

1 CITY OF BONITA SPRINGS, FLORIDA
2 ORDINANCE NO. 19-05
3

4 AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA,
5 CREATING CHAPTER 48, STORMWATER UTILITY, TO THE BONITA
6 SPRINGS CODE; PROVIDING FOR THE CREATION OF A STORMWATER
7 UTILITY AND COLLECTION METHODS; PROVIDING FOR SEVERABILITY,
8 CONFLICTS, CODIFICATION, SCRIVENER'S ERRORS; AND PROVIDING
9 FOR AN EFFECTIVE DATE.
10

11 **WHEREAS**, the Charter provides that the City Council shall have the broadest
12 exercise of home rule powers permitted under the state Constitution and the laws of the
13 state; and
14

15 **WHEREAS**, the City of Bonita Springs, Florida is contemplating the imposition of
16 special assessments for the provision of stormwater services, facilities and programs
17 within the City boundary; and
18

19 **WHEREAS**, Section 403.0893, Florida Statutes, confers upon the City the
20 authority to create a stormwater utility and fees to plan, construct, operate and maintain
21 stormwater management systems; and
22

23 **WHEREAS**, pursuant to the Article VIII of the Florida Constitution, the City of
24 Bonita Charter and Section 166.021, Florida Statutes, the City Council is authorized to
25 adopt ordinances necessary for the exercise of its powers in for health, safety, and
26 general welfare; and
27

28 **WHEREAS**, the City Council has previously determined that it is in the best
29 interests and welfare of the City of Bonita Springs and its residents to enact this
30 Ordinance.
31

32 **THE CITY OF BONITA SPRINGS HEREBY ORDAINS:**
33

34 **Section 1. Recitals Adopted.**
35

36 That each of the above stated recitals is hereby adopted and confirmed as being
37 true, and the same are hereby incorporated as a part of this Ordinance.
38

39 **Section 2. Creating Chapter 48, Stormwater Utility.**
40
41

42 CHAPTER 48 – STORMWATER UTILITY

43 ARTICLE I. - INTRODUCTION

44 Sec. 48-1. - Definitions.

1 When used in this article, the following terms shall have the following meanings,
2 unless the context clearly requires otherwise:

3 *Annual stormwater improvement assessment resolution* means the resolution
4 described in section 48-208, approving the stormwater improvement assessment roll for
5 a specific fiscal year.

6 *Annual stormwater service assessment resolution* means the resolution described in
7 section 48-157, approving the stormwater service assessment roll for a specific fiscal
8 year.

9 *Assessed property* means all parcels of real property included on the stormwater
10 service assessment roll that receive a benefit from the stormwater improvements and
11 stormwater management services.

12 *Capital cost* means the cost associated with the construction, acquisition, installation,
13 reconstruction, renewal or replacement of stormwater improvements necessary to
14 improve the water quality and /or maintain and/or increase the level of service for flood
15 protection, including, without limitation: (1) the cost of physical construction,
16 reconstruction, renewal, replacement or completion; (2) the costs of acquisition and
17 installation; (3) the cost of all labor, materials, machinery and equipment, including costs
18 associated with the acquisition thereof; (4) the cost of all lands and interest therein,
19 property rights, and easements of any nature whatsoever, including costs associated with
20 the acquisition thereof; (5) the cost of any indemnity or surety bonds and premiums for
21 insurance during construction; (6) the cost of construction plans and specifications,
22 surveys and estimates of costs; (7) the cost of engineering, legal and other consultant
23 services; (8) reasonable contingencies for construction cost increases and change
24 orders; (9) interest to be paid on interim obligations through: a. The end of the fiscal year
25 during which the stormwater improvements are scheduled for completion; b. The date of
26 issuance of the permanent obligations; or c. Such other date as the Council may establish
27 by resolution; and (10) all other expenses that are properly attributable to such acquisition
28 or construction under generally accepted accounting principles; and including
29 reimbursement to the City or to a landowner or developer as authorized by any other City
30 ordinance, for any moneys heretofore or hereafter advanced for capital cost and interest
31 on any interfund loan for such purposes. "Capital cost" excludes any amount to be paid
32 from sources other than stormwater improvement assessments, including but not limited
33 to grants, contributions and other City funds.

34 *City* means City of Bonita Springs, Florida.

35 *City Manager* means the chief executive officer of the City or such person's designee.

36 *Clerk* means the Clerk of the Circuit Court for Lee County, ex officio Clerk of the
37 Council, or any designee.

38 *Comprehensive Plan* means the Comprehensive Plan adopted by the City pursuant
39 to F.S. ch. 163, pt. II (F.S. § 163.3161 et seq.).

40 *Comprehensive Stormwater Policy Plan* means a policy document adopted by the
41 Council which identifies the levels of service for water quality and quantity management
42 in the City, based upon the criteria in the Comprehensive Plan and applicable State and

1 federal law, to guide the prioritization of expenditures within the Stormwater Utility Area.
2 The Comprehensive Stormwater Policy Plan shall designate those Stormwater Basins for
3 which a Stormwater Basin Plan is required.

4 *Condominium residential unit parcel* means a parcel of developed property
5 constituting a condominium "unit," as defined in F.S. § 718.103, which contains a dwelling
6 unit and is assigned a Land Use Code of 0430, 0431, 0436, 3937, 3944, or the functional
7 equivalent thereof, together with those parcels that the Stormwater Program Director has
8 determined should be treated as condominium residential unit parcels based upon an
9 individual verification of property use. *Parcel* means a parcel of property which the
10 property appraiser has assigned a distinct ad valorem property tax identification number.

11 *Council* means the Bonita Springs City Council of the City of Bonita Springs, Florida.

12 *Customer service cost* means all expenses that are properly attributable to customer
13 services under generally accepted accounting principles, including, without limiting the
14 generality of the foregoing: (1) any debt service, lease payment or other similar expense
15 incurred by the City for land and buildings utilized for customer services; (2)
16 reimbursement to the City for any moneys advanced for customer services; and (3)
17 interest on any interfund loan for such purposes.

18 *Customer services* means: (1) parcel identification and review; and (2) related
19 customer information services.

20 *Developed property* means property that has been developed with impervious or
21 semi-impervious area.

22 *ERU* means "equivalent residential unit," the standard unit to be used in calculating
23 the stormwater burden expected to be generated by the physical characteristics of a
24 parcel or classification of property, which shall be determined by an engineering
25 calculation of the relative amount of stormwater runoff that each parcel or classification
26 of property is expected to generate, considering impervious areas, and mitigation credit
27 or other factors affecting the quantity or quality of stormwater runoff.

28 *ERU value* means the median impervious area for a single-family parcel within the
29 City. Based upon a median impervious area derived from all single-family parcels
30 (calculated from the total base subarea plus extra features information on the tax roll), the
31 City has computed an "ERU value" of 4,500 square feet, which shall be used to calculate
32 the number of ERUs attributable to each parcel.

33 *Final stormwater improvement assessment resolution* means the resolution
34 described in section 48-207, which shall confirm, modify or repeal the initial stormwater
35 improvement assessment resolution and which shall be the final proceeding for the
36 imposition of a stormwater improvement assessment.

37 *Final stormwater service assessment resolution* means the resolution described in
38 section 48-156, which shall confirm, modify or repeal the initial stormwater service
39 assessment resolution and shall be the final proceeding for the imposition of a stormwater
40 service assessment.

1 *Fiscal year* means the period commencing on October 1 of each year and continuing
2 through the next succeeding September 30, or such other period as may be prescribed
3 by law as the fiscal year for the City.

4 *Government Property* means property owned by the United States of America or any
5 agency thereof, the State of Florida or any agency thereof, a County, a special district or
6 a municipal corporation.

7 *Impervious or semi-impervious area* means areas including, but are not limited to,
8 asphalt shingles, concrete, tile, metal roof structures, mobile homes, continuous asphalt,
9 concrete sidewalk, swimming pools decks, and other surfaces which similarly impact to
10 the natural infiltration or runoff patterns which existed prior to development. All bare earth
11 surfaces, stone, gravel, brick, lime rock, and other "placed" hard sidewalk will not be
12 considered impervious including those used for parking or driveways. Vehicles or other
13 moveable objects located on grass or bare earth will not be considered impervious.

14 *Initial stormwater improvement assessment resolution* means the resolution
15 described in section 48-202, which shall be the initial proceeding for the imposition of the
16 stormwater improvement assessment.

17 *Initial stormwater service assessment resolution* means the resolution described in
18 section 48-152, which shall be the initial proceeding for the imposition of the stormwater
19 service assessment.

20 *Interim obligations* means the obligation to repay funds drawn from a pooled
21 commercial paper or similar short-term financing program issued or incurred with the
22 intent, as expressed by the Council in the initial stormwater improvement assessment
23 resolution, to provide interim funding for the capital cost of stormwater improvements prior
24 to the issuance of permanent obligations.

25 *Maintenance service cost* means all expenses that are properly attributable to
26 maintenance services under generally accepted accounting principles, including, without
27 limiting the generality of the foregoing: (1) any debt service, lease payment or other similar
28 expense incurred by the City for land and buildings utilized for maintenance services; (2)
29 reimbursement to the City for any moneys advanced for maintenance services; and (3)
30 interest on any interfund loan for such purposes.

31 *Nonresidential parcel* means a parcel of developed property other than a single-family
32 parcel or a condominium residential unit parcel, together with those parcels that the
33 Stormwater Program Director has determined should be treated as for profit and / or
34 nonresidential unit parcels based upon an individual verification of property use.

35 *Obligations* means interim obligations or permanent obligations.

36 *Ordinance* means this stormwater ordinance.

37 *Parcel* means a parcel of property which the property appraiser has assigned a
38 distinct ad valorem property tax identification number.

39 *Permanent obligations* means bonds or other evidence of indebtedness, including an
40 obligation to repay funds drawn from a pooled commercial paper or similar short-term
41 financing program, issued or incurred with the intent, as expressed by the Council in the

1 initial stormwater improvement assessment resolution, to provide permanent funding for
2 the capital cost of stormwater improvements.

3 *Pledged revenue* means, as to any series of obligations: (1) the proceeds of such
4 obligations, including investment earnings; (2) proceeds of the stormwater improvement
5 assessments pledged to secure the payment of such obligations; and (3) any other legally
6 available non-ad valorem revenue pledged to secure the payment of such obligations, as
7 specified by the resolution authorizing such obligations.

8 *Property Appraiser* means the Lee County Property Appraiser.

9 *Single-family parcel* means a parcel of developed property as defined in F.S. §
10 718.103, which contains a dwelling unit and is assigned a Land Use Code of 0000, 0090,
11 0110, 0260, 0261, 0810, or the functional equivalent thereof, together with those parcels
12 that the Stormwater Program Director has determined should be treated as single-family
13 parcels based upon an individual verification of property use.

14 *Stormwater* means the flow of water which results from, and which occurs
15 immediately following, a rainfall event.

16 *Stormwater assessment* means, for each parcel of property, the sum of the
17 stormwater service assessment and any applicable stormwater improvement
18 assessments.

19 *Stormwater basin* means a part of the earth's surface that contributes stormwater to
20 a drainage system, consisting of a surface stream or body of impounded surface water,
21 together with all natural or artificial tributary surface streams and bodies of impounded
22 surface water.

23 *Stormwater basin plan* means a policy document adopted by the Council for each
24 stormwater basin or hydrologic subarea thereof in which stormwater improvements are
25 proposed, which provides for implementation of the Comprehensive Stormwater Policy
26 Plan therein.

27 *Stormwater conveyance system* means the infrastructure necessary for flood control
28 and prevention. Infrastructure may include, but is not limited to the following: canals,
29 ponds, drainage pipes, ditches, drainage structures, and pumps.

30 *Stormwater improvement* means land, capital facilities and improvements acquired
31 or provided to detain, retain, convey or treat stormwater.

32 *Stormwater improvement area* means one or more stormwater basins, or a portion or
33 portions thereof, as identified in the initial stormwater improvement assessment
34 resolution, encompassing those parcels of property specially benefited by the
35 construction, reconstruction or installation of all or any portion of a stormwater
36 improvement that removes, retains or treats, in whole or in part, the stormwater burden
37 expected to be generated by the physical characteristics and use of such property. Each
38 stormwater improvement area will include either: (1) the property hydrologically
39 connected, directly or indirectly, to the stormwater improvement; or (2) all property located
40 within a hydrologically defined area in which the City constructs one or more stormwater
41 improvements pursuant to a stormwater basin plan, to correct existing deficiencies and
42 achieve a consistent stormwater improvement performance standard.

1 *Stormwater improvement assessment* means a special assessment imposed by the
2 City to fund the capital cost of one or more stormwater improvements and the associated
3 stormwater improvement collection costs.

4 *Stormwater improvement assessment roll* means the special assessment roll relating
5 to stormwater improvement assessments, approved by a final stormwater improvement
6 assessment resolution or an annual stormwater improvement assessment resolution
7 pursuant to section 48-207 or section 48-208.

8 *Stormwater improvement collection cost* means the estimated cost to be incurred by
9 the City during any fiscal year in connection with the collection of stormwater improvement
10 assessments.

11 *Stormwater improvement performance standard* means the level of stormwater
12 management expected to result from construction of stormwater improvements, as
13 defined in the comprehensive stormwater policy plan and applied in a stormwater basin
14 plan.

15 *Stormwater maintenance services* means operating and maintaining the City's capital
16 facilities for stormwater management, including extraordinary maintenance.

17 *Stormwater maintenance area* means the stormwater basins in which the City
18 provides maintenance services.

19 *Stormwater management services* means customer service, utility wide operating,
20 stormwater system maintenance, and stormwater improvement for the City's stormwater
21 management facilities.

22
23 *Stormwater Program Director* means the manager of the City's Stormwater Utility or
24 such person's designee.

25 *Stormwater service assessment* means an annual special assessment imposed upon
26 each benefitted parcel within the stormwater utility area to fund customer services,
27 stormwater service collection costs, utility-wide operations, maintenance services and the
28 associated stormwater service collection cost.

29 *Stormwater service assessment roll* means the special assessment roll relating to
30 stormwater service assessments, approved by a final stormwater service assessment
31 resolution or an annual stormwater service assessment Resolution pursuant to Section
32 48-156 or Section 48-157.

33 *Stormwater service collection cost* means the estimated cost to be incurred by the
34 City during any fiscal year in connection with the collection of stormwater service
35 assessments.

36 *Stormwater utility* means the entity established by section 48-101 to implement the
37 stormwater management program of the City.

38 *Stormwater utility area* means the geographic area described in the initial stormwater
39 service assessment resolution that encompasses all parcels within the City which
40 specially benefit from the utility-wide operations.

1 *Tax Collector* means the Lee County Tax Collector.

2 *Tax Roll* means the real property ad valorem tax assessment roll maintained by the
3 Property Appraiser for the purpose of the levy and collection of ad valorem taxes.

4 *Transaction cost* means the costs, fees and expenses incurred by the City in
5 connection with the issuance and sale of any series of obligations, including but not limited
6 to: (1) rating agency and other financing fees; (2) the fees and disbursements of bond
7 counsel; (3) the underwriters' discount; (4) the fees and disbursements of the City's
8 financial advisor; (5) the costs of preparing or printing the obligations and the
9 documentation supporting issuance of the obligations; (6) the fees payable in respect of
10 any municipal bond insurance policy; (7) administrative, development, credit review or
11 other fees associated with any pooled commercial paper or similar interim financing
12 program; and (8) any other costs of a similar nature incurred in connection with issuance
13 of such obligations.

14 *Uniform Assessment Collection Act* means F.S. §§ 197.3632 and 197.3635, or any
15 successor statutes authorizing the collection of non-ad valorem assessments on the
16 same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

17 *Utility-wide operating cost* means all expenses that are properly attributable to utility-
18 wide operations under generally accepted accounting principles, including, without
19 limiting the generality of the foregoing: (1) any debt service, lease payment or other similar
20 expense incurred by the City for land and buildings utilized for utility-wide operations; (2)
21 reimbursement to the City for any moneys advanced for utility-wide operations; and (3)
22 interest on any interfund loan for such purposes.

23 *Utility-wide operations* means: (1) general management and administration; (2)
24 general system engineering; (3) plan review and inspections; (4) basin planning; (5)
25 capital improvement plan development; and (6) legal and other consultant services.

26 Sec. 48-2. - Interpretation.

27 Unless the context indicates otherwise, words importing the singular number include
28 the plural number and vice versa; the terms "hereof," "hereby," "herein," "hereto,"
29 "hereunder" and similar terms refer to this article; and the term "hereafter" means after,
30 and the term "heretofore" means before, the effective date of this article. Words of any
31 gender include the correlative words of the other genders, unless the sense indicates
32 otherwise.

33 Sec. 48-3. - Findings.

34 It is hereby ascertained, determined and declared that:

35 (1) Article VIII, Section 1 of the Florida Constitution, F.S. §§ 166.021 and 166.041,
36 and the City of Bonita Springs Charter grant to the Council all powers of local
37 self-government to perform City functions and to render services for City
38 purposes in a manner not inconsistent with general law, or with special law
39 approved by vote of the electors, and such power may be exercised by the
40 enactment of City ordinances.

- 1 (2) The stormwater assessments authorized by this article are consistent with the
2 authority granted in F.S. § 403.0893, which is additional authority and
3 supplements the constitutional and statutory power of local government granted
4 to a charter city.
- 5 (3) The benefits provided by the stormwater utility to property located within the
6 stormwater utility area include, by way of example and not limitation:
- 7 a. The provision of stormwater management services and the availability and
8 use of facilities or improvements by owners and occupants of such property
9 to properly and safely detain, retain, convey or treat stormwater discharged
10 from such property;
 - 11 b. Stabilization of or the increase of property values;
 - 12 c. Increased safety and better access to property;
 - 13 d. Improved appearance;
 - 14 e. Rendering property more adaptable to a current or reasonably foreseeable
15 new and higher use;
 - 16 f. Alleviation of the burdens caused by stormwater runoff and accumulation
17 attendant with the present or projected use of property;
 - 18 g. Fostering the enhancement of environmentally responsible use and
19 enjoyment of the natural resources within the City; and
 - 20 h. Implementation of the Comprehensive Plan.
- 21 (4) The benefits provided by the stormwater utility bear a logical relationship to the
22 value, use and characteristics of the property located within the stormwater utility
23 area.
- 24 (5) The stormwater assessments authorized by this article provide an equitable
25 method of funding the capital cost of stormwater improvements, the customer
26 service cost, the utility-wide operating cost and the maintenance service cost, by
27 fairly and reasonably allocating such costs to specially benefitted property
28 classified on the basis of the stormwater burden expected to be generated by the
29 physical characteristics and use of such property.
- 30 (6) The stormwater assessments imposed pursuant to this article are imposed by the
31 Council, not the Clerk, Property Appraiser or Tax Collector. Any activity of the
32 Clerk, Property Appraiser or Tax Collector under the provisions of this article shall
33 be construed as ministerial.

34 Secs. 48-4—48-100. - Reserved.

35 ARTICLE 2. - STORMWATER UTILITY

36 Sec. 48-101. - Stormwater utility.

37 There is hereby established a stormwater utility, which shall be the operational means
38 of implementing and otherwise carrying out the functional requirements of the City's

1 stormwater management system. The stormwater utility shall provide administration,
2 management services, operation and maintenance of the City's capital facilities for
3 stormwater management; studies and programs; regulation of drainage; and repairs,
4 replacements, improvements and extensions of the City's capital facilities for Stormwater
5 management. The Stormwater Program Director shall be responsible for administration
6 of the Stormwater Utility.

7 Sec. 48-102. - Special Revenue Fund.

8 The Council intends to fund the cost of providing services and capital facilities for
9 stormwater management through stormwater assessments. The Council has further
10 determined that periodic determination of revenues earned and expenses incurred in
11 connection with the provision of services and capital facilities for stormwater management
12 will enhance accountability and management control of the City's stormwater
13 management program and will facilitate implementation of the Council's funding policy for
14 stormwater management. Accordingly, there shall be established a stormwater special
15 revenue fund. Proceeds of the stormwater service assessment shall be used for the
16 payment of customer service cost, utility-wide operating cost, maintenance service cost,
17 and stormwater service collection cost. Proceeds of the stormwater improvement
18 assessments shall be used for payment of the capital cost of stormwater improvements,
19 or the payment of debt service on obligations issued to finance stormwater improvements,
20 and payment of the stormwater improvement collection cost.

21 Secs. 48-103—48-150. - Reserved.

22 ARTICLE 3. - STORMWATER SERVICE ASSESSMENTS

23 Sec. 48-151. - Stormwater service assessments [authorized].

24 The Council is hereby authorized to impose stormwater service assessments against
25 property located within the stormwater utility area.

26 (1) Stormwater service assessments shall be payable annually and shall be
27 computed as the sum of:

28 a. The parcel's share of:

- 29 1. the customer service cost;
- 30 2. the utility-wide operating cost;
- 31 3. The stormwater service collection cost; and
- 32 4. the stormwater maintenance service cost if any; and

33 b. An amount equal to the maximum discount allowed for early payment thereof
34 under the Uniform Assessment Collection Act.

35 Nothing contained in this article shall be construed to require or preclude the
36 imposition of stormwater service assessments against government property.

37

1 Sec. 48-152. - Initial proceedings.

2 The initial proceeding for imposition of a stormwater service assessment shall be the
3 Council's adoption of an initial stormwater service assessment resolution:

- 4 (1) Identifying the stormwater utility area, the stormwater maintenance area and, if
5 applicable, that portion of the stormwater utility area receiving a distinct special
6 benefit from utility-wide operations and that portion of the stormwater
7 maintenance area to receive a higher level of service;
- 8 (2) Estimating the customer service cost the utility-wide operating cost, the
9 maintenance service cost and, if applicable, the utility-wide operating cost related
10 to the component of utility-wide operations providing a distinct special benefit and
11 the incremental maintenance service cost associated with a higher level of
12 service;
- 13 (3) Describing the method of determining the number of ERUs attributable to each
14 parcel or classification of property (including any mitigation credit factors), or
15 other apportionment methodology to be utilized for the stormwater service
16 assessment;
- 17 (4) Describing the procedure for adjusting the number of ERUs or other
18 apportionment units attributable to a parcel of property; and
- 19 (5) Identifying the proposed method of collection.

20 An initial stormwater service assessment resolution may be combined with an initial
21 stormwater improvement assessment resolution.

22 Sec. 48-153. - Stormwater service assessment roll.

- 23 (a) The Stormwater Program Director shall prepare, or direct the preparation of, a
24 preliminary stormwater service assessment roll, which shall contain the following
25 information: (1) a summary description of parcels of property (conforming to the
26 description contained on the tax roll) subject to the stormwater service assessment;
27 (2) the name of the owner of record of each parcel as shown on the tax roll; (3) the
28 number of ERUs or other applicable unit of apportionment attributable to each parcel;
29 (4) the estimated maximum annual stormwater service assessment to become due
30 in any fiscal year for each ERU; and (5) the estimated maximum annual stormwater
31 service assessment to become due in any fiscal year for each parcel.
- 32 (b) Copies of the initial stormwater service assessment resolution and the preliminary
33 stormwater service assessment roll shall be on file in the office of the stormwater
34 utility and open to public inspection. The foregoing shall not be construed to require
35 that the stormwater service assessment roll be in printed form if the amount of the
36 stormwater service assessment for each parcel of property can be determined by use
37 of a computer terminal.

38 Sec. 48-154. - Notice by publication.

1 After filing the stormwater service assessment roll in the office of the Stormwater
2 Program Director, as required by section 48-153, the Stormwater Program Director shall
3 publish once in a newspaper of general circulation within the City a notice stating that a
4 public hearing of the Council will be held on a certain day and hour, not earlier than 20
5 calendar days from such publication, at which hearing the Council will receive written
6 comments and hear testimony from all interested persons regarding adoption of the final
7 stormwater service assessment resolution and approval of the stormwater service
8 assessment roll. The published notice shall conform to the requirements set forth in the
9 Uniform Assessment Collection Act. The notice required by this section may be combined
10 with the stormwater improvement assessment notice required by section 48-205.

11 Sec. 48-155. - Notice by mail.

12 In addition to the published notice required by section 48-154, the Stormwater
13 Program Director shall provide notice of the proposed stormwater service assessment by
14 first class mail to the owner of each parcel of property subject to the stormwater service
15 assessment. The mailed notice shall conform to the requirements set forth in the Uniform
16 Assessment Collection Act. Notice shall be mailed at least 20 calendar days prior to the
17 hearing to each property owner at such address as is shown on the tax roll available on
18 the date the preliminary stormwater service assessment roll is prepared. Notice shall be
19 deemed mailed upon delivery thereof to the possession of the U.S. Postal Service. The
20 Stormwater Program Director shall provide proof of such notice by affidavit. Failure of the
21 owner to receive such notice due to mistake or inadvertence shall not affect the validity
22 of the stormwater service assessment roll nor release or discharge any obligation for the
23 payment of a stormwater service assessment imposed by the Council pursuant to this
24 article. The notice required by this section may be combined with the stormwater
25 improvement assessment notice required by section 48-206.

26 Sec. 48-156. - Adoption of final resolution.

27 At the time named in such notice, or to which an adjournment or continuance may be
28 taken, the Council shall receive any written objections of interested persons and may
29 then, or at any subsequent meeting of the Council, adopt the final stormwater service
30 assessment resolution, which shall:

- 31 (1) Confirm, modify or repeal the initial stormwater service assessment resolution
32 with such amendments, if any, as may be deemed appropriate by the Council;
- 33 (2) Approve the stormwater service assessment roll, with such amendments as it
34 deems just and right; and
- 35 (3) Determine the method of collection.

36 The final stormwater service assessment resolution may be combined with a final
37 stormwater improvement assessment resolution. The stormwater service assessments
38 so approved shall be in proportion to the special benefits received by the affected parcels
39 as a consequence of the management of the stormwater burden expected to be
40 generated by the physical characteristics and use of the parcel or classification of
41 property. All objections to adoption of the final stormwater service assessment resolution

1 shall be made in writing, and filed with the Clerk at or before the time or adjourned time
2 of such hearing.

3 Sec. 48-157. - Annual stormwater service assessment resolution.

4 The Council shall adopt an annual stormwater service assessment resolution during
5 its budget adoption process for each fiscal year following adoption of the final stormwater
6 service assessment resolution. The annual stormwater service assessment resolution
7 shall approve the stormwater service assessment roll for such fiscal year. The stormwater
8 service assessment roll shall be prepared in accordance with the initial stormwater
9 service assessment resolution, as confirmed or amended by the final stormwater service
10 assessment resolution. If the proposed stormwater service assessment for any parcel of
11 property exceeds the maximum amount established in the final stormwater service
12 assessment resolution or if a stormwater service assessment is imposed against property
13 not previously subject thereto, the Council shall provide notice to the owner of such
14 property in accordance with sections 48-154 and 48-155 hereof and conduct a public
15 hearing prior to adoption of the annual stormwater service assessment resolution.

16 Sec. 48-158. - Effect of assessment resolution.

17 The stormwater service assessments for the fiscal year shall be established upon
18 adoption of the final stormwater service assessment resolution or annual stormwater
19 service assessment resolution. The adoption of the final stormwater service assessment
20 resolution or annual stormwater service assessment shall be the final adjudication of the
21 issues presented (including, but not limited to, the method of apportionment and
22 assessment, the rate of assessment, the adoption of the stormwater service assessment
23 roll and the levy and lien of the stormwater service assessments), unless proper steps
24 are initiated in a court of competent jurisdiction to secure relief within 20 days from the
25 date of Council adoption of the final stormwater service assessment resolution or annual
26 stormwater service assessment resolution. The stormwater service assessment roll, as
27 approved by the final stormwater service assessment resolution or annual stormwater
28 service assessment resolution, shall be delivered to the Tax Collector, or such other
29 official as the Council, by resolution, deems appropriate.

30 Sec. 48-159. - Lien of stormwater service assessments.

31 (a) Upon adoption of the annual stormwater service assessment resolution for each fiscal
32 year, stormwater service assessments to be collected under the Uniform Assessment
33 Collection Act shall constitute a lien against assessed property equal in rank and
34 dignity with the liens of all State, County, district or municipal taxes and other non-ad
35 valorem assessments. Except as otherwise provided by law, such lien shall be
36 superior in dignity to all other liens, titles and claims, until paid. The lien shall be
37 deemed perfected upon adoption by the Council of the Annual Stormwater Service
38 Assessment Resolution and shall attach to the property included on the stormwater
39 service assessment roll as of the prior January 1, the lien date for ad valorem taxes.

40 (b) Upon adoption of the final stormwater service assessment resolution, stormwater
41 service assessments to be collected under the alternative method of collection

1 provided in section 48-252 shall constitute a lien against assessed property equal in
2 rank and dignity with the liens of all State, County, district or municipal taxes and
3 other non-ad valorem assessments. Except as otherwise provided by law, such lien
4 shall be superior in dignity to all other liens, titles and claims, until paid. The lien shall
5 be deemed perfected on the date notice thereof is recorded in the official records of
6 Lee County, Florida.

7 Sec. 48-160. - Revisions to stormwater service assessments.

8 If any stormwater service assessment made under the provisions of this Chapter is
9 either in whole or in part annulled, vacated or set aside by the judgment of any court, or
10 if the Council is satisfied that any such stormwater service assessment is so irregular or
11 defective that the same cannot be enforced or collected, or if the Council has omitted to
12 include any property on the stormwater service assessment roll which property should
13 have been so included, the Council may take all necessary steps to impose a new
14 stormwater service assessment against any property benefited by the customer services,
15 utility-wide operations or maintenance services, following, as nearly as may be
16 practicable, the provisions of this article, and in case such second stormwater service
17 assessment is annulled, the Council may obtain and impose other stormwater service
18 assessments until a valid stormwater service assessment is imposed.

19 Sec. 48-161. - Procedural irregularities.

20 Any informality or irregularity in the proceedings in connection with the levy of any
21 stormwater service assessment under the provisions of this article shall not affect the
22 validity of the same after the approval thereof, and any stormwater service assessment
23 as finally approved shall be competent and sufficient evidence that such stormwater
24 service assessment was duly levied, that the stormwater service assessment was duly
25 made and adopted, and that all other proceedings adequate to such stormwater service
26 assessment were duly had, taken and performed as required by this article; and no
27 variance from the directions hereunder shall be held material unless it be clearly shown
28 that the party objecting was materially injured thereby. Notwithstanding the provisions of
29 this section, any party objecting to a stormwater service assessment imposed pursuant
30 to this article must file an objection with a court of competent jurisdiction within the time
31 periods prescribed herein.

32 Sec. 48-162. - Correction of errors and omissions.

- 33 (a) No act of error or omission on the part of the Property Appraiser, Tax Collector, Clerk,
34 Council or their deputies or employees shall operate to release or discharge any
35 obligation for payment of any stormwater service assessment imposed by the Council
36 under the provisions of this article.
- 37 (b) The number of ERUs or other apportionment units attributed to a parcel of property
38 may be corrected in accordance with the procedure set forth in the initial stormwater
39 service assessment resolution. Any such correction which reduces a stormwater
40 service assessment shall be considered valid ab initio and shall in no way affect the
41 enforcement of the stormwater service assessment imposed under the provisions of
42 this article. Any such correction which increases a stormwater service assessment or

1 imposes an assessment on omitted property shall first require notice to the affected
2 owner at the address shown on the tax roll notifying the owner of the date, time and
3 place that the Council will consider confirming the correction and offering the owner
4 an opportunity to be heard.

5 (c) After the stormwater service assessment roll has been delivered to the Tax Collector
6 in accordance with the Uniform Assessment Collection Act, any changes,
7 modifications or corrections thereto shall be made in accordance with the procedures
8 applicable to errors and insolvencies for ad valorem taxes.

9 Secs. 48-163—48-200. - Reserved.

10 ARTICLE 4. - STORMWATER IMPROVEMENT ASSESSMENTS

11 Sec. 48-201. - Stormwater improvement assessments [authorized].

12 The Council is hereby authorized to impose stormwater improvement assessments
13 to fund all or any portion of the capital cost of a stormwater improvement identified in any
14 stormwater basin plan and the associated stormwater improvement collection costs.
15 Stormwater improvement assessments may be imposed against all parcels of property
16 within the stormwater improvement area at a rate of assessment based upon the special
17 benefit accruing to such property from the stormwater improvement, measured by the
18 number of ERUs attributable to each parcel or classification of property.

19 (1) If the Council expects to issue permanent obligations to finance the capital cost
20 of the stormwater improvements, the stormwater improvement assessments for
21 any stormwater improvement assessment roll that will be certified for collection
22 prior to issuance of such permanent obligations shall be computed and applied
23 as follows:

24 a. Prior to adoption of the initial stormwater improvement assessment
25 resolution, the Stormwater Program Director shall direct the preparation of a
26 pro forma schedule of the permanent obligations required to finance the
27 capital cost of the stormwater improvements utilizing the following
28 assumptions:

29 1. The principal amount of the pro forma permanent obligations is at least
30 sufficient to fund: i. Interest to accrue on such permanent obligations from
31 their expected date of issuance to the first interest payment date that
32 occurs during the fiscal year following that in which the stormwater
33 improvements to be constructed from the proceeds of such permanent
34 obligations are scheduled for completion; ii. Payment of the transaction
35 cost; iii. Amounts to be deposited in any reserve account established for
36 the permanent obligations; and iv. The estimated capital cost for the
37 stormwater improvements;

38 2. The permanent obligations are payable in substantially equal annual
39 payments over a period not exceeding 30 years from their expected date
40 of issuance; and

- 1 3. The permanent obligations bear interest at rates not exceeding two full
2 percentage points in excess of the rates such permanent obligations
3 would bear, in the reasonable judgment of the City or its financial advisor,
4 on the date the pro forma schedule of permanent obligations is prepared.
- 5 b. Based upon the pro forma schedule of permanent obligations, the annual
6 stormwater improvement assessment for each ERU shall be computed as (a)
7 the ERU's share of (i) the maximum annual debt service for the pro forma
8 schedule of permanent obligations, (ii) any anticipated credit enhancement
9 or similar fees not to be funded from proceeds of the permanent obligations,
10 and (iii) the stormwater improvement collection costs, divided by (b) the factor
11 of 0.95, reflecting the percentage of reasonably anticipated receipts the City
12 is permitted to appropriate pursuant to F.S. § 129.01(2)(b). The annual
13 stormwater improvement assessment for each parcel or classification of
14 property shall be computed by multiplying the stormwater improvement
15 assessment for each ERU by the number of ERUs attributable to such parcel
16 or classification of property.
- 17 c. Proceeds from the stormwater improvement assessments received during
18 each fiscal year shall be applied by the City as follows:
- 19 1. Payment of the associated stormwater improvement collection cost;
20 2. Payment of the capital cost for the stormwater improvements;
21 3. Payment of the actual debt service on interim obligations attributable to
22 the stormwater improvements becoming due during such fiscal year; and
23 4. Prepayment of the interim obligations attributable to the stormwater
24 improvements.
- 25 (2) The annual stormwater improvement assessment for any stormwater
26 improvement assessment roll that will be certified for collection after the issuance
27 of permanent obligations to finance the stormwater improvements shall be
28 computed as (i) the sum of the ERU's share of (a) the annual debt service for the
29 permanent obligations, (b) any anticipated credit enhancement or similar fees not
30 to be funded from proceeds of the permanent obligations, (c) any deficiency in
31 the collection of annual debt service for the permanent obligations in the prior
32 fiscal year (deficiency for this purpose being defined as collection of any amount
33 less than annual debt service for the permanent obligations divided by 0.95), (d)
34 the amount of any principal of and interest on permanent obligations that has
35 become due and remains unpaid, and (e) the stormwater improvement collection
36 costs, divided by (ii) the factor of 0.95, reflecting the percentage of reasonably
37 anticipated receipts the City is permitted to appropriate pursuant to F.S. §
38 129.01(2)(b). For purposes of determining the debt service, the Council may
39 assume that the permanent obligations bear interest at a rate not greater than
40 one full percentage point in excess of their actual rate. The annual stormwater
41 improvement assessment for each parcel or classification of property shall be
42 computed by multiplying the stormwater improvement assessment for each ERU
43 by the number of ERUs attributable to such parcel or classification of property.

1 (3) If obligations will not be issued to finance the capital cost of the stormwater
2 improvements, the stormwater improvement assessments shall be computed
3 and applied as follows:

4 a. The annual stormwater improvement assessment for each ERU shall be
5 computed as (a) the sum of each ERU's share of the capital cost to be funded
6 during the fiscal year and the associated stormwater improvement collection
7 costs, divided by (b) the factor of 0.95, reflecting the percentage of
8 reasonably anticipated receipts the City is permitted to appropriate pursuant
9 to F.S. § 129.01(2)(b). The annual stormwater improvement assessment for
10 each parcel of property shall be computed by multiplying the stormwater
11 improvement assessment for each ERU by the number of ERUs attributable
12 to such parcel.

13 b. Proceeds from the stormwater improvement assessments received during
14 each fiscal year shall be applied to payment of the capital cost for the
15 stormwater improvements and the associated stormwater improvement
16 collection cost.

17 (4) Nothing contained in this article shall be construed to require or preclude the
18 imposition of stormwater improvement assessments against government
19 property.

20 Sec. 48-202. - Initial proceedings.

21 The initial proceeding for the imposition of a stormwater improvement assessment
22 shall be the Council's adoption of an initial stormwater improvement assessment
23 resolution:

24 (1) Briefly describing the stormwater improvement;

25 (2) Identifying the stormwater improvement area;

26 (3) Estimating the capital cost;

27 (4) Describing the method of determining the number of ERUs attributable to each
28 parcel or classification of property (including any mitigation credit factors), or
29 other apportionment methodology to be utilized for the stormwater service
30 assessment;

31 (5) Describing the procedure for adjusting the number of ERUs or other
32 apportionment units attributable to a parcel of property; and

33 (6) Identifying the proposed method of collection.

34 An initial stormwater improvement assessment resolution may be combined with an initial
35 stormwater service assessment resolution.

36 Sec. 48-203. - Plans and specifications.

37 As soon as possible after the passage of the initial stormwater improvement
38 assessment resolution, the Stormwater Program Director shall prepare, or direct the
39 preparation of, preliminary plans, specifications and cost estimates for the stormwater

1 improvement. The plans and specifications need only be in sufficient form to enable the
2 Stormwater Program Director to estimate, or direct the estimation of, the costs of the
3 stormwater improvement and to prepare the preliminary stormwater improvement
4 assessment roll.

5 Sec. 48-204. - Stormwater improvement assessment roll.

6 (a) The Stormwater Program Director shall prepare, or direct the preparation of, a
7 preliminary stormwater improvement assessment roll, which shall contain the
8 following information:

9 (1) A summary description of parcels of property (conforming to the description
10 contained on the tax roll) located within or without the stormwater improvement
11 area;

12 (2) The name of the owner of record of each parcel as shown on the tax roll;

13 (3) The number of ERUs or other applicable unit of apportionment attributable to
14 each parcel;

15 (4) The estimated maximum annual stormwater improvement assessments to
16 become due in any fiscal year for each ERU; and

17 (5) The estimated maximum annual stormwater improvement assessment to
18 become due in any fiscal year for each parcel.

19 (b) Copies of the initial stormwater improvement assessment resolution, preliminary
20 plans and specifications, capital cost estimates for the stormwater improvement and
21 the preliminary stormwater improvement assessment roll shall be on file in the office
22 of the stormwater environmental utility and open to public inspection. The foregoing
23 shall not be construed to require that the stormwater improvement assessment roll
24 be in printed form if the estimated maximum annual stormwater improvement
25 assessment can be determined by use of a computer terminal.

26 Sec. 48-205. - Notice by publication.

27 After filing the stormwater improvement assessment roll in the office of the
28 Stormwater Program Director, as required by section 48-204, the Stormwater Program
29 Director shall publish once in a newspaper of general circulation within the City a notice
30 stating that a public hearing of the Council will be held on a certain day and hour, not
31 earlier than 20 calendar days from such publication, at which hearing the Council will
32 receive written comments and hear testimony from all interested persons regarding
33 adoption of the final stormwater improvement assessment resolution and approval of the
34 stormwater improvement assessment roll. The published notice shall conform to the
35 requirements set forth in the Uniform Assessment Collection Act. The notice required by
36 this section may be combined with the stormwater service assessment notice required by
37 section 48-154.

38 Sec. 48-206. - Notice by mail.

39 In addition to the published notice required by section 48-205, the City shall provide
40 notice of the stormwater improvement assessments by first class mail to the owner of

1 each parcel of property subject to the stormwater improvement assessment. The mailed
2 notice shall conform to the requirements set forth in the Uniform Assessment Collection
3 Act. Notice shall be mailed at least 20 calendar days prior to the hearing to each property
4 owner at such address as is shown on the tax roll available on the date the preliminary
5 stormwater improvement assessment roll is prepared. Notice shall be deemed mailed
6 upon delivery thereof to the possession of the U.S. Postal Service. The Council may
7 provide proof of such notice by affidavit. The notice required by this section may be
8 combined with the stormwater service assessments notice required by section 48-155.

9 Sec. 48-207. - Adoption of final resolution.

10 At the time named in such notice, or to which an adjournment or continuance may be
11 taken, the Council shall receive any written objections of interested persons and may
12 then, or at any subsequent meeting of the Council, adopt a final stormwater improvement
13 assessment resolution which shall:

- 14 (1) Approve the aforementioned plans and specifications and estimates of capital
15 cost for the stormwater improvement, with such amendments as it deems just
16 and right;
- 17 (2) Confirm, modify or repeal the initial stormwater improvement assessment
18 resolution with such amendments, if any, as may be deemed appropriate by the
19 Council;
- 20 (3) Approve the initial stormwater improvement assessment roll and the method by
21 which the stormwater improvement assessments will be computed, with such
22 amendments as it deems just and right; and
- 23 (4) Determine the method of collection.

24 A final stormwater improvement assessment resolution may be combined with a final
25 stormwater service assessment resolution. The stormwater improvement assessments
26 so approved shall be in proportion to the special benefits received by the affected parcels
27 as a consequence of the management of the stormwater burden expected to be
28 generated by the physical characteristics and use of the parcel or classification of
29 property. All objections to adoption of the final stormwater improvement assessment
30 resolution shall be made in writing, and filed with the Clerk at or before the time or
31 adjourned time of such hearing.

32 Sec. 48-208. - Annual stormwater improvement assessment resolution.

33 The Council shall adopt an annual stormwater improvement assessment resolution
34 during its budget adoption process for each fiscal year following adoption of the final
35 stormwater improvement assessment resolution during which obligations remain
36 outstanding. The final stormwater improvement assessment resolution shall constitute
37 the annual stormwater improvement assessment resolution for the initial fiscal year. The
38 annual stormwater improvement assessment resolution shall approve the stormwater
39 improvement assessment roll for such fiscal year. The stormwater improvement
40 assessment roll shall be prepared in accordance with the initial stormwater improvement
41 assessment resolution, as confirmed or amended by the final stormwater improvement

1 assessment resolution. If the proposed stormwater improvement assessment for any
2 parcel of property exceeds the maximum amount established in the final stormwater
3 improvement assessment resolution or if a stormwater improvement assessment is
4 imposed against property not previously subject thereto, the Council shall provide notice
5 to the owner of such property in accordance with sections 48-205 and 48-206 and conduct
6 a public hearing prior to adoption of the annual stormwater improvement assessment
7 resolution. Failure to adopt an annual stormwater assessment resolution during the
8 budget adoption process for a fiscal year may be cured at any time.

9 Sec. 48-209. - Effect of assessment resolution.

10 The stormwater improvement assessments shall be established upon adoption of the
11 final stormwater improvement assessment resolution or annual stormwater improvement
12 assessment resolution. The adoption of the final stormwater improvement assessment
13 resolution or, if the stormwater improvement assessment for any parcel of property
14 exceeds the maximum amount established in the final stormwater improvement
15 assessment resolution, the annual stormwater improvement assessment resolution, shall
16 be the final adjudication of the issues presented (including, but not limited to, the method
17 of assessment, the adoption of the stormwater improvement assessment roll, the
18 preliminary plans and specifications, the estimated capital cost for the stormwater
19 improvement, and the levy and lien of the stormwater improvement assessments), unless
20 proper steps are initiated in a court of competent jurisdiction to secure relief within 20
21 days from the date of Council adoption of the final stormwater improvement assessment
22 resolution or annual stormwater improvement assessment resolution. The stormwater
23 improvement assessment roll, as approved by the final stormwater improvement
24 assessment resolution or annual stormwater improvement assessment resolution, shall
25 be delivered to the Tax Collector, or other such official as the Council, by resolution,
26 deems appropriate.

27 Sec. 48-210. - Lien of stormwater improvement assessments.

28 (a) Upon adoption of the annual stormwater improvement assessment resolution for
29 each fiscal year, stormwater improvement assessments to be collected under the
30 Uniform Assessment Collection Act shall constitute a lien against assessed property
31 equal in rank and dignity with the liens of all State, County, district or municipal taxes
32 and other non-ad valorem assessments. Except as otherwise provided by law, such
33 lien shall be superior in dignity to all other liens, titles and claims, until paid. The lien
34 shall be deemed perfected upon adoption by the Council of the annual stormwater
35 improvement assessment resolution and shall attach to the property included on the
36 stormwater improvement assessment roll as of the prior January 1, the lien date for
37 ad valorem taxes.

38 (b) Upon adoption of the final stormwater improvement assessment resolution,
39 stormwater improvement assessments to be collected under the alternative method
40 of collection provided in Section 48-252 shall constitute a lien against assessed
41 property equal in rank and dignity with the liens of all State, County, district or
42 municipal taxes and other non-ad valorem assessments. Except as otherwise
43 provided by law, such lien shall be superior in dignity to all other liens, titles and

1 claims, until paid. The lien shall be deemed perfected on the date notice thereof is
2 recorded in the official records of Lee County, Florida.

3 Sec. 48-211. - Revisions to stormwater improvement assessments.

4 If any stormwater improvement assessment made under the provisions of this
5 Chapter is either in whole or in part annulled, vacated or set aside by the judgment of any
6 court, or if the Council is satisfied that any such stormwater improvement assessment is
7 so irregular or defective that the same cannot be enforced or collected, or if the Council
8 has omitted to include any property on the stormwater improvement assessment roll
9 which property should have been so included, the Council may take all necessary steps
10 to impose a new stormwater improvement assessment against any property benefited by
11 the stormwater improvements, following, as nearly as may be practicable, the provisions
12 of this article, and in case such second stormwater improvement assessment is annulled,
13 the Council may obtain and impose other stormwater improvement assessments until a
14 valid stormwater improvement assessment is imposed.

15 Sec. 48-212. - Procedural irregularities.

16 Any informality or irregularity in the proceedings in connection with the levy of any
17 stormwater improvement assessment under the provisions of this article shall not affect
18 the validity of the same after the approval thereof, and any stormwater improvement
19 assessment as finally approved shall be competent and sufficient evidence that such
20 stormwater improvement assessment was duly levied, that the stormwater improvement
21 assessment was duly made and adopted, and that all other proceedings adequate to such
22 stormwater improvement assessment were duly had, taken and performed as required
23 by this article; and no variance from the directions hereunder shall be held material unless
24 it be clearly shown that the party objecting was materially injured thereby. Notwithstanding
25 the provisions of this section, any party objecting to a stormwater improvement
26 assessment imposed pursuant to this article must file an objection with a court of
27 competent jurisdiction within the time periods prescribed herein.

28 Sec. 48-213. - Correction of errors and omissions.

- 29 (a) No act of error or omission on the part of the Property Appraiser, Tax Collector, Clerk,
30 Council or their deputies or employees shall operate to release or discharge any
31 obligation for payment of any stormwater improvement assessment imposed by the
32 Council under the provisions of this article.
- 33 (b) The number of ERUs or other apportionment units attributed to a parcel of property
34 may be corrected in accordance with the procedure set forth in the initial stormwater
35 improvement assessment resolution. Any such correction which reduces a
36 stormwater improvement assessment shall be considered valid ab initio and shall in
37 no way affect the enforcement of the stormwater improvement assessment imposed
38 under the provisions of this article. Any such correction which increases a stormwater
39 improvement assessment or imposes an assessment on omitted property shall first
40 require notice to the affected owner at the address shown on the tax roll, notifying the
41 owner of the date, time and place that the Council will consider confirming the
42 correction and offering the owner an opportunity to be heard.

1 (c) After the stormwater improvement assessment roll has been delivered to the Tax
2 Collector in accordance with the Uniform Assessment Collection Act, any changes,
3 modifications or corrections thereto shall be made in accordance with the procedures
4 applicable to errors and insolvencies for ad valorem taxes.

5 Sec. 48-214. - Disposition of stormwater improvement assessment fund balance.

6 (a) If, at the completion of the construction of a bonded Stormwater Improvement and
7 after making provisions for the satisfaction of all Obligations related to that bonded
8 Stormwater Improvement, a surplus of assessment revenues for that Stormwater
9 Improvement remains due to the receipt of grants or other reductions to the final cost
10 of the Stormwater Improvement, the surplus revenues shall be applied to the
11 assessed properties located within the applicable Stormwater Improvement Area as
12 a credit per ERU on the annual County tax bill until the surplus assessment revenues
13 for that Stormwater Improvement are depleted.

14 (b) If, at any time either prior to completion of construction or upon completion of
15 construction of a nonbonded Stormwater Improvement and after consideration of the
16 receipt of all reasonably anticipated grants and upon making provisions for the
17 satisfaction of all Obligations related to that Stormwater Improvement, there remains
18 a surplus of assessment revenues for that Stormwater Improvement which is
19 determined by the project engineer to be in excess of the amount needed to complete
20 construction of that Stormwater Improvement, the surplus revenues shall be applied
21 to the assessed properties located within the applicable Stormwater Improvement
22 Area as a credit per ERU on the annual County tax bill until the surplus assessment
23 revenues for that Stormwater Improvement are depleted.

24 (c) In no event may the Stormwater Improvement Assessment credit to a property in any
25 single year exceed the amount of that property's Stormwater Service Assessment
26 levied for that year. After surplus assessment revenues in a Stormwater Improvement
27 Area fund have been credited to the assessed properties within that Stormwater
28 Improvement Area, if de minimus revenues remain in that Stormwater Improvement
29 Area fund as a result of fractional calculations or other adjustments, those de minimus
30 revenues shall be transferred to the Stormwater Service Assessment fund and the
31 depleted Stormwater Improvement Area fund shall be closed.

32 Secs. 48-215—48-250. - Reserved.

33 ARTICLE 5. - COLLECTION OF STORMWATER ASSESSMENTS

34 Sec. 48-251. - Method of collection.

35 Unless directed otherwise by the Council, stormwater assessments (other than
36 stormwater assessments imposed against government property) shall be collected
37 pursuant to the Uniform Assessment Collection Act, and the City shall comply with all
38 applicable provisions thereof. Any hearing or notice required by this article may be
39 combined with any other hearing or notice required by the Uniform Assessment Collection
40 Act.

1 Sec. 48-252. - Alternative method of collection.

2 In lieu of using the Uniform Assessment Collection Act, the City may elect to collect
3 the stormwater assessment by any other method which is authorized by law or provided
4 by this section as follows:

5 (1) The City shall provide stormwater assessment bills by first class mail to the owner
6 of each affected parcel of property, other than government property. The bill or
7 accompanying explanatory material shall include:

8 a. A brief explanation of the stormwater assessment:

9 b. A description of the ERU or other unit of measurement used to determine the
10 amount of the stormwater assessment;

11 c. The number of ERUs or other units contained within the parcel;

12 d. The total amount of the parcel's stormwater assessment for the appropriate
13 period;

14 e. The location at which payment will be accepted;

15 f. The date on which the stormwater assessment is due; and

16 g. A statement that the stormwater assessment constitutes a lien against
17 assessed property equal in rank and dignity with the liens of all State, County,
18 district or municipal taxes and other non-ad valorem assessments.

19 (2) A general notice of the lien resulting from imposition of the stormwater
20 assessments shall be recorded in the official records of Lee County. Nothing
21 herein shall be construed to require that individual liens or releases be filed in the
22 official records.

23 (3) The City shall have the right to appoint or retain an agent to foreclose and collect
24 all delinquent stormwater assessments in the manner provided by law. A
25 stormwater assessment shall become delinquent if it is not paid within 30 days
26 from the date any installment is due. The City or its agent shall notify any property
27 owner who is delinquent in payment of his or her stormwater assessment within
28 60 days from the date such assessment was due. Such notice shall state in effect
29 that the City or its agent will initiate a foreclosure action and cause the foreclosure
30 of such property subject to a delinquent stormwater assessment in a method now
31 or hereafter provided by law for foreclosure of mortgages on real estate, or
32 otherwise as provided by law.

33 (4) All costs, fees and expenses, including reasonable attorneys' fees and title
34 search expenses, related to any foreclosure action as described herein shall be
35 included in any judgment or decree rendered therein. At the sale pursuant to
36 decree in any such action, the City may be the purchaser to the same extent as
37 an individual person or corporation. The City may join in one foreclosure action
38 the collection of stormwater assessments against any or all property assessed in
39 accordance with the provisions hereof. All delinquent property owners whose
40 property is foreclosed shall be liable for an apportioned amount of reasonable

1 costs and expenses incurred by the City and its agents, including reasonable
2 attorneys' fees, in collection of such delinquent stormwater assessments, and
3 any other costs incurred by the City as a result of such delinquent stormwater
4 assessments, including, but not limited to, costs paid for draws on a credit facility,
5 and the same shall be collectible as a part of, or in addition to, the costs of the
6 action.

7 (5) In lieu of foreclosure, any delinquent stormwater assessment, and the costs, fees
8 and expenses attributable thereto, may be collected pursuant to the Uniform
9 Assessment Collection Act; provided, however, that:

10 a. Notice is provided to the owner in the manner required by law and this article;
11 and

12 b. Any existing lien of record on the affected parcel for the delinquent
13 stormwater assessment is supplanted by the lien resulting from certification
14 of the stormwater service assessment roll or stormwater improvement
15 assessment roll, as applicable, to the Tax Collector.

16 Sec. 48-253. - Responsibility for enforcement.

17 The City and its agent, if any, shall maintain the duty to enforce the prompt collection
18 of stormwater assessments by the means provided herein. The duties related to collection
19 of stormwater assessments may be enforced at the suit of any holder of obligations in a
20 court of competent jurisdiction by mandamus or other appropriate proceedings or actions.

21 Sec. 48-254. - Government Property.

22 (a) If stormwater assessments are imposed against government property, the City shall
23 provide stormwater assessment bills by first class mail to the owner of each affected
24 parcel of government property. The bill or accompanying explanatory material shall
25 include:

26 (1) A brief explanation of the stormwater assessment;

27 (2) A description of the ERU or other unit of measurement used to determine the
28 amount of the stormwater assessment;

29 (3) The number of ERUs or other units contained within the parcel;

30 (4) The total amount of the parcel's stormwater assessment for the appropriate
31 period;

32 (5) The location at which payment will be accepted; and

33 (6) The date on which the stormwater assessment is due.

34 (b) Stormwater assessments imposed against governmental property shall be due on
35 the same date as all other stormwater assessments and, if applicable, shall be subject
36 to the same discounts for early payment.

37 (c) A stormwater assessment shall become delinquent if it is not paid within 30 days from
38 the date any installment is due. The City shall notify the owner of any government
39 property that is delinquent in payment of its stormwater assessment within 60 days

1 from the date such assessment was due. Such notice shall state in effect that the City
2 will initiate a mandamus or other appropriate judicial action to compel payment.

3 (d) All costs, fees and expenses, including reasonable attorneys' fees and title search
4 expenses, related to any mandamus or other action as described herein shall be
5 included in any judgment or decree rendered therein. All delinquent owners of
6 government property against which a mandamus or other appropriate action is filed
7 shall be liable for an apportioned amount of reasonable costs and expenses incurred
8 by the City, including reasonable attorneys' fees, in collection of such delinquent
9 stormwater assessments, and any other costs incurred by the City as a result of such
10 delinquent stormwater assessments, including, but not limited to, costs paid for draws
11 on a credit facility, and the same shall be collectible as a part of, or in addition to, the
12 costs of the action.

13 (e) As an alternative to the foregoing, a stormwater assessment imposed against
14 government property may be collected on the bill for any utility service provided to
15 such governmental property. The Council may contract for such billing services with
16 any utility not owned by the City.

17 Secs. 48-255—48-300. - Reserved.

18 ARTICLE 6. - ISSUANCE OF OBLIGATIONS

19 Sec. 48-301. - General authority.

20 Upon adoption of the final stormwater improvement assessment resolution or at any
21 time thereafter, the Council shall have the power and is hereby authorized to provide by
22 resolution, at one time or from time to time in series, for the issuance of obligations of the
23 City in an aggregate principal amount at least sufficient to fund: (1) interest to accrue on
24 such obligations from the date of issuance to the first interest payment date that occurs
25 during the next ensuing fiscal year following the issuance of such series of obligations, or
26 such period subsequent thereto as the Council deems appropriate by resolution; (2)
27 payment of the transaction cost; (3) amounts to be deposited in any reserve account
28 established for the obligations; and (4) the estimated capital cost for the stormwater
29 improvement. The principal of and interest on each series of obligations shall be payable
30 from pledged revenue.

31 Sec. 48-302. - Terms of the obligations.

32 The obligations shall be dated, shall bear interest at such rate or rates, and shall
33 mature at such times as may be determined by resolution of the Council, and may be
34 made redeemable before maturity, at the option of the City, at such price or prices and
35 under such terms and conditions as may be fixed by the Council. Said obligations shall
36 mature not later than 40 years after their issuance and may, at the option of the Council,
37 bear interest at a variable rate. The Council shall determine by resolution the form of the
38 obligations, and the manner of executing such obligations, and shall fix the denominations
39 of such obligations, the place or places of payment of the principal and interest, which
40 may be at any bank or trust company within or outside of the State of Florida, and such
41 other terms and provisions of the obligations as it deems appropriate. The obligations

1 may be sold at public or private sale for such price or prices as the Council shall determine
2 by resolution. The obligations may be delivered to any contractor to pay for his work in
3 constructing the stormwater improvements or may be sold in such manner and for such
4 price as the Council may determine by resolution to be for the best interests of the City.

5 Sec. 48-303. - Variable rate obligations.

6 The City may, at its option, issue obligations bearing a variable rate of interest. In
7 such event, the City shall adopt a resolution to designate the interest rate used to compute
8 the stormwater improvement assessments; provided, however, that if the resolution
9 authorizing issuance of the obligations establishes a maximum rate of interest, the rate
10 of interest used to compute the stormwater improvement assessments shall not exceed
11 such maximum rate. If, for any fiscal year, the actual rate of interest on the obligations is
12 less than the rate of interest used to compute the stormwater improvement assessments,
13 the excess amounts shall be credited to the next installment of the stormwater
14 improvement assessment or be returned to the property owners who paid such amounts,
15 as provided by resolution of the Council. If, for any fiscal year, the actual rate of interest
16 on the obligations exceeds the rate of interest used to compute the stormwater
17 improvement assessments, such deficiency may be imposed as a surcharge on the next
18 annual installment.

19 Sec. 48-304. - Temporary obligations.

20 Prior to the preparation of definitive obligations of any series, the Council may, under
21 like restrictions, issue interim receipts, interim certificates, or temporary obligations,
22 exchangeable for definitive obligations when such obligations have been executed and
23 are available for delivery. The Council may also provide for the replacement of any
24 obligations which shall become mutilated, destroyed or lost. Obligations may be issued
25 without any other proceedings or the happening of any other conditions or things than
26 those proceedings, conditions or things which are specifically required by this article.

27 Sec. 48-305. - Anticipation notes.

28 In anticipation of the sale of obligations, the Council may, by resolution, issue notes
29 and may renew the same from time to time. Such notes may be paid from the proceeds
30 of the obligations, the proceeds of the stormwater improvement assessments, the
31 proceeds of the notes and such other legally available moneys as the Council deems
32 appropriate by resolution. Said notes shall mature within five years of their issuance and
33 shall bear interest at a rate not exceeding the maximum rate provided by law. The Council
34 may issue obligations or renewal notes to repay the notes. The notes shall be issued in
35 the same manner as the obligations.

36 Sec. 48-306. - Taxing power not pledged.

37 Obligations issued under the provisions of this article shall not be deemed to
38 constitute a pledge of the faith and credit of the City, but such obligations shall be payable
39 only from pledged revenue and, if applicable, proceeds of the stormwater service
40 assessments, in the manner provided herein and by the resolution authorizing the
41 obligations. The issuance of obligations under the provisions of this article shall not

1 directly or indirectly obligate the City to levy or to pledge any form of ad valorem taxation
2 whatever therefor. No holder of any such obligations shall ever have the right to compel
3 any exercise of the ad valorem taxing power on the part of the City to pay any such
4 obligations or the interest thereon or to enforce payment of such obligations or the interest
5 thereon against any property of the City, nor shall such obligations constitute a charge,
6 lien or encumbrance, legal or equitable, upon any property of the City, except the pledged
7 revenue.

8 Sec. 48-307. - Trust funds.

9 The pledged revenue received pursuant to the authority of this article shall be deemed
10 to be trust funds, to be held and applied solely as provided in this article and in the
11 resolution authorizing issuance of the obligations. Such pledged revenue may be invested
12 by the City, or its designee, in the manner provided by the resolution authorizing issuance
13 of the obligations. The pledged revenue, upon receipt thereof by the City, shall be subject
14 to the lien and pledge of the holders of any obligations or any entity other than the City
15 providing credit enhancement on the obligations.

16 Sec. 48-308. - Remedies of holders.

17 Any holder of obligations, except to the extent the rights herein given may be
18 restricted by the resolution authorizing issuance of the obligations, may, whether at law
19 or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and
20 all rights under the laws of the State or granted hereunder or under such resolution, and
21 may enforce and compel the performance of all duties required by this part [article], or by
22 such resolution, to be performed by the City.

23 Sec. 48-309. - Refunding Obligations.

24 The City may, by resolution of the Council, issue obligations to refund any obligations
25 issued pursuant to this article, or any other obligations of the City theretofore issued to
26 finance the capital cost of a stormwater improvement, and provide for the rights of the
27 holders thereof. Such refunding obligations may be issued in an amount sufficient to
28 provide for the payment of the principal of, redemption premium, if any, and interest on
29 the outstanding obligations to be refunded. If the issuance of such refunding obligations
30 results in an annual stormwater improvement assessment that exceeds the estimated
31 maximum annual assessment set forth on the preliminary assessment roll prepared
32 pursuant to section 48-204, the Council shall provide notice to the affected property
33 owners and conduct a public hearing in the manner required by Article 3 of Chapter 48.

34 Secs. 48-310—48-350. - Reserved.

35 ARTICLE 7. - GENERAL PROVISIONS

36 Sec. 48-351. - Severability.

37 The provisions of this article are severable, and if any section, subsection, sentence,
38 clause or provision is held invalid by any court of competent jurisdiction, the remaining
39 provisions of this article shall not be affected thereby.

1 Sec. 48-352. - Alternative method.

2 This article shall be deemed to provide an additional and alternative method for the
3 doing of the things authorized hereby and shall be regarded as supplemental and
4 additional to powers conferred by other laws, and shall not be regarded as in derogation
5 of any powers now existing or which may hereafter come into existence. This article,
6 being necessary for the welfare of the inhabitants of the City, shall be liberally construed
7 to affect the purposes hereof.

8 Secs. 48-353—48-400. - Reserved.

9 **Section 3.** **SEVERABILITY**

10
11 The provisions of this ordinance are severable, and it is the intention to confer the
12 whole or any part of the powers herein provided for. If any Court of competent jurisdiction
13 shall hold any of the provisions of this Ordinance unconstitutional, the decision of such
14 Court shall not affect or impair any remaining provisions of this ordinance. It is hereby
15 declared to be the legislative intent that this ordinance would be adopted had such
16 unconstitutional provision not been included therein.

17
18 **Section 4.** **CONFLICTS OF LAW**

19
20 Whenever the requirements or provisions of this ordinance are in conflict with the
21 requirements or provisions of any other lawfully adopted City of Bonita Springs ordinance
22 or Florida Statutes, the more restrictive shall apply.

23
24 **Section 5.** **CODIFICATION AND SCRIVENER'S ERRORS**

25
26 It is the intention of the City Council that the provisions of this Ordinance shall
27 become and be made part of the Bonita Springs Code; that sections of this Ordinance
28 may be renumbered or re-lettered and that the word "ordinance" may be changed to
29 "section", "article", or such other appropriate word or phrase in order to accomplish such
30 intention; and that any typographical errors which do not affect the intent may be
31 authorized by the City Manager without need of public hearing, by filing a corrected copy
32 with the City Clerk.

33
34 **Section 6.** **EFFECTIVE DATE**

35
36 The effective date of this ordinance shall be thirty (30) days from its adoption date.

37
38 DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs,
39 Lee County, Florida, this 17 day of July, 2019.

40
41 AUTHENTICATION:

42 
43 _____
44 Mayor

42 
43 _____
44 City Clerk

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12

APPROVED AS TO FORM: 
City Attorney

Vote:

Carr	Aye	O'Flinn	Aye
DeWitt	Aye	Quaremba	Aye
Forbes	Aye	Simmons	Aye
Gibson	Nay		

Date filed with City Clerk: 7/19/19