.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to the Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve the Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny the Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of the Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for the Grantee to meet the required delivery schedule.

31. Guarantee of Parent Company.

If the Grantee is a subsidiary of another corporation or other business entity, the Grantee asserts that its parent company will guarantee all of the obligations of the Grantee for purposes of fulfilling the obligations of the Agreement. In the event the Grantee is sold during the period the Agreement is in effect, the Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of the Grantee.

32. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

33. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of the Grantee, its agents, servants, and employees, nor shall the Grantee disclaim its own negligence to the Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If the Department consents to a subcontract, the Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

34. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

35. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of the Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

36. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of the Department. In the event of any assignment, the Grantee remains secondarily liable for performance of the Agreement, unless the Department

expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to the Grantee of its intent to do so.

37. Prohibited Local Government Construction Preferences.

Pursuant to Section 255.0991, F.S., for a competitive solicitation for construction services in which 50 percent (50%) or more of the cost will be paid from state-appropriated funds that have been appropriated at the time of the competitive solicitation, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

- i. The contractor's maintaining an office or place of business within a particular local jurisdiction;
- ii. The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or
- iii. The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

For any competitive solicitation that meets the criteria of this section, a state college, county, municipality, school district, or other political subdivision of the state shall disclose in the solicitation document that any applicable local ordinance or regulation does not include any preference that is prohibited by this section.

38. Prohibited Governmental Actions for Public Works Projects.

Pursuant to Section 255.0992, F.S., state and political subdivisions that contract for public works projects are prohibited from imposing restrictive conditions on certain contractors, subcontractors, or material suppliers and prohibited from restricting qualified bidders from submitting bids.

- a. "Political subdivision" means separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair or improvement of public works.
- b. "Public works project" means an activity of which fifty percent (50%) or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of construction, maintenance, repair, renovation, remodeling or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.
- c. Except as required by federal or state law, the state or political subdivision that contracts for a public works project may not require that a contractor, subcontractor or material supplier or carrier engaged in such project:
 - i. Pay employees a predetermined amount of wages or prescribe any wage rate;
 - ii. Provide employees a specified type, amount, or rate of employee benefits;
 - iii. Control, limit, or expand staffing; or
 - iv. Recruit, train, or hire employees from designated, restricted, or single source.
- d. For any competitive solicitation that meets the criteria of this section, the state or political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project, except for those vendors listed under Section 287.133 and Section 287.134, F.S.
- e. Contracts executed under Chapter 337, F.S. are exempt from these prohibitions.

39. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
GRANT AGREEMENT
SPECIAL TERMS AND CONDITIONS
AGREEMENT # NS032**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is the North 2 UEP – Catch Basin Replacement and Bioswales (West) project. The Project is defined in more detail in the Attachment 3, Grant Work Plan.

2. Duration.

a. Reimbursement Period.

The reimbursement period for this Agreement is the same as the term of the Agreement.

b. Extensions. There are extensions available for this Project.

c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

a. Compensation. This is a cost reimbursement agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.

b. Invoicing. Invoicing will occur as indicated in Attachment 3.

c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Costs Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
<input type="checkbox"/>	<input type="checkbox"/>	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
<input type="checkbox"/>	<input type="checkbox"/>	a. Fringe Benefits, N/A.
<input type="checkbox"/>	<input type="checkbox"/>	b. Indirect Costs
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Contractual (Subcontractors)
<input type="checkbox"/>	<input type="checkbox"/>	Travel
<input type="checkbox"/>	<input type="checkbox"/>	Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Rental/Lease of Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Miscellaneous/Other Expenses
<input type="checkbox"/>	<input type="checkbox"/>	Land Acquisition

No Equipment purchases shall be funded under this Agreement.

There will be no Land Acquisitions funded under this Agreement.

5. Match Requirements.

The Agreement requires at least a 50% match on the part of the Grantee. Therefore, the Grantee is responsible for providing \$600,000 through cash or third party in-kind towards the work funded under this Agreement.

The Grantee may claim allowable project expenditures made on or after July 1, 2016 for purposes of meeting its match requirement as identified above.

Each payment request submitted shall document all matching funds and/or match efforts (i.e., in-kind services) provided during the period covered by each request. The final payment will not be processed until the match requirement has been met.

If, upon completion of this Project, actual Project costs are less than the total estimated Project costs, and there are no pending payment requests, the Grantee's required match may be reduced proportionately, as long as at least a 50% match of the actual total cost of the Project is provided by the Grantee and the reduced amount satisfies statutory and program requirements.

6. Quality Assurance Requirements.

The Grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet Project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. All sampling and analyses performed under this Agreement must conform with the requirements set forth in Chapter 62-160, Florida Administrative Code, and the Quality Assurance Requirements for Department Agreements, attached hereto and made part hereof as Exhibit E-1, Quality Assurance Requirements for Contracts and Grants, if applicable. If the Project does not involve environmentally-related measurements or data generation, this Attachment shall not be required and shall be intentionally excluded.

7. Additional Lobbying Requirements for Federally-Funded Agreements

This Agreement is not federally funded.

8. Miscellaneous Contract Terms.

a. Retainage.

Retainage is permitted under this agreement. Retainage may be up to a maximum of 10% of the total amount of the Agreement.

b. Subcontracting.

The Grantee may subcontract work under this Agreement without the prior written consent of the Grant Manager except for certain fixed-price subcontracts pursuant to this Agreement, which require prior approval. The Grantee shall submit a copy of the executed subcontract to the Department prior to submitting any invoices for subcontracted work. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

c. State-owned land.

The work will not be performed on State-owned land.

d. Office of Policy and Budget Reporting.

There are no special Office of Policy and Budget reporting requirements for this Agreement.

9. Additional Terms.

ATTACHMENT 3 GRANT WORK PLAN

PROJECT TITLE: North 2 UEP – Catch Basin Replacement and Bioswales (West)

PROJECT LOCATION: The Project will be located in the West area of the North 2 Utilities Extension Project (UEP), North of Pine Island Road, within the City of Cape Coral in Lee County (26.64361111 dd Latitude, -82.04861111 dd Longitude). See Figure 1 for a location map.

PROJECT BACKGROUND: The City of Cape Coral adopted the UEP in 2015 to replace the previous system of septic tanks and shallow groundwater wells. The goal of this project is to upgrade stormwater treatment and to expand City access to water, sewer, and irrigation, using a combination of State Revolving Funds, local, and State funds.

PROJECT DESCRIPTION: The Grantee intends to replace existing open throat catch basins with new control structures. These new structures shall consist of double orifice bleeders at the swale flowline with a grated top overflow. The smaller catch basin inflow orifice will encourage surface water discharges to pond and percolate through the ground instead of directly flowing into the catch basin/canal system. This catch basin project is a part of the larger North 2 UEP project which will replace approximately 1,500 catch basins throughout the utility contracts.

Bioswales will also be installed in this part of the UEP along runs of fully developed lots in select areas. The bioswales are expected to include a layer of soil with sod cover and denitrification media for additional filtration and nutrient load reduction. The proposed improvements will reduce nutrients in the City's Canal system, Matlacha Pass and Charlotte Harbor Estuary.

TASKS and DELIVERABLES:

Task 1: Construction

Task Description: The Grantee will replace approximately 400 existing storm water catch basins using the proposed double orifice bleeder inlets with grated overflow and to install bioswales as needed, in accordance with the construction contract documents.

Deliverables: Construction completed to date as described in this task, as evidenced by these deliverables: 1) Dated color photographs of on-going work representing the time period covered in the payment request; 2) signed acceptance and brief description of the completed work to date by the Grantee; 3) written verification that the Grantee has received record drawings and any required final inspection report(s) for the project (as applicable); and 4) signed statement from a Florida Licensed Professional Engineer indicating construction has been completed in accordance with the construction contract documents (as applicable).

Performance Standard: The Department's Grant Manager will review the deliverables to verify that they meet the specifications in the Grant Work Plan and this task description.

Payment Request Schedule: The deliverables must be submitted and accepted prior to each payment request and may be submitted no more frequently than quarterly.

Task 2: Quality Assurance Project Plan

Task Description: The Grantee will prepare, submit, and receive approval on a Quality Assurance Project Plan (QAPP) prior to commencement of any monitoring associated with the project. The QAPP must

specify the sampling procedures, locations, instruments, and parameters to be sampled. The Grantee will use the format provided by the Department's Grant Manager, if applicable.

Deliverable 2a: Draft QAPP submitted electronically in Word format to the Department's Grant Manager. Upon request, the Grantee will provide a paper copy of the Draft QAPP to the Department's Grant Manager.

Performance Standard: The Department's Grant Manager will ensure review of the draft QAPP for compliance with this Agreement and the quality assurance requirements, to ensure sufficient monitoring is planned to measure project effectiveness, and provide comments to the Grantee as needed prior to Final QAPP submittal.

Deliverable 2b: Final Department-approved QAPP submitted electronically in Word format to the Department's Grant Manager. Upon request, the Grantee will provide a paper copy of the Final QAPP to the Department's Grant Manager.

Performance Standard: The Department's Grant manager will review the Final QAPP to ensure that draft comments have been taken into consideration and the Final QAPP is in compliance with this Agreement and the quality assurance requirements.

Task 3: Monitoring

Task Description: The Grantee will conduct monitoring in accordance with the Department-approved QAPP for this project (see Task 2).

Deliverables: Summary of completed monitoring activities (dates completed, sampling conducted and any not conducted and why), monitoring results along with interpretation of those results (as expected or not as expected) submitted electronically, along with the draft or final (when submitting final request) laboratory report and sampling logs to the Department's Grant Manager. Upon request, the Grantee will provide a paper copy or copies to the Department's Grant Manager.

Performance Standard: The Department's Grant Manager will review the monitoring results for completion and compliance with QAPP requirements.

Task 4: Public Education

Task Description: The Grantee will provide public education information about the project and its environmental benefits in the following formats: newsletter(s), website posting(s), sign(s) installed at the project location, and workshop(s).

Deliverable 4a: 1) Copy of draft print-ready newsletters submitted to the Department's Grant Manager for review and approval prior to final printing and distribution; 2) provide the active link for the website as designed or updated with project information to the Department's Grant Manager with expectation that draft material is provided for review prior to finalization and public distribution; 3) copy of draft kiosk/sign(s) text and graphics submitted to the Department's Grant Manager for review and approval prior to final printing and distribution; and 4) draft materials for public presentations and educational meetings submitted to the Department's Grant Manager for review and approval prior to when presentations and/or meetings are held. Deliverables should be submitted as electronic copies unless otherwise requested by the Department's Grant Manager.

Performance Standard: The Department's Grant Manager must approve draft materials prior to public distribution. The Department's Grant Manager will review the draft deliverables and provide comments to the Grantee as needed.

Deliverable 4b: Completed public education activities to date as described in this task, as evidenced by: 1) Copy of the final printed materials with number distributed and where; 2) incorporate any suggested changes to the website or information posted there and provide documentation to demonstrate the website's service functionality; 3) summary of airing dates for final approved PSA; 4) dated photograph(s) of installed kiosk/sign(s) as approved; 5) copy of meeting or workshop notices, agenda(s), meeting minutes or notes, and sign-in sheets; and 6) copy of promotional effectiveness survey(s) with summary of results. Deliverables should be submitted as electronic copies unless otherwise requested by the Department's Grant Manager.

Performance Standard: The deliverables [of paragraph 4b] must be submitted and accepted prior to each payment request and may be submitted upon completion of the task.

Task 5: Final Report

Task Description: The Grantee will prepare a Final Report summarizing the results of the project, including all tasks in the Grant Work Plan. The Final Report must include at a minimum:

- Project location and background, project description and timeline, grant award amount and anticipated benefits.
- Financial summary of actual costs versus the budget, along with any changes required to the budget. Include any match or locally pledged contributions provided, along with other related project work performed outside of this Agreement to identify the overall project cost.
- Discussion of project schedule versus actual completion, including changes required to the schedule, unexpected site conditions and adjustments, significant unexpected delays and corrections, and/or other significant deviations from the original project plan.
- Summary of activities completed as well as those not completed and why, as well as a brief summary of any additional phases yet to be completed.
- Photo documentation of work performed (before, during and after), appropriate figures (site location, site plan(s), etc.), appropriate tables summarizing data/information relevant to Grant Work Plan tasks, and appropriate attachments relevant to the project.
- Discussion of whether the anticipated benefits have been/will be realized (e.g., why a Best Management Practice (BMP) approach did or did not exceed the expected removal efficiency).
- Summary of monitoring activities completed and any not completed and why, monitoring results, and an interpretation of data based on planned versus realized results.

Deliverable 5a: An electronic copy of the draft Final Report in Word format submitted to the Department's Grant Manager for review prior to submission of the Final Report. Upon request, the Grantee will provide a paper copy of the draft Final Report.

Performance Standard: The Department's Grant Manager will review the submitted draft Final Report to verify that it meets the specifications in the Grant Work Plan and this task description, and provide any comments to the Grantee for consideration of incorporation into the Final Report .

Deliverable 5b: An electronic copy of the Final Report, with all suggested changes incorporated, in Word or PDF format submitted to the Department's Grant Manager for review and approval. Upon request, the Grantee will provide a paper copy of the Final Report.

Performance Standard: The Department's Grant Manager will review the deliverables to ensure that they meet the specifications in the Grant Work Plan and this task description.

PROJECT TIMELINE: The tasks must be completed and all deliverables received by the corresponding task end date.

Task/ Deliverable No.	Task or Deliverable Title	Task Start Date	Task End Date
1	Construction of Project	July 1, 2016	April 20, 2020
2	Quality Assurance Project Plan		
2a	Draft QAPP	July 1, 2016	January 1, 2018
2b	Final QAPP	July 1, 2016	February 1, 2018
3	Monitoring	Upon QAPP Approval	May 1, 2020
4	Public Education		
4a	Draft Deliverables	July 1, 2016	April 20, 2020
4b	Final Deliverables	July 1, 2016	June 1, 2020
5	Final Report		
5a	Draft Deliverables	April 20, 2019	May 1, 2020
5b	Final Deliverables	April 20, 2019	June 1, 2020

BUDGET DETAIL BY TASK:

Task No.	Budget Category	Budget Amount	Match Amount
1	Contractual Services	\$600,000	\$600,000
	Total for Task:	\$600,000	\$600,000
2	No Funds Associated with this Task		
3	No Funds Associated with this Task		
4	No Funds Associated with this Task		
5	No Funds Associated with this Task		
Percentage Match		50%	50%

Budget Narrative: A quarter of the match, \$600,000, must come from a local source; \$150,000 must come from a local source.

PROJECT BUDGET SUMMARY: Cost reimbursable grant funding must not exceed the category totals for the project as indicated below. Match funding shall be provided in the categories indicated below.

Category Totals	Grant Funding, Not to Exceed, \$	Match Funding, \$
Contractual Services Total	\$600,000	\$600,000
Total:	\$600,000	\$600,000
Percentage Match:	50%	50%

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Figure 1: Project Location



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Public Records Requirements

Attachment 4

1. Public Records

- a. If the Agreement exceeds \$35,000.00, and if the Grantee is acting on behalf of the Department in its performance of services under the Agreement, the Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if the Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If the Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply:

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to the Department.
- e. Upon completion of the contract, transfer, at no cost, to the Department all Public Records in possession of the contractor or keep and maintain Public Records required by the Department to perform the service. If the contractor transfers all Public Records to the Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department’s custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.
- f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE**

**CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF
PUBLIC RECORDS AT:**

Telephone: (850) 245-2118

Email: public.services@dep.state.fl.us

Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public
Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

ATTACHMENT 5

SPECIAL AUDIT REQUIREMENTS

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the contract/agreement*) to the recipient (*which may be referred to as the "Contractor", Grantee" or other name in the contract/agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, 2 CFR Part 200, Subpart F, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, and/or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised (for fiscal year start dates prior to December 26, 2014), or as defined in 2 CFR §200.330 (for fiscal year start dates after December 26, 2014).

1. In the event that the recipient expends \$500,000 (\$750,000 for fiscal year start dates after December 26, 2014) or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F. An audit of the recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F.
3. If the recipient expends less than \$500,000 (or \$750,000, as applicable) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, is not required. In the event that the recipient expends less than \$500,000 (or \$750,000, as applicable) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at www.cfda.gov

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2)(n), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this Attachment indicates state financial assistance awarded through the Department of Environmental Protection by this Agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F and required by PART I of this Attachment shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised, and 2 CFR §200.501(a) (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, and 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised, and 2 CFR §200.512.
2. Pursuant to Section .320(f), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, the recipient shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, and any management letters issued by the auditor, to the Department of Environmental Protection at one the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

3. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Attachment 5

Electronically:
FDEPSingleAudit@dep.state.fl.us

B. The Auditor General's Office at the following address:

State of Florida Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

5. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with OMB Circular A-133, as revised and 2 CFR Part 200, Subpart F, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of **5** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **3** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

EXHIBIT - 1

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

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount \$	State Appropriation Category

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program Number	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
NS032	Line Item 1601	2016-2017	37.039	Statewide Surface Water and Wastewater Projects	600,000	140076

Total Award	\$600,000
-------------	-----------

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [www.cfda.gov] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
Progress Report Form**

Exhibit A

DEP Agreement No.:	NS032		
Grantee Name:	City of Cape Coral		
Grantee Address:			
Grantee's Grant Manager:		Telephone No.:	
Reporting Period:			
Project Number and Title:			
<p>Provide the following information for all tasks and deliverables identified in the Grant Work Plan: a summary of project accomplishments for the reporting period; a comparison of actual accomplishments to goals for the period; if goals were not met, provide reasons why; provide an update on the estimated time for completion of the task and an explanation for any anticipated delays and identify by task.</p> <p>NOTE: Use as many pages as necessary to cover all tasks in the Grant Work Plan.</p> <p><u>The following format should be followed:</u></p> <p>Task 1:</p> <p>Progress for this reporting period:</p> <p>Identify any delays or problems encountered:</p>			

This report is submitted in accordance with the reporting requirements of DEP Agreement No. NS032 and accurately reflects the activities associated with the project.

Signature of Grantee's Grant Manager

Date

EXHIBIT D
PAYMENT REQUEST SUMMARY FORM

Payment Request No. _____ DEP Agreement No. _____ Date _____

Performance Period (Start date - End date): _____

Deliverables completed to support payment request (attach additional pages as needed):

Task/Deliverable	Task Budget
Number(s): _____	Amount: \$ _____ -

Grantee:
(Name & Mailing Address) _____

Grantee Contact: _____
(Name & Phone)

GRANT EXPENDITURES SUMMARY SECTION

CATEGORY OF EXPENDITURE (As authorized)	AMOUNT OF THIS REQUEST	TOTAL CUMULATIVE PAYMENT REQUESTS	MATCHING FUNDS FOR THIS REQUEST	TOTAL CUMULATIVE MATCHING FUNDS
Salaries/Wages	\$ -	\$ -	\$ -	\$ -
Fringe Benefits	\$ -	\$ -	\$ -	\$ -
Indirect Cost	\$ -	\$ -	\$ -	\$ -
Contractual (Subcontractors)	\$ -	\$ -	\$ -	\$ -
Travel	\$ -	\$ -	\$ -	\$ -
Equipment (Direct Purchases)	\$ -	\$ -	\$ -	\$ -
Rental/Lease of Equipment	\$ -	\$ -	\$ -	\$ -
Miscellaneous/Other Expenses	\$ -	\$ -	\$ -	\$ -
Land Acquisition	\$ -	\$ -	\$ -	\$ -
TOTAL AMOUNT	\$	\$	\$	\$
TOTAL BUDGET (ALL TASKS)	\$		\$	
Less Total Cumulative Payment Requests of:	\$		\$	
TOTAL REMAINING (ALL TASKS)	\$		\$	

GRANTEE CERTIFICATION

Complete Grantee's Certification of Payment Request on Page 2 to certify that the amount being requested for reimbursement above was for items that were charged to and utilized only for the above cited grant activities.

Grantee's Certification of Payment Request

I, _____, on behalf of
(Print name of Grantee's Grant Manager designated in the Agreement)

_____, do hereby certify for
(Print name of Grantee)

DEP Agreement No. _____ and Payment Request No. _____ that:

- ☒ The disbursement amount requested is for allowable costs for the project described in Attachment 3 of the Agreement.
- ☒ All costs included in the amount requested have been satisfactorily purchased, performed, received, and applied toward completing the project; such costs are documented by invoices or other appropriate documentation as required in the Agreement.
- ☒ The Grantee has paid such costs under the terms and provisions of contracts relating directly to the project; and the Grantee is not in default of any terms or provisions of the contracts.

Check all that apply:

- ☐ All permits and approvals required for the construction, which is underway, have been obtained.
- ☐ Construction up to the point of this disbursement is in compliance with the construction plans and permits.
- ☐ The Grantee's Grant Manager relied on certifications from the following professionals that provided services for this project during the time period covered by this Certification of Payment Request, and such certifications are included:

Professional Service Provider (Name / License No.)	Period of Service (mm/dd/yy – mm/dd/yy)

_____ Grantee's Grant Manager's Signature	_____ Grantee's Fiscal Agent Signature
_____ Print Name	_____ Print Name
_____ Telephone Number	_____ Telephone Number

INSTRUCTIONS FOR COMPLETING PAYMENT REQUEST SUMMARY FORM

PAYMENT REQUEST NO.: This is the number of your payment request, not the quarter number.

DEP AGREEMENT NO.: This is the number on your grant agreement.

DATE: This is the date that you are submitting the payment request.

PERFORMANCE PERIOD: This is the beginning and ending date of the performance period for the Task/Deliverable that the request is for (this must be within the timeline shown for the Task/Deliverable in the Agreement).

TASK/DELIVERABLE NO.: Identify the number of the Task/Deliverable that you are requesting payment for and/or claiming match for (must agree with the current Grant Work Plan). *Note:* If payment request includes more than one Task/Deliverable, additional pages should identify each Task/Deliverable Number, its corresponding budget amount, and the amount requested.

TASK BUDGET AMOUNT: List the Task budget amount as identified in the Grant Work Plan for the corresponding Task/Deliverable. *Note:* If payment request includes more than one Task/Deliverable, additional pages should identify each Task/Deliverable Number, its corresponding budget amount, and the amount requested.

GRANTEE: Enter the name of the Grantee's agency and the address to which you want the state warrant sent.

GRANTEE CONTACT: List the name and telephone number for the Grantee's grant manager or other point of contact regarding the payment request submittal.

GRANT EXPENDITURES SUMMARY SECTION:

"AMOUNT OF THIS REQUEST" COLUMN: Enter by authorized category of expenditure the amount for which you are requesting reimbursement for this task. This must agree with the currently approved budget in the current Grant Work Plan of your grant Agreement. Do not claim expenses in a budget category that does not have an approved budget. Do not claim items that are not specifically identified in the current Grant Work Plan. Enter the column total on the "*TOTAL AMOUNT*" line. Enter the amount of all Tasks on the "*TOTAL BUDGET (ALL TASKS)*" line. Enter the total cumulative amount of this request **and** all previous payments on the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" line. Deduct the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" from the "*TOTAL BUDGET (ALL TASKS)*" for the amount to enter on the "*TOTAL REMAINING (ALL TASKS)*" line.

"TOTAL CUMULATIVE PAYMENT REQUESTS" COLUMN: Enter the cumulative amounts that have been requested to date for reimbursement by budget category. The final request should show the total of all requests; first through the final request (this amount cannot exceed the approved budget amount for that budget category for the Task(s) you are reporting on). Enter the column total on the "*TOTAL PAYMENT REQUEST*" line. **Do not enter anything in the shaded areas.**

"MATCHING FUNDS" COLUMN: Enter the amount to be claimed as match for the performance period for the Task(s) you are reporting on. This needs to be shown under specific budget categories according to the currently approved Grant Work Plan. Enter the total on the "*TOTAL AMOUNT*" line for this column. Enter the match budget amount on the "*TOTAL BUDGET (ALL TASKS)*" line for this column. Enter the total cumulative amount of this and any previous match claimed on the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" line for this column. Deduct the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" from the "*TOTAL BUDGET (ALL TASKS)*" for the amount to enter on the "*TOTAL REMAINING (ALL TASKS)*" line.

"TOTAL CUMULATIVE MATCHING FUNDS" COLUMN: Enter the cumulative amounts you have claimed to date for match by budget category. Put the total of all on the line titled "*TOTAL PAYMENT REQUEST.*" The final request should show the total of all claims, first claim through the final claim, etc. **Do not enter anything in the shaded areas.**

GRANTEE'S CERTIFICATION: Check all boxes that apply. Identify any licensed professional service providers that certified work or services completed during the period included in the request for payment. **Must be signed by both the Grantee's Grant Manager as identified in the grant agreement and the Grantee's Fiscal Agent.**

Documentation for match claims must meet the same requirements as those expenditures for reimbursement.

Contract #:

Payment Request #:

Complete the table below. Use the drop down lists to add categories. Enter one Task number per row and one Category per column.

Select only the categories that are in the contract task budget.

Also complete the **Contractual Detail** spreadsheet if the contractual category is funded in the Agreement/Task.

Also, complete the **Equip-Supplies-Expense** spreadsheet if the contractual category is funded in the Agreement/Task.

Also complete the **Salary/Fringe Detail** spreadsheet if the salary and fringe categories are funded in the Agreement/Task.

*Include the match amount if match is required in the Agreement and is included in the invoice.

Formulas are included in some of the spreadsheet cells, denoted with \$:

[illegible]

Complete one table per Task containing Contractual Reimbursement Requests
Add rows as needed for each table. Add tables as needed, if more than two tasks are in the invoice.
Enter the contractual sum for each task into the Invoice Summary spreadsheet.
*Include the match amount if match is required in the Agreement and is included in the invoice

Task/Deliverable #:								
Performance Period - Date Range	Sub-contractor Name	Subcontractor Invoice Number	Sub-contractor Invoice Date	Check Number	Check Amount	Amount requested for reimbursement	Amount to credit towards Match*	Comments

Task/Deliverable #:								
Performance Period - Date Range	Sub-contractor Name	Subcontractor Invoice Number	Sub-contractor Invoice Date	Check Number	Check Amount	Amount requested for reimbursement	Amount to credit towards Match*	Comments

Complete one table for each task containing Equipment and Supply/Expense Reimbursement Request. Add rows as needed for each table. Add tables as needed, if more than two tasks are in the invoice. Enter the Equipment and Supplies/Expense sums for each task into the Invoice Summary spreadsheet. *Include the match amount if match is required in the Agreement and is included in the invoice.

[illegible]

Complete one table for each task containing Salary and Fringe Reimbursement Requests
Add rows as needed for each table. Add tables as needed, if more than two tasks are in the invoice.
Enter the Salary and Fringe sums for each task into the Invoice Summary spreadsheet.
*Include the match amount if match is required in the Agreement and is included in the invoice.

[illegible]

Instructions for Completing Request for Payment - Part II

Include the Grantee Name, Payment Request No., and DEP Agreement Number. List vendor invoices that are associated with the Project by Task/Deliverable.

- 1 **Invoice Amount:** Amount of Invoice being submitted for reimbursement.
- 2 **Local Share or Other Funding or Amount Not Requested:** Portion of invoice paid for by Grantee.
Requested Amount: Subtract Grantee's Local Share or Other Funding or Amount Not Requested **(2)** from Invoice Amount **(1)**.
- 3 **Deliverable Number:** Must identify completed deliverable(s) for each invoice. If invoice covers multiple deliverables, that invoice would be listed multiple times, a line item for each deliverable with any portion not applicable to that Task/Deliverable identified under **(2)**.
- 4

Submittal Instructions

Instructions for E-mailing:

The program now accepts reimbursement requests electronically. When scanning please be sure that the minimum scan resolution must be 300 DPI (dots per inch). When reimbursement requests are sent electronically, please do not also send a hard copy by postal mail.

Please redact all sensitive financial information from the invoices and other supporting documentation to be submitted with this Payment Request Form.

Remit Payment Request by E-mail to the Department's Grant Manager

Be sure the E-mail payment request includes the following:

Subject: Project Number_Disbursement Number: example – LP14025_Disb_1

Attachments:

- 1) Exhibit D Payment Request Summary
- 2) Request for Payment Part II Reimbursement Detail
- 3) Copies of invoices
- 4) Other supporting documentation, as needed

For questions or concerns regarding these forms or if you would like the payment request forms listed above in electronic format please contact the Department's Grant Manager.

EXHIBIT E
Department of Environmental Protection
Quality Assurance Requirements for Contracts and Grants

1. GENERAL REQUIREMENTS AND DEFINITIONS

- a. As applicable to the scope of services described in the contract work plan or other statement of work for this contract, the sampling, field testing and laboratory analyses performed under this contract shall conform to the requirements set forth in Chapter 62-160, Florida Administrative Code (F.A.C.) and "Requirements for Field and Analytical Work Performed for the Department of Environmental Protection under Contract" (DEP-QA-002/02), February 2002.
- b. Hereinafter, "DEP" or "Department" refers to the Florida Department of Environmental Protection.
- c. "Sample" and "sampling" refers to samples that shall be either collected or analyzed under the terms of this contract.

2. REQUIREMENTS FOR LABORATORIES

- a. All applicable laboratory testing activities shall be performed by laboratories certified by the Florida Department of Health Environmental Laboratory Certification Program (DoH ELCP) for all applicable matrix/method/analyte combinations to be measured for this contract. Laboratory certification requirements are described in rule 62-160.300, F.A.C. Certification is not required for laboratory tests outside of the scope of DoH ELCP accreditation as determined according to 62-160.300(5)(c), F.A.C.
- b. For samples collected from a non-potable water matrix, the certification requirement is met if the laboratory is certified for the contracted analyte(s) in at least one method utilizing an analytical technology appropriate for the contract, as determined by the Department according to 62-160.300(1)(c), F.A.C.
- c. If the laboratory is not certified for some or all of the proposed test measurements, the laboratory shall apply for certification within one month of contract execution. The laboratory shall attempt to become fully certified for all applicable matrix/method/analyte combinations to be performed for the contract by maintaining active coordination with the DoH ELCP throughout the application process. Regardless of when the laboratory receives certification, the laboratory shall implement all applicable standards of the National Environmental Laboratory Accreditation Conference (NELAC 2003 Quality Systems standards, as adopted) upon contract execution.
- d. Laboratories shall maintain certification as specified in item 2.a above during the life of the contract. Should certification for an analyte or test method be lost, all affected tests shall be immediately sub-contracted to a laboratory with current DoH ELCP certification in the appropriate matrix/method/analyte combination(s). The contractor shall notify the DEP contract manager in writing before any change to a sub-contracted laboratory is made.
- e. The DoH ELCP certificate number (certified laboratory identification number) for each contracted (and sub-contracted) laboratory shall be listed in the required contract QA plan (see Section 6 below) in association with the analytical tests to be performed by each laboratory analyzing samples for the contract.
- f. Each certified laboratory analyzing contracted samples shall ensure that an acceptable demonstration of capability (DOC) is performed as described in the 2003 NELAC Quality Systems standards (NELAC 2003, Section 5.5.4.2.2 and Appendix C). In addition, each certified laboratory that performs any of the proposed matrix/method/analyte combination(s) approved for the contract shall have the requisite DOC documentation and supporting laboratory records on file for the applicable combinations. The DOCs performed shall meet the requirements for precision, accuracy, method detection limit (MDL) and/or practical quantitation limit (PQL), as specified in each applicable laboratory test method, Standard Operating Procedure (SOP) or Quality Manual, or as listed in the contract QA plan (section 6, below). Alternative limits for detection and quantitation other than MDL and PQL shall be determined, if applicable to the laboratory. DOCs performed for the contracted analytes shall include any modifications to the test method or SOP that have been approved by DEP according to 62-160.330(3), F.A.C., if

applicable. If requested by the Department, documentation that supports the DOC for a specified analyte and test method shall be made available for review.

- g. The contracted (and/or subcontracted) laboratory shall report PQLs and MDLs or other specified limits of detection and quantitation with the results of sample analyses. MDLs and/or PQLs shall only be required for test methods that are technically amenable to the determination of MDLs and/or PQLs. For those test methods where the determination of MDLs and/or PQLs are not technically feasible, the laboratory shall report a value or increment representing the lower limit of the working range of the test method, however determined by the laboratory. The laboratory shall indicate whether the reported limit represents a limit of detection or quantitation. In all cases, limits of detection and quantitation other than MDLs and PQLs shall be explicitly defined and evaluated by the laboratory. All limits shall be as listed in the applicable laboratory test method, SOP or Quality Manual, or as listed in the contract QA plan (Section 6, below). The reported MDLs and PQLs (or other limits per above) shall meet the analytical sensitivity and quantitation objectives for the contract.
- h. Additional laboratory quality control expectations:
 - (i) The selected laboratory test methods listed in the QA Plan shall provide results that meet applicable contract data quality objectives.
 - (ii) All laboratory testing procedures shall follow the analytical methods as approved in the contract QA plan (see Section 6).
 - (iii) The laboratory shall adhere to the quality control requirements specified in the laboratory test methods and this Attachment.
 - (iv) The laboratory shall calculate all sample results according to the procedures specified in the analytical test methods approved in the contract QA plan.

3. FIELD ACTIVITIES

- a. All sample collection and field testing activities shall be performed in accordance with the Department's "Standard Operating Procedures for Field Activities" (DEP-SOP-001/01, March 1, 2014). The specific standard operating procedures (SOPs) to be used for this contract shall be cited in the contract QA plan (see Section 6).
- b. Field-Generated Quality Control (QC) Blanks are defined in DEP SOP FQ 1000 (subparts FQ 1211 – FQ 1214) and shall be composed and analyzed for sample collection activities associated with this contract according to the requirements of part FQ 1230 (sections 1. – 2.3.1), DEP SOP FS 2100 (Part FS 2110, sec. 2.1.1.2) and/or DEP SOP FS 2400 (Part FS 2430, sec. 2.1.1.2), as applicable to the analytes and matrices to be collected using the sampling equipment specified in the contract QA plan (section 6 below).
 - (i) If an analyte detected in the sample is also found in any field-generated QC blank that is associated with the sample, the contractor shall investigate and attempt to determine the cause of the QC blank contamination. If any contracted sample results are qualified as in (ii) below, the outcome of this investigation shall be reported to the DEP contract manager and shall include a discussion of the corrective measures taken to minimize future occurrences of QC blank contamination associated with the collection of samples for this contract.
 - (ii) If an analyte detected in the sample is also found in any field-generated QC blank that is associated with the sample, the analytical result reported for the affected sample shall be qualified as an estimated value, unless the analyte concentration in the blank is less than or equal to 10% of the reported sample concentration. The "G" data qualifier code shall be reported with the sample result for any blank concentration exceeding the above "10%" criterion for the affected analyte (see Table 1, Chapter 62-160, F.A.C.).

4. REPORTING, DOCUMENTATION AND RECORDS RETENTION

- a. All laboratory and field records described or listed in Rules 62-160.240 and 62-160.340, F.A.C. shall be retained for a minimum of five years after the generation (or completion) of the records applicable to the contract. Longer retention times as specified in the contract shall supersede.
- b. All field and laboratory data and supporting information shall be reported for this contract according to applicable requirements in 62-160.340(3) through 62-160.340(8), F.A.C.

- c. Any other documentation and reports associated with work performed for this contract shall be likewise retained and shall include relevant information for the procedures described in sections 2 and 3, above.
- d. Any documentation or reports specifically identified in this contract as deliverable work products shall be retained as in 4.a., above.
- e. All field and laboratory records that are associated with work performed under this contract shall be organized so that any information can be quickly and easily retrieved for inspection, copying or distribution.
- f. The Department reserves the right to request some or all of the laboratory or field information in an electronic format specified by the Department, as specified in the contract, and/or as described in the approved contract QA plan (section 6). Also see subsection k., below.
- g. Any certified laboratory reports issued for contracted sample analyses using certified methods shall be generated in accordance with NELAC Quality Systems requirements (NELAC 2003, section 5.5.10).
- h. Upon request by the Department contract manager or as required by the contract, copies of the original laboratory reports shall be submitted to the contract manager.
- i. In addition to any reports of sample results provided per contract deliverable requirements and subsections b., e., f. and g., above, the contractor shall submit any of the laboratory information and/or records associated with the contracted analyses as described in this section (section 4) upon request by DEP, including any of the following:
 - ▶ Laboratory sample identification (ID) and associated Field ID
 - ▶ Analytical/test method
 - ▶ Parameter/analyte name
 - ▶ Analytical result (including dilution factor)
 - ▶ Result unit
 - ▶ Applicable DEP Data Qualifier Codes per Table 1 of Chapter 62-160, F.A.C.
 - ▶ Result comment(s) to include corrective/preventive actions taken for any failed QC measure (e.g., QC sample result, calibration failure) or other problem related to the analysis of the samples
 - ▶ Date and time of sample preparation (if applicable)
 - ▶ Date and time of sample analysis
 - ▶ Results of laboratory verification of field preservation of received samples
 - ▶ Sample matrix
 - ▶ DoH ELCP certification number for each laboratory (must be associated with the test results generated by each laboratory analyzing samples under this contract)
 - ▶ MDL, Limit of Detection (LOD) or other defined limit of detection
 - ▶ PQL, Limit of Quantitation (LOQ) or other defined limit of quantification
 - ▶ Field and laboratory QC blank results:
 - Laboratory QC blank analysis results as required by the method and the NELAC Quality Systems standards (e.g., method blank)
 - Results for trip blanks, field blanks and equipment blanks, as applicable to the project and as specified in the QA Plan (see Section 6)
 - ▶ Results for field duplicates (or replicates)
 - ▶ Results for other QC and calibration verification results, as applicable to the specific test methods used for the contracted analyses:
 - Results of sample matrix spikes, laboratory duplicates or matrix spike duplicates
 - Results of surrogate spike analyses
 - Results of laboratory control samples (LCS)
 - Results of calibration verifications
 - Acceptance criteria used to evaluate each reported quality control measure

- j. Unequivocal documentation links between each reported laboratory quality control measure (e.g., QC blanks, matrix spikes, LCS, duplicates, calibration verification) and the associated sample result(s) shall be maintained for all contracted analyses.
- k. In addition to any field information provided per contract deliverable requirements, and subsections b., e., f. and g., above, the contractor shall submit any of the field information and/or records associated with the contracted samples as described in this section (section 4) upon request by DEP, including any of the following:
 - ▶ Site name and location information
 - ▶ Field ID for each sample container and the associated analytes (test methods) for which the container was collected
 - ▶ Date and time of sample collection
 - ▶ Sample collection depth, if applicable
 - ▶ Sample collection method identified by the DEP SOP number, where applicable
 - ▶ If performed, indicate samples that were filtered
 - ▶ Field test measurement results:
 - DEP SOP number (FT-series), where applicable
 - Parameter name
 - Result
 - Result unit
 - Applicable Data Qualifier Codes per Table 1 of Chapter 62-160, F.A.C.
 - ▶ Narrative comments providing explanations, descriptions and/or discussions of: field conditions impacting QC for sample collections, unacceptable field measurements, field-testing meter calibration verification failures, or other problems related to the sampling event, and corrective/preventive actions taken for the items noted (e.g., for blank contamination or meter calibration failure).
- l. The Department reserves the right to request some or all of the laboratory or field information in a format as specified in the contract, and/or as described in the approved contract QA plan (section 6). Required formats are specified in **Attachment 3, Grant Work Plan**.

5. **AUDITS**

- a. AUDITS BY THE DEPARTMENT – Pursuant to Rule 62-160.650, F.A.C., the Department may conduct audits of field and laboratory activities. In addition to allowing Department representatives to conduct onsite audits of contracted work in the field or at contractor (or subcontractor) facilities, upon request by the Department, field and laboratory records pertinent to the contracted research as described per section 4, above shall be provided by the contractor. If an audit by the Department results in a determination that the reported data are not usable for the purpose(s) of the contract, do not meet the data quality objectives specified by the contract, do not meet other applicable Department criteria described in the contract, its attachments, the QA Plan (see section 6, below) or these QA Requirements, do not applicable meet data validation criteria outlined in Rule 62-160.670, F.A.C.; or, are not otherwise suitable for the intended use of the data (however applicable), the DEP contract manager shall pursue remedies available to the Department, including those outlined in section 8, below.
- b. PLANNING REVIEW AUDITS –
 - (i) Initial: Prior to the completion of the sampling and analysis events and after the second completed sampling and analysis event but no later than fourth, or as described in **Attachment 3**, the contractor and all subcontractors shall review the contract QA plan (see Section 6 below) relative to the completed field and laboratory activities to determine if data quality objectives are being met, identify any improvements to be made to project activities, and refine the sampling and/or analytical design or schedule, if applicable. Within one month of the review, a summary of the review, including any corrective action plans or amendments to the contract QA plan, shall be sent to the DEP contract manager, and a copy of all submitted documents shall be maintained with the permanent project records.

- (ii) Ongoing: Planning reviews as described in subsection (i) above shall occur annually thereafter for the remainder of the contract, if applicable to the duration of the contract.
- c. QUALITY SYSTEMS AUDITS – The contractor and all subcontractors shall ensure that any required laboratory and field quality system audits are performed according to the respective Quality Manuals or other relevant internal quality assurance documents for each contracted and sub-contracted entity. The results of these audits shall be documented in the contractor's and subcontractors' records. Copies of the above audit reports or results shall be provided to the DEP contract manager upon request. Copies of audit records for internal audits conducted per DEP SOP FA 1000 (subpart FA 4200) or NELAC Quality Systems requirements (NELAC 2003, section 5.4.13) shall be similarly provided.
- d. STATEMENTS OF USABILITY – As a part of the audit process and the final report, the contractor shall provide statements about data usability as necessary to address the topics in subsections (i) – (iii) below, relative to the contract data quality objectives and any data quality indicators that may be specified in the contract, its attachments, the QA Plan (see section 9, below), or these QA Requirements.
 - (i) All applicable data quality acceptance and usability criteria for the contract, as specified in the procedures, test methods, QA plan, Quality Manual(s), other contract attachments, or these QA Requirements shall be met.
 - (ii) All quality control measures shall be evaluated according to the acceptance criteria listed in the applicable procedures, test methods, QA plan, Quality Manual(s), other contract attachments or these QA Requirements.
 - (iii) All sample results shall be evaluated according to all applicable usability criteria specified in the procedures, test methods, QA plan, Quality Manual(s), other contract attachments, or these QA Requirements.

6. QA PLAN

- a. The contractor shall submit the contract QA plan identified in **Attachment 3** to the DEP contract manager in accordance with the schedule set forth in **Attachment 3** and **prior to the commencement of field and laboratory activities**. Failure to submit the QA plan in this required timeframe shall result in a delay of approval to begin work until the document has been submitted to the Department and approved (or conditionally approved) by the DEP contract manager.
- b. The contractor may submit a version of the QA plan to the Department for approval no more than three times. If the contractor fails to obtain approval for the QA Plan after the third (final) submission to the Department, the DEP contract manager may suspend or terminate the contract.
- c. The DEP contract agreement number shall appear on the title page of the submitted QA plan. Within 45 days or as specified in **Attachment 3**, of receipt of the QA plan by the Department, the Department shall review and either approve the QA plan or provide comments to the contractor as to why the QA plan is not approved. If further revisions are needed, the contractor shall then have 15 days or as specified in **Attachment 3**, from the receipt of review comments to respond. The Department shall respond to all revisions to the QA plan within 30 days, or as specified in **Attachment 3** of receipt of any revisions.
- d. If the review of the QA plan by the Department is delayed beyond sixty (60) days after the QA plan is received by the Department, through no fault of the contractor, the contractor shall have the option, after the QA plan is approved, of requesting and receiving an extension in the term of the contract for a time period not to exceed the period of delayed review and approval. This option must be exercised at least sixty (60) days prior to the current termination date of the contract.
- e. Work may not begin for specific contract tasks until approval has been received by the contractor from the DEP contract manager. Sampling and analysis for the contract may not begin until the contract QA plan has been approved (or conditionally approved).

- f. Once approved, the contractor and subcontractor(s) shall follow the procedures and methods described in the contract QA plan and any other relevant quality assurance documents, including, but not limited to :
 - ▶ Ensuring that all stated quality control measures are collected, analyzed and evaluated for acceptability;
 - ▶ Using only the protocols approved in the QA plan; and
 - ▶ Using only the equipment approved in the QA plan.
 - g. If any significant changes in sampling project design, changes in the project analyte list, changes in procedures or test methods, changes in equipment, changes in subcontractor organizations or changes in key personnel occur, the contractor shall submit appropriate revisions of the QA Plan to the DEP contract manager for review. The proposed revisions may not be implemented until they have been approved (or conditionally approved) by the DEP contract manager. If the contractor fails to submit the required revisions, the DEP contract manager may suspend or terminate the contract. QA plan revisions or amendments shall be provided as one or more of the following, as described in **Attachment 3**:
 - (i) Provided in a new contract QA plan;
 - (ii) Provided as amended sections of the current contract QA plan;
 - (iii) Documented through written or electronic correspondence with the DEP contract manager and incorporated into the approved contract QA plan by reference or other linkage.
7. **DELIVERABLES**
- a. The following lists the expected deliverables that are associated with the quality assurance requirements of this contract:
 - (i) Reports of planning review audits as specified in item 5.b. above.
 - (ii) Statements of usability as specified in item 5.d. above.
 - (iii) Contract QA plan, per Section 6, above.
8. **CONSEQUENCES**
- a. Failure to comply with any requirement of this attachment (and any included addenda) may result in:
 - (i) Immediate termination of the contract.
 - (ii) Withheld payment for the affected activities.
 - (iii) Contract suspension until the requirement(s) has been met.
 - (iv) A request to refund already disbursed payments.
 - (v) A request to redo work affected by the non-compliant activity.
 - (vi) Other remedies available to the Department.

Item Number: 6.K.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 135-18 Approval to offer relocation reimbursement, if applicable, as allowed in the City Code of Ordinances, section § 2-25.4, when hiring 22 School Resource Officer (SRO) positions in the Police Department in which the recruitment efforts will be conducted in FY2018 and the expenses will be incurred in FY2019 for a not to exceed amount of \$55,000 (up to \$2,500/out-of-state relocation, \$1,500/in state relocation); The SRO positions were approved via Resolution 115-18 on May 14, 2018. Department: Human Resources; Total Dollar Amount: \$55,000; (General Fund – FY2019)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No

If Yes, Priority Goals Supported are listed below.

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

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. On March 9, 2018 Florida Governor Rick Scott signed SB7026, the Marjory Stoneman Douglas High School Public Safety Act, which requires a "safe-school officer" or school resource officer (SRO) in every school in the state. There are 25 public schools, including charter schools, in Cape Coral. In order to provide services to the School District of Lee County beginning in August, 2018, at the start of the 2018-2019 school year, the City of Cape Coral would need to provide an additional 22 officer positions. Council approved Resolution 115-18 providing the additional 22 officers, at the May 14, 2018 meeting.

2. Funding Information: General Fund Budget for FY-2019 - Upon approval of the City's FY-2019 budget.

The resolution authorizes payment of up to \$2,500 in eligible relocation expenses for out-of-state newly hired employees and \$1,500 in eligible relocation expenses for in-state newly hired employees for a total not to exceed \$55,000 when hiring police officer positions in FY2019.

LEGAL REVIEW:**EXHIBITS:**

Memo - Relocation Expenses New SRO Program
Resolution 135-18

PREPARED BY:

Molly
Liebegott Division- Administration Department- Human
Resources

SOURCE OF ADDITIONAL INFORMATION:

Lisa Sonogo - Human Resources Director






ATTACHMENTS:

	Description	Type
▣	Memo - Relocation Expenses New SRO Program	Cover Memo
▣	Resolution 135-18	Resolution

MEMORANDUM

CITY OF CAPE CORAL
CITY MANAGER'S OFFICE

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager 
Lisa Sonogo, Human Resources Director 
Dave Newlan, Chief of Police 
Victoria Bateman, Financial Services Director 
Chris Phillips, Management/Budget Administrator 

DATE: June 4, 2018

SUBJECT: Relocation Expenses for New School Resource Officer Program

Background

At the May 22, 2018 City Council meeting, Council approved resolution 115-18 authorizing 22 new Police Officer positions to establish a school resource officer (SRO) program for Cape Coral public schools.

The City of Cape Coral's code of ordinances, § 2-25.4, authorizes, with City Council approval, reimbursement for reasonable relocation expenses for newly hired or rehired employees. A copy of the full language is attached for reference.

Recommendation

To aid in the recruitment of the 22 newly authorized SRO positions, relocation expenses, up to \$2,500 for out of state applicants and \$1,500 for in state applicants, are requested.

Funding

The recruitment efforts will be conducted in FY2018 and the relocation expenses will be incurred in FY2019 for a not to exceed amount of \$55,000 which will be incorporated into the City Manager's FY2019 budget. There are no recurring expenses.

Approval is requested.

JS/LS/DN/VB/CP:ac

Attachment: Code of Ordinances, § 2-25.4 – Relocation Expenses

§ 2-25.4 - Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

RELOCATION EXPENSES; REIMBURSABLE. Those reasonable costs incurred by a newly hired or re-hired employee, as more particularly set forth in Division 13 below, who is relocating to Lee County from a distance of greater than 50 miles away, to commence employment with the City of Cape Coral. These expenses are contemplated to include the transporting of normal and customary household goods and personal effects, packing/unpacking, loading/unloading, incidental moving supplies, and reasonable insurance charges. Relocation expenses, which are not reimbursable include, but are not limited to, moving of airplanes, animals, and boats; special insurance for antiques, coin/stamp collections, paintings, and similar items of high intrinsic value; intermediate kennel and/or veterinary charges; and storage costs of household goods. Reimbursement of relocation expenses is limited to the actual costs of allowable expenses supported by original invoices or a maximum of \$5,000, whichever is less. Mileage and tolls shall be reimbursed for no more than two personal vehicles, traveling the most direct route between the previous residence and the new residence (at the prevailing rate paid by the city pursuant to the administrative regulations) or in exceptional cases, at the discretion of the City Council, at the request of the City Manager, the cost of the most economical airfare available for each member of the immediate family. Payment shall also be made for costs associated with meals and lodging, during the travel process, upon submission of receipts, in an amount not to exceed \$200 per day, for a maximum of seven days. In addition, payment shall also be made for temporary living expenses for a maximum of 14 days, in an amount not to exceed \$200 per day, once the travel process is complete. Temporary living expenses include hotel or motel accommodations and meals, if the hotel or motel does not have kitchen facilities for the preparation of meals. All relocation reimbursements will be reported on the employee's IRS Form W-2.

§ 2-37.3 - Rate of pay upon hire and re-hire.

(a) *General.* Except as may be otherwise provided in this article, the rate of pay for a newly-hired or re-hired person shall be the minimum of the pay grade to which his or her classification is assigned.

(b) *Exceptions.*

(1) Upon completing the initial probationary period, an employee hired or re-hired at the minimum of his or her pay grade may receive an increase in pay of not more than 10%, provided that such increase is requested in writing by the employee's department head and approved by the Director.

(2) A newly-hired or re-hired employee may be employed at a rate of pay which exceeds the minimum of the pay grade by not more than 10%, provided, however, that such rate of pay shall first be requested in writing by the department head and approved by the Director.

(3) A newly-hired or re-hired employee may be employed at a rate of pay which exceeds the minimum of the pay grade, but which does not exceed the mid-point of the pay grade; provided, however, that such rate of pay shall first be requested in writing by the department head and approved by the Director and the City Manager.

(4) A newly-hired or re-hired employee may be employed at a rate of pay which exceeds the mid-point of the pay grade but which does not exceed maximum of the pay grade; provided, however, that such rate of pay shall first be requested in writing by the department head and approved by the City Manager and the City Council.

(c) Relocation expenses. To aid in recruiting and relocating exceptional candidates for critical city positions, a newly hired or re-hired employee may be afforded relocation expenses, as defined in § 2-25.4; provided, however, that payment of such expenses shall first be approved by the City Council, at the request of the City Manager.

RESOLUTION 135 - 18

A RESOLUTION OF THE CITY OF CAPE CORAL AUTHORIZING PAYMENT OF UP TO \$2,500 IN ELIGIBLE RELOCATION EXPENSES FOR OUT-OF-STATE NEWLY HIRED EMPLOYEES AND \$1,500 IN ELIGIBLE RELOCATION EXPENSES FOR IN-STATE NEWLY HIRED EMPLOYEES FOR A TOTAL NOT TO EXCEED \$55,000 WHEN HIRING POLICE OFFICER POSITIONS IN FY2019; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 2-37.3(c) of the City of Cape Coral Code of Ordinances provides for relocation expenses for candidates for critical city positions upon approval by City Council at the request of the City Manager; and

WHEREAS, relocation expenses up to \$5,000 per newly hired or re-hired employee are allowed when relocating to Lee County from a distance of greater than 50 miles away; and

WHEREAS, the City will be entering into an agreement with the Lee County School District to utilize Cape Coral police as School Resource Officers at Lee County schools located in Cape Coral, creating a need to hire up to an additional 22 police officers beginning in October, 2018; and

WHEREAS, the City Manager requests approval of relocation expenses up to the amount of \$2,500 per officer if relocating from outside the State of Florida, and up to the amount of \$1,500 per officer if relocating from within the State of Florida, but from a distance of greater than 50 miles away when the selected candidates qualify for relocation expenses, with a total cost not to exceed \$55,000; and

WHEREAS, the newly hired officers will begin employment in FY2019 upon adoption of the FY2019 budget that will include the new positions and the funding for the positions, though the recruitment of candidates will begin within the current fiscal year; and

WHEREAS, any relocation expenses provided to the police officers will be in accordance with the requirements and qualifying provisions set forth in the City Code.

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

SECTION 1. The City Council hereby authorizes payment of up to a total of \$55,000 in reimbursable relocation expenses for newly hired police officers that will begin employment in FY2019. The Council approves relocation expenses up to the amount of \$2,500 per officer if relocating from outside the State of Florida, and up to the amount of \$1,500 per officer if relocating from within the State of Florida, but from a distance of greater than 50 miles away. Relocation expenses will be awarded only when the selected candidates qualify for relocation expenses under Section 2-37.3(c) of the Code of Ordinances of the City of Cape Coral, Florida.

SECTION 2. All relocation expenses approved will not be awarded or payable until October, 2018 after approval of the positions and funds in the FY2019 budget.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 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/Relocation Expenses-Assistant City Auditor
6/12/18

Item Number: 6.L.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 136-18 Approval of Interlocal Agreement with Lee County School Board to establish School Resource Officer Program

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

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

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 Lee County School District consists of 10 middle and high schools and nine elementary schools. Since 2010, the Lee County Sheriff's office has provided School Resource Officers in the Lee County school district.

In March, the Marjory Stoneman Douglas High School Public Safety Act was adopted by the State of Florida requiring school resource officers at each public school for the protections and safety of school personnel, property, students, and visitors.

Due to the increased need for school resources in every public school, the Lee County Sheriff's office will no longer fund school resource officers in municipalities that have a police department. The Lee County School Board and the City of Cape Coral Police Department desire to enter into an Interlocal Agreement so that School Resource Officers are provided by the Cape Coral Police Department to all Lee County district schools located within the City of Cape Coral.

The resolution approves an Interlocal Agreement between the School Board of Lee County and the City to establish a School Resource Officer Program wherein the City provides police in Lee County district schools within the City of Cape Coral, and authorizes the execution of the agreement.

LEGAL REVIEW:**EXHIBITS:**

Memo

Resolution 136-18

Letter from Superintendent Gregory Adkins

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Police Chief Newlan

ATTACHMENTS:

Description	Type
▣ Memo	Cover Memo
▣ Resolution 136-18	Resolution
▣ Letter from School Board	Backup Material



CAPE CORAL POLICE DEPARTMENT

Office of the Chief of Police

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager
David Newlan, Chief of Police

DATE: June 12, 2018

SUBJECT: School Resource Officer Agreement

On May 14, 2018, Resolution 115-18 went in front of City Council for the approval to increase the number of School Resource Officers (SRO) by 22 positions, add one sergeant position, and purchase 23 vehicles in order to provide SRO coverage for all the public and charter schools in the City of Cape Coral at the beginning of the 2018-2019 school year.

Resolution 115-18 addressed that once the City Manager receives the formal agreement from the school board it would be presented to City Council for approval.

The Interlocal Agreement between the School Board of Lee County, Florida and the City of Cape Coral, Florida for the School Resource Program provides SRO coverage at all nineteen public schools in the City of Cape Coral. Article IV of the agreement refers to the financing of the School Resource Officer Program by which the Lee County School Board agrees to contribute a 50% cost share, up to \$50,000 per SRO, for each of the nineteen SROs and one supervisor for the twelve (12) month period from July 1, 2018, to June 30, 2019.

RESOLUTION 136 - 18

A RESOLUTION OF THE CAPE CORAL CITY COUNCIL APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LEE COUNTY, FLORIDA, AND THE CITY OF CAPE CORAL TO ESTABLISH A SCHOOL RESOURCE OFFICER PROGRAM WHEREIN THE CITY OF CAPE CORAL PROVIDES POLICE IN LEE COUNTY DISTRICT SCHOOLS WITHIN THE CITY OF CAPE CORAL, AND AUTHORIZES THE MAYOR TO EXECUTE THE AGREEMENT; PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the School Board of Lee County desires to enter into an interlocal agreement with the City of Cape Coral to provide Cape Coral police as School Resource Officers in each of the nineteen district schools located in the City of Cape Coral; and

WHEREAS, the School Board will contribute \$50,000 per officer to assist with the cost of providing law enforcement officers in the schools; and

WHEREAS, the City of Cape Coral desires to enter into an interlocal agreement with the School Board in order to place officers in schools in Cape Coral for the protection and safety of school personnel, property, students, and visitors.

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

Section 1. The City Council hereby approves the Interlocal Agreement between the School Board of Lee County, Florida and the City of Cape Coral to establish a School Resource Officer Program wherein the City provides police officers in each Lee County district school within the City. A copy of the Interlocal Agreement is attached hereto as Exhibit A.

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

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

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

JOE COVIELLO, MAYOR

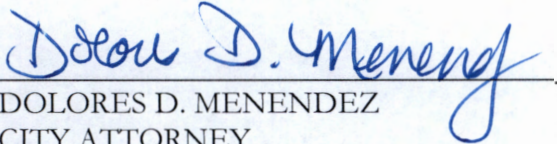
VOTE OF MAYOR AND COUNCILMEMBERS:

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\Interlocal-Lee Co School Bd SROs
6/12/18

EXHIBIT A

INTERLOCAL AGREEMENT BETWEEN
THE SCHOOL BOARD OF LEE COUNTY, FLORIDA
and
THE CITY OF CAPE CORAL
for
THE SCHOOL RESOURCE OFFICER PROGRAM

THIS AGREEMENT, made and entered into this _____ day of _____, 2018 by and between the School Board of Lee County, Florida, (hereinafter referred to as the "School Board") and The City of Cape Coral, (hereinafter referred to as the "CCPD");

WITNESSETH:

- A. The School Board and the CCPD desire to provide law enforcement and related services to the public schools of Cape Coral; and
- B. A School Resource Officer Program has been proposed for the public school system of Lee County, Florida, and hereinafter described; and
- C. The School Board and the CCPD recognize the potential outstanding benefits of the School Resource Officer Program to the citizens of Cape Coral, Florida, and particularly to the students of the public school system of Lee County, Florida; and
- D. It is in the best interest of the School Board, the CCPD, and the citizens of Cape Coral to establish this program;

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the School Board and the CCPD hereby agree as follows:

ARTICLE I

A School Resource Officer Program is hereby established in the public school system of Lee County, Florida for twelve months from July 1, 2018 to June 30, 2019.

ARTICLE II

The CCPD shall provide School Resource Officers (hereinafter referred to as "SRO's") as follows:

Number of School Resource Officers

- 1. The CCPD shall assign ten (10) SRO's to the following ten (10) middle and high schools:

Caloosa Middle	Ida S. Baker High
Cape Coral High	Island Coast High
Challenger Middle	Mariner High
Diplomat Middle	Mariner Middle
Gulf Middle	Trafalgar Middle

2. The CCPD shall assign nine (9) SRO's to the following nine (9) elementary schools:

Caloosa Elementary
Cape Elementary
Patriot Elementary
Diplomat Elementary
Gulf Elementary

Hector Cafferata Elementary
Pelican Elementary
Skyline Elementary
Trafalgar Elementary

3. The CCPD shall assign a supervisor to oversee the officers assigned to the above schools.

Regular Duty Hours for School Resource Officers

1. Each SRO officer shall be assigned on a full-time basis for eight (8) hours on those days and during those hours that the school is in regular session. Officers may be temporarily re-assigned by the CCPD during school holidays and vacations, trainings, or during a period of police emergency.
2. SRO's will be available for Summer School at covered schools.

Duties and Responsibilities of School Resource Officers

1. The SRO shall coordinate all school related activities with the principal and staff members concerned and will seek permission, advice, and guidance prior to enacting any program within the school.
2. The SRO shall develop expertise in presenting various subjects to students. Such subjects shall include a basis of understanding of the laws, the role of the police officer and the police mission.
3. The SRO shall interact with the faculty of the school which he or she is assigned.
4. The SRO shall become familiar with the school, its policies, and the students of each school.
5. The SRO shall coordinate with the principal, or his/her her designee, as it relates to academic issues and will also coordinate all school related activities with the principal, or his/her designee.
6. To the extent permitted by law, the SRO shall maintain a confidential contact report on the students which he/she has occasion to counsel. However, the SRO must report violations of the laws he/she becomes aware of to their supervisor at the CCPD. The SRO shall also protect the confidentiality of the Student Records to which he/she is provided access.
7. The SRO shall perform latent investigations of offenses assigned to him/her by their supervisor.
8. The SRO shall work with students, faculty, and parents, when presenting various programs.
9. The SRO shall integrate with the students in the following ways: during class breaks, during lunch periods, before and after school, at school activities, such as football and basketball games, and in classrooms.
10. The SRO shall perform other law enforcement duties which are assigned by their supervisors such as latent investigations, special investigations, and special assignments.
11. The SRO shall serve as referral resource for the students, faculty, and parents to many social agencies and facilities available to the public.
12. The SRO shall adhere to School Board Policy, (Where that policy does not conflict with the Department's Rules and Regulations and/or Florida State Statutes concerning police officers), and Law Enforcement Policy concerning student interviews and confidentiality of investigations.

ARTICLE III

Rights, Duties and Responsibilities of the School Board

1. Upon discovery of a student or adult committing an act that poses a serious threat to school safety, the principal, designee or other staff member shall provide immediate notification to the School Resource Officer or other law enforcement official.
2. School officials shall not report petty acts of misconduct to School Resource Officers or other law enforcement officials, and shall handle those disciplinary offenses without filing a report.
3. The School Board shall provide the SRO of each school the following materials and facilities, which are deemed necessary to performance of the SRO duties:
 - A. Audio/video, aids/equipment for classroom presentations.
 - B. A secure area for storage of equipment and communications.
 - C. The School District of Lee County will provide secure office space for all law enforcement agencies in the school district SRO Program located at the Lee County Public Education Center in the event they need to work with school district officials.
 - D. A dedicated air conditioned and properly lighted private office for each Middle and High School SRO, a telephone which may be used for general business purposes, a desk, chair, and access to secretarial support.
4. Principals shall ensure that all school personnel are properly informed as to their responsibilities regarding the reporting of crime.
5. All law enforcement matters will be the sole jurisdiction and responsibility of the CCPD.

ARTICLE IV

Financing of the School Resource Officer Program

State and matching local funds provided by the School Board for the term of this Agreement, for the cost of the School Resource Officer services listed in this Agreement, shall be paid to the CCPD upon receipt of said State funds.

The School Board agrees to contribute \$50,000.00 for each of the nineteen (19) School Resource Officer, and one (1) supervisor, for CCPD's School Resource Officer Program for the twelve (12) month period from July 1, 2018 to June 30, 2019.

ARTICLE V

Employment Status of School Resource Officers

School Resource Officers shall remain employees of the CCPD, and shall not be employees of the School Board of Lee County. The School Board and the CCPD acknowledge that the School Resource Officers are police officers, who shall uphold the law under the direct supervision and control of the Cape Coral Police Department. School Resource Officers shall remain responsive to the chain of command of the CCPD. School Resource Officers serve to assist the principals, and other members of the school community.

ARTICLE VI

Appointment of School Resource Officers

The Chief of the Cape Coral Police Department will maintain the responsibility for the recruitment, interviewing, and evaluation of the School Resource Officer.

SRO applicants must meet the following requirements:

1. The applicant should be a volunteer for the position of School Resource Officer.
2. The applicant shall be a State Certified Law Enforcement Officer.
3. It is desirable that the applicant possess a bachelors degree from an accredited college or university.
4. The SRO will obtain an SRO Certificate after appointment.
5. The SRO will obtain the National Alliance on Mental Illness (NAMI) Crisis Intervention Training (CIT)

ARTICLE VII

Dismissal of School Resource Officers; Replacement

- A. Upon the principal's request, the supervisor of the SRO shall arrange a meeting to discuss concerns regarding the SRO's performance or responsibilities.
- B. In the event of the resignation, dismissal, reassignment or an absence by an SRO, the Chief of CCPD shall provide a temporary replacement SRO.

ARTICLE VIII

Termination of Agreement

This Agreement may be terminated by either party upon ninety (90) days written notification that any other party has failed to substantially perform in accordance with the terms and conditions of this Agreement. This Agreement may be terminated without cause by either party upon one hundred eighty (180) days written notification. Termination of this Agreement may only be accomplished, as provided herein. In the event this Agreement is terminated, compensation will be made to the CCPD for all services performed to date of termination. The School Board shall be entitled a pro-rated refund for that period of time when SRO services are not provided because of termination of this Agreement.

ARTICLE IX

Notices

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

Richard A. Parfitt
Director of Safety & Security (School Safety Specialist)
The School District of Lee County
2855 Colonial Boulevard
Fort Myers, Florida 33966

The Honorable Chief David Newlan
The Cape Coral Police Department
1100 Cultural Park Boulevard
Cape Coral, Florida 33990

ARTICLE X

Good Faith

The School Board, the CCPD, their agents and employees agree to cooperate in good faith in fulfilling the terms of this Agreement. Unforeseen difficulties or questions will be resolved by negotiation between the Superintendent and the Chief, or their designees.

ARTICLE XI

Modification

This document constitutes the full understanding of the parties, and no terms, conditions, understandings, or agreement purporting to modify or vary the terms of this document shall be binding unless hereinafter made in writing and signed by both parties.

ARTICLE XII

This agreement constitutes a final written expression of all the terms of this Agreement, and is complete and exclusive statement of those terms.

ARTICLE XIII

SRO Advisory Committee

The SRO Advisory Committee, composed of the head law enforcement officer of each of the law enforcement agencies or their designee, participating in the SRO program, the Superintendent or his designee, will be responsible for overseeing the terms of this Agreement.

ARTICLE XIV

Indemnification

Each party agrees to be liable for all claims, suits, damages, including court costs and attorney's fees, arising out of the negligent or intentional acts or omissions of its own agents, subcontractors, and employees, in the course of the operation of this contract. Further, each party agrees to indemnify the other to the extent allowed by law against all claims, suits, damages, including court costs and attorney's fees, arising out of the negligent or intentional acts or omission of its own agents, subcontractors, and employees, in the course of the operation of this Agreement. Nothing herein contained is intended to serve as a waiver of sovereign immunity by either party. Nothing herein shall be construed as a consent to be sued by third parties in any matter arising out of this Agreement.

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

Signed, sealed and delivered
In the presence of:

THE SCHOOL BOARD OF LEE
COUNTY, FLORIDA

By: _____
Chairman

Approved as to Form:

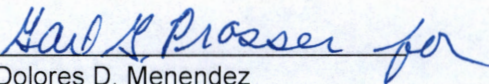
Keith B. Martin
School Board Attorney

Signed, sealed and delivered
In the presence of:

THE CITY OF CAPE CORAL

By: _____
Joe Coviello, Mayor

Approved as to Form:


Dolores D. Menendez
City Attorney



THE SCHOOL DISTRICT OF LEE COUNTY

2855 COLONIAL BLVD. ♦ FORT MYERS, FLORIDA 33966 ♦ WWW.LEESCHOOLS.NET

CATHLEEN O'DANIEL MORGAN
CHAIRMAN, DISTRICT 7

PAMELA H. LARIVIERE
VICE CHAIRMAN, DISTRICT 5

MARY FISCHER
DISTRICT 1

MELISA W. GIOVANNELLI
DISTRICT 2

CHRIS N. PATRICCA
DISTRICT 3

STEVEN K. TEUBER
DISTRICT 4

JANE E. KUCKEL, PHD
DISTRICT 6

GREGORY K. ADKINS, ED. D.
SUPERINTENDENT

KEITH B. MARTIN, ESQ.
BOARD ATTORNEY

June 6, 2018

John Szerlag
City Manager
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990

Dear Mr. Szerlag,

On behalf of the School District of Lee County, I want to thank you, Chief Dave Newlan and the citizens of Cape Coral for the cooperation and partnership with the School District in providing the District schools in the city with School Resource Officers (SRO). As the mandate from recent legislation requires that we provide a SRO for every school and the change in Lee County funding those officers, once provided by the Lee County Sheriff, you and the Chief responded without hesitation to our challenge and agreed that this is not just a School District problem, but a community concern.

Thank you again and we look forward to a long partnership.

Sincerely,

Gregory K. Adkins, Ed.D.
Superintendent

CITY MANAGER
2018 JUN - 8 PM 2:50

Item Number: 6.M.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Consent Agenda - Resolution 138-18 Rescind Bid CON UT18-41/KR awarded to Douglas N. Higgins under Resolution 105-18 dated May 14, 2018; Department: Utilities; Dollar Value: N/A; (Fund: N/A)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? 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:
RECOMMENDATION**

Rescind the Weir 15 Improvements contract awarded to Higgins for failure to disclose unresolved OSHA violations.

BACKGROUND

An invitation to bid was issued to secure a contractor to relocate and upgrade Weir #15 Bladder and Controls. The improvements are necessary as the current location of the controls are in direct conflict with the Lee County Burnt Store Road Widening Project.

Douglas N. Higgins, Inc. (Higgins) was deemed the lowest responsive and responsible bidder. The contract amount is for \$162,000, plus a request for a 10% City controlled contingency for a project total of \$178,200. City Council awarded the contract last month on May 14, 2018.

Staff was recently made aware of recent OSHA Citations against Higgins. Upon further investigation, staff was advised that Higgins was cited by the United States Occupational Safety and Health Administration (OSHA) for two separate underground utility construction accidents in 2017 resulting in the deaths of 4 construction workers. The OSHA Inspection Numbers referenced are 1243748 and 1277394.

On the bid documents submitted by Higgins, their response to question 16-C-2 (see attached) was: “*Various OSHA citations that are all resolved.*” Staff confirmed that Higgins was issued an OSHA citation on May 14, 2018 that had not been resolved at the time of the March 22, 2018 bid submittal. Higgins was awarded the Weir 15 Improvement Contract by Council on May 14, 2018, the same day that OSHA issued the citation to the contractor. The City’s bid documents include a business ethics requirement (Section 00481) that the contractor agrees to notify the City within 48 hours of any instance where the contractor becomes aware of a failure of taking any actions or conditions which could result in a conflict with the City’s best interests.

Higgins is also currently constructing the North 2 Utilities Extension Project (UEP) Canal Pump Station #10. UEP staff prequalified the North 2 UEP bidders in 2016 and Higgins properly disclosed one 2015 OSHA investigation within their prequalification submittal documents. Higgins was subsequently selected as the lowest responsive and responsible bidder for Contract 13 for two canal pump stations. However, the contract was subsequently changed to only include one canal pump station due to budget constraints. Since Higgins disclosed their prior OSHA violations during the North 2 UEP prequalification, this contract will not be terminated. Higgins will be required to pay for a full-time inspector to assist in mitigating risk associated with underground construction activities.

LEGAL REVIEW:

EXHIBITS:

Memo
Resolution 138-18

PREPARED BY:

Amy Burdier, Sr Administrative
Specialist

Division- Administration

Department- Utilities

SOURCE OF ADDITIONAL INFORMATION:

Jeff Pearson, Utilities Director

ATTACHMENTS:

Description	Type
▣ Memo	Backup Material
▣ Resolution 138-18	Resolution

MEMORANDUM

CITY OF CAPE CORAL
UTILITIES DEPARTMENT

TO: Mayor Coviello and Council

FROM: John Szerlag, City Manager
Jeff Pearson, Utilities Director
Paul Clinghan, Public Works Director
Kevin Higginson, UEP Manager

DATE: June 13, 2018

SUBJECT: Rescind Bid Award to Douglas N. Higgins, Inc. for Weir 15 Improvements

RECOMMENDATION

Rescind the Weir 15 Improvements contract awarded to Higgins for failure to disclose unresolved OSHA violations.

BACKGROUND

An invitation to bid was issued to secure a contractor to relocate and upgrade Weir #15 Bladder and Controls. The improvements are necessary as the current location of the controls are in direct conflict with the Lee County Burnt Store Road Widening Project.

Douglas N. Higgins, Inc. (Higgins) was deemed the lowest responsive and responsible bidder. The contract amount is for \$162,000, plus a request for a 10% City controlled contingency for a project total of \$178,200. City Council awarded the contract last month on May 14, 2018.

Staff was recently made aware of recent OSHA Citations against Higgins. Upon further investigation, staff was advised that Higgins was cited by the United States Occupational Safety and Health Administration (OSHA) for two separate underground utility construction accidents in 2017 resulting in the deaths of 4 construction workers. The OSHA Inspection Numbers referenced are 1243748 and 1277394.

On the bid documents submitted by Higgins, their response to question 16-C-2 (see attached) was: *"Various OSHA citations that are all resolved."* Staff confirmed that Higgins was issued an OSHA citation on May 14, 2018 that had not been resolved at the time of the March 22, 2018 bid submittal. Higgins was awarded the Weir 15 Improvement Contract by Council on May 14, 2018, the same day that OSHA issued the citation to the contractor. The City's bid documents include a business ethics requirement (Section 00481) that the contractor agrees to notify the City within 48 hours of any instance where the contractor becomes aware of a failure of taking any actions or conditions which could result in a conflict with the City's best interests.

Higgins is also currently constructing the North 2 Utilities Extension Project (UEP) Canal Pump Station #10. UEP staff prequalified the North 2 UEP bidders in 2016 and Higgins properly disclosed one 2015 OSHA investigation within their prequalification submittal documents. Higgins was subsequently selected as the lowest responsive and responsible bidder for Contract 13 for two canal pump stations. However, the contract was subsequently changed to only include one canal pump station due to budget constraints. Since Higgins disclosed their prior OSHA violations during the North 2 UEP prequalification, this contract will not be terminated. Higgins will be required to pay for a full-time inspector to assist in mitigating risk associated with underground construction activities.

15. RECORD OF PERFORMANCE:

A. Has the Bidder ever failed to complete a construction contract awarded to it?

YES ☐ NO ☒

If YES, for each incident include details explaining why the work was not completed, name, phone number, and email address of the Owner's representative, and the total contract value. Include as an Attachment to this form labeled "15 – Performance - A".

B. Within the last ten (10) years has any officer or partner of your organization ever been an officer or partner of another organization when it failed to complete a construction contract?

YES ☐ NO ☒

If YES, include details explaining why the work was not completed including Project Owner's contact information. Include as an Attachment to this form labeled "15 – Performance - B".

16. LEGAL PROCEEDINGS:

A. ARBITRATIONS & MEDIATIONS

Include as an attachment to this form labeled "16 – A - Arbitration", a description of all construction arbitration or mediation demands filed by or against the Bidder in the last five (5) years and identify the nature of the claim, the amount in dispute, the parties involved and the ultimate resolution of the proceeding. Each arbitration or mediation should be listed in a separate paragraph on the sheet in the attachment. IF NONE SO STATE in the block.

None

B. LAWSUITS

Include as an attachment to this form labeled "16 – B - Lawsuit", a description of all construction-related lawsuits (other than labor or personal injury litigation) filed by or against the Bidder in the last five (5) years and identify the nature of the claim, the amount in dispute, the parties involved and the ultimate resolution of the lawsuit. Each lawsuit should be listed in a separate paragraph on the sheet in the attachment. IF NONE SO STATE in the block.

None

C. OTHER PROCEEDINGS

1. Include as an attachment labeled "16 – C1 – Other", any lawsuits, administrative proceedings, or hearings initiated by the Internal Revenue Service, or any State revenue department concerning the tax liability of the Bidder (other than audits), its principals, owners, and/or partners in the last ten (10) years. Identify the nature of any proceeding and its ultimate resolution. Each event should be listed on a separate sheet in the attachment. IF NONE SO STATE in the block.

None

2. Include as an attachment to this form labeled "16 – C2 – Other", a description of any civil or criminal proceedings, investigations and/or violations of administrative orders, consent orders, or permits brought against the Bidder, its principals, owners, and/or partners in the last ten (10) years. Identify the nature of any proceeding and its ultimate resolution. Each event should be listed in a separate paragraph on the sheet in the attachment. IF NONE SO STATE in the block. Various OSHA citations that are all resolved.

3. Include as an attachment to this form labeled "16 – C3 – Other", a description of any environmental enforcement actions (i.e., citation, consent order, civil penalty, litigation, etc.) brought against the Bidder, its principals, owners, and/or partners in the last five (5) years by a local, state or Federal regulatory agency. Identify the nature of any proceeding and its ultimate resolution. Each event should be listed in a separate paragraph on the sheet in the attachment. IF NONE SO STATE in the block. None

4. Include as an attachment to this form labeled "16 – C4 – Other", a description of any claims, disputes, protests or pending litigation involving the Bidder (as a prime Contractor or subcontractor), its principals, owners, and/or partners on any existing contracts, contracts awaiting award, bids, proposals, etc. Identify details outlining the claim, dispute, protest or circumstances surrounding the pending litigation, including Project Owner's contact information. Each event should be listed in a separate paragraph on the sheet in the attachment. IF NONE SO STATE in the block.
We have one lawsuit with the FDOT for additional work. The claim is roughly \$400,000.00

17. SAFETY PROGRAM:

Name of Bidder's Safety Officer: James Watford

Does the Bidder have a written General Safety Program?

YES ☒ NO ☐

Does the Bidder have a written Orientation Program for New Hires?

YES ☒ NO ☐

Does the Bidder have a written Drug Testing Program?

YES ☒ NO ☐

18. QUALITY CONTROL PROGRAM:

Name of Bidder's Quality Control Officer: Daniel Higgins

Does the Firm have a written Quality Control Program?

YES ☒ NO ☐

RESOLUTION 138 - 18

A RESOLUTION OF THE CITY OF CAPE CORAL RESCINDING THE AWARD OF BID FOR WEIR #15 BLADDER & CONTROL IMPROVEMENTS TO DOUGLAS N. HIGGINS, INC.; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 22, 2018, INVITATION TO BID (ITB) #PW18-41/KR was issued for the Weir #15 Bladder & Control Improvements Project; and

WHEREAS, on May 14, 2018, City Council adopted Resolution 105-18, awarding the bid for the Weir #15 Bladder & Control Improvements Project to Douglas N. Higgins, Inc.; and

WHEREAS, it appears to the City that the bidding documents contained material misrepresentations or omissions, and the City Manager recommends rescinding the award of bid for Weir #15 Bladder & Control Improvements to Douglas N. Higgins, Inc.; and

WHEREAS, a Release Agreement executed by Douglas N. Higgins, Inc., waiving, releasing and discharging all claims for damages resulting from the rescission of the award of bid is attached hereto as Exhibit A; and

WHEREAS, City Council desires to rescind the award of bid for Weir #15 Bladder & Control Improvements to Douglas N. Higgins, Inc.

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

Section 1. The award of bid for the Weir #15 Bladder & Control Improvements Project to Douglas N. Higgins, Inc., is hereby rescinded.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS SPECIAL 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\Rescind Bid Award-Douglas N Higgins

EXHIBIT A

RELEASE AGREEMENT

This Release Agreement ("Agreement") is executed and made effective as of 13th day of June 2018 by DOUGLAS N. HIGGINS, INC., (DNH) in favor of and for the benefit of THE CITY OF CAPE CORAL, FLORIDA ("the City"), a Florida municipal corporation, its affiliates, officers, employees, assignees, and successors in interest.

IN CONSIDERATION of good, valuable and legal consideration, the receipt and sufficiency of which are acknowledged, DNH agrees as follows:

1. Release. DNH hereby waives, releases, and forever discharges any and all claims for damages which DNH or DNH's successors, subsidiaries, assigns, parent companies, affiliates, officers, directors, employees, former employees, counsel, and insurance carriers of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, attorney's fees and legal costs, liens, claims and demands whatsoever, in law or in equity, which DNH may have brought or which may hereafter accrue as a result of the City of Cape Coral rescinding the award of bid for Weir #15 Bladder & Control Improvements to DNH.

2. Acknowledgment. DNH acknowledges it has read the terms of this Agreement and understands its provisions, DNH has discussed or had the opportunity to discuss its terms and conditions with its legal counsel, and that this Release has been fully explained to DNH.

3. Choice of Law and Venue. This Agreement will be construed under Florida Law, and venue for any action to enforce or interpret this Release will lie in Lee County, Florida.

4. Severability. If any provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, DNH through their authorized representative has executed this Release Agreement on the date indicated below.

DOUGLAS N. HIGGINS, INC., (DNH)

Date: 6/13/18

Signature: [Signature]
DOUGLAS N. HIGGINS, V.P.

Title: VICE PRESIDENT

SWORN TO (OR AFFIRMED) AND SUBSCRIBED before me this 13th day of June, 2018, by Daniel N. Higgins, who is personally known to me or has produced (type of identification) as identification.

Sandra K Garrison
SIGNATURE OF NOTARY PUBLIC

Sandra K Garrison
PRINT, TYPE OR STAMP

COMMISSIONED NAME OF NOTARY PUBLIC

SANDRA K GARRISON
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF WASHTENAW
My Commission Expires January 10, 2020

Item Number: 6.N.
Meeting Date: 6/18/2018
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Personnel Action - Resolution 137-18 Approval of new position classification of Senior Public Works Manager: Human Resources; Dollar Value: no budgetary impact (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:

- Public Works Department is requesting to create one new classification of Senior Public Works Manager/no new FTE
- no budgetary impact for this reclassification

LEGAL REVIEW:

EXHIBITS:

Memo - Public Works Structure Adjustment
Resolution 137-18

PREPARED BY:

Molly Liebeggott Division- Administration Department- Human Resources

SOURCE OF ADDITIONAL INFORMATION:

Paul Clinghan, Public Works Director


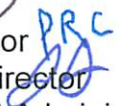


ATTACHMENTS:

Description	Type
▫ Memo - Public Works Structure Adjustment	Backup Material
▫ Resolution 137-18	Resolution

MEMORANDUM

CITY OF CAPE CORAL
CITY MANAGER'S OFFICE

TO: Mayor Coviello and Council Members

FROM: John Szerlag, City Manager 
Paul Clinghan, Public Works Director 
Lisa Sonego, Human Resources Director 
Chris Phillips, Management/Budget Administrator 

DATE: June 13, 2018

SUBJECT: Public Works Structure Adjustment

In accordance with the City's Code of Ordinances, Chapter 2, Article III, Division 12 – Classification; City Council approval is required to create new classifications (titles) and to move existing full time equivalent positions (FTEs) within existing classifications.

City Management is requesting that a new classification (title) of Senior Public Works Manager be approved. This new classification (title) will replace the currently budgeted, vacant Deputy Public Works Director position. There is no budgetary impact or new FTEs requested as this new classification is within the same pay grade as the Deputy Public Works Director position being replaced.

Attached is the proposed Senior Public Works Manager job description.

Approval is requested.

Attachment: Senior Public Works Manager job description

JS/PC/LS



City of Cape Coral, Florida Job Description

Classification Title	Senior Public Works Manager		
Job Unit	Managerial/Confidential		
FLSA Status	Exempt	Pay Grade	NB121
Pay Range	Annual: \$94,078.40- \$150,529.60	Hourly: \$45.23 - \$72.37	
Safety Sensitive	No	Fingerprinting Required	No

GENERAL SUMMARY

Under the general supervision of the Public Works Director, assists as assigned in managing Public Works functions related to stormwater, transportation, streets, lot mowing, laboratory testing, facilities and fleet, which may include the following major groups: Design and Construction, Planning and Permitting, Survey, Environmental Resources, Transportation/Stormwater Maintenance, Utilities Expansion Program (UEP), Facilities and Fleet. Position assists in departmental budget responsibility. Recommends, implements and administers Public Works policies, plan ordinances, and objectives; provides highly responsible administrative support. Furnishes advice and assistance on Public Works matters throughout the City. Performs related work as required.

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.

- Assists in managing the planning, survey, design, permitting and construction of City Transportation, Stormwater and UEP projects.
- Assists in overseeing the maintenance of City-owned facilities within standard operating procedures.
- Assists in managing the development, implementation and maintenance of the City's transportation system. Coordinates with state and county agencies for expansion of these systems.
- Assists in managing the operations and maintenance of the City's Stormwater systems and Fleet.
- Assists in managing the City's lot mowing program and related programs such as pepper tree removal.
- Assists in managing the City's Environmental Resources Function including all laboratory and related testing functions.
- Assists in developing and administering projects and program schedules and budgets.

Classification Title	Senior Public Works Manager
-----------------------------	-----------------------------

- May serve on the Selection Advisory Committee (SAC).
- May serve as staff leader for the City's Transportation Advisory Commission (CTAC).
- Represents City at various civic and governmental meetings; prepares agenda items and supporting information.
- Assists Director in establishing and implementing policies, procedures, rules, techniques and practices to improve operational efficiency.
- Meets federal, state and local laws, regulations, ordinances, labor contracts, and other rules or procedures to ensure compliance.
- Assists Director in developing and implementing Public Works strategic plan, goals and objectives to meet the needs of the community and City workforce.
- Assists in administering personnel functions for employees under charge, i.e., performance evaluations, interviews, hiring, discipline, promotion; provides regular and frequent verbal feedback to staff on work performance, establishes process of staff cross-training and provides opportunities for staff training in new skills and/or updating existing certifications.
- Assists in preparing and administering operating and capital budgets for Public Works Department, to include various programs, preventative maintenance and capital projects, equipment and vehicles. Monitors actual expenditures versus budget.
- Oversees the completion of special projects including research and data analysis, preparation of technical reports, resolutions and oral presentations.
- May be required to operate a motor vehicle in performance of assigned tasks.
- Performs other related duties and assignments as required.

MINIMUM QUALIFICATIONS

Education and Experience

- Bachelor's degree from an accredited college or university in Engineering, Environmental Science, Business Administration, Public Administration or related field required.
- Eight (8) years of experience in the Public Works field in positions of increasing responsibility and complexity.
- Five (5) years of experience in management of pertinent areas such as: Transportation or Stormwater systems, construction contracts, surface water management; and management of organizations with experience in budget preparation.

Licenses or Certifications

- Must possess a valid state driver's license and obtain a valid Florida driver's license within thirty (30) days of hire or promotion.

OTHER JOB REQUIREMENTS

- None.

PREFERRED QUALIFICATIONS

- Master's degree in Engineering, Environmental Science, Business Administration, Public Administration or related field.

KNOWLEDGE, SKILLS AND ABILITIES REQUIRED

Knowledge of:

- Public works operations and capital project planning, obtaining project funding (i.e. loans/grants), environmental permitting, and construction management.
- Project budgeting, critical path method (CPM) and earned value management (EVM) principles to deliver projects on time and under budget.
- Regulatory requirements regarding utility processes and understanding of the concepts related to utility/developer agreements.
- Principles and practices of effective management, organizational structures, administration, and leadership.
- Employment regulations, personnel administration, labor contract administration, and fiscal responsibility to include strategic planning, budgeting, delegating, problem-solving, listening, and analyzing information.
- Municipal organization and function.
- Research methods and techniques and methods of presentation and market methods.
- Modern office support functions.
- Report and record maintenance principles and techniques.
- Business English, grammar, punctuation and spelling; the application of such to a variety of formats and styles, and editing principles and techniques.
- Modern office equipment and various computer programs and applications, to include construction management and scheduling and complex spreadsheets.
- Occupational hazards and safety precautions of the work.

Skill in:

- Public speaking and public relations.
- Leadership development, management practices, and supervisory techniques.
- Planning, organization, prioritization, and time management.
- The principles and techniques of short- and long-range program planning.

Classification Title	Senior Public Works Manager
-----------------------------	------------------------------------

- Written, verbal, electronic, and visual communications for effective expression and clarity.
- Use of modern office equipment and various computer programs and applications, to include construction management and scheduling, Microsoft Word, Excel and Outlook.

Ability to:

- Understand and manage highly complex, diverse projects or programs; and balance multiple assignments.
- Assemble, organize and present, in written and oral form, statistical, financial or factual information derived from a variety of sources.
- Adapt to performing under frequent deadlines, re-prioritization of tasks and assignments, and in response to emergencies.
- Perform duties independently with minimal supervision and review with emphasis in achieving results on City initiatives.
- Learn City Charter, Citywide administrative regulations, applicable Citywide departmental policies, Personnel Ordinance, Collective Bargaining Agreements and other regulatory documents as required to complete tasks and assignments.
- Assess and evaluate the coordination of project materials, equipment, labor needs and time requirements.
- Inspect projects while in progress and upon completion, and ascertain the points in repair and/or maintenance when defects are most likely to occur.
- Communicate with numerous individuals from a broad array of backgrounds.
- 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.
- Convey a sense of authority and influence.
- Exercise discretion and maintain confidentiality of sensitive information received and processed.
- 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.

Classification Title	Senior Public Works Manager
-----------------------------	-----------------------------

- Analyze documentation, data, and various records and reports for the purpose of extrapolating pertinent information and assimilating into meaningful formats, specifications, presentations, reports, etc.
- Apply principles of rational and influence systems to solve practical problems and deal with a variety of concrete variables in situations where standardization exists.
- Add, subtract, multiply and divide, calculate decimals and percentages; understand and perform advanced mathematical skills, i.e., graphs, geometric and algebraic principles.
- Organize and review work for efficient results and accuracy.
- Adapt new technology and methods to increase program effectiveness.
- Compare and/or judge the readily observable, functional or composite characteristics of signs, equipment and roads.
- Communicate efficiently and effectively in Standard English.
- 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 generally performed in a common office environment.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The position involves *light physical demands*, such as exerting up to 20 lbs. of force occasionally, and/or up to 10 lbs. of force frequently, and/or a negligible amount of force constantly to move objects. Tasks may require prolonged periods of visual concentration and require moderate levels of eye/hand/foot coordination.

Requires the ability to speak, hear (perceive sound) and/or signal people to convey and exchange information; differentiate between colors or shades of color; read a variety of materials, at times complex; apply principles of rational problem-solving; record and deliver information, explain procedures, issue and follow oral and written instructions; and communicate effectively and efficiently in Standard English.

RESOLUTION 137 - 18

A RESOLUTION OF THE CITY OF CAPE CORAL, FLORIDA, APPROVING THE CREATION OF A NEW POSITION CLASSIFICATION OF "SENIOR PUBLIC WORKS MANAGER"; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Manager has determined that there is a need in the Public Works department for the oversight and management of certain projects and programs; and

WHEREAS, the duties identified as necessary to be performed in the Public Works department currently do not exist in any other position classification; 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 a new classification titled "Senior Public Works Manager" at pay grade NB121 would provide the skills necessary for those duties that will meet the needs of the Public Works department; and

WHEREAS, a job description for the "Senior Public Works Manager" has been developed and is attached hereto as Exhibit A; and

WHEREAS, the position of Deputy Public Works Director is currently vacant, and the City Manager is not intending to fill the position; therefore, the addition of a senior level manager position will not result in an additional number of positions within the department; and

WHEREAS, the City Council desires to approve the new position classification of "Senior Public Works Manager" at pay grade NB121.

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

SECTION 1. Pursuant to Section 2-36.4 of the City of Cape Coral Code of Ordinances, the City Council hereby approves the creation of the position of "Senior Public Works Manager" at pay grade NB121. A copy of the job description is attached hereto as Exhibit A.

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

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 Sr PW Manager
6/13/18

EXHIBIT A

	City of Cape Coral, Florida Job Description		
Classification Title	Senior Public Works Manager		
Job Unit	Managerial/Confidential		
FLSA Status	Exempt	Pay Grade	NB121
Pay Range	Annual: \$94,078.40- \$150,529.60	Hourly:	\$45.23 - \$72.37
Safety Sensitive	No	Fingerprinting Required	No

GENERAL SUMMARY

Under the general supervision of the Public Works Director, assists as assigned in managing Public Works functions related to stormwater, transportation, streets, lot mowing, laboratory testing, facilities and fleet, which may include the following major groups: Design and Construction, Planning and Permitting, Survey, Environmental Resources, Transportation/Stormwater Maintenance, Utilities Expansion Program (UEP), Facilities and Fleet. Position assists in departmental budget responsibility. Recommends, implements and administers Public Works policies, plan ordinances, and objectives; provides highly responsible administrative support. Furnishes advice and assistance on Public Works matters throughout the City. Performs related work as required.

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.

- Assists in managing the planning, survey, design, permitting and construction of City Transportation, Stormwater and UEP projects.
- Assists in overseeing the maintenance of City-owned facilities within standard operating procedures.
- Assists in managing the development, implementation and maintenance of the City's transportation system. Coordinates with state and county agencies for expansion of these systems.
- Assists in managing the operations and maintenance of the City's Stormwater systems and Fleet.
- Assists in managing the City's lot mowing program and related programs such as pepper tree removal.
- Assists in managing the City's Environmental Resources Function including all laboratory and related testing functions.
- Assists in developing and administering projects and program schedules and budgets.

- May serve on the Selection Advisory Committee (SAC).
- May serve as staff leader for the City's Transportation Advisory Commission (CTAC).
- Represents City at various civic and governmental meetings; prepares agenda items and supporting information.
- Assists Director in establishing and implementing policies, procedures, rules, techniques and practices to improve operational efficiency.
- Meets federal, state and local laws, regulations, ordinances, labor contracts, and other rules or procedures to ensure compliance.
- Assists Director in developing and implementing Public Works strategic plan, goals and objectives to meet the needs of the community and City workforce.
- Assists in administering personnel functions for employees under charge, i.e., performance evaluations, interviews, hiring, discipline, promotion; provides regular and frequent verbal feedback to staff on work performance, establishes process of staff cross-training and provides opportunities for staff training in new skills and/or updating existing certifications.
- Assists in preparing and administering operating and capital budgets for Public Works Department, to include various programs, preventative maintenance and capital projects, equipment and vehicles. Monitors actual expenditures versus budget.
- Oversees the completion of special projects including research and data analysis, preparation of technical reports, resolutions and oral presentations.
- May be required to operate a motor vehicle in performance of assigned tasks.
- Performs other related duties and assignments as required.

MINIMUM QUALIFICATIONS

Education and Experience

- Bachelor's degree from an accredited college or university in Engineering, Environmental Science, Business Administration, Public Administration or related field required.
- Eight (8) years of experience in the Public Works field in positions of increasing responsibility and complexity.
- Five (5) years of experience in management of pertinent areas such as: Transportation or Stormwater systems, construction contracts, surface water management; and management of organizations with experience in budget preparation.

Licenses or Certifications

- Must possess a valid state driver's license and obtain a valid Florida driver's license within thirty (30) days of hire or promotion.

OTHER JOB REQUIREMENTS

- None.

PREFERRED QUALIFICATIONS

- Master's degree in Engineering, Environmental Science, Business Administration, Public Administration or related field.

KNOWLEDGE, SKILLS AND ABILITIES REQUIRED

Knowledge of:

- Public works operations and capital project planning, obtaining project funding (i.e. loans/grants), environmental permitting, and construction management.
- Project budgeting, critical path method (CPM) and earned value management (EVM) principles to deliver projects on time and under budget.
- Regulatory requirements regarding utility processes and understanding of the concepts related to utility/developer agreements.
- Principles and practices of effective management, organizational structures, administration, and leadership.
- Employment regulations, personnel administration, labor contract administration, and fiscal responsibility to include strategic planning, budgeting, delegating, problem-solving, listening, and analyzing information.
- Municipal organization and function.
- Research methods and techniques and methods of presentation and market methods.
- Modern office support functions.
- Report and record maintenance principles and techniques.
- Business English, grammar, punctuation and spelling; the application of such to a variety of formats and styles, and editing principles and techniques.
- Modern office equipment and various computer programs and applications, to include construction management and scheduling and complex spreadsheets.
- Occupational hazards and safety precautions of the work.

Skill in:

- Public speaking and public relations.
- Leadership development, management practices, and supervisory techniques.
- Planning, organization, prioritization, and time management.
- The principles and techniques of short- and long-range program planning.

- Written, verbal, electronic, and visual communications for effective expression and clarity.
- Use of modern office equipment and various computer programs and applications, to include construction management and scheduling, Microsoft Word, Excel and Outlook.

Ability to:

- Understand and manage highly complex, diverse projects or programs; and balance multiple assignments.
- Assemble, organize and present, in written and oral form, statistical, financial or factual information derived from a variety of sources.
- Adapt to performing under frequent deadlines, re-prioritization of tasks and assignments, and in response to emergencies.
- Perform duties independently with minimal supervision and review with emphasis in achieving results on City initiatives.
- Learn City Charter, Citywide administrative regulations, applicable Citywide departmental policies, Personnel Ordinance, Collective Bargaining Agreements and other regulatory documents as required to complete tasks and assignments.
- Assess and evaluate the coordination of project materials, equipment, labor needs and time requirements.
- Inspect projects while in progress and upon completion, and ascertain the points in repair and/or maintenance when defects are most likely to occur.
- Communicate with numerous individuals from a broad array of backgrounds.
- 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.
- Convey a sense of authority and influence.
- Exercise discretion and maintain confidentiality of sensitive information received and processed.
- 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.

- Analyze documentation, data, and various records and reports for the purpose of extrapolating pertinent information and assimilating into meaningful formats, specifications, presentations, reports, etc.
- Apply principles of rational and influence systems to solve practical problems and deal with a variety of concrete variables in situations where standardization exists.
- Add, subtract, multiply and divide, calculate decimals and percentages; understand and perform advanced mathematical skills, i.e., graphs, geometric and algebraic principles.
- Organize and review work for efficient results and accuracy.
- Adapt new technology and methods to increase program effectiveness.
- Compare and/or judge the readily observable, functional or composite characteristics of signs, equipment and roads.
- Communicate efficiently and effectively in Standard English.
- 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 generally performed in a common office environment.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The position involves *light physical demands*, such as exerting up to 20 lbs. of force occasionally, and/or up to 10 lbs. of force frequently, and/or a negligible amount of force constantly to move objects. Tasks may require prolonged periods of visual concentration and require moderate levels of eye/hand/foot coordination.

Requires the ability to speak, hear (perceive sound) and/or signal people to convey and exchange information; differentiate between colors or shades of color; read a variety of materials, at times complex; apply principles of rational problem-solving; record and deliver information, explain procedures, issue and follow oral and written instructions; and communicate effectively and efficiently in Standard English.

Item Number:	6.O.
Meeting Date:	6/18/2018
Item Type:	BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Unfinished Business - 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:

1. Lake Okeechobee - update
2. Bimini Basin - update
3. Mayor Ruane - Sanibel

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Item Number:	6.P.
Meeting Date:	6/18/2018
Item Type:	BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

ADDENDUM: Unfinished Business - LCEC Franchise Agreement discussion (Brought forward by Mayor Coviello)

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:

City/LCEC Electrical Franchise Agreement Term Sheet

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Term Franchise Agreement	Backup Material

City/LCEC Electrical Franchise Agreement Term Sheet

Proposed Terms for Franchise Agreement

Length of Agreement – 30 years

Franchise Fee - 3% initial fee for first year, City can go to 4.5 % in years 2-5, and 6% after year 5 with the adoption of new fee by public hearing, using Lee County F/A language to include “Favored Nation Language”

Audit of Franchise Fees - Limited to the amount collected from accounts within the City’s boundaries once every 5 years with annual audit of newly annexed areas.

City buyout option at end of Franchise Agreement - Eliminated

Proposed Terms for MOU

Future Rate Constraints – LCEL will provide the City with quarterly reports comparing LCEC residential electric rates (for 1000kwh/month consumption) with those of other investor-owned, municipal and cooperative electric utilities in Florida, so long as comparative data is available to LCEC. Should LCEC rates exceed the statewide average, LCEC will make a presentation to City Council outlining drivers of LCEC rates and actions planned by LCEC to reestablish rates below the statewide average.

Reliability Standards - Reliability results are shared monthly, against adopted LCEC targets, with the LCEC Board Members and available on the web site for review by all members. If the City ever has a concern with these results they are able to raise their concerns with the Board at the next available Board Meeting.

Street Lights - City will pay same district street light rate available to every municipal customer in LCEC PSC-approved service area.

Construction Schedule in Public Right of Ways - Annual plans for construction in City with updates as plans change.

Schedule for Tree Trimming - Annual notice of schedule + methods with updates as plans change.

New Technologies - LCEC is committed to providing efficient, reliable and cost-competitive electric service and emerging energy solutions to the City of Cape Coral and all other cooperative members. In furtherance of that commitment, LCEC will agree to participate in a "New Technology Work Group" comprised of two members of the City's staff, two members of LCEC's staff and one member designated by the Cape Coral Council for Progress ("CFP") or other business organization (FGCU Subject Specialist). The New Technology Work Group (NTWG) will meet at least twice per year during the term of this Agreement, on dates and at times mutually acceptable to the work group members, to (i) discuss and evaluate new and emerging technologies that LCEC could cost-effectively deploy to provide efficient and reliable electricity to the City and its other members, and (ii) explore the feasibility for LCEC and the City to partner in cost-effective energy projects in the City, all in accordance with applicable laws and regulations. The NTWG will prepare and present an annual report to the LCEC Board and City Council.

City EOC - LCEC will maintain a presence in the City's EOC when it is activated.

Mutual non-disparagement clause will be included.

Item Number:	6.Q.
Meeting Date:	6/18/2018
Item Type:	BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

ADDENDUM: New Business - Waste Pro Ride Along that occurred on June 11, 2018 (Brought forward by Councilmember Nelson)

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:

Councilmember Nelson's presentation

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
□ Councilmember Nelson's presentation	Backup Material



Waste Pro Ride Along

Issues and Solutions

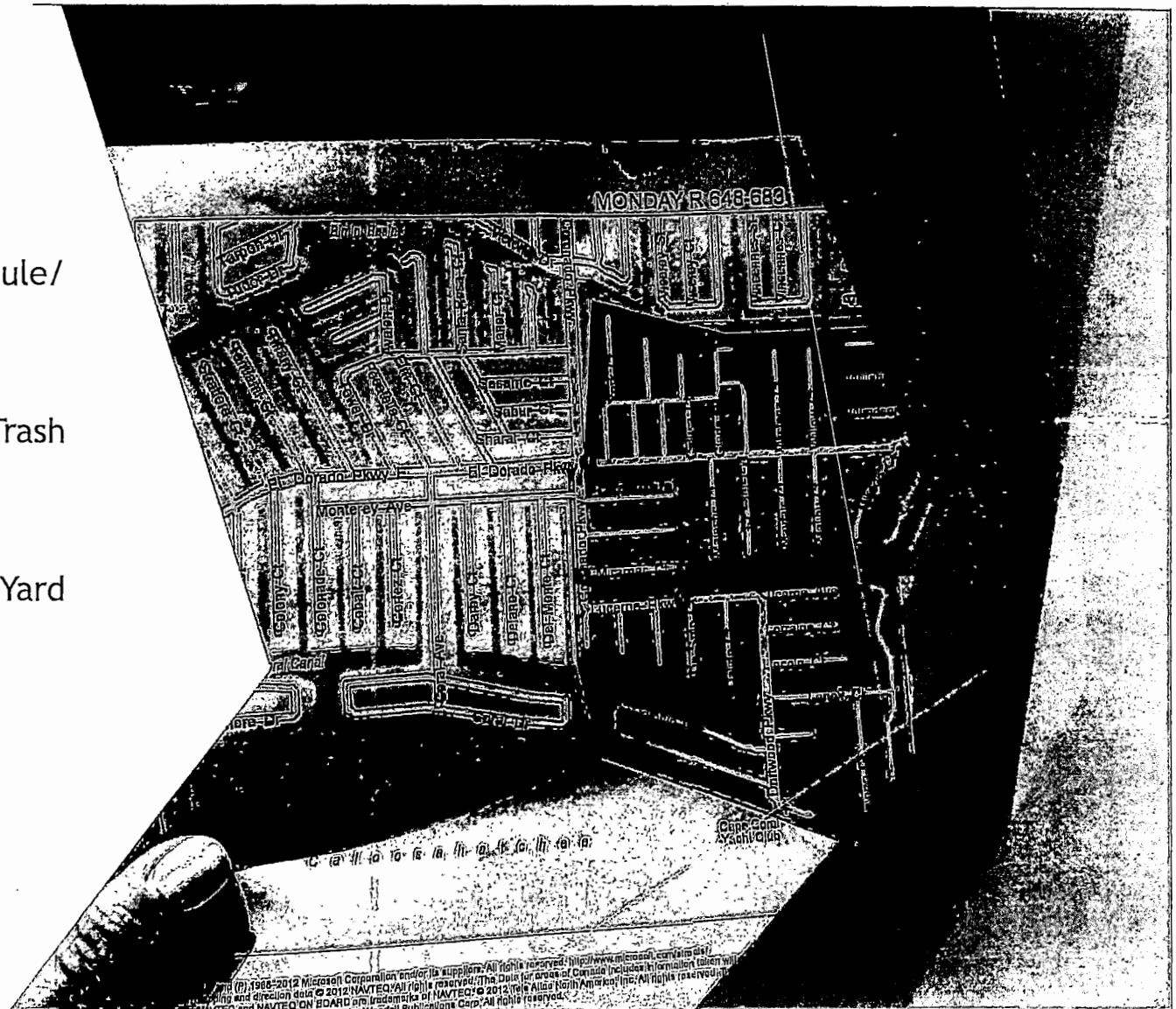
Councilmember Jennifer Nelson, District 4

June 2018



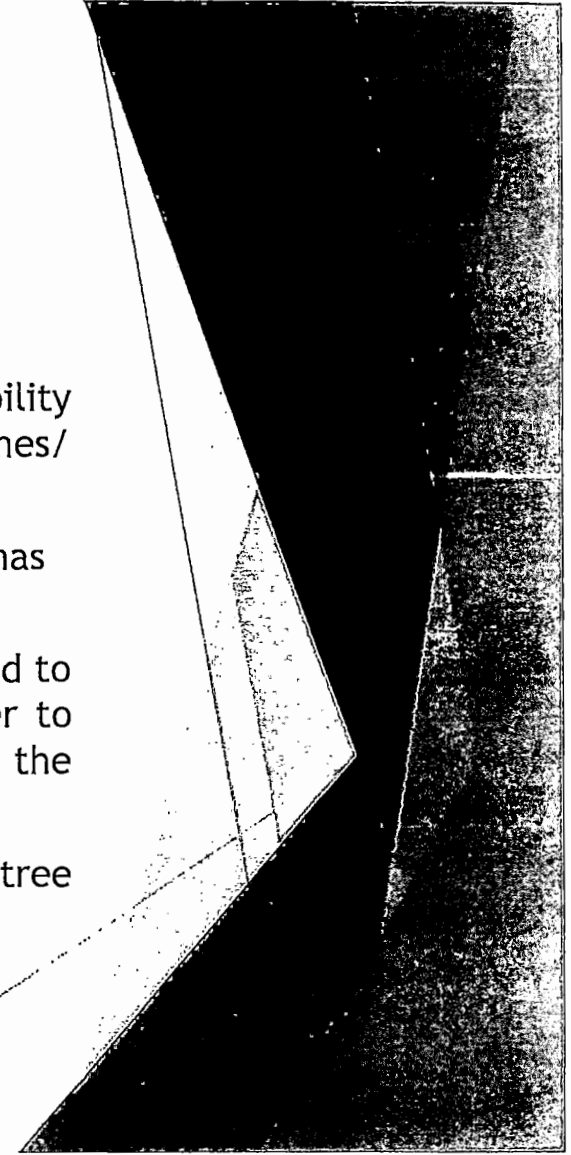
Issues

- ▷ Missed Pickups (Normal Schedule/ Backdoor/Streets/ Routes)
- ▷ Length of time for Bulk Trash Pickups
- ▷ Preparation/Placement of Yard Waste



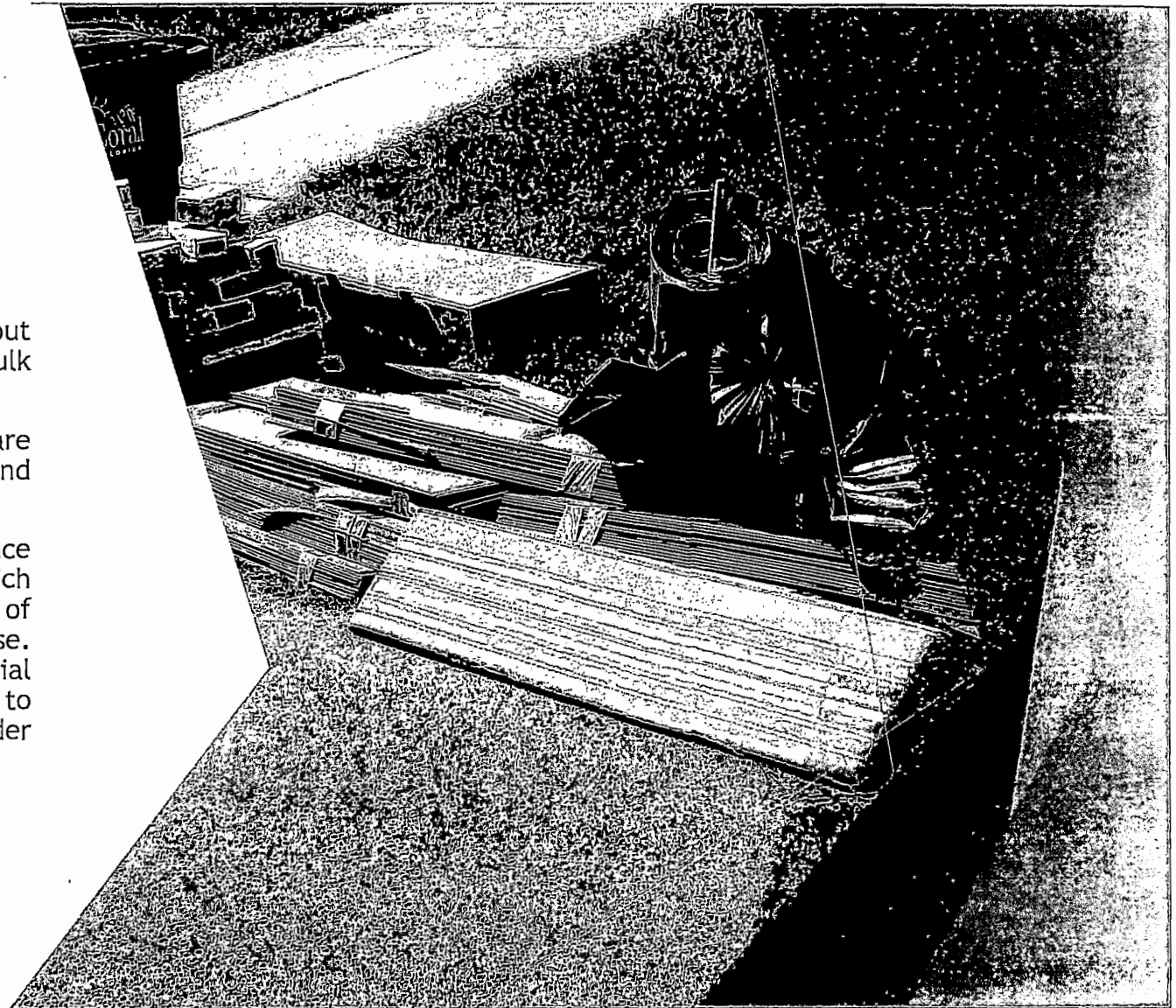
Contributing Factors

- ▶ UEP/construction projects make accessibility difficult causing the trucks to miss homes/streets.
- ▶ Residents place cans out after the truck has passed.
- ▶ Special pick-ups for the disabled, referred to as “backdoor service” require the driver to get out of the truck and hand throw the cans.
- ▶ Weather, holidays, sagging powerlines, tree limbs, etc. affect pick-ups.



Bulk Trash

- ▶ Waste Pro has 2 to 3 bulk trucks out daily, yet residents state that the bulk trash takes weeks to pick up.
- ▶ Residents and contractors are throwing away construction and demolition items.
- ▶ The city currently has an ordinance Chapter 9, Article Section 9-69 which addresses the requirements of contractors for handling onsite refuse. They are required to make special arrangements with the franchisee to provide appropriate service (i.e. order an open top).



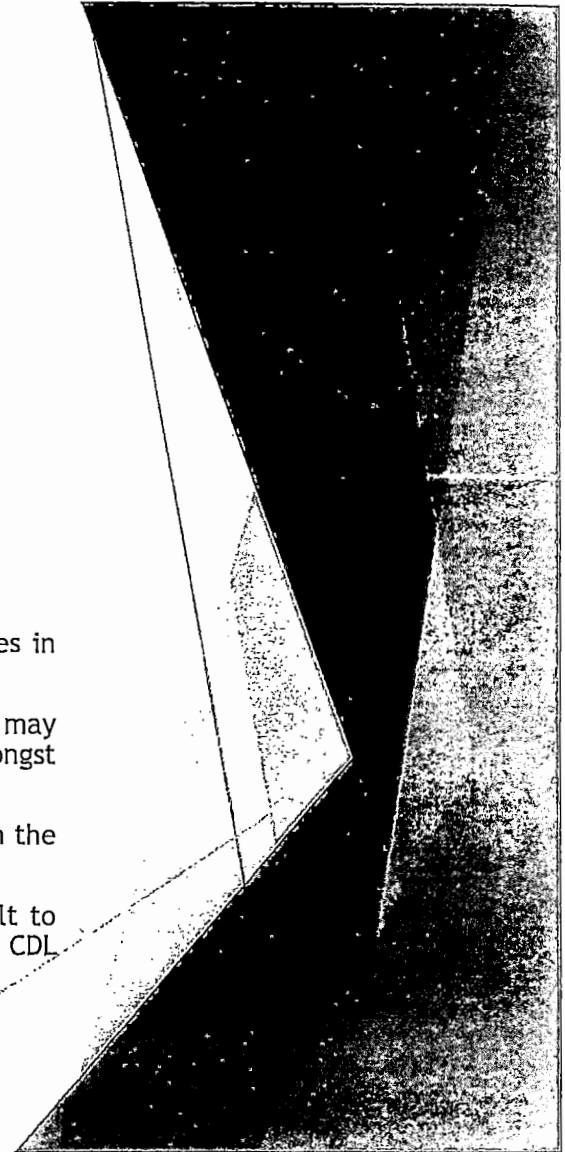
Why Do We Have These Issues?



- ▶ June 2016- May 2017= 1,522 permits were issued
- ▶ June 2017- May 2018= 2,047 permits were issued
- ▶ +26% increase in single family permits over PY
- ▶ Construction, weather, UEP

WASTE PRO:

- ▶ Delayed holiday schedules and experienced staff shortages in recent weeks.
- ▶ As a result, some pockets / streets / individual homes may experience service delays as the routes are split amongst drivers not as familiar with the areas as the normal driver.
- ▶ Low unemployment rate in our region (in conjunction with the overall shortage of qualified drivers nationwide).
- ▶ Increase in construction related jobs has made it difficult to attract and retain employees in our skilled positions like CDL Drivers and Certified Technicians.



What the Contract States

► Collection Equipment (Fleet Reserves)

- The Contractor shall have available reserve equipment which can be put into service within two (2) hours of any breakdown. Such reserve equipment used shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties. If the public roads or public right-of-way or private road in the service area is not paved or in an extremely worn condition, the Contractor shall provide appropriate equipment that has the capability to service these roads. Service on these roads shall be a minimum of one combined garbage and horticultural collection, and one separate recycling collection per week.

► Complaints Missed Garbage/Recycling

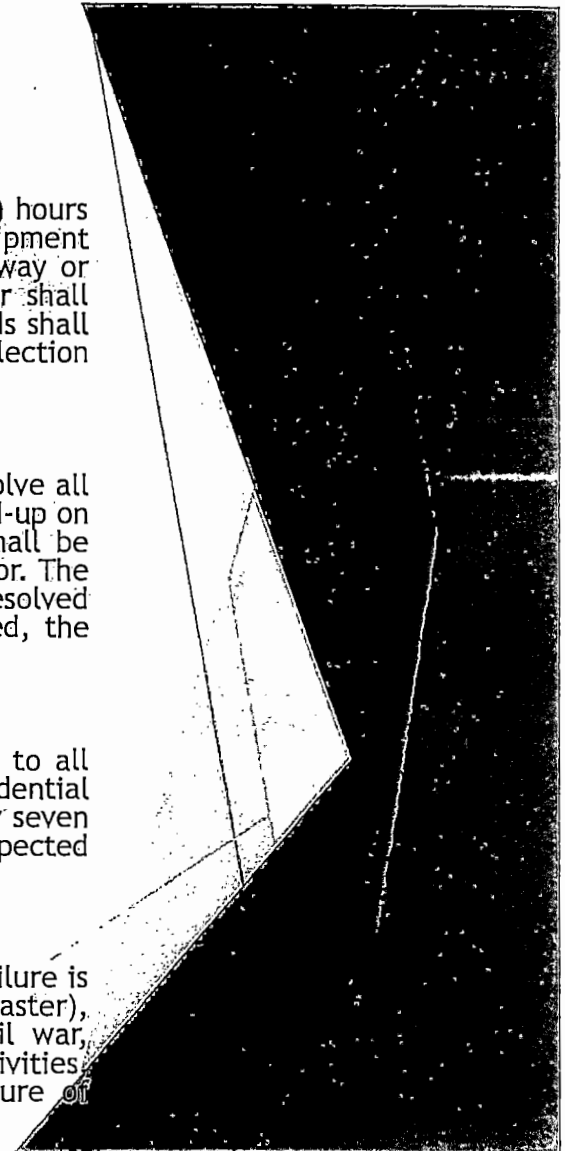
- Complaints: The goal of this operation is to minimize complaints by requiring the Contractor to resolve all problems as soon as possible. For example, each missed garbage/recycling collection must be picked-up on the same day it is missed. All complaints related to collection services received by the City shall be directed to the Contractor for resolution. The City may issue a "Request for Action" to the Contractor. The Contractor shall make contact with the complainant within one work day. The complaint must be resolved within one work day after it is received by the Contractor. When the complaint has been resolved, the Contractor shall forward an email with a brief explanation of the resolution to the City.

► Holiday Schedule Residential Garbage Collection:

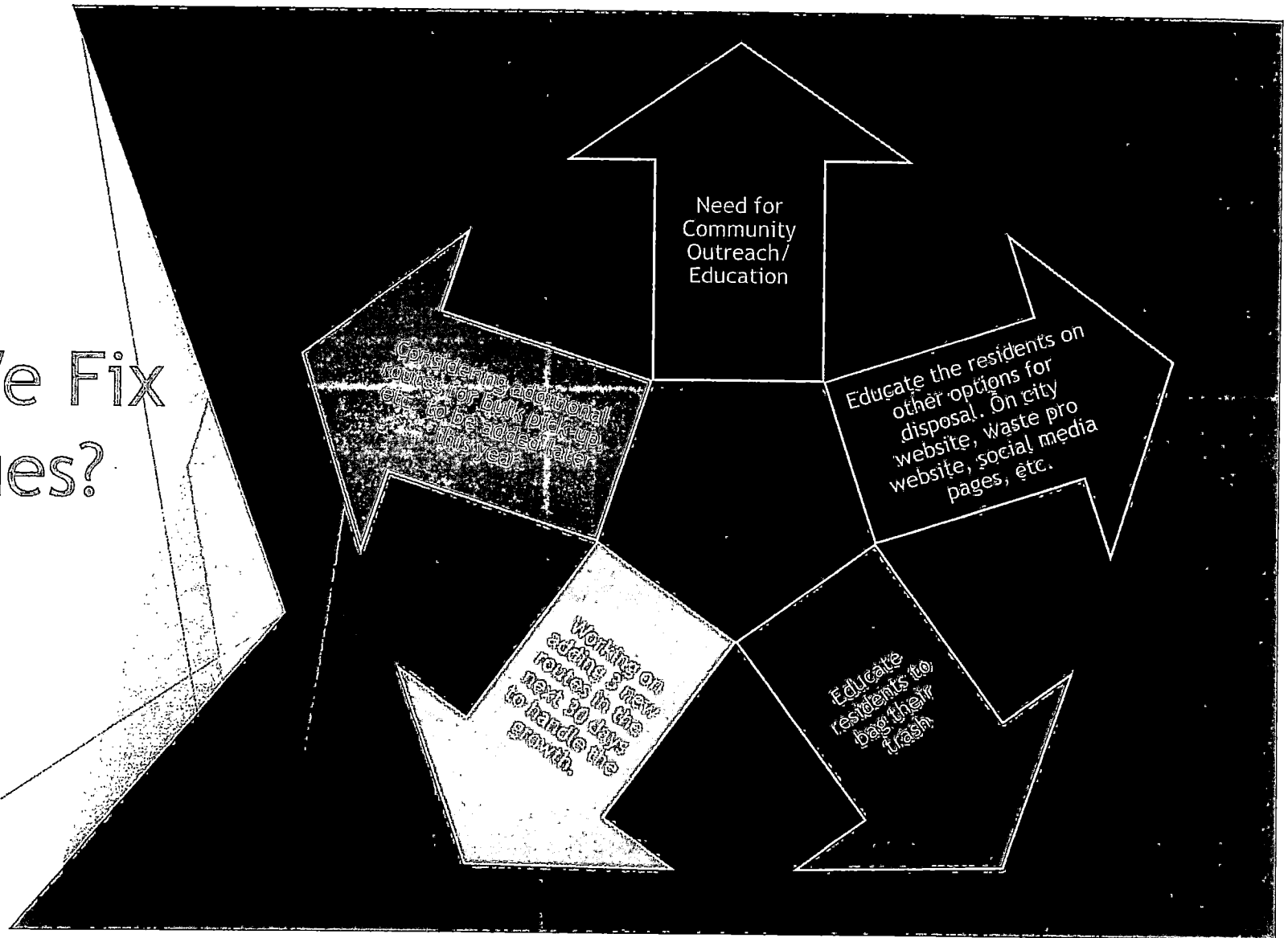
- Conditions and Frequency of Service: The Contractor shall provide residential garbage collection to all dwelling units receiving residential garbage collection (single family homes and multi-family residential Can service). This service shall be provided once every week on the current scheduled day or every seven (7) days, as otherwise approved by the City, on a scheduled route basis. The Contractor will be expected to adhere to the schedule. Allowed holidays will require pick-up on the following day.

► Acts of Nature (Hurricanes, Floods, etc.):

- Force Majeure: Contractor is not liable for failure to perform the Contractor's obligations if such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service.

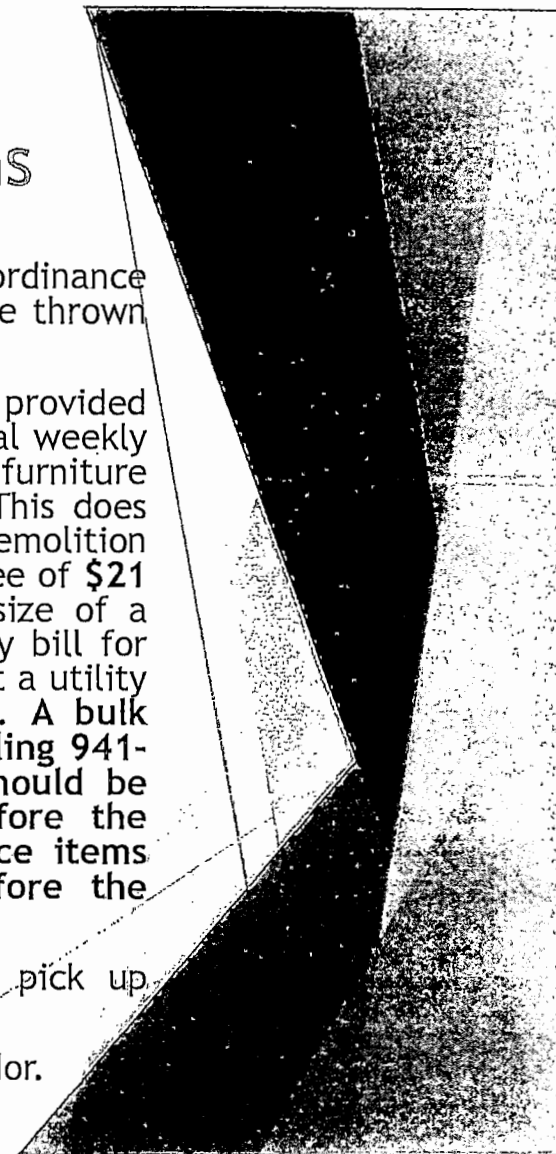


How Do We Fix These Issues?

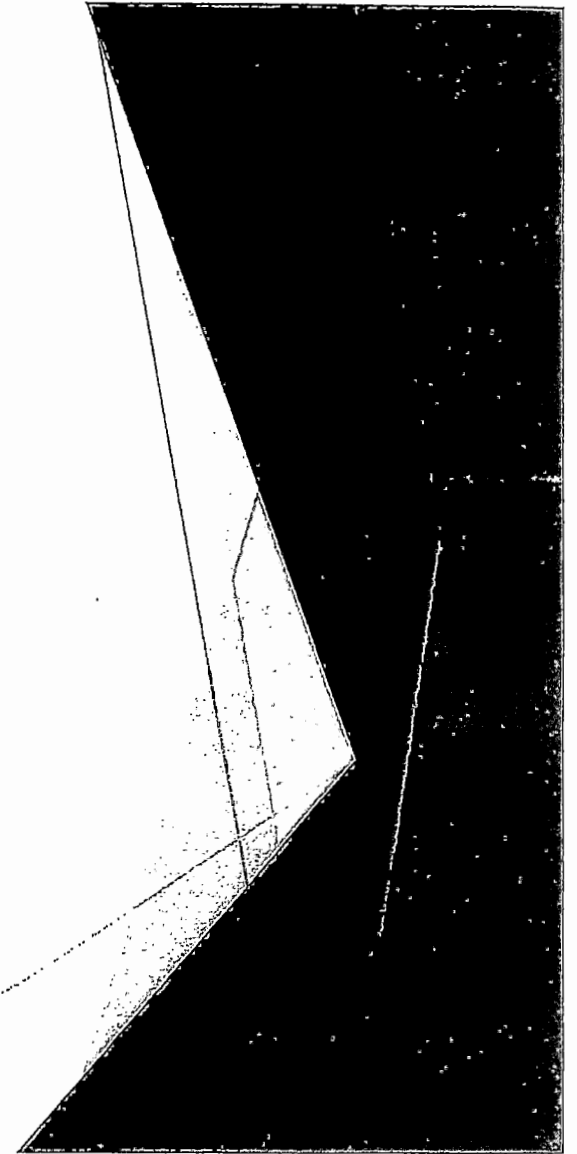


Recommendations

- ▷ The city should consider creating an ordinance that limits what types of items can be thrown away, how large and the frequency.
- ▷ **Venice, FL:** "Bulk garbage collection is provided for items too large or heavy for normal weekly collection. Bulk collection consists of furniture and miscellaneous household items. This does not include construction or demolition materials or any hazardous waste. A fee of **\$21 per cubic yard** (approximately the size of a twin bed) will be added to the utility bill for this service. Customers who do not get a utility bill may prepay at Venice City Hall. **A bulk collection must be scheduled by calling 941-486-2422.** Items to be collected should be placed by the curb the night before the scheduled pick up day. Do not place items curbside more than 24 hours before the scheduled collection day".
- ▷ Send out RFP to other haulers who pick up specific reusable items.
- ▷ Send out an RFP for another trash vendor.



Thank You!



Item Number:	7.A.
Meeting Date:	6/18/2018
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 36-18 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?
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 2, Administration, Article II, Fees, by establishing Division 9, Impact Fee Deferral Pilot Program; providing definitions; establishing a Single-Family Impact Fee Deferral Program; providing program eligibility and procedures; requiring developer agreements; requiring owner agreements; providing for expiration or extension of the Impact Fee Pilot Program.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 36-18
Staff Presentation from 3/27/2017 Committee of the Whole meeting
Memo from 3/27/2017 Committee of the Whole meeting
June 5, 2017 Regular Meeting Minutes
Updated Staff Presentation

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Amy Yearsley, Housing Coordinator

ATTACHMENTS:

Description	Type
▣ Ordinance 36-18	Ordinance
▣ Staff presentation - Cow backup 3/27/2017	Backup Material
▣ Memo - COW backup 3/27/2017	Backup Material
▣ 6/5/2017 Regular Meeting Minutes	Backup Material
▣ Updated staff presentation	Backup Material

ORDINANCE 36 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE II, FEES, BY ESTABLISHING DIVISION 9, IMPACT FEE DEFERRAL PILOT PROGRAM; PROVIDING DEFINITIONS; ESTABLISHING A SINGLE-FAMILY IMPACT FEE DEFERRAL PROGRAM; PROVIDING PROGRAM ELIGIBILITY AND PROCEDURES; REQUIRING DEVELOPER AGREEMENTS; REQUIRING OWNER AGREEMENTS; PROVIDING FOR EXPIRATION OR EXTENSION OF THE IMPACT FEE PILOT PROGRAM; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Cape Coral desires to encourage and support the development of affordable single-family owner-occupied housing within the city; and

WHEREAS, City of Cape Coral Comprehensive Plan goals include providing good quality housing in safe, clean neighborhoods, offering a broad choice of options in both types (single family and multi-family) and tenure (owner and renter occupied) to meet the needs of present and future residents of the City, regardless of age or income status; and

WHEREAS, the City of Cape Coral Affordable Housing Incentive Plan identified impact fees as an impediment to the development of affordable housing; and

WHEREAS, the City Council finds that the health, safety, and welfare of the city will be enhanced by providing programs to encourage the development of these types of housing units.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, Article II, Division 9, is hereby established as follows:

DIVISION 9 – Impact Fee Deferral Pilot Program

§ 2-24.50. Purpose and intent.

It is the purpose of this article to encourage and support the development of affordable housing by implementing an impact fee pilot program.

§ 2-24.51. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings set forth herein, except where the context clearly indicates a different meaning.

- (a) "Extremely low income families" means families whose incomes do not exceed 35 percent of the median income for the area as determined by the Secretary of the U.S. Department of Housing and Urban Development.
- (b) "Very low income families" means families whose incomes do not exceed 50 percent of the median income for the area as determined by the Secretary of the U.S. Department of Housing and Urban Development.
- (c) "Low income families" means families whose incomes are more than 50 percent but do not exceed 80 percent of the median income for the area as determined by the Secretary of the U.S. Department of Housing and Urban Development.
- (d) "Moderate income families" means families whose incomes are more than 80 percent but do not exceed 120 percent of the median income for the area as determined by the Secretary of the U.S. Department of Housing and Urban Development.

§ 2-24.52. Single-Family Impact Fee Deferral Pilot Program.

- (a) Purpose and Intent. The Single-Family Impact Fee Deferral Pilot Program is intended to encourage the provision of new units of owner-occupied affordable housing within the City of Cape Coral by providing for deferral of payment of City imposed fees on qualifying units of affordable housing. This program is intended to further the affordable housing goals and objectives in the Housing Element of the City's Comprehensive Plan.
- (b) Applicability. The Single-Family Impact Fee Deferral Program is limited to not-for-profit entities acting as developers who participate in the City of Cape Coral's Affordable Housing Programs and that are approved by the Department of Community Development.
- (c) Impact fees not subject to Single-Family Impact Fee Deferral Pilot Program. Utility capital expansion fees and impact fees collected on behalf of Lee County are not subject to this pilot program. The deferral of an impact fee under this article shall not in any way result in a refund of previously paid impact fees or previously paid impact fee installment payments.
- (d) Eligible dwelling unit categories. Agreements for the deferral of impact fees under this section may only be approved for single-family units.
- (e) Qualifying owner-occupied dwelling. To qualify for an affordable housing impact fee deferral, an owner-occupied dwelling unit must meet all the following criteria:
 - (1) The owner(s) or anticipated owner(s) of the dwelling unit must have an extremely low, very low, low, or moderate income level, as defined in Section 2-24.51, at the time of final execution by the City of the Owner's Impact Fee Deferral Agreement.
 - (2) The monthly mortgage payment, including taxes and insurance, must not exceed 30 percent of that amount which represents the percentage of the median annual gross income for the applicable household category as indicated in Section 2-24.51. However, it is not the intent to limit an individual household's ability to devote more than 30 percent of its income for housing, and housing for which a household devotes more than 30 percent of its income shall be deemed affordable if the first institutional mortgage lender is satisfied that the household can afford mortgage payments more than the 30 percent benchmark.
 - (3) Once the property has been transferred from the developer to the owner(s), the dwelling unit must be the homestead of the owner(s). The owner must apply for and be granted a homestead tax exemption pursuant to Chapter 196, Florida Statutes, for the next available tax year.
 - (4) The owner(s) of the dwelling unit must be at least 18 years of age and must be either citizen(s) of the United States or be legal alien(s) who permanently reside in the United States. Proof of United States Citizenship or permanent legal residency must be established to the City's sole satisfaction.
- (f) Application. Application for the Single-Family Impact Fee Deferral Pilot Program must be submitted to the Department of Community Development prior to submission of the building permit application. Applications may take up to sixty days for approval or denial.

The application, at a minimum, will require the following:

- a. Name and address of the Developer;
- b. Legal description of the site upon which the development is proposed to be located;
- c. The square footage and number of bedrooms in each dwelling unit; and

- d. Type of construction as classified by the Florida Building Code.
- (g) Developer Impact Fee Deferral Agreement. Approval of the application shall be contingent upon an executed impact fee deferral agreement between the Developer and the City in a form approved by the City. The Developer's impact fee deferral agreement may be accepted by the City in lieu of prompt payment of the impact fee that would otherwise then be due and payable but for the agreement.
- (h) Developer Time of Performance. Title to the property must be conveyed to a qualified buyer within 180 days from the date of the Certificate of Occupancy issuance.

If title to the property is not conveyed to a qualified buyer within the 180-day period, then:

- (1) The deferred impact fee is considered in default as of the date that the fee would have been due without the deferral; and
 - (2) The developer shall pay all the impact fees, including delinquency fees and interest dating back to the date that the fees would have been assessed but for the deferral.
- (i) Owner's Impact Fee Deferral Agreements. The qualified buyer receiving an impact fee deferral shall enter into an impact fee deferral agreement with the City that is recorded in the Official Records of Lee County at the owner's expense. A separate deferral agreement shall be executed for each qualifying owner-occupied dwelling. The deferral agreement shall provide for, at a minimum, the following and shall further include such provisions deemed necessary by the City to effectuate the provisions of this article:
- (1) Legal description of the property, including the parcel tax identification number and street address.
 - (2) Throughout the period of deferral, the dwelling unit must be the homestead of the owner(s) under Section 4, Article X of the State Constitution, and pursuant to Chapter 196, Florida Statutes.
 - (3) For each such owner-occupied dwelling unit, the amount of impact fees deferred shall be paid to the City in full upon sale. Such fees shall be accelerated and thereby be automatically due and payable prior to that period if there is any breach in the subject impact fee deferral agreement by the non-city party.
 - (4) The deferred impact fees shall be a lien on the property. The lien may be foreclosed upon in the event of noncompliance with the requirements of the agreement. The agreement described herein shall operate as a lien against the dwelling unit. The lien shall terminate upon the recording of a release or satisfaction of lien in the public records of Lee County. Such release shall be recorded upon payment in full. Neither the deferred impact fees nor the agreement providing for the deferral of impact fees shall be transferred, assigned, credited or otherwise conveyed from the dwelling unit.
 - (5) Upon satisfactory completion of the agreement's requirements, the City shall record any necessary documentation evidencing same, including, but not limited to, a release of lien.
 - (6) In the event the owner is in default under the agreement, and the default is not cured within 30 days after written notice is provided to the owner, the City may at its sole option collect the impact fee amounts in default, foreclose, or bring a civil action to enforce the agreement or declare that the deferred impact fees are then in default and immediately due and payable. The City shall be entitled to recover all fees and costs, including attorney's fees and costs, incurred by the City in enforcing the agreement, plus interest at the then maximum statutory rate for judgments calculated on a calendar day basis until paid.

(j) Repayment for owner-occupied units.

- (1) All impact fees deferred for owner-occupied dwelling units shall become due and payable and shall be immediately paid in full to the City upon:
 - a. The sale of the dwelling; or
 - b. Refinancing of the purchase mortgage or loans secured by senior real property security instruments with cash out; or
 - c. A loss of the homestead exemption under Section 4, Article X of the State Constitution, and pursuant to Chapter 196, Florida Statutes; or
 - d. The first occurrence of any sale or transfer of any part of the affected real property, and in any such event the deferred impact fees shall be paid in full to the City not later than the closing of the sale, or not later than the effective date of the transfer.
- (2) Repayment shall include any accrued interest. Interest shall be computed at the rate of five percent per annum, but in no event shall it exceed 25 percent of the total impact fee amount.

(k) Repayment obligations.

- (1) Generally. The impact fees deferred shall be a lien on the property until all requirements under this article and the agreement have been satisfied.
- (2) Owner-occupied dwelling units. If the household income of the qualified owner-occupied dwelling unit rises above the standards for deferrals set forth in subsection (e) of this section, the owner shall maintain the deferral. Notwithstanding the foregoing, all outstanding impact fees deferred shall be paid in full upon sale or transfer of the dwelling unit as set forth in subsection (j) of this section.

(l) Subordination. Impact fee deferrals for all owner-occupied dwelling units will automatically be subordinate to the owner's first mortgage and/or any government funded affordable housing loan. Requests for subordination shall be in accordance with the City of Cape Coral Subordination of Mortgage Policy.

(m) Ceiling on deferrals.

- (1) The aggregate number of impact fee deferrals granted pursuant to the Impact Fee Deferral Pilot Program shall be limited, in total, to 100 units. The City Council may, by ordinance, adjust the aggregate cap.
- (2) Deferrals shall be available on a first-come, first-served basis.
- (3) The City shall maintain a tracking system to ensure that the aggregate number of impact fee deferrals do not exceed the deferral ceilings established in this subsection.

(n) Time period of pilot program. The Impact Fee Deferral Pilot Program shall expire upon completion of 100 units, or on September 30, 2022, whichever occurs first. The City Council may, by ordinance, extend or terminate the program at any time prior to the expiration date of the program.

SECTION 2. Severability. If 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 _____
STOKES _____
CARIOSCIA _____
STOUT _____

NELSON _____
GUNTER _____
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\Affordable Housing Impact Fee Deferrals

Single Family Impact Fee Deferral Pilot Program For Workforce Housing

City Council
Committee of the Whole
March 27, 2017

Single Family Impact Fee Deferral Pilot Program

- Impact fee deferral program for the development of owner occupied single family dwelling units
- Limited to established not-for-profit housing development entities approved by the City of Cape Coral
- Up to \$7,000 in impact fee deferrals
- Does not include school impact fees collected on behalf of Lee County School District (LCSD)
- Maximum of 150 homes over a five year period



Next Steps

- Identification of best practices
- Draft Program Parameters
 - Buyer Requirements
 - Developer Requirements
 - Program Ceiling on maximum number/amount per year
 - Deferral Period/Repayment
 - Staffing – long term monitoring (Department of Community Development), fiscal impact (Finance)

MEMORANDUM

CITY OF CAPE CORAL
CITY MANAGER'S OFFICE

TO: Mayor Sawicki and Council Members

FROM: John Szerlag, City Manager 
Kelley Fernandez, Business Manager 

DATE: March 22, 2017

SUBJECT: Single Family Impact Fee Deferral Program for Workforce Housing

We recently met with Habitat for Humanity President Kitty Green and Board Member Gary Aubuchon to discuss a proposed program for impact fee deferral for single family homes. During that meeting, they demonstrated the need for such a program in order to achieve their mission of providing workforce housing within Cape Coral. This pilot program would consist of a maximum of 150 houses over the course of five years and would apply to other agencies the City partners with which fulfills our statutory obligations to provide workforce housing.

Representatives of Habitat for Humanity will be in attendance at the March 27, 2017 Committee of the Whole meeting to provide information about this potential pilot program along with City staff.

City Management supports the concept of a deferral program for single family impact fees within parameters and, as such, believes further exploration of a program should be pursued.

Should you have any questions, please feel free to contact my office.

JS/KF

C: Dolores Menendez, City Attorney
Brian Bartos, Assistant City Attorney

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

June 5, 2017

Council Chambers

4:30 p.m.

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

Moment of Silence – Councilmember Cosden

Pledge of Allegiance – Skylar Muncy – Oasis Elementary

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

CHANGES TO AGENDA/ADOPTION OF AGENDA

Mayor Sawicki announced that Item 10D will be moved to after Citizens Input, 11A has been withdrawn, and the public hearing for Ordinance 22-17 will be held on June 12, 2017.

Councilmember Williams moved, seconded by Councilmember Cosden to approve the agenda, as amended.

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

RECOGNITIONS/ACHIEVEMENTS

None.

APPROVAL OF MINUTES

Regular Meeting – May 1, 2017

Councilmember Burch moved, seconded by Councilmember Erbrick to approve the minutes for the May 1, 2017 regular meeting as presented. Voice Poll: All “ayes.” Motion carried.

BUSINESS

PUBLIC COMMENT - CONSENT AGENDA

No speakers.

CONSENT AGENDA

Councilmember Williams pulled item 4.

Councilmember Erbrick pulled item 2 for a brief discussion.

- (1) Resolution 78-17 Adopt the 2017 Lee County Joint Unified Local Mitigation Strategy (LMS), and repeal Resolution 13-12 which adopted a previous version of the plan. Recovering from an emergency or a disaster could take several weeks, months, or even years, and cost jurisdictions millions of dollars. The 2017 LMS lays out specific mitigation strategies and projects that could be funded should federal mitigation dollars be available after a declared disaster. The Federal Emergency Management Agency and the Florida Division of Emergency Management require Lee County and all six municipalities therein

to adopt the updated plan to be eligible for federal disaster funding; Department: Fire; Dollar Amount: \$0; (Fund: N/A)

- (2) Resolution 80-17 Approve Contract PB-CON-PD17-1/GM which piggybacks the City of Sarasota RFP15-33BK awarded to Action Labor of Florida, LLC dba Staffing Connection for the purchase of School Crossing Guard Services at the hourly rate proposed, not to exceed budgetary limits, in accordance with City of Cape Coral Code of Ordinances Chapter 2, Article VII, Division 1, Section 2-144(f) Purchases of Goods or Services from Contracts Awarded by Other Governmental Entities by Competitive Bid, and authorize the City Manager, or designee, to sign the contract and any renewals; Department: Police Department; Estimated Dollar Value \$218,000; (General Fund)
- (3) Resolution 82-17 Award of competitive solicitation - ITB-UT17-41/KR Galvanized Pipe Replacement Program – Section 2A to Boyd Irrigation, Inc. of North Fort Myers, FL to replace 18,240 LF of existing galvanized pipe, as the lowest responsive, responsible bidder, in the amount of \$2,455,820, with a City controlled contingency amount of 10%, \$245,582 for a total \$2,701,402 dollars and authorize the City Manager or designee to execute the contract; Department: Utilities; Dollar Value: \$2,701,402; (Water and Sewer Fund)
- (4) Resolution 83-17 Approve the waiver of the procurement process for the purchase of medical supplies and entering into an agreement with Cooperative Services of Florida, Inc. (CSF) LeeSar, Inc., at the unit prices stated not to exceed budgetary limits, and authorize the City Manager or Designee to execute the agreement, renewals and any other pertinent document; Fire Department; Annual Estimated Dollar Value: \$113,982; (General Fund)
- (5) Resolution 87-17 Approve contract CON-UT03-17/KR for the Underground Fire Line Improvement Project with TKW Consulting Engineers, Inc. of Fort Myers, FL. for Professional Engineering Services for Phase II and authorize the City Manager or designee to execute the contract and any renewals or amendments. Phase II is to develop complete design, permitting, bidding and construction services for twenty-one (21) properties for conversion of water supply for fire protection from non-potable irrigation to potable water system. Phase I agreement was approved via Resolution 35-15 on March 30, 2015 in which the agreement also allowed entering into negotiation for Phase II; Department: Utilities; Dollar Value: \$269,392; (Water & Sewer Fund)
- (6) Resolution 90-17 Approval of Contract for Purchase of Lots 73 and 74, Block 3003, Unit 43, Cape Coral Subdivision, 1312 NW 25th Street, Cape Coral, for the Festival Park project for the purchase price of \$14,950 plus proration costs not to exceed \$500; Department: Financial Services/Real Estate; Dollar Value: \$15,450; (Parks Capital Project Fund) Note: Trade offer rejected by Seller
- (7) Resolution 91-17 Approval of three (3) Purchase Contracts for the purchase of Lots 81 through 85, Block 80, Cape Coral Subdivision Unit 9, 604 – 612 SE 47th Terrace, for the construction of a new wastewater Master Pump Station; Combined purchase price is \$137,500 plus proration/closing costs not to exceed \$2,500; Department: Financial Services / Real Estate Division; Dollar Value: \$140,000; (Water and Sewer Fund) Note: Trade offer rejected by Sellers.

Councilmember Leon moved, seconded by Councilmember Burch to approve Item 8(B)(1), 8(B)(3), 8(B)(5), 8(B)(6), and 8(B)(7) as presented.

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

Councilmember Erbrick inquired with Chief of Police Newlan why it was going for outsourcing.

Chief of Police Newlan explained that there are 8 team contract crossing guards. We have been in communication with Crossing Guards Now through letter and phone calls. Approval will facilitate a meeting with the company to offer them all the same positions.

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

Councilmember Carioscia questioned how much money privatization will save.

Chief Newlan stated it would save approximately \$65,000.

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

Councilmember Williams questioned Fire Chief Cochran about the bidding process on item 4.

Fire Chief Cochran explained that currently the Fire Department utilizes over 250 different medical supplies throughout the year from seven different vendors. The real savings in the future will be when we are able to lower our inventories because currently we have to purchase in bulk amounts.

Councilmember Williams stated he was more concerned about the process.

Procurement Manager Roop stated we have bid this project before and ended up with multiple vendors. The analysis that was conducted showed that this would be cost neutral. The only reason we're asking for a waiver versus a piggyback because we can utilize other entities' contracts including not for profit. This group goes directly to the manufacturers to get the best price.

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

Councilmember Stout shared her experience from the Lee Health Board and remarked about the savings with this type of bid process.

Councilmember Burch agreed with the bidding done by the Fire Chief and the Procurement Manager to be current, accessible, and affordable.

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

CITIZENS INPUT TIME

Sean Hetz, a local clinical mental health counselor, stated the agenda shows an item to decrease the number of homes for Habitat for Humanity, adding that rents are up 29 percent in this City. A lot of his clients are on Medicaid and ask him where they can get money for rent and food. The complaint against LCEC should not be withdrawn. He commented about solar power, minimum wage, and taking away services.

Brian Delant discussed tiny houses, noting it was a waste of City resources. He could only find two in the State. He stated we should wait for a developer before wasting time. Council should look to Habitat for Humanity for social norm housing.

Wendy Blake submitted a Petition to Council to discuss best practices by the Real Estate Division. She requested to speak to the Council as a whole and will be reaching out individually to address some concerns. She wanted to share her family's first hand experiences involving the City's Real Estate Division. She stated the City has approximately 877 properties in their pipeline. She read from a website www.gray-

robinson.com, who is an eminent domain attorney. Best practices must be in place; results can be catastrophic in court.

Dennie Hamilton, Executive Vice President and CEO of LCEC, spoke about item 10D. LCEC appreciates the recommendation from the City Manager about the item being withdrawn. Their preference has always been negotiation rather than defending against litigation, and their hope was to negotiate a mutually beneficial franchise agreement within a reasonable time frame. They were optimistic that the withdrawal of the complaint and efforts toward good faith negotiations will result in a timely and acceptable agreement.

Richard Osman appeared to speak about the decline in wearing hats and how there will be an increase in skin cancer. City staff working outside should be protected with headgear.

Dan Sheppard discussed the area south of Cape Coral Parkway off Chiquita to El Dorado regarding the new infrastructure being installed for phone and cable underground City-wide. They are doing these as far back as 24 feet; the right of way was 15 feet but it varies throughout the City. He spoke about the irrigation water crisis. There is not enough shade in our City; our ground is very hard so it does not restore our water. He spoke to the engineer on the job and they are putting the pipes three feet down. The problem is you can't plant trees there. If they could put it at a depth of 5 to 6 feet, it won't impede on any planting. He stated while this job is just starting out can we look into this.

John Karcher stated on April 17th he hand delivered a petition to speak to Council. He had a meeting with the City Manager on May 24th who was going to bring that forward. He was hoping that it would be on the agenda next week; if not, when?

Mike Hollow spoke about the impending water towers. He discussed an act under Florida State Statute Chapter 70 that has to do with the Burt Harris Act.

Mayor Sawicki stated she was inclined to hear the Bunch Family petition next week at the June 12th meeting. She requested that the City Clerk add that to the agenda. She stated Pearl will be sending out the petition to all Councilmembers.

Councilmember Leon clarified that Habitat for Humanity is not limiting what we're doing as a City but it's more of a pilot program. He questioned if Mr. Sheppard's request was a possibility. He thanked Mr. Hamilton for coming and bringing up some valid points regarding LCEC.

Mayor Sawicki addressed Mr. Karcher's Petition to Council. She will not accept or allow petitions to go on our agenda that are politically motivated or to politicize a particular candidate's stance.

Councilmember Williams requested the Bunches call the office to set up an appointment.

Councilmember Burch stated he was glad that everything was somewhat resolved for the Bunch Family. It was appropriate for Mr. Hamilton to speak tonight. He clarified that Cape Coral had no interest in fighting with LCEC. He hoped we could get into negotiations and be proud of the final franchise agreement.

Recommendation to Withdraw Public Service Commission Action Against LCEC for Rate Structure Discrimination

City Manager Szerlag stated this was being done in the spirit of cooperation. It would benefit all parties if the City would drop this filing with prejudice which means we cannot go back to the Public Service Commission if we are unsuccessful in any franchise negotiation.

Councilmember Stout stated she was never in favor of action against LCEC. She has been approached by many citizens who have told her that they do not want the City to take over the electric.

Councilmember Williams stated it was never the intention of the City of buying LCEC. He noted there were some issues, and we needed to move forward.

Councilmember Williams moved, seconded by Councilmember Stout to approve the withdrawal of the Public Service Commission action against LCEC with prejudice.

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

PERSONNEL ACTIONS

Resolution 93-17 Approval and ratification of the Tentative Collective Bargaining Agreement between the City of Cape Coral and the Fraternal Order of Police, representing the Officers and Sergeants of Cape Coral Lodge #33

City Manager Szerlag explained what this Resolution would accomplish. He asked all who were involved on the labor and management team to stand up. He stated Doug Lozen can explain what we did with the excess monies from Act 185 that has to be allocated toward pension improvement.

Doug Lozen, Foster and Foster, stated they provided the actuarial calculations during negotiations. In the future as State monies increase, the City will continue to have some access to those increased monies.

Councilmember Burch commented on how we needed to catch up when he first was elected to office. Over time we have corrected the situation, but this is the ultimate achievement.

Councilmember Burch moved, seconded by Councilmember Stout to approve Resolution 93-17.

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

Resolution 94-17 Approval and ratification of the Tentative Collective Bargaining Agreement between the City of Cape Coral and the Fraternal Order of Police, representing the Lieutenants of Cape Coral Lodge #33

Councilmember Burch moved, seconded by Councilmember Cosden to approve Resolution 94-17.

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

PETITIONS TO COUNCIL

None

APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS 529 p.m.

Charter Review Commission - 7 member vacancies and 2 alternate vacancies

Assistant City Clerk Brunns stated the Clerk's Office began advertising for the Charter Review Commission vacancies in December 2016. There are seven member

vacancies and two alternate vacancies. Advertising was done in the newspaper, Cape Coral website, and a Face Book page. Thirteen applications were received. Applicants Jenkins, Solofra, Weiss, and Ollmann have indicated that they are unable to attend this evening based on prior commitments and have asked to be considered.

Interviews

Anthony Bennie
Phyllis Jenkins (not present)
K (Skip) Kitchen II
John McNamara
Tim Ollman (not present)
Ryan Peterson (2/3 vote needed)
Giovanni Robinson (2/3 vote needed)
James Solofra (not present)
Joe Stewart
Andrew Sund
David Thompson (not present)
Christopher Tompkins (not present)
Victoria Weiss (not present)

A majority tally for the seven members was received for Phyllis Jenkins, Skip Kitchen, John McNamara, Ryan Peterson, Giovanni Robinson, Anthony Bennie, and Andrew Sund.

Councilmember Leon moved, seconded by Councilmember Williams to appoint the following to the Charter Review Commission as full members: Phyllis Jenkins, Skip Kitchen, John McNamara, Ryan Peterson, Giovanni Robinson, Anthony Bennie, and Andrew Sund.

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

A majority tally for the two alternates was received for Victoria Weiss and Joe Stewart.

Councilmember Leon moved, seconded by Councilmember Erbrick to appoint the following to the Charter Review Commission as alternate members: Victoria Weiss and Joe Stewart.

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

Councilmember Burch stated this was an important Committee and the alternates should attend all meetings.

ORDINANCES/RESOLUTIONS

Public Hearings

Ordinance 14-17 Second and Final Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the Cape Coral Land Use and Development Regulations, Article II, District Regulations, Section 2.5, Schedule of Land Use Classifications, by adding "Sports Academy" to the schedule of Land Use Classifications; amending Section 2.7, District Regulations, by providing that Private Parks shall be allowed as a permitted use in Single-Family Residential (R-1A and R-1B) and Multi-Family (R-3) districts; and providing that Cultural Facilities; Hotels/Motels-Resorts Only; Recreation, Commercial, Group II; and Schools, Commercial (Sports Academy Only) uses shall be allowed as special exception uses in the Single-Family Residential (R-1A and R-1B) and Multi-Family Residential (R-3) districts under certain identified conditions;

amending Article XI, Definitions, by revising the definition of "Resort" and adding a definition for "Sports Academy."

P&Z recommendation: At the March 1, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted (7-0) to recommend approval of Ordinance 14-17.

City Management Recommendation: Recommends approval of the requested amendment.

Assistant City Clerk Bruns read the title of the Ordinance.

Planning Team Coordinator Daltry presented a power point with the following slides:

- Ordinance 14-17
- Summary
- Analysis/Purpose
- Recommendation

Public Hearing opened.

No Speakers

Public Hearing closed.

Councilmember Erbrick moved, seconded by Councilmember Williams to adopt Ordinance 14-17, as presented.

Discussion held regarding locations where these uses would be allowed.

Discussion held regarding the benefit of passing this Ordinance.

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

Ordinance 22-17 (PDP 16-0010*) Public Hearing (At the applicant's request, this item will also be continued to June 12, 2017)

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

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending Ordinance 14-05 which approved a Planned Development Project entitled "Entrada," providing for Planned Development Project approval for property located at the intersection of Del Prado Boulevard North and De Navarra Parkway, granting rezoning of a 10.57 acre tract from Multi-Family Residential (R-3) to Pedestrian Commercial (C-1); granting a special exception for an Automotive Service Station - Limited with Convenience Store use; granting subdivision approval.

HEX Recommendation: The Hearing Examiner recommends approval of the Project, subject to the terms and conditions set forth in the PDP HEX Recommendation Order 2-2017.

City Management Recommendation: City Management recommends approval with conditions.

INTRODUCTIONS

Ordinance 25-17 Set Public Hearing Date for July 24, 2017

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the Code of Ordinances, Chapter 2, Administration, Article III, Personnel Rules and Regulations, Division 11, Attendance and Leave, to change the list of designated holidays by removing Columbus Day and adding Christmas Eve Day

Assistant City Clerk Bruns read the title and scheduled the public hearing date.

Human Resources Director Sonogo stated she was available to answer any questions.

Councilmember Williams questioned why this was being done.

Director Sonogo stated there were some requests from directors and managers that the dates be changed. She stated we approached the unions and asked if they had a preference to do that as well. The two contracts that just went through has that change. The General Unions are looking at ratifying that this month.

UNFINISHED BUSINESS

Water Quality

Councilmember Carioscia asked what staff was doing to address the one day watering to go back to the normal two days a week.

City Manager Szerlag stated he will be speaking with Mr. Pearson tomorrow about lifting the restriction. We are in the 90 days stage to have a drawdown of the reservoir of 17 million gallons a day. There has been a complaint against us that we caused a well to go dry. He instructed Mr. Pearson to have the geologists determine if pumping 17 million gallons a day from the reservoir into our canal system has an adverse effect on the surrounding wells. DEP and FDOT will want to know as well. If we go back to a two day a week watering, he will need to stop the pumping of the reservoir. Before he does that, he wants to know if there is an impact on the well system.

Councilmember Leon inquired about the location of the well that went dry.

City Manager Szerlag stated it was a well in a correctional facility north of the reservoir in Charlotte County.

Legislative Issues – Update

None.

Update Single Family Impact Fee Deferral - Housing Coordinator Yearsley

Housing Coordinator Yearsley provided an update on the single family impact fee deferral. Slides included:

- Background
- Considerations
- Initial Proposal
- Proposed Changes
- Cape Coral Housing Elevations
- Habitat for Humanity Elevations
- Photos

Councilmember Leon explained why he could not support this; he did not think it was right to ask the citizens to help bear that cost. It should be up to the private sector.

Councilmember Stout requested that Kitty or Bonnie to come forward and explain the Ordinance as far as what it would do to them.

Kitty Green, Habitat for Humanity, stated it would help to reduce costs that it takes to put someone in an affordable home so that we can provide more affordable homes. There is a huge need.

Bonnie Schnell, Cape Coral Housing Development Corporation, stated the more people we can help the better it is for us. She appreciated Council bringing this forward for both agencies.

Councilmember Burch thanked them for the leadership they have provided in Lee County for many years. He stated this was a deferral and not an elimination of impact fees. This will help the quality of life in the community.

Councilmember Burch moved, seconded by Councilmember Williams to approve the single family impact fee deferral.

Mayor Sawicki requested that the City Manager clarify what he was looking for on this topic.

City Manager Szerlag stated that Gary Aubuchon and Kitty Green asked to meet with him about this program, and he thought it was a good idea to advance it to City Council. He recommended this program.

Financial Services Director Bateman explained the analysis that was done by Finance. She stated the deferral is up to ten years on 100 homes. We would not be losing the original impact fees; it would be for the interest for those years if you did not pay the impact fees. Over ten years the interest would be \$420,000. At the same point, we would be getting ad valorem for ten years of \$1.1 million that we would not get today if it was just vacant land.

City Manager Szerlag stated a consensus was being requested and a resolution could be brought forward next week.

Mayor Sawicki stated there was already a motion with a second. She commented that affordable housing was critical, and we are going in the direction of providing it. She stated this is part of a bigger problem of not having the wages for the jobs in your community for people to afford housing. It would be nice to see an update on our Economic Development on what we are doing. It's not just about lost revenue or impact fees. We need to have discussion on what we are continuing to do to bring in higher wage jobs. She noted this could be addressed at the Strategic Planning meeting to be held soon.

Councilmember Carioscia stated he would support this because of the revenue stream from ad valorem taxes, as well as the Public Service Tax, and the Fire Service Assessment.

City Attorney Menendez stated there will be a need to adopt an Ordinance in order to accomplish this amendment to the impact fee structure.

Councilmember Burch amended his motion to accept the deferral of the impact fees and all the associated items that go in the Resolution that come forward. Second agreed.

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

Recommendation to Withdraw Public Service Commission Action Against LCEC for Rate Structure Discrimination
item 10D moved directly after citizens input

NEW BUSINESS

Councilmember Appointment to the Tourist Development Council (TDC)
item 11A withdrawn

REPORTS OF THE MAYOR AND COUNCIL MEMBERS

Councilmember Cosden – Topic: Coral Ridge Memorial Day

Councilmember Erbrick – Topics: Thanks to the family at Coral Ridge for the excellent service; Fire Department Annual Recognition Ceremony, congratulations to all promoted and those who retired; last Friday three new members were sworn in to our Cape Coral Police Department; update on Mid Cape have met with business owners and have had a couple of sweeps with Waste Pro, went through community cleaned up the corridors, alleyways, and streets.

Councilmember Leon – Topic: No report

Councilmember Stout – Topic: No report

Councilmember Williams – Topics: Attended the Fire Department Recognition Ceremony; Memorial Day attended the ceremonies at Coral Ridge, Iraq Memorial, and the Military Museum; Friday Youth Council meeting. He inquired if there was any interest in Festival Park now that there is a Parks Master Plan. We need to start putting together a plan. There are things that could be done now or next year without having millions of dollars. He wanted staff to gather information on what it would cost us to move forward with a plan for Festival Park.

Councilmember Leon seconded it. He agreed 100 percent. He noted all the nearby events going on even in fields for concerts.

Councilmember Williams stated he agreed with the concept of the bands. He was looking as a first step for staff to tell us how much it would cost to get a Master Plan made for Festival Park.

Mayor Sawicki stated the Parks Master Plan was recently done. She wanted to be cautious that we do not circumvent the money that we already spent. She wanted to know where that falls and what staff has done so far. She asked the City Manager to provide an update.

City Manager Szerlag stated as opposed to a Master Plan, the question is what will it take to have a performance venue at Festival Park for 5,000 people. Staff will provide a scope of work. He mentioned that it is in our plan document and unfunded needs are document as well.

Mayor Sawicki stated she was not in favor for spending any money on additional studies.

City Manager Szerlag stated he would see what can be done in house first.

Councilmember Williams stated we need to know what we want to do with the whole park. He suggested the City Manager, Director Pohlman, and whoever else to brainstorm. He wanted to get something going without costing the City a lot of money that would provide a big benefit to the residents.

Councilmember Erbrick stated she thought that once the Parks and Master Plan was developed, we would start looking into this. She mentioned a potential referendum. She was in support of starting something since the venue at Sun Splash is getting tight for the Coconut Festival.

Mayor Sawicki stated she wanted to see how it falls within the Parks Master Plan and if it is a priority. City Manager Szerlag stated they would come back with some information.

Councilmember Burch stated his concern for the Old Golf Club Property, 178 acres sitting in the most populated part of the City, and we allow it to sit, and yet there is no population near Festival Park.

Councilmember Leon stated Festival Park is land that is currently owned by the City unlike the golf course. This is a good discussion for the Youth Council to get involved. He asked Councilmember Williams if he would work with them and staff to get their feedback and have them come and present what they think of this for the future.

Councilmember Williams stated the next meeting for the Youth Council will be on June 16. Parks and Recreation Director Pohlman will be presenting the Parks Master Plan. He stated in response to Councilmember Burch that these are two different venues.

Councilmember Williams – Topic: No report

Councilmember Burch – Topic: No report

Councilmember Carioscia – Topic: No report

Mayor Sawicki – Topics: May 25th attended the Cape Coral Fire Awards Ceremony; Attended Memorial Day events at Coral Ridge, Iraq Memorial, and Military Museum.

Mayor Sawicki inquired of City Manager Szerlag what it would take to get a City flag for the Military Museum.

City Manager Szerlag stated they would accommodate that request.

Mayor Sawicki – June 1st and 2nd Daytona Insurance Trust meeting; June 8th panelist for the Above-Board Chamber; June 8th Cape Coral Fire Department hosting a Hurricane Seminar in Council Chambers at 5 p.m.; Oasis Charter School local grants.

REPORTS OF THE CITY MANAGER AND CITY ATTORNEY

City Attorney – Topic: No report.

City Manager – Topic: No report.

TIME AND PLACE OF FUTURE MEETINGS

A regular meeting of the Cape Coral City Council was scheduled for Monday, June 12, 2017 at 4:30 p.m. in Council Chambers.

MOTION TO ADJOURN

There being no further business, the meeting adjourned at 6:59 p.m.

Submitted by,



Rebecca van Deutekom, MMC
City Clerk

ORDINANCE 36-18

Introduction 5/14/2018

Public Hearing 6/18/2018

Department of Community Development

Planning Division

BACKGROUND

- City approached by Habitat for Humanity of Lee and Hendry County regarding a single-family impact fee program (Kitty Green, CEO and Gary Aubuchon, Board Member);
- Staff presented the concept a March 2017 COW meeting - several questions were raised;
- Staff brought forth a revised proposal in June 2017; this proposal revised the number of homes in the pilot, modeled after the Collier ordinance and required repayment at first transfer. This proposal was approved by City Council with a vote of 7-1 recognizing that an ordinance change would still need to be brought forward.

PROGRAM PARAMETERS

- Unit Requirements
 - Single family properties – New Construction (100 units maximum)
- Buyer Requirements
 - Household income less than 120% the Area Median Income provided annually by the U.S. Department of Housing and Urban Development and Florida Housing Finance Corporation data;
 - Buyer first mortgage cannot exceed 30% of the projected annual income for the household – unless approved by primary lender;
 - Buyer income qualified using 24 CFR Part 54/HUD Handbook 4350.3

PROGRAM PARAMETERS

- Developer Requirements
 - Non-Profit Housing Development Corporation participating in the City's Affordable Housing Programs
 - In existence over 2 years with proven experience in developing affordable single family units
 - Experience with 24 CFR Part 53/HUD Handbook 4350.3
 - Required to operate and maintain an office within Lee County, which is easily accessible to the general public and provides reasonable accommodations for persons requesting assistance.

PROGRAM PARAMETERS

- Repayment Provisions
 - Sale of property by initial income qualified buyer;
 - Refinancing of the purchase mortgage or loans secured by senior real property security instruments;
 - A loss of the homestead exemption;
 - Repayment shall include any accrued interest.

PROGRAM PARAMETERS

- Development Agreement Requirements
 - Agreements with Developer/Buyer outlining requirements recorded in public record
- Monitoring and Violation Provisions
 - Annual monitoring of homestead by City of Cape Coral Staff
 - Payment demand/foreclosure

QUESTIONS



Item Number:	7.B.
Meeting Date:	6/18/2018
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA
REQUEST FORM
CITY OF CAPE
CORAL**



TITLE:

Ordinance 38-18 Public Hearing

REQUESTED ACTION:

STRATEGIC PLAN INFO:

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

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

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

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An Ordinance ordering and calling for a Bond Referendum Election to be held on November 6, 2018 in the City of Cape Coral, Florida to determine if the qualified electors residing in the City approve the issuance by the City of General Obligation Bonds which shall mature not later than Fifteen (15) Years from their date of issuance in an aggregate principal amount not exceeding \$60,000,000 payable from Ad Valorem Taxes levied in amounts sufficient to pay Debt Service on such Bonds on all taxable property within the City to finance costs relating to the acquisition, construction and equipping of Various Parks, Natural Areas, Recreational and Athletic Facilities; Trails, Boating, Fishing and Swimming Facilities, and Wildlife Habitat and Shoreline Protection Improvements; providing severability and an effective date.

LEGAL REVIEW:

EXHIBITS:

REVISED - Ordinance 38-18

Updated Memo - dated 6/13/2018

REVISED - Presentation

PREPARED BY:

Division- Department- City
 Attorney

SOURCE OF ADDITIONAL INFORMATION:**ATTACHMENTS:**

Description	Type
▣ REVISED - Ordinance 38-18	Backup Material
▣ Updated Memo - dated June 13, 2018	Backup Material
▣ Revised Presentation	Backup Material

ORDINANCE 38 - 18

AN ORDINANCE ORDERING AND CALLING FOR A BOND REFERENDUM ELECTION TO BE HELD ON NOVEMBER 6, 2018 IN THE CITY OF CAPE CORAL, FLORIDA TO DETERMINE IF THE QUALIFIED ELECTORS RESIDING IN THE CITY APPROVE THE ISSUANCE BY THE CITY OF GENERAL OBLIGATION BONDS WHICH SHALL MATURE NOT LATER THAN FIFTEEN (15) YEARS FROM THEIR DATE OF ISSUANCE IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$60,000,000 PAYABLE FROM AD VALOREM TAXES LEVIED IN AMOUNTS SUFFICIENT TO PAY DEBT SERVICE ON SUCH BONDS ON ALL TAXABLE PROPERTY WITHIN THE CITY TO FINANCE COSTS RELATING TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF VARIOUS PARKS, NATURAL AREAS, RECREATIONAL AND ATHLETIC FACILITIES; TRAILS, BOATING, FISHING AND SWIMMING FACILITIES, AND WILDLIFE HABITAT AND SHORELINE PROTECTION IMPROVEMENTS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA:

SECTION 1. FINDINGS. The City Council of the City of Cape Coral Florida (the "City") hereby finds and determines that:

(a) It is necessary and desirable and in the best interests of the City to acquire, construct and equip various parks, natural areas, recreational and athletic facilities, trails, boating, fishing and swimming facilities, and wildlife habitat and shoreline protection improvements (as generally described in Exhibit A hereto and more particularly described in the plans and specifications on file with the City, the "Project"), in order to promote, improve, maintain and protect the health, safety and welfare of the residents of the City.

(b) The most efficient and fair method of financing costs of the Project is through the issuance of general obligation bonds (the "Bonds") maturing not later than fifteen (15) years from their date of issuance, and secured by and payable from ad valorem taxes levied in amounts sufficient to pay debt service on such Bonds on all taxable property within the City (the "Ad Valorem Taxes").

(c) In accordance with the Constitution of the State of Florida and the Charter of the City, the question as to whether or not such Bonds should be issued to finance costs of the Project must be submitted to the qualified electors of the City.

SECTION 2. BOND REFERENDUM ELECTION. A bond referendum election of the qualified electors in the City is hereby ordered and called to be held on November 6, 2018, to determine whether or not the City shall issue the Bonds in one or more series to finance costs of the Project. Such Bonds shall mature not later than fifteen (15) years from their date of issuance, shall be issued in an aggregate principal amount of not exceeding \$60,000,000, shall bear interest at a rate not in excess of the maximum lawful rate and shall be secured by and payable from the Ad Valorem Taxes. If the issuance of

the Bonds is approved by the qualified electors, the specific provisions of the Bonds shall be set forth in a resolution or ordinance subsequently adopted by the City Council.

SECTION 3. MANNER OF VOTING. The referendum election shall be conducted in accordance with applicable law at the same time and places as the general election to be held on November 6, 2018, coordinated by the Supervisor of Elections of Lee County and, to the extent required, the City Clerk. Early voting may be utilized to the extent allowable by, and in accordance with, applicable law.

SECTION 4. OFFICIAL BALLOT. The form of ballot to be used shall be in substantially the form as attached hereto as Exhibit B. The ballots to be used in the referendum election, including any required sample ballots, shall be prepared and distributed by the Supervisor of Elections of Lee County in accordance with applicable law. Electronic balloting may be utilized to the extent allowable by, and in accordance with, applicable law.

SECTION 5. VOTE BY MAIL. Adequate provision shall be made by the Supervisor of Elections of Lee County for "Vote by Mail". Ballots to be used in the referendum election for "Vote by Mail" shall be in substantially the same form as those ballots utilized at the polling places on the day of the referendum election. Ballots for "Vote by Mail" shall be distributed, collected and canvassed in accordance with applicable law.

SECTION 6. ELECTION RESULTS. Returns of the votes cast at the referendum election shall be certified by the City Council in accordance with Article IX of the City's Charter. If a majority of the votes cast at such election in respect to the aforestated proposition shall be "YES - For Bonds" votes, such proposition shall be approved and the Bonds may be issued by the City. If a majority of the votes cast at such election in respect to the aforestated proposition shall be "NO - Against Bonds" votes, such proposition shall be defeated and the Bonds may not be issued by the City.

SECTION 7. NOTICE OF BOND REFERENDUM ELECTION. A public notice, substantially in the form attached hereto as Exhibit C, shall be published in full in a newspaper of general circulation in the City in the manner provided by law. The notice shall be published at least 30 days prior to the bond referendum election, once in the fifth week prior and once again in the third week prior to the week in which the bond referendum election is held, all in the manner provided in Section 100.342, Florida Statutes. The City Clerk is hereby charged with the responsibility of this notice procedure.

SECTION 8. SUPERVISORS OF ELECTIONS. The City Clerk is hereby authorized and directed to coordinate with and through the Supervisor of Elections of Lee County in carrying out the purposes of this Ordinance.

SECTION 9. CONFLICTS. If there is conflict between the provision of this Ordinance and any other ordinance or resolution or portions thereof, the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 10. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

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 JUNE, 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 JUNE, 2018.

REBECCA VAN DEUTEKOM, CITY CLERK

APPROVED AS TO FORM:

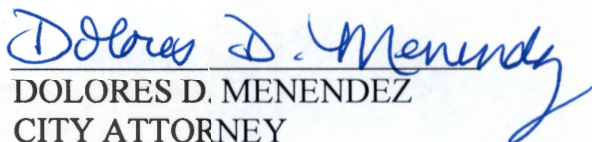

DOLORES D. MENENDEZ
CITY ATTORNEY
6/4/18

EXHIBIT A

The Project consists of various park and recreational capital improvements, including but not limited to, parks, natural areas, recreational and athletic facilities, trails, boat ramps, piers, swimming and fishing facilities and improvements and facilities to protect wildlife habitat and improve shoreline protection, all as more particularly described in the City of Cape Coral Parks Master Plan and other plans and specifications on file with the City, as the same may be amended and supplemented from time to time by the City.

EXHIBIT B

**Official Ballot
City of Cape Coral, Florida
Bond Referendum Election
November 6, 2018**

**Cape Coral General Obligation Bonds For Parks, Wildlife Habitat and
Shoreline Protection and Recreational Facilities**

To finance costs of various parks, natural areas, recreational and athletic facilities, trails, boat ramps, piers, swimming and fishing facilities, and improvements for wildlife habitat and shoreline protection, shall the City of Cape Coral issue general obligation bonds not exceeding \$60,000,000, maturing within 15 years of issuance, with interest not exceeding the maximum legal rate, and payable from ad valorem property taxes levied in amounts sufficient to pay debt service on such Bonds?

INSTRUCTIONS TO VOTERS:

☐ **YES - FOR BONDS**

☐ **NO - AGAINST BONDS**

EXHIBIT C

**Notice to Electors of the City of Cape Coral
of a Bond Referendum Election to be held on November 6, 2018
Regarding Cape Coral General Obligation Bonds For Parks, Wildlife Habitat and
Shoreline Protection and Recreational Facilities**

Notice is hereby given that a bond referendum election will be held on November 6, 2018, to determine whether the City of Cape Coral may finance the acquisition, construction and equipping of various parks, natural areas, recreational and athletic facilities, trails, boat ramps, piers, swimming and fishing facilities, and improvements for wildlife habitat and shoreline protection by issuing general obligation bonds maturing not later than fifteen (15) years from their issuance date in a principal amount not exceeding \$60,000,000, with interest not exceeding the maximum legal rate, which bonds shall be payable from ad valorem property taxes levied in amounts sufficient to pay debt service on such Bonds on all taxable property within the City.




As required by Ordinance No. _____, this Notice is given by publishing said Ordinance No. _____ in full as follows:

[copy Ordinance]

MEMORANDUM

CITY OF CAPE CORAL CITY MANAGER'S OFFICE

TO: Mayor and Council Members

FROM: John Szerlag, City Manager 
Victoria Bateman, Finance Director *m.v. for V.B.*
Kerry Runyon, Parks and Recreation Director 
Jay Murphy, Business Manager
Connie Barron, Public Affairs Manager 

DATE: June 13, 2018

SUBJECT: Consideration of General Obligation Bond Referendum Question for the
November 2018 General Election – Updated

RECOMMENDATION

The City Council adopted the Parks Master Plan in December 2016. The master plan identified various parks and recreation deficiencies and developed a strategic course to address these deficiencies. The plan includes parks and recreational improvements, athletic facilities, trails, boat ramps, protection of wildlife habitat and natural areas.

The cost to address the parks and recreation needs identified in the Parks Master Plan is about \$57 million. Trying to fix these deficiencies on a "pay as you go" plan is not a feasible option and could take decades to complete. Because of the need to move forward and begin implementing the Master Plan, City staff is recommending City Council ask the voters to consider a General Obligation (GO) bond not to exceed \$60 million. The term of the bond will be 15 years. Please know that bond proceeds will not be used for recurring "Operation and Maintenance" costs or future personnel costs (see Financial Considerations). The designated projects are attached for ease of reference and a map showing the locations thereof is forthcoming.

GO bonds cannot be issued without the approval of the voters. By placing this referendum on the November ballot, our residents will have the opportunity to decide if they want these parks and recreation projects to be completed. If they vote in the affirmative, the \$60 million bond will be repaid with ad valorem taxes levied on all taxable property via a debt service millage rate, which is estimated in the range of 0.4 mills.

PARKS MASTER PLAN OVERVIEW

City staff first met in August 2015 to begin the process of developing a master plan for the City's parks and recreation needs. In January 2016, a group of residents were assembled to assist in the development of the plan. The stakeholders provided valuable input, which was instrumental in the final product presented to City Council in December 2016.

The final Parks Master Plan contains 46 recommendations within the seven following categories:

Neighborhood, Community, and Nature Parks
Special Venues
Beach and Water Access
Trails and Bikeways
Signage and Wayfinding
Programs and Special Events
Maintenance and Operations*

**This category references only the development of a comprehensive maintenance plan and establishing maintenance facilities. This is not related to the ongoing annual operating and maintenance costs and future personnel costs.*

The Parks Master Plan did not consider the 175 acres of property formerly known as the Golf Club, which the City now is negotiating to purchase. A recent request also was advanced to build athletic fields by the Oasis Charter Schools. Due to these two new variables, we have reassembled the Parks Master Plan stakeholders. They have been tasked to determine if there is a need or desire to amend the plan taking these variables into consideration and also how they might impact Yacht Club venue facilities, Four Freedoms Park and Festival Park.

The stakeholders have been challenged to complete this task by mid-August. Any suggested changes to the Master Plan will be presented to City Council for adoption.

FINANCIAL CONSIDERATIONS

Recurring Costs Associated with Operations and Maintenance

The Master Plan estimates construction costs amounting to \$42 million, while planning and design costs are about \$14.7 million. The total is \$56.7 million. The plan estimates recurring operating and maintenance costs of \$3 million upon completion of all projects. Future personnel costs will be determined based on the venue. These costs are not included in the \$60 million GO bond.

Grant Fund Revenues

If voter approval is received and the GO bond issued, the City will move forward with the projects immediately. The City also will identify and seek numerous grant opportunities that may be available. Most of these grants are limited to specific uses and require matching funds. They also are released on a specific schedule. While we are optimistic that grant funds can be acquired, because of the specific guidelines, we cannot include grants as a known source of funding.

Other Revenues

Many of these future venues will generate revenues via concessions, admission fees, rentals and contracts. While not expected to be substantial, these revenues will offset some of the future costs.

Bond Market

The City's financial markets advisor, Julie Santamaria, Director, RBC Capital Markets, has prepared a proforma for issuance of a \$60 million GO bond for 15 years. Based on current market conditions these bonds will be sold at a premium and will provide the City with \$58.4 million in total capital revenue with an expected interest rate about 3.58%.

Attached is a summary prepared by RBC that offers further information.

JS/VB/KR/JM/CB:pd

Attachments: List of Projects
RBC Summary

Cape Coral Parks Master Plan 2016

Current Recommendations

Project	Development Cost	Location	O & M	Total
Yacht Club	\$19,400,000	SE	\$650,000	\$20,050,000
Festival Park	\$1,250,000	NW	\$300,000	\$1,550,000
Lake Kennedy Community Park	\$2,900,000	SW	\$150,000	\$3,050,000
Yellow Fever Creek	\$3,900,000	NE	\$900,000	\$4,800,000
Gator Circle Park	\$2,735,000	NE	\$130,000	\$2,865,000
Cultural Park	\$2,735,000	SE	\$130,000	\$2,865,000
Crystal Park	\$2,735,000	NW	\$130,000	\$2,865,000
Sands Park	\$2,735,000	SW	\$130,000	\$2,865,000
Lake Meade	\$2,735,000	NE	\$130,000	\$2,865,000
Oasis Woods	\$2,735,000	SW	\$130,000	\$2,865,000
Tropicana Park	\$2,735,000	NW	\$130,000	\$2,865,000
Acquire Land	\$5,000,000	All	N/A	\$5,000,000
Develop Citywide Park Design	\$50,000	New Parks	N/A	\$50,000
Improve Existing Aesthetics	\$5,000,000	All Areas	N/A	\$5,000,000
Totals	\$56,645,000		\$2,910,000	\$59,555,000

RBC SUMMARY

SOURCES AND USES OF FUNDS

City of Cape Coral
General Obligation Bonds, Series 2019

Dated Date 02/01/2019
Delivery Date 02/01/2019

Sources:

Bond Proceeds:	
Par Amount	54,200,000.00
Net Premium	5,797,049.65
	<hr/>
	59,997,049.65
	<hr/>

Uses:

Project Fund Deposits:	
Project Fund	58,400,234.31
Other Fund Deposits:	
Capitalized Interest Fund	1,281,315.34
Delivery Date Expenses:	
Cost of Issuance	180,000.00
Underwriter's Discount	135,500.00
	<hr/>
	315,500.00
	<hr/>
	59,997,049.65
	<hr/>

Figure 1 Table prepared by RBC, Julie Santamaria, Director Capital Markets

REVISED
6/18/18

Parks Master Plan



General Obligation Bond Referendum
November 2018

General Obligation Bond Referendum
November 6, 2018

**Cape Coral General Obligation Bonds For Parks, Wildlife Habitat and
Shoreline Protection and Recreational Facilities**

To finance costs of various parks, natural areas, recreational and athletic facilities, trails, boat ramps, piers, swimming and fishing facilities, and improvements for wildlife habitat and shoreline protection, shall the City of Cape Coral issue general obligation bonds not exceeding \$60,000,000, maturing within 15 years of issuance, with interest not exceeding the maximum legal rate, and payable from ad valorem property taxes levied in amounts sufficient to pay debt service on such Bonds?

Parks Master Plan

Working with contracted consultant, Barth Associates, as well as conducting various workshops, surveys and focus groups over a 12-month period, the 2016 Parks Master Plan was officially adopted by the City Council in December.

The outcome of the Master Plan is an **objective assessment** of leisure and recreation needs of the community, with a goal of ensuring that City **resources are invested** in the **programs and facilities** that are **most important** to the **citizens** of Cape Coral moving forward.

Today, represents the next step of the process. Council will discuss and determine if the proposed funding source, and methodology is a viable alternative for implementation of the funding plan. Grants, sponsorships, rentals and activity fees are anticipated as a source of funding.

Bond Facts

Provided by RBC

Issue

- Maximum Amount \$60 m.
- 15-year Maturity
- Max. Annual Debt Service
 - \$5.2 m
 - \$14.3 est. 2018 taxable value
 - Estimated .36 mils

Distribution

- Premium Bonds @ 110.696
- Average Life 8.885 years
- All-In TIC est. at 3.585%
- Distribution
 - Project: \$ 58.4 m
 - Cap. Interest: \$ 1.3 m
 - Fees: \$.3 m

Current Inventory

- Regional Park
 - Four-Mile Cove
- Community Parks (2)
 - Yacht Club
 - Lake Kennedy
 - Senior Center
 - Special Pops
 - Youth Center
- Attractions
 - Sun Splash
 - Coral Oaks
- Specialty Parks (23)
 - BMX Park
 - RC Seahawks
 - Skate Park
 - Boat Ramps (3)
 - Athletic Fields (11)
 - Sirenia Vista
 - Del Prado Linear
- Neighborhood (10)
 - Camelot
 - Giuffrida
 - Jaycee
 - Jeffers
 - Stonis
 - Sanborn
 - Saratoga
 - Veterans
- Rec Centers
 - Art Studio
 - Four Freedoms
 - Lake Kennedy
 - Rotary
 - Rotino Center
 - Bill Austen Youth Center
 - Yacht Club



Level of Service Analysis

Year		2015			Buildout	
Population		175,229			400,000	
Park Acreage Calculation	Comp Plan LOS Target	Acreage	Need	Acreage (need)/surplus	Target Acreage	Acreage (need)/surplus
Total	8.50	829	1,489	(660)	3,400	(2,570)
Regional	4.00	365	701	(336)	1,600	(1,235)
Community	2.00	59	350	(291)	800	(741)
Neighborhood	2.00	59	350	(291)	800	(740)
Specialty	0.50	345	87	258	800	146



Master Plan Prioritized Needs

North

Crystal Lake Park

P3; Beach, cable ski; aqua park
Fees: through P3

Tropicana Park

Boat ramp; kayak/canoe ramp;
neighborhood park
Fees: Pavilion rentals; trailer parking

Festival Park

Amphitheater, and multi-sports complex
Fees: Facility rental; programs

Yellow Fever Creek

Ltd development; Welcome Ctr, dog park,
disc golf, primitive camping, trails (170
acres)
Fees: Dog Park, camping

Gator Circle

Neighborhood Park(s)
Fees: Shelter/pavilion rentals

Lake Meade

Large Community Park
Fees: Programs/Pavilion Rentals

South

Lake Kennedy Park

Pickleball/Tennis complex
Fees: Member fees; tournaments

Cultural Park

Expansion/renovation; Outdoor
space and garden; weddings
Fees: Rental of area for art shows;
weddings, etc.

Sands Park

Neighborhood Park
Fees: Shelter/pavilion rentals

Oasis Woods

Trails, environmental education
Fees: Possible program fees

Yacht Club

Programming for renovation,
improvements, expansion of beach,
add parking, etc.

Former Golf Club

Currently Unfunded/not Programmed

Based on needs assessment preliminary development program may include but not limited to:

- Paved multi-use trails
- Indoor recreation/fitness center
- Dog park
- Nature park
- Large “destination” playground
- Multi-purpose lawns w/ outdoor theatre
- Restrooms
- Picnic shelter(s)
- Tennis, pickleball, and basketball courts
- Lawn game rentals/shaded picnic areas

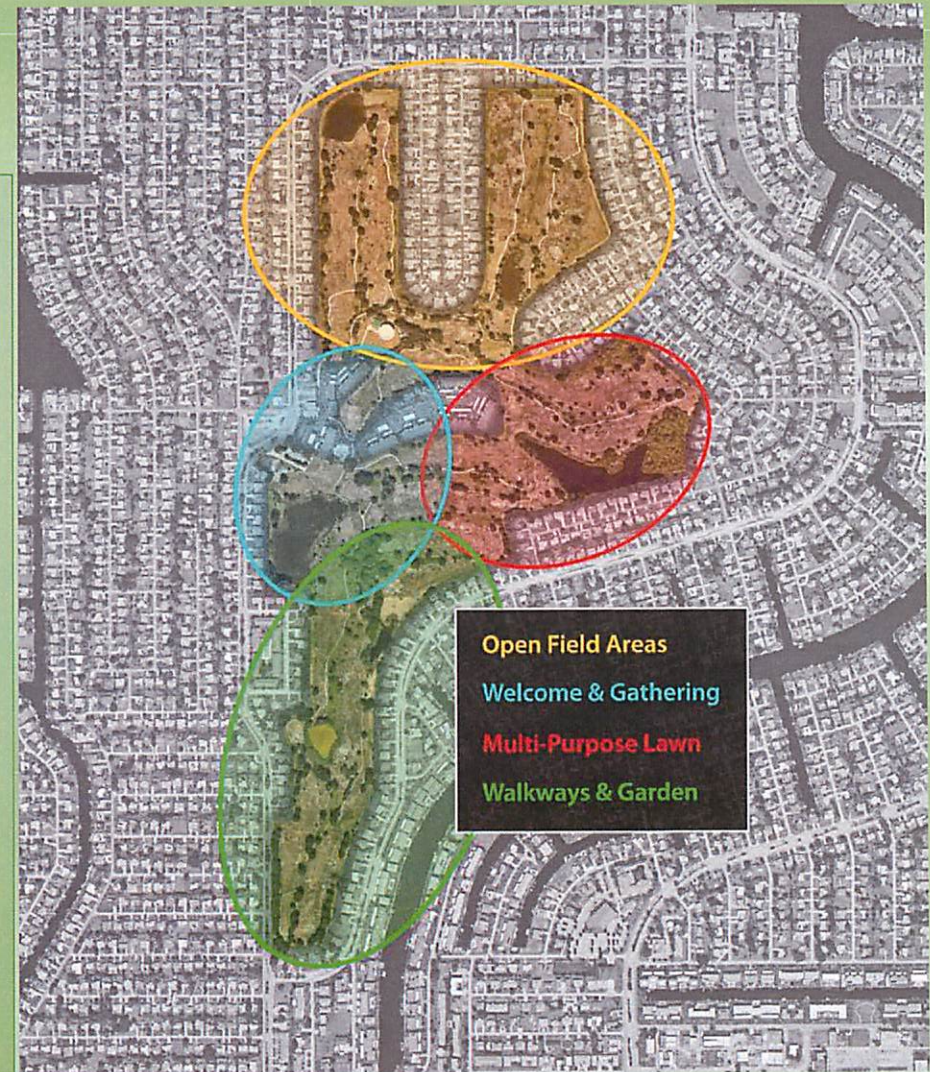
First locate the recreation/fitness community center/restaurant which is the main hub.

Lay out the main trail, meandering along the perimeter and the most scenic areas of the site to maximize trail length and user-experience.

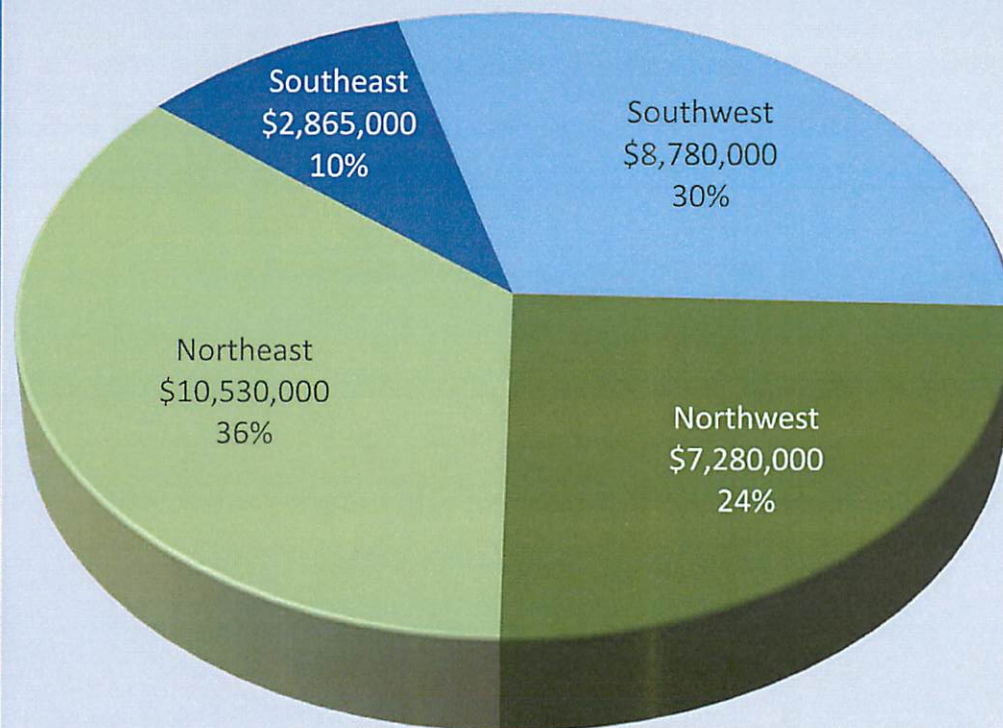
Locate bubbles for the other uses based on compatibility, sensitivity to residential areas, and sensitivity to natural features

Provide trail connections to each use – or cluster of uses – to create separate “rooms” or spaces for different venues. Do residents walk/bike or drive to each venue, Wi Fi and outdoor seating areas with shade.

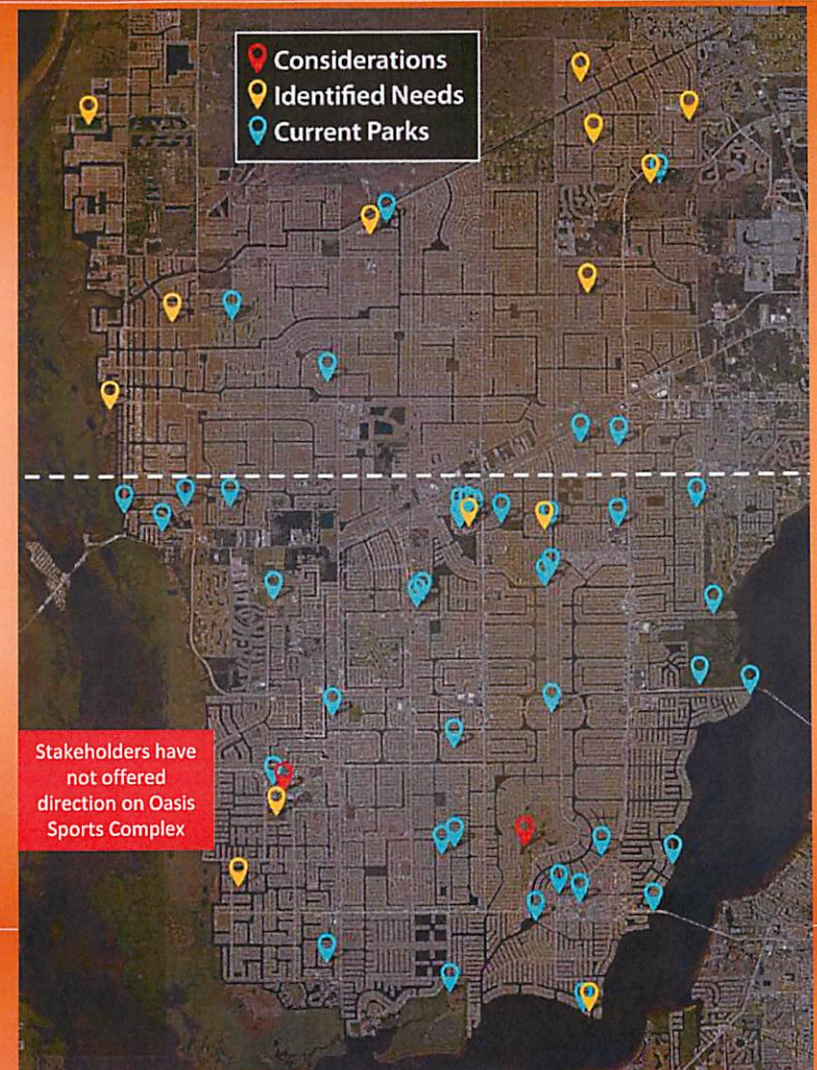
Seek opportunities to generate multiple benefits for the City



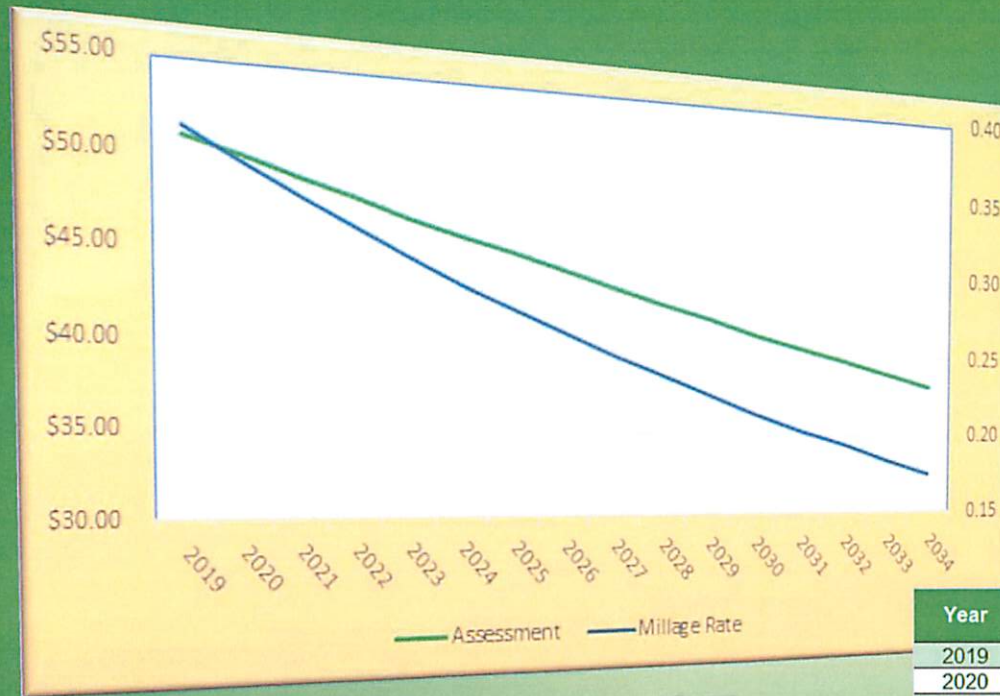
Fund Distribution Less Yacht Club, Land Acquisition, Aesthetics and Design Fees



A direct inverse correlation exists between population and dedicated funds.

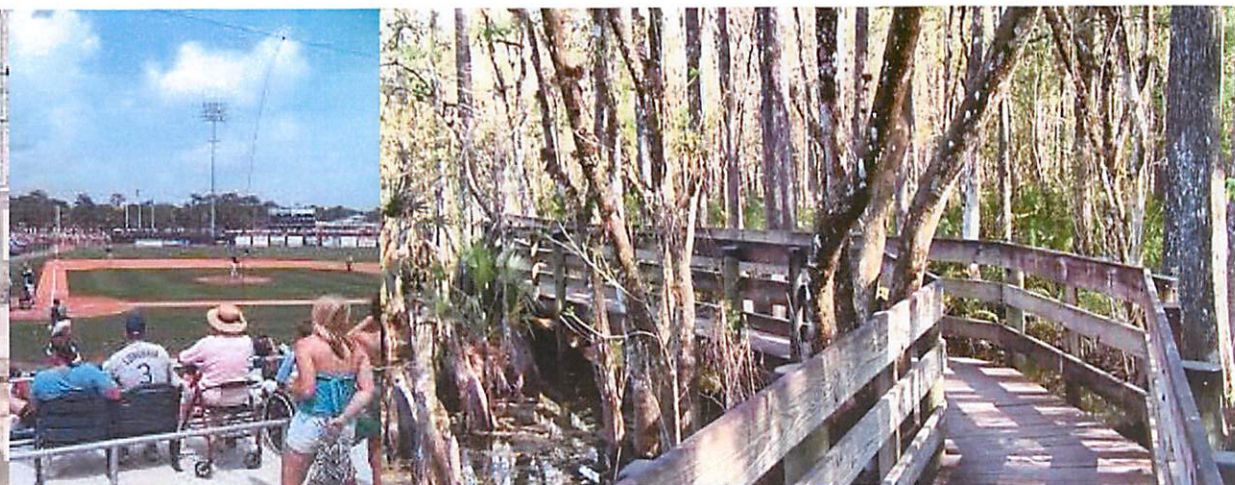


Declining Impact of Assessment



Assessment is based on the Average Taxable Value of a Residential Home allowing for annual SOH inflation

Year	Annual Debt Service	Property Value (\$000)	Millage Rate	Avg Taxable Value	Assessment	Referendum Balance
2019						\$ 54,200,000
2020	\$ 5,210,300	\$ 15,015,000	0.34701	\$144,200	\$ 50.04	\$ 51,595,000
2021	\$ 5,208,200	\$ 15,765,750	0.33035	\$148,526	\$ 49.07	\$ 48,940,000
2022	\$ 5,212,000	\$ 16,554,038	0.31485	\$152,982	\$ 48.17	\$ 46,175,000
2023	\$ 5,208,750	\$ 17,381,739	0.29967	\$157,571	\$ 47.22	\$ 43,275,000
2024	\$ 5,208,750	\$ 18,250,826	0.28540	\$162,298	\$ 46.32	\$ 40,230,000
2025	\$ 5,211,500	\$ 19,163,368	0.27195	\$167,167	\$ 45.46	\$ 37,030,000
2026	\$ 5,211,500	\$ 20,121,536	0.25900	\$172,182	\$ 44.60	\$ 33,670,000
2027	\$ 5,208,500	\$ 21,127,613	0.24653	\$177,348	\$ 43.72	\$ 30,145,000
2028	\$ 5,212,250	\$ 22,183,993	0.23496	\$182,668	\$ 42.92	\$ 26,440,000
2029	\$ 5,212,000	\$ 23,293,193	0.22376	\$188,148	\$ 42.10	\$ 22,550,000
2030	\$ 5,207,500	\$ 24,457,853	0.21292	\$193,793	\$ 41.26	\$ 18,470,000
2031	\$ 5,208,500	\$ 25,680,745	0.20282	\$199,607	\$ 40.48	\$ 14,185,000
2032	\$ 5,209,250	\$ 26,964,783	0.19319	\$205,595	\$ 39.72	\$ 9,685,000
2033	\$ 5,209,250	\$ 28,313,022	0.18399	\$211,763	\$ 38.96	\$ 4,960,000
2034	\$ 5,208,000	\$ 29,728,673	0.17518	\$218,115	\$ 38.21	



Item Number:	7.C.
Meeting Date:	6/18/2018
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA
REQUEST FORM
CITY OF CAPE
CORAL**



TITLE:

Ordinance 39-18 Public Hearing for Transmittal

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

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

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

Planning & Zoning Recommendation: At their June 6, 2018 meeting, Planning & Zoning voted (7-0) to recommend transmittal.

Staff Recommendation: Staff recommends transmittal.

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending Policy 1.15 of the Future Land Use Element to establish the Seven Islands Sub-District Land Use Classification, which provides specific development limitations that are unique to the area.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 39-18
 Future Land Use Element GOP excerpt
 Ord 39-18 Summary 7 Islands Sub-District
 TXT 18-0002 case report
 Staff Presentation - Public Hearing

PREPARED BY:

Division- Department- City
 Attorney

SOURCE OF ADDITIONAL INFORMATION:

Wyatt Daltrey, Planning Team Coordinator

ATTACHMENTS:

Description	Type
▣ Ordinance 39-18	Ordinance
▣ Ord 39-18 Summary 7 Islands Sub-District	Backup Material
▣ Staff Presentation - Public Hearing	Backup Material
▣ Updated TXT 18-0002 Case Report	Backup Material
▣ Updated Future Land Use Element GOP excerpt	Backup Material

ORDINANCE 39 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING POLICY 1.15 OF THE FUTURE LAND USE ELEMENT TO ESTABLISH THE SEVEN ISLANDS SUB-DISTRICT LAND USE CLASSIFICATION; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS AS FOLLOWS:

Section 1. The City of Cape Coral hereby adopts Comprehensive Plan amendments necessary to update the Comprehensive Plan as follows:

The amendment to Policy 1.15 of the Future Land Use Element establishes the Seven Islands Sub-District which provides specific development limitations that are unique to the area. The amendment to the Future Land Use Element is described in Exhibit A, attached hereto and incorporated herein by reference.

Section 2. Severability. In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this plan amendment shall be thirty-one (31) days after the state land planning agency notifies the City that the plan amendment package is complete, or if timely challenged, the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184(3)(c)4, F.S., whichever is applicable.

ADOPTED BY THE COUNCIL 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	_____	CODSEN	_____

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
Comp Plan Amendment-Seven Island Sub District

EXHIBIT A
FUTURE LAND USE ELEMENT

GOAL: TO PROTECT THE PUBLIC INVESTMENT BY ENCOURAGING THE EFFICIENT USE OF COMMUNITY INFRASTRUCTURE AND NATURAL RESOURCES; ASSURE THE ORDERLY, EFFICIENT GROWTH OF THE CITY BY ENCOURAGING DEVELOPMENT IN THOSE AREAS WHICH ARE BEST SERVED BY INFRASTRUCTURE AND COMMUNITY SERVICES; PROMOTE NEW LAND USES WHICH CREATE THE LEAST POSSIBLE DISRUPTION TO EXISTING USES; CREATE A STRATEGY WHICH ANTICIPATES FUTURE COMMUNITY NEEDS BY ACQUIRING AND ASSEMBLING PLATTED LANDS; AND PROTECT THE RIGHTS OF INDIVIDUAL PROPERTY OWNERSHIP, CONSISTENT WITH PUBLIC NEEDS.

OBJECTIVE 1: Managing Future Growth and Development: The City of Cape Coral will manage future growth and land development by adopting, implementing, and enforcing new regulatory vehicles. All land development regulations called for in this Plan shall be adopted and implemented in accordance with the provisions of S. 163.3202, Florida Statutes. The short-term planning timeframe shall be established as up to the year 2020, while the long-term planning horizon shall be the year 2035.

...

Policy 1.15: Land development regulations adopted to implement this comprehensive plan will be based on, and will be consistent with, the standards for uses and densities/intensities as described in the following future land use classifications. In no case shall maximum densities allowable by the following classifications conflict with Policy 4.3.3 of the Conservation and Coastal Management Element regulating density of development within the Coastal High Hazard Area.

...

- r. **OPEN SPACE (OS):** The Open Space Future Land Use Classification is designed to designate, with the consent of the property owner, areas for purposes or activities having no dwelling units, non-residential floor area or demand for public facilities. Areas suitable for designation under this classification include, but are not limited to, the following: lakes or other waterways not platted as rights-of-way, which may be used for recreational purposes; stormwater treatment facilities; buffer areas; preserves or conservation areas; or recreation areas having no access except by owners, guests or employees of the surrounding development project. Areas included within this future land use classification used for recreation may have amenities, including, but not limited to, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Floor areas of any such structures shall not be considered as non-residential floor area, and may not be used to support the sale or rental of any items; nor may such structures be used for office or administrative purposes. No commercial use shall be made for any recreational facilities located within the Open Space Future Land Use Classification.

Paving of areas within this future land use classification shall be limited to the construction of foot paths and floors for open-sided shelters or pavilions, basketball, tennis or other recreational courts (however, no such courts shall have associated

spectator seating or administrative/maintenance structures), as well as paving associated with minimal parking areas, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Lands or areas within this future land use classification shall not be used as parking for residential, commercial or industrial areas, although minimal onsite parking, including an access drive, may be allowed to facilitate recreational use of lands under this future land use classification, or to serve as parking for nearby properties that are within the Natural Resources/Preservation Future Land Use Classification.

All zoning districts are considered compatible with this future land use classification. However, this future land use classification allows only those activities that are consistent with this classification, as delineated above, and, which have no associated density, intensity, or demand for public facilities.

- s. Sub-Districts: In addition to the regulations listed above, the City of Cape Coral also has sub-districts, as a means to efficiently regulate development in particular areas of interest. These sub-districts include:

Tyson Shores Sub-District

Within the Tyson Shores Sub-District, development shall be limited to a maximum of 115 dwelling units. All property within the Tyson Shores Sub-District shall be entitled to a proportional share of the 115 dwelling units; however, the development rights may be transferred among any properties within the Tyson Shores Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan. This limitation may be amended when central water and sewer service is available to serve the site.

Judd Creek Sub-District

Within the Judd Creek Sub-District, development shall not exceed 10 dwelling units per acre on lands with a future land use map designation of Multi-Family. Non-residential intensity on lands with a future land use map designation of Pine Island Road District shall not exceed 250,000 square feet of gross leasable floor area. All lands within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District shall be entitled to a proportional share of the 250,000 square feet of gross leasable floor area; however, the development rights may be transferred among any properties within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District through mutual agreement of the affected property owners, as long as the intensity is consistent with all Land Use and Development Regulations and other provisions of this Plan. These limitations may be amended in the event that roadway network improvements are made that would allow development beyond these limitations without degradation of roadway level of service below the adopted level of service.

Paradise Preserve Sub-District

Within the Paradise Preserve Sub-District, development shall be limited to a maximum of 420 dwelling units. All property within the Paradise Preserve Sub-District shall be entitled to a proportional share of the 420 dwelling units; however, the development rights may be transferred among any properties within the Paradise Preserve Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan.

Seven Islands Sub-District

Within the Seven Islands Sub-District, development shall be limited to a maximum of 995 dwelling units and 110,000 square feet of non-residential development. A hotel of no more than 240 rooms is also permitted in addition to the aforementioned non-residential square footage. Development rights in the Sub-District may be transferred among any properties in the Seven Islands Sub-District through mutual agreement of the property owners, as long as the density and intensity is consistent with all Land Use and Development Regulations and other provisions of this Plan.

This Sub-District shall be placed in the Mixed-Use future land use map classification, but is not subject to Mixed-Use future land use map classification baseline densities and intensities found in Policy 1.15.f and development incentive program requirements identified in Policy 1.23. Mixed use development is required in the Seven Islands Sub-District. Development in the Seven Islands Sub-District shall not require a PDP.

The location of the Sub-District is legally described as:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

All of Lots 12 through 17, Block 6400;
All of Tract "G" and all of Lots 1 through 5, Block 6401;
All of Tract "F" and all of Lots 1 through 7, Block 6402;
All of Tract "E" and all of Lots 1 through 4, Block 6403;
All of Tract "D" and all of Lots 1 through 3, Block 6404;
All of Tract "C" and all of Lots 1 and 2, Block 6405;
All of Tract "B" and all of Lots 1 through 7, Block 6406;
All of Tract "A" and all of Lots 1 through 8, Block 6407;
All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

Policy 1.16: Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address the location and extent of both residential and non-residential land uses in accordance with the Future Land Use Map and the policies and description of types, sizes, densities, and intensities of land use contained in the "Future Land Use Map" section of this Element.

...

Cape Coral City Council Summary

June 4, 2018

ORDINANCE 39-18

TXT18-0002

Background

- **City is amending Policy 1.15.s of the Comprehensive Plan to create the Seven Islands Sub-District**
- **Sub-District is an overlay of the Mixed Use future land use**
- **Purpose is to provide specific development parameters for the Seven Islands site, in accordance with the adopted vision plan**

Background

- **Development parameters within Sub-District include:**
 - 1. 995 dwelling units with up to 3 multi-family residential structures up to 8 stories in height (including parking);**
 - 2. 70,000 square footage of commercial space, including restaurants and hotel (240 rooms);**
 - 3. A 40,000-square foot community center;**
 - 4. A marina; and**
 - 5. Park uses.**
- **Follow up ordinance (Ordinance 40-18) would map the Sub-District**

Cape Coral City Council

June 18, 2018

ORDINANCE 39-18

TXT18-0002

Background

- **City is amending Policy 1.15.s of the Comprehensive Plan to create the Seven Islands Sub-District**
- **Sub-District is an overlay of the Mixed Use future land use**
- **Purpose is to provide specific development parameters for the Seven Islands site, in accordance with the adopted vision plan**

Background

- **Development parameters within Sub-District include:**
 - 1. 995 dwelling units with up to 3 multi-family residential structures up to 8 stories in height (including parking);**
 - 2. 70,000 square footage of commercial space, including restaurants and hotel (240 rooms);**
 - 3. A 40,000-square foot community center;**
 - 4. A marina; and**
 - 5. Park uses.**
- **Follow up ordinance (Ordinance 40-18) would map the Sub-District**

Recommendation

Planning Division staff recommends Transmittal for the following reasons:

- **The request will provide support for development of Seven Islands site in accordance with adopted city vision**

P&Z Recommendation

At the June 6, 2018 Planning and Zoning Commission meeting, the Planning and Zoning Commission voted unanimously (7-0) to recommend approval of the proposed text amendment. There were no public speakers, and no correspondence was obtained.

Planning Division Staff Report

TXT18-0002

Review Date: April 26, 2018

Prepared by: Wyatt Daltry, AICP, Planning Team Coordinator

Request: Amend Policy 1.15.s of the Comprehensive Plan's Future Land Use Element to create the Seven Islands Sub-District, to permit greater development flexibility in the Mixed-Use future land use map classification.

STAFF RECOMMENDATION:

APPROVAL

Positive Aspects of Application:	<ul style="list-style-type: none">Streamlines the development review process in the Mixed-Use (MX) future land use by removing the PDP requirement for the Seven Islands Sub-District
Negative Aspects of Application:	<ul style="list-style-type: none">Some parties may wish to have greater oversight through the PDP process for the Seven Islands development
Mitigating Factors:	<ul style="list-style-type: none">Adequate protection for potential impacts to surrounding residential areas are assured through LUDR requirements and landscape buffering

Background

In 2016, the City embarked upon a master planning effort for the Seven Islands site, off Old Burnt Store Road. The master planning effort involved feedback from residents and visitors. A vision plan was approved by the Cape Coral City Council in late-2016. The Council considered a number of options for the Seven Islands and approved Option D-1. In late-2017, the City Council adopted Ordinance 23-17, which established the Mixed-Use future land use map classification on the Seven Islands site.

Efforts to prepare the property for future development in accordance with the vision plan are moving forward. These include development of a Seven Islands-specific zoning district as part of the Land Development Code update and this Comprehensive Plan text amendment for a specific Sub-District to establish specific development uses, intensities and densities for this property.

Summary and Analysis of the Proposed Changes

The language below in Policy 1.15.s establishes the Seven Islands Sub-District which provides specific development limitations that are unique to the area. Sub-Districts are specific areas mapped on the Future Land Use Map; a future land use map amendment is considered to be proposed concurrently with this ordinance.

Staff proposes the following language to Policy 1.15:

...

- r. OPEN SPACE (OS): The Open Space Future Land Use Classification is designed to designate, with the consent of the property owner, areas for purposes or activities having no dwelling units, non-residential floor area or demand for public facilities. Areas suitable for designation under this classification include, but are not limited to, the following: lakes or other waterways not platted as rights-of-way, which may be used for recreational purposes; stormwater treatment facilities; buffer areas; preserves or conservation areas; or recreation areas having no access except by owners, guests or employees of the surrounding development project. Areas included within this future land use classification used for recreation may have amenities, including, but not limited to, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Floor areas of any such structures shall not be considered as non-residential floor area, and may not be used to support the sale or rental of any items; nor may such structures be used for office or administrative purposes. No commercial use shall be made for any recreational facilities located within the Open Space Future Land Use Classification.

Paving of areas within this future land use classification shall be limited to the construction of foot paths and floors for open-sided shelters or pavilions, basketball, tennis or other recreational courts (however, no such courts shall have associated spectator seating or administrative/maintenance structures), as well as paving associated with minimal parking areas, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Lands or areas within this future land use classification shall not be used as parking for residential, commercial or industrial areas, although minimal onsite parking, including an access drive, may be allowed to facilitate recreational use of lands under this future land use classification, or to serve as parking for nearby properties that are within the Natural Resources/Preservation Future Land Use Classification.

All zoning districts are considered compatible with this future land use classification. However, this future land use classification allows only those activities that are consistent with this classification, as delineated above, and, which have no associated density, intensity, or demand for public facilities.

- s. Sub-Districts: In addition to the regulations listed above, the City of Cape Coral also has sub-districts, as a means to efficiently regulate development in particular areas of interest. These sub-districts include:

Tyson Shores Sub-District

Within the Tyson Shores Sub-District, development shall be limited to a maximum of 115 dwelling units. All property within the Tyson Shores Sub-District shall be entitled to a proportional share of the 115 dwelling units; however, the development rights may be transferred among any properties within the Tyson Shores Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan. This limitation may be amended when central water and sewer service is available to serve the site.

Judd Creek Sub-District

Within the Judd Creek Sub-District, development shall not exceed 10 dwelling units per acre on lands with a future land use map designation of Multi-Family. Non-residential intensity on lands with a future land use map designation of Pine Island Road District shall not exceed 250,000 square feet of gross leasable floor area. All lands within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District shall be entitled to a proportional share of the 250,000 square feet of gross leasable floor area; however, the development rights may be transferred among any properties within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District through mutual agreement of the affected property owners, as long as the intensity is consistent with all Land Use and Development Regulations and other provisions of this Plan. These limitations may be amended in the event that roadway network improvements are made that would allow development beyond these limitations without degradation of roadway level of service below the adopted level of service.

Paradise Preserve Sub-District

Within the Paradise Preserve Sub-District, development shall be limited to a maximum of 420 dwelling units. All property within the Paradise Preserve Sub-District shall be entitled to a proportional share of the 420 dwelling units; however, the development rights may be transferred among any properties within the Paradise Preserve Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan.

Seven Islands Sub-District

Within the Seven Islands Sub-District, development shall be limited to a maximum of 995 dwelling units and 110,000 square feet of non-residential development. A hotel of no more than 240 rooms is also permitted in addition to the aforementioned non-residential square footage. Development rights within the Sub-District may be transferred among any properties within the Seven Islands Sub-District through mutual agreement of the property owners.

This Sub-District shall be placed within the Mixed-Use future land use map classification, but is not subject to Mixed-Use future land use map classification baseline densities and intensities found within Policy 1.15.f and Policy 1.23. Mixed use development is required within the Seven Islands Sub-District. Development within the Seven Islands Sub-District shall not require a PDP.

The location of the Sub-District is legally described as:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

All of Lots 12 through 17, Block 6400;

All of Tract "G" and all of Lots 1 through 5, Block 6401;

All of Tract "F" and all of Lots 1 through 7, Block 6402;

All of Tract "E" and all of Lots 1 through 4, Block 6403;

All of Tract "D" and all of Lots 1 through 3, Block 6404;

All of Tract "C" and all of Lots 1 and 2, Block 6405;

All of Tract "B" and all of Lots 1 through 7, Block 6406;

All of Tract "A" and all of Lots 1 through 8, Block 6407;

All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

Policy 1.16: Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address the location and extent of both residential and non-residential land uses in accordance with the Future Land Use Map and the policies and description of types, sizes, densities, and intensities of land use contained in the "Future Land Use Map" section of this Element.

Consistency with the Comprehensive Plan

The proposed changes are consistent with the following policies in the Future Land Use Element of the Comprehensive Plan.

Mixed Use

The proposed language is consistent with Policy 1.20, FLUE:

Policy 1.20: The City will promote the development of identifiable residential neighborhoods and commercial districts through the encouragement of more compact development patterns, the use of shared design and landscaping characteristics, and the development of landmarks and gateways.

Recommendation

Staff recommends approval of the proposed text amendment.

FUTURE LAND USE ELEMENT

GOAL: TO PROTECT THE PUBLIC INVESTMENT BY ENCOURAGING THE EFFICIENT USE OF COMMUNITY INFRASTRUCTURE AND NATURAL RESOURCES; ASSURE THE ORDERLY, EFFICIENT GROWTH OF THE CITY BY ENCOURAGING DEVELOPMENT IN THOSE AREAS WHICH ARE BEST SERVED BY INFRASTRUCTURE AND COMMUNITY SERVICES; PROMOTE NEW LAND USES WHICH CREATE THE LEAST POSSIBLE DISRUPTION TO EXISTING USES; CREATE A STRATEGY WHICH ANTICIPATES FUTURE COMMUNITY NEEDS BY ACQUIRING AND ASSEMBLING PLATTED LANDS; AND PROTECT THE RIGHTS OF INDIVIDUAL PROPERTY OWNERSHIP, CONSISTENT WITH PUBLIC NEEDS.

...

- r. **OPEN SPACE (OS):** The Open Space Future Land Use Classification is designed to designate, with the consent of the property owner, areas for purposes or activities having no dwelling units, non-residential floor area or demand for public facilities. Areas suitable for designation under this classification include, but are not limited to, the following: lakes or other waterways not platted as rights-of-way, which may be used for recreational purposes; stormwater treatment facilities; buffer areas; preserves or conservation areas; or recreation areas having no access except by owners, guests or employees of the surrounding development project. Areas included within this future land use classification used for recreation may have amenities, including, but not limited to, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Floor areas of any such structures shall not be considered as non-residential floor area, and may not be used to support the sale or rental of any items; nor may such structures be used for office or administrative purposes. No commercial use shall be made for any recreational facilities located within the Open Space Future Land Use Classification.

Paving of areas within this future land use classification shall be limited to the construction of foot paths and floors for open-sided shelters or pavilions, basketball, tennis or other recreational courts (however, no such courts shall have associated spectator seating or administrative/maintenance structures), as well as paving associated with minimal parking areas, boat ramps, piers, docks, open-sided picnic shelters, gazebos or pavilions. Lands or areas within this future land use classification shall not be used as parking for residential, commercial or industrial areas, although minimal onsite parking, including an access drive, may be allowed to facilitate recreational use of lands under this future land use classification, or to serve as parking for nearby properties that are within the Natural Resources/Preservation Future Land Use Classification.

All zoning districts are considered compatible with this future land use classification. However, this future land use classification allows only those activities that are consistent with this classification, as delineated above, and, which have no associated density, intensity, or demand for public facilities.

- s. **Sub-Districts:** In addition to the regulations listed above, the City of Cape Coral also has sub-districts, as a means to efficiently regulate development in particular areas of interest. These sub-districts include:

Tyson Shores Sub-District

Within the Tyson Shores Sub-District, development shall be limited to a maximum of 115 dwelling units. All property within the Tyson Shores Sub-District shall be entitled to a proportional share of the 115 dwelling units; however, the development rights may be transferred among any properties within the Tyson Shores Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan. This limitation may be amended when central water and sewer service is available to serve the site.

Judd Creek Sub-District

Within the Judd Creek Sub-District, development shall not exceed 10 dwelling units per acre on lands with a future land use map designation of Multi-Family. Non-residential intensity on lands with a future land use map designation of Pine Island Road District shall not exceed 250,000 square feet of gross leasable floor area. All lands within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District shall be entitled to a proportional share of the 250,000 square feet of gross leasable floor area; however, the development rights may be transferred among any properties within the Judd Creek Sub-District with a future land use map designation of Pine Island Road District through mutual agreement of the affected property owners, as long as the intensity is consistent with all Land Use and Development Regulations and other provisions of this Plan. These limitations may be amended in the event that roadway network improvements are made that would allow development beyond these limitations without degradation of roadway level of service below the adopted level of service.

Paradise Preserve Sub-District

Within the Paradise Preserve Sub-District, development shall be limited to a maximum of 420 dwelling units. All property within the Paradise Preserve Sub-District shall be entitled to a proportional share of the 420 dwelling units; however, the development rights may be transferred among any properties within the Paradise Preserve Sub-District through mutual agreement of the affected property owners, as long as the density is consistent with all Land Use and Development Regulations and other provisions of this Plan.

Seven Islands Sub-District

Within the Seven Islands Sub-District, development shall be limited to a maximum of 995 dwelling units and 110,000 square feet of non-residential development. A hotel of no more than 240 rooms is also permitted in addition to the aforementioned non-residential square footage. Development rights within the Sub-District may be transferred among any properties within the Seven Islands Sub-District through mutual agreement of the property owners.

This Sub-District shall be placed within the Mixed-Use future land use map

classification, but is not subject to Mixed-Use future land use map classification baseline densities and intensities found within Policy 1.15.f and Policy 1.23. Mixed use development is required within the Seven Islands Sub-District. Development within the Seven Islands Sub-District shall not require a PDP.

The location of the Sub-District is legally described as:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

All of Lots 12 through 17, Block 6400;

All of Tract "G" and all of Lots 1 through 5, Block 6401;

All of Tract "F" and all of Lots 1 through 7, Block 6402;

All of Tract "E" and all of Lots 1 through 4, Block 6403;

All of Tract "D" and all of Lots 1 through 3, Block 6404;

All of Tract "C" and all of Lots 1 and 2, Block 6405;

All of Tract "B" and all of Lots 1 through 7, Block 6406;

All of Tract "A" and all of Lots 1 through 8, Block 6407;

All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

Policy 1.16: Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address the location and extent of both residential and non-residential land uses in accordance with the Future Land Use Map and the policies and description of types, sizes, densities, and intensities of land use contained in the "Future Land Use Map" section of this Element.

Item Number:	7.D.
Meeting Date:	6/18/2018
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 40-18 (LU 18-0002) Public Hearing for Transmittal

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

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

2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below.

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

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

Planning & Zoning Recommendation: At their June 6, 2018 meeting, Planning & Zoning voted (7-0) to recommend transmittal.

Staff Recommendation: Staff recommends transmittal.

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map to designate a parcel of land classified as Mixed Use (MX) Land Use as comprising the Seven Islands Sub-District for parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 40-18

LU 18-0002 Aerial

LU 18-0002 Proposed FLU

LU 18-0002 Zoning

LU 18-0002 Case Report

Staff Presentation - Public Hearing

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Wyatt Daltry, Planning Team Coordinator

ATTACHMENTS:

Description	Type
▣ Ordinance 40-18 (LU 18-0002)	Ordinance
▣ LU 18-0002 Aerial	Backup Material
▣ LU 18-0002 Proposed FLU	Backup Material
▣ LU 18-0002 Zoning	Backup Material
▣ LU 18-0002 Case Report	Backup Material
▣ Staff Presentation - Public Hearing	Backup Material

ORDINANCE 40 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO DESIGNATE A PARCEL OF LAND CLASSIFIED AS MIXED USE (MX) LAND USE AS COMPRISING THE SEVEN ISLANDS SUB-DISTRICT, SAID PROPERTY BEING DESCRIBED AS PARCELS OF LAND LYING IN SECTIONS 12 AND 13, SECTION 44 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA, SAID PARCELS OF LAND BEING MORE PARTICULARLY DESCRIBED HEREIN; AMENDING THE CITY OF CAPE CORAL LAND USE MAP OF ALL PROPERTY WITHIN THE LIMITS OF THE CITY OF CAPE CORAL TO REFLECT THE LAND USE MAP AMENDMENT; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral on February 13, 1989, adopted a Comprehensive Plan pursuant to the Comprehensive Planning Act; and

WHEREAS, as part of the Comprehensive Plan the City of Cape Coral adopted therewith a future land use map designating land uses and proposed land uses throughout the City of Cape Coral consistent with the Comprehensive Plan and Comprehensive Planning Act; and

WHEREAS, the City of Cape Coral City Council has considered the testimony, evidence, and documentation for the Land Use Amendment initiated by the CITY OF CAPE CORAL regarding the below described property, and considered the recommendation of the Planning & Zoning Commission/Local Planning Agency and City staff.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. That the below-described real property located within the City of Cape Coral, Florida, is hereby amended consistent with the City of Cape Coral Comprehensive Plan. The below-described parcel has a land use designation of Mixed Use (MX) and is hereby further designated the Seven Islands Sub-District as follows:

Parcels of land lying in Sections 12 and 13, Section 44 South, Range 22 East, Lee County, Florida; and being more particularly described as follows:

All of Lots 12 through 17, Block 6400;
 All of Tract "G" and all of Lots 1 through 5, Block 6401;
 All of Tract "F" and all of Lots 1 through 7, Block 6402;
 All of Tract "E" and all of Lots 1 through 4, Block 6403;
 All of Tract "D" and all of Lots 1 through 3, Block 6404;
 All of Tract "C" and all of Lots 1 and 2, Block 6405;
 All of Tract "B" and all of Lots 1 through 7, Block 6406;
 All of Tract "A" and all of Lots 1 through 8, Block 6407;
 All of Tract "I" and all of Lots 1 through 4, Block 6408;

All as shown on the Plat of Cape Coral, Unit 76, The Islands, recorded in Plat Book 35 at Pages 121 through 129 of the Public Records of Lee County, Florida. Subject to Easements, Reservations, and Restrictions of record.

SECTION 2. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this plan amendment shall be: The date a final order is issued by the Department of Community Affairs finding the amendment to be in compliance in accordance with Chapter 163.3184(9), F.S.; or the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184(9), F.S.

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:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/lu18-0002

SUBJECT PARCELS

OLD BURNT STORE RD N

NW 39TH AVE

NW 38TH PL

NW 38TH AVE

NW 37TH PL

NW 37TH AVE

NW 36TH PL

NW 36TH AVE

NW 35TH PL

NW 6TH ST

NW 33RD AVE

NW 7TH ST

NW 7TH TER

NW 5TH TER

NW 4TH ST

NW 4TH ST

NW 4TH ST

NW 5TH TER

NW 5TH ST

NW 5TH TER

NW 39TH AVE

NW 38TH PL

NW 38TH AVE

NW 37TH PL

NW 3RD ST

NW 3RD TER

NW 2ND TER

NW 2ND ST

NW 1ST TER

NW 1ST ST

EMBERS PKWY W

SW 1ST ST

SW 1ST ST

SW 1ST TER

SW 1ST LN

SW 37TH PL

SW 37TH AVE

SW 36TH PL

SW 35TH PL

SW 35TH AVE

SW 34TH PL

0 770 1,540

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

Case No. LU18-0002

Subject Parcels




MAY 9TH, 2017

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

PROPOSED FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU18-0002


LEGEND

 500' Proximity Boundary

 Subject Parcels


Future Land Use

 SF

 SM

 Seven Islands Sub-District

 PK

 PR



MAY 9TH, 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.

SUBJECT PARCELS


500' PROXIMITY BOUNDARY

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

CURRENT ZONING MAP
500' Proximity Boundary

Case No. LU18-0002

LEGEND

 500' Proximity Boundary

 Subject Parcels

Zoning

 PRES-Regulated by FLU

 R-1A

 R-1B

 RD



MAY 9TH, 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.

SUBJECT PARCELS

500' PROXIMITY BOUNDARY

STAFF REPORT

LU18-0002

City of Cape Coral

DOCKET/CASE/APPLICATION NUMBER

Wyatt Daltrey, AICP, Planning Team

Coordinator (239) 573-3160,

wdaltrey@capecoral.net

STAFF PLANNER

APPLICANT/PROPERTY OWNER

101 Old Burnt Store Road North

606 Old Burnt Store Road North

4100 Tropicana Parkway West

PROPERTY ADDRESS/LOCATION

BRIEF SUMMARY OF REQUEST

City-initiated Future Land Use Map Amendment to amend three properties (50.72 acres) from Mixed Use (MX) to the Seven Islands Sub-District.



MAP SOURCE

EXISTING ZONING	EXISTING LAND USE	PROPOSED LAND USE	SITE IMPROVEMENTS	SIZE OF PROPERTY
Residential Development (RD)	MX	MX w/in the Seven Islands	Undeveloped.	50.72 acres

STAFF RECOMMENDATION**APPROVE****DENY**

Compatibility with the Comprehensive Plan:	PROPERTY HISTORY Property purchased by City of Cape Coral in 2013. Site of future Seven Islands development. City Council identified preferred development option and adopted the Seven Islands Vision Plan on December 11, 2016. Amendment to Mixed Use completed in late-2017.
Positive Aspects of Application:	<ul style="list-style-type: none"> N2 UEP is bringing utilities to area Amendment will implement adopted City Vision Plan Development of site can be a positive transformative project for NW Cape Coral
Negative Aspects of Application:	<ul style="list-style-type: none"> Nearby residents may have concerns with scale, noise, and traffic for project allowable in Sub-District
Mitigating Factors:	<ul style="list-style-type: none"> Old Burnt Store RD is being widened, providing additional traffic capacity for area

Review Date: April 26, 2018

Case Staff: Wyatt Daltry, AICP, Planning Team Coordinator

Review Approved
By: Robert Pederson, AICP, Planning Manager

Location: Northwest Cape Coral. Unit 76, Cape Coral Subdivision.

STRAP Number	Block	Lot	Site Address
134422C200801G000	6400	12	106 OLD BURNT STORE RD N
124422C200808I000	6408	TR I	4100 TROPICANA PKWY W
124422C200807A000	6405	TR C	606 OLD BURNT STORE RD N

Area: ±50.72 acres

Current FLU	Proposed	Acreage
Mixed Use	Mixed Use within the Seven Islands Sub-District	50.72

50.72 acres total

Subject Property:	Future Land Use	Zoning
Current:	Mixed Use (MX)	Residential Development (RD)
Proposed:	Mixed Use within the Seven Islands Sub-District	N/A
	Surrounding Future Land Use	Surrounding Zoning
North:	Single Family/Multi-Family by PDP	R-1B, and RD
South:	Single Family Residential (SF)	R-1B, and RD
East:	SF	R-1B, and RD
West:	Natural Resources/Preservation (PRES)	Preservation – regulated by Preserve FLU (PRES)

Urban Service Area: Transition

Type of Street Access: Seven Islands are accessible from Embers Parkway, Ceitus Parkway, Tropicana Parkway, and local roadways. Direct access to site will be from Old Burnt Store Road.

BACKGROUND

In 2013, the City of Cape Coral purchased 491 properties; most of which are north of Pine Island Road (SR 78) and have sizes from 0.25 acres to 50-acre tracts. Part of the Seven Islands were included in that transaction.

Cape Coral has long needed additional commercial and mixed use opportunities, particularly along the waterfront. The 2013 purchase provided the City with a unique opportunity to facilitate mixed use development on the waterfront. To accomplish this, the City contracted with CPH Engineers who, with sub-consultants, developed a Seven Islands and Northwest Cape Coral Vision Plan with assistance and input from city staff and the public.

In late 2016, the City Council evaluated several development options for the Seven Islands property. Council directed City staff to move forward with implementing a vision plan, which had the following development metrics:

1. 995 dwelling units with up to 3 multi-family residential structures up to 8 stories in height (including parking);
2. 70,000 square footage of commercial space, including restaurants and hotel (240 rooms);
3. A 40,000-square foot community center;
4. A marina; and
5. Park uses.

Subsequently, staff reviewed the Comprehensive Plan and determined that the MX future land use map classification was the land use that would best accomplish Council direction to implement the newly-adopted vision plan. Ordinance 23-17 was adopted last year which accomplished this task. A new zoning district is contemplated for the site, to be adopted as part of the City update to the Land Use and Development Regulations.

In order to best effectuate the future development of the site in accordance with the Vision Plan, staff proposes a future land use map amendment to place a Sub-District on the Seven Islands site. Sub-Districts are used to identify specific development mixes or limitations. Three Sub-Districts are currently mapped on the Future Land Use Map: Paradise Preserve, Tyson Shores, and Judd Creek. This Sub-District will be an overlay of the Mixed Use future land use map classification. Parallel with this effort is a text amendment that will establish the Seven Islands Sub-District in the Future Land Use Element of the Comprehensive Plan.

Additional Site Information

Protected Species

Eagle nests are present in the vicinity. The City requires species surveys prior to issuance of City of Cape Coral permits or development approvals, in accordance with the Conservation and Coastal Management Element of the Comprehensive Plan. Furthermore, development within 1,100' of an active eagle nest is regulated by Chapter 23 of the City Code of Ordinances.

Should additional protected species be identified on the property as part of the development review of the site, the City will abide by Policy 1.2.5 of the Conservation and Coastal Management Element, which states:

"Policy 1.2.5: The City will assist in the implementation of and compliance with all state and federal regulations concerning species listed as endangered, threatened, species of special concern, or commercially exploited by monitoring development activities, providing information on listed species in building permit packages, and assisting in investigations as requested."

Utilities

The site is in the Urban Services Transition and Reserve area as designated by the City Comprehensive Plan. Utilities are in the process of construction, which started in late 2017.

Soils and Drainage

The site has two soil classifications; Estero Muck and Matlacha Gravelly Fine Sand. These soils have various limitations for development, which are typically overcome using various engineering solutions such as importing fill. The soil types should not present an obstacle to future land development although special feasibility studies may be required.

The soil study for this area dates from a 1984 Soil Survey of Lee County, Florida performed by the Soil Conservation Service. The area has been modified significantly since the survey was undertaken; most of the area identified by Estero Muck has since been converted into the Northwest Spreader canal, or has had additional dredge spoil more consistent with Matlacha Gravelly Fine Sand.

REGIONAL PLAN ANALYSIS

Southwest Florida Regional Planning Council's (SWFRPC) Strategic Regional Policy Plan (SRPP):

This amendment is addressed by Economic Development Goal 1, Strategy: "Ensure the adequacy of lands for commercial and industrial centers, with suitable services provided."

Lee County Metropolitan Planning Organization's (MPO) Long Range Transportation Plan:

This area is not addressed in the MPO's Long Range Transportation Plan.

COMPREHENSIVE PLAN ANALYSIS

Staff analyzed the Comprehensive Plan to evaluate the proposed future land use map amendment. Most direction in the Comprehensive Plan for complex, multi-use development is based in the Future Land Use Element.

Future Land Use Element

Policy 1.20: The City will promote the development of identifiable residential neighborhoods and commercial districts through the encouragement of more compact development patterns, the use of shared design and landscaping characteristics, and the development of landmarks and gateways.

Unlike many pre-platted, residential areas of Cape Coral, a mixed-use development such as the Seven Islands area has an opportunity to become an identifiable commercial district.

Policy 3.1: The City of Cape Coral will encourage the development of future commercial (retail, office and/or services) areas at or near transportation nodes by assigning appropriate future land use designations.

The FLUMA site is located at two intersections of collectors and arterial roadways (Tropicana PKWY/Old Burnt Store RD and Embers PKWY/Old Burnt Store RD).

OBJECTIVE 4: Location of Future Development: Future private development requiring public water and wastewater will be directed into the Urban Services Infill Area and the Urban Services Transition Area illustrated on the Future Land Use Map, unless specifically accepted by the provisions of this plan.

The site is in the Urban Services Transition Area. Utilities will be extended to this area as part of the North 2 Utility Expansion Project, which began in 2017.

Policy 10.1: Requests for development orders and building permits will be coordinated with governmental agencies including, but not necessarily limited to, Lee County, Charlotte County, the Regional Planning Council, the South Florida Water Management District, and other State and Federal agencies.

The City will implement this policy as part of the development review. The proposed FLUMA will be reviewed by the SWFRPC, SFWMD, and other state agencies.

Conservation and Coastal Management Element

Policy 1.1.8: The City will (as a cooperative effort with appropriate governmental agencies) continue to investigate the effectiveness and function of the spreader waterway systems in reducing the adverse environmental impacts of surface water discharge from Cape Coral into Matlacha Pass State Aquatic Preserve, and will periodically evaluate whether improvements are needed in the spreader system to reduce measurable negative impacts on the Matlacha Pass Ecosystem.

The City continues to abide by this policy.

Policy 1.3.9: Marina and boat ramp siting preference shall be given to areas where water depths can accommodate vessels with a four foot, or greater, draft, and to those facilities which are to be available for public use, and where economic need and feasibility can be demonstrated.

Depths of four (4) feet or greater are present at this location.

Policy 1.3.10: The City will consider consistency with the countywide marina siting plan, adopted on June 29, 2004, in the permitting of marinas. The City will also consider consistency with the general criteria of the Florida Fish and Wildlife Conservation Commission, Boat Facility Siting Guide, adopted August 2000:

- Expansion of existing facilities may be preferred over new facilities, if environmentally sound;
 - There should be no impact to seagrass;
 - Mitigation for seagrass destruction should not be allowed;
 - Areas with adequate depth and good flushing which require no new dredging are preferable;
 - Locations near inlets and popular boating destinations are preferable;
 - Piling construction is preferred over dredge and fill techniques;
-

- Marinas should not be sited in essential manatee habitats; and
- Marinas should not be situated in areas with high manatee mortality occurrence.

Impact to seagrass is anticipated to be minimal due to lack of seagrass present in area. The Spreader Canal has adequate depth during most of the year, and currently indicates sufficient flushing. Seven Islands is north of former boat lift, near the canal entrance to Matlacha Pass; a popular boating destination. Seven Islands is north of Manatee Park at Sirennia Vista, which is not designated an essential manatee habitat, but a popular location for spotting manatees.

Policy 1.7.16: Recognizing the importance of the Matlacha Pass Preservation Area, including the Matlacha Pass State Aquatic Preserve and the Matlacha Pass National Wildlife Refuge, as representing a unique and vitally important estuarine mangrove community, the City of Cape Coral will continue to abide by all rules and regulations imposed by state authorities to ensure the protection of this area. To implement this policy the City will prohibit all development within the Preservation Area, except for providing public access for enjoyment of the natural area, and will review adjacent applications for development orders to minimize adverse impacts of development upon this unique area.

This policy is best addressed during the development of the site; however, care will be taken to ensure protection of the adjacent Aquatic Preserve. No development within the Preservation area is anticipated.

Objective 2.1: Public Access to the coast. The City will continue to maintain and/or increase public access sites to the coastal zone.

The proposed marina use and public park will provide and improve public access to the Northwest Spreader Canal.

Policy 2.1.3: All coastal public access development will be done in accordance with the objectives and policies of Goal 1 so as not to destroy or damage coastal natural resources.

Acknowledged.

Policy 4.3.3: The City shall not approve any future land use map amendment that would increase the maximum residential density within the coastal high-hazard area, unless one of the following criteria is met, in accordance with Section 163.3178(9), F.S.:

1. The proposed amendment would not exceed a 16-hour out-of-county hurricane evacuation time for a category 5 storm event, as measured on the Saffir-Simpson scale; or
 6. A 12-hour evacuation time to shelter is maintained for a category 5 storm event as measured on the Saffir-Simpson scale and shelter space reasonably expected to accommodate the residents of the development contemplated by a proposed comprehensive plan amendment is available; or
 7. Appropriate mitigation is provided that will satisfy the provisions of either of the previous two paragraphs. Appropriate mitigation shall include, without limitation, payment of money, contribution of land, and construction of hurricane shelters and transportation facilities. Required mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to development. For future land use map amendments initiated by a developer, the City and the developer shall enter into a binding agreement to memorialize the mitigation plan prior to adoption of the amendment.
-

The City will work with Lee County to meet the third criteria of this policy, to provide additional shelter space necessary to mitigate the proposed increase of dwelling units in the Coastal High Hazard Area.

Transportation Element

Policy 2.2.7: The City shall discourage new strip style commercial development through efforts to promote the concentration of commercial development at the nodes of major intersections.

As discussed in Policy 3.1, Future Land Use Element, the site is located at two intersections of collector and arterial roadways (Tropicana PKWY/Old Burnt Store RD and Embers PKWY/Old Burnt Store RD). Furthermore, the Seven Islands site is not representative of “strip-style” commercial development, given the mixed-use nature and waterfront focus in the vision plan.

In conclusion, the FLUMA meets the policies of the Comprehensive Plan.

Impact Assessment Summary

The following calculations summarize approximate conditions for each municipal service analyzed. To determine the impact assessment, staff utilized the adopted future land use and zoning designations to determine the existing impacts at buildout. Therefore, the impacts discussed in this assessment do not necessarily reflect the actual amount of dwelling units, population, etc.

Current Impacts: The entire 50.72-acre site is MX, and the analysis below assumes a density of 16 dwelling units per acre and using this floor-area-ratio, a maximum of 552,341 square-feet of commercial space.

Proposed Impacts: The impact assessment summary of the proposed use, a maximum of 995 dwelling units for the site, a 240-room hotel, and 70,000 square-feet of commercial space.

Dwelling Units

Existing:	811 presently
Proposed:	995
Net Change:	+184

Population*

Existing:	2,059 with existing FLUM
Proposed:	2,527
Net Change:	+468

* 2.54 persons/household = avg. household size; 2010 Census

Water Use

Existing:	<u>327,902 gal/day total</u> 162,200 gal/day residential (200 gal/day x 811 DU's) + 165,702 gal/day
-----------	---

commercial (552,341 square feet x 0.3 gal/sq ft/day)
 Proposed: 244,000 gal/day total 199,000 residential gal/day (200 gal/day x 995 DU's) + 21,000 gal/day commercial (70,000 square feet x 0.3 gal/sq ft/day) + 24,000 gal/day hotel (100 gal/day/room x 240 rooms)
 Net Change: -83,902 gal/day
 Facility Capacity: 30.1 MGD
 Permitted Usage: 16.9 MGD
 Avg. Daily Usage: 9.4 MGD

Sewage

Existing: 327,902 gal/day total 162,200 gal/day residential (200 gal/day x 811 DU's) + 165,702 gal/day commercial (552,341 square feet x 0.3 gal/sq ft/day)
 Proposed: 244,000 gal/day total 199,000 residential gal/day (200 gal/day x 995 DU's) + 21,000 gal/day commercial (70,000 square feet x 0.3 gal/sq ft/day) + 24,000 gal/day hotel (100 gal/day/room x 240 rooms)
 Net Change: -83,902 gal/day
 Facility Capacity: 28.4 MGD
 Avg. Daily Usage: 12.8 MGD

The wastewater generated by development permitted by future land use map amendments in the future would be evaluated as part of those later reviews and concurrency requirements would be required to be met at the time of those respective reviews.

Solid Waste

Existing Generation: 84,877 lbs. total/day 9,759 lbs/day residential (4.74 lbs./person/day x 2,059 residents) + 75,118 lbs/day commercial (552,341 square feet x 0.136 gal/sq ft/day)
 Proposed: 22,458 lbs. total/day 11,978 lbs/day residential (4.74 lbs./person/day x 2,527 residents) + 9,520 lbs/day commercial (70,000 square feet x 0.136 gal/sq ft/day) + 960 lbs/day hotel (4 lbs/day/room x 240 rooms)
 Net Change: -62,419 lbs./day
 Facility Capacity: 1,836 tons/day
 Existing Demand: 1,384 tons/day
 Capacity Available: Yes

Traffic/Daily Trips

Existing Generation: 0 presently; 772 AM peak trips/hour and 2,323 PM peak trips/hour with existing FLUM
 Proposed: 438 AM peak trips/hour and 713 PM peak trips/hour
 Net Change: -334 AM peak hour trips and -1,610 PM peak hour trips
 Facility Capacity: Old Burnt Store Road, a collector roadway, Tropicana Parkway, a minor arterial roadway, and Embers Parkway, a minor arterial roadway currently access the subject properties. All roadways meet or surpass the minimum acceptable Level of Service Standard of "D."
 Capacity Available: Yes

Development Impact Analysis

Hurricane Evacuation

The site is in Evacuation Zone A (most vulnerable). The Seven Islands Sub-District future land use could increase potential residential dwelling units by 184 dwelling units, thus causing an impact on hurricane evacuation times. The City will mitigate impacts of increased dwelling units within the Coastal High Hazard Area through an agreement with Lee County, to provide additional shelter space.

Park Lands

The level of service standard (LOS) for parkland and facilities is based on permanent population. Based on 184 additional dwelling units, there could be a maximum increase in park demand of 1.87 acres.

Protected Species

The City requires an environmental survey prior to issuance of any land clearing, site clearing, or development permits. Any future land alteration activities will be preceded by the completion of an environmental survey identifying the presence of protected flora and fauna. Based on the results of the environmental survey, City, state, or federal protective or mitigation measures may be required by the developer to proceed.

School Impacts

There will be an increase in the potential number of dwelling units with a Seven Islands Sub-District future land use, resulting in an increase in the projected number of students.

Existing dwelling units:	0 presently; 811 dwelling units with existing FLUM
Existing students:	0 presently; 73 (811 DU x .091 students per multi-family dwelling unit)
Proposed dwelling units:	995 dwelling units
Proposed students:	91 (995 DU x .091 students per multi-family dwelling unit)
Change:	+18 students

Recommendation:

Planning Division staff recommends **Adoption** of the proposed large-scale future land use map amendment request.

ORDINANCE 40-18

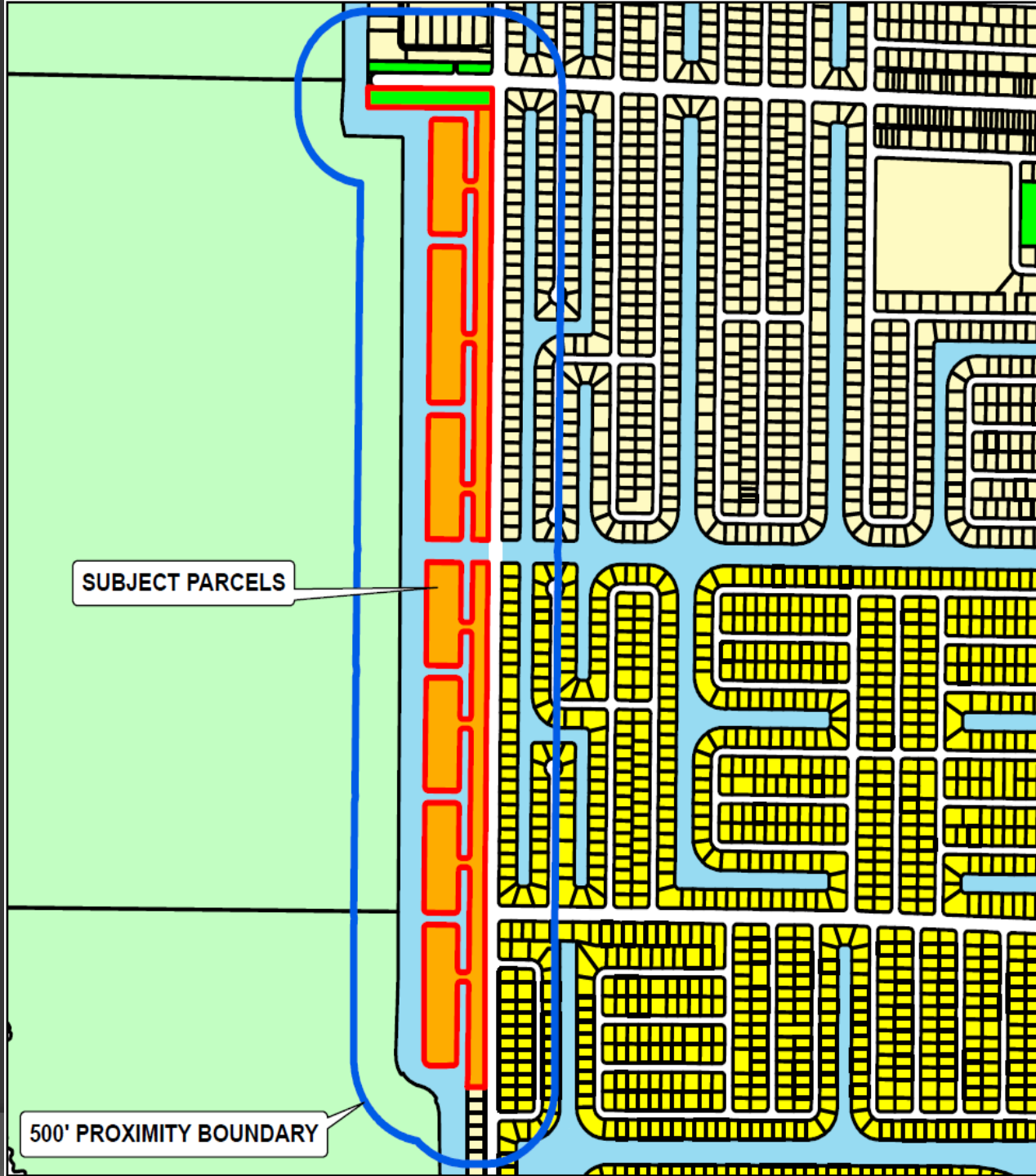
LU18-0002

JUNE 18, 2018

LU18-00002

- **Applicant: City of Cape Coral**
- **Location: NW Cape Coral**
- **Request: City-initiated large-scale future land use amendment from Mixed Use (MX) to the Seven Islands Sub-District for a 50.72-acre site.**







CITY OF CAPE CORAL
Department of
Community Development
Planning Division

CURRENT FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU18-0002

LEGEND

 500' Proximity Boundary

 Subject Parcels


Future Land Use

 SF

 SM

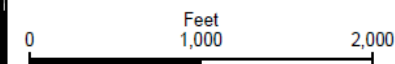
 MX

 PK

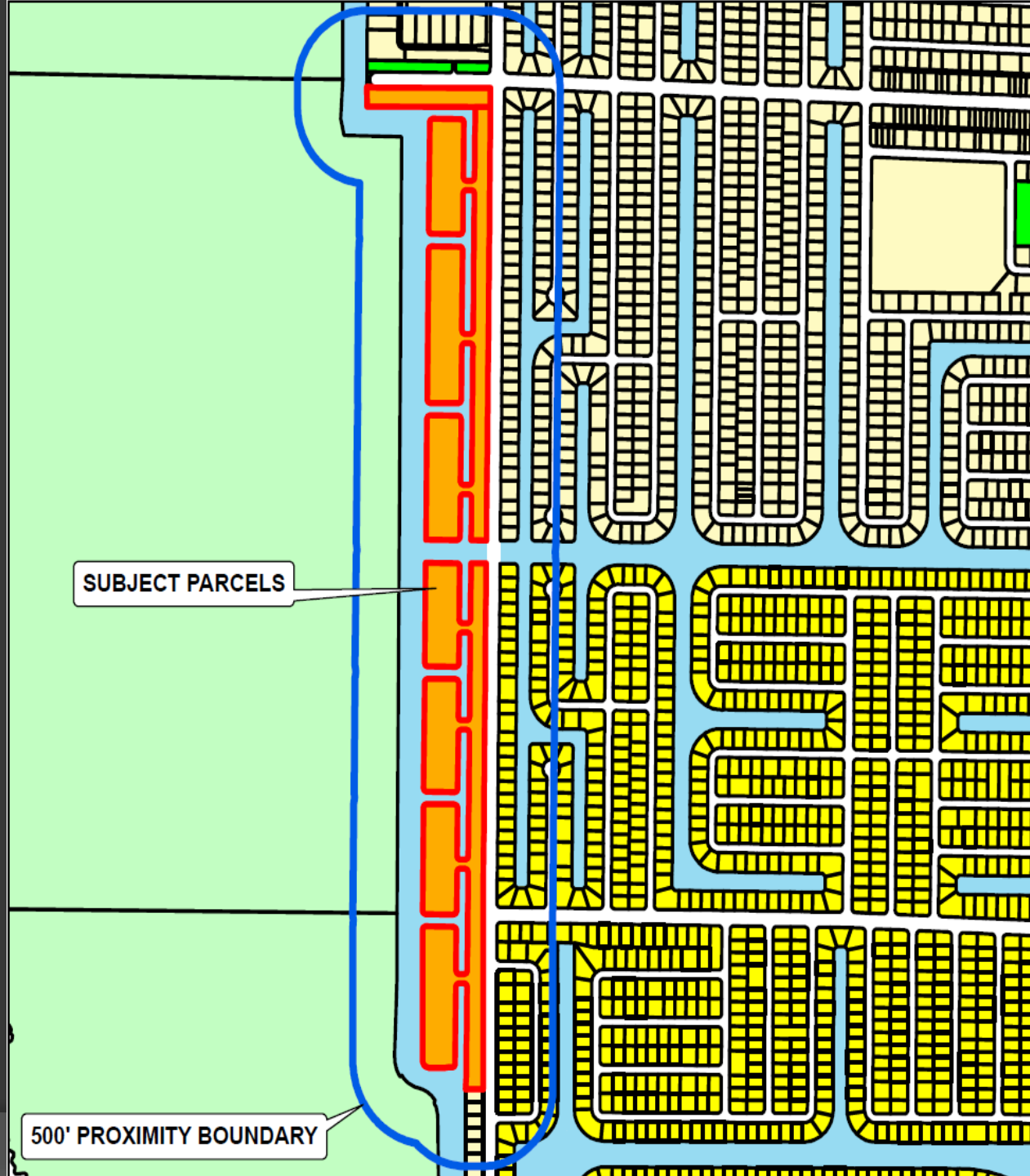
 PR



MAY 9TH, 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

PROPOSED FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU18-0002

LEGEND


 500' Proximity Boundary

 Subject Parcels


Future Land Use

 SF

 SM

 Seven Islands Sub-District

 PK

 PR



MAY 9TH, 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.

FLUMA and Zoning Amendments

- **FLUMA discusses broad policy matters; is the change to MX appropriate?**
- **Site-specific questions regarding uses, setbacks, building heights are addressed by zoning**

Background

- Purpose of amendment is to place a Sub-District on the property
- Sub-Districts are placed over the future land use; development would be in accordance with mixed-use future land use
- Following limitations within Sub-District:
 1. 995 dwelling units with up to 3 multi-family residential structures up to 8 stories in height (including parking);
 2. 70,000 square footage of commercial space, including restaurants and hotel (240 rooms);
 3. A 40,000-square foot community center;
 4. A marina; and
 5. Park uses.

Background

- **N2 UEP is bringing utilities to area**
- **Amendment will implement adopted City Vision Plan and provide specific development guidance for the Seven Islands site**
- **Development of site can be a positive transformative project for NW Cape Coral**

Background

- **A text amendment establishing the Sub-District in the Future Land Use Element (Ordinance 39-18) is running parallel to this effort**

Considerations – Comprehensive Plan

- **Proposed amendment is consistent with multiple policies in the Future Land Use Element, Conservation and Coastal Management Element, and Transportation Element as discussed in the case report**
- **Policies of note include:**
 - **Policy 1.20 FLUE - promotes the creation of identifiable commercial districts;**
 - **Policy 2.2.7, TE - discourages strip-style commercial development; the Seven Islands would not be an example of such**

Recommendation

Planning Division staff recommends Transmittal for the following reasons:

- The request is consistent with the Comprehensive Plan and Land Use and Development Regulations**
- The request will provide support for development of Seven Islands site in accordance with adopted city vision**

P&Z Recommendation

At the June 6, 2018 Planning and Zoning Commission meeting, the Planning and Zoning Commission voted unanimously (7-0) to recommend approval of the proposed future land use map amendment. There were no public speakers, and no correspondence was obtained.

Item Number:	7.E.
Meeting Date:	6/18/2018
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 41-18 Public Hearing

REQUESTED ACTION:

Introduction

STRATEGIC PLAN INFO:

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

ELEMENT A: INCREASE ECONOMIC DEVELOPMENT AND REDEVELOPMENT IN THE CITY

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

Establishes time, place, manner regulation for mooring in the Bimini Basin within the City of Cape Coral Code of Ordinances. This is the first phase for the implementation of a mooring field in the Bimini Basin. Next steps will also be discussed at this meeting. The City's consultants, Stantec, will also be in attendance. This ordinance and associated work products were funded by a grant from the Florida Department of Economic Opportunity.

LEGAL REVIEW:

EXHIBITS:

REVISED - Ordinance 41-18
Deliverable #1
Deliverable #2 (redacted)
Mooring Field Executive Summary

PREPARED BY:

Wyatt Division- Planning Department- Community
Daltry Division Development

SOURCE OF ADDITIONAL INFORMATION:

Wyatt Daltry, AICP
Planning Team Coordinator

ATTACHMENTS:

Description	Type
▣ Revised 41-18	Backup Material
▣ Deliverable #1	Backup Material
▣ Deliverable #2 Redacted	Backup Material
▣ Mooring Field Executive Summary	Backup Material

REVISED
6/18/18

ORDINANCE 41 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 10, "LAND, WATERWAY USE RESTRICTIONS," BY ESTABLISHING ARTICLE V, "MOORING FIELDS"; PROVIDING FOR GENERAL CONDITIONS; PROVIDING FOR BIMINI BASIN MOORING FIELD RULES; PROVIDING FOR RESPONSIBILITIES OF TENANTS FOR ALL MOORING FIELDS; PROVIDING FOR AMENITIES AND SERVICES FOR ALL MOORING FIELDS; PROVIDING FOR LEASING REQUIREMENTS FOR ALL MOORING FIELDS; PROVIDING FOR SPEED LIMITS; PROVIDING FOR SEVERE STORM OR HURRICANE PLANS FOR ALL MOORING FIELDS; PROVIDING FOR PLANS FOR FUTURE EXPANSION FOR ALL MOORING FIELDS; PROVIDING FOR MANAGED MOORING AREAS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 10, "Land, Waterway Use Restrictions," Article V, "Mooring Fields," is hereby established as follows:

CHAPTER 10

LAND, WATERWAY USE RESTRICTIONS

...

ARTICLE V. MOORING FIELDS

DIVISION 1. – GENERAL CONDITIONS

§ 10-26 - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings described to them in this section, except where the context clearly indicates a different meaning:

Anchorage area means a customary, suitable and designated harbor area in which vessels may anchor.

Anchoring means the use of a heavy device fastened to a line or chain to hold a vessel in a desired position.

Designated special anchorage areas means anchorage areas designated by the coast guard where it has been determined such an anchorage ground is necessitated due to maritime or commercial interests.

Dinghy means a small boat usually 13 feet or less, either inflatable or rigid, that serves to provide transportation between a larger anchored vessel and land.

Emergency means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Harbor means a natural or manmade anchorage and/or mooring area providing some degree of protection and security from storms.

Harbor management plan for mooring area means a plan adopted by ordinance of the city council to address the rules and regulations of anchoring, mooring, and speed limits in the waters administrated by the city.

Harbormaster/dockmaster means a designated city employee charged with implementation of the harbor management plan for mooring area.

Houseboat means a vessel that is used primarily as a residence for at least 21 days during any 30-day period in a county of this state if such residential use of the vessel is to the preclusion of its use as a means of transportation.

Idle speed is the minimum speed that will maintain the steerageway of a motorboat.

Live-aboard vessel means:

- (a) A vessel used solely as a residence and not for navigation;
- (b) A vessel for which a declaration of domicile has been filed pursuant to s. 222.17, Florida Statutes; or
- (c) A vessel used as a residence that does not have an effective means of propulsion for safe navigation.

A commercial fishing vessel is expressly excluded from the term "live-aboard vessel."

Marine sanitation device means any equipment for installation on board a vessel, which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage. Marine sanitation device Types I, II, and III shall be defined as provided in 33 C.F.R. part 159, as may be amended.

Mooring means permanent ground tackle where vessels are kept at anchor.

Mooring field means a designated area where permanent ground tackle is utilized to provide multiple vessel moorings in accordance with the harbor management plan for mooring area.

Slow speed means the speed at which a vessel proceeds when it is fully off plane and completely settled into the water, and when it creates only a minimum wake that does not endanger other vessels or marine life. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific numerical speed is assigned to slow speed.

Transient mooring means a mooring for use by vessels for periods of no more than 10 total days per month.

Vessel means a term synonymous with the word "boat," as referenced in section 1(b), section VII of the state constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water under the Florida Vessel Registration and Safety Law.

§ 10-27 - Applicability; enforcement.

The harbor management plan for mooring area shall apply to all vessel(s), owner(s), crew(s), and guests entering the managed mooring field. Any vessel operator in violation of federal law(s) or regulation(s), state law(s) or regulation(s), or this Code would result in cause for eviction from the managed mooring field.

DIVISION 2. - BIMINI BASIN MOORING FIELD RULES

§ 10-28 - General description.

Bimini Basin, located in the City of Cape Coral Florida, is a 980,000-square foot body of water surrounded by four (4) access waterways. One of these four (4) waterways, Bimini Canal, provides boaters direct gulf access without any overhead obstructions.

§ 10-29 - Authority of harbormaster/dockmaster.

The harbormaster/dockmaster has the right to assign berths and moorings. No vessel shall occupy any mooring berth without the approval of the harbormaster/dockmaster or his designee. Subleasing of any mooring by the lessee is prohibited. Owners wishing to transfer to a different mooring other than the one assigned must obtain the prior authorization of the harbormaster/dockmaster or his designee and complete the required forms. It may be necessary to reassign a vessel from the particular space rented to another mooring within the managed mooring field as dictated by the practical needs of the existing use of the managed mooring field and the tenants therein. The decision or interpretation of this article shall be the responsibility of the harbormaster/dockmaster.

§ 10-30 - Intent and Purpose.

It is the intent of the harbor management plan for mooring area to address the primary management of the managed mooring field located in the Bimini Basin in the City of Cape Coral. This will provide a safe mooring option for transient boaters, while also allowing the City of Cape Coral the ability to effectively monitor and regulate the activities inside Bimini Basin.

§ 10-31 - Target group of boaters.

The Bimini Basin Mooring Field is designed to accommodate the needs of vessels, which are typically sailboats up to 35 feet in length. However, the mooring field layout can also be adjusted to allow larger vessels up to 45 feet in length.

§ 10-32 - Vessels allowed; toilet facilities.

- (a) Only vessels that are in compliance with the United States Coast Guard (USCG) regulations, and state statutes, particularly the operational and safety standards, shall be allowed within the managed mooring field. Only seaworthy vessels in good operating condition, capable of maneuvering under their own power or sail, possessing current registration and acceptable documentation, shall be allowed to moor or anchor within the managed mooring field. This is to ensure that all vessels are functional and operational, in the interest of public safety.
- (b) The decision of whether a vessel is considered to be in good operational condition and capable of maneuvering under its own power shall be the responsibility of the harbormaster/dockmaster, based on the United States Coast Guard and state laws and regulations concerning safety and operational requirements.
- (c) All vessels, except dinghies, without an integral source of propulsion (sail or motorized) are not allowed to remain within the managed mooring field. Examples of vessels that would not be allowed to remain within the managed mooring field are a sailboat with no motor and no sails, a motorboat with no motor, or a vessel that must be towed. This requirement does not include vessels that require minor sail or engine repairs.
- (d) Every vessel with an enclosed cabin and berthing facilities, including live-aboard vessels, shall, while on the waters of the state, be equipped with a toilet. On a vessel, other than a houseboat, the toilet may be portable or permanently installed. Every permanently installed toilet shall be properly attached to the appropriate United States Coast Guard certified or labeled marine sanitation device.
- (e) Every houseboat shall be equipped with at least one permanently installed toilet, which shall be properly connected to a United States Coast Guard certified or labeled type III marine sanitation device. If the toilet is simultaneously connected to both a type III marine sanitation device and another approved marine sanitation device, the valve or other mechanism selecting between the two marine sanitation devices shall be set to direct all sewage to the type III marine sanitation device and, while the vessel is on the waters of the state, shall be locked or otherwise secured by the boat operator so as to prevent resetting.

§ 10-33 - Transportation requirements.

All vessels should have a dinghy or other small craft as a method of conveyance to enable access to the dinghy dock and the office of the harbormaster/dockmaster. The vessel owner shall report the absence of a dinghy to the harbormaster/dockmaster. The vessel owner is responsible for transportation to and from the office of the harbormaster/dockmaster for registering to rent the mooring facilities. The vessel owner can utilize his main vessel for this purpose by temporarily bringing it to the fuel dock. The lack of such a dinghy shall not be a cause to refuse rental of a mooring. It is the sole responsibility of the occupants of the vessel to provide their own conveyance to the upland facilities. Under no circumstances is the city responsible for owning, operating, or maintaining a dinghy for the exclusive use of mooring patrons.

§ 10-34 - Commercial uses.

- (a) Commercial activities or vessels engaged in commercial activities are prohibited from mooring in the managed mooring field. The site is designed as a recreational and residential site and shall be maintained as such. No advertising or soliciting shall be permitted on any vessel moored within the managed mooring field, except for "for sale" signs, not to exceed one square foot in size. Each vessel shall be limited to two "for sale" signs.
- (b) Minor commercial activities and vessels, such as water taxis, delivery vessels, pump-out vessels, and those performing minor repairs on mooring vessels, may extend service to the vessels in the managed mooring field. The harbormaster/dockmaster shall make the final decision on determining whether a commercial vessel is allowed in the managed mooring field.

§ 10-35 - Repairs.

Major repairs or refitting of vessels, including any activity that could result in a deposition of any materials into the waterway or within the managed mooring field, are strictly prohibited since a significant water quality violation would result in an adverse impact to public health. Only minor repairs or mechanical adjustments may be conducted on vessels while in the managed mooring field. The harbormaster/dockmaster office shall be notified in advance to verify compliance of any proposed activity.

§ 10-36 - Mooring and anchoring methods.

- (a) The method of mooring vessels in the managed mooring field shall be by tying the buoy line to the bow only. The line used to attach a vessel to the mooring buoy shall be the one furnished, which has one end permanently attached to the buoy. No vessel shall be moored at the stern or be tied to more than one buoy or points on a vessel. Dropping or placement of additional anchors or anchor systems from any vessel in the managed mooring field is prohibited. All vessels within the managed mooring field shall only use the established buoys and anchoring systems.
- (b) Vessels may not anchor in a manner that:
 - (1) Jeopardizes other vessels at anchor or underway;
 - (2) Might cause damage to other property or persons; and/or
 - (3) Impedes access to docks, slips or public or private property.

§ 10-37 - Abandonment of vessels.

If a vessel is left unattended for more than 72 continuous hours without giving prior notification to the harbormaster/dockmaster, the vessel shall be considered abandoned. If any vessel is determined to be abandoned, it may be stored in a secure location or commercial marina for 30 days, during which time the harbormaster/dockmaster shall make a reasonable, diligent effort to locate the owner of the vessel. If the vessel is not reclaimed within 30 days, the vessel shall be sold under the process prescribed by state statutes, at fair market value, which will cover the cost of unpaid rental fees, as well as any fees due for storage and removal.

§ 10-38 - Illegal activities prohibited.

Any illegal activity within the boundaries of the city, which includes the managed mooring field, shall be grounds for immediate prosecution under the provisions of state statutes and/or this Code. It is the intent of the city to prosecute each violation to the fullest extent of the law.

§ 10-39 - Liability of city.

The city neither assumes, nor accepts any liability for use of the managed mooring field by tenants or guests. Also, the city neither assumes, nor accepts any responsibility for personal possessions, vessel, dinghy, or their contents or use while said vessels are located within the managed mooring field or upland facilities. Persons using the water of the city shall assume all risk of personal injury and damage

or loss to their property. The city neither assumes, nor accepts any risk due to accident, fire, theft, vandalism, or acts of God.

§ 10-40 - Anchoring outside designated anchorage.

Overnight anchoring outside of the mooring field boundary is prohibited within the Bimini Basin.

§ 10-41 - Special Events.

All vessels located in the Bimini Basin mooring field will need to be removed in advance of special events, including but not limited to:

- (a) Cardboard regatta; and
- (b) Christmas boat parade.

DIVISION 3. - RESPONSIBILITIES OF TENANTS – ALL MOORING FIELDS

§ 10-42 - Safe operation of vessels.

Reckless or careless operation of any vessel, including but not limited to violation of navigation rules, when the vessel endangers or is likely to endanger life, limb, property, or person, shall be grounds for eviction from the managed mooring field.

§ 10-43 - Use of sewage pump-out facilities.

- (a) Discharge of sewage or other pollutants within the managed mooring field is prohibited. All vessels permitted to use the anchorage area shall be equipped with an approved and properly operating marine sanitation device. The harbormaster shall have authority to inspect the device and require a vessel to use the pumpout facility before assigning a mooring. The dockmaster shall have the authority to require periodic pumpouts and install a lockout device on the system, if deemed necessary. The other pump-out facility could be a floating facility, sometimes known as a "honey barge," should one be put into operation. All tenants within the managed mooring field must maintain strict compliance with 33 CFR 159 and F.S. § 327.53 as amended, as to the operation and management of marine sanitation devices to reduce discharges that would adversely impact public health. The use of the pump-out facility will be included in the fee for all tenants.
- (b) Violation of this section will be reason for immediate eviction, withholding of any security deposit and prosecution to the fullest extent provided by federal, state and city laws. Enforcement of sewage discharge laws will be by the state fish and wildlife conservation commission, or federal, state and local marine patrol.

§ 10-44 - Conduct of tenants.

- (a) Noise shall be kept at a minimum at all times so as to avoid creation of a nuisance or disturbance. The anchorage area is in a residential neighborhood and tenants shall use discretion in using any sound producing devices or machinery, which may include but is not limited to televisions, radios, stereos and musical instruments, so as not to create a nuisance to other tenants and the surrounding community. Generators, blowers or other noisy machinery shall not be operated between the hours of 8:00 p.m. and 7:00 a.m. Disorderly, boisterous or rowdy conduct by a vessel owner, crew or guest that disturbs the peace of other occupants in the managed mooring field and the surrounding community shall be cause for a warning to the operator/tenant or eviction of the vessel from the managed mooring field.
- (b) The use of charcoal burners or any open flame equipment is prohibited on the docks or other common areas. All pets must be leashed while on the docks or in any common areas. Pets are permitted, provided they do not disturb other tenants. Laundry shall not be placed in public view aboard any vessel or in any common area.

§ 10-45 - Discharge of waste or other materials.

- (a) While within the managed mooring field, any discharge into the basin of any fluids, waste or other material, regardless of the nature thereof, that would adversely impact public health, except for clean bilge or properly treated wastewater, is prohibited by state and federal law. If the harbormaster/dockmaster or any employee observes any such discharge, they will immediately notify the department of environmental protection or call the state warning point number (800-320-0519). If such a discharge occurs and is illegal, eviction from the managed mooring field shall be mandatory, once appropriate environmental enforcement action has been taken.
- (b) In the event of an accidental discharge, the vessel captain, operator, or owner shall immediately notify the harbormaster/dockmaster to ensure any action that could improve the containment of the spilled/discharged material will begin as soon as possible.

§ 10-46 - Boarding by law enforcement personnel.

The vessel operator is encouraged to cooperate with and assist law enforcement personnel in the lawful pursuit of their duties. The vessel operator shall not improperly resist or obstruct a lawful boarding or inspection conducted by a law enforcement officer.

§ 10-47 - Emergency repairs in absence of tenant.

The harbormaster/dockmaster shall have the authority to make necessary repairs in the event of an emergency when an unattended vessel is in immediate danger of sinking or represents a threat to other vessels. The emergency may include, but shall not be limited to, the vessel sinking or fire, breakdown of a bilge, fuel or sewage pumps or fluid leaks or broken lines. The cost of repairs, parts and labor will be assessed to the owner of the vessel and be due and payable within 48 hours of the return of the owner of the vessel or as provided by the harbormaster/dockmaster. Failure to pay this cost shall result in the City placing a lien on the vessel for unpaid fees or charges assessed by the harbormaster. If the vessel is deemed to be in imminent danger of sinking, fails to meet United States Coast Guard and state standards, leaks fluids or materials, or represents a threat to other vessels, the harbormaster/dockmaster will require repairs to be made within a reasonable, but specific period. If the repairs are not adequately accomplished, the vessel may be evicted from the managed mooring field.

§ 10-48 - Departure of vessels with delinquent dockage accounts.

It is unlawful for the vessel owner to vacate a mooring without the permission of the harbormaster/dockmaster when said vessel has a delinquent dockage account. Additionally, as part of the lease agreement, the city will be authorized to place a lien on the vessel for the cost of the unpaid fees or charges assessed by the harbormaster/dockmaster.

DIVISION 4. - AMENITIES AND SERVICES – All MOORING FIELDS

§ 10-49 - Damage of amenities and property.

Misuse of any amenity or property is grounds for eviction. If any tenant, crew or guest damages any property or equipment of the amenities, due to neglect, misuse, vandalism or failure to follow stated instructions, the tenant shall be held responsible for the cost of repair and replacement, as well as any civil or criminal charges for the activity.

§ 10-50 - Use of dinghy docks.

- (a) Registered managed mooring field tenants shall have free use of the dinghy docks provided in the area by the City of Cape Coral. Dockage is limited to a single dinghy at any one time, with a maximum length of 13 feet overall. Dinghies must be kept in the water and secured by a single line of good quality from the bow to a cleat or ring on the dock.
- (b) Use of the dinghy docks by vessels anchored in designated anchorage is included in the anchorage amenity package. The same restrictions apply as to vessels in the managed mooring field.

§ 10-51 - Use of sewage pump-out facility.

For the Bimini Basin mooring field, a pump-out facility provided by the City of Cape Coral identified in the tenant lease agreement shall be open and in operation from 8:00 a.m. to 6:00 p.m., seven days a week, with the exception of Thanksgiving Day and Christmas Day. There is no fee for the use of this facility by registered mooring field tenants. All vessels in the managed mooring field must use the pump-out facility on an as required basis.

DIVISION 5. - LEASING REQUIREMENTS – ALL MOORING FIELDS

§ 10-52 - Lease agreement.

- (a) Tenancy in the managed mooring field shall fall into three categories defined as follows:
 - (1) Transient: 5 days maximum, with 1 day out, then 5 more consecutive days, not to exceed 10 days in any given month. This will be known as the “5-1-5” rule.
 - (2) Monthly: Not allowed
 - (3) Annually: Not allowed
- (b) All vessels with the intention of utilizing the managed mooring field must make prior reservations with the office of the harbormaster/dockmaster, regardless of the planned length of stay. Arrangements for transient stays are on a space available basis and can be made upon arrival utilizing a very high frequency (VHF) radio on channel 16.
- (c) The tenants, upon taking residence within the managed mooring field, shall execute acknowledgement of the rules of the harbor management plan for mooring area, as well as the operational requirements of the managed mooring field. The lease agreement shall contain reasonable language, as deemed necessary, to enforce compliance with the provisions of this article.
- (d) A description of the requirements of the tenants, based on the terms of their anticipated stay, shall be as follows:
 - (1) Transient tenant (one day to five days) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section on the acknowledgement of the rules and operational requirements within the managed mooring field, and pay the required daily fee in advance. There will be no assessment of a security deposit for transient tenants.
 - (2) Monthly tenant – Not allowed.
 - (3) Annual tenants – Not allowed.

§ 10-53 - Tenant information required.

- (a) The owner/vessel operator shall provide the following information for the lease/dockage agreement for the managed mooring field:
 - (1) Owner's or operator's name;
 - (2) Owner's or operator's home address, including city and state;
 - (3) Owner's or operator's telephone number;
 - (4) Emergency number (monthly and annual agreements);
 - (5) Length overall (LOA);
 - (6) Beam;
 - (7) Draft;
 - (8) Type of vessel;
 - (9) Mooring assignment;
 - (10) Vessel name;
 - (11) Registration or document number;
 - (12) Proof of insurance.

- (b) The tenant shall be responsible to inform the harbormaster/dockmaster of any changes in the preceding required lease information within 72 hours of any such changes.

§ 10-54 - Mooring rental rate.

The city council shall set the daily rental rate for the mooring fields by resolution. The rate shall be posted in the dockmaster's office and on the signs at the entrance to the mooring field.

§ 10-55 - Vacation of moorings.

Mooring field leaseholders are required to notify the office of the harbormaster/dockmaster whenever they plan to vacate the mooring for greater than 24 hours. A date of departure and planned time of return must be provided, if the vessel operator wants to maintain the right of tenancy. The harbormaster/dockmaster reserves the right to rent any unoccupied mooring space when an assigned vessel is absent for 24 hours or more, without any compensation to the mooring field leaseholder.

§ 10-56 - Moorings signage.

To ensure compliance with the rules and regulations of the mooring field, a single sign shall be placed at the west end of the mooring area. The sign shall be four feet high by six feet wide and shall display the following wording: "(NAME) MOORING FIELD," "ALL VESSELS MUST USE MOORING BUOYS," "FOR MOORING ASSIGNMENT REGISTER AT THE DOCKMASTER'S OFFICE," "\$ _____ PER DAY MOORING RENTAL FEE."

DIVISION 6. - SPEED LIMITS

§ 10-57 - Bimini Basin.

The speed limit in Bimini Basin and surround access waterways shall be slow speed, minimum wake or idle speed no wake as designated by the Florida Fish and Wildlife Commission.

DIVISION 7. - SEVERE STORM OR HURRICANE PLAN – ALL MOORING FIELDS

§ 10-58 - Safety plan.

The office of the harbormaster/dockmaster shall, if possible, warn the managed mooring field tenants to exercise prudent and appropriate judgment in the event that a severe storm or hurricane threatens the area. The tenants shall be advised that the mooring equipment provided in the managed mooring field may not be able to withstand a hurricane or tropical storm and/or the associated wind and tidal surges. Evacuation of the managed mooring field will not be mandatory; however, it may be recommended.

DIVISION 8. - PLANS FOR FUTURE EXPANSION – ALL MOORING FIELDS

§ 10-59 - Expansion of mooring field.

It may become necessary or desirable to expand a managed mooring field to address additional mooring requirements. At such time, a mooring field management plan may be modified to the extent that state and federal permit allow.

DIVISION 9. - MANAGED MOORING AREA

§ 10-60 - Physical moorings.

The mooring systems will consist of an embedment anchoring system, downline, and floating buoy system marked with permit and anchorage numbers. Specific installation details and engineered drawings will provide further details.

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:

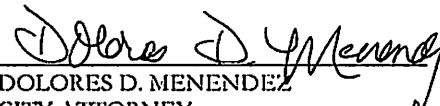
COVIELLO _____
GUNTER _____
CARIOSCIA _____
STOUT _____

NEILSON _____
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
ord\Mooring Fields

Mooring Field Ordinance

Development Plan and Regulatory
Analysis for Bimini Basin
City of Cape Coral, Florida

April 6, 2018



Contents

Legal and Regulatory Constraints Summary	1
Stakeholder and Public Engagement	4
Mooring Field Priorities Program and Managed Mooring Field Development	6
Mooring Field Vessel and Example Ordinances	8
Public Information Session #1	10
Appendix - Mooring Field Example Ordinances	

Legal and Regulatory Constraints Summary

Federal laws defer to states to regulate anchoring in areas adjacent to navigation channels. Limitations on the restrictions are intended to ensure unobstructed and safe navigation to boaters while also preventing degradation of the surrounding environment. The legal and regulatory constraints that define mooring fields have been referenced to help with planning and implementing a mooring field management plan and developing an ordinance in the Bimini Basin area of Cape Coral, Florida.

Currently in Florida statewide, vessels can anchor anywhere as long as the vessels are moored in a way as to maintain the submerged lands in its natural condition and a mooring light is present per F.S. 253.037(1).



Mooring Field Locations

Mooring fields should be located as to provide protection from winds and waves, good sediment to hold anchors, shore access/amenities, and be aesthetically developed. The mooring field location should be referenced in cruising guides, on webpages, social media, and other online forums to provide the boating community access to the local rules and regulations.

Permitting Requirements and Regulatory Authorizations:

The Florida Department of Environmental Protection (FDEP) and the United States Army Corps of Engineers (USACE) have permitting authority over submerged lands and overlying waters that would be applicable to a managed mooring field. The United States Coast Guard (USCG) and the Florida Fish and Wildlife Conservation Commission (FWC) have authority over navigation safety and signage including the following state/federal permits:

- USCG Federal Permits Rivers and Harbors Act, Section 10, USACOE
- FWC Permits "Uniform Waterway Markers" Fla. Stat. 327.40

FWC and the United States Fish and Wildlife Service (USFWS) also have authority over protected species (e.g. Manatees and Seagrasses) and regulate state Aquatic Preserve designations. The mooring area will also likely require FWC approval to create a boating restricted area and associated signage and/or buoys.

Florida regulates mooring fields through the submerged lands lease, the FDEP Environmental Resource Permit and the establishment of boating restricted areas by FWC. The submerged lands lease authorizations and the FDEP permit are obtained through a joint application process that includes the USACE federal permit. The submerged lands lease incorporates the FDEP Permit, and all local government governance documents including:

- The local adopted ordinance
- The Harbor Management Plan

If the proposed mooring field is in a Florida Aquatic Preserve, it will be subject to the Florida Aquatic Preserve Act and FDEP regulations.

- This will impose separate criteria for obtaining a permit.
- For approval of the project it must be found in the public interest.
- Public interest determination is based on balancing legal factors as outlined in 18.20.004 (2) of the Florida Administrative Code.
- Projects in more pristine and less developed Aquatic Preserves are subject to even higher standards in the public interest analysis.



The following list provides a general overview of the legal steps to establish a Managed Mooring Field (MMF) in Florida:

1. Confirm the ownership of submerged lands
2. Confirm relevant political jurisdiction
3. Review Local Government Comprehensive Plans to determine whether a MMF will be consistent with the plan
4. Initiate Drafting of Proposed Ordinance or Resolution
5. Select administration option:
 - Governmental - Municipal
 - Concession - Draft agreement between local government and concessionaire
 - Not-For Profit Organization
6. Obtain authorizations
 - Submerged lands lease
 - Environmental Resource Permit – FDEP
 - Obstructions to Navigation – section 10 – Rivers and Harbor Act - USACE
 - Boating restricted area - FWC
 - Special Anchorage Area Designation – USCG
7. Resource Agency Consultations
 - United States Fish and Wildlife Service (USFWS)
 - Fish and Wildlife Conservation Commission
8. City should consult with its own attorney

2-Step Process in creating a Managed Mooring Field in Florida:

Project Initiation

- Technical
- Legal
- Public (Educational)

Project Development

- Legal
- Technical
- Public (Legal)

Develop permit(s) application information

- Navigational
 - Establish signage and buoy needs
 - Hydrographic survey
- Biological
- Water quality

Prepare rules for boats that would use the Mooring Field:

- Comply with U. S. Coast Guard regulations and safety standards and Chapter 327 of the Florida Statutes
- Be in good operational condition, capable of maneuvering under its own power
- Have current registration or acceptable documentation otherwise
- Have Liability Insurance coverage
- Contain a U. S. Coast Guard approved marine sanitation device, that complies with the U. S. Coast Guard requirements governing the installation and use of such devices upon that particular vessel



Dinghy Dock Landing

Safe Anchoring and Mooring Procedures for the Mooring Field:

- Boats must anchor so that they are not harming any other vessels, damaging property or injuring people, or preventing access to boats or property.
- Boats should not anchor in sea grass or coral areas because of the damage that the anchors can do to these habitats.
- Boats should be able to get underway within a reasonable amount of time.
- Safety of the crew and boat is a primary concern.

Regulating Activities within the Mooring Field by Developing Ordinance:

- Prohibit other nuisance-like activities in Mooring Field Ordinance
 - Rowdy Conduct
 - Hanging laundry
- Hours for Repairs, or Not Allow Repairs
 - Consider Major or Refitting Vessels vs. Minor
- Limit "For Sale" Signage
- No Advertising or Soliciting
- Leashed pets only
- Operational Hours for Noise & Machinery
- Prohibit grills
- Fishing in designated areas, or not at all
- Swimming Prohibited
- Feeding Wildlife Prohibited
- Insurance Requirements
- Proof of Insurance
- Clear Dispute Resolution Processes
- Schedule Inspections & Maintenance During Off-Peak Season

Potential Issues:

- Nearly all moorings must be made available to public on a first-come first-serve basis (i.e. 90% Sarasota & Fort Myers

Beach)

- Commercial activities generally prohibited
- Use of revenue may be restricted
- Manatee education plan
- Length of stay
- Live-aboards
- Fee structure
- Relationship between harbormaster and boaters
- A mooring field may consider restricting & varying length of stay within the mooring field.
- The State generally discourage live-aboards but they are allowed in some instances such as in Ft. Myers Beach.
- Pursuant to the Fort Myers Beach Lease, a Live-Aboard is:
 - "A vessel docked at the facility and inhabited by a person for any 5 consecutive days or a total of 10 within a 30-day period."
 - If allowed, "live-aboard status cannot exceed 6 months within any 12-month period".

Florida Statute Regarding Live-aboard Vessels:

2009 amendments to Chapter 327:

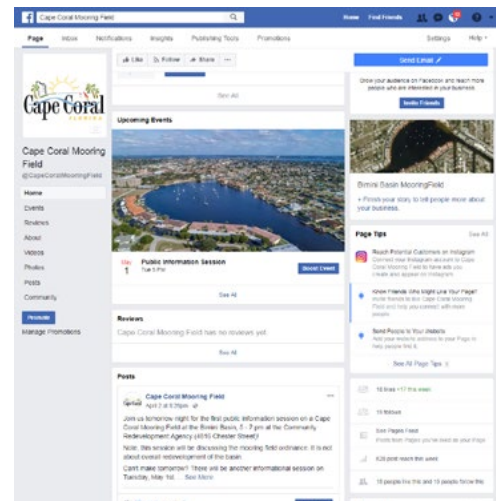
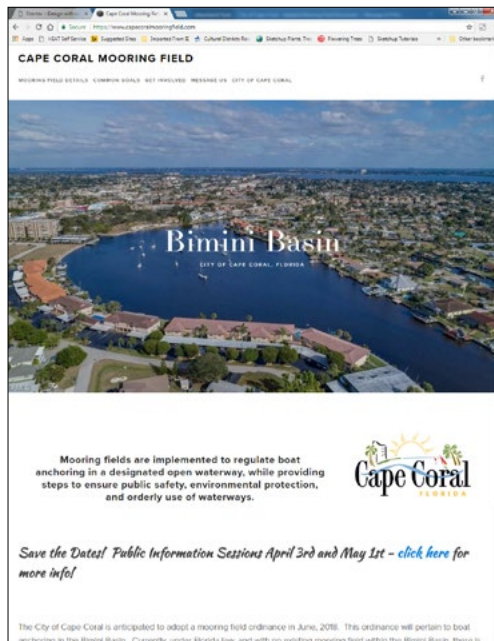
1. Definitions: Live-aboard vessel means – any vessel used solely as a residence and not for navigation (emphasis added); or 2, 3
2. F.S. 327.60 – prohibits a county or municipality from enacting, continuing in effect, or enforcing any ordinance or local regulation:
 - Regulating the anchoring of vessels other than live-aboard vessels outside the marked boundaries of mooring fields permitted as provided in 327.40

Stakeholder and Public Engagement

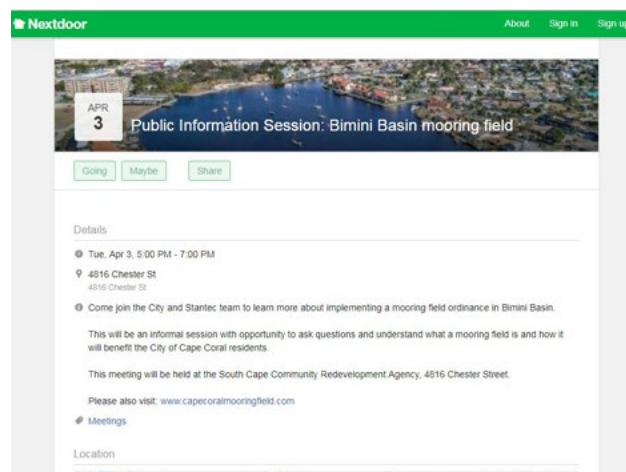
During the project kickoff meeting with staff, a stakeholder and public engagement plan was identified that included: project website, Facebook page, two public informational meetings, one presentation to the Community Redevelopment Agency Commission, and print collateral to be available at public meetings or other city venues.

Website & Social Media:

Following kickoff, the project website and Facebook pages were created.



To use these as a resource, Stantec began direct social media target posts, including project web address and meeting dates to vested Cape Coral organizations and local media, including: South Cape CRA, Bimini Basin Social Media, Chamber of Commerce of Cape Coral, Cape Coral Civic Association, News-Press, ABC 7, NBC 2, Fox 4, WINK TV, among others. These were also included in apps such as Next Door to notify those specifically signed up for neighborhood news.



Identified Stakeholders:

The city also provided Stantec the Bimini Basin Stakeholder List including 41 contacts that represent residents, businesses, property owners, organizations, and developers.

Email notice was sent to all contacts including the meeting dates and project website.

Public Meetings:

Public information meetings have been scheduled to involve the community in the process and set for:

- Public Information Meetings: April 3rd & May 1st, 5:00 – 7:00 pm
- Presentation to the Community Redevelopment Agency Commission: May 1st, 3:00 pm
- City Council Public Hearings: June 4th & June 11th, 4:30 pm

April 3rd Public Information Meeting:

The first session was held on April 3rd and resulted in approximately 40 attendees who participated group style in a general Q&A format. City staff and Stantec were present to share background, explain the process, and answer questions. Informational rack cards and handouts were available to the attendees and mounted graphic boards of the potential mooring area were displayed to show where a mooring field might be in the basin.

The key purpose of this meeting was to ensure the public had an opportunity to hear clearly what a mooring field is, and how this could be created within the city. The feedback that was gathered will be used in establishing various items in preparation for the second public information session, including potential mooring field layouts, number of potential boats that may be within it, duration of stay, and a draft ordinance, among others.

Print Material:

Working to enable interested community members to understand this project and process, consistent messaging has been used on the project website, social media outlets and in all print material. Multiple pieces of print material have been created and are being distributed for public use.



Mooring Field Priorities Program and Managed Mooring Field Development

Goals and Objectives:

1. Promote the establishment and use of public mooring fields
2. Promote public access to the waters of this state
3. Enhance navigational safety
4. Protect maritime infrastructure
5. Protect the marine environment
6. Deter improperly stored, abandoned or derelict vessels
 - Provide public access to Florida waters
 - Be ecologically and habitat friendly
 - Promote tourism and provide economic benefit to merchants with minimal infrastructure requirements
 - Be a self-sustaining, user-funded amenity
 - Provide proprietary moorings more secure than normal anchors
 - Enable higher density of vessels for space available
 - Not accommodate or allow derelict or abandoned vessels
 - Enhance oversight of the water resource
 - Enhance real estate values

Mooring Field Management Plan Development

- A harbor management plan should be developed.
- The plan should be based on objective data obtained by inventories of natural and cultural resources.
- The plan should be based on consensus of local stakeholders and city officials.
- A local board should be consulted that includes boaters in order to create the local harbor management plan.
- A Harbormaster should be identified.
- The management plan should focus on providing adequate space via moorings both for transient boaters and for safe shelter during storm events.
- The management plan should provide for a dinghy dock and on-shore facilities for boaters.
- The management plan should provide for signage and/or buoys.
- The board should inquire into funding mechanisms for signs, moorings, improvements and amenities (dinghy dock, showers, laundry facilities, etc.).
- Try to get Special Anchorage Designation.
- Create a dispute resolution mechanism.
- Obtain necessary permits to use the submerged lands.

Mooring Field Issues and Options:

- Vessel Storage – Not defined by state statutes, possible abandonment of vessels
- Abandoned / Derelict Vessel – State/County derelict vessel program. Education and enforcement
- Marine Sanitation – pump-out locations, education and enforcement
- Anchor Drags / Sea grass Impacts – signs and buoys, education and enforcement
- Anchor Light – defined anchorage areas, education and enforcement
- Determine whether mooring field will be municipal, concession or non-profit
- Solicit public input

Fee Schedule Considerations

- Different Transient vs. Live-Aboard fees
- Reduced rate for off-peak season
- Monthly facility fee for amenities not included in base rate
 - Ex.: Vero Beach fees support facilities including fueling facility, pump-out facility, and restrooms.
- Reduced rate or tiered fees, graduated down for long-term stay

Amenities and Services:

- Included Services
 - Are they covered in the basic fee structure?
 - Shower?
 - Parking?
 - Laundry?
- Services Provided at Additional Cost
 - Will boaters expect the service to be at an additional cost?
- Consider a monthly flat fee

Technical Considerations

- Vessel Types & Sizes
- Subsurface Conditions
- Tidal Parameters
- Wind Exposure & Fetch
- Mooring Radius Overlap

Mooring Field Vessel and Example Ordinances

Establishing a mooring field in Florida may seem like a daunting process, but by following the lead of other communities in Florida, the process can be streamlined by learning from the development of other ordinances. The list below includes some of the mooring fields referenced in this document that the City of Cape Coral can model their own ordinance from. Included at Appendix A, are the mooring field ordinances from some of the boating communities in South Florida.

Existing and Permitted Mooring Fields in Florida:

- City of Naples – 12 moorings
- Fort Myers - 49 moorings
- Fort Myers Beach - 70 moorings
- Key West - 149 moorings
- Marathon Boot Key - 226 moorings
- Punta Gorda - 42 moorings
- Sarasota - 35 moorings
- Stuart - 69 moorings
- Vero Beach - 57 moorings

Technical Resources to Support Mooring Field Development:

- State of Florida Technical Assistance Team (FDEP)
- Working Waterfronts Florida
- Office of Boating and Waterways (FWC)
- Florida Boating Improvements Trust Fund
- Florida Inland Navigation District (FIND)
- Clean Vessel Act grant program (FDEP)
- Florida Sea Grant

Pros/Cons:

- Future upland facilities could be required by FDEP permitting process to include restrooms, showers, garbage disposal, and sewage pump-out at Four Freedoms Park. This can also include ongoing maintenance of pump out apparatus and annual reporting to various regulatory agencies. This is a substantial investment that needs to be evaluated on a return on investment business value equation/business plan.
- USACE, FDEP, FWC and the State Health Department would need to be part of the permitting process. This is multi-year permitting process.
- Alternative opportunity - contract with third party entity to oversee/manage all mooring operations. At some point, this could be a viable economic alternative.
- Funding constraints – state and WCIND –specific criteria would have to be met for possible funding for a pump out station or pump out vessel.
- Permitting considerations - if seagrasses are present in study area. This is also a consideration from a permitting perspective that may involve future mitigation for potential impacts if seagrasses are present.
- FWC will likely need be consulted on essential fish habitat for possible habitat impacts.



Boot Key Harbor Mooring Field



City of Naples Mooring Field:

- \$15 per day
- Maximum of 4 consecutive nights, then out 1 day, then back for a maximum of 4 nights. (8 days total in a 30-day period)
- Pump out and lockout requirements
- No hanging clothes
- Noise restrictions

Fort Myers Beach Mooring Field:

- Fees depend on length of stay
- Pump-out services and facilities included in fees
- Facilities include dinghy docks, restrooms, laundry room and garbage disposal
- Private Marina manages mooring field under concession from city

Vero Beach Municipal Mooring Field:

- Mooring Field offers long-term and transient moorings.
- Anchoring limited outside mooring field by city ordinance
- Length of stay regulation
- Fees support facilities including fueling facility, pump-out facility, and restrooms.
- Employees include harbormaster, assistant harbor master and part time employees.
- Harbormaster resides at the anchorage.
- There is also an advisory board to the anchorage.
- Establishes Enterprise Fund – money that it earns goes back to support the MMF.

Current Mooring Field Rates:

Mooring Field	*Rates (\$)		
	Daily	Weekly	Monthly
City of Naples	15	n/a	n/a
Fort Myers	18	103	312
Fort Myers Beach	20	140	225
Key West	19	133	343
Marathon-Boot Key	22	115	324
Punta Gorda	13	72	226
Sarasota	25	175	250-345
Stuart	35	170	400
Vero Beach	16	112	324

*Data accurate as of March 30, 2018.

References

A Guide for Local Communities that are Considering Creating a Managed Mooring Field PowerPoint Presentation. UF/IFAS Extension and Charlotte County, 2015.

Anchoring Away: Government Regulation and the Rights of Navigation in Florida, Sea Grant, 2011.

Number of vessels berthed within Bimini Basin

In an email dated March 7, 2018 from the City of Cape Coral Harbormaster, Rich Gainley to Wyatt Daltry, the City sees on average 12 vessels per month in anchored in the Bimini Basin. This would translate to 144 vessels annually that would visit the area annually. If assumed to representative of past years, a total of 720 vessels would have been anchored in the Bimini Basin.

Cape Coral Mooring Field

Public Information Session #1

April 3rd, 2018



The first public information session was held on Tuesday, April 3rd at the Cape Coral Community Redevelopment Agency from 5 – 7 pm.

The session was promoted through the project website, social media, calendar postings, local news, business, and community organizations, and through the city. Print collateral was available in information rack cards and flyers. Mounted boards were posted for attendees to view the potential maximum area of a mooring field.

Approximately 40 community members participated in the open Q&A session. It was clear that this is a very passionate issue for residents and there was unanimous support for moving forward. While some residents question the current inability to enforce any former or current policy/ordinance/regulation immediately, they support this process.

Several key concerns and considerations were expressed during the session. A few of the most common are identified below. Following this summary are the comment cards or prepared notes that were submitted at the end of the session.



- Water quality and dumping into the basin was consistently the #1 issue
- Multi-day (transient) mooring is supported, however should be limited to a few to several days at a time
- No live aboard boats
- Limit the number of boats within the mooring field – generally ranges from 10 – 25 based on feedback
- Limit the sizes of boats within the mooring field – generally ranges from 20 – 40'
- Noise levels must be included within the ordinance
- Concern boats that will either be denied permits or will exhaust their permit time will simply move to another location in Cape Coral
- Restrict amount of boat repair or maintenance that can be done on the water
- Multiple significant events occur within the Bimini Basin annually that cannot be disrupted by boats in the mooring field

These items will be used in the process of creating the mooring field layout options as well as the draft ordinance for use during the May 1st public information session.

CAPE CORAL MOORING FIELD

April 3rd Public Information Session capecoralmooringfield.com



Name:

Email:

Address (optional):

Debra Brett		444 Tudor Dr #10
Pete Calvo		434 Tudor Dr #21
Bob O'Connor		4015 Palm Tree Blvd
Joe Matuckiewicz, Jr.		PO Box 101655
Linda Jo Prince		1318 SE 43 rd Terrace
CHARLES McNEIL		447 AVALON DR
BRAD Rothman		4807 Sunset CT.
Jerome Deputy		5109 Sunnybrook Ct #14
RICK STULTS		3761 SE 10 th Ave
JOHN McDEVITT		4302 SW 24 th CT
LINDA BIONDI		728 SE 44 th ST 33904
Ed & Shirley Wieggers		5103 Sunnybrook 33901
Kraig Hankins		4003 SE 1st Pl, Cape Coral, FL 33904
Sarah Keim		

CAPE CORAL MOORING FIELD

April 3rd Public Information Session capecoralmooringsfield.com



Name:

Email:

Address (optional):

Huguette Haaland@gmail.com 434 Tudor Dr.

Unchu Smith usmith44@AOL.com 434 Tudor

Ralph Smith rwsstocky@AOL.com 434 Tudor Dr.

Paul Prince CapeCivic1962@gmail.com N/A

Tom & Linda Ritter LINRIT@Yahoo.com 1505 SW 47 TERR

John Lilly Jr. JLLYJR@gmail.com 416 Tudor -

John Mierke JMM1802@AOL

Alma del Po delrioalma@gmail.com

CAPE CORAL MOORING FIELD

April 3rd Public Information Session capecoralmooringfield.com



Name:

Email:

Address (optional):

EARL HARLAND carlhookend@yahoo.com 434 Tudor Dr #1E

Tony Adinolfi ATAdinolfi@gmail.com 5223 T. Hay Ct

Betty Will 1402 SE 43rd Terrace 33902

ALAN WATERMAN alwaterman86@gmail.com 4807 SUNSET CT.

Roger Jacobsen RJACOBSEN@NAPLESgov.com

Roy Borek 5121 Sunnybrook Ct #23 royborek@yahoo.com

Jim COLLIER juchlauer@yahoo.com 606 SW 40th Lane

CAPE CORAL MOORING FIELD

April 3rd Public Information Session capecoralmooringfield.com



Name:

Email:

Address (optional):

MAYA ROBERT

mayoulea@gmail.com

Bruce Lewis

Tillburo71@gmail.com

Rich Terry

RTerry

ATCOTestis@gmail.com

5109 Sunnybrook Ct #11

Paul Detlefsen

439 AVALON DR. C. C.

CAPE CORAL MOORING FIELD

April 3rd Public Information Session
capecoralmooringfield.com



Comments:

Jim Collier
JWC Lawyer@yahoo.com

- Suggest 10 day stay as max in any one month (non consecutive)
- 100K minimum liability ins minimum
- 40' max ~~Boats~~ ^{ON ARRIVAL} in general maybe 23 Balls for larger pump out ~~and arrival~~ & cock the petcock
- No open stoves or grilling onboard.
- Reserve a lot of the waterfront for the community, not just for the visiting boats
- If Swartz is getting paid, their rep's shouldn't chew gum throughout a public meeting.

CAPE CORAL MOORING FIELD

April 3rd Public Information Session
capecoralmooringfield.com



Comments:

- Establish mooring balls and charge a fixed daily fee with a maximum of 5 days to 7 days.
- Regulate the size of the boats & enforce the ordinance rules with the CCPD Marine Unit.
- Do not need dingy docks.

CAPE CORAL MOORING FIELD

April 3rd Public Information Session
capecoralmooringfield.com



Comments:

How will we keep this from happening
in other basins in Cape Coral

35' BOAT MAX

CAPE CORAL MOORING FIELD

April 3rd Public Information Session
capecoralmooringfield.com



Comments:

Keep mooring time limited 3-5 days

Noise ordinance needs to be in place

Pump out station or by boat, what's most feasible?

Need dingy docking area w/ restrooms showers trash

mooring for 10-15 boats 40' & less

General maint only.

CAPE CORAL MOORING FIELD

April 3rd Public Information Session
capecoralmooringfield.com



Comments: We Need a mooring field

Typically there are 12-15 boats in the Basin which is enough. We want to have high cost mooring and ^{limit to} stay 3-5 days to attract people that are less apt to dumping. Having a dumping boat to assist in getting rid of their tanks would be great giving even less chance of more dumping.

We do enjoy seeing boats in the basin but the dumping is a huge problem for Cardboard boat races, Taste of the Cape, The Christmas Boat Parade and many more and people who live on the Basin.

CAPE CORAL MOORING FIELD

April 3rd Public Information Session
capecoralmooringfield.com



Comments: Tony Adinolfi

- Good idea -!
- less Boats - 15-20 at first more late
- Strict Enforcement - need STAFF?
- higher fees -
- noise Controls - very close To homes
⇒ 8am → 8pm?
need someone To Enforce 65/60 Db at homes

4/03/18

CAPE CORAL MOORING FIELD

April 3rd Public Information Session

capecoralmooringfield.com



Comments:

Charge fees for Anchorage \$35 day \$200 wk
Pump out boat service
Monitor Boats for illegal dumping
Boaters need to leave out if Event such as
Boat-A-Long happens in December
Security Cameras
Use Lock Boat Head or Pill/Colored if Head is Dumped
Boat Length - 40 ft Highest Smaller - 20 ft
25 Boats LCA

Enforcement - tweak ordinance
Emergency Plan for Bigger Boats / Buoy Anchorage

CAPE CORAL MOORING FIELD

April 3rd Public Information Session

capecoralmooringfield.com



Comments: Create a Visting Boater mooring

- 1) limit mooring balls to 15-25-
- 2) Enforcement ability/patrols-
- 3) Dump boat on site
- 4) higher all inclusive fee for mooring, dumping, etc
- 5) limit mooring time to 3-5 days
- 6) NO LIVE ABORDS-
- 7) Keep our water clean
- 8) Create Noise ordinances (one)
- 9) ~~limit~~ limit maintenance
- 10) on site personal
- 11) Boat size not to exceed 35 ft
- 12) Current lic / insurance / registration
- 13) lock down tanks & odor dye - see Naples
- 14) NO BBO / laundry
- 15) NO free anchoring in the mooring field
- 16) Hurricane - evaluate
- 17) Empty mooring field during the Xmas parade
- 18) length of boat all aspect
- 19) Reservation
- 20) Anchor sites must

Mooring issues/concerns to be addressed in development of Cape Coral's ordinance for the Bimini Basin

The following are things we the resident/owners of the Sunnybrook Harbur Condominium Association believe are important and should be included in the new ordinance.

- 1) No Wake Buoys should be prominently displayed. Boaters speed thru the Bimini Basin as if they were in the open waters of the Gulf.
- 2) No wet storage
- 3) Reservations should be made in advance. An exception could be made if the boater has an emergency situation but, immediate request for a permit would be required.
- 4) All renters MUST register and obtain a permit and their vessel must be properly registered with current (not expired) decals displayed.
- 5) The mooring fee established should not be reduced for live aboard boaters.
- 6) In addition to the mooring fee live aboard boaters should pay an additional fee similar to that of the City of Vero Beach's \$100.00 per month fee. Perhaps even an amount greater than \$100.00.
- 7) Live aboard boaters should be limited to number of months they may stay in one calendar year. No more than 3 regardless if consecutive or at intervals. Some of our owners feel three months is too long. They would prefer a one month limit.
- 8) Length of stay is limited to a number of days for transient boaters passing by. Perhaps no more than five days.
- 9) If the ordinance does not include a weekly pumpout vessel service, then proof of weekly pump-out should be required and proof that it has occurred and if the boater cannot provide proof he/she should be fined according to Florida boater law of \$250.00.
- 10) The number of moorings should be limited as not to over crowd the Bimini Basin. Perhaps a maximum of 20 boats total. Long anchor lines make it already dangerous to come back at night to docks and piers east of the Bimini Basin at night. The traffic in this area will only increase once the condos are built on the west side of Coronado Parkway between Cape Coral Parkway and Tower Street.
- 11) Anchoring light regulations must be observed at night and enforced.

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Tuesday, April 03, 2018 10:05:00 AM

Name: Edwin Hauck

Email Address: ehauck1@hotmail.com

Message: Moorings have been greatly needed for the Bimini Basin, which I have a condo no the basin

Just to eliminate the derelick boat and to control the flushing of holding tanks in our waterways

I have traveled to the virgin islands and everywhere you go you must use a mooring and it works fine

E Hauck

(Sent via [Cape Coral Mooring Field](#))

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Friday, April 06, 2018 1:04:37 AM

Name: Gina Chancy

Email Address: Ginachancy@gmail.com

Message: Why isn't there a big warning sign posted? It was our 1st time there & wondered over from playground to the picturesque picknic tables. We were there this Tuesday with my 3 yr old (& 6 yr old niece, & other kids) who played in the water.

(Sent via [Cape Coral Mooring Field](#))

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Thursday, April 05, 2018 10:20:50 AM

Name: jason pim

Email Address: jpim1@comcast.net

Message: Is there any way to receive a recap or minutes of Tuesday public information session?

(Sent via [Cape Coral Mooring Field](#))

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Thursday, April 05, 2018 12:49:54 PM

Name: Jim Fogle

Email Address: jfogle7885@aol.com

Message: I am on the Board of Directors for Waterside West COA at 416 and 420 Tudor Dr. I observe illegal activities every day as my home office overlooks the Basin. On calm mornings, you can see an oil and sewage sheen on top of the water. Some of the abandoned boats have been out there for 3-4 years with no one on them except for the 2 boats of gypsies that came in last fall and are still there. One of the gypsie's boat has four adults and a mid sized dog living on board a 25ft sailboat (hull # MO71628). The other gypsie boat is a Hunter 25ft with 2 adults living on board (Hull # FL3570GH). They have boarded most of the derelict boats numerous times and transport items back and forth for storage. I have personally dealt with several of the boats breaking loose from their moorings and ending up on our dock. Cape Coral Marine units do nothing to enforce maritime mooring rules such as waste containment and anchorage lights. I know what I am talking about as I am a USCG Master Captain observing this situation for 5 years now. I will be at the meeting on May 1st.

(Sent via [Cape Coral Mooring Field](#))

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Monday, April 02, 2018 11:48:52 AM

Name: Joe Galewski

Email Address: joe@avalon-insurance.com

Message: Will the mooring field invite more boats to anchor in the Bimini Basin? I am all about getting rid of the eye soars and squatters that are currently living in the basin now. I own a home looking directly at the basin and can no longer stand looking at these nasty boats filled with drifters that could possibly be drug attics and sex offenders. It is amazing that they are allowed to stay there for years not maintaining their vessels . To top it off they are anchored right off Four Freedoms Park where many children play (not saying any of these squatters are sex offenders but who regulates that if they are and are they allowed to live next to the park?) Will changing the Basin to a mooring field have any repercussions on future events that are always held in the Basin such as the Christmas Boat Parade and the Cardboard boat races? Thank you for taking the time to read and thank you for helping with the problem in our beautiful Bimini Basin!

Joe Galewski

(Sent via [Cape Coral Mooring Field](#))

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Tuesday, April 03, 2018 4:13:12 PM

Name: John Conroy

Email Address: JohnFloridaSW@aol.com

Message: A regulated "Mooring Field" in the Bimini Basin is long overdue!

Well over 70 percent of the boats currently anchored there have been there for more than six months. I have witnessed and reported brown discharges coming from the side of sailboats and predawn dumping of 5 gallon pails over the side of other boats.

Marine Division officers and Florida Fish and Wildlife officials tell me that nothing can be done unless they see it happen.

The West end of Four Freedoms park has become a daytime safe haven for some of the boaters and nearly a dozen land based homeless persons. They leave behind their trash and bottles strewn about.

Occasionally, an elderly gentleman and my wife and I pick up the trash and deposit it in the nearby receptacles. The City workers remove the bags several times a week, but seldom bend over to pick up trash strewn about.

(Sent via [Cape Coral Mooring Field](#))

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Thursday, April 05, 2018 8:56:27 PM

Name: John Lewis

Email Address: Jail16@aol.com

Message: What was the City of Cape Coral thinking when they built a beach fifty yards from where boaters have been dumping their bodily wastes for years and years? Now they want to build up around this Basin and put more people in the water which is already polluted. My neighbors and myself are tired of calling to boaters to "slow down". The more boaters, the more speeders and wakes that travel back and forth across the canal long after the boat has passed. No one should fish or swim in that sludge being left by the boaters. Making them pay will not solve the problem. The pollution will still be there. Stop it all together. The rainy season will not help as some have suggested. There is just more run off from the streets to assist with the pollution. I own a condo on the Bimini Canal so I see this every day.

(Sent via [Cape Coral Mooring Field](#))

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Monday, April 02, 2018 8:24:31 PM

Name: Leonard Epp

Email Address: EPPLG@MOUNTUNION.EDU

Message: Late this afternoon I learned about the public meeting regarding the potential mooring field in Bimini Basin. As a condo owner on the basin I am unhappy that I will not be able to attend as I made unchangeable out-of-town plans for tomorrow. As a snowbird I will be back in Ohio on the May date so again will not be able to attend. So, I would like to make the following comments here. PLEASE, get rid of the moldy, unattractive and abandoned boats outside my window. (One of the 17 out there today has been there, honestly I believe, for all 6 years I have been renting/owning on the basin and I have never seen anyone on it.) PLEASE, get rid of the homeless live-aboards who have been out there for years, storing their belongings on multiple boats, living all day in the park next to the children's playground in Four Freedoms Park, and dumping their bilge in the basin outside my window. PLEASE get rid of Cape Coral's only existing slum which is an embarrassment to our whole community. (I must say I don't understand why the city is worried about legitimate hardworking, taxpaying residents parking their business vehicles in their driveways and paying the city taxes on their business income, while ignoring the abandoned, derelict and homeless-occupied boats parked in one of the most scenic and desirable parts of our city. And how much do those derelict boat owners pay in taxes? Hmmm?). Now I suppose there will be some residents in the area of the basin who will oppose the Bimini Basin area development no matter what. I feel development of this valuable area is unavoidable and accept it because I fully believe that this development will progress with all due consideration to the current area residents. But, the current basin situation is, in my estimation, a separate matter. It is a situation that the city should deal with, not because it affects future development, but because it is the right thing to do for the city of Cape Coral. Thank you for considering my opinion.

(Sent via [Cape Coral Mooring Field](#))

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Thursday, April 05, 2018 5:53:06 PM

Name: Paul Rod

Email Address: Paulrod@comcast.net

Message: I live on the water in Cape Coral and occasionally visit Bimini Basin whenever there are special events. Some of the boats anchored are complete garbage and probably don't have running engines and are clearly dumping sewage.. So much growth on the hulls that they probably couldn't even be towed. A mooring field would be a great idea for the city but would have to be carefully monitored and standards for vessels would have to be set (working engines, properly secured sewage lines, etc.).

(Sent via [Cape Coral Mooring Field](#))

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Wednesday, April 04, 2018 1:05:21 PM

Name: Richard Ordway

Email Address: Svcambia@yahoo.com

Message: Moorings work. We sailed full time for 17 yrs. Loved the places with moorings and pump out boats . It makes for a secure, clean harbor.

(Sent via [Cape Coral Mooring Field](#))

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Wednesday, April 04, 2018 9:48:34 PM

Name: Sam McKay

Email Address: smckay2004@hotmail.com

Message: The Bimini Basin is the only sailboat-draft anchorage area assessable via public easement (Four Freedoms Park) within walking distance to 47th terrace. I know of no other Florida city that provides free public mooring so close to its downtown. When the basin is developed to resemble Cape Harbour (a certainty), how many retirees will remain to complain about anything going on there? Who could afford it?

(Sent via [Cape Coral Mooring Field](#))

From: Squarespace
To: [Beck, Jared](#)
Subject: Form Submission - New Form
Date: Thursday, March 29, 2018 6:45:36 PM

Name: Tim Argie

Email Address: tjargie@yahoo.com

Message: Over the past several years, we have enjoyed anchoring in Bimini Basin numerous times - on our way out the Caloosahatchee River to cruise various places and on our way back in the Caloosahatchee River. We store our boat near LaBelle.

We come here to provision at the nearby grocery stores (Paesano's is great). Anything we need is at the nearby hardware and West Marine. Laundry and propane refills are also very convenient. We also enjoy eating at the local restaurants. Many of our cruising friends are reluctant to stay here because of the crowded conditions with the stored boats and the large number of full time liveaboards. We would welcome the extra security of a mooring field in Bimini Basin!

(Sent via [Cape Coral Mooring Field](#))

Appendix - Mooring Field Example Ordinances

DIVISION 1. - GENERALLY

Sec. 46-91. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Anchorage means a customary, suitable and designated harbor area in which vessels may anchor.

Anchoring means the use of a heavy device fastened to a line or chain to hold a vessel in a desired position.

Designated special anchorage areas means anchorage areas designated by the coast guard where it has been determined such an anchorage ground is necessitated due to maritime or commercial interests.

Emergency means any occurrence, or threat thereof, whether natural, technological or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Harbor means a natural or manmade anchorage and/or mooring area providing some degree of protection and security from storms.

Harbor management plan for mooring area means a plan adopted by ordinance of the city council to address the rules and regulations of anchoring, mooring, and speed limits on the river bottom owned by the city.

Harbormaster/dockmaster means a designated city employee charged with implementation of the harbor management plan for mooring area.

Houseboat/live-aboard vessel means any vessel which is used primarily as a residence for a minimum of 21 days during any 30-day period, in a county of this state, and this residential use of the vessel is to the preclusion of the use of the vessel as a means of transportation. This includes any vessel represented as a place of business, a professional or other commercial enterprise, or a legal residence. A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

Mooring means permanent ground tackle where vessels are kept at anchor.

Mooring field means a designated area where permanent ground tackle is utilized to provide multiple vessel moorings in accordance with the harbor management plan for mooring area.

Vessel means a term synonymous with the word "boat," as referenced in section 1(b), section VII of the state constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water under the Florida Vessel Registration and Safety Law.

(Code 1991, § 9-64; Ord. No. 2999, § 2, 1-16-2001)

Cross reference— Definitions and rules of construction, § 1-2.

Sec. 46-92. - Intent.

It is the intent of the harbor management plan for mooring area to address the primary management of the managed mooring field located in the Caloosahatchee River on the Okeechobee Waterway. The harbor management plan for mooring area also addresses anchoring outside the designated anchorage and speed/wake limitations on the remainder of the city-owned river bottom. The purpose of the city yacht basin is to be boater friendly and encourage more boaters to visit downtown; therefore, there is a need to provide additional facilities to accommodate transient vessels in an anchorage or a mooring, or at a dock.

(Code 1991, § 9-60; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-93. - Purpose.

The purpose of the harbor management plan for mooring area is to establish a plan for adequate management of the managed mooring field in a manner that will reduce the potential discharge of pollutants into the water and provide boaters with maximum protection from irresponsible or unthinking actions of other boaters.

(Code 1991, § 9-61; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-94. - Target group of boaters.

The harbor management plan for mooring area is designed to accommodate the needs of operators of adequately equipped sailboats operating their vessels in a responsible manner. However, this plan also addresses possible issues that may arise from irresponsible actions of a minority group of boaters anticipated to utilize the managed mooring field. It is acknowledged that the majority of vessel operators are responsible and comply with applicable federal and state requirements.

(Code 1991, § 9-62; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-95. - Applicability; enforcement.

The harbor management plan for mooring area shall apply to all vessel(s), owner(s), crew(s), and guests entering the managed mooring field. Any vessel operator in violation of federal law(s) or regulation(s), state law(s) or regulation(s), or this Code would result in cause for eviction from the managed mooring field.

(Code 1991, § 9-63; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-96—46-120. - Reserved.

DIVISION 2. - MANAGED MOORING FIELD RULES

Sec. 46-121. - Authority of harbormaster/dockmaster.

The harbormaster/dockmaster has the right to assign berths and moorings. No vessel shall occupy any mooring berth without the approval of the harbormaster/dockmaster or his designee. Subleasing of any mooring by the lessee is prohibited. Owners wishing to transfer to a different mooring other than the one assigned must obtain the prior authorization of the harbormaster/dockmaster or his designee and complete the required forms. It may be necessary to reassign a vessel from the particular space rented to another mooring within the managed mooring field as dictated by the practical needs of the existing use of the managed mooring field and the tenants therein. The decision or interpretation of this article shall be the responsibility of the harbormaster/dockmaster.

(Code 1991, § 9-70; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-122. - Vessels allowed; toilet facilities.

- (a) Only vessels that are in compliance with the United States Coast Guard (USCG) regulations, and state statutes, particularly the operational and safety standards, shall be allowed within the managed

mooring field. Only seaworthy vessels in good operating condition, capable of maneuvering under their own power or sail, possessing current registration and acceptable documentation, shall be allowed to moor or anchor within the managed mooring field. This is to ensure that all vessels are functional and operational, in the interest of public safety.

- (b) The decision of whether a vessel is considered to be in good operational condition and capable of maneuvering under its own power shall be the responsibility of the harbormaster/dockmaster, based on the United States Coast Guard and state laws and regulations concerning safety and operational requirements.
- (c) All vessels, except dinghies, without an integral source of propulsion (sail or motorized) are not allowed to remain within the managed mooring field. Examples of vessels that would not be allowed to remain within the managed mooring field are a sailboat with no motor and no sails, a motorboat with no motor, or a vessel that must be towed. This requirement does not include vessels that require minor sail or engine repairs.
- (d) Every vessel 26 feet or more in length, which has an enclosed cabin with berthing facilities, shall, while on the waters of the state, be equipped with a toilet. On a vessel, other than a houseboat, the toilet may be portable or permanently installed. Every permanently installed toilet shall be properly attached to the appropriate United States Coast Guard certified or labeled marine sanitation device.
- (e) Every houseboat shall be equipped with at least one permanently installed toilet, which shall be properly connected to a United States Coast Guard certified or labeled type III marine sanitation device. If the toilet is simultaneously connected to both a type III marine sanitation device and another approved marine sanitation device, the valve or other mechanism selecting between the two marine sanitation devices shall be set to direct all sewage to the type III marine sanitation device and, while the vessel is on the waters of the state, shall be locked or otherwise secured by the boat operator so as to prevent resetting.

(Code 1991, § 9-71; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-123. - Transportation requirements.

All vessels should have a dinghy or other small craft as a method of conveyance to enable access to the dinghy dock and the office of the harbormaster/dockmaster. The vessel owner shall report the absence of a dinghy to the harbormaster/dockmaster. The vessel owner is responsible for transportation to and from the office of the harbormaster/dockmaster for registering to rent the mooring facilities. The vessel owner can utilize his main vessel for this purpose by temporarily bringing it to the fuel dock. The lack of such a dinghy shall not be cause to refuse rental of a mooring. It is the sole responsibility of the occupants of the vessel to provide their own conveyance to the upland facilities. Under no circumstances is the city yacht basin responsible for owning, operating or maintaining a dinghy for the exclusive use of mooring patrons.

(Code 1991, § 9-72; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-124. - Commercial uses.

- (a) Commercial activities or vessels engaged in commercial activities are prohibited from mooring in the managed mooring field. The site is designed as a recreational and residential site and shall be maintained as such. No advertising or soliciting shall be permitted on any vessel within the managed mooring field, except for "for sale" signs, not to exceed one square foot in size. Each vessel shall be limited to two "for sale" signs. Commercial vessels, such as day charter or sport fishing boats, will be allowed to store the boats on a mooring the same as a private vessel tenant.
- (b) Minor commercial activities and vessels, such as water taxis, delivery vessels, pump-out vessels, and those performing minor repairs on mooring vessels, may extend service to the vessels in the

managed mooring field. The harbormaster/dockmaster shall make the final decision on determining whether a commercial vessel is allowed in the managed mooring field.

(Code 1991, § 9-73; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-125. - Repairs.

Major repairs or refitting of vessels, including any activity that could result in a deposition of any materials into the waterway or within the managed mooring field, are strictly prohibited since a significant water quality violation would result in an adverse impact to public health. Only minor repairs or mechanical adjustments may be conducted on vessels while in the managed mooring field. The harbormaster/dockmaster office shall be notified in advance to verify compliance of any proposed activity.

(Code 1991, § 9-74; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-126. - Mooring and anchoring methods.

- (a) The method of mooring vessels in the managed mooring field shall be by tying the buoy line to the bow only. The line used to attach a vessel to the mooring buoy shall be the one furnished, which has one end permanently attached to buoy. No vessel shall be moored at the stern or be tied to more than one buoy or points on a vessel. There shall be no dropping or placement of additional anchors or anchor systems from any vessel in the managed mooring field. All vessels within the managed mooring field shall only use the established buoys and anchoring systems.
- (b) Vessels may not anchor in a manner that:
 - (1) Jeopardizes other vessels at anchor or underway;
 - (2) Might cause damage to other property or persons; and/or
 - (3) Impedes access to docks, slips or public or private property.

(Code 1991, § 9-75; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-127. - Abandonment of vessels.

If a vessel is left unattended for more than 72 continuous hours without giving prior notification to the harbormaster/dockmaster, the vessel shall be considered abandoned. If any vessel is determined to be abandoned, it may be stored in a secure location or commercial marina for 30 days, during which time the harbormaster/dockmaster shall make a reasonable, diligent effort to locate the owner of the vessel. If the vessel is not reclaimed within 30 days, the vessel shall be sold under the process prescribed by state statutes, at fair market value, which will cover the cost of unpaid rental fees, as well as any fees due for storage.

(Code 1991, § 9-76; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-128. - Drug use or possession policy.

It is the policy of the city not to tolerate any illegal drug use or possession within its boundaries, which includes the managed mooring field. Such use or possession shall subject the offender to be immediately prosecuted to the fullest extent of the provisions of all applicable laws.

(Code 1991, § 9-77; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-129. - Illegal activities prohibited.

Any illegal activity within the boundaries of the city, which includes the manned mooring field, shall be grounds for immediate prosecution under the provisions of state statutes and/or this Code. It is the intent of the city to prosecute each violation to the fullest extent of the law.

(Code 1991, § 9-78; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-130. - Liability of city.

The city assumes no liability for use of the managed mooring field by tenants or guests. Also, the city neither assumes, nor accepts any responsibility for personal possessions, vessel, dinghy, or their contents or use while said vessels are located within the managed mooring field or upland facilities. Persons using the water of the city shall assume all risk of personal injury and damage or loss to their property. The city assumes no risk due to accident, fire, theft, vandalism, or acts of God.

(Code 1991, § 9-79; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-131. - Anchoring outside designated anchorage.

- (a) Overnight anchoring south of the Intracoastal Waterway is prohibited from markers 39—58. Short-term anchoring in this area is permitted during city permitted waterfront activities, such as band concerts and firework displays. For the purposes of this subsection, the term "short-term" means three hours before and after said event. Overnight anchoring will not be allowed.
- (b) Vessels may anchor not more than seven consecutive days out of any 28 days north of the Intracoastal Waterway from markers 39—58, but not in the managed mooring field, nor in any other location that would impede other vessels' travel to channels or docks in the area. Vessels anchored on the city-owned river bottom, but not in the designated anchorage, are not allowed to utilize any city yacht basin amenities, including the dinghy dock.

(Code 1991, § 9-80; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-132—46-150. - Reserved.

DIVISION 3. - RESPONSIBILITIES OF TENANTS

Sec. 46-151. - Safe operation of vessels.

Reckless or careless operation of any vessel, including but not limited to violation of navigation rules, when the vessel endangers or is likely to endanger life, limb, property or person, shall be grounds for immediate eviction from the managed mooring field.

(Code 1991, § 9-85; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-152. - Use of sewage pump-out facilities.

- (a) Absolutely no discharge of sewage or other pollutants within the managed mooring field is allowed. Use of the pump-out facility located at the fuel dock of the city yacht basin or some other pump-out facility is required on an as needed basis. The other pump-out facility could be a floating facility, sometimes known as a "honey barge," should one be put into operation. All tenants within the managed mooring field must maintain strict compliance with 33 CFR 159 and F.S. § 327.53, as to

the operation and management of marine sanitation devices to reduce discharges that would adversely impact public health. The use of the yacht basin pump-out facility is free for all tenants and the general public.

- (b) Violation of this section will be reason for immediate eviction, withholding of any security deposit and prosecution to the fullest extent provided by federal, state and city laws. Enforcement of sewage discharge laws will be by the state fish and wildlife conservation commission, state marine patrol, who currently perform random boarding and inspections of anchored and docked vessels.

(Code 1991, § 9-86; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-153. - Conduct of tenants.

- (a) Tenants shall use discretion in using any sound producing devices or machinery, which may include but is not limited to televisions, radios, stereos and musical instruments, so as not to create a nuisance to other tenants. Generators, blowers or other noisy machinery shall not be operated between the hours of 8:00 p.m. and 7:00 a.m. Disorderly, boisterous or rowdy conduct by a vessel owner, crew or guest that disturbs the peace of other occupants in the managed mooring field shall be cause for a warning to the operator/tenant or eviction of the vessel from the managed mooring field.
- (b) The use of charcoal burners or any open flame equipment is prohibited on the docks or other common areas, except as provided by the city yacht basin. Swimming, diving and fishing are prohibited from yacht basin docks and bulkheads. All pets must be leashed while on the docks or in any of the common areas. Pets are permitted, provided they do not disturb other tenants. Laundry shall not be placed in public view aboard any vessel or in the common area.

(Code 1991, § 9-87; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-154. - Discharge of waste or other materials.

- (a) While within the managed mooring field, any discharge into the river of any fluids, waste or other material, regardless of the nature thereof, that would adversely impact public health, except for clean bilge or properly treated wastewater, is prohibited by state and federal law. If the harbormaster/dockmaster or any employee observes any such discharge, they will immediately notify the department of environmental protection or call the state warning point number (800-320-0519). If such a discharge occurs and is illegal, eviction from the managed mooring field shall be mandatory, once appropriate environmental enforcement action has been taken.
- (b) In the event of an accidental discharge, the vessel captain, operator, or owner shall immediately notify the harbormaster/dockmaster to ensure any action that could improve the containment of the spilled/discharged material will begin as soon as possible.

(Code 1991, § 9-88; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-155. - Boarding by law enforcement personnel.

The vessel operator is encouraged to cooperate with, and assist law enforcement personnel in, the lawful pursuit of their duties. The vessel operator shall not improperly resist or obstruct a lawful boarding or inspection conducted by a law enforcement officer.

(Code 1991, § 9-89; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-156. - Emergency repairs in absence of tenant.

The harbormaster/dockmaster shall have the authority to make necessary repairs in the event of an emergency when an unattended vessel is in immediate danger of sinking or represents a threat to other vessels. The emergency may include, but shall not be limited to, the vessel sinking or fire, breakdown of a bilge, fuel or sewage pumps or fluid leaks or broken lines. The cost of repairs, parts and labor will be assessed to the owner of the vessel and be due and payable within 48 hours of the return of the owner of the vessel or as provided by the harbormaster/dockmaster. If the vessel is deemed to be in imminent danger of sinking, fails to meet United States Coast Guard and state standards, leaks fluids or materials, or represents a threat to other vessels, the harbormaster/dockmaster will require repairs to be made within a reasonable, but specific time frame. If the repairs are not adequately accomplished, the vessel may be evicted from the managed mooring field.

(Code 1991, § 9-90; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-157. - Departure of vessels with delinquent dockage accounts.

It is unlawful for the vessel owner to vacate a mooring without the permission of the harbormaster/dockmaster when said vessel has a delinquent dockage account. Additionally, as part of the lease agreement, the city clerk will be authorized to place a lien on the vessel for the cost of the unpaid fees or charges assessed by the harbormaster/dockmaster.

(Code 1991, § 9-91; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-158—46-180. - Reserved.

DIVISION 4. - AMENITIES AND SERVICES

Sec. 46-181. - Damage of amenities and property.

Misuse of any amenity or property is grounds for eviction. If any tenant, crew or guest damages any property or equipment of the amenities, due to neglect, misuse, vandalism or failure to follow stated instructions, they shall be held responsible for the cost of repair and replacement, as well as any civil or criminal charges for the activity.

(Code 1991, § 9-95; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-182. - Use of parking spaces.

- (a) Use of city yacht basin parking spaces is limited to customers who have a monthly lease agreement for a specified numbered parking space. Vehicles parked in the city yacht basin numbered parking spaces must at all times display an authorized parking pass on the dash or on the back of the rear view mirror. The pass must reflect the same number as the parking space.
- (b) Parking spaces are leased on an as available basis only. Parking spaces, when available, will only be leased to slip holders or tenants with managed mooring field leases.

(Code 1991, § 9-96; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-183. - Use of dinghy docks.

- (a) Registered managed mooring field tenants shall have free use of the dinghy docks located at floating dock D, slips D34—D40, at the city yacht basin. Dockage is limited to a single dinghy at any one time, with a maximum length of ten feet overall. Dinghies must be kept in the water and secured by a single line of good quality from the bow to a cleat or ring on the dock.

- (b) Use of the dinghy docks by vessels anchored in designated anchorage is included in the anchorage amenity package. The same restrictions apply as to vessels in the managed mooring field.

(Code 1991, § 9-97; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-184. - Use of sewage pump-out facility.

The city yacht basin pump-out facility, located on the riverside of the fuel dock, shall be open and in operation from 8:00 a.m. to 5:30 p.m., seven days a week, with the exception of Thanksgiving Day and Christmas Day. There is no fee for the use of this facility. All vessels in the managed mooring field must use the pump-out facility on an as required basis.

(Code 1991, § 9-98; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-185—46-200. - Reserved.

DIVISION 5. - LEASING REQUIREMENTS

Sec. 46-201. - Lease agreement.

- (a) Tenancy in the managed mooring field shall fall into three categories defined as follows:
 - (1) *Transient*: Overnight to less than one month;
 - (2) *Monthly*: One to 11 months;
 - (3) *Annually*: Twelve months or longer.
- (b) All vessels with the intention of utilizing the managed mooring field must make prior reservations with the office of the harbor master/dockmaster, regardless of the planned length of stay. Arrangements for transient stays are on a space available basis and can be made upon arrival utilizing a very high frequency (VHF) radio on channel 16. Arrangements for any other length of stay shall be made prior to arrival, in person or via telephone.
- (c) The tenants, upon taking residence within the managed mooring field, shall execute acknowledgement of the rules of the harbor management plan for mooring area, as well as the operational requirements of the managed mooring field. The lease agreement shall contain reasonable language, as deemed necessary, to enforce compliance with the provisions of this article.
- (d) A description of the requirements of the tenants, based on the terms of their anticipated stay, shall be as follows:
 - (1) Transient tenant (one day to less than one month) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section on the acknowledgement of the rules and operational requirements within the managed mooring field, and pay the required daily fee in advance. There will be no assessment of a security deposit for transient tenants.
 - (2) Monthly tenant (one month to less than 12 months) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section on the acknowledgement of the rules and operational requirements within the managed mooring field, and pay the required monthly fee(s) in advance. A tenant may pay in advance for multimonth mooring; however, there will be no refunds. It is the responsibility of the tenant for payment of the monthly fee at the beginning of each rental period. There will be no assessment of a security deposit for monthly tenants.
 - (3) Annual tenants (12 months or longer) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section of the acknowledgement of the rules and operational requirements within the managed mooring field. A security deposit equal to two months'

mooring fee will be paid at the beginning of the lease. The security deposit will be returned after the final bill is paid in full. The monthly mooring fee will be billed the first of each month for the preceding month or partial month. Partial months will be pro rated.

(Code 1991, § 9-101; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-202. - Tenant information required.

- (a) The owner/vessel operator shall provide the following information for the lease/dockage agreement for the managed mooring field:
 - (1) Owner's name;
 - (2) Owner's home address, including city and state;
 - (3) Owner's telephone number;
 - (4) Emergency number (monthly and annual agreements);
 - (5) Length overall (LOA);
 - (6) Beam;
 - (7) Draft;
 - (8) Type of vessel;
 - (9) Mooring assignment;
 - (10) Vessel name;
 - (11) Registration or document number.
- (b) The tenant shall be responsible to inform the harbormaster/dockmaster of any changes in the preceding required lease information.

(Code 1991, § 9-102; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-203. - Vacation of moorings.

Monthly and annual managed mooring field leaseholders are required to notify the office of the harbormaster/dockmaster whenever they plan to vacate the mooring for greater than 24 hours. A date of departure and planned time of return must be provided, if the vessel operator wants to maintain the right of tenancy. The harbormaster/dockmaster reserves the right to rent any unoccupied mooring space when an assigned vessel is absent for 24 hours or more, without any compensation to the mooring field leaseholder.

(Code 1991, § 9-103; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-204—46-220. - Reserved.

DIVISION 6. - SPEED LIMITS

Sec. 46-221. - Outside Intracoastal Waterway.

The speed limit in the water bounded by the southbound Edison Bridge on the east, the Caloosahatchee Bridge on the west, a line drawn between the bridges through the southern end of Lofton's Island (Pleasure Key) on the north, and the southern edge of the Caloosahatchee River on the

south shall be idle speed/no wake. The speed limit between the bridges north of the above-mentioned line to the north shore of the Caloosahatchee River shall be slow speed, minimum wake.

(Code 1991, § 9-110; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-222—46-240. - Reserved.

DIVISION 7. - SEVERE STORM OR HURRICANE PLAN^[3]

Footnotes:

--- (3) ---

Cross reference— Civil emergencies, ch. 22; emergency services, ch. 34.

Sec. 46-241. - Established.

The office of the harbormaster/dockmaster shall, if possible, warn the managed mooring field tenants to exercise prudent and appropriate judgment in the event that a severe storm or hurricane threatens the area. The tenants shall be advised that the mooring equipment provided in the managed mooring field may not be able to withstand a hurricane or tropical storm and/or the associated wind and tidal surges. Evacuation of the managed mooring field will not be mandatory; however, it may be recommended.

(Code 1991, § 9-115; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-242—46-260. - Reserved.

DIVISION 8. - PLANS FOR FUTURE EXPANSION

Sec. 46-261. - Expansion of mooring field.

It may become necessary or desirable to expand the managed mooring field to address additional mooring requirements.

(Code 1991, § 9-120; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-262—46-280. - Reserved.

DIVISION 9. - MANAGED MOORING AREA

Sec. 46-281. - General description.

The 24.3-acre managed mooring area is located northwest of Pleasure Key (Lofton's Island) and provides for 49 moorings with a radius of 75 feet. The current plan is to install 25 moorings initially in every other mooring spot to secure the entire area as a managed mooring field, allowing for the installation of the additional 25 moorings when expansion is required. The mooring anchor points will be 150 feet apart, which will provide for a 75-foot radius. Under normal wind and current conditions, with the full complement of 49 moorings, the vessels will be kept 75 feet apart. Initially, with every other mooring installed, the distance will double to 150 feet, allowing experience to be gained in how the vessels lie in all wind and current conditions.

(Code 1991, § 9-125; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-282. - Physical moorings.

The moorings, manufactured by Force 5 Mooring Systems, Inc., consist of a ten and one-half-foot long galvanized three-quarter-inch diameter steel rod with an eye at one end. Each mooring will have two or four two-inch by three-inch steel U-channels that are 12 inches long and located near the bottom of the rod and hinged to a flat section of the rod. It is water jetted to its full length and then pulled upward. The upward pull extends the U-channels and locks the mooring in the river bottom. Units that have four U-channels are rated by the manufacturer for 60-foot vessels in class 3 hurricanes (120-mile per hour winds). Units with two U-channels are rated by the manufacturer for 40-foot vessels in class 3 hurricanes. The eye of the mooring rod is connected to a surface buoy by a three-quarter-inch polypropylene line. The surface fiberglass buoys are 16 inches high and 24 inches in diameter. A mooring pennant will connect the mooring buoy to the moored vessel.

(Code 1991, § 9-126; Ord. No. 2999, § 2, 1-16-2001)

Chapter 82 - WATERWAYS^[1]

Footnotes:

--- (1) ---

Charter reference— Authority of city commission in development of free port, § 1.03.

Cross reference— Buildings and building regulations, ch. 14; coastal construction and floodplain management codes, § 14-391 et seq.; environment, ch. 26; floods, ch. 34; planning and development, ch. 54; streets and sidewalks, ch. 62; planning and development, ch. 108; resources protection, ch. 110; coastal resources, § 110-181 et seq.; zoning, ch. 122; waterways, watercraft and marine-related structures, § 122-1186.

State Law reference— Vessels, F.S. ch. 327.

ARTICLE I. - IN GENERAL

Sec. 82-1. - Penalties.

Violations of this chapter shall be punishable in accordance with section 1-15. Penalties imposed under section 1-15 shall not be exclusive of any other applicable penalty or remedy under federal, state or local law.

(Code 1986, § 42.12)

Sec. 82-2. - Alteration of Key West's main ship channel.

- (a) Unless approved by a super majority vote of the city commission, the city commission, its boards, committees, agencies, authorized representatives or employees in the course of their duties, shall not take any action individually or in cooperation with any person or entity which could result in the widening, deepening or other alteration of Key West's main ship channel. Any such super majority vote may only occur after notice by publication at least twenty-one (21) days in advance of the meeting at which the vote is to take place.
- (b) This ordinance [section] may only be amended, rescinded or otherwise altered by a super majority vote of the city commission.

(Ord. No. 14-01, § 1, 2-19-2014)

Secs. 82-3—82-30. - Reserved.

ARTICLE II. - VESSELS^[2]

Footnotes:

--- (2) ---

Charter reference— Extension of police powers in the tidal waters, § 1.02; power for development of municipal free port, § 103.

State Law reference— Vessel safety, F.S. ch. 327; beautification and improvement of waterways by municipalities, F.S. § 342.03.

Sec. 82-31. - Unlawful docking and mooring.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Dinghy means a small boat usually 13 feet or less, either inflatable or rigid, that serves to provide transportation between a larger anchored vessel and land.

Tender means a small boat larger than 13 feet but normally less than 20 feet, either inflatable or rigid that serves to provide transportation between a larger anchored vessel and land.

- (b) It is unlawful to tie, moor, anchor, beach or attach in any way a vessel to public or private property, including seawalls, structures, other vessels, waterway markers, signposts or fence posts, vegetation (trees, bushes, plants) and submerged lands, without prior written permission from the owner within the city limits, unless authorized by state and/or federal law. When the owner of the property is the city, the written permission must be granted by the city manager or his/her designee. This written permission shall be specific to the vessel by registration number and operator by name and shall include the duration of permission to stay. Failure to provide written permission to a law enforcement official may result in the removal and storage of the vessel at the owner's expense consistent with state and local law. Responsibility of compliance with this section is the burden of the vessel owner/operator.
- (c) All vessels docking at a city marina or mooring in a city mooring field shall abide by the rules and regulations of the city. The respective dockmasters are authorized to enforce such rules and regulations.
- (d) The city manager or his/her designee shall designate areas to be used as dinghy docks.
- (e) Dinghies in disrepair, with protruding edges or any other conditions that may damage a neighboring docked dinghy will not be permitted to dock at the dinghy dock.
- (f) Prior to securing a dinghy at any city-owned dinghy dock designated by the city manager or his/her designee or prior to securing a tender at any city-owned dock, the owner of the dinghy or tender shall provide payment for dockage in advance. In addition, the owner of the dinghy or tender shall present proof that the dinghy or tender was tethered to a vessel which is currently enrolled and participating in the pump-out service administered by Monroe County. In the alternative, the owner of the dinghy or tender may present a valid receipt establishing that the dinghy or tender was tethered to a vessel which was serviced by a pump-out service within fourteen (14) days of the owner's request to dock.
- (g) In the event a dinghy is placed at a city-owned dock designated by the city manager or his/her designee or a tender is placed at a city-owned dock without permission and without complying with subsections (e) and (f) above, a notice of the violation will be placed on the dinghy or tender directing the owner to contact the dock master to correct the violation or violations and to pay the dockage fee within one (1) hour. In the event the violations are not remedied within the prescribed period, the dinghy or tender will be towed by the dock master to the dock master's office where it will be impounded and secured. A \$25.00 impound fee to the marina will be required for release of the dinghy or tender to its owner.

(Code 1986, § 42.01; Ord. No. 14-10, § 1, 5-6-2014)

Sec. 82-32. - Certain prohibitions for Salt Ponds.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Motorized vessel means any vessel powered by fuel, including but not limited to gasoline and diesel fuel.

Salt Ponds means the following described area: From the intersection of South Roosevelt Boulevard with the south bank of Riviera Canal, proceed south and then west along South Roosevelt Boulevard to Bertha Street; thence north along Bertha Street to Flagler Avenue; thence east along Flagler Avenue to 11th Street; thence south along 11th Street to the south bank of Riviera Canal; thence along the south bank of Riviera Canal to its intersection with South Roosevelt Boulevard, but excluding the extension of Riviera Canal, between Salt Run Creek and 11th Street, and excluding the two finger canals extending southward from Riviera Canal and located within the Riviera Shores Subdivision.

Vessel means every type of watercraft used or capable of being used as a means of transportation on or in water.

(b) *Prohibitions.* No person shall:

- (1) Operate a motorized vessel in the Salt Ponds.
- (2) Conduct a commercial tour in the Salt Ponds using any type of vessel.

(c) *Exemption.* Emergency craft shall be exempt from this section.

(Code 1986, § 42.02)

Sec. 82-33. - Marine sanitation systems.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Compost system means a self-contained dry composting toilet.

Habitable vessel means a waterborne craft, including liveaboard vessels, that is equipped with an onboard toilet which is connected to a fitting that allows for the overboard discharge of sewage.

Habitation means overnight occupation of a vessel or floating home by one or more persons, while the vessel or floating home is moored, docked or anchored in any of the public waterways lying within the city.

Incineration device means a facility approved by the United States Coast Guard located on a vessel which is capable of reducing waste from any vessel to clean ash.

Marine sanitation device means a functioning facility capable of removing waste from any vessel and discharging the waste into a disposal system approved by all governmental authorities having jurisdiction over this system and available for use by persons living aboard habitable vessels.

(b) *Use required.* Every owner of a habitable vessel where habitation is occurring and which is docked or moored within the jurisdictional limits of the city and every real property owner who has a habitable vessel where habitation is occurring docked or moored at his property shall be required to have such vessel at all times use one of the following:

- (1) A marine sanitation device consistent with F.S. § 327.53;
- (2) An approved incineration device;
- (3) A dock or shoreside holding tank;
- (4) A compost system; or
- (5) A city sewer line.

(c) *Consistency with federal and state laws.* All marine sanitation requirements of the city shall be consistent with applicable federal and state laws.

(d) *Operators in Key West Bight.* All operators of habitable vessels in the jurisdiction of the Key West Bight shall abide by the following terms set forth in the Sovereignty Submerged Land Leases between the city and the state: 440027185 page 6 section J & K and D.E.P. Marina Permit

440027185 section 9 & 10 (j&9): "The marina operator shall direct all vessels entering the facilities, for the purpose of mooring, to the sewage pumpout facilities where 1. All holding tanks shall be pumped 2. All vessels without holding tanks shall have the head discharge sea cock closed and sealed. It is the responsibility of the lessee (City of Key West) to ensure thereafter that the holding tanks of liveboards are pumped at required intervals, and that vessels without holding tanks shall have their sea cocks sealed.... The Lessee (City of Key West) and marina operations staff shall inform all slip occupants in writing of the availability and requirements to use the sewage pumpout facilities provided at the docking facility."

- (e) *Prohibitions.* It shall be unlawful for any person to discharge untreated or inadequately treated sewage or, if it so pertains, to violate subsection (d) of this section. It shall be unlawful for any person in the jurisdiction of the city to rent, lease, or otherwise provide dock space for any habitable vessel unless the vessel is equipped with a marine sanitation system pursuant to subsection (b) of this section. It shall be unlawful for any person to build, erect, install or use any article, machine, equipment or other contrivance, the use of which will conceal any discharge that would otherwise constitute a violation of any of the sections of this article.

(Code 1986, § 42.03)

State Law reference— Marine sanitation, F.S. § 327.53.

Sec. 82-34. - Noise.

All vessels shall comply with the muffle and other requirements in F.S. § 327.65.

(Code 1986, § 42.04)

State Law reference— Muffling devices, F.S. § 327.65.

Sec. 82-35. - Dockage fees.

All vessels docked in city marinas or moored at city mooring fields that are subject to dockage fees shall have the dockage fees applied on a length-overall basis. To determine the length overall of a vessel, the dockmaster shall measure the vessel from the furthestmost portion of the bow to the aftermost portion of the stern or platform, including additions or extensions.

(Code 1986, § 42.05)

Sec. 82-36. - Charterboats.

- (a) For the purposes of this section, the term "charterboat" means any vessel for hire or other watercraft operated from a city dockage facility or private property for the purpose of providing a charter to private parties.
- (b) All operators of charterboats and vessels for hire docked at a city marina shall execute a lease with the city and shall be subject both to the lease terms and applicable marina regulations.
- (c) All operators of charterboats and vessels for hire shall hold a business tax receipt from the city for each vessel. The license shall be displayed in a conspicuous place on the vessel.
- (d) All fish caught by any particular person on any charterboat shall belong to the person catching it, who may, however, give the fish to the captain or the operator of the charterboat to dispose of as he sees fit.

- (e) The city commission shall determine at a public hearing whether and to what extent the city will continue to establish a reasonable number of charterboats within all city-operated marinas. The Key West Bight Board is authorized to extend such limitation to its tenants with respect to their subtenants, if the board so deems necessary.

(Code 1986, § 42.06; Res. No. 06-292, § 1, 9-6-2006)

Sec. 82-37. - Liveaboard vessels.

- (a) Liveaboard vessels within the jurisdictional waters of the city are subject to the city's rate of growth ordinance (ROGO) when such vessels are intended for permanent habitation by docking or mooring. Therefore, liveaboard vessels attempting to be established after the effective date of the ROGO may be limited thereby. Unless otherwise provided in the land development regulations, privately owned bay bottom shall be recognized as the same as upland property for the purposes of density and ROGO units.
- (b) Liveaboard vessels shall be docked or moored consistent with sections 82-31 and 82-33. No liveaboard shall be kept on public or private property in violation of the city zoning laws.
- (c) No private or public utility shall provide water, electricity or other utility service to a liveaboard vessel that is in violation of this article.

(Code 1986, § 42.07)

Sec. 82-38. - Abandonment; mooring creating menace to navigation.

It shall be unlawful for any person to abandon any vessel in the public waterways within the jurisdictional limits of the city or to moor such vessel in such manner as to cause it to become a menace to navigation.

(Code 1986, § 42.08)

Sec. 82-39. - Blocking navigation channel.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Device means any net, seine, rope, stake, piling, pontoon, floatline wire, trap, buoy or any similar device, except a hand-thrown cast net.

Navigation channel means any channel between two land masses, fingers or landfills designed for use by watercraft of any type; any project channel marked and maintained by the federal government; a natural channel marked either by the federal government or a local governmental agency; or any natural or artificial channel which is neither marked nor maintained by any governmental authority.

- (b) *Prohibition.* It shall be unlawful to place into any navigation channel any device that either temporarily or permanently obstructs the navigation channel in such a manner as to impede the movement of vessels within the navigation channel or that impedes the ingress and egress of vessels in such navigation channel, except where placement of such devices is required in carrying out duly authorized dredging and channel maintenance programs.

(Code 1986, § 42.09)

Sec. 82-40. - Removal and impoundment of dangerous or hazardous vessels.

- (a) Any vessel, due to fire, explosion, accident, act of God, or other disaster, which, in the opinion of the city manager, in consultation with the U.S. Coast Guard, constitutes a clear and present danger to life or property shall be subject to removal and impoundment by the city in a manner consistent with the paramount interest of providing for the safety of the public, and costs incident thereto shall be borne by the owner.
- (b) Any sunken vessel which, in the opinion of the city manager, in consultation with the U.S. Coast Guard or the state marine patrol, constitutes a hazard to navigation shall be subject to removal and impoundment by the city in a manner consistent with the paramount interest of maintaining the waterways in a safe and navigable condition, and the costs incident thereto shall be borne by the owner.

(Code 1986, § 42.10)

Sec. 82-41. - No discharge zone.

- (a) For the purpose of this section, the term "vessel" means any boat, houseboat, charterboat, fishing boat, or floating structure, whether or not habitable.
- (b) The jurisdictional waters of the city are declared to be a no discharge zone. It shall be unlawful for any person to discharge treated or untreated sewage into the jurisdictional waters of the city from any vessel, whether moored, docked, in transit, or otherwise located within these waters.
- (c) Every marina in Key West shall install sanitary sewage pump-out facilities to serve every vessel and floating structure that docks at the marina. The marina proprietor shall require that the owner or operator of each vessel and floating structure both lock out the black water discharge pipe and use the pump-out facilities as a condition of dockage; all leases or other agreements for dockage shall include this pump-out requirement, as well as a statement that the jurisdictional waters of Key West are a no discharge zone. Each marina owner shall post conspicuous signage informing vessel operators of the no discharge zone. Except as provided in section 82-33(d), pump-out shall occur within 24 hours of the vessel's arrival at the marina, unless the vessel departs within 24 hours of arrival, in which case pump-out is not required. Every such private marina shall maintain a pump-out log showing the sewage disposal history of each vessel and floating structure during its dockage at the marina. Every owner of a vessel docking or mooring within the jurisdictional waters of Key West shall also maintain such a pump-out log at all times that the vessel is in Key West waters. The marina proprietor shall file with the director of utilities a plan for the collection and disposal of vessel and floating structure sewage not later than December 1, 2002, at which date enforcement of the requirements of this subsection shall commence.
- (d) Violations of this section are punishable as provided in section 82-1. A conviction under this section may result in eviction from a city marina.

(Code 1986, § 42.11; Ord. No. 02-25, § 1, 10-1-2002)

Sec. 82-42. - Mooring field; no anchoring zone.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Personal watercraft means a small class A-1 or A-2 vessel as defined in F.S. § 327.02(27), as amended.

Vessel means any boat, houseboat, charterboat, fishing boat, or floating structure, whether or not habitable.

- (b) *Mooring field.* Requirements for the mooring field are as follows:

- (1) All vessels within the seaplane basin are required to moor and tie up to an assigned buoy within the mooring field, which shall serve as a permanent mooring site for transient and liveaboard vessels. The map and description of the mooring field established within the seaplane basin is attached to Ordinance No. 00-32 as composite exhibit A, adopted by reference as if set out at length in this section, and is on file in the city clerk's office.
 - (2) The city shall grant a permit for a fee to tie up to an assigned buoy within the mooring field. A mooring fee shall be established by resolution of the city commission as a user's fee for the anticipated length of use and to provide for continued garbage services, restroom facilities, sewage pumpout for vessels, dingy dock, maintenance of these facilities and other boater-related recreational facilities.
 - (3) Reservations for space within the mooring field shall be accepted by the city, provided space is available for the entire term of the time period sought in the reservation and provided the daily mooring fee is prepaid to cover the time period to be reserved. Such fees shall be nonrefundable. Space availability priority shall be given to county-registered vessels.
 - (4) Accepted reservations shall take priority over applications for extensions when space availability for the term of the reservation and that of the applied for extension conflict.
 - (5) The daily mooring fee shall be paid in advance for the number of days the vessel shall be moored. The monthly mooring fee shall be paid on the first day of each calendar month, and a security deposit and late payment penalties may be charged.
 - (6) The operators or occupants of all vessels moored in the mooring field shall at all times comply with the permit rules and regulations and this Code. Any vessel for which a permit has been granted for use of the mooring field is declared not to be exercising a right of navigation.
 - (7) It shall be unlawful for any person to operate a personal watercraft within the mooring field, except for the limited purpose of ingress or egress to or from a vessel for which a permit has been granted for use of the mooring field.
- (c) *No anchoring zone.* Requirements for the no anchoring zone are as follows:
- (1) The area commonly known as the seaplane basin is declared to be a no anchoring zone. The map and description of such land is attached to Ordinance No. 00-32 as composite exhibit A, adopted by reference as if set out at length in this section, and is on file in the city clerk's office.
 - (2) It shall be unlawful for any person to anchor or otherwise attach or intentionally ground any vessel, temporarily or permanently, to the bottom within the seaplane basin, except in an emergency. Any vessel anchored or intentionally grounded in violation of this subsection is declared not to be exercising a right of navigation.
- (d) *Violations.* Violations of this section are punishable as provided in section 82-1.

(Code 1986, § 42.13)

Sec. 82-43. - Marine park established; restrictions on motorized vessels.

- (a) There is hereby established the Key West Marine Park. It shall be located within an area reserved for swimming to be identified by demarcation buoys (the swim areas). The legal description of the swim areas is attached to and made a part of the ordinance from which this section is derived in exhibit A. A map of the swim areas shall be kept on file and be available for inspection in the city clerk's office. No motorized vessels shall operate in the swim areas.
- (b) The city shall designate lanes for motorized vessels for ingress to and egress from the shoreline. The legal description of the two lanes (entry lane one and entry lane two) is attached to and made a part of the ordinance from which this section is derived in exhibit A. A map of such lanes shall be kept on file and be available for inspection in the city clerk's office. Vessels operating within these lanes shall operate at an idle speed, creating no wake.

(c) Violations of this section are punishable in accordance with the provisions of section 82-1.

(Ord. No. 01-16, § 1(42.14), 9-18-2001)

Charter reference— Exhibit A, referred to in this section is not set out herein but is available for inspection in the city clerk's office.

Sec. 82-44. - Idle speed/no wake zone established.

(a) Definitions. [As used in this section, the following words and terms shall have the meaning ascribed thereto:]

Idle speed/no wake zone means an area of water where a vessel shall not proceed at a speed greater than that speed which is necessary to maintain steerageway.

Vessel means a boat and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on or in the water.

(b) An idle/no wake zone is hereby established in the Garrison Bight and described as follows: To include the entire basin of Garrison Bight, as well as the adjacent marked approach channel running west from the entrance to the basin along Trumbo Point, extending out to 300 feet from the residential shoreline. A map describing the boundaries of this zone is Attachment "A" to Ordinance No. 03-08, and is available in the city clerk's office.

(c) The idle speed/no wake zone described in subsection (b) shall be marked on the waters with uniform regulatory markers in accordance with applicable state and federal laws and regulations.

(d) The city shall consent to the execution of an agreement with the Florida Fish and Wildlife Conservation Commission and the Florida Department of Environmental Protection, holding their respective agencies harmless for claims arising from alleged negligence in the placement, maintenance or operation of agency-approved markers.

(e) Violations of the section are punishable in accordance with the provisions of section 82-1 of this Code and/or F.S. § 327.74.

(Ord. No. 03-08, § 1, 2-19-2003)

Secs. 82-45—82-70. - Reserved.

ARTICLE III. - BEACHES

Sec. 82-71. - Removal of sand, rock or fill.

It shall be unlawful for any person to remove sand, rock or fill in any quantity whatsoever from the South Roosevelt Boulevard Bathing Beach or any other municipally owned beach.

(Code 1986, § 81.10)

Sec. 82-72. - Watercraft prohibited near beaches and parks.

(a) For purposes of this section, the term "motorized watercraft" shall mean any watercraft being propelled by any motor, including but not limited to motorboats, sailboats under engine-assisted power, motorized jet skis, wet bikes, and all other craft capable of being propelled on or through water.

- (b) No person shall operate or cause to be operated or knowingly rent or lease to any person intending to operate any motorized watercraft within 300 feet of the apparent shoreline of any public beach or public park in the city or within the confines of city or state parkland wetland habitats of the city or there to disturb migratory or wading or other indigenous bird species.
- (c) Any person in the city offering or causing to be offered any motorized watercraft for rent or lease shall at all such times prominently display upon the rental business premises written public notice of the terms of subsections (a) and (b) of this section.
- (d) No embarkation or disembarkation of passengers of commercial boating, recreational, or sightseeing operations shall take place on, across, by way of, or within 600 feet of any shoreline or any public beach or public park in the city or within the confines of city or state park and wetland habitats of the city, except when taking place at a boatramp designated by the city manager for that purpose, a marina, or a dock or similar concession; nor shall any commercial watercraft, whether motorized or nonmotorized, be anchored, tied off or otherwise stored within 600 feet of such shoreline, public beach or public park in the city or within the confines of city or state park and wetland habitats of the city, unless specifically authorized in a valid franchise or lease agreement with the city or other proprietary entity or when located in a marina or on private property or in a channel marked for navigation.
- (e) Subsection (b) of this section shall have no application to operation of motorized watercraft directly and immediately engaged in temporary use of the Simonton Street or Bertha Street boatramps or docks or operating pursuant to a franchise approved by the city commission.

(Code 1986, § 81.11)

ARTICLE IV. - CITY WATERS AND MOORING FIELDS

Sec. 36-79. - Intent and purpose.

The intent and purpose of this article is to regulate activities within City waters to promote water quality, quality of life, and manage the economic impact of the use of City waters. As such, this Article authorizes and provides for the adoption of rules and regulations governing the management and use of City designated vessel anchorage areas and mooring fields, which may be adopted by separate resolution and amended from time to time. City waters, anchorage areas and mooring fields shall be managed so as to eliminate abandoned and derelict vessels, ensure compliance with the Clean Vessel Act, minimize benthic damage, and provide a safe secure harbor for the boating community. This Article is adopted pursuant to, and shall be construed as consistent with Fla. Stat. chs. 327 and 315.

(Ord. No. 02-01-08, § 1(5.5-227), 1-8-2002; Ord. No. 2006-011, § 1(5.5-227), 7-11-2006)

Sec. 36-80. - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Abandoned vessel means any vessel that is left unattended long enough for the vessel to become a hazard to other boats, unseaworthy, or a hazard to navigation regardless of it being properly registered.

Anchor means a piece of a vessel's equipment designed to temporarily secure the vessel in an anchorage, or the act of anchoring. All anchors and lines will be considered ground tackle.

Anchorage or mooring agreement means an agreement or license between the Ports Manager and any person desiring to use a City anchorage area or mooring field, agreeing to the fees, rules and regulations governing the same.

Anchorage field means an area or areas within the City-owned or leased submerged lands designated for vessels to moor temporarily using their own ground tackle (anchor).

City waters means the waters extending 1,200 feet into the tidal waters adjacent to the City limits, or as may be otherwise designated by the Florida Legislature. The term "commercial vessel" shall have the same meaning as set forth in Fla. Stat. ch. 327 .

Derelict vessel means any vessel in a wrecked, junked, or substantially dismantled condition or abandoned upon any City waters or at any anchorage area or mooring field in City waters without the consent of the City or other agency having jurisdiction thereof or docked at any private property without the consent of the owner of the private property.

Floating structure shall have the same meaning as set forth in Fla. Stat. ch. 327.

Live-aboard vessel shall have the same meaning as set forth in Fla. Stat. ch. 327.

Marine sanitation device (MSD) shall have the same meaning as set forth in Fla. Stat. ch. 327 .

Moor means the securing of a vessel, by anchoring, attachment, or mooring, rafting to another vessel, or tying to a dock, pier, pile, or wharf.

Mooring means a semipermanent anchorage installation consisting of a heavy anchor, block, or attachment to the bottom, a rode, and a buoy and pennant used for securing a vessel.

Mooring field means an area designated by the City with a network of moorings.

Navigational channel means any area designated by the appropriate Federal, State or local government agency for the purpose of vessel traffic.

Ports Manager means the City Manager or designee whom shall manage City waters and operate, manage, and maintain any City anchorage areas and mooring fields.

Registered owner means the name denoted on the vessel registration.

Seaworthy condition means a vessel that complies with all applicable Federal, State or local government agency regulations concerning equipment, operation, registration and safety.

Storm event means any declared storm event.

Transient anchoring area or *transient mooring field* mean an area in the City's waters designated for short-term anchoring and mooring.

Vessel means the same as set forth in Fla. Stat. ch. 327.

Vessel registration means Federal, State, or international registration indicating the ownership of the vessel to include its official number, port of registration and address of owner.

Wet storage is the act of leaving a vessel or floating structure unattended within the City of Marathon owned or leased submerged lands such that it is not being utilized exclusively as a live-aboard vessel.

(Ord. No. 02-01-08, § 1(5.5-228), 1-8-2002; Ord. No. 2003-30, § 1, 12-23-2003; Ord. No. 2006-011, § 1(5.5-228), 7-11-2006; Ord. No. 2008-27, § 2, 11-25-2008)

Sec. 36-81. - Rules and regulations for City waters.

The City may adopt by resolution, fees, rules and regulations for the management of designated anchorage areas and mooring fields in City waters.

(Ord. No. 02-01-08, § 1(5.5-229), 1-8-2002; Ord. No. 2006-011, § 1(5.5-229), 7-11-2006)

Sec. 36-82. - Powers and duties of Ports Manager.

In addition to any duties that may be assigned from time to time, the Ports Manager shall have the following powers and duties:

- (1) To enforce the provisions of this Article.
- (2) To remove or cause to be removed, from City owned, operated, or maintained or regulated anchorage areas, docks, and mooring fields all vessels and floating structures not properly anchored, docked or moored, as determined by the Ports Manager.
- (3) To control and regulate the use of City boat ramps.
- (4) To represent the City as its agent in the execution of all anchorage, docking and mooring agreements or licenses.
- (5) To remove, or cause the removal of, wrecks, derelict vessels, abandoned vessels, and floating structures or navigational hazard as authorized by interlocal agreement with applicable Federal, State and local government agencies.
- (6) To inspect the valves and holding tanks and seal the valves upon entry of a vessel to a mooring field or anchorage and to inspect the sealed valves at noticed and scheduled intervals not less than three (3) months apart.

(Ord. No. 02-01-08, § 1(5.5-230), 1-8-2002; Ord. No. 2006-011, § 1(5.5-230), 7-11-2006)

Sec. 36-83. - Anchorage areas and mooring fields.

- (a) The City may, by resolution, establish and regulate anchorage areas and mooring fields in City waters to accommodate all vessels both transient and long-term.

- (b) Anchorage in a designated mooring field is prohibited.
- (c) Anchorage in Boot Key Harbor is allowed only in designated anchorage areas, except during imminent and post-storm events, during which time areas outside the designated anchorage areas and not in designated mooring fields may be used as safe harbor for anchorage.
- (d) The Ports Manager has the authority to remove or direct the removal of all vessels, floating structures, ground tackle, or any other equipment or materials prior to the installation of a mooring field. The owners of such vessels, floating structures, ground tackle, or any other equipment or materials shall be responsible for their removal. The City shall attempt to give reasonable notice to owners of those vessels, floating structures, ground tackle, or any other equipment or materials to allow for voluntary removal. If the City is unable to contact the owner of those vessels, floating structures, ground tackle, or any other equipment or materials, the City may remove and impound those vessels, floating structures, ground tackle, or any other equipment or materials and dispose of them.
- (e) No one may operate a business from a vessel occupying a mooring without the express written permission of the Ports Manager. This may include, but is not limited to chartering, brokerage, commercial fishing, boat rentals, rental accommodations, and other similar uses.
- (f) All vessels desiring to use a City anchorage area or mooring field shall first register with the Ports Manager or designee. Only seaworthy and registered vessels shall be allowed use of the anchorage areas and mooring fields.
- (g) The vessel operator, upon leaving the anchorage, must remove all ground tackle.
- (h) The registered owner and his/her guests are the only allowed occupants of any vessel on or within City-owned or leased submerged lands within Boot Key Harbor. No vessel anchored or moored on or within City-owned or leased submerged lands may be rented or leased to another party by its registered owner for the purpose of habitation. Vessels on or within City-owned or leased submerged lands within which the City maintains its mooring field are subject to the terms and conditions of the Boot Key Harbor City Marina License Agreement.
- (i) Wet storage is prohibited on or within the City-leased submerged lands utilized as an anchorage field. Violation of this provision of the ordinance from which this Section derives is enforceable utilizing the penalties defined in Section 36-89.
- (j) Floating structures are prohibited within the City-owned or leased submerged lands utilized as an anchorage field. Violation of this provision of the ordinance from which this Section derives is enforceable utilizing the penalties defined in Section 36-89.

(Ord. No. 02-01-08, § 1(5.5-231), 1-8-2002; Ord. No. 2006-011, § 1(5.5-231), 7-11-2006; Ord. No. 2008-27, § 3, 11-25-2008)

Sec. 36-84. - Wastewater discharge and other activities prohibited.

- (a) No person shall discharge raw or treated sewage from any vessel including live-aboards or any floating structure. At such time as the Florida Keys are designated a no-discharge zone, the disposal of all waste shall comply with all applicable Federal and State rules and regulations applicable to waste discharge. This Section shall be enforced pursuant to Fla. Stat. § 327.70.
- (b) No person on any vessel or on land may throw garbage, waste (solid or liquid) including plastics, fuel oils, or derivatives thereof, rubbish, swill, offal or refuse into City waters.
- (c) With the exception of areas designated by the Ports Manager for emergency purposes, such as hurricane preparations, and until the emergency has subsided (as defined by the City Manager or designee), no person may anchor, moor or dock, or permit or cause to be anchored, moored or docked, any live-aboard vessel:

- (1) In a manmade canal, manmade basin, or manmade cove that is adjacent to any residential area; or
- (2) Within 100 feet of a manmade canal mouth, manmade basin, manmade cove, or a manmade or natural shoreline whose adjacent or upland property is a residential area.

Any vessel with a person or persons aboard that is anchored, moored or docked in the same location for 72 hours is presumed to be a live-aboard vessel. This prohibition does not apply to a marina in lawful operation on the effective date of the ordinance from which this Article is derived. Any marina at which a live-aboard is docked, as a condition for site improvements or redevelopment, shall provide an on-site pump-out station or a contract for pump-out services.

(Ord. No. 02-01-08, § 1(5.5-232), 1-8-2002; Ord. No. 2006-011, § 1(5.5-232), 7-11-2006)

Sec. 36-85. - Removal and impoundment of dangerous or hazardous vessels.

Any vessel, due to fire, explosion, accident, or negligence, which in the determination of the Ports Manager creates an immediate danger to life or property, hazard to navigation, or imminent environmental hazard shall be subject to immediate removal and impoundment of the vessel, and costs incident thereto shall be borne by the vessel owner.

(Ord. No. 02-01-08, § 1(5.5-233), 1-8-2002; Ord. No. 2006-011, § 1(5.5-233), 7-11-2006)

Sec. 36-86. - Abandoned, derelict and wrecked vessels and illegal floating structures.

- (a) No abandoned, derelict or wrecked vessel, or illegal floating structure, shall be allowed in or upon the City waters or the shores of the City. No vessel which is likely to damage private or public property or become a hazard to navigation shall be permitted to anchor, dock or moor in City waters. The Ports Manager or designee shall determine whether any vessel is abandoned, derelict or wrecked, or a floating structure is illegal and if so determined, and as may be authorized by interlocal agreement or State law shall take steps for its removal as follows:
 - (1) To the extent possible, notify the owner or other responsible party, as soon as possible, of the determination; and
 - (2) If the owner or responsible party fails to remedy the condition, in the manner and time directed, the Ports Manager, shall then notify the registered owner, and any other party known by the City to have an interest in the vessel or floating structure, in writing, specifying the remedy required and the time frame within which it is to be completed.

In addition to the penalties herein, the City may choose to remove, or cause to be removed, the vessel or floating structure. The responsible party shall be required to reimburse the City for the costs incurred in the removal. If the responsible party fails to reimburse the City for the costs of removal, the City may place a lien on the responsible party's real and personal property for the costs incurred by the City. The City may foreclose on the lien, or seek a money judgment, as provided for by State law.

- (b) Notwithstanding the above, if the Ports Manager determines that a vessel or floating structure is an imminent risk to the health, safety and welfare of the residents of the City, or is likely to immediately damage private or public property, or is an immediate hazard to navigation, the City may take all steps necessary to immediately remove, or cause to be removed, the vessel or floating structure without written communication.
- (c) In addition to the means of compliance defined in this Section, violation of this provision of the ordinance from which this Section derives is enforceable utilizing the penalties defined in Section 36-89.

(Ord. No. 02-01-08, § 1(5.5-234), 1-8-2002; Ord. No. 2006-011, § 1(5.5-234), 7-11-2006; Ord. No. 2008-27, § 4, 11-25-2008)

Sec. 36-87. - Fees.

All fees may be set by resolution of the City Council.

(Ord. No. 02-01-08, § 1(5.5-235), 1-8-2002; Ord. No. 2006-011, § 1(5.5-235), 7-11-2006)

Sec. 36-88. - [Mangrove maintenance.]

- (a) *Property owner's responsibility.* All property owners shall maintain and trim mangroves and other native vegetation on their properties so as to prevent the vegetation from impeding the navigability of the waterway.
 - (1) The requirements of this Section shall only apply to property owners whose property exists on a manmade canal, with two approximately parallel shorelines, both of which have residential or commercial development on them.
 - (2) For purposes of this Section, navigation will be impeded if vegetation growing from any canal shoreline extends a distance greater than ten (10) feet waterward from mean high or 20 percent of the canal width, whichever is the lesser distance.
- (b) *Permits required.* Mangrove or other native vegetation trimming and removal requires a permit from the Florida Department of Environmental Protection for mangroves and/or the City of Marathon for other vegetation.
- (c) *Standards for trimming.* Mangrove trimming shall be performed in accordance with Fla. Stat. §§ 403.9321—403.9334.
- (d) *Supervision.* Unless otherwise exempt from permitting, all mangrove or other native vegetation trimming or removal shall be directly supervised by a person certified by Florida DEP or as indentified in Chapter 106.07(F), City of Marathon Land Development Regulations.
- (e) *Applicable law.* It is the property owner's responsibility to ensure compliance with all State and local laws governing the removal and maintenance of vegetation.

(Ord. No. 2008-13, § 2, 7-8-2008)

Sec. 36-89. - Penalties.

A violation of this Article may be enforced by issuance of a citation, summons, notice to appear in County court, arrest as provided in Fla. Stat. ch. 901, or in accordance with this Code, and punishable by a fine not to exceed \$500.00. Nothing contained herein, however, shall prohibit the City from enforcing this Article by any other lawful means.

(Ord. No. 2008-27, § 5, 11-25-2008)

Secs. 36-90—36-117. - Reserved.

DIVISION 5. - CITY DOCK/CRAYTON COVE ANCHORAGE

- **Sec. 42-141. - Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City dock/Crayton Cove anchorage means the open bay area located between the Naples City Dock and the Naples Yacht Club pier, and the cove south of the Naples Yacht Club.

Moor means to secure a vessel by line, cable, or other device to one of the eight mooring buoys installed in the city dock/Crayton Cove anchorage.

Transient mooring means a mooring for use by inhabited vessels for periods of no more than 14 days out of every 30 days.

Vessel means every description of self-propelled watercraft used or capable of being used as a means of transportation on water, including all types of boats and all uses thereof.

(Code 1994, § 78-109; Ord. No. 00-8820, § 1, 5-3-2000)

Cross reference— Definitions generally, [§ 1-2](#).

- **Sec. 42-142. - Prohibitions on mooring and anchoring.**

(a)

No vessel may moor to any of the mooring buoys without permission of the dockmaster, who shall assign moorings. Moorings shall only be assigned to transient vessels.

(b)

No vessel may anchor within the anchorage or within the dedicated channels to the north and south of the anchorage. No vessel may anchor on the private submerged land to the west of the anchorage.

(Code 1994, § 78-110; Ord. No. 00-8820, § 1, 5-3-2000)

- **Sec. 42-143. - Rules and regulations for use and operation.**

The city manager is authorized and directed to promulgate rules and regulations for the use and operation of the city dock/Crayton Cove anchorage in addition to and supplemental to the following, all of which shall be posted at the dockmaster's office on the city dock:

(1)

Vessels desiring to use the anchorage shall register with the dockmaster, who will assign a mooring buoy.

(2)

Only legally registered or documented transient vessels in seaworthy condition shall be admitted to the anchorage.

(3)

No person shall discharge or throw overboard any oil, fuel, spirits, oily bilge, sewage, or any other foreign material into Naples Bay.

(4)

Any vessel moored in the anchorage may be inspected at any time by the dockmaster or a U.S. Coast Guard representative for safety or sanitary purposes.

(5)

All vessels permitted to use the anchorage shall be equipped with an approved and properly operating marine sanitation device. The dockmaster shall have authority to inspect the device and require a vessel to use the wastewater pumpout facility before assigning a mooring and the dockmaster shall have the authority to require periodic pumpout if the vessel remains moored for more than one week.

(6)

Assignment of a mooring shall constitute permission for the vessel's inhabitants to use the dinghy dock, deposit trash and garbage in the appropriate containers, use the laundry and toilet/lavatory/shower facilities on the city dock, use the dockmaster's bicycles, use the potable water supply, and otherwise enjoy the benefits assigned city dock tenants.

(7)

Graywater discharge shall be kept to a minimum. The laundry machines at the city dock must be used for clothes washing.

(8)

Noise shall be kept at a minimum at all times so as to avoid creation of a nuisance or disturbance. The anchorage is in a residential neighborhood and subsections [22-37](#)(d), (e), (h) and (j) apply to waterways as well as ashore.

(9)

No painting, scraping, sanding, or other repairs shall be permitted in the anchorage except such repairs and maintenance as may be authorized by the dockmaster.

(10)

The dockmaster is responsible for the enforcement of the rules and regulations for the city dock/Crayton Cove anchorage and may terminate the mooring agreement and order any vessel to vacate the assigned mooring for violation of any rule or regulation relating to the anchorage. At the dockmaster's discretion, the following enforcement for violations of the rules and regulations relating to the city dock/Crayton Cove anchorage shall be provided:

a.

Verbal warning issued by the dockmaster to the offender, with documentation in the dockmaster's file;

b.

Written warning depending of the severity of the violation (the dockmaster will provide written notice to the offender detailing the violation);

c.

Notice to appear in the county court; and

d.

Termination of the mooring agreement. If the vessel owner or operator cannot be located after termination of the agreement, the vessel shall be towed from the anchorage to a commercial marina for storage at the owner's expense. The mooring rental rate shall be quadrupled until the vessel is towed from the anchorage.

In addition to the procedure dealing with enforcement of the violations at the city dock/Crayton Cove anchorage, the city will provide a hearing and appeals procedure for violation of rules and regulations of the city dock/Crayton Cove anchorage, as follows: Within ten days of the notice of violation the offender may file a written notice of intent to appeal the dockmaster's decision with the city manager, whereby a hearing will be scheduled within five days with the city manager. The decision of the city manager will be final.

(Code 1994, § 78-111; Ord. No. 00-8820, § 1, 5-3-2000)

- **Sec. 42-144. - Mooring rental rate.**

The city council shall, by resolution, set the daily rental rate for the 12 moorings in the city dock/Crayton Cove anchorage. The rate shall be posted in the dockmaster's office and on the signs at the east ends of the anchorage areas, and shall be as set forth in appendix A to this Code.

(Code 1994, § 78-112; Ord. No. 00-8820, § 1, 5-3-2000; Res. No. [17-14057](#), § 1, 11-1-2017)

- **Sec. 42-145. - Moorings signage.**

To ensure compliance with the rules and regulations for the city dock/Crayton Cove anchorage, a single sign shall be placed at the east end of each anchorage area. The signs shall be four feet high by six feet wide and shall display the following wording: "MANAGED ANCHORAGE," "ALL VESSELS MUST USE MOORING BUOYS," "FOR MOORING ASSIGNMENT REGISTER AT THE DOCKMASTER'S OFFICE ON THE CITY DOCK," "\$ _____ PER DAY MOORING RENTAL FEE." Beneath those lines the sign shall also state that the anchorage is managed under an agreement with the trustees of the internal improvement trust fund and reference the agreement number.

(Code 1994, § 78-113; Ord. No. 00-8820, § 1, 5-3-2000)

DIVISION 1. - GENERAL REGULATIONS

Sec. 10-20. - Definitions.

The following definitions apply throughout article II:

- (a) *Abandoned* means disposed of on public property in a wrecked, inoperative or partially dismantled, or derelict condition with no identifiable owner.
- (b) *Airboat* means a vessel that is primarily designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders.
- (c) *Anchor* means to secure a vessel by using an object or device that is intended to prevent the vessel from moving.
- (d) *Derelict* means in a wrecked, junked or substantially dismantled condition while upon any public waters or while docked, grounded or beached upon the property of another without the consent of the owner.
- (e) *Harbormaster* means a business organization or other person under contract with the city who is responsible for the daily operation of the Sarasota Bayfront Mooring Field.
- (f) *Licensees* means persons or entities who obligate themselves or another person to the terms of the Management Plan, Mooring Field Rules, and Mooring License Agreement including their agents or guests.
- (g) *Live-aboard vessel* means any vessel used solely as a residence and not for navigation; any vessel represented as a place of business, or a professional or other commercial enterprise; or any vessel for which a declaration of domicile has been filed pursuant to F.S. § 222.17. A commercial fishing boat is expressly excluded from the term. This definition shall not apply within designated and properly permitted mooring fields.
- (h) *Marine sanitation device* means any equipment for installation on board a vessel, which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage. Marine sanitation device Types I, II, and III shall be defined as provided in 33 C.F.R. part 159.
- (i) *Moor* means to tie-off a vessel to any submerged fixed object; or to tie-off or secure a vessel to a piling, dock, wharf, seawall, buoy, another vessel, or other object or thing.
- (j) *Motorboat* means any vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation, or whether the machinery is the primary source of propulsion.
- (k) *Personal watercraft* means a vessel less than sixteen (16) feet in length which uses an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.
- (l) *Recreational vessel* means any vessel (1) manufactured and used primarily for noncommercial purposes, or (2) leased, rented, or chartered to a person for the person's noncommercial use.
- (m) *Slow speed* means the speed at which a vessel proceeds when it is fully off plane and completely settled into the water, and when it creates only a minimum wake that does not endanger other vessels or marine life. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, there is no specific numerical speed assigned to slow speed.
- (n) *Idle speed* is the minimum speed that will maintain the steerageway of a motorboat.
- (o) *Vessel* is synonymous with boat as referenced in Section 1(b), Article VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-21. - Operation of vessels in marked swimming or bathing areas.

No person shall operate any vessel, except hand- or foot-propelled vessels within a swimming or bathing area which has been clearly marked by duly authorized buoys or other distinguishing devices.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-22. - Operation of vessels near the shore of the Gulf of Mexico.

No person shall operate any motorboat or other vessel in excess of idle speed within three hundred (300) feet of any land in the city fronting on the Gulf of Mexico except in areas designated by the city commission as a corridor for shore access, after public hearing, and when such access corridors are marked by distinguishing devices.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-23. - Towing or manipulating flying or sailing devices, parachuting near beaches.

It shall be unlawful for any person to tow or manipulate any person attached to any flying or sailing device or parachute through or over an area within five hundred (500) feet each side of the water's edge of any shore line in the city below an altitude of five hundred (500) feet above the surface of the water.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-24. - Operating flying devices near beaches.

It shall be unlawful for any person to operate, engage in, be a passenger in or control any flying device carrying a person or persons through or over an area within five hundred (500) feet each side of the water's edge of any public or private gulf beach customarily used for swimming or surf bathing below an altitude of five hundred (500) feet above the surface of the water.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-25. - Launching of vessels from public property.

- (a) It shall be unlawful for any person to launch a vessel into any bayou, canal, bay or the Gulf of Mexico from any property owned by the city, or in which the city has an easement, unless the launching takes place at a marina; or from a boat ramp provided by the city.
- (b) Small vessels including, but not necessarily limited to sailboats, rowboats, dingys, canoes or kayaks may be launched from John Ringling Causeway Park, Ken Thompson Park or any other location approved by the city manager. The city manager may establish rules and regulations pertaining to launchings from these locations.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-26. - Designated waterski area; manatee protection.

- (a) The following portion of Sarasota Bay shall be identified by use of appropriate markers as a waterski area:

That portion of Sarasota Bay lying northwesterly of a line one hundred fifty (150) feet northwesterly of and parallel with a line perpendicular to the John Ringling Parkway bridge connecting St. Armand's Key to City Island from the northwesterly end of said bridge, southwesterly of a line seven hundred fifty (750) feet northeasterly of and parallel with the center line of John Ringling Parkway (running northwesterly from St. Armand's Key) northwesterly of a line one thousand fifty (1,050) feet northwesterly of and parallel with a line perpendicular to the aforementioned John Ringling Parkway bridge connecting St. Armand's Key to City Island and from the northwesterly end of said bridge, and southwesterly of a line three thousand two hundred fifty (3,250) feet northeasterly of and parallel with the centerline of the aforementioned John Ringling Parkway (running northwesterly from St. Armand's Key).

- (b) Within the described area persons who engage in waterskiing activities or other water sports shall be required to keep watch for manatees who are known to frequent that portion of Sarasota Bay. So as to provide public education concerning the existence of manatees within the identified area, appropriate signage will be prepared and posted at boat launching facilities within the city. At a minimum, an appropriate educational sign shall be posted at the Ken Thompson Park boat ramp.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-27. - Boating prohibited in proximity to Saprito Pier.

No person shall operate any vessel within one hundred fifty (150) feet of the Saprito Pier when signs are posted to prohibit such conduct.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-28. - Airboats prohibited.

- (a) It shall be unlawful for any person to operate, or cause to operate an airboat on any bayous, bays, canals, the Gulf of Mexico or any other body of water within the city limits of the city for any cause whatsoever, except that this prohibition shall not apply within the Florida Intracoastal Waterway.
- (b) This section shall not apply to any airboats owned and operated by the state, the county, the city or the United States government while engaged in the discharge of the official activities of the owner entity or official duties of the operating employee.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-29. - Speed limit in certain areas; exceptions.

- (a) It shall be unlawful for any person to operate a motorboat in any bayou, creek, canal, arm of the bay, channel, boat harbor, anchorage, dockage area or within one hundred fifty (150) feet of any shoreline, dock, wharf or bridge within the city in excess of slow speed, when posted.
- (b) This section shall not apply within one hundred fifty (150) feet of a location on a shore, bulkhead or dock being employed as a point of departure or return in connection with waterskiing or aquaplaning activities within the area designated for water skiing by section 10-26(a).

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-30. - Speed limit within certain distance of other vessels; exceptions.

No person shall operate a motorboat at any point within the city in excess of slow speed within one hundred fifty (150) feet of any other vessel except in areas designated for use for waterskiing and aquaplaning. This section shall not apply to any motorboat proceeding on a substantially straight course, either parallel or at right angles to the course of another vessel, for the purpose of clearing such other vessel when proceeding in a channel. For the purposes of this section, the word 'channel' shall include any area of water which, because of its depth, location, or the configuration of nearby obstructions to navigation is routinely used as a route of travel for substantial numbers of vessels within the city.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-31. - Speed not to be greater than what is reasonable under conditions.

Nothing contained in this article shall be construed to authorize or approve any speed greater than is reasonable and proper in consideration of local conditions, other water traffic, persons swimming or fishing in the area or other hazards, whether such speed is more or less than slow speed.

(Ord. No. 12-5002, § 1, 7-16-12)

DIVISION 2. - SARASOTA BAYFRONT MOORING FIELD

Sec. 10-32. - Description of the City of Sarasota Bayfront Mooring Field.

In 2009, the Florida Department of Environmental Protection issued an environmental resource permit to the City of Sarasota, along with authorization to use sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, to establish and maintain a one hundred fourteen-acre mooring field. The permit allows the City of Sarasota Bayfront Mooring Field ("Mooring Field") to install permanent anchoring systems for the mooring of up to one hundred nine (109) private, noncommercial vessels. In addition, a 10.4-acre area will be set aside for the anchorage of section 18-24 transient vessels.

The mooring field is to be located adjacent to Marina Jack, west of U.S. 41 in the City of Sarasota, Sections 19 and 30, Township 36 South, Range 18 East, Sarasota County, within Sarasota Bay, a Class III Outstanding Florida waterbody. It will be located on the southern side of city-owned island park (adjoining Bayfront Park) and will serve boaters on a first-come, first-served basis.

Vessels that occupy the permanent mooring area are to range in size from twenty (20) feet long with a two-foot draft to one hundred (100) feet long with an eight-foot draft. The transient anchorage area is an overflow area for the permanent mooring area, as well as an anchorage area for vessels that arrive at the mooring field after hours. The vessels in the permanent mooring field will be secured to fixed anchors, cables and buoys that are designed to prevent scouring of the submerged bottom and minimize the footprint of the anchoring system.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-33. - Intent.

- (a) The intent of the city in creating the mooring field is to establish a regulated mooring field in an area where approximately one hundred (100) vessels now moor without regulation. The lack of regulation has resulted in environmental degradation and potential health hazards, as well as navigational and safety hazards.
- (b) It is the intent of the city that this division be construed in a manner that is consistent with the City of Sarasota Bayfront Mooring Field Management Plan ("Mooring Field Management Plan"), approved by the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers, as that document may be amended from time to time.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-34. - Applicability.

This division applies to the harbormaster, to licensees, and to all others who enter the mooring field.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-35. - Authority of harbormaster.

- (a) The harbormaster is authorized to manage and operate the mooring field pursuant to a contract with the City of Sarasota. The harbormaster shall manage and operate the mooring field in a manner that is consistent with this division and the mooring field management plan.
- (b) The harbormaster is authorized to establish rules for the mooring field, subject to approval by the city manager and the city attorney.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-36. - Mooring of vessels.

- (a) No person shall moor or anchor a vessel within the mooring field without registering with the harbormaster, who has authority to assign and re-assign mooring slips in accordance with the City of Sarasota Bayfront Mooring Field Operations Agreement. Licenses to occupy moorage and anchorage slips shall be granted on a first-come, first-served, basis. The harbormaster shall require proof that the vessel meets certain safety and sanitation regulations prior to registration and may refuse to register any vessel that does not provide such proof or that does not otherwise meet the conditions set forth in this division.
- (b) Only vessels that meet the definition of "motorboat" and the definition of "recreational vessel" contained in this article are allowed to moor in the mooring field. All vessels that utilize the mooring field must be U.S. Coast Guard documented vessels or be registered with the State of Florida or registered in another U.S. state or foreign jurisdiction; provide documentation establishing U.S. Coast Guard or valid registration, be in compliance with U.S. Coast Guard and state law regulations, be seaworthy, be in good operational condition, and be capable of moving under their own power or sail.
- (c) All vessel owners or operators who moor in the mooring field must enter into a mooring field license agreement with the harbormaster within twenty-four (24) hours of entering the mooring field and must further agree to abide by and act in conformity with the mooring field management plan and mooring field rules.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-37. - Discharge of wastes and pollutants.

- (a) Every vessel that moors or anchors in the mooring field must be equipped with a marine sanitation device in compliance with F.S. § 327.53. Violators of F.S. § 327.53 may be charged with a noncriminal infraction pursuant to F.S. § 327.73.
- (b) Vessels occupying the mooring field shall utilize an upland sewage pump-out facility provided by the harbormaster and/or an authorized pump-out vessel, if provided. Vessels that occupy the mooring field must have their sewage holding tanks emptied upon entering and when leaving, and as otherwise required by the mooring field rules and/or license agreement.

- (c) It shall be unlawful for any person to discharge into the waters of the mooring field human waste or hazardous waste, including but not limited to fuel oils, lubricants, paints, varnishes or bilge waters mixed with a hazardous substance. Such discharge shall also be grounds for immediate eviction from the mooring field.
- (d) Any person who accidentally spills or discharges human or hazardous waste into the waters of the mooring field shall immediately report such discharge to the harbormaster, who is authorized to contain discharges and to conduct emergency repairs of unattended vessels. In the event the harbormaster cannot be reached, such person shall immediately report the spill or discharge to the City of Sarasota Police Department, Marine Patrol Unit.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-38. - License agreements.

- (a) The harbormaster shall enter into license agreements with those who anchor or moor in the mooring field. Such agreements shall be in a form approved by the city manager and city attorney.
- (b) The license agreement may contain the following provisions: an initial term for up to one (1) year; a daily, weekly or monthly fee; a security deposit equal to the one (1) month's usage; a list of amenities and services to be provided by the harbormaster; an indemnification provision that protects the harbormaster and the city from liability; insurance requirements; remedies available to the harbormaster in the event of default; emergency weather procedures; and miscellaneous provisions as are deemed necessary to create a hospitable and safe environment for boaters and the general public, while safeguarding the waters of Sarasota Bay and the property of the harbormaster, the city, and boaters who use the facility.
- (c) The harbormaster is authorized to place a lien on a vessel, and may force a nonjudicial sale of a vessel pursuant to F.S. § 328.17, for breach of the license agreement, including the failure to pay license fees or other sums due the Harbormaster and including but not limited to fines or costs related to an environmental restoration or clean-up necessitated by the vessel.
- (d) In accordance with provisions of the license agreement, the harbormaster may unilaterally terminate the license agreement if the licensee materially breaches the agreement.
- (e) The city commission may, by resolution, create special programs for certain vessel owners, including but not limited to live-aboard vessel owners who are currently at anchorage in Sarasota Bay or who have moored within the Sarasota Bayfront Mooring Field within the twelve (12) month period prior to the effective date of this article, in order to ease their transition into the mooring field. Such programs may reduce or waive license fees and/or insurance requirements for participants for a set period of time.

(Ord. No. 12-5002, § 1, 7-16-12)

Secs. 10-39—10-49. - Reserved.

DIVISION 3. - MOORING AND ANCHORING

Sec. 10-50. - Anchorage and mooring outside mooring fields.

No person shall allow a vessel (as defined in section 10-20(o) of this Code) to anchor or moor at any location outside of a properly permitted mooring field for more than ninety (90) consecutive days. After midnight of the 90th consecutive day, the owner, operator, occupants or person in custody of the vessel shall relocate the vessel to a properly permitted mooring field or to a location outside the municipal boundaries of the city.

For purposes of this division 3, the term "properly permitted mooring field" shall mean an area designated for the mooring of vessels that has been approved and permitted for such purpose by all state and federal agencies with jurisdictional authority.

It shall not be relevant to a determination of a violation of this section that the vessel was temporarily moved from a site or location and then later returned to that same site or location or in close proximity thereto, unless the vessel shall have been absent from the site or location for a period of seventy-two (72) hours between each anchoring or mooring. Nothing in this section shall be construed to limit or restrict a vessel from being tied up to a properly permitted dock or restrict a vessel from being moored pursuant to a mooring permit issued by the Florida Department of Environmental Protection anywhere in the jurisdictional waters of the city.

(Ord. No. 12-5003, § 1, 7-16-12)

Sec. 10-51. - Anchoring and mooring on city property.

It shall be unlawful for any person to anchor, moor or tie off a vessel at, to or on any dock, seawall, piers or any real property or beaches owned by the city, except for active loading or unloading and except for tenders (such as dinghies, row boats and similar vessels) in active service to their properly anchored or moored mother vessel. The foregoing exception for tenders in active service is limited to twelve (12) continuous hours within any twenty-four (24) hour period.

(Ord. No. 12-5003, § 1, 7-16-12)

Sec. 10-52. - Anchoring and mooring within one hundred fifty feet of shoreline or sea wall.

In order to protect marine infrastructure, such as but not necessarily limited to docks, wharves, sea walls, marine railways and boat ramps, it shall be unlawful for any person to anchor or moor a vessel for a period of time in excess of twelve (12) hours in a manner which allows the vessel or any part of the vessel to be within one hundred fifty (150) feet of waterfront real property as measured from the natural shoreline or sea wall. However, the owner of privately owned submerged lands may anchor or moor a single vessel on his or her property in excess of twelve (12) hours, subject to the limitation in section 10-50. The preceding sentence shall not be construed to limit or restrict a vessel from being tied up to a properly permitted dock or restrict a vessel from being moored pursuant to a mooring permit issued by the Florida Department of Environmental Protection anywhere in the jurisdictional waters of the city.

(Ord. No. 12-5003, § 1, 7-16-12)

Sec. 10-53. - Anchoring and mooring in close proximity to properly permitted mooring fields.

It shall be unlawful for any person to anchor or moor a vessel for a period of time in excess of twelve (12) hours in a manner which allows the vessel or any part of the vessel to be within one hundred fifty (150) feet from the marked boundaries of a properly permitted mooring field.

(Ord. No. 12-5003, § 1, 7-16-12)

Sec. 10-54. - Exceptions to anchoring and mooring prohibitions.

Notwithstanding sections 10-50 through 10-53 above, vessels may remain anchored or moored for longer periods of time than provided therein in the event of a temporary mechanical breakdown or when imminent or existing extreme weather conditions would impose an unreasonable risk of harm to persons or property, in which case vessels may remain anchored or moored until the vessel is repaired, which shall occur within five (5) days, or in the event of extreme weather, until weather conditions improve.

Notwithstanding sections 10-50 and 10-53 above, vessels may remain anchored or moored for longer periods of time than provided therein when all properly permitted mooring fields in the city are full and have no space for new occupants. However, the preceding sentence shall only be construed to allow a vessel that remains anchored or moored for a longer period of time than provided in section 10-50 to do so until space becomes available in a properly permitted mooring field. It shall not be construed to allow a vessel to anchor or moor at any location outside of a properly permitted mooring field for a second consecutive ninety (90) day period.

Notwithstanding sections 10-50 through 10-53 above, the city commission may allow or permit vessels that are participants in a boat show, race, parade or other public event to anchor or moor in a location that would otherwise be prohibited by those sections, so long as the vessel owner complies with resolutions or agreements governing the public event.

Sections 10-50 through 10-53 shall not apply within the Florida Intracoastal Waterway, as that term is defined by state statutes.

(Ord. No. 12-5003, § 1, 7-16-12)

Sec. 10-55. - Determination of a violation and enforcement.

For the purpose of determining whether or not the time limitation of Section 10-50 has been violated, the initial physical observation of a vessel at a particular location outside a properly permitted mooring field shall be documented in writing and a final observation of the vessel at the same location or approximate location more than ninety (90) days later shall also be documented in writing. The initial and the final observation as described in the preceding sentence plus the physical observation of the vessel at the same location or approximate location, a minimum of two (2) times, with a minimum of thirty (30) days between each observation, during the allowed ninety (90) day time period shall be deemed prima facie evidence of a violation of Section 10-50. The required observations may be made by officers, employees, agents of the city, private citizens or both. In the case of observation by private citizens, such citizen shall be required to make affidavit as to the observation.

For the purpose of determining whether or not the time limitations of sections 10-52 or 10-53 have been violated, the physical observation of a vessel at the same location or approximate location, a minimum of two (2) times during an allowed time period and one (1) time beyond the maximum authorized time period shall be deemed prima facie evidence of a violation of the aforementioned sections. The required observations may be made by officers, employees or agents of the city, private citizens or both. In the case of observation by private citizens, such citizen shall be required to make affidavit as to the observation.

The provisions of this chapter 10, article II, division 3 of the City Code shall be enforced by the city police department. However, Sarasota County Sheriff's Department and the Division of Law Enforcement of the Florida Fish and Wildlife Conservation Commission shall have concurrent jurisdiction to enforce said provisions. The law enforcement agency issuing a citation for violation of this division shall present the completed citation to the owner or occupant of the subject vessel or, in the alternative, shall mail the citation to the owner of the vessel at the mailing address shown on the title or registration of the vessel, by U.S. mail, certified, return receipt requested.

The city may prosecute a violation of this division in any manner allowed by law, specifically including but not limited to prosecution for a municipal ordinance violation in county court and an action for mandatory injunctive relief ordering that a vessel be moved from a particular location. A violation of this ordinance shall be considered a noncriminal violation and shall be punished by a fine not exceeding five hundred dollars (\$500.00), except for a first time violation which shall be punished by a fine not exceeding two hundred fifty dollars (\$250.00).

(Ord. No. 12-5003, § 1, 7-16-12)

DIVISION 4. - ABANDONED AND DERELICT VESSELS

Sec. 10-56. - Abandoned vessel prohibited.

- (a) It is unlawful for any person to abandon any vessel (live aboard or non-live aboard) in the water within the jurisdictional limits of the city or on any adjacent real property.
- (b) City police may remove and dispose of abandoned vessels pursuant to F.S. ch. 705, as may be amended. A property owner who fails to remove an abandoned vessel, after notice and within the specified period, shall be liable for all costs of removal, storage and destruction of the property, less any salvage value obtained by the city. In accordance with the Florida Statutes, any person who neglects or refuses to pay such costs is not entitled to be issued a certificate of registration for such vessel or any other vessel or motor vehicle until such costs have been paid.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-57. - Derelict vessel prohibited.

- (a) It is unlawful for any person to leave, store or abandon a derelict vessel (live aboard or non-live aboard) in the water within the jurisdictional limits of the city or on any adjacent real property.
- (b) City police may remove derelict vessels pursuant to F.S. § 823.11, as may be amended, when such vessels obstruct or threaten to obstruct navigation or in any way constitute a danger to the environment. All costs incurred by the city police in the removal of derelict vessels shall be recoverable against the owner. Any person who neglects or refuses to pay such costs is not entitled to be issued a certificate of registration for such vessel or any other vessel or motor vehicle until such costs have been paid.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-58. - Unlawfully moored, anchored, abandoned or derelict vessel a public nuisance.

Any vessel (live aboard or non-live aboard) that is moored, anchored, abandoned or in a derelict condition in violation of this chapter shall constitute a public nuisance. Enforcement of violations or abatement procedures provided for in this chapter shall be cumulative to other enforcement or abatement action provided for by law.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-59. - Penalties.

Unless otherwise required by state law, violations of this chapter shall be punishable as provided by section 1-11 of this Code.

(Ord. No. 12-5002, § 1, 7-16-12)

Sec. 10-60. - Reserved.

ARTICLE IV. - HARBOR MANAGEMENT PLAN FOR MOORING AREA

DIVISION 1. - GENERALLY

Sec. 46-91. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Anchorage means a customary, suitable and designated harbor area in which vessels may anchor.

Anchoring means the use of a heavy device fastened to a line or chain to hold a vessel in a desired position.

Designated special anchorage areas means anchorage areas designated by the coast guard where it has been determined such an anchorage ground is necessitated due to maritime or commercial interests.

Emergency means any occurrence, or threat thereof, whether natural, technological or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Harbor means a natural or manmade anchorage and/or mooring area providing some degree of protection and security from storms.

Harbor management plan for mooring area means a plan adopted by ordinance of the city council to address the rules and regulations of anchoring, mooring, and speed limits on the river bottom owned by the city.

Harbormaster/dockmaster means a designated city employee charged with implementation of the harbor management plan for mooring area.

Houseboat/live-aboard vessel means any vessel which is used primarily as a residence for a minimum of 21 days during any 30-day period, in a county of this state, and this residential use of the vessel is to the preclusion of the use of the vessel as a means of transportation. This includes any vessel represented as a place of business, a professional or other commercial enterprise, or a legal residence. A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

Mooring means permanent ground tackle where vessels are kept at anchor.

Mooring field means a designated area where permanent ground tackle is utilized to provide multiple vessel moorings in accordance with the harbor management plan for mooring area.

Vessel means a term synonymous with the word "boat," as referenced in section 1(b), section VII of the state constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water under the Florida Vessel Registration and Safety Law.

(Code 1991, § 9-64; Ord. No. 2999, § 2, 1-16-2001)

Cross reference— Definitions and rules of construction, § 1-2.

Sec. 46-92. - Intent.

It is the intent of the harbor management plan for mooring area to address the primary management of the managed mooring field located in the Caloosahatchee River on the Okeechobee Waterway. The harbor management plan for mooring area also addresses anchoring outside the designated anchorage and speed/wake limitations on the remainder of the city-owned river bottom. The purpose of the city yacht

basin is to be boater friendly and encourage more boaters to visit downtown; therefore, there is a need to provide additional facilities to accommodate transient vessels in an anchorage or a mooring, or at a dock.

(Code 1991, § 9-60; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-93. - Purpose.

The purpose of the harbor management plan for mooring area is to establish a plan for adequate management of the managed mooring field in a manner that will reduce the potential discharge of pollutants into the water and provide boaters with maximum protection from irresponsible or unthinking actions of other boaters.

(Code 1991, § 9-61; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-94. - Target group of boaters.

The harbor management plan for mooring area is designed to accommodate the needs of operators of adequately equipped sailboats operating their vessels in a responsible manner. However, this plan also addresses possible issues that may arise from irresponsible actions of a minority group of boaters anticipated to utilize the managed mooring field. It is acknowledged that the majority of vessel operators are responsible and comply with applicable federal and state requirements.

(Code 1991, § 9-62; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-95. - Applicability; enforcement.

The harbor management plan for mooring area shall apply to all vessel(s), owner(s), crew(s), and guests entering the managed mooring field. Any vessel operator in violation of federal law(s) or regulation(s), state law(s) or regulation(s), or this Code would result in cause for eviction from the managed mooring field.

(Code 1991, § 9-63; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-96—46-120. - Reserved.

DIVISION 2. - MANAGED MOORING FIELD RULES

Sec. 46-121. - Authority of harbormaster/dockmaster.

The harbormaster/dockmaster has the right to assign berths and moorings. No vessel shall occupy any mooring berth without the approval of the harbormaster/dockmaster or his designee. Subleasing of any mooring by the lessee is prohibited. Owners wishing to transfer to a different mooring other than the one assigned must obtain the prior authorization of the harbormaster/dockmaster or his designee and complete the required forms. It may be necessary to reassign a vessel from the particular space rented to another mooring within the managed mooring field as dictated by the practical needs of the existing use of the managed mooring field and the tenants therein. The decision or interpretation of this article shall be the responsibility of the harbormaster/dockmaster.

(Code 1991, § 9-70; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-122. - Vessels allowed; toilet facilities.

- (a) Only vessels that are in compliance with the United States Coast Guard (USCG) regulations, and state statutes, particularly the operational and safety standards, shall be allowed within the managed mooring field. Only seaworthy vessels in good operating condition, capable of maneuvering under their own power or sail, possessing current registration and acceptable documentation, shall be allowed to moor or anchor within the managed mooring field. This is to ensure that all vessels are functional and operational, in the interest of public safety.
- (b) The decision of whether a vessel is considered to be in good operational condition and capable of maneuvering under its own power shall be the responsibility of the harbormaster/dockmaster, based on the United States Coast Guard and state laws and regulations concerning safety and operational requirements.
- (c) All vessels, except dinghies, without an integral source of propulsion (sail or motorized) are not allowed to remain within the managed mooring field. Examples of vessels that would not be allowed to remain within the managed mooring field are a sailboat with no motor and no sails, a motorboat with no motor, or a vessel that must be towed. This requirement does not include vessels that require minor sail or engine repairs.
- (d) Every vessel 26 feet or more in length, which has an enclosed cabin with berthing facilities, shall, while on the waters of the state, be equipped with a toilet. On a vessel, other than a houseboat, the toilet may be portable or permanently installed. Every permanently installed toilet shall be properly attached to the appropriate United States Coast Guard certified or labeled marine sanitation device.
- (e) Every houseboat shall be equipped with at least one permanently installed toilet, which shall be properly connected to a United States Coast Guard certified or labeled type III marine sanitation device. If the toilet is simultaneously connected to both a type III marine sanitation device and another approved marine sanitation device, the valve or other mechanism selecting between the two marine sanitation devices shall be set to direct all sewage to the type III marine sanitation device and, while the vessel is on the waters of the state, shall be locked or otherwise secured by the boat operator so as to prevent resetting.

(Code 1991, § 9-71; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-123. - Transportation requirements.

All vessels should have a dinghy or other small craft as a method of conveyance to enable access to the dinghy dock and the office of the harbormaster/dockmaster. The vessel owner shall report the absence of a dinghy to the harbormaster/dockmaster. The vessel owner is responsible for transportation to and from the office of the harbormaster/dockmaster for registering to rent the mooring facilities. The vessel owner can utilize his main vessel for this purpose by temporarily bringing it to the fuel dock. The lack of such a dinghy shall not be cause to refuse rental of a mooring. It is the sole responsibility of the occupants of the vessel to provide their own conveyance to the upland facilities. Under no circumstances is the city yacht basin responsible for owning, operating or maintaining a dinghy for the exclusive use of mooring patrons.

(Code 1991, § 9-72; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-124. - Commercial uses.

- (a) Commercial activities or vessels engaged in commercial activities are prohibited from mooring in the managed mooring field. The site is designed as a recreational and residential site and shall be maintained as such. No advertising or soliciting shall be permitted on any vessel within the managed mooring field, except for "for sale" signs, not to exceed one square foot in size. Each vessel shall be limited to two "for sale" signs. Commercial vessels, such as day charter or sport fishing boats, will be allowed to store the boats on a mooring the same as a private vessel tenant.

- (b) Minor commercial activities and vessels, such as water taxis, delivery vessels, pump-out vessels, and those performing minor repairs on mooring vessels, may extend service to the vessels in the managed mooring field. The harbormaster/dockmaster shall make the final decision on determining whether a commercial vessel is allowed in the managed mooring field.

(Code 1991, § 9-73; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-125. - Repairs.

Major repairs or refitting of vessels, including any activity that could result in a deposition of any materials into the waterway or within the managed mooring field, are strictly prohibited since a significant water quality violation would result in an adverse impact to public health. Only minor repairs or mechanical adjustments may be conducted on vessels while in the managed mooring field. The harbormaster/dockmaster office shall be notified in advance to verify compliance of any proposed activity.

(Code 1991, § 9-74; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-126. - Mooring and anchoring methods.

- (a) The method of mooring vessels in the managed mooring field shall be by tying the buoy line to the bow only. The line used to attach a vessel to the mooring buoy shall be the one furnished, which has one end permanently attached to buoy. No vessel shall be moored at the stern or be tied to more than one buoy or points on a vessel. There shall be no dropping or placement of additional anchors or anchor systems from any vessel in the managed mooring field. All vessels within the managed mooring field shall only use the established buoys and anchoring systems.
- (b) Vessels may not anchor in a manner that:
 - (1) Jeopardizes other vessels at anchor or underway;
 - (2) Might cause damage to other property or persons; and/or
 - (3) Impedes access to docks, slips or public or private property.

(Code 1991, § 9-75; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-127. - Abandonment of vessels.

If a vessel is left unattended for more than 72 continuous hours without giving prior notification to the harbormaster/dockmaster, the vessel shall be considered abandoned. If any vessel is determined to be abandoned, it may be stored in a secure location or commercial marina for 30 days, during which time the harbormaster/dockmaster shall make a reasonable, diligent effort to locate the owner of the vessel. If the vessel is not reclaimed within 30 days, the vessel shall be sold under the process prescribed by state statutes, at fair market value, which will cover the cost of unpaid rental fees, as well as any fees due for storage.

(Code 1991, § 9-76; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-128. - Drug use or possession policy.

It is the policy of the city not to tolerate any illegal drug use or possession within its boundaries, which includes the managed mooring field. Such use or possession shall subject the offender to be immediately prosecuted to the fullest extent of the provisions of all applicable laws.

(Code 1991, § 9-77; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-129. - Illegal activities prohibited.

Any illegal activity within the boundaries of the city, which includes the manned mooring field, shall be grounds for immediate prosecution under the provisions of state statutes and/or this Code. It is the intent of the city to prosecute each violation to the fullest extent of the law.

(Code 1991, § 9-78; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-130. - Liability of city.

The city assumes no liability for use of the managed mooring field by tenants or guests. Also, the city neither assumes, nor accepts any responsibility for personal possessions, vessel, dinghy, or their contents or use while said vessels are located within the managed mooring field or upland facilities. Persons using the water of the city shall assume all risk of personal injury and damage or loss to their property. The city assumes no risk due to accident, fire, theft, vandalism, or acts of God.

(Code 1991, § 9-79; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-131. - Anchoring outside designated anchorage.

- (a) Overnight anchoring south of the Intracoastal Waterway is prohibited from markers 39—58. Short-term anchoring in this area is permitted during city permitted waterfront activities, such as band concerts and firework displays. For the purposes of this subsection, the term "short-term" means three hours before and after said event. Overnight anchoring will not be allowed.
- (b) Vessels may anchor not more than seven consecutive days out of any 28 days north of the Intracoastal Waterway from markers 39—58, but not in the managed mooring field, nor in any other location that would impede other vessels' travel to channels or docks in the area. Vessels anchored on the city-owned river bottom, but not in the designated anchorage, are not allowed to utilize any city yacht basin amenities, including the dinghy dock.

(Code 1991, § 9-80; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-132—46-150. - Reserved.

DIVISION 3. - RESPONSIBILITIES OF TENANTS

Sec. 46-151. - Safe operation of vessels.

Reckless or careless operation of any vessel, including but not limited to violation of navigation rules, when the vessel endangers or is likely to endanger life, limb, property or person, shall be grounds for immediate eviction from the managed mooring field.

(Code 1991, § 9-85; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-152. - Use of sewage pump-out facilities.

- (a) Absolutely no discharge of sewage or other pollutants within the managed mooring field is allowed. Use of the pump-out facility located at the fuel dock of the city yacht basin or some other pump-out facility is required on an as needed basis. The other pump-out facility could be a floating facility,

sometimes known as a "honey barge," should one be put into operation. All tenants within the managed mooring field must maintain strict compliance with 33 CFR 159 and F.S. § 327.53, as to the operation and management of marine sanitation devices to reduce discharges that would adversely impact public health. The use of the yacht basin pump-out facility is free for all tenants and the general public.

- (b) Violation of this section will be reason for immediate eviction, withholding of any security deposit and prosecution to the fullest extent provided by federal, state and city laws. Enforcement of sewage discharge laws will be by the state fish and wildlife conservation commission, state marine patrol, who currently perform random boarding and inspections of anchored and docked vessels.

(Code 1991, § 9-86; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-153. - Conduct of tenants.

- (a) Tenants shall use discretion in using any sound producing devices or machinery, which may include but is not limited to televisions, radios, stereos and musical instruments, so as not to create a nuisance to other tenants. Generators, blowers or other noisy machinery shall not be operated between the hours of 8:00 p.m. and 7:00 a.m. Disorderly, boisterous or rowdy conduct by a vessel owner, crew or guest that disturbs the peace of other occupants in the managed mooring field shall be cause for a warning to the operator/tenant or eviction of the vessel from the managed mooring field.
- (b) The use of charcoal burners or any open flame equipment is prohibited on the docks or other common areas, except as provided by the city yacht basin. Swimming, diving and fishing are prohibited from yacht basin docks and bulkheads. All pets must be leashed while on the docks or in any of the common areas. Pets are permitted, provided they do not disturb other tenants. Laundry shall not be placed in public view aboard any vessel or in the common area.

(Code 1991, § 9-87; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-154. - Discharge of waste or other materials.

- (a) While within the managed mooring field, any discharge into the river of any fluids, waste or other material, regardless of the nature thereof, that would adversely impact public health, except for clean bilge or properly treated wastewater, is prohibited by state and federal law. If the harbormaster/dockmaster or any employee observes any such discharge, they will immediately notify the department of environmental protection or call the state warning point number (800-320-0519). If such a discharge occurs and is illegal, eviction from the managed mooring field shall be mandatory, once appropriate environmental enforcement action has been taken.
- (b) In the event of an accidental discharge, the vessel captain, operator, or owner shall immediately notify the harbormaster/dockmaster to ensure any action that could improve the containment of the spilled/discharged material will begin as soon as possible.

(Code 1991, § 9-88; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-155. - Boarding by law enforcement personnel.

The vessel operator is encouraged to cooperate with, and assist law enforcement personnel in, the lawful pursuit of their duties. The vessel operator shall not improperly resist or obstruct a lawful boarding or inspection conducted by a law enforcement officer.

(Code 1991, § 9-89; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-156. - Emergency repairs in absence of tenant.

The harbormaster/dockmaster shall have the authority to make necessary repairs in the event of an emergency when an unattended vessel is in immediate danger of sinking or represents a threat to other vessels. The emergency may include, but shall not be limited to, the vessel sinking or fire, breakdown of a bilge, fuel or sewage pumps or fluid leaks or broken lines. The cost of repairs, parts and labor will be assessed to the owner of the vessel and be due and payable within 48 hours of the return of the owner of the vessel or as provided by the harbormaster/dockmaster. If the vessel is deemed to be in imminent danger of sinking, fails to meet United States Coast Guard and state standards, leaks fluids or materials, or represents a threat to other vessels, the harbormaster/dockmaster will require repairs to be made within a reasonable, but specific time frame. If the repairs are not adequately accomplished, the vessel may be evicted from the managed mooring field.

(Code 1991, § 9-90; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-157. - Departure of vessels with delinquent dockage accounts.

It is unlawful for the vessel owner to vacate a mooring without the permission of the harbormaster/dockmaster when said vessel has a delinquent dockage account. Additionally, as part of the lease agreement, the city clerk will be authorized to place a lien on the vessel for the cost of the unpaid fees or charges assessed by the harbormaster/dockmaster.

(Code 1991, § 9-91; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-158—46-180. - Reserved.

DIVISION 4. - AMENITIES AND SERVICES

Sec. 46-181. - Damage of amenities and property.

Misuse of any amenity or property is grounds for eviction. If any tenant, crew or guest damages any property or equipment of the amenities, due to neglect, misuse, vandalism or failure to follow stated instructions, they shall be held responsible for the cost of repair and replacement, as well as any civil or criminal charges for the activity.

(Code 1991, § 9-95; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-182. - Use of parking spaces.

- (a) Use of city yacht basin parking spaces is limited to customers who have a monthly lease agreement for a specified numbered parking space. Vehicles parked in the city yacht basin numbered parking spaces must at all times display an authorized parking pass on the dash or on the back of the rear view mirror. The pass must reflect the same number as the parking space.
- (b) Parking spaces are leased on an as available basis only. Parking spaces, when available, will only be leased to slip holders or tenants with managed mooring field leases.

(Code 1991, § 9-96; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-183. - Use of dinghy docks.

- (a) Registered managed mooring field tenants shall have free use of the dinghy docks located at floating dock D, slips D34—D40, at the city yacht basin. Dockage is limited to a single dinghy at any one time, with a maximum length of ten feet overall. Dinghies must be kept in the water and secured by a single line of good quality from the bow to a cleat or ring on the dock.
- (b) Use of the dinghy docks by vessels anchored in designated anchorage is included in the anchorage amenity package. The same restrictions apply as to vessels in the managed mooring field.

(Code 1991, § 9-97; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-184. - Use of sewage pump-out facility.

The city yacht basin pump-out facility, located on the riverside of the fuel dock, shall be open and in operation from 8:00 a.m. to 5:30 p.m., seven days a week, with the exception of Thanksgiving Day and Christmas Day. There is no fee for the use of this facility. All vessels in the managed mooring field must use the pump-out facility on an as required basis.

(Code 1991, § 9-98; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-185—46-200. - Reserved.

DIVISION 5. - LEASING REQUIREMENTS

Sec. 46-201. - Lease agreement.

- (a) Tenancy in the managed mooring field shall fall into three categories defined as follows:
 - (1) *Transient*: Overnight to less than one month;
 - (2) *Monthly*: One to 11 months;
 - (3) *Annually*: Twelve months or longer.
- (b) All vessels with the intention of utilizing the managed mooring field must make prior reservations with the office of the harbormaster/dockmaster, regardless of the planned length of stay. Arrangements for transient stays are on a space available basis and can be made upon arrival utilizing a very high frequency (VHF) radio on channel 16. Arrangements for any other length of stay shall be made prior to arrival, in person or via telephone.
- (c) The tenants, upon taking residence within the managed mooring field, shall execute acknowledgement of the rules of the harbor management plan for mooring area, as well as the operational requirements of the managed mooring field. The lease agreement shall contain reasonable language, as deemed necessary, to enforce compliance with the provisions of this article.
- (d) A description of the requirements of the tenants, based on the terms of their anticipated stay, shall be as follows:
 - (1) Transient tenant (one day to less than one month) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section on the acknowledgement of the rules and operational requirements within the managed mooring field, and pay the required daily fee in advance. There will be no assessment of a security deposit for transient tenants.
 - (2) Monthly tenant (one month to less than 12 months) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section on the acknowledgement of the rules and operational requirements within the managed mooring field, and pay the required monthly fee(s) in advance. A tenant may pay in advance for multimonth mooring; however, there will be no

refunds. It is the responsibility of the tenant for payment of the monthly fee at the beginning of each rental period. There will be no assessment of a security deposit for monthly tenants.

- (3) Annual tenants (12 months or longer) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section of the acknowledgement of the rules and operational requirements within the managed mooring field. A security deposit equal to two months' mooring fee will be paid at the beginning of the lease. The security deposit will be returned after the final bill is paid in full. The monthly mooring fee will be billed the first of each month for the preceding month or partial month. Partial months will be pro rated.

(Code 1991, § 9-101; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-202. - Tenant information required.

- (a) The owner/vessel operator shall provide the following information for the lease/dockage agreement for the managed mooring field:
 - (1) Owner's name;
 - (2) Owner's home address, including city and state;
 - (3) Owner's telephone number;
 - (4) Emergency number (monthly and annual agreements);
 - (5) Length overall (LOA);
 - (6) Beam;
 - (7) Draft;
 - (8) Type of vessel;
 - (9) Mooring assignment;
 - (10) Vessel name;
 - (11) Registration or document number.
- (b) The tenant shall be responsible to inform the harbormaster/dockmaster of any changes in the preceding required lease information.

(Code 1991, § 9-102; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-203. - Vacation of moorings.

Monthly and annual managed mooring field leaseholders are required to notify the office of the harbormaster/dockmaster whenever they plan to vacate the mooring for greater than 24 hours. A date of departure and planned time of return must be provided, if the vessel operator wants to maintain the right of tenancy. The harbormaster/dockmaster reserves the right to rent any unoccupied mooring space when an assigned vessel is absent for 24 hours or more, without any compensation to the mooring field leaseholder.

(Code 1991, § 9-103; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-204—46-220. - Reserved.

DIVISION 6. - SPEED LIMITS

Sec. 46-221. - Outside Intracoastal Waterway.

The speed limit in the water bounded by the southbound Edison Bridge on the east, the Caloosahatchee Bridge on the west, a line drawn between the bridges through the southern end of Lofton's Island (Pleasure Key) on the north, and the southern edge of the Caloosahatchee River on the south shall be idle speed/no wake. The speed limit between the bridges north of the above-mentioned line to the north shore of the Caloosahatchee River shall be slow speed, minimum wake.

(Code 1991, § 9-110; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-222—46-240. - Reserved.

DIVISION 7. - SEVERE STORM OR HURRICANE PLAN^[3]

Footnotes:

--- (3) ---

Cross reference— Civil emergencies, ch. 22; emergency services, ch. 34.

Sec. 46-241. - Established.

The office of the harbormaster/dockmaster shall, if possible, warn the managed mooring field tenants to exercise prudent and appropriate judgment in the event that a severe storm or hurricane threatens the area. The tenants shall be advised that the mooring equipment provided in the managed mooring field may not be able to withstand a hurricane or tropical storm and/or the associated wind and tidal surges. Evacuation of the managed mooring field will not be mandatory; however, it may be recommended.

(Code 1991, § 9-115; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-242—46-260. - Reserved.

DIVISION 8. - PLANS FOR FUTURE EXPANSION

Sec. 46-261. - Expansion of mooring field.

It may become necessary or desirable to expand the managed mooring field to address additional mooring requirements.

(Code 1991, § 9-120; Ord. No. 2999, § 2, 1-16-2001)

Secs. 46-262—46-280. - Reserved.

DIVISION 9. - MANAGED MOORING AREA

Sec. 46-281. - General description.

The 24.3-acre managed mooring area is located northwest of Pleasure Key (Lofton's Island) and provides for 49 moorings with a radius of 75 feet. The current plan is to install 25 moorings initially in every other mooring spot to secure the entire area as a managed mooring field, allowing for the

installation of the additional 25 moorings when expansion is required. The mooring anchor points will be 150 feet apart, which will provide for a 75-foot radius. Under normal wind and current conditions, with the full complement of 49 moorings, the vessels will be kept 75 feet apart. Initially, with every other mooring installed, the distance will double to 150 feet, allowing experience to be gained in how the vessels lie in all wind and current conditions.

(Code 1991, § 9-125; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-282. - Physical moorings.

The moorings, manufactured by Force 5 Mooring Systems, Inc., consist of a ten and one-half-foot long galvanized three-quarter-inch diameter steel rod with an eye at one end. Each mooring will have two or four two-inch by three-inch steel U-channels that are 12 inches long and located near the bottom of the rod and hinged to a flat section of the rod. It is water jetted to its full length and then pulled upward. The upward pull extends the U-channels and locks the mooring in the river bottom. Units that have four U-channels are rated by the manufacturer for 60-foot vessels in class 3 hurricanes (120-mile per hour winds). Units with two U-channels are rated by the manufacturer for 40-foot vessels in class 3 hurricanes. The eye of the mooring rod is connected to a surface buoy by a three-quarter-inch polypropylene line. The surface fiberglass buoys are 16 inches high and 24 inches in diameter. A mooring pennant will connect the mooring buoy to the moored vessel.

(Code 1991, § 9-126; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-281. - General description.

The 24.3-acre managed mooring area is located northwest of Pleasure Key (Lofton's Island) and provides for 49 moorings with a radius of 75 feet. The current plan is to install 25 moorings initially in every other mooring spot to secure the entire area as a managed mooring field, allowing for the installation of the additional 25 moorings when expansion is required. The mooring anchor points will be 150 feet apart, which will provide for a 75-foot radius. Under normal wind and current conditions, with the full complement of 49 moorings, the vessels will be kept 75 feet apart. Initially, with every other mooring installed, the distance will double to 150 feet, allowing experience to be gained in how the vessels lie in all wind and current conditions.

(Code 1991, § 9-125; Ord. No. 2999, § 2, 1-16-2001)

Sec. 46-282. - Physical moorings.

The moorings, manufactured by Force 5 Mooring Systems, Inc., consist of a ten and one-half-foot long galvanized three-quarter-inch diameter steel rod with an eye at one end. Each mooring will have two or four two-inch by three-inch steel U-channels that are 12 inches long and located near the bottom of the rod and hinged to a flat section of the rod. It is water jetted to its full length and then pulled upward. The upward pull extends the U-channels and locks the mooring in the river bottom. Units that have four U-channels are rated by the manufacturer for 60-foot vessels in class 3 hurricanes (120-mile per hour winds). Units with two U-channels are rated by the manufacturer for 40-foot vessels in class 3 hurricanes. The eye of the mooring rod is connected to a surface buoy by a three-quarter-inch polypropylene line. The surface fiberglass buoys are 16 inches high and 24 inches in diameter. A mooring pennant will connect the mooring buoy to the moored vessel.

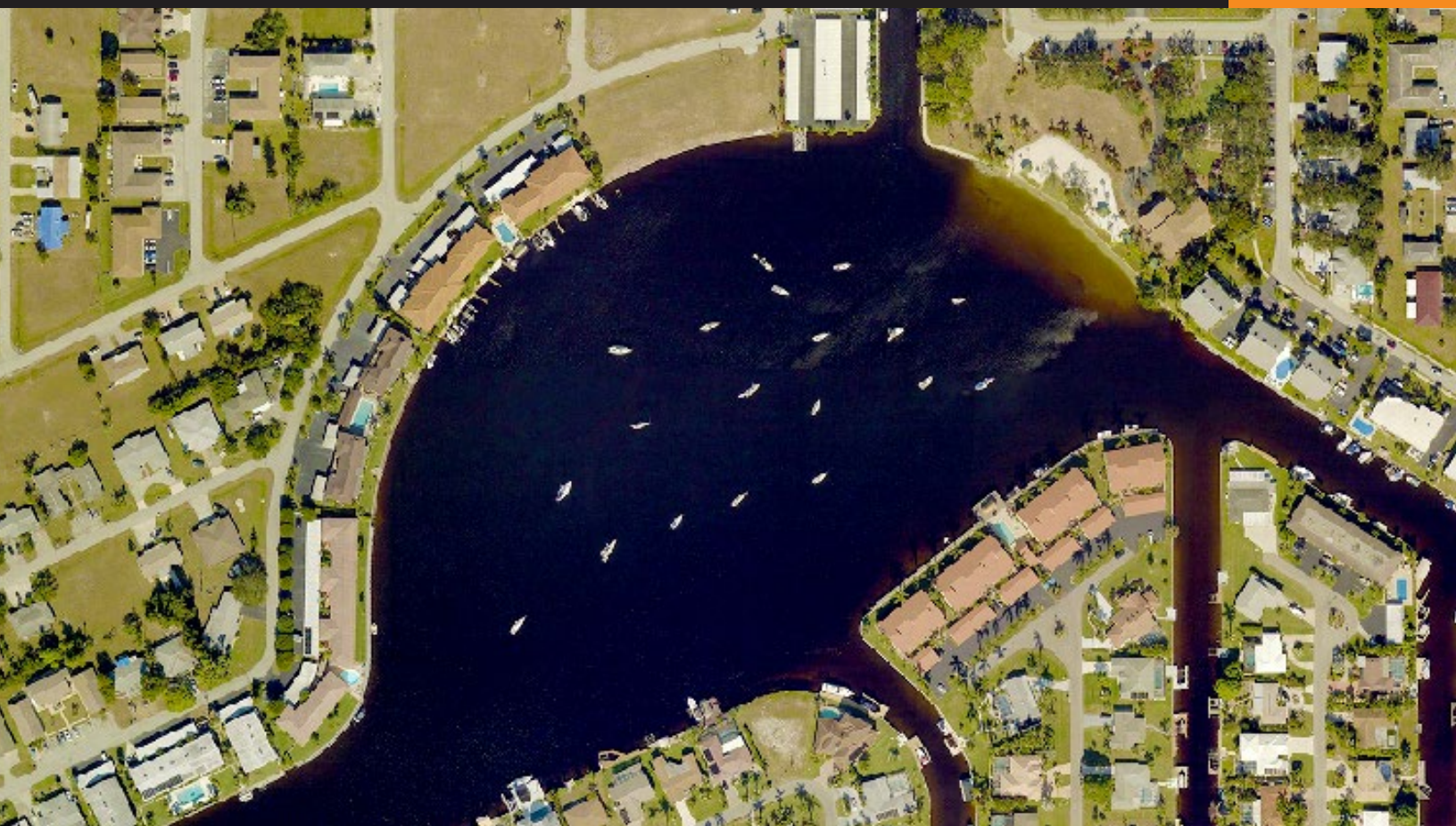
(Code 1991, § 9-126; Ord. No. 2999, § 2, 1-16-2001)

Mooring Field Ordinance

Mooring Field Vessel & Example Ordinances, and Use Schedule & Accident Report

City of Cape Coral, Florida

April 20, 2018
Deliverable
#2



Contents

Mooring Field	1
<hr/>	
Deliverable: A. 5	
Mooring Field Vessels	2
<hr/>	
Deliverable: B.1, a, & b	
Mooring Field Use Schedule	4
<hr/>	
Deliverable: B.1,c, & d, C.1	
Analysis of Similar Communities	7
<hr/>	
Deliverable: B.1,e	
Existing Accident Report	8
<hr/>	
Deliverable: C.2	
Appendix - City of Cape Coral Incident Reports	
<hr/>	

Mooring Field

Proposed Mooring Field Location & Boundary

Stantec staff have reviewed the geographic data in and around Bimini Basin and collaborated with the City of Cape Coral staff and public stakeholders to receive input to determine what mooring field layout would be best suitable for Bimini Basin, local residents and the surrounding waterfront communities. Stantec Staff conducted a public outreach meeting on April 3, 2018 with the purpose of gathering adjacent resident's opinions, suggestions and goals for the proposed mooring field project. The resulting outcome of the public meeting was a resounding agreement to pursue the creation of an organized and regulated mooring field within Bimini Basin (Figure 1). The information gathered from City of Cape Coral staff and public input has allowed Stantec to develop and propose two feasible options that address the goals of the City and meet the needs of local residents.



Figure 1: Bimini Basin



Figure 2: Mooring Field Area

Mooring Field Vessels

Mooring Field Use Schedule and Layout Options

Stantec staff reviewed parcel data provided by Lee County to help determine the best options for the mooring field boundary limits. The boundary of the mooring field was delineated by offsetting the bulkhead line around the basin 150 feet. By doing so, this created an ample fairway for vessels arriving and departing the basin, which allows for safe passing and/or docking on any of the surrounding docks. With the boundary line of the proposed mooring field established, Stantec staff propose the following two options best meet the goals and objectives for the basin:

Option 1:

Mooring Field Option 1 (Figure 3) will provide for 18 mooring installed to provide safe mooring to vessels up to 35 feet length overall (LOA). All mooring stations will have a bounding radius of 70 feet. This gives the moored vessel the necessary room required for the mooring system to maneuver during storm events and tidal shifts without colliding with neighboring moored vessels or other structures inside the basin.



Figure 3: Option 1 - Proposed Mooring Field Layout with Moorings for Vessels up to 35 Feet in Overall Length

Option 2:

Mooring Field Option 2 (Figure 4) will provide 15 moorings. 12 moorings will be designated for vessels up to 35 feet length overall (LOA) and 3 mooring buoys for vessels up to 45 feet length overall (LOA). Mooring stations for vessels up to 35 feet length over all (LOA) will have a bounding radius of 70 feet. Mooring stations for vessels up to 45 feet length overall (LOA) will have a bounding radius of 85 feet. This gives the moored vessel the necessary room required for the mooring system to maneuver during storm events and tidal shifts without colliding with neighboring moored vessels or other structures inside the basin.



Figure 4: Option 2 - Proposed Mooring Field Layout with Moorings for Vessels up to 35 Feet (12) and 45 (3) Feet in Overall Length

Mooring Field Use Schedule

Maximum Number of Vessels

Using Option 1 and 2 as base guidelines, approximately 18 boats could be moored at any one time within the mooring field. Naturally, a reduction in the size of boats permitted or introducing smaller sized boat limitations could increase the number of moorings available.

Length of Stay

With the configuration of either proposed mooring field option, the length of stay for each vessel is a critical factor to implementation and management of the mooring field. Based on community feedback, other local mooring field plans, and the City of Cape Coral goals, it is proposed that 5-1-5 day system be used for mooring field occupancy within a 30-day period. This means that a boater can only stay at the mooring field for 5 consecutive days, then must leave for a 1-day period, before returning for another 5 consecutive days. No boater may stay within the basin for more than 10 days within a 30-day period. This approach has been very successful at other managed mooring fields, including the City of Naples.

With the length of stay established in the mooring field to 5-days, this will give the opportunity for the City of Cape Coral to manage special events. Since boaters can only stay for a shortened period of time, the City can block out a window of time for cardboard boat races and other winter parades, by not allowing any moorings during these events.

Projects Required to Support a Mooring Field

With the creation of the Bimini Basin Mooring Field ordinance, there will be various additional capital projects associated with the implementation and operation of the mooring field. While reviewing other mooring field plans and ordinances, additional implementation costs which go beyond the initial establishment of the mooring field ordinance must be considered:

1. State/Federal permitting
2. Mooring ball system installation
3. Pump-out systems
4. Upland facilities (ie, restrooms, showers, trash receptacles, parking, dockage, laundry, etc.)

Permitting:

The first step in establishing a managed municipal mooring field is to permit the boundary and number of proposed mooring stations. This permit will also include mooring stations, proposed sewage pump-out facility and any upland structures associated with the creation of Bimini Basin Mooring Field. Permits must be issued by the Florida Department of Environmental Protection (FDEP) and the United States Army Corps of Engineers (USACE).

Mooring System Installation

As discussed with the City of Cape Coral, the end goal is to install permanent mooring systems within Bimini Basin. There are several options for mooring systems used nationwide. There are several mooring field systems that will function well within the mooring field. Once a system is finalized, construction plans to present to marine contractors for the installation of the mooring systems shall be developed. State and federal permits will also dictate that the installation of uniform waterway markers to demarcate the mooring field boundary.


TABLE 1. COMPARISON OF BREAKOUT FORCE FOR MOORING ANCHORS										
										
	CONCRETE BLOCKS					MUSHROOMS			DOR-MOR	HELICALS
Test	BoatU.S.	Vineyard Haven	Vineyard Haven	BoatU.S.	Sarasota Sailing Squadron	BoatU.S.	Vineyard Haven	Vineyard Haven	BoatU.S.	BoatU.S. Vineyard Haven Sarasota Sailing Squadron
Anchor dry weight	8,000 lbs.	6,000 lbs.	3,000 lbs.	2,000 lbs.	1,500 lbs.	500 lbs.	500 lbs.	350 lbs.	650 lbs.	Various sizes
Breakout force	4,000 lbs.	3,200 lbs.	2,100 lbs.	800 lbs.	800 lbs.	1,200 lbs.	1,700 lbs.	2,000 lbs.	4,500 lbs.	10,000 - 20,800 lbs.
Holding Ratio*	0.5	0.5	0.7	0.4	0.5	2.4	3.4	5.7	6.9	
BoatU.S. – 1995 BoatU.S. Insurance pull-test conducted by BoatU.S., MIT, and Cruising World in Newport, RI Vineyard Haven – Test performed at Vineyard Haven, MA by Helix Moorings with harbor masters, marine writers, and BoatU.S. in attendance Sarasota Sailing Squadron – 2007 Practical Sailor test conducted at the Sarasota Sailing Squadron *Holding ratio is defined as breakout force/anchor dry weight and represents the breakout pounds per pound of anchor dry weight.										

Figure 5: Anchoring Systems

Pump-out Requirements:

Based on stakeholder input, it is anticipated that the transient vessels utilizing the mooring field will be producing grey water and sewage.

This will require the mooring field to have the proper means to remove the waste water from these vessels. The two common options would be to either provide a pump out vessel to directly pump out a moored vessel (Figure 6) or to have a pump out system installed at an upland location. (Figure 7). If the decision is to acquire a pump out vessel, there will be a need for a treatment system to dispose of the waste. If the choice is to have a pump out system installed at a nearby docking facility, the best location for boat docking for easy access for the tenant to operate the pumpout system 24/7.

Either option typically comes with operation and maintenance costs for equipment and staffing. These costs must also be factored into the overall project plan and implementation.

Install Upland Facilities

With every active mooring field there is a need to have supporting upland structures. The city-owned Four Freedoms Park may be an ideal location to install a permanent or floating dinghy dock for boaters to access the parks facilities. This dock can also be used as a pump out docking facility (if applicable). Additional facilities can make for a more desirable mooring destination include laundry rooms, restroom/showering facilities and waste receptacles.

Additional Considerations

Based on review of other communities mooring fields, the City of Cape Coral managed mooring field plan may also require the City to:

- Enforce the provisions of a sovereignty submerged lands lease (if required) and state/federal permits issued
- Provide administration for the operation, maintenance, safety, and security of the mooring field and shore side amenities
- Assign moorings
- Prepare records and reports as they relate to management of the mooring field
- Maintain the mooring field, anchoring systems, and dockmaster facilities
- Ensure that all mooring field patrons execute a mooring field use agreement during normal business hours, or for those vessels arriving after normal business hours, at the start of business the following day



Figure 6: Pump-out Vessel



Figure 7: Pump-out System

Existing Accident Reports

Stantec reviewed documents of incident reports provided by the City of Cape Coral. The documents are dated from January of 2013 to February of 2018. The majority of the police reports indicate that there were no major accidents. These majority of these reports consist of noise complaints, vessels losing anchor becoming adrift and vessels being tampered with by someone other than the owners. Once the ordinance is in place and the mooring field is established, the City of Cape Coral will be able to curb such activity by ensuring every mooring field tenant abides by the ordinance and rules within the City of Cape Coral. The incident reports received from the City of Cape Coral are included as Appendix A for reference.

Analysis of Similar Communities

Goals and Objectives:

Over the last decade in Florida, many communities have found themselves having to create local ordinances to regulate and enforce activities in areas where boaters typically anchor for long periods of time. This is good news for the City of Cape Coral, as the lessons learned during their development, can be used to enhance and strengthen the City's proposed mooring field ordinance for Bimini Basin. Some other communities that have created their own mooring field ordinances include:

- City of Naples
- Fort Myers
- Fort Myers Beach
- Key West
- Marathon Boot Key
- Punta Gorda
- Sarasota
- Stuart
- Vero Beach

After an analysis of the mooring field ordinances from these communities, the proposed mooring field ordinance for the city should include the following items in their ordinance:

General Conditions:

- Definitions
- Intent
- Purpose
- Target group of boaters
- Applicability and enforcement

Managed Mooring Field Rules:

- Authority of the harbormaster/dockmaster
- Vessels allowed
- Toilet facilities and pump-out requirements
- Transportation requirements
- Commercial uses
- Repairs
- Mooring and anchoring methods
- Abandonment of vessels
- Drug use or possession policy
- Illegal activities prohibited
- Noise
- Liability of the city
- Anchoring outside of designated area
- Mooring rental rates

Responsibilities of Tenants:

- Safe operation of vessels
- Use of sewage pump-out facilities
- Conduct of tenants
- Discharge of waste or other materials
- Boarding by law enforcement personnel
- Emergency repairs in absence of tenant
- Departure of vessels with delinquent dockage accounts

Amenities and Services:

- Damage of amenities and property
- Use of parking spaces
- Use of dinghy docks
- Use of sewage pump-out facility

Leasing Requirements:

- Lease agreement
- Tenant information required
- Vacation of mooring

Speed Limits:

- Outside of the mooring field

Severe Storm & Hurricane Plan:

- Established plan

Plan for Future Expansion:

- Expansion of mooring field

Managed Mooring Area:

- General description
- Signage

The proposed list of items above can serve as the framework of items to be included in the draft ordinance for the City of Cape Coral.

Accident Report

Existing Accident Reports

Stantec reviewed documents of incident reports provided by the City of Cape Coral. The documents are dated from January of 2013 to February of 2018. The majority of the police reports indicate that there were no major accidents. The majority of these reports consist of noise complaints, vessels losing anchor becoming adrift and vessels being tampered with by someone other than the owners. Once the ordinance is in place and the mooring field is established, the City of Cape Coral will be able to curb such activity by ensuring every mooring field tenant abides by the ordinance and rules within the City of Cape Coral. The incident reports received from the City of Cape Coral are included as an Appendix for reference.

Appendix



Bimini Basin Mooring Field

Ordinance 41-18

City Council Public Hearing – June 18, 2018

Executive Summary




Bimini Basin Mooring Field

- Ordinance 41-18 will allow the City to regulate mooring of vessels in Bimini Basin
- State Law and Court Decisions require a municipality to adopt a mooring field ordinance to regulate mooring in any way
- DEO grant provided funding for City consultant – Stantec, Inc. drafted ordinance and conducted public outreach. Grant requires Council action at this meeting
- First step in a three step process:
 - 1) Mooring Field Ordinance
 - 2) Mooring Field Plan, Design, and Permitting
 - 3) Construction



Bimini Basin Mooring Field – Next Steps

- **Council action on Ordinance 41-18.
Approval is recommended**
 - **Pursue Opportunities for Mooring Field
Plan, Final Design, Permitting, and
Construction**
- 

Item Number:	8.A.
Meeting Date:	6/18/2018
Item Type:	ORDINANCES/RESOLUTIONS - Introductions

**AGENDA
REQUEST FORM
CITY OF CAPE
CORAL**



TITLE:

Ordinance 42-18/LU 18-0001 Set Public Hearing for July 30, 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:

Planning & Zoning Recommendation: At their June 6, 2018 meeting, Planning & Zoning voted (6-1) to recommend approval of the Ordinance.

Staff Recommendation: Staff recommends approval.

SUMMARY EXPLANATION AND BACKGROUND:

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map from Commercial/Professional (CP) to Single-Family Residential (SF) Land Use for property described as Lots 1-28 and 55-82, Block 3170, Cape Coral Unit 66; property located north of SW 28th Street, south of SW 26th Street, east of SW 9th Avenue, and west of SW 8th Court. (Applicant: Sullico II, LLC)

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 42-18
Backup material
Presentation

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Chad Boyko, Principal Planner

ATTACHMENTS:

Description	Type
▣ Ordinance 42-18/LU 18-0001	Ordinance
▣ Backup Material	Backup Material
▣ Presentation ORD 42-18	Presentation

ORDINANCE 42 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM COMMERCIAL/PROFESSIONAL (CP) TO SINGLE-FAMILY RESIDENTIAL (SF) LAND USE FOR PROPERTY DESCRIBED AS LOTS 1-28 AND 55-82, BLOCK 3170, CAPE CORAL UNIT 66, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED NORTH OF SW 28TH STREET, SOUTH OF SW 26TH STREET, EAST OF SW 9TH AVENUE, AND WEST OF SW 8TH COURT; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral on February 13, 1989, adopted a Comprehensive Plan pursuant to the Comprehensive Planning Act; and

WHEREAS, as part of the Comprehensive Plan the City of Cape Coral adopted therewith a future land use map designating land uses and proposed land uses throughout the City of Cape Coral consistent with the Comprehensive Plan and Comprehensive Planning Act; and

WHEREAS, the City of Cape Coral City Council has considered the testimony, evidence, and documentation for the Land Use Amendment initiated by SULLICO II, LLC, regarding the below described property, and considered the recommendation of the Planning & Zoning Commission/Local Planning Agency and City staff.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. That the below described real property located within the City of Cape Coral, Florida, is hereby amended consistent with the City of Cape Coral Comprehensive Plan as follows:

FROM COMMERCIAL/PROFESSIONAL (CP) TO SINGLE-FAMILY RESIDENTIAL (SF)

Lots 1-27, Block 3170, CAPE CORAL UNIT 66, according to plat thereof, recorded in Plat Book 22, Pages 2 through 26, inclusive, Public Records of Lee County, Florida.

Lot 28, Block 3170, CAPE CORAL UNIT 66, according to plat thereof, recorded in Plat Book 22, Pages 2 through 26, inclusive, Public Records of Lee County, Florida, *less and except* that portion of said Lot 28 lying within the right of way for the extension of SE 26th Street as set forth in that certain plat of Home Depot according to the map or plat thereof as bearing Official Records Instrument # 2006000203514, Public Records of Lee County, Florida.

Lot 55, Block 3170, CAPE CORAL UNIT 66, according to plat thereof, recorded in Plat Book 22, Pages 2 through 26, inclusive, Public Records of Lee County, Florida, *less and except* that portion of said Lot 55 lying within the right of way for the extension of SE 26th Street as set forth in that certain plat of Home Depot according to the map or plat thereof as bearing Official Records Instrument # 2006000203514, Public Records of Lee County, Florida.

Lots 56-82, Block 3170, CAPE CORAL UNIT 66, according to plat thereof, recorded in Plat Book 22, Pages 2 through 26, inclusive, Public Records of Lee County, Florida.

SECTION 2. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this small scale development amendment to the Comprehensive Plan shall be thirty-one (31) days after the adoption of this ordinance. Alternatively, if the small scale development amendment adopted by this ordinance is challenged by an "affected person" within thirty (30) days after adoption, then the effective date of this amendment shall be the date upon which either the state land planning agency or the Administration Commission issues a

"final order" determining that this small scale development amendment is "in compliance" as provided in Section 163.3187(5), Florida Statutes.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 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/lu18-0001



DEPARTMENT OF COMMUNITY DEVELOPMENT
REQUEST TO PLANNING & ZONING COMMISSION/LOCAL PLANNING AGENCY AND COUNCIL
FOR A LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT

JAN 25 18 8.75

FEE \$1,225.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

CASE # LUB-0001

OWNER OF PROPERTY

Sullico II LLC

Address: 15946 Double Eagle Drive

City: Morrison State: CO Zip 80465

Email: _____

Phone: _____

AUTHORIZED REPRESENTATIVE

Avalon Engineering Inc

Address: 2503 Del Prado Blvd Suite 200

City: Cape Coral State: FL Zip 33904

Email: Linda@avaloneng.com

Phone: 239-573-2077

Unit 66 Block 3170 Lot(s) List Subdivision Cape Coral

Legal Description _____

Address of Property Parcels on SW 8th Ct and SW 9th Avenue

Plat 23 Page 23

Current Zoning C-1 Strap Number See Listing

Current Land Use CP Proposed Land Use SF

Parcel Size: Width 1120 Depth 250 Sq. Ft. 280,000 Acreage 3.44 owned by 6.42 Acres

Soil Type: 13- Boca Fine Sand and 69 Matlacha Gravely Fine Sand Sullico

Urban Services Area: (check one) ☒ Infill ☐ Transition ☐ Reserve

Natural Resources: (state habitat type, e.g. high lands, wetlands, upland forest, oak hammocks, etc.):

FLUCCS: 192 Inactive land with street patterns but without structures and 121 Fixed Single Family units

Animal Species: (list any endangered, threatened, or species of special concern on-site)

None

Estimated Development:

Estimate total lot coverage: 20 %

Estimate total building floor area 56,000 sq. ft.

Estimate type of future development and percentages (e.g. business offices, commercial retail, automotive repair, etc.)

Single Family Homes

Estimated peak hour trip ends:

If 300 or less peak hour trip ends are projected, the applicant must provide the source of the traffic projection. If more than 300 peak hour trip ends are projected, a traffic impact study must be completed and submitted as part of the application (see attachments).

City Sewer: Yes ☒ No ☐
City Water: Yes ☒ No ☐

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

Sullico II LLC

Elaine M. Sullivan, Managing Member
NAME (PLEASE TYPE OR PRINT)

Elaine M. Sullivan, Managing Member
AUTHORIZED SIGNATURE

(SIGNATURE MUST BE NOTARIZED)
STATE OF FL, COUNTY OF CHARLOTTE

Sworn to (or affirmed) and subscribed before me this 30 day of NOVEMBER, 2017, by ELAINE M. SULLIVAN who is personally known or produced FL DRIVER LICENSE as identification.



Exp. Date: 01-11-2020 Commission Number: FF 949461

Signature of Notary Public:

Printed name of Notary Public:

Michael A. Gardner

MICHAEL A. GARDNER

AUTHORIZATION TO REPRESENT PROPERTY OWNER(S)

PLEASE BE ADVISED THAT

Avalon Engineering

(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

Land Use Map Amendment

(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT 66 BLOCK 3170 LOT(S) Listing SUBDIVISION Cape Coral

OR LEGAL DESCRIPTION

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

Sullico II LLC

Elaine M. Sullivan, Managing Member

PROPERTY OWNER (Please Print)

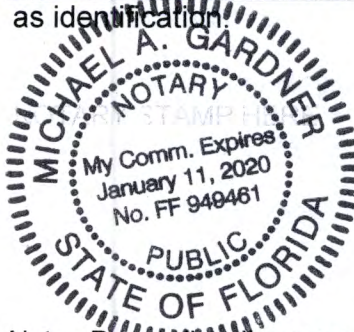
PROPERTY OWNER (Please Print)

Elaine M. Sullivan, Managing Member
PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Signature & Title)

STATE OF FL, COUNTY OF CHARLOTTE

Subscribed and sworn to (or affirmed) before me this 30 day of NOVEMBER, 2017, by
ELAINE M. SULLIVAN who is personally known or produced FL DRIVER LICENSE
as identification.



Exp. Date: 01-11-2020 Commission Number: FF 949461

Signature of Notary Public:

Michael A. Gardner

Printed name of Notary Public:

MICHAEL A. GARDNER

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT

Avalon Engineering, 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

Land Use Map Amendment and Zoning Map Amendment

(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT 66 BLOCK 3170 LOT(S) 9 & 10 SUBDIVISION Cape Coral

OR LEGAL DESCRIPTION

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

Jeffrey A. Oddy

PROPERTY OWNER (Please Print)

PROPERTY OWNER (Please Print)

Jeffrey A. Oddy

PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Signature & Title)

STATE OF FL, COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 8th day of January, 2018, by
Jeffrey Oddy who is personally known or produced ABC
as identification.



Exp. Date: 8/23/19 Commission Number: FF911672

Signature of Notary Public: [Signature]

Printed name of Notary Public: Katrina Learn

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.

ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I, or my representative, must attend any applicable meetings scheduled for the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals, and Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

I hereby acknowledge that I have read and understood the above affidavit on the 8th day of JAN, 2018

Jeffrey A. Oddy
NAME (PLEASE TYPE OR PRINT)

Jeffrey A. Oddy
APPLICANT'S SIGNATURE

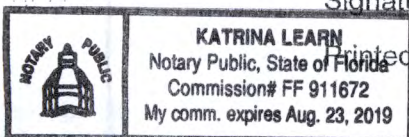
STATE OF FL, COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 8th day of January, 2018 by Jeffrey Oddy who is personally known or produced FLDL as identification.

Exp. Date: 8/23/19 Commission Number: FF911672

Signature of Notary Public:

Printed name of Notary Public:



Katrina Learn

Detail by Entity Name

Florida Limited Liability Company
SULLICO II, LLC

Filing Information

Document Number	L13000173163
FEI/EIN Number	46-5305473
Date Filed	12/16/2013
Effective Date	12/12/2013
State	FL
Status	ACTIVE

Principal Address

83 OCEAN DRIVE
PUNTA GORDA, FL 33950

Mailing Address

83 OCEAN DRIVE
PUNTA GORDA, FL 33950

Changed: 03/02/2015

Registered Agent Name & Address

SULLIVAN, ELAINE M
83 OCEAN DRIVE
PUNTA GORDA, FL 33950

Authorized Person(s) Detail

Name & Address

Title MGRM

SULLIVAN, ELAINE M
83 OCEAN DRIVE
PUNTA GORDA, FL 33950

Annual Reports

Report Year	Filed Date
2015	03/02/2015
2016	02/12/2016
2017	01/20/2017

Document Images

01/20/2017 -- ANNUAL REPORT	View image in PDF format
02/12/2016 -- ANNUAL REPORT	View image in PDF format
03/02/2015 -- ANNUAL REPORT	View image in PDF format
04/18/2014 -- ANNUAL REPORT	View image in PDF format
12/16/2013 -- Florida Limited Liability	View image in PDF format



Avalon Engineering, Inc.
2503 Del Prado Boulevard South, Suite 200
Cape Coral, Florida 33904
Phone: (239) 573-2077 Fax: (239) 573-2076
#AA C001936 #EB 0003128

January 24, 2018

Mr. Vince Cautero, Director
Department of Community Development
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

PROJECT: BLOCK 3170 LOTS 1-28 & 55-82

SUBJECT: SMALL SCALE LAND USE MAP AMENDMENT LETTER OF INTENT

Dear Mr. Cautero:

As provided for in Section 8.7 of the City of Cape Coral Land Use and Development Regulations, and on behalf of two of the property owners within Block 3170, Sullico II LLC, and Jeffrey A. Oddy, we respectfully request an amendment to the Future Land Use Map to change the designation of the subject 6.42 acres within Block 3170 for Lots 1 -28 and 55-82. The subject property has a Land Use designation of CP (Commercial Professional), and the applicants are requesting a Land Use designation of SF (Single Family).

In addition to the applicants for this case, we have also received signed acknowledgements of support from three (3) other single family home owners within this Block, Cynthia Cavanaugh, Equity Trust for Katherine Davis, and Maria Rosa Flick.

The subject Block is located south of Veterans Parkway and west of Skyline Blvd, just south of the Home Depot Shopping Center in Section 34, Township 44E, and Range 23 S in the SW Section of Cape Coral. There are a total of 56 Lots within Block 3170. The applicants, Sullico II, LLC owns thirty (30) Lots and Mr. Oddy owns two (2) lots, for a total ownership of 57% of the Lots within this Block. 51% is required for the submittal of a Land Use Map Amendment Application.

In 2001, the Land Use and Zoning were amended for this Block and four (4) other Blocks, north to Veterans Parkway and east to Skyline Blvd, from SF (Single Family) to CP (Commercial Professional), in order to support a large commercial subdivision that was planned to contain two (2) Big Box developments, several national anchor stores, some local space, and outparcels fronting Skyline Blvd. As a result of the development of the Home Depot, the vision to incorporate this 6.42 acres into the current Shopping Center diminished, as commercial interest no longer looks favorable on a second phase of this center, for an another big box, or a couple of anchor retail stores and additional out-parcels.

Twenty-two (22) Lots (or 39% of this Block) are developed with Single Family Homes, all of which were constructed prior or during the Land Use and Zoning Amendments to commercial. No new Single Family Homes have been constructed on Block 3170 since the Land Use and Zoning was amended, as the City's C-1 (Pedestrian Commercial) Zoning does not permit single family development.

Development Blocks to the west 3172, 3171, and 3166, currently have single family development consisting of between 58% to 75%, with new single family building permits being submitted monthly within this area.

Market Studies, that have been prepared by developers of National Chains, over and over since 2003, indicate that retail development is not conducive on this Block, due to the linear distance from Skyline Blvd, however, there is much developer interest in expanding on the success of the single family development to the west of the site.

Commercial development has occurred on Blocks that have Lots fronting Skyline Blvd. Since the Lots fronting Skyline have been developed, it is not feasible for Block 3170, which is located 634 feet from Skyline Blvd to be developed with commercial uses.

Please accept this evaluation of the propose amendment with respect to determining consistency with these General Standards:

1. The extent to which the value of the property is diminished by the proposed land use restriction or zoning of the property;

The value of the property will not be diminished with the proposed Land Use Amendment. Prior to approval of the Land Use Map Amendment to commercial within this area of the Cape, including Block 3170, Blocks that did not front Skyline Blvd were designated as Single Family.

Eleven (11) Single Family homes were constructed within Block 3170 prior to the approval of the Land Use Map Amendment to Commercial Professional.

All parcels within this area have been assessed for City water, wastewater, and irrigation. Due to the commercial zoning and land use owners of the Lots within Block 3170, are currently not able to permit a single family home on their parcel.

The Land Use Amendment was approved in 2001, and for seventeen years this Block has been available for commercial development. Commercial development has occurred only along Skyline Blvd and the corner of Veterans Parkway and Skyline Blvd. Since commercial development has not occurred, it is necessary to consider the needs of the existing homeowners within this Block.

2. The extent to which, the removal of a proposed land use restriction or change in zoning depreciates the value of other property in the area;

The proposed change will allow the existing single family homes to be a permitted use with the ability to rebuild in case of a natural event or an emergency. The amendment would have little effect on the existing or future commercial development, since this site, over the years, has had the ability to develop with commercial uses and has not.

3. The suitability of the property for the zoning purpose or land use restriction imposed on the property as zoned;

Block 3170 is adjacent to other existing single family zoned Blocks, directly to the west and behind the Shopping Center. The proposed land use change would not only be suitable for this Block, but it will provide the current homeowners a sense of security that they deserve, as their existing home will be a permitted use and the homeowners will know that they will have only single family uses constructed adjacent to them. The current single family home owners within this Block have been living with the uncertainty of not knowing what would be built next or in close proximity to them since 2001.

4. The character of the neighborhood, existing uses, zoning of nearby and surrounding properties, and compatibility of the proposed land use restriction or zoning;

The character of the neighborhood consists of a majority of the area being single family residential with commercial zoned vacant and development parcels fronting Skyline Blvd. The current uses consist of a Home Improvement Store, automotive services (repair and parts store), fast food restaurant (Dairy Queen), convenience store with gas pumps, a bank, and a variety store. The existing commercial square footage fronts on Skyline Blvd, with residential located at least 634 feet from Skyline Blvd and 1068 feet from Veteran's Parkway.

5. The relative gain to the community as compared to the hardship, if any imposed, by the proposed land use restrictions or from rezoning said property;

There would be a positive effect in amending the land use for Block 3170. The property would have a better chance of being developed within the next few years, which would increase the City's tax base and provide an increase in the amount and type of housing products available within the Cape.

The redevelopment of the existing Shopping Center to incorporate and integrate the proposed parcel, as required to create a commercial node and a unified development, is unlikely, thus leaving this Block isolated from the existing commercial, without visibility and direct access to a major street.

6. The community need for the use proposed by the zoning or land use restriction;

Block 3170 was originally designated for Single Family use. The Block contains 11 single family homes. Over the last 17 years, the character of the Block has not changed. The community need is to protect the existing Single Family homes within this Block and to encourage investment and development rather than foster an area that can't invest in the improvements to their developed properties, thus allowing for the possibility of Blight.

7. Length of time the property proposed to be rezoned has been vacant, as zoned, when considered in the context of the City of Cape Coral Comprehensive Land Use Plan for the development of the proposed property and surrounding property;

The Block was land used commercial in 2001 and rezoned to C-1 (Pedestrian Commercial). This Block has been marketed as available commercial property since that date. There has been no interest in the development of this parcel for a commercial use, due to the lack of frontage along a major street.

8. The extent to which the proposed land use restriction or zoning promotes the health, safety, morals, or general welfare of this community;

The proposed land use change from CP (Commercial Professional) to SF (Single Family) will provide the City of Cape Coral with additional housing options in an area, which are in close proximity to public transit, adjacent to shopping and within walking distance of job opportunities.

9. The extent to which the proposed land use, land use restriction, or zoning will impact the level of service standards for public facilities as specified in the Comprehensive Plan; and

This proposed land use change from CP (Commercial Professional) to SF (Single Family) will not degrade the level of service of any public facility below the adopted level of service. In addition, the peak hour trips associated with the number of Single Family homes that would be able to be developed is less than the peak hour trips associated with retail, commercial service, or even a mini-warehouse use.

10. Whether the proposed land use restriction, removal of a restriction, or zoning is consistent with the City of Cape Coral Comprehensive Land Use Plan.

Policy 1.13 of the City's Future Land Use Element of the Comprehensive Plan states that commercial nodes should be located around or in the vicinity of intersection of major city roadways.

Block 3170 is over 634 feet away from a major city roadway and over 1068 feet from the intersection. This Block would not be considered a commercial node.

Policy 1.14 of the City's Future Land Use Element of the Comprehensive Plan states that the benefits derived by having commercial properties located in the vicinity of the intersection diminish with distance from the intersection and whether the subject property represents a new commercial property or an expansion of an existing commercial area.

New commercial properties should preferably be located adjacent to the intersection, while commercial properties that clearly represent an expansion of an existing commercial area can be any distance from the intersection, provided that such properties are integrated with existing properties.

The subject property currently has a land use designation of commercial. If a commercial development were to occur on this site it would be considered new development according to Policy 1.14 and as such this new commercial development would not meet the requirements of this policy, which is to be located in the vicinity of the intersection.

Policy 1.14 of the City's Future Land Use Element of the Comprehensive Plan states that in the City of Cape Coral there are two ideal access provisions for a commercial property a) Access via a platted City parking area and b) Direct access onto an arterial or collector roadway having an adopted City access management plan. If a subject property would meet the requirements for one or more of these provisions, the creation of a commercial future land use at the proposed location should be encouraged.

Block 3170 property currently has a land use designation as commercial. If a commercial development were to develop on this site the development would not meet the requirements of this policy as it does not meet either ideal access provisions. The subject parcel should be encouraged to develop with a single family use and not a commercial use.

The Commercial Corridor Study identified 17 separate commercial corridors within the City of Cape Coral. Each of these Corridors will require a certain amount of commercial square footage to meet the needs of that particular area, and that each of those Corridor areas should be viewed separately to determine those needs. Additional commercial land that is available within one corridor may not provide a benefit if not within an area needing commercial space nor within an area without a commercial market, as commercial is market driven.

This Block should be considered additional commercial land that is in an area that has existing commercial square footage and without a commercial market.

Single Family Land Use Advantages for this Block:

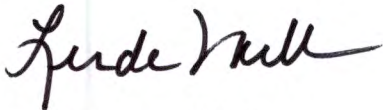
- 1) This Block contains existing single family homes.
- 2) This Block is located within a centralized area and has a large percentage of commercial square footage already developed within this corridor.
- 3) This Block has accessibility to public transit.
- 4) The land use amendment will encourage improvements to the existing single family homes, and allow the owners to obtain home mortgages and home insurance since the SF use will be permitted.
- 5) The change in land use will allow the owners of the existing homes to market their properties as single family homes rather than future investment properties. This will create a more stable neighborhood with more owner occupied homes.
- 6) The subject parcel is located out-side of the Coastal High Hazard Area and would be permitted to request a residential zoning.
- 7) The Block is currently platted into single family lots, typical of Cape Coral, with enough land area to support a single family home and individual amenities (pools, playgrounds, barbeque areas, etc). In addition, these lots have access to City utilities.

Cautero /Letter of Intent
LUMA/ Block 3170
January 24, 2018
Page 7

On behalf of the applicant, Avalon has reached out to each homeowner within this Block with two direct mailings explaining our application for a land use amendment. Avalon has not received any unfavorable response to this land use map amendment application from the homeowners within this Block. Should you or your staff have questions or require additional information, please let us know.

Sincerely,

AVALON ENGINEERING, INC.

A handwritten signature in black ink, appearing to read "Linda Miller". The signature is fluid and cursive, with the first name "Linda" being more prominent than the last name "Miller".

Linda Miller, AICP
Senior Planner

Block 3170	56 Lots (22 Developed -34 Undeveloped -30 are owned by Sullico II, LLC)			
Strap	Improved	Lot	Address	Owner
344423C2031700560	No	55, 56	2606 SW 8TH CT	INA GROUP LLC
344423C2031700570	No	57, 58	2608 SW 8TH CT	SULLICO II LLC
344423C2031700590	No	59, 60	2612 SW 8TH CT	SULLICO II LLC
344423C2031700610	No	61 - 63	2618 SW 8TH CT	SULLICO II LLC
344423C2031700640	No	64 - 66	2624 SW 8TH CT	SULLICO II LLC
344423C2031700670	No	67 - 69	2630 SW 8TH CT	SULLICO II LLC
344423C2031700700	No	70 - 72	2702 SW 8TH CT	SULLICO II LLC
344423C2031700730	Yes	73, 74	2706 SW 8TH CT	CAVANAUGH CYNTHIA A
344423C2031700750	Yes	75, 76	2710 SW 8TH CT	HANCOCK FRANCIS J
344423C2031700770	Yes	77, 78	2714 SW 8TH CT	2311803 ONTARIO INC
344423C2031700790	No	79, 80	2718 SW 8TH CT	SULLICO II LLC
344423C2031700810	No	81, 82	2722 SW 8TH CT	SULLICO II LLC
344423C2031700010	No	1, 2	2723 SW 9TH AVE	SULLICO II LLC
344423C2031700030	Yes	3, 4	2719 SW 9TH AVE	ARROW RE SUB 1 LLC
344423C2031700050	Yes	5, 6	2715 SW 9TH AVE	EQUITY TRUST COMPANY
344423C2031700070	No	7, 8	2711 SW 9TH AVE	SULLICO II LLC
344423C2031700090	Yes	9, 10	2707 SW 9TH AVE	ODDY JEFFREY A
344423C2031700110	Yes	11, 12	2703 SW 9TH AVE	NORTHUP SCOTT E
344423C2031700130	Yes	13, 14	2633 SW 9TH AVE	SASH THOMAS W
344423C2031700150	Yes	15, 16	2629 SW 9TH AVE	FLICK MARIA ROSA
344423C2031700170	No	17, 18	2625 SW 9TH AVE	SULLICO II LLC
344423C2031700190	Yes	19, 20	2621 SW 9TH AVE	KEMP STEPHEN G + ELLEN K
344423C2031700210	No	21, 22	2617 SW 9TH AVE	SULLICO II LLC
344423C2031700230	No	23, 24	2613 SW 9TH AVE	SULLICO II LLC
344423C2031700250	Yes	25, 26	2609 SW 9TH AVE	MCCRACKEN RANDY + MARLENE J
344423C2031700270	No	27, 28	2607 SW 9TH AVE	LJH INVESTMENTS LLC

Protected Species Assessment

Block 3170

Lots 1, 2, 7, 8, 17, 18, 21 - 24, 57-72, 79-82

Cape Coral, Florida 33914

Section 34, Township 44S, Range 23E

December, 2017

Prepared for:

Sullico II LLC

15946 Double Eagle Drive

Morrison, CO 80465

Prepared by:

Avalon Engineering, Inc.

2503 Del Prado Boulevard South, Suite 200

Cape Coral, Florida 33904

INTRODUCTION

This 3.44 acre area is located between SW 8th Court and SW 9th Avenue, west of Skyline Blvd and south of Veterans Parkway. Adjacent properties consist of the following: to the north is commercial building, to the south is residential, to the east is lots zoned commercial but developed with some single family homes, and to the west is developed and undeveloped single family lots. The parcel is located in Section 34, Township 44S, Range 23E, Cape Coral, Florida.

SITE CONDITIONS

A site inspection was conducted by Scott Tucker on December 27, 2017. The weather was partly cloudy with temperatures in the 50's.

VEGETATION CLASSIFICATIONS

The table below displays the (#1) vegetative associations found on the subject parcel. These vegetative associations were identified using the Florida Land Use Cover Classification System. (FLUCCS) and are shown on the table below. Also included is a description of each FLUCCS association below.

FLUCCS CODE	DESCRIPTION	APPROXIMATE ACREAGE
192	Inactive land with street patterns but without structures (routinely mowed).	3.44
TOTAL ACREAGE		3.44

SURVEY METHOD

To provide at least 100% visual coverage, four centered transects were completed at 20' intervals within the construction area. This method was selected to examine for the presence or absence of protected or listed species within the entire construction area.

If a sign or sighting was observed, an aerial photograph was marked depicting the approximate location. The attached scale aerial map depicts the results of this survey. Other listed protected species which could occur on the subject parcel according to City of Cape Coral which were surveyed for are as follows:

SPECIES	SCIENTIFIC NAME	OBSERVED
Burrowing Owl	Athene cunicularia	No
Gopher Tortoise	Gopherus polyphemus	No

RESULTS

The Protected Species Survey revealed the presence of no species listed by either the U.S. Fish & Wildlife Service (USFWS) or by the Florida Fish & Wildlife Conservation Commission (FFWCC).

Attachment: Transect Line Map



PROTECTED SPECIES TRANSECT
 LINE JANUARY 10, 2018

1 of 1 <small>017-250/LUMA</small>	TRANSECT MAP (AERIAL)	LAND USE MAP AMENDMENT BLOCK 3170, UNIT 66 CAPE CORAL, FLORIDA	AVALON ENGINEERING, INC. <small>2503 DEL PRADO BLVD. #200 CAPE CORAL, FLORIDA 33904 FBPE#3128 (239) 573-2077</small>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">DATE</th> <th style="width: 10%;">BY</th> <th style="width: 75%;">REVISION DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>12/12/17</td> <td>LM</td> <td>INITIAL SUBMITTAL</td> </tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	DATE	BY	REVISION DESCRIPTION	12/12/17	LM	INITIAL SUBMITTAL										THIS PLAN IS INTENDED FOR CONCEPTUAL PLANNING PURPOSES ONLY. SITE LAYOUT MAY CHANGE SIGNIFICANTLY BASED UPON SURVEY, ENVIRONMENTAL AND REGULATORY CONSTRAINTS. "NOT FOR CONSTRUCTION"
DATE	BY	REVISION DESCRIPTION																		
12/12/17	LM	INITIAL SUBMITTAL																		



Avalon Engineering, Inc.
2503 Del Prado Boulevard South, Suite 200
Cape Coral, Florida 33904
Phone: (239) 573-2077 Fax: (239) 573-2076
#AA C001936 #EB 0003128

January 24, 2018

Mr. Vince Cautero, Director
Department of Community Development
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990

PROJECT: SMALL SCALE LAND USE MAP AMENDMENT - BLOCK 3170

SUBJECT: TRAFFIC GENERATION STATEMENT

Dear Mr. Cautero,

Included herewith are the traffic generation calculations for the above referenced project. As the project creates less than 300 vehicle trips, peak hour of the generator, a traffic impact statement will not be necessary.

Source: I.T.E. Trip Generation Manual, 9th Edition
Land Use: (210) Single Family Detached Housing
Dwelling Unit: 28 (maximum dwelling units)

A.M. Peak Hour of the Generator:
0.77 Average Rate per dwelling unit

5.61 vehicles entering 26%
15.95 vehicles exiting 74%
21.56 TOTAL VEHICLES

P.M. Peak Hour of the Generator:
1.02 Average Rate per dwelling unit

18.27 vehicles entering 64%
10.29 vehicles exiting 36%
28.56 TOTAL VEHICLES

If you should have any questions or require additional information, please feel free to call me.

Sincerely,

AVALON ENGINEERING, INC.

Lihda Miller, AICP
Senior Planner

Date 1-13-18

To the City of Cape Coral Planning Division,

I own a single family home within Block 3170 in Cape Coral. I support the proposed Land Use and Zoning Map Amendments that are being requested, as these amendments will change the Land Use and the Zoning on my Lots back to Single Family Residential.

Lots: 73 & 74

CYNTHIA A. CAVANAUGH
Cynthia A. Cavanaugh

Cynthia A. Cavanaugh
Signature of Owner

Date 12/16/17

To the City of Cape Coral Planning Division,

Equity Trust owns a single family home within Block 3170 in Cape Coral. We support the proposed Land Use and Zoning Map Amendments that are being requested, as these amendments will change the Land Use and the Zoning on the lots back to Single Family Residential.

Lots: 5 & 6

Kitty Davis

Printed Name

Kitty A

Signature of Owner

Trustee, Kathryn R. Davis

Title of Signer for Equity Trust Company

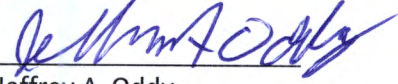
Date

1/8/18

To the City of Cape Coral Planning Division,

I own a single family home within Block 3170 in Cape Coral. I support the proposed Land Use and Zoning Map Amendments that are being requested, as these amendments will change the Land Use and the Zoning on my Lots back to Single Family Residential.

Lots: 9 & 10



Jeffrey A. Oddy


Signature of Owner

Exhibit A

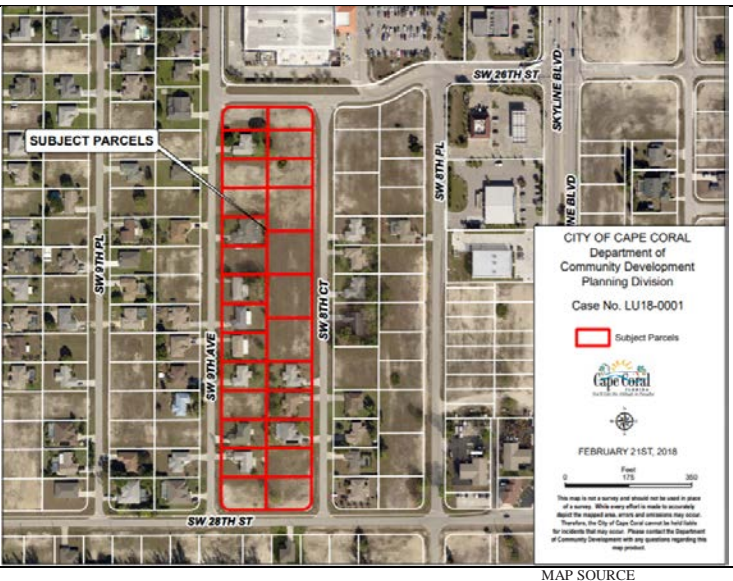
Land Use Map Amendment Application - Block 3170

Legal Description

Block 3170, Lots 1-28 & 55-82 in Cape Coral Unit 66 as platted in Plat Book 22, Page 23 in the records of Lee County, Florida.

PLANNING DIVISION STAFF REPORT
LU18-0001

PROPERTY ADDRESSES Multiple Addresses. See attached list. Site is South of Veterans Parkway and West of Skyline Boulevard.	APPLICANTS/PROPERTY OWNERS Sullico II, LLC. Multiple property owners. See attached list.
--	--

SUMMARY OF REQUEST The applicant requests a future land use map amendment from the Commercial/Professional (CP) future land use designation to the Single-Family Residential (SF) future land use designation several properties. The site is 6.42 acres, although, only 3.44 acres is owned by the applicant. The site is a mix of single-family homes and undeveloped parcels.	
--	---

MAP SOURCE

STAFF RECOMMENDATION: **Approval**

Positive Aspects of Application:	There are several single-family homes that would be reverted to a conforming use. Amendment would allow for construction of single-family homes.
Negative Aspects of Application:	The amendment would be a loss of commercial land. Over half of the block is under common ownership, which increases potential for quality development.
Mitigating Factors:	No parcels within the site have developed commercially since the future land use and zoning of the site was amended. The site is two blocks removed from frontage along collector or arterial road.

SITE INFORMATION

Location: Multiple addresses.
Unit 66. All of Block 3170 (Lots 1-82)
South of Veterans Parkway and West of Skyline Boulevard.

STRAP Number: Multiple STRAP numbers.

Site Area: 6.44 acres

Site:	Future Land Use	Zoning
Current:	Commercial/Professional	Pedestrian Commercial (C-1)
Proposed:	Single-Family Residential (SF)	N/A
	Surrounding Future Land Use	Surrounding Zoning
North:	CP	C-1
South:	SF	Single-Family Residential (R-1B)
East:	CP	C-1
West:	SF	R-1B

Urban Service

Area: Transition

City Water/Sewer: Yes

Type of

Access Road: The block has frontage on four local streets – SW 26th Street, SW 28th Street, SW 9th Ave and SW 8th Court.

Soil Types and Limitations for Development:

Map Unit		Limitations	
		Dwellings without basements	Small commercial buildings
13	Boca Fine Sand	Moderate (wetness)	Moderate (wetness)

The soil in the area presents moderate limitations for dwellings and small commercial buildings. These limitations are typically overcome by using various engineering solutions, such as importing fill. The soil type, therefore, may not present an obstacle to any proposed amendment. However, special feasibility studies may be required at the development stage of the property.

Drainage: Must comply with South Florida Water Management District and the City of Cape Coral Engineering Design Standards.

Natural Resources: The site consists of undeveloped land and single-family homes. The overall hydrology is considered non-hydric.

Flora & Fauna Habitat: Prior to any permit for development being issued, an environmental survey must be undertaken, and mitigation performed to minimize the impacts of development, if any, on the protected species habitat.

FINDINGS OF FACT

The site is all of Block 3170 in southwestern Cape Coral. Block 3170 consists of 56 parcels and is 6.44 acres. 20 parcels in the block are developed with single-family homes, while the remaining parcels are undeveloped. The applicant, Sullico II, LLC, owns 30 parcels in the block and the remaining parcels are owned by a variety of owners. No other individual or business owns more than one parcel in the block. The site is bounded by four local streets; SW 26th Street to the north, SW 8th Court to the west, SW 28th Street to the south, and SW 9th Avenue to the east. Surrounding development consists of a Home Depot to the north and a combination of single-family homes and undeveloped parcels to east, west, and south. The Home Depot site was a part of Block 3170¹ prior to the development being approved and subdivided by a Planned Development Project (PDP) in 2005.

The parcels in Block 3170 have gone through several future land use and zoning changes in the past. The Block was designated as Single-Family/Multi-Family (SM) upon the adoption of the Comprehensive Plan in 1989. In two separate amendments in 2002 and 2005, the future land use of the parcels was amended from SM to Commercial/Professional (CP). Similarly, two separate rezones in 2002 and 2008 changed the zoning within the block from Single-Family Residential (R-1B) to Pedestrian Commercial (C-1). The future land use and zoning amendments were sought by a previous owner who owned most of the parcels in Block 3170.

The applicant is seeking the amendment to build more single-family homes in the block. The applicant states there is little demand for commercial development in the block, while, there is demand for single-family home development.

¹ Prior to re-plat.

NOTICE OF CHANGE OF LAND USE

The City of Cape Coral proposes to adopt ORDINANCE 42-18, AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM COMMERCIAL/ PROFESSIONAL (CP) TO SINGLE-FAMILY RESIDENTIAL (SF) LAND USE FOR PROPERTY DESCRIBED AS LOTS 1-28 AND 55-82, BLOCK 3170, CAPE CORAL UNIT 66, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED NORTH OF SW 28TH STREET, SOUTH OF SW 26TH STREET, EAST OF SW 9TH AVENUE, AND WEST OF SW 8TH COURT; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

A public hearing on the ordinance will be held Wednesday, June 6, 2018 at 9:00 a.m. at the City of Cape Coral, City Hall Chambers, 1015 Cultural Park Blvd., Cape Coral, Florida 33990. At this public hearing, the Planning and Zoning Commission will consider a recommendation to change the City's future land use map amendment request. Accordingly, members of the general public and real property owners in the community are invited to appear and speak at the public hearing. Written comments filed with the Director will also be entered into the record. A copy of the map and the proposed amendment under consideration will be available for inspection and will be provided to the public at cost at the City Clerk's office between 7:30 a.m. and 4:30 p.m., Monday through Friday excluding holidays. Any person who decides to appeal any decision made by the City Council at that meeting will need a record of proceedings, and that subject person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. In accordance with Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this meeting should contact the City Clerk no later than 4:00 p.m. on the day prior to the meeting.

Rebecca Van Deutekom, CMC
City Clerk



Ordinance 42-18
LU18-0001

**COMMERCIAL/
PROFESSIONAL
(CP) TO SINGLE-
FAMILY
RESIDENTIAL (SF)
FOR LOTS 1-28 AND
55-82, BLOCK 3170,
UNIT 66**

NP-0000961360

☐ PROOF O.K. BY: _____ ☐ O.K. WITH CORRECTIONS BY: _____

PLEASE READ CAREFULLY • SUBMIT CORRECTIONS ONLINE

ADVERTISER: CITY OF CAPE CORAL_DEPT
SALES PERSON: Legal Display
PUBLICATION: NP-DAILY
SIZE: 3 col X 9.25 in

PROOF CREATED AT: 5/21/2018 2:09 PM
PROOF DUE: -
NEXT RUN DATE: 05/27/18

NP-0000961360.INDD



NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: LU18-0001

REQUEST: The applicant requests a future land use map amendment from the Commercial/Professional (CP) future land use designation to the Single-Family Residential (SF) future land use designation several properties.

LOCATION: Site is South of Veterans Parkway and West of Skyline Boulevard.

CAPE CORAL STAFF CONTACT: Chad Boyko, Principal Planner, 239-573-3162, cboyko@capecoral.net

APPLICANT: Sullico II, LLC

AUTHORIZED REPRESENTATIVE: Avalon Engineering

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Local Planning Agency will hold a public hearing at 9:00A.M. on Wednesday June 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 City of Cape Coral Local Planning Agency 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 City of Cape Coral Local Planning Agency 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 (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

APPEALS: If a person decides to appeal any decision made by the City of Cape Coral Local Planning Agency with respect to any matter considered at such meeting or hearing, he or she will need a record of the

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

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



Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Sullico LLC

APPLICATION NO: LU18-0001


STATE OF FLORIDA)
) §
COUNTY OF LEE)

I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 29th day of May, 2018.

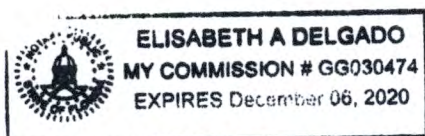


Vincent A. Cautero, AICP

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 29th day of May, 2018, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/6/20 Commission # 66030474




Signature of Notary Public


Elisabeth A. Delgado
Print Name of Notary Public

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

CURRENT ZONING MAP
500' Proximity Boundary

Case No. LU18-0001

LEGEND

 500' Proximity Boundary

 Subject Parcels

Zoning

 C-1

 R-1B

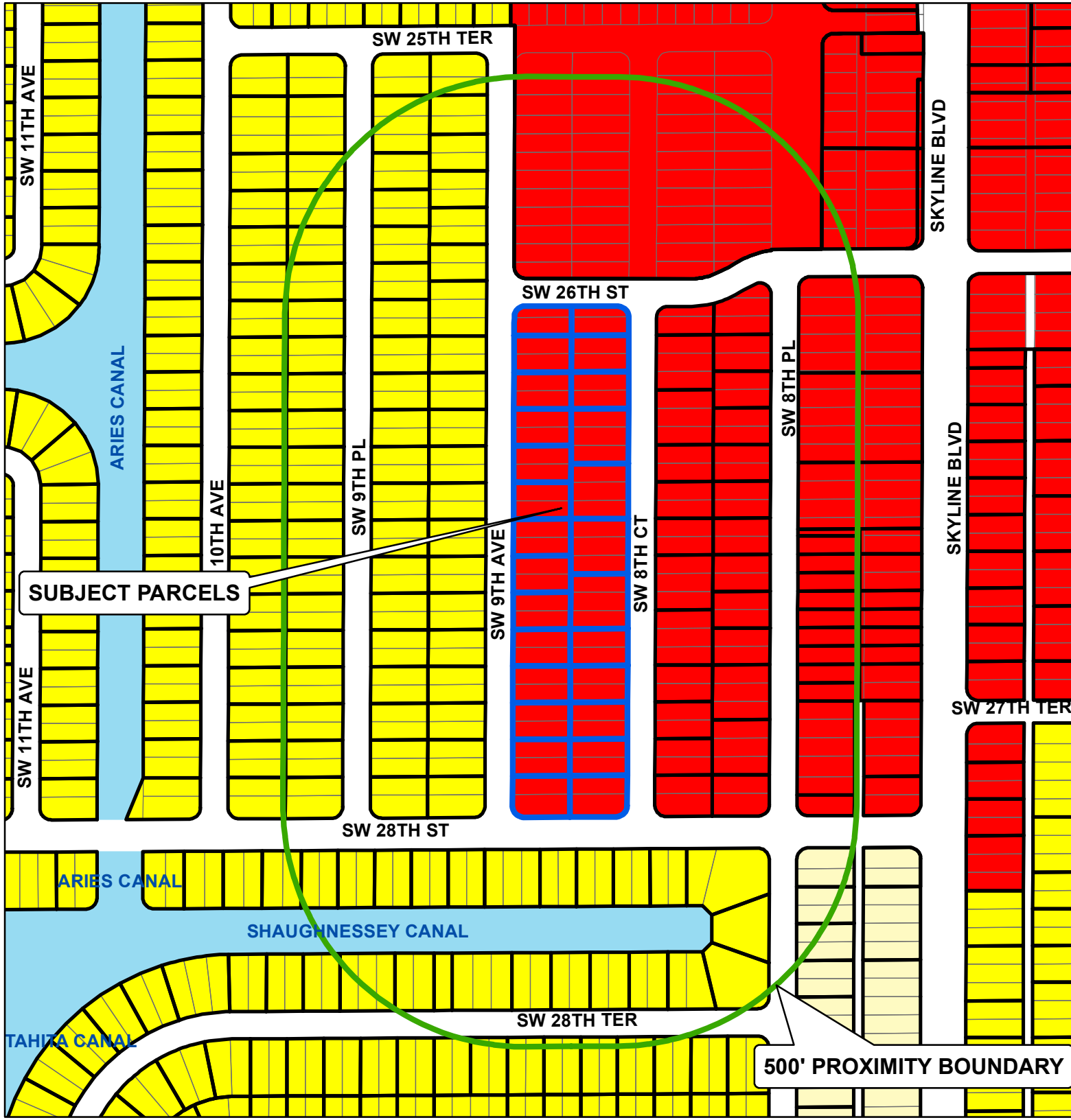
 RD



FEBRUARY 21ST, 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 FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU18-0001

LEGEND

 500' Proximity Boundary

 Subject Parcels

Future Land Use

 SF

 MF

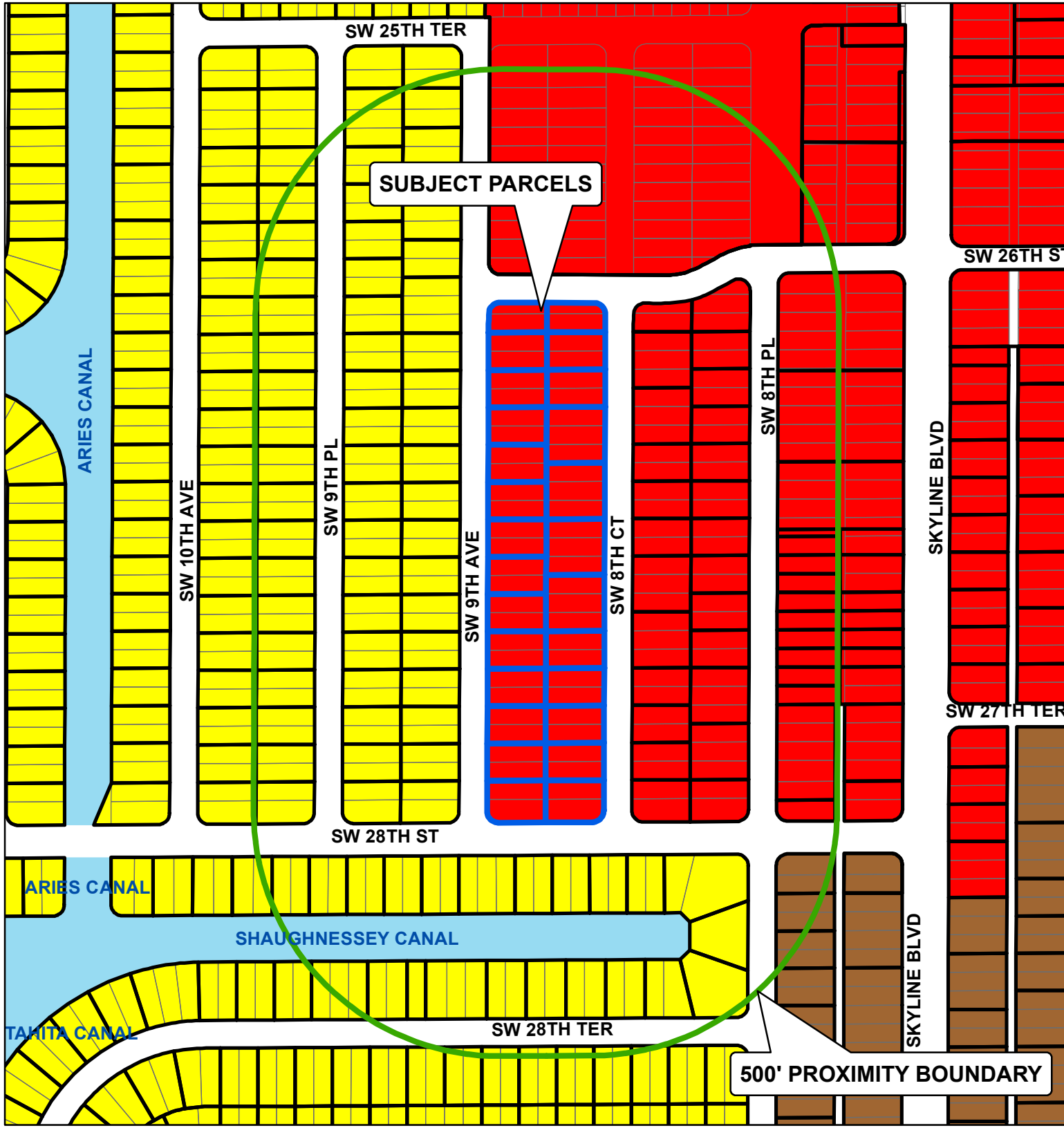
 CP



FEBRUARY 21ST, 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

PROPOSED FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU18-0001

LEGEND

 500' Proximity Boundary

 Subject Parcels

Future Land Use

 SF

 MF

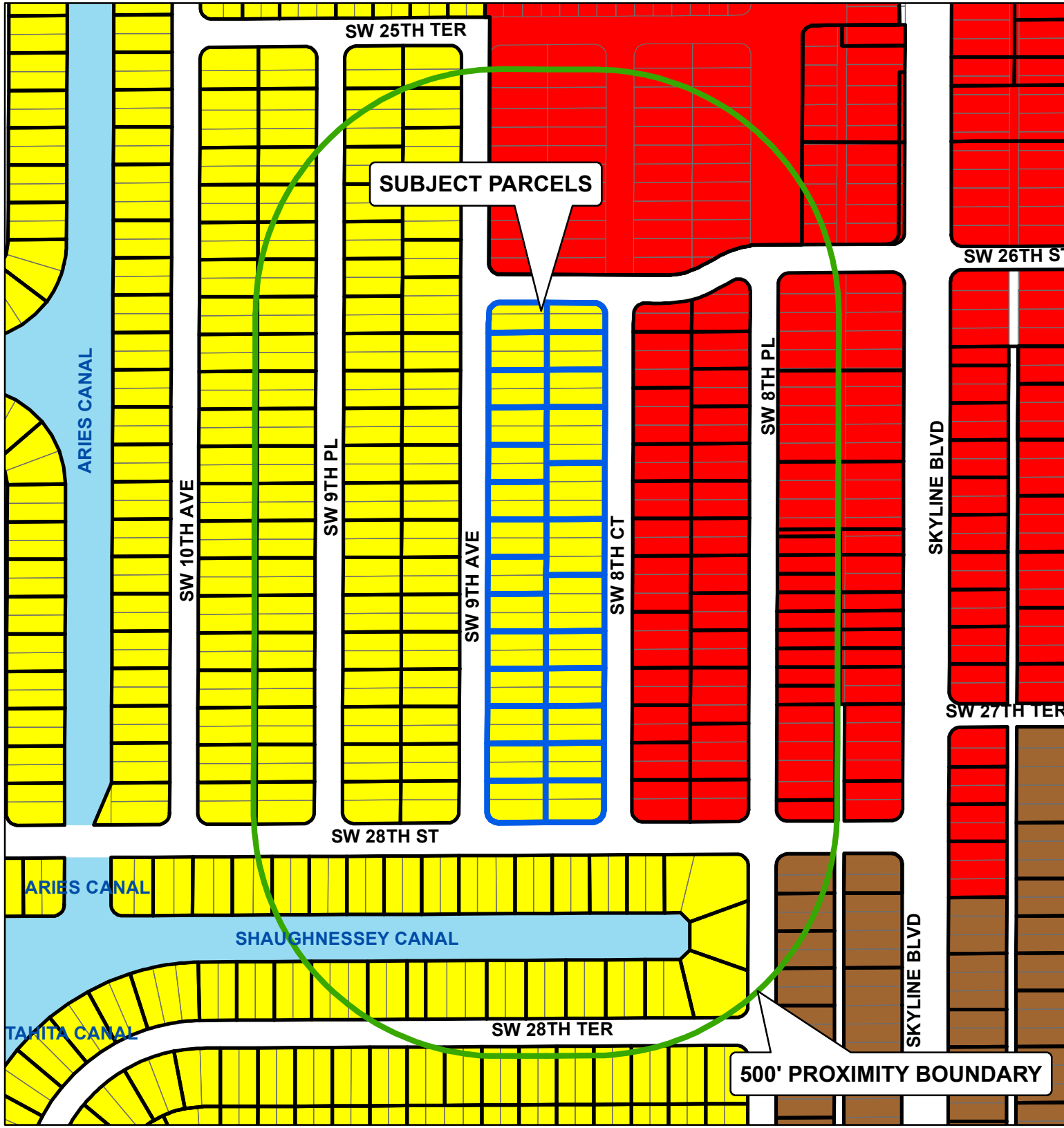
 CP



FEBRUARY 21ST, 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.



SUBJECT PARCELS

SW 9TH PL

SW 9TH AVE

SW 8TH CT

SW 8TH PL

SW 26TH ST


SKYLINE BLVD

INE BLVD

SW 28TH ST

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

Case No. LU18-0001

 Subject Parcels



FEBRUARY 21ST, 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.

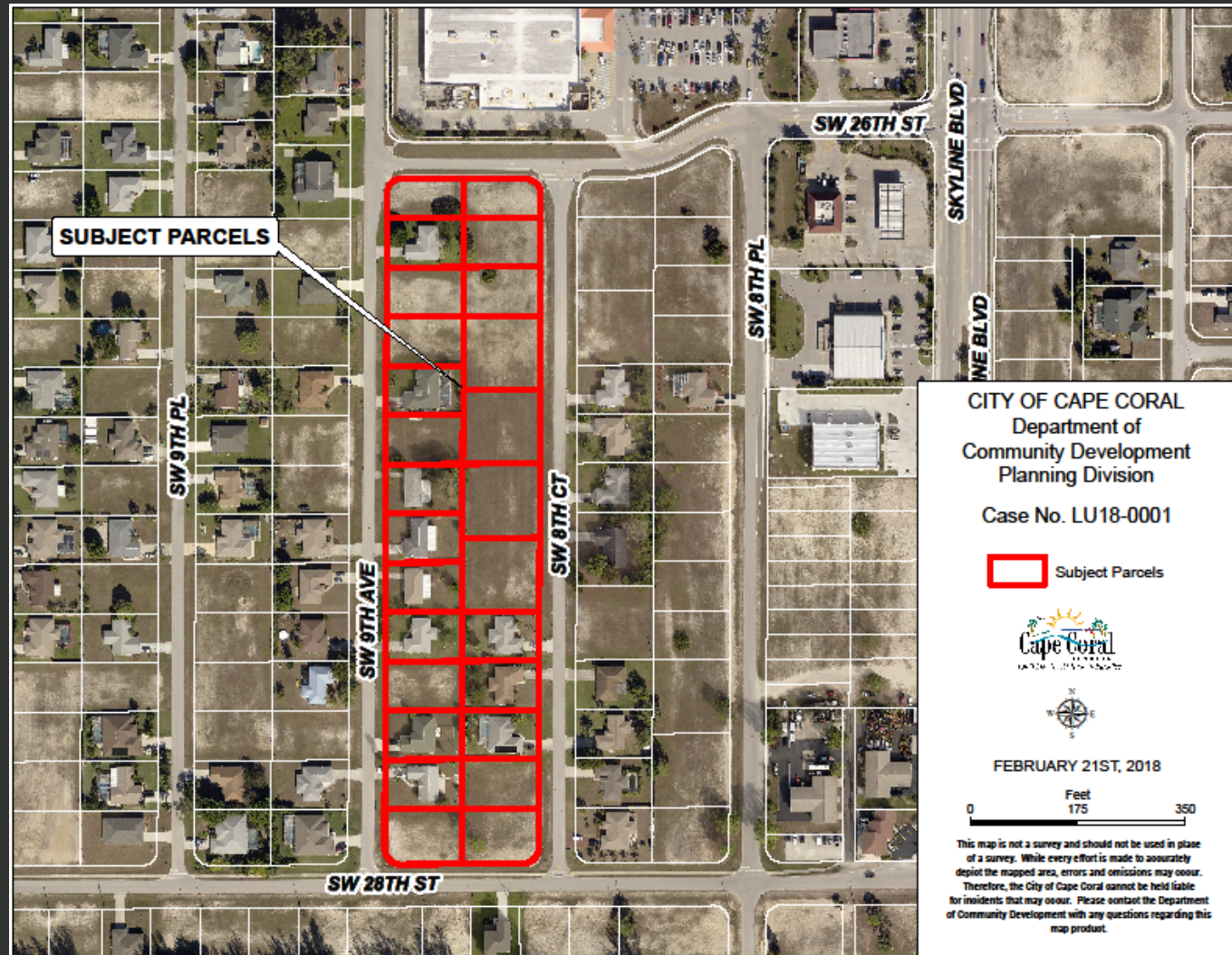
Ordinance 42-18 LU18-0001

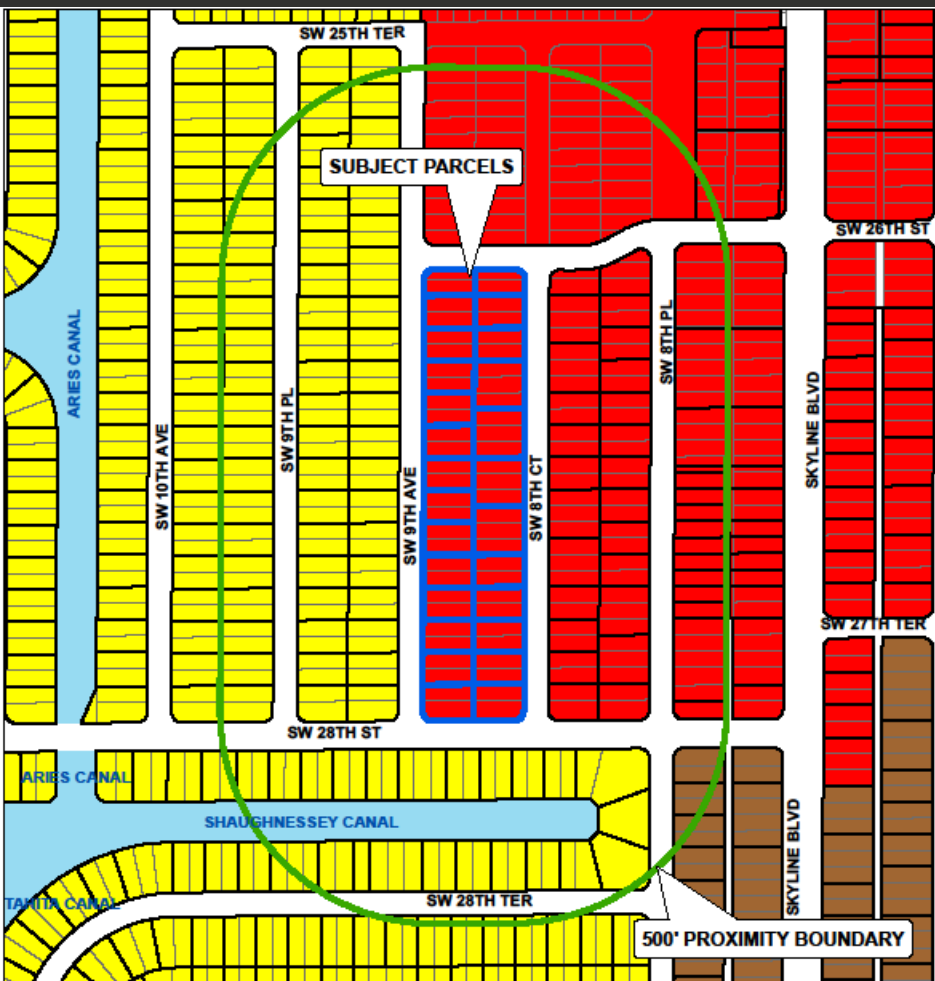
Cape Coral City Council

Ordinance 42-18

- **Applicants: Sullico, LLC (Multiple Owners)**
- **Location: Lots 1-28 and 55-82 in Block 3170 / South of Veterans Parkway and West of Skyline Boulevard**
- **Area: 6.4 acres**
- **Urban Services: Transition**
- **Request: A Future Land Use Map amendment from Commercial/Professional (CP) to Single-Family Residential (SF)**

Ordinance 42-18







CITY OF CAPE CORAL
Department of
Community Development
Planning Division

CURRENT FUTURE
LAND USE MAP
500' Proximity Boundary
Case No. LU18-0001

LEGEND

- 500' Proximity Boundary
- Subject Parcels
- Future Land Use**
- SF
- MF
- CP

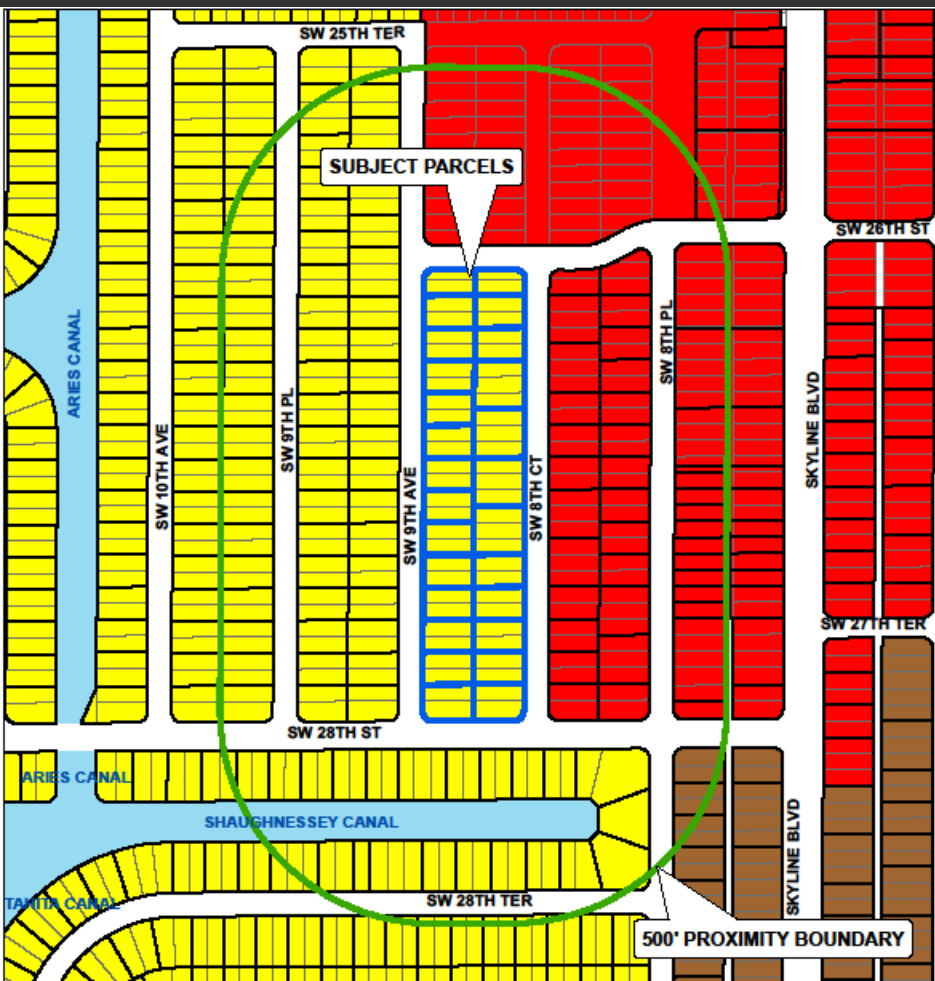

FLORIDA
WATER & LAND MANAGEMENT



FEBRUARY 21ST, 2018

0 Feet 340 680

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

PROPOSED FUTURE
LAND USE MAP
500' Proximity Boundary
Case No. LU18-0001

LEGEND

- 500' Proximity Boundary
- Subject Parcels
- Future Land Use**
- SF
- MF
- CP


FLORIDA
WATER & LAND MANAGEMENT



FEBRUARY 21ST, 2018

0 Feet 340 680

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.

Findings of Fact

- **Site is 56 parcels / 20 are developed with single-family homes / 36 undeveloped.**
- **The applicant owns 30 parcels – remainder are scattered ownership.**
- **A portion of Block 3170 is a part of the Home Depot development.**
- **The site is bounded by 4 local streets.**
- **Applicant is seeking to build single-family homes.**

Future Land Use and Zoning History

- **1989 – Block 3170 designated as Single-Family/Multi-Family (SM)**
- **2002/2005 – Future Land Use amended to Commercial/Professional (CP)**
- **2002/2008 – Zoning changed from Single-Family Residential (R-1B) to Pedestrian Commercial (C-1).**
- **2018 – Amendment proposed from CP to Single-Family Residential (SF)**

Analysis

- **Planning staff reviewed the amendment with following Comp Plan policies**
 - **Policy 1.13 (Commercial Nodes) – The site is 1,300 linear feet away from intersection of Skyline Boulevard and Veterans Parkway, however, existing commercial land is between the site and the node. Staff finds the site is still at a commercial node but the location may make commercial development difficult.**
 - **Policy 1.14 (Commercial Siting Guidelines) – The site is consistent or partially consistent with 6 of the 8 guidelines (major intersection, adequate depth, compactness, assembly, intrusion, and ownership pattern). Non consistent with 2 guidelines (access, integration).**

Appropriateness of Single-Family Residential

- **Single-Family development would require a rezone.**
- **Several factors make the site viable as commercial (assemblage, entitlements, utilities).**
- **Site has several challenges such as lack of frontage and visibility.**
- **No commercial development has occurred in 10 years since future land use was amended.**
- **Amendment would make site compatible with areas to west and south.**
- **The amendment would be a loss of commercial designated land / staff notes the land may have difficulty developing as commercial.**

Summary and Recommendation

- The existing FLU of the site is consistent with several Comp Plan policies, however the proposed designation is also consistent with areas to west and south.
- Site does not have access along arterial or collector.
- Reduction in commercial land but land is not ideal for commercial development.
- Planning staff recommends approval of amendment to Single-Family Residential.
- The Local Planning Agency recommends approval by a vote of 6-1.

Item Number:	8.B.
Meeting Date:	6/18/2018
Item Type:	ORDINANCES/RESOLUTIONS - Introductions

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 43-18/LU 17-0012 Set Public Hearing for Transmittal for July 30, 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:

Planning & Zoning Recommendation: At their June 6, 2018 meeting, Planning & Zoning voted (5-2) to recommend approval of the Ordinance.

Staff Recommendation: Staff recommends approval.

SUMMARY EXPLANATION AND BACKGROUND:

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by amending the Future Land Use Map from Mixed Use Preserve (MUP), Class III, Type D to Multi-Family Residential (MF) and from Urban Services Reserve Area to Urban Services Transition Area for a parcel lying in a portion of the Southwest Quarter of Section 29, Township 44 South, Range 23 East, Lee County Florida; property located northeast of Veterans Parkway and to the west of the Sandoval Subdivision. (Applicant: MSI Holdings, LLC)

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 43-18/LU 17-0012

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Chad Boyko, Principal Planner

ATTACHMENTS:

Description	Type
▣ Ordinance 43-18/LU 17-0012	Ordinance
▣ Backup Material	Backup Material
▣ Presentation	Presentation

ORDINANCE 43 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM MIXED USE PRESERVE (MUP), CLASS III, TYPE D TO MULTI-FAMILY RESIDENTIAL (MF) AND FROM URBAN SERVICES RESERVE AREA TO URBAN SERVICES TRANSITION AREA FOR A PARCEL LYING IN A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 29, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED NORTHEAST OF VETERANS PARKWAY AND TO THE WEST OF THE SANDOVAL SUBDIVISION; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral on February 13, 1989, adopted a Comprehensive Plan pursuant to the Comprehensive Planning Act; and

WHEREAS, as part of the Comprehensive Plan the City of Cape Coral adopted therewith a future land use map designating land uses and proposed land uses throughout the City of Cape Coral consistent with the Comprehensive Plan and Comprehensive Planning Act; and

WHEREAS, the City of Cape Coral City Council has considered the testimony, evidence, and documentation for the Land Use Amendment initiated by MSI HOLDINGS, LLC, regarding the below described property, and considered the recommendation of the Planning & Zoning Commission/Local Planning Agency and City staff.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. That the below described real property located within the City of Cape Coral, Florida, is hereby amended consistent with the City of Cape Coral Comprehensive Plan as follows:

FROM MIXED USE PRESERVE (MUP), CLASS III, TYPE D TO MULTI-FAMILY
RESIDENTIAL (MF) AND
FROM URBAN SERVICES RESERVE AREA TO URBAN SERVICES TRANSITION AREA

A PLOT OR PARCEL LYING IN A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 29, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER CORNER, WEST LINE OF SECTION 29, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA; THENCE RUN S.89°51'53"E. ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF THE AFORESAID SECTION 29 TO A POINT ALONG THE EASTERLY RIGHT OF WAY LINE OF VETERANS PARKWAY AS RECORDED IN OFFICIAL RECORDS BOOK 2910, PAGE 2471 PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR 566.85 FEET; THENCE RUN S.89°51'53"E. FOR 2192.43 FEET; THENCE RUN S.00°12'27"W. TO A POINT ALONG THE ARC OF A CURVE AND THE AFORESAID RIGHT OF WAY LINE OF VETERANS PARKWAY FOR 2702.64 FEET; THENCE RUN ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST FOR 1871.14 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 1565.02 FEET, A CENTRAL DELTA ANGLE OF 68°30'11" A CHORD THAT BEARS N.49°41'42"W. AND A CHORD DISTANCE OF 1761.67 FEET TO A POINT OF TANGENCY; THENCE RUN N.15°26'36"W. TO A POINT OF CURVATURE FOR 480.72 FEET; THENCE RUN ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE TO THE SOUTHWEST FOR 1001.86 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 2067.90 FEET, A CENTRAL DELTA ANGLE OF 27°45'32", A CHORD THAT BEARS N.29°19'22"W. AND A CHORD DISTANCE OF 992.09 FEET TO A POINT OF TANGENCY; THENCE RUN N.43°12'08"W. FOR 329.10 FEET TO THE POINT OF BEGINNING.

CONTAINING; 3,689,459.55 SQ FEET OR 84.7 ACRES, MORE OR LESS

SECTION 2. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this plan amendment shall be thirty-one (31) days after the state land planning agency notifies the City that the plan amendment package is complete, or if timely challenged, the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184(3)(c)4., F.S., whichever is applicable.

ADOPTED BY THE COUNCIL 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:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/LU17-0012



DEPARTMENT OF COMMUNITY DEVELOPMENT
LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT
Questions: 239-574-0553

Case # _____

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT Shellie Johnson and/or Brian Smith
(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
Large Scale Comprehensive Plan Map Amendment
(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT BLOCK LOT(S) SUBDIVISION

OR LEGAL DESCRIPTION Lee County STRAP #29-44-23-C4-00002.0000

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

MSI Holdings, LLC

PROPERTY OWNER (Please Print)

PROPERTY OWNER (Please Print)

H. Charles Talarian
PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Signature & Title)

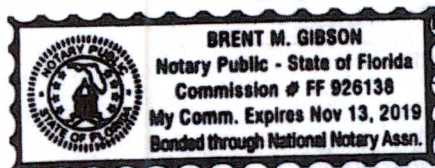
STATE OF

FL

COUNTY OF

LEE

Subscribed and sworn to (or affirmed) before me this 16th day of NOVEMBER, 2017, by
H. Charles Talarian who is personally known or produced FL DL T145-323-39-066-0
as identification.



Exp. Date:

11/13/19

Commission Number:

FF 926138

Signature of Notary Public:

Billy

Printed name of Notary Public:

Brent M. Gibson

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.



DEPARTMENT OF COMMUNITY DEVELOPMENT
LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT

Questions: 239-574-0553

Case # _____

Estimated peak hour trip ends:

If 300 or less peak hour trip ends are projected, the applicant must provide the source of the traffic projection.
If more than 300 peak hour trip ends are projected, a traffic impact study must be completed and submitted as part of the application (see attachments).

City Sewer: Yes ☒ No ☐
City Water: Yes ☒ No ☐

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

H. CHARLES TAPALIAN
NAME (PLEASE TYPE OR PRINT)

[Signature]
AUTHORIZED SIGNATURE

(SIGNATURE MUST BE NOTARIZED)

STATE OF FL, COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 16 day of NOVEMBER, 2017, by
H. CHARLES TAPALIAN who is personally known or produced FL DL T145-323-39-D66-0
as identification.

Exp. Date: 11/13/19 Commission Number: FF 926138
Signature of Notary Public: [Signature]
Printed name of Notary Public: BRENT M. GIBSON





DEPARTMENT OF COMMUNITY DEVELOPMENT
LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT
Questions: 239-574-0553

Case # _____

ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I, or my representative, must attend any applicable meetings scheduled for the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals, and Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

I hereby acknowledge that I have read and understood the above affidavit on the

_____ day of _____, 20____
H. CHARLES TAPALIAN _____
NAME (PLEASE TYPE OR PRINT) APPLICANT'S SIGNATURE
STATE OF FL, COUNTY OF LEE

Subscribed and sworn to (or affirmed) before me this 16th day of November, 2017, by
H. CHARLES TAPALIAN who is personally known or produced FL DL T145-323-39-066-0
as identification.



Exp. Date: 11/13/19 Commission Number: FF 926138
Signature of Notary Public: Brent M. Gibson
Printed name of Notary Public: Brent M. Gibson



DEPARTMENT OF COMMUNITY DEVELOPMENT
LARGE SCALE COMPREHENSIVE LAND USE MAP AMENDMENT
Questions: 239-574-0553

Case # _____

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT Shellie Johnson and/or Brian Smith
(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
Large Scale Comprehensive Plan Map Amendment
(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT BLOCK LOT(S) SUBDIVISION

OR LEGAL DESCRIPTION Lee County STRAP #29-44-23-C4-00002.0000

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

MSI Holdings, LLC H. CHARLES TALACIA
PROPERTY OWNER (Please Print)

PROPERTY OWNER (Please Print)

H. Charles Talacia
PROPERTY OWNER (Signature & Title)

PROPERTY OWNER (Signature & Title)

STATE OF FL, COUNTY OF LEE

Subscribed and sworn to (or affirmed) before me this 16th day of NOVEMBER, 2017, by
H. CHARLES TALACIA who is personally known or produced FL DL T145-323-39-066-0
as identification.



Exp. Date: 11/13/19 Commission Number: FF 926138
Signature of Notary Public: Billy
Printed name of Notary Public: BRENT M. GIBSON

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.

MSI Cape 80 Large Scale Comprehensive Plan Map Amendment



Resubmittal, January 2018

Application Narrative

The applicant is requesting a Comprehensive Plan Map Amendment for ±84.7 acres located on the northeast side of Veterans Parkway, adjacent and west of the Sandoval Subdivision. The property falls within the Mixed Use Preserve (MUP) Land Use Class III, Type D category and the applicant is requesting a map amendment to change the Land Use category to Multi-Family to allow for development of a multi-family residential community. The subject property is located in the Urban Services Reserve Area, and the applicant is requesting a change to Transition Area as part of this application.

The subject property is currently undeveloped but is disturbed, containing two large excavation lakes that are surrounded by long, narrow areas of wooded vacant land. The property is currently zoned Agriculture, however the intent of the owner is to rezone the property immediately following approval of the Land Use Map Amendment. Water and sewer are available to the property, though not directly adjacent to the site.

Land Use, zoning and use information of surrounding properties is provided below:

	Future Land Use	Zoning	Existing Use
North	Rural (Lee County)	RS-2 (Lee County)	Residential
South	Mixed Use Preserve / Single Family Residential	Agriculture (A) / Single Family Residential (R-1B)	Vacant / Residential
East	Single Family/Multi-Family	Single Family Residential (R-1 B) / Multi-Family (R-3)	Residential
West	Mixed Use Preserve Class III, Type D	Agriculture (A)	Vacant

The applicant desires to develop the vacant areas of the subject property with multi-family residential units. While the MUP Class III, Type D category does allow for up to 20% of the land area to be developed residentially, the allowable average density is limited to 4.4 dwelling units per acre. The property has a greater development potential, hence the request to amend the Land Use designation to Multi-Family which will allow for a maximum density of 16 development units per acre.

While the MUP Class III, Type D Land Use category does allow for commercial development, location of the property is not ideal for commercial use. The property is situated with significant frontage on Veterans Parkway which has a posted speed in this location of 55 miles per hour and is a divided roadway with limited access to the property. The high speed, combined with road curvature and access challenges is not conducive for commercial success and points of access would likely have to occur at the curvature of the road, creating potential safety issues. Additionally, a substantial commercial development already exists in near proximity to the subject

property, precluding the need for additional services. Approximately 1/3 mile east at the intersection of Surfside and Veterans is the Shops at Surfside commercial center. Approximately 1.5 miles to the north at the intersection of Burnt Store Road and Pine Island Road is the Coral Shores Shopping Plaza. These two large commercial centers are located more ideally for commercial development.

The proposed multi-family residential development will offer a compatible land use with the surrounding development. The residential development to the east (Sandoval) is comprised of a mix of single family and multi-family development. The site configuration provides extensive separation from the single family lots via existing large lake areas. The single-family properties within the northern development (Royal Tee) are separated by a fairway, and development of the subject property will focus activity areas internal to the property to the greatest extent possible.

Comprehensive Plan Consistency

Future Land Use Element

Goal: "To protect the public investment by encouraging efficient use of community infrastructure...assure orderly and efficient growth of the City encouraging development in those areas which are best served by infrastructure and community services..."

The subject property is ideally located to offer orderly and efficient growth of the City of Cape Coral. Water and sewer are available to the site and the property is surrounded by similar residential development to the north, east and south. Veteran's Parkway to the west provides adequate access to the site and commercial supportive services are available within close proximity to the property.

Policy 1.15: Multiple Family Residential, not more than 16 units per acre.

The applicant is requesting a Land Use change to this category. The proposed development will not exceed 16 units per acre.

Policy 4.1: Requirement for public water and wastewater will be directed into the Urban Services Infill and Transition Areas; and

Policy 7.1: Appropriateness of additional lands into the Urban Services Transition Area.

As part of this application, the applicant is requesting changing the urban services designation of the subject property from Urban Reserve to Urban Transition. Water and wastewater are available to the site, and the applicant understands that extension of such services is the responsibility of the developer.

The Urban Services Map reflects adjacent properties to the east and south are within the Transition Area and the property to the north, in Lee County is fully developed. The land use pattern suggests Veterans Parkway as a logical boundary for urban service area transition. The

subject property can be considered an isolated parcel with regard to Urban Reserve service area description.


Housing Element

GOAL: To provide good quality housing in safe, clean neighborhoods, offering a broad choice of options in both type (single family and multi-family) and tenure (owner and renter occupied) to meet the needs of present and future residents of the City, regardless of age or income status.

The applicant is proposing a multi-family residential development supporting housing options that meet the needs of present and future residents of the City of Cape Coral.

PLANNING DIVISION STAFF REPORT
LU17-0012

SITE ADDRESS No site address. Site is east of Veterans Parkway and west of Surfside Boulevard.	APPLICANTS/PROPERTY OWNERS MSI Holdings, LLC
--	--

SUMMARY OF REQUEST The applicant proposes a Future Land Use Map Amendment for an 84.47 acre site from Mixed Use Preserve (MUP) Type III to Multi-Family Residential (MF). The existing zoning is Agricultural (A). The applicant is also requesting to change the Urban Services designation from Reserve to Transition.	 <p>CITY OF CAPE CORAL Department of Community Development Planning Division Case No. LU17-0012</p> <p>Subject Parcel</p> <p>JANUARY 9TH, 2017</p> <p>0 400 800 Feet</p> <p>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 damages that may occur. Please contact the Department of Community Development with any questions regarding this map product.</p> <p>MAP SOURCE</p>
--	---

STAFF RECOMMENDATION:

Positive Aspects of Application:	The amendment addresses a need for multi-family development. Site has ideal frontage and size for large multi-family development. Majority of surrounding development is residential.
Negative Aspects of Application:	The amendment would constitute a loss of commercial land that is large enough to accommodate a quality commercial development.
Mitigating Factors:	The site is ideal for commercial or multi-family, both of which are needed in Cape Coral.

Site Information

Urban Service Area: The site is in the Urban Service Reserve Area. Utilities have been installed in areas surrounding the site.

City Water and Sewer: The site is not connected to City water and sewer, however, connection would be possible from nearby sites.

Street Access: The site has road frontage on Veterans Memorial Parkway, which is classified as a principal arterial.

STRAP Number: 29-44-23-C4-00002.0000

Block/Lot(s): The site is not platted within a subdivision.

Zoning and Land Use Information:

Subject Property:	Future Land Use	Zoning
Current:	Mixed Use Preserve (MUP)	Agricultural (A)
Proposed:	Multi-Family Residential (MF)	N/A

Surrounding Areas	Future Land Use	Zoning
North:	Lee County Future Land Use	Lee County Zoning
South:	Single-Family Residential (SF)	Single-Family Residential (R-1B)
East:	Single-Family/Multi-Family (SM)	R-1B
West:	MUP Type III	A

Background

The 84.47 site is in the southwestern quadrant of the City and was formerly used a borrow pit that has ceased operations for several years. The site has frontage along Veterans Parkway West and is surrounded by two residential subdivisions¹ to the north and east, an undeveloped site to the west², and single-family homes to the south. The site topography is similar to many former borrow pits with the majority of the site consisting of two large lakes where soil was dredged out. The site also has two driveway stubs that would allow access at the time of development.

The original future land designation was Single-Family/Multi-Family (SM)³. In 2007, the future land use designation was amended to Mixed Use Preserve (MUP) Type III, Class D. The future land use amendment was City-initiated and intended to make the site and a site to the west across Veterans Parkway available for commercial development. The sites were seen as a good fit for commercial development because of the sites are large, un-platted, and have access along a major arterial. The site has retained Agricultural (A) zoning since 1989.

The applicant states in their "Letter of Intent" that the owners intend to construct multi-family residences, rather than commercial or mixed use. The applicants state the current future land use designation allows residential units but only 20% of the area can be developed residentially and the maximum density is 4.4 units per acre. The requested future land use designation of MF would allow 16 units per acre. The applicant also states they do not believe commercial is ideal based upon several factors such as limited roadway access, the curvature and speed of traffic on Veterans Parkway, and the presence of existing commercial in the area.

Additional Site Information

Protected Species

The applicant has not submitted an Environmental Species Survey, however, the applicant will be required to submit the survey prior to any development of the site. Should protected species be identified on the site as part of the development review of the site, the City will abide by Policy 1.2.5 of the Conservation and Coastal Management Element, which states:

"Policy 1.2.5: The City will assist in the implementation of and compliance with all state and federal regulations concerning species listed as endangered, threatened, species of special concern, or commercially exploited by monitoring development activities, providing information on listed species in building permit packages, and assisting in investigations as requested."

Soils and Drainage

The site has one soil classification; Boca Fine Sand. This soil has limitations for development, which are typically overcome using various engineering solutions such as importing fill. The soil type should not present an obstacle to future land development although special feasibility studies may be required.

¹ The subdivision to the north is within unincorporated Lee County.

² The site is also owned by the applicant.

³ From the 1989 adoption of the Comprehensive Plan.

Analysis

Planning staff analysis will analyze the appropriateness of the existing future land use designation – Mixed Use Preserve (MUP) and the proposed Multi-Family Residential (MF) future land use designation with several Comprehensive Plan policies.

Comprehensive Plan

Mixed Use Preserve (MUP) Class III, Type D Future Land Use Designation

The site has a Future Land Use Designation of MUP Class III, Type D. The MUP designation is defined in the Comprehensive Plan in Chapter, Policy 1.15.Q. The MUP designation was created promote non-residential and mixed use development that would create employment centers while simultaneously creating open spaces. The MUP designation also has five classes that determine the allowable uses and four types that determine the development percentage of those uses. The site is designated Class III, Type D which allows a maximum residential allocation of 20% or the option to develop a site with 100% non-residential uses. The maximum residential density is 4.4 units per acre and a maximum floor area ratio (FAR) of 2.0. MUP also allows shifting of residential density or commercial intensity from wetlands areas to upland areas.

Multi-Family Residential (MF) Future Land Use Designation

The applicant is seeking an amendment to the MF future land use designation. The MF future land use designation allows a maximum of 16 dwelling units per acre, except for large assemblies of land that may construct 20 dwelling units per acre.

The applicant's proposed Future Land Use Map amendment would allow the site to develop with multi-family dwelling units⁴ on 100% of the site.

Chapter 4 – Future Land Use Element

Policy 1.13

Policy 1.13 encourages commercial development at commercial nodes to decrease the potential for strip development and to facilitate compact development that encourages pedestrian friendliness. A commercial node is defined as the intersection of two four-lane parkways or boulevards. The site has frontage along Veterans Parkway, which is a 4-lane roadway, but the site is over 2,500 feet away from the nearest commercial node⁵, **therefore, staff finds that the site may not be appropriate for commercial or mixed-use development according to Policy 1.13.**

Policy 1.14

Policy 1.14 addresses eight commercial siting guidelines that provide guidance on whether or not a site is appropriate for a commercial or mixed-use Future Land Use designation. The MUP designation is not listed as a Future Land Use designation that should be evaluated according the commercial siting guidelines, however, the MUP has development allocations similar to the Commercial Activity Center (CAC). The MUP allows primarily commercial development, therefore

⁴ Or any use permitted in the site's current zoning district at the time.

⁵ Veterans Parkway and Surfside Boulevard.

the commercial siting guidelines are an appropriate method of evaluating the applicant's request. The guidelines are also a guide on determining compatibility between existing residential uses and potential commercial uses. A response to each of the commercial siting guidelines follows in **bold**.

Major Intersection

Preferred locations for commercial properties are in the vicinity of major intersections (i.e., intersections of two or more arterial and/or collector roadways). Development of a commercial node at such an intersection may involve multiple parcels and, sometimes, multiple quadrants of the intersection. The benefits derived by having commercial properties located in the vicinity of the intersection diminish with distance, but the distance at which a property ceases to derive benefit from proximity to the intersection varies, based upon whether the subject property would represent a 'new' commercial property (a commercial property not abutting any existing commercial properties) or an expansion of an existing commercial area. New commercial properties should preferably be located adjacent to the intersection, while commercial properties that clearly represent an expansion of an existing commercial area can be any distance from the intersection, provided that such properties are integrated with existing properties (see below: Integration).

Staff Response: The site has frontage on a principal arterial, however, the site is over 2,000 feet away from the nearest major intersection. Planning staff finds that the current MUP future land use designation is not consistent with the above guideline.

Adequate Depth

Ideally, a commercial property should extend not only along the adjacent collector or arterial roadway, but also should extend inward with adequate depth to accommodate the necessary parking, buffering, retention, and open area for the future commercial development. In Cape Coral, most City blocks are rows of back-to-back lots approximately 250 feet deep. Preferably adequate depth is achieved if any number of contiguous properties, owned by the same landowner (see "Ownership Pattern", below) occupy the entire 250 feet of depth. Adequate depth would not be achieved if the subject properties have different owners, and if the contiguous properties are not reasonably compact (see below, "Compactness").

Staff Response: The site has an irregular shape, however, the property has varying depths between 500 feet and 1,500 feet, therefore, Planning staff finds that the MUP future land use designation is consistent with the above guideline.

Compactness

Compactness measures the ability of a property proposed for a commercial future land use to take advantage of economies of scale. The shape of an ideal compact commercial property approaches that of a square or rectangle. This quality allows for an orderly arrangement of development on the subject property and acts to reduce adverse visual, noise or aesthetic impacts to neighboring properties.

Staff Response: The site has an irregular shape that does not resemble a compact square or a rectangle, therefore, Planning staff finds that the MUP future land use designation is not consistent with the above guideline.

Integration

Integration, for the purposes of these guidelines, refers to the interrelatedness of development within a commercial node or area. The presence of features, such as internal access roads, shared parking, courtyards, walkways, or other features, binds the various commercial properties within the node together. This pattern of development reduces the traffic impacts associated with commercial development and often promotes a pedestrian-friendly environment. Integration of neighboring commercial properties should always be encouraged. Therefore, properties proposed for conversion to a commercial future land use should be evaluated for the likelihood that such properties would or could be integrated with adjacent existing commercial properties.

Staff Response: The site is over 1,300 feet away from the nearest commercial or mixed-use development, which reduces or eliminates potential integration. The site is a unique area of the City, where there are several large housing developments adjacent to the site, both to the north and the east. These large developments are generally master-planned with significant buffers and have more separation from surrounding development than many other pre-platted areas of the City which may not have significant buffers between developments. The nature of this area reduces the need for true integration of commercial uses, however, Planning staff finds that the lack of nearby commercial nodes makes existing MUP future land use designation not consistent with the above guideline.

Assembly

For commercial areas to provide the most benefit to the surrounding community, they must be of relatively large size. The majority of buildable lots within the City of Cape Coral are approximately 10,000 square feet (0.23 acre) in size. These lots were designed primarily for single family residential development and do not typically have adequate width or depth for larger commercial development that might serve the City as shopping or employment centers. Therefore, it is important for the City to encourage commercial applicants to assemble relatively large parcels (properties comprising 3 acres or more). Assembly of pre-platted parcels into tracts of 3 acres or more will promote the development of commercial properties that do not express the indicators of strip commercial development. Assembly of larger parcels also allows the developer to provide a greater variety of commercial land uses, and to provide architectural and landscape features that result in a more attractive end-product.

Properties proposed for conversion to a commercial future land use, where such properties would represent an expansion of an existing commercial area may be considered “assembled,” for the purposes of these guidelines if the proposed expansion properties are either owned by the landowner of one or more adjacent commercial properties, or if the expansion property is likely to be integrated with (see above) adjacent commercial properties.

Staff Response: The site is not considered an assemblage of property because the site is an unplatted tract. The site is also much larger than the three acres recommended in the guideline. The site would allow for development that does not resemble “strip commercial”. Planning staff finds that the MUP future land use designation is consistent with the above guideline.

Intrusion

“Intrusion,” as defined for the purpose of these guidelines, is a measure of the objectionable qualities of the proposed commercial development. This guideline applies primarily to new commercial property (a property proposed for conversion to a commercial future land use in an area where it would not abut existing commercial

properties). Intrusion evaluates the potential adverse impacts on surrounding properties that could be caused by converting a property from its existing future land use to a commercial use. There are no definite guidelines for determining when a proposed commercial use would be intrusive to surrounding development. However, expansions of existing commercial areas are generally considered less intrusive than the establishment of new commercial areas. Commercial areas may be considered less intrusive to adjacent multi-family development than to adjacent single family development. Commercial development that is separated from a residential area by a street, canal, vegetative buffer, or other geographic features may be considered less intrusive than a commercial development that directly abuts a residential area. The degree of compactness (see "Compactness" above) of a commercial property can also reduce or increase its intrusion upon adjacent or nearby properties.

Typically, new commercial properties are less likely to be considered intrusive if the surrounding or adjacent residential areas are sparsely developed. While the finding of intrusion is subjective and depends on many factors, the principle is the proposed commercial property would not likely be intrusive *if* adjacent residential areas are 25% or less developed. The area analyzed to determine the percentage of adjacent residential development may vary from 300 feet to 1,000 feet from the subject property, depending upon the degree to which streets, canals, landscaping or other geographic features separate the subject property from nearby residential areas.

Staff Response: The surrounding residential areas to the north, south, and east within 1,000 feet are more than 25% developed. The area to the west is undeveloped. Staff finds that the majority of the surrounding is more than 25% developed, therefore, Planning staff finds that the MUP future land use designation is not consistent with the above guideline.

Access

In the City of Cape Coral there are two ideal access provisions for a commercial property. If a subject property would meet the requirements for one or more of these provisions, the creation of a commercial future land use at the proposed location should be encouraged. These provisions are as follows:

- a) Access via a platted City parking area. The City of Cape Coral contains a number of dedicated commercial parking areas; some created by plat, and some deeded to the City by landowners. The Comprehensive Plan and City Land Use and Development Regulations refer to these as "dedicated City parking areas." These parking areas are often surrounded by smaller platted lots originally intended for commercial development with access to these lots only, or primarily, from the dedicated City parking area. In implementing this provision, it may sometimes be in the City's interest to promote conversion of a dedicated City parking area to a fully functional commercial development (i.e., a portion of the dedicated parking area would become a commercial building site) in return for the applicant's agreement to own and manage the site.
- b) Direct access onto an arterial or collector roadway having an adopted City access management plan. The City has adopted access management plans for certain arterial and collector roadways. Access management plans serve to facilitate mobility of the traveling public; therefore, such roadways more readily accommodate the impacts of commercial development than roadways without such access management plans.

Staff Response: As stated previously, the site has frontage on Veterans Parkway, which is maintained by Lee County and has an access management plan adopted by Lee County. The site is not within close proximity to any dedicated City parking area. The site has frontage on an arterial roadway with an approved access management plan, therefore, Planning staff finds that the MUP future land use designation is consistent with

the above guideline.

Ownership Pattern

An ideal commercial node is a cohesive, compact, interrelated network of commercial properties. Properties proposed for conversion to a commercial future land use that consist of multiple parcels, or groups of parcels, or under multiple ownerships are unlikely to develop as a true “commercial node.” Instead, these properties are more likely to develop as separate, small commercial developments with multiple access points, leading to adverse, unsafe traffic conditions. Each small development may also have its own stormwater management pond, dumpster, and an appearance and/or landscaping design that is inconsistent with surrounding development. This pattern is a characteristic of strip commercial development (see Policy 1.13, above). Therefore, the City of Cape Coral encourages land owners and developers to assemble the properties involved in a commercial future land use request under common ownership. Multiple, small properties under separate ownership, even if such properties are included in a single future land use amendment request, may not be appropriate for the full array of commercial uses.

Staff Response: The site is one property that is over 80 acres in size with one owner. The site does not consist of multiple parcels with similar ownership as mentioned in the guideline, however, the site is large enough to develop a commercial site that is not considered “strip commercial”. Planning staff finds that while the site is not a cohesive, compact, or interrelated network of commercial properties, the site is a large tract that offers the potential for a quality commercial development based upon factors such as size and access, therefore, the MUP future land use designation is consistent with the above guideline.

In summary, Policy 1.14 contains eight commercial siting guidelines. The site is consistent with four of these guidelines (Adequate Depth, Assembly, Access, and Ownership Pattern) and is inconsistent with four guidelines (Compactness, Integration, Intrusion, and Major Intersection). Policy 1.14 does not require a proposed amendment to meet a certain threshold number of guidelines for approval or denial, rather the guidelines are meant to provide a compatibility analysis. Staff finds that upon analysis of these guidelines, the site is appropriate for commercial or mixed-use development and the current MUP future land use designation may be compatible with the surrounding area.

Policy 3.1

Policy 3.1 states that the City of Cape Coral will encourage commercial development at transportation nodes by designating areas with appropriate future land use categories. Planning staff finds that the proposed amendment is not at a transportation node, therefore, **this policy is not supportive of the current MUP future land use designation.**

Objective 3, Policy 3.3

Policy 3.3 identifies commercial corridors and the projected amount of commercial square footage and the type of developments (Neighborhood Shopping Center, Power Center, Regional Shopping Center, etc) that would meet the needs of the community in the future. The Veterans Parkway corridor is projected to need 188 acres of commercial land along with two neighborhood shopping centers, a community shopping center and one power center. The amendment would remove over 80 acres of land that could be used for commercial development⁶. This policy does not prohibit future land use map amendments that remove commercial land from these corridors, however, in order for the future needs of the

⁶ This is not considering the unique topography of the site.

community to be met, additional land should potentially be considered for a conversion from residential to commercial.

Regional Plan Analysis

Southwest Florida Regional Planning Council's (SWFRPC) Strategic Regional Policy Plan (SRPP):

This existing MUP future land use designation is consistent with the SRPP Strategy that prioritizes locating commercial development along transportation corridors. Veterans Parkway is a four-lane arterial roadway and is considered a major transportation corridor.

Lee County Metropolitan Planning Organization's (MPO) 2040 Long Range Transportation Plan:

Veterans Parkway has not been identified for improvements or widening in the MPO's 2040 Long Range Transportation Plan.

Cape Coral Economic Development Plan

The proposed amendment is supported by the City Economic Development Master Plan (EMDP). The site is not designated as an "Area of Economic Opportunity" per the EDMP. The amendment to Multi-Family Residential (MF) would be supported by Initiative 6, Objective 2, Strategy 2.1 which is to "Increase the amount of multi-family residential dwelling units" in the City. The amendment could potentially add over 1,200 multi-family dwelling units based upon the size of the parcel and the density allowed by the MF future land use designation. The addition of the multi-family dwelling units is also supported by a needs analysis⁷ that was conducted which determined that the City needs 1,450 multi-family units per year for the next 5 years in order to keep up with demand.

Analysis Summary

After a review of the Comprehensive Plan and analyzing the proposed MF future land use designation, Planning staff finds that the existing MUP designation or the proposed MF designation can both be viewed as appropriate and compatible with the surrounding area. The site is large and has ideal access to support a quality commercial development. The site is also bordered by large residential communities on two sides and multi-family development would be compatible with these developments. Furthermore, the City has an identified need for both large-scale commercial development and large multi-family developments. Commercial or multi-family development are also supported by several Comprehensive Plan policies and studies. While the topography was not part of the analysis, the site does have some unusual site conditions because it was used as a borrow pit in the past. Future development may be impacted by this topography as a large portion of the site is a man-made lake.

Urban Service Boundary Amendment

The applicant has requested to amend the Urban Service area for the site from a Reserve classification to a Transition classification. The Reserve classification is for sites that do not have access to utilities and for areas that are not anticipated to have utilities for several years. The Transition classification is for site and areas that are anticipated to have utilities installed in the near future⁸ or may already have utilities installed.

⁷ Need for Multi-Family Rental Apartments

⁸ 1-3 years.

The site is surrounded by properties that have had City utilities for several years. Utilities were not provided to the site given uncertainty regarding future development, however, utilities can be provided from nearby sites. The applicants request to amend to Urban Service boundary is supported by the following Comprehensive Plan policies.

Objective 4, Policy 4.1: Future development requiring access or connect to public water and sewer facilities will be located within either the Urban Services Infill or Transition Areas.

Response: Future development of the site will require public water and wastewater, therefore, the Urban Services boundary should be extended to the site.

Objective 7. Development in the Urban Services Area: The City will discourage premature “leap-frog” development within the Urban Services Reserve Area.

Response: Development of the site would not be considered leap frog development, however, the site has access to utilities and is near large development with municipal water and wastewater service.

Impact Assessment Summary

The following calculations summarize approximate conditions for each municipal service analyzed. To determine the impact assessment, staff utilized the adopted future land use and zoning designations to determine the existing impacts at buildout. Therefore, the impacts discussed in this assessment do not necessarily reflect the actual number of dwelling units, population, etc. present within the subject area.

The site has a Mixed Use Preserve (MUP) Future Land Use designation. The site is designated Class III, Type D which allows a maximum residential allocation of 20% or the option to develop a site with 100% non-residential uses. The maximum residential density is 4.4 units per acre and a maximum floor area ratio (FAR) of 2.0. MUP also allows the shifting of residential density or commercial intensity from wetlands areas to upland areas. The site is zoned Agricultural (A) and the site would need a rezone to achieve the maximum density and intensity.

This analysis will be based upon 80% of the site developing with non-residential uses at an FAR of 2.0⁹ and 20% of the site developing with residential uses with a density of 4.4 dwelling units. Based upon the calculations, a future development could be built that includes 5,837,040 sq. ft. and 74 dwelling units.

The analysis will also consider the proposed Multi-Family Residential (MF) future land use designation. The MF designation would allow 16 dwelling units per acre. The site is 84.47 acres which would allow a maximum of 1,351 dwelling units. This analysis will be based upon the maximum amount of development allowed by the Comprehensive Plan and the Land Use Development Regulations (LUDR).

Dwelling Units

Existing:	74
Proposed:	1,351
Net Change:	+1,277

⁹ Developing at an FAR of 2.0 is unlikely given topography of the site and historical Cape Coral development patterns.

Population*

Existing:	188
Proposed:	3,432
Net Change:	+3,244

* 2.54 persons/household = avg. household size; 2010 Census

Non-Residential Square Footage

Existing:	5,837,040 sq. ft.
Proposed:	0 sq. ft.
Net Change:	-5,837,040 sq. ft.

Water Use

Existing:	<u>1,765,912 gal/day total</u> (74 dwelling units x 200 gal/day) + (5,837,040 sq. ft. x 0.3 gal/sq ft/day)
Proposed:	<u>270,200 gal/day total</u> (1,351 dwelling units x 200 gal/day)
Net Change:	-1,495,712 gal/day
Facility Capacity:	30.1 MGD
Permitted Usage:	16.9 MGD
Avg. Daily Usage:	9.4 MGD

Sewage

Existing:	<u>1,765,912 gal/day total</u> (74 dwelling units x 200 gal/day) + (5,837,040 sq. ft. x 0.3 gal/sq ft/day)
Proposed:	<u>270,200 gal/day total</u> (1,351 dwelling units x 200 gal/day)
Net Change:	-1,495,712 gal/day
Facility Capacity:	28.4 MGD
Avg. Daily Usage:	12.8 MGD

Solid Waste

Existing Generation:	<u>794,728 lbs. total/day</u> (188 persons x 4.74 lbs/person/day) + (51,836 sq. ft. x 0.136 lbs/sq ft/day)
Proposed:	<u>16,268 lbs. total/day</u> (3,432 persons x 4.74 lbs/person/day)
Net Change:	-48,460 lbs/day
Facility Capacity:	1,836 tons/day
Existing Demand:	1,384 tons/day
Capacity Available:	Yes

Traffic/Daily Trips

Existing Generation:	6,629 PM peak trips/hour
----------------------	--------------------------

Proposed: 838 PM peak trips/hour
 Net Change: -5,791 AM peak trips/hour and -100 PM peak trips/hour
 Facility Capacity: Veterans Parkway meets the minimum acceptable Level of Service Standard of "D."
 Capacity Available: Yes

Hurricane Evacuation

The subject area is in Evacuation Zone A, however, this amendment would result in an increase of dwelling units. This would have a negative effect on the evacuation times for the surrounding road network.

Park Lands

The levels of service standard (LOS) for parkland and facilities is based on permanent population. Based on potential development of 1,351 dwelling units (3,342 persons), additional park land would be needed for regional, neighborhood, community and specialty parks.

Protected Species

The City requires an environmental survey prior to the issuance of any land clearing, site clearing, or development permits. Any future land alteration activities will be preceded by the completion of an environmental survey identifying the presence of protected flora and fauna. Based on the results of the environmental survey, City, state, or federal protective or mitigation measures may be required by the developer to proceed.

School Impacts

There will be an increase in dwelling units based upon the requested future land use designation. The Lee County School estimates that the amendment will generate 119 additional school students. The school district has indicated that there is sufficient elementary school capacity, however, the amendment will increase a deficit in middle and high school capacity. The school district does indicate that sufficient school seating for middle and high school is available in their service areas.

Recommendation:

Planning Division staff finds that the proposed Future Land Use amendment is consistent with several policies of the City's Comprehensive Plan and is compatible with the surrounding neighborhood and therefore recommends **approval** of the proposed large-scale future land use map amendment request.

Planning Staff Contact Information

Chad Boyko, AICP, Principal Planner

239-573-3162/cboyko@capecoral.net



NOTICE TO SURROUNDING PROPERTY OWNERS

CASE NUMBER: LU17-0012

REQUEST: The applicant proposes a Future Land Use Map Amendment for an 84.47 acre site from Mixed Use Preserve (MUP) Type III to Multi-Family Residential (MF). The existing zoning is Agricultural (A). The applicant is also requesting to change the Urban Services designation from Reserve to Transition.

LOCATION: Site is east of Veterans Parkway and west of Surfside Boulevard.

CAPE CORAL STAFF CONTACT: Chad Boyko, Principal Planner, 239-573-3162, cboyko@capecoral.net

APPLICANT: EnSite, Inc.

AUTHORIZED REPRESENTATIVE: Avalon Engineering

UPCOMING PUBLIC HEARING: Notice is hereby given that the City of Cape Coral Local Planning Agency will hold a public hearing at 9:00 A.M. on Wednesday June 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 City of Cape Coral Local Planning Agency 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 City of Cape Coral Local Planning Agency 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 (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

APPEALS: If a person decides to appeal any decision made by the City of Cape Coral Local Planning Agency 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.



NOTICE OF CHANGE OF LAND USE

The City of Cape Coral proposes to adopt ORDINANCE 43-18, AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP FROM MIXED USE PRESERVE (MUP), CLASS III, TYPE D TO MULTI-FAMILY RESIDENTIAL (MF) AND FROM URBAN SERVICES RESERVE AREA TO URBAN SERVICES TRANSITION AREA FOR A PARCEL LYING IN A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 29, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED NORTHEAST OF VETERANS PARKWAY AND TO THE WEST OF THE SANDOVAL SUBDIVISION; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

A public hearing on the ordinance will be held Wednesday, June 6, 2018 at 9:00 a.m. at the City of Cape Coral, City Hall Chambers, 1015 Cultural Park Blvd., Cape Coral, Florida 33990. At this public hearing, the Planning and Zoning Commission will consider a recommendation to change the City's future land use map amendment request. Accordingly, members of the general public and real property owners in the community are invited to appear and speak at the public hearing. Written comments filed with the Director will also be entered into the record. A copy of the map and the proposed amendment under consideration will be available for inspection and will be provided to the public at cost at the City Clerk's office between 7:30 a.m. and 4:30 p.m., Monday through Friday excluding holidays. Any person who decides to appeal any decision made by the City Council at that meeting will need a record of proceedings, and that subject person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. In accordance with Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this meeting should contact the City Clerk no later than 4:00 p.m. on the day prior to the meeting.

Rebecca Van Deutekom, CMC
City Clerk



Ordinance 43-18
LU17-0012

MIXED USE PRESERVE (MUP),
CLASS III, TYPE D TO MULTI-
FAMILY RESIDENTIAL (MF)
AND FROM URBAN SERVICES
RESERVE AREA TO URBAN
SERVICES TRANSITION AREA
FOR AREA NORTH OF
VETERANS PKWY AND SOUTH
OF PINE ISLAND ROAD

NP-0000961361

☐ PROOF O.K. BY: _____ ☐ O.K. WITH CORRECTIONS BY: _____

PLEASE READ CAREFULLY • SUBMIT CORRECTIONS ONLINE

ADVERTISER: CITY OF CAPE CORAL_DEPT
SALES PERSON: Legal Display
PUBLICATION: NP-DAILY
SIZE: 3 col X 9.25 in

PROOF CREATED AT: 5/21/2018 4:14 PM
PROOF DUE: -
NEXT RUN DATE: 05/27/18

NP-0000961361.INDD

Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: MSI Holdings, LLC

APPLICATION NO: LU17-0012

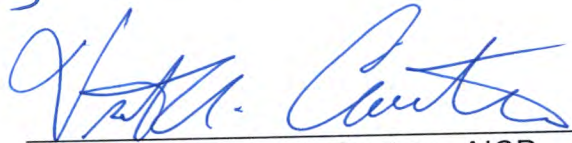
STATE OF FLORIDA)
) §
COUNTY OF LEE)

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 29th day of May, 2018.

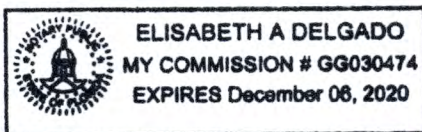


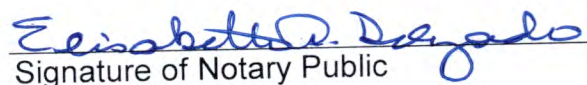
Vincent A. Caution, AICP

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 29th day of May, 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



SUBJECT PARCEL

ROYAL TEE CIR

BELLINGHAM CT

WOODBOURNE PL

SANDOVAL BLVD

SUNVALE CT

SOMERV


VET

MIRACLE PKWY

DANI

CITY OF CAPE CORAL
Department of
Community Development
Planning Division

Case No. LU17-0012

 Subject Parcel



JANUARY 9TH, 2017

0 Feet 430 860








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 FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU17-0012

LEGEND

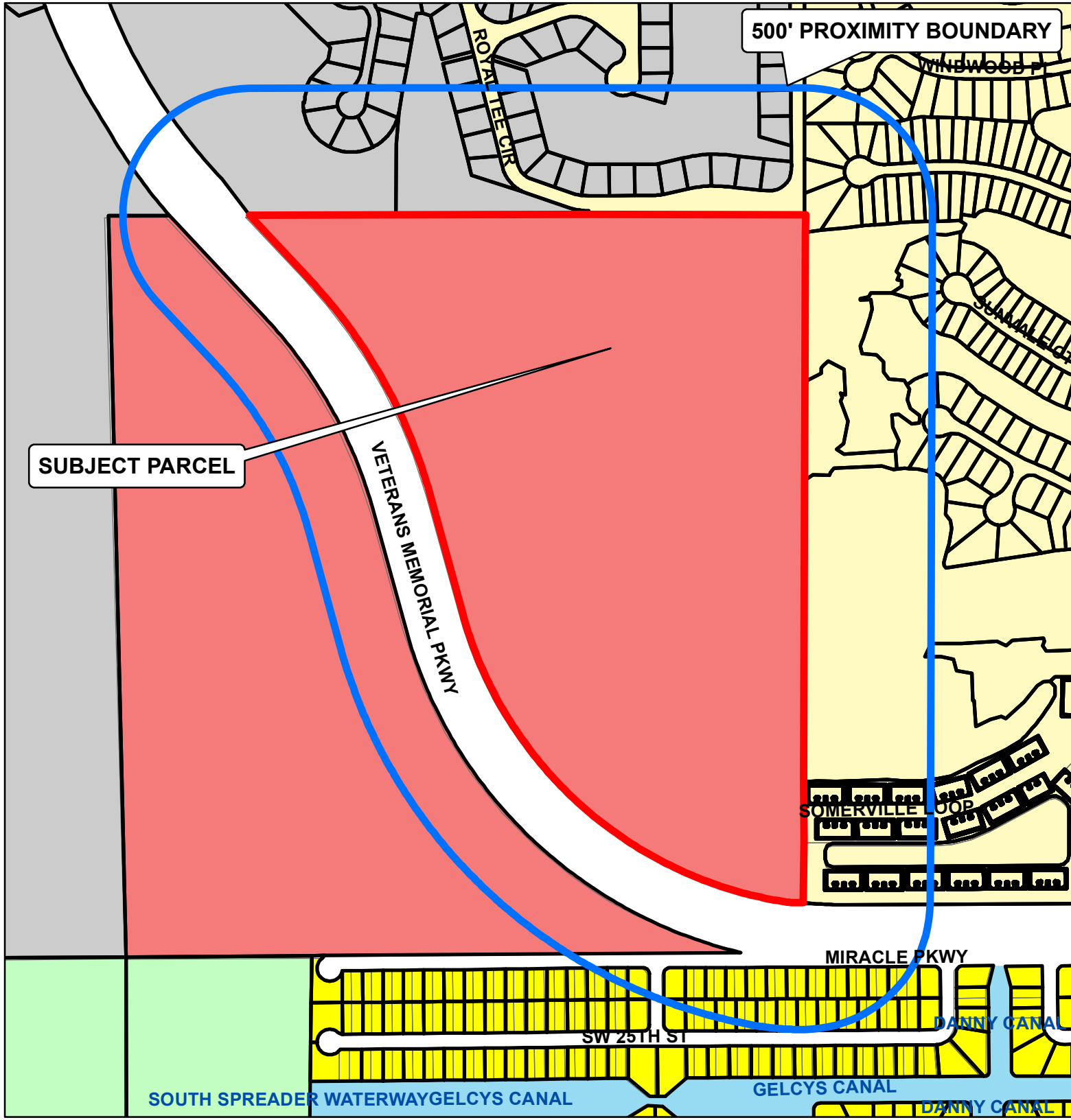
-  Subject Parcel
-  500' Proximity Boundary
- Future Land Use**
 -  SF
 -  SM
 -  MUP
 -  PR
 -  LEE COUNTY FLU



JANUARY 9TH, 2017



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. LU17-0012

LEGEND

-  500' Proximity Boundary
 Subject Parcel

Zoning

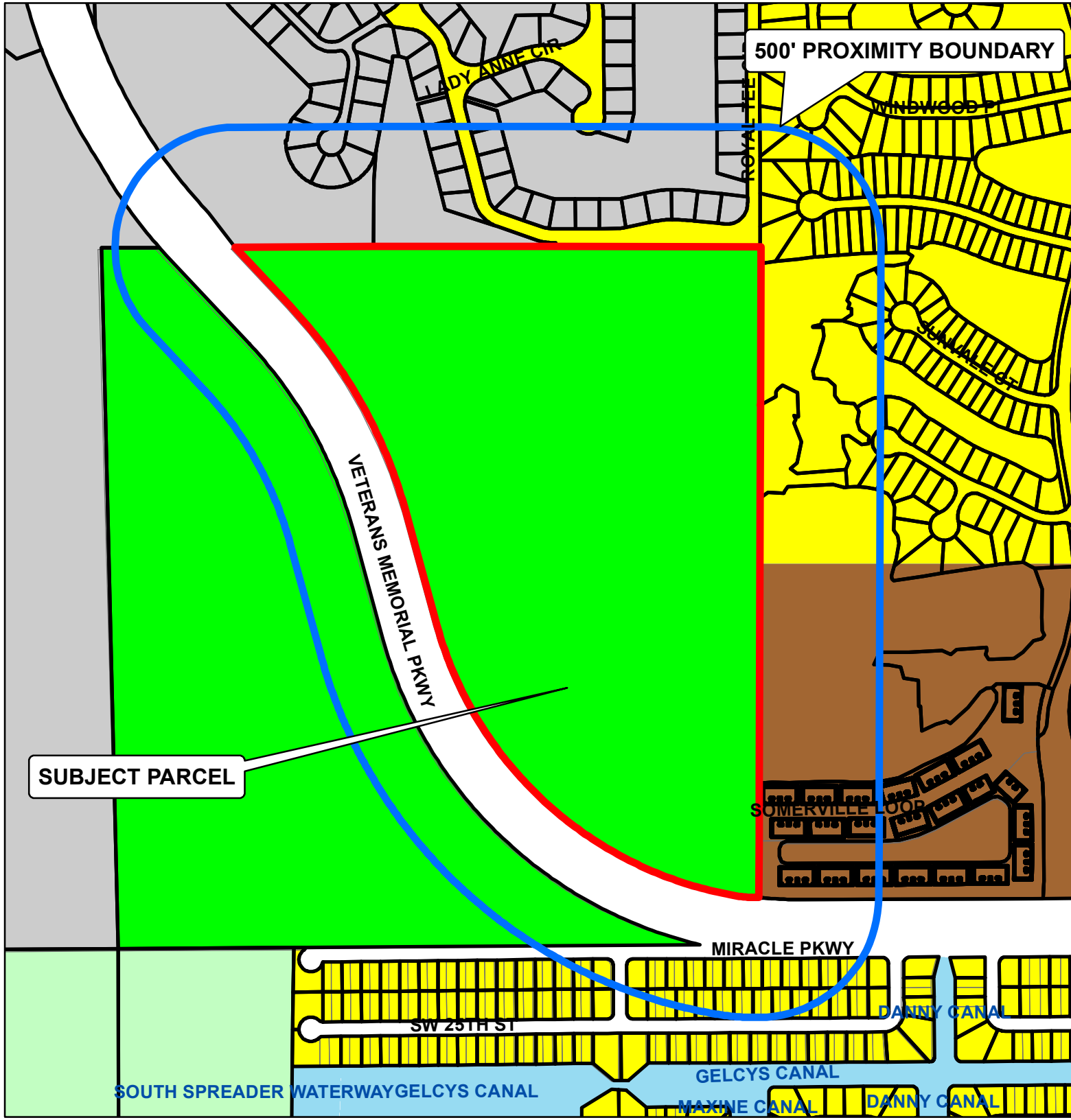
-  A
 C-1
 PRES-Regulated by FLU
 R-1B
 R-3
 LEE COUNTY ZONING



JANUARY 9TH, 2017



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







PROPOSED FUTURE
LAND USE MAP
500' Proximity Boundary

Case No. LU17-0012

LEGEND

-  Subject Parcel
-  500' Proximity Boundary

Future Land Use

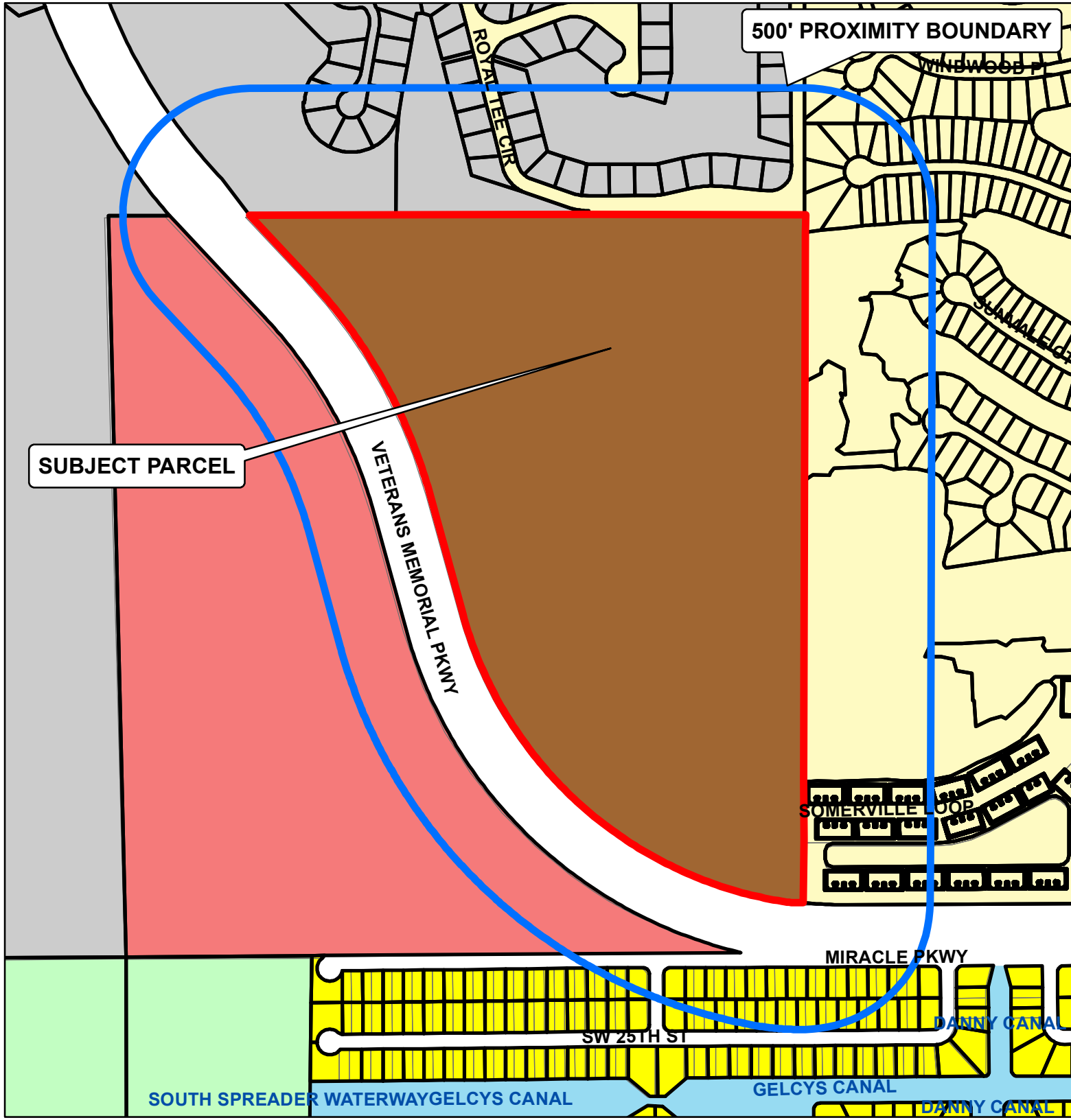
-  SF
-  SM
-  MUP
-  PR
-  MF
-  LEE COUNTY FLU



JANUARY 9TH, 2017



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.



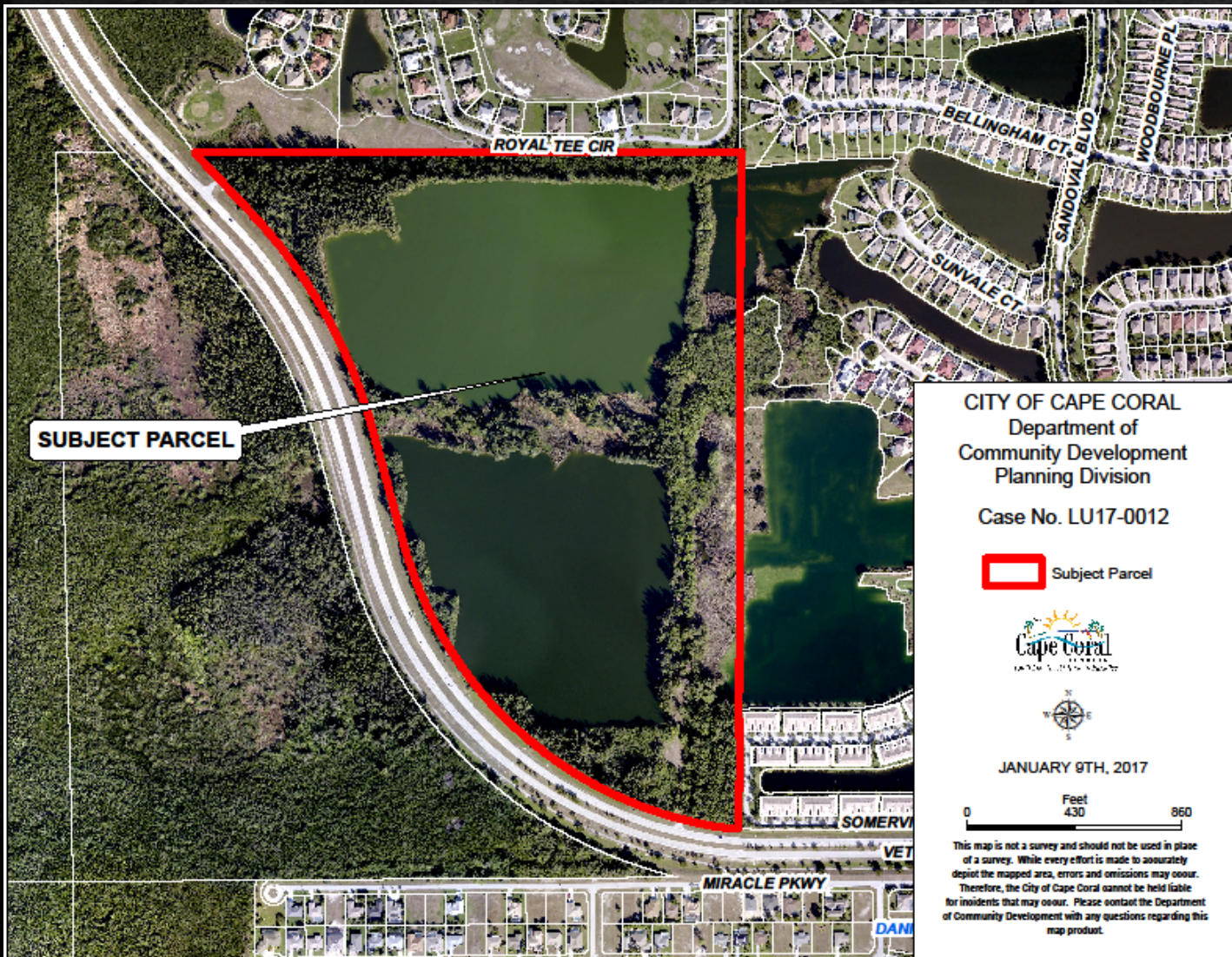
Ordinance 43-18

LU17-0012

Cape Coral City Council

Ordinance 43-18

- Applicant: MSI Holdings, LLC
- Size: 84.47 acres
- Location: North of Veterans Parkway/East of Surfside Boulevard
- Zoning: Agricultural
- Request: A future land use map amendment from Mixed Use Preserve Type 3, Class D (MUP 3D) to Multi-Family Residential (MF) and an Urban Service designation change from Reserve to Transition.



CITY OF CAPE CORAL
Department of
Community Development
Planning Division

Case No. LU17-0012

 Subject Parcel



JANUARY 9TH, 2017

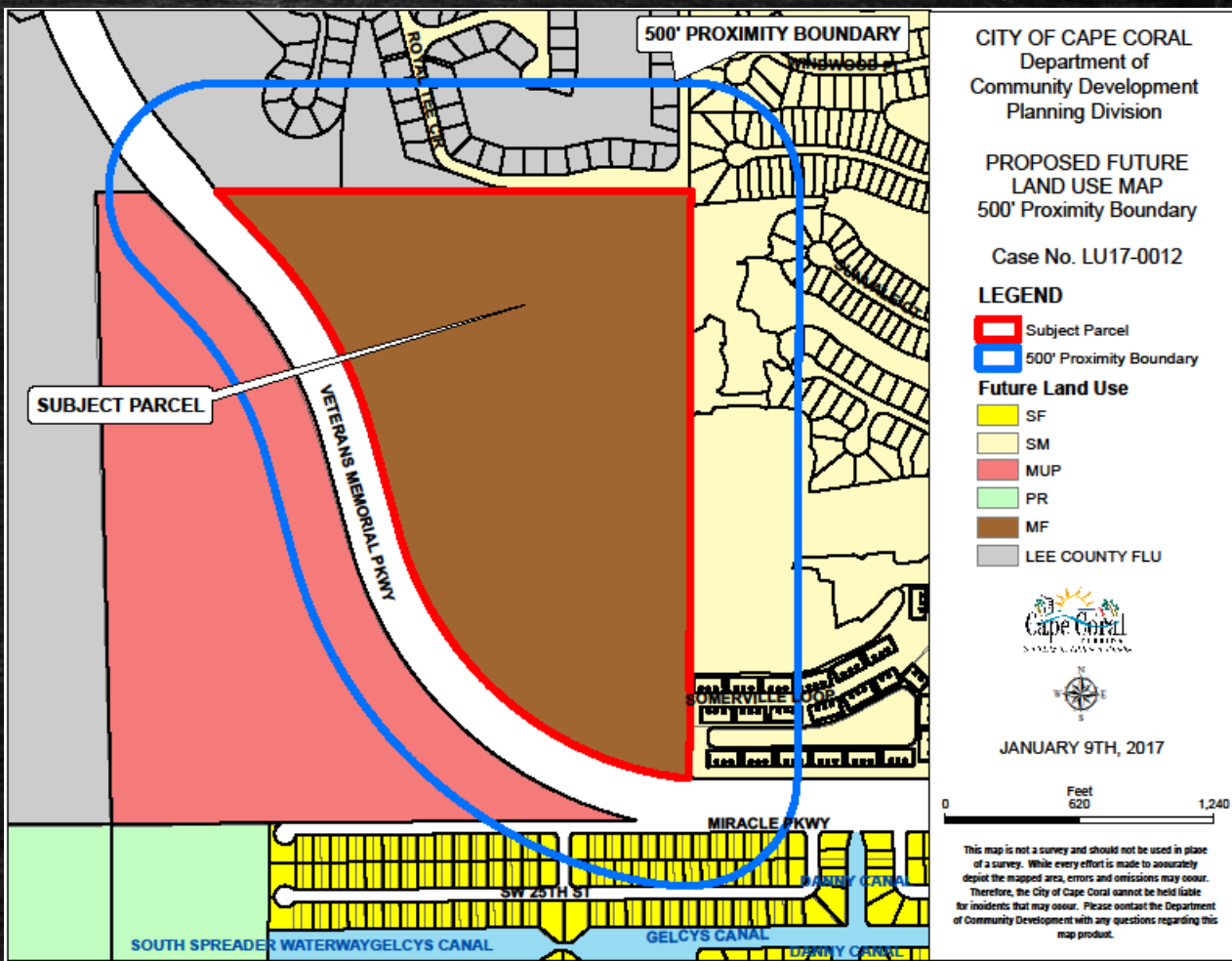
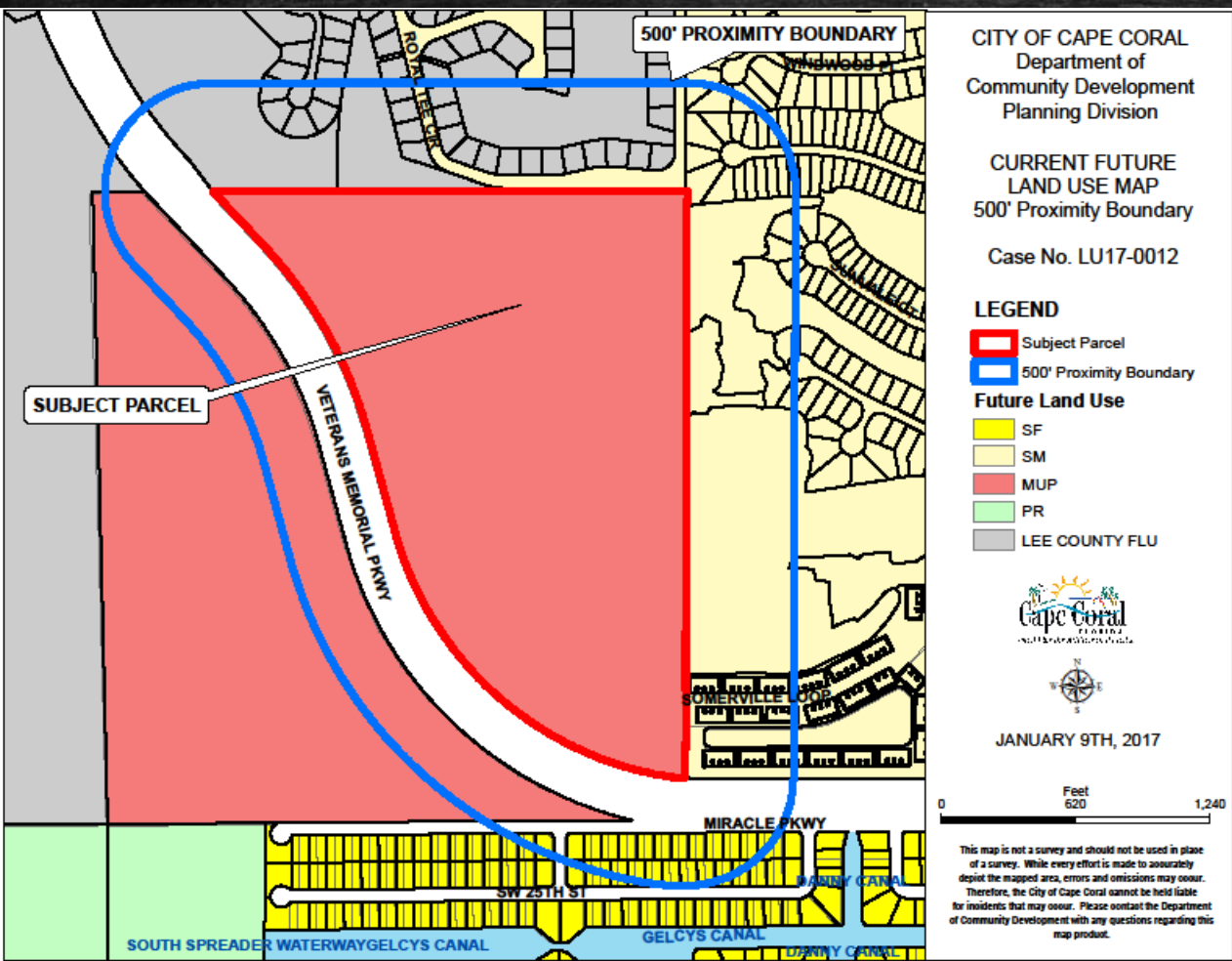
0 Feet 430 860

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.

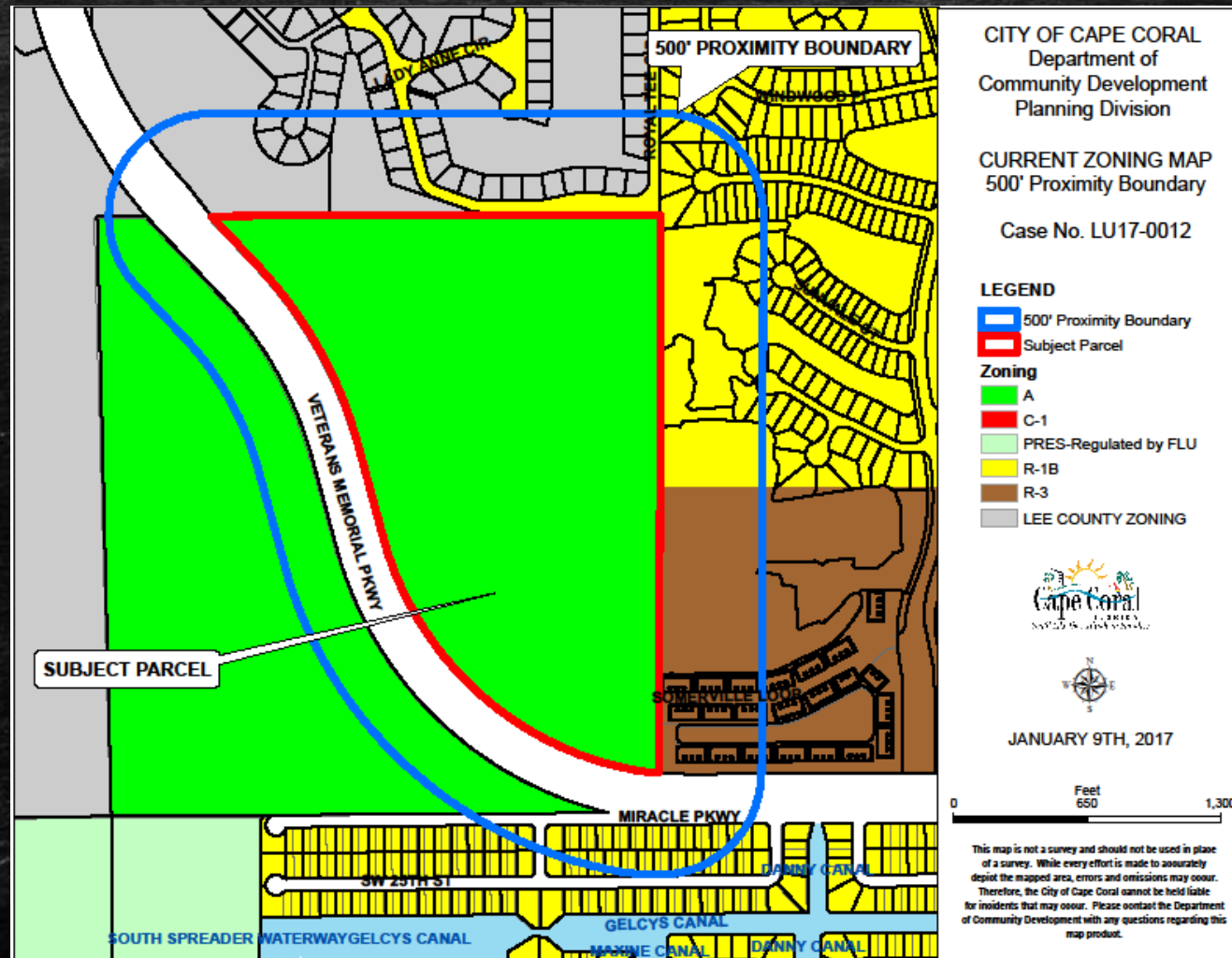


Current Future Land Use

Proposed Future Land Use



Current Zoning



Findings of Fact

- The site is a former borrow pit that ceased operations several years ago.
- Site is characterized by 2 large lakes.
- Frontage on Veterans Parkway – principal arterial – there are 2 existing stub outs for future access.
- Surrounding development is 2 large residential subdivisions.
- The future land use of the site was amended in 2007 from Single-Family/Multi-Family (SM) to Mixed Use Preserve, Type 3, Class D.
- The site has been zoned Agricultural (A) since 1989.

Mixed Use Preserve

- Mixed Use Preserve (MUP) was created to promote non-residential and mixed-use development while also creating open spaces.
- There are 5 classes and 4 types that determine allowable uses and development scale (density and square footage).
- The site is Class 3, Type D which allows 20% maximum of residential development at 4.4 du's/acre and a Floor Area Ratio of 2.0.
- Based upon current designation, the maximum development potential of the site is 5.8 million square feet of commercial space and 74 residential units.

Multi-Family Residential

- Multi-Family Residential (MF) allows maximum density of 16 units per acre.
- MF designation would allow applicant to develop the site with 100% residential uses or any other use allowed in compatible zoning district.
- MF designation would allow a maximum of 1,351 multi-family units on the site.

Analysis – Future Land Use Element

Policy 1.13 – This policy encourages commercial development at commercial nodes to decrease strip development and facilitate compact development.

- The site has frontage on a principal arterial but is 2,500 feet away from nearest intersection. The site is also separated from existing commercial development by residential development. The MUP designation is not fully consistent with Policy 1.13.

Policy 1.14 – This policy has 8 commercial siting guidelines that help determine if a site is ideal for a commercial future land use designation.

- The site is consistent with 4 guidelines (adequate depth, assembly, access, and ownership pattern) and not consistent with 4 guidelines (integration, intrusion, compactness, major intersection).

Analysis – Future Land Use Element

Policy 3.1 – This policy encourage commercial development at transportation nodes.

- The site is not at or near a transportation node. This policy is not supportive of existing future land use designation.

Objective 3, Policy 3.3 – This policy states that the Veterans Parkway corridor will need approximately 188 acres of commercial land to meet needs of surrounding residential areas.

- This policy does not prohibit future land use amendments, however, additional future land use amendments may be required to replace the loss of 80 acres.

Analysis – Economic Development Master Plan

- 1) The site is not listed as an area of “Economic Opportunity”
- 2) The amendment is supported by the City’s documented need for multi-family housing (1,500 units per year for the next 5 years)

Analysis – Urban Service Boundary

Objective 4, Policy 4.1 – Requires that developments requiring access or connection to municipal utilities shall be in the Urban Service Infill or Transition area

- The boundary line amendment will place the site within the Transition Area and will meet this policy.

Objective 7 – This objective discourages leap frog development within Urban Services Reserve areas.

- While the development is not leapfrog development, the boundary line amendment will meet the objective by placing the site within the Transition Area.

Development Impact Analysis

Existing – Mixed Use Preserve, Type 3, Class D

- 74 Dwelling Units
- 5.83 Million sq. ft. of Commercial
- 6,629 Peak Hour Trips
- 1.7 million GPD Water/Sewer

Proposed – Multi-Family Residential

- 1,351 Dwelling Units
- 0 sq. ft. of Commercial
- 838 Peak Hour Trips
- 270,000 GPD Water/Sewer

Recommendation

- Planning staff finds that the site is suitable for residential and non-residential development.
- The site is large enough to accommodate quality residential or non-residential development.
- The site has frontage on a principal arterial with a minimum of 2 access points.
- The site is bordered by residential developments and staff finds that the proposed future land use designation is more compatible with these developments.
- Planning staff recommends approval of the proposed future land use designation.
- The Local Planning Agency recommends approval by a vote of 5-2.

Correspondence

- Planning staff received 8 emails/letters of opposition and 5 phone calls of opposition.
- Staff received 3 phone calls for more information or didn't indicate opposition.

